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# White-Collar Crime 2023

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## **Greece: Trends & Developments**

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## Trends and Developments

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**GIANNIDISKOURELEAS Law Firm** is a leading law firm in white-collar crime cases combining consulting and criminal litigation. The team consists of three partners and three associates, all specialised in criminal law. The list of clients includes Greek and foreign financial institutions and funds, companies active in the area of construction, heavy industry, concession, airports, shipping, aviation, telecommunication, technology, informatics, energy, health, pharmaceuticals,

nutrition, and media. The firm provides legal advice on corporate compliance issues, focusing on averting, minimising, and handling criminal liability risks. In the last three decades, the firm has represented clients in almost all major financial criminal cases in Greece (eg, fraud, and corruption). It stands out for its efficiency in handling criminal tax cases and it is also known for its unparalleled experience in handling criminal matters for banks and financial institutions.

## Authors



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**Firm**. He is a highly respected criminal litigator, practising law since 1986. He has been lead counsel in almost all high-profile white-collar criminal cases in Greece in the past 30 years. Ioannis is President of the Board of the Hellenic Association of Penal Law. He is legal counselor to the National Bank of Greece and head legal counselor to the board members of said bank. He is also a member of the Legal Council of the Hellenic Banks Association.



**Natasha Kaisari** has been a partner at **GIANNIDISKOURELEAS Law Firm** since 2007. She holds an LLM in criminal law and criminal procedure from the University of

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### Corporate Criminal Liability: Points to Consider Under the Greek Jurisdiction

#### *Identification of criminal liability risk*

Criminal liability risk is of concern to corporations because criminal proceedings may have direct or indirect repercussions on their reputation and operation. Identifying potential criminal liability risk may be especially challenging for companies exploring foreign investment, as the legal framework varies between jurisdictions. Furthermore, in the context of mergers and acquisitions, pending criminal proceedings against the management of the target company may be considered as a red flag during the due diligence process, which may require a closer look on behalf of the acquirer and sufficient elaboration on behalf of the target company.

The authors outline below certain key criminal law issues that should be considered by corporations exploring business in Greece or already active under the Greek jurisdiction.

#### *Key points to consider in the Greek jurisdiction*

Unlike most EU member states, Greece has not introduced corporate criminal liability and is not expected to do so in the foreseeable future. According to Greek law, criminal liability presup-

poses that the actus reus of the offence is covered by mens rea, ie, dolus (intent) or negligence of the perpetrator; hence, legal entities cannot be held criminally liable nor subject to criminal sanctions (as opposed to administrative sanctions which may be applicable).

Given that criminal liability is attributed only to natural persons, if a company is under scrutiny for potential criminal offences related to its business, the investigation focuses on the company's legal representatives appointed by virtue of the Articles of Association and/or BoD decisions delegating the authority of representation to the CEO and/or other executives.

The time of commission of a criminal offence is crucial in identifying potential suspects or defendants, as the management of a company cannot be held liable for acts or omissions that took place prior to or after their tenure. Thus, potential criminal liability risk under Greek jurisdiction concerns the legal representatives of the company at the time of the offence, as opposed to the previous or subsequent management or the company itself.

In addition, criminal proceedings may have a direct impact on the company, as illustrated by

the legal framework governing the authorities' power to order freezing during pre-trial criminal proceedings. Freezing orders of bank accounts, securities, or financial products kept with a credit institution or financial organisation, content of safety deposit boxes, etc, belonging to the suspects/defendants or third parties (including legal entities), may be issued at an early stage of the proceedings under the conditions prescribed in law.

The key provisions of the Code of Penal Procedure (hereinafter CPP) are the following.

Article 36 CPP refers to the powers of the public prosecutors of financial crime, who are granted with the authority to conduct preliminary inquiries for serious criminal tax cases and financial crimes. Prosecutors conduct preliminary inquiries at an early stage of the proceedings to collect all evidence deemed necessary for deciding whether they should start prosecution or not. During the preliminary inquiry, the persons accused have the status of suspects possessing all the rights of the defendants.

When the public prosecutors of financial crime conduct preliminary inquiries for offences falling into their competence (including tax evasion and financial crimes against the state), they are entitled to order freezing of bank accounts or other assets for a maximum period of nine months, which may be extended by virtue of the Judicial Council's decision for an additional nine-month period (a total of 18 months). The person whose property is affected can file a petition before the Judicial Council requesting revocation of the freezing order.

Article 261 CPP refers to the relative powers of the investigating judges when they are conducting a main investigation (following prosecu-

tion). In the context of a main investigation, the investigating judge, acting with the consent of the prosecutor, is empowered to freeze bank accounts and other assets, if there is serious indication that they derive directly or indirectly from the offence under investigation. This provision explicitly refers to assets belonging to third persons, stipulating that such assets are subject to freezing if they have derived from crime and there is indication that they have been transferred to a third party to avoid confiscation.

The person whose property is affected is entitled to file a petition before the Judicial Council requesting revocation of the freezing order. The freezing order is automatically revoked five years after it was issued, unless the First Instance Court issues a decision on the criminal case by that time.

The AML Law (amended in 2021 and then again in 2022 and 2023) also provides for the power of the authorities to freeze bank accounts and assets derived from predicate offences or money laundering.

Briefly, money laundering refers to:

- transferring or converting property knowing that it is derived from criminal activity or from an act of participation in criminal activity, for the purpose of hiding or disguising the illicit origin of the property or of assisting any person involved in criminal activity in order for that person to evade the legal consequences of his/her actions;
- hiding or disguising the true nature, source, disposition, transfer, or use of property or its location, the ownership of property, or the rights relevant to it, knowing that such property is derived from criminal activity or from an act of participation in such activity;

- acquiring, possessing, or using property knowing at the time of acquisition, possession, or use that the property originates from criminal activity or from an act of participation in such activity; and
- using the financial sector by depositing or transferring proceeds deriving from criminal activities for the purpose of lending false legitimacy to such proceeds.

Criminal activity (hereinafter “predicate offence”) may refer to one of the specific offences listed in the AML Law or every other offence that is punishable with a minimum of more than three months imprisonment and generates proceeds.

The provisions on freezing on the basis of AML Law provide for the power of the authorities to freeze assets at the stage of the main investigation or even before that. More specifically, in the course of the main investigation for money laundering or a predicate offence, the investigating judge, acting with the consent of the prosecutor, is empowered to freeze bank accounts or other assets of the defendant, even if they are joint with another person, if there is serious indication (as opposed to “reasonable suspicion” in the previous version of the legal provision) that these assets are derived directly or indirectly from a predicate offence or from the offence of money laundering or are subject to confiscation in accordance with Article 40 of the AML Law.

The Law explicitly states that assets belonging to a third natural or legal person may also be subject to freezing if there is serious indication that the conditions for confiscation are met pursuant to Article 40 paragraph 1 of the AML Law.

At the stage of preliminary inquiry, the power of freezing accounts and assets is granted to the Judicial Council (without prejudice to the above-

mentioned rights of the financial crime prosecutors) on the basis of reasonable suspicion that the assets are derived directly or indirectly from the commission of money laundering or from the commission of a predicate offence or are subject to confiscation.

During investigations conducted by the AML Authority, the Head of the Authority has the power to freeze assets based on reasonable suspicion.

The legal provision on confiscation refers to assets derived from a predicate offence or money laundering, or assets that are acquired directly or indirectly through the proceeds of such offences or the means used or intended for use to commit such offences. In case the proceeds of crime have been mingled with legitimate funds, confiscation is imposed on property the value of which corresponds to the proceeds of the crime. Article 40 paragraph 1 of the AML Law dictates, *inter alia*, that confiscation is possible even if the assets belong to third parties, provided that they had knowledge of the predicate offence or the offence of money laundering at the time of acquisition. The court decision must provide concrete reasons for the claim that there was third-party knowledge. If the third party is a legal entity, it is explored whether its legal representatives (in a broad sense, including *de facto* managers) have had the knowledge required by law regarding the illicit origin of the assets.

According to Article 40 paragraph 2 of the AML Law, confiscation of (legitimate) assets of a value corresponding to the value of the proceeds of crime is possible where the proceeds, etc, no longer exist or have not been found or cannot be seized. If the property is not of sufficient value or belongs to a third party whose assets cannot be

confiscated, the court may choose to impose a pecuniary sanction instead, equal in value to the proceeds of the crime.

Freezing orders are issued without prior notice and are served on the affected person, who can file a petition requesting revocation.

It should be noted that freezing and confiscation do not affect previous rights of bona fide third parties on the assets. The current AML Law explicitly provides for the right of third parties claiming title of ownership or other property rights on frozen assets, to request revocation of the freezing order.

### *Tax evasion*

The legal framework for tax evasion reveals the importance of identifying potential criminal liability risk to avert or minimise it.

As a general rule, tax assessments exceeding the thresholds prescribed in law lead to criminal proceedings for the offence of tax evasion. According to the Code of Tax Procedure, if on the basis of a final corrective tax assessment act or an act of imposition of a fine there is a case of tax evasion or attempt thereof, a criminal complaint is filed by the tax authorities. Criminal proceedings start *ex officio*.

Depending on the amount assessed, the offence may be punishable as a misdemeanor (maximum imprisonment five years or pecuniary sanction) or a felony (imprisonment of 5–15 years).

In the case of Greek Societes Anonymes (public limited companies), the chair-person of the BoD, CEO, directors, general managers, and any person entrusted with the management or representation of the company may be considered as perpetrators, provided that they contributed to

the offence with any act or omission. In absence of all the above persons, the BoD members may be held liable if they perform (permanently or temporarily) one of the above duties. The persons acting *de facto* as directors may also be held criminally liable for the above offences (either as perpetrators or as accomplices).

It is worth noting that according to current law, if there is a criminal case of tax/VAT evasion or attempt thereto based on an enforceable act issued by the tax authorities, the issuance of such act suspends the statute of limitation of the criminal offence and leads – *ex officio* – to adjournment or suspension of criminal proceedings. Depending on whether the tax payer files an administrative appeal against the assessment or not, suspension of the statute of limitations of the criminal offence and adjournment/suspension of criminal proceedings lasts until the lapse of the deadline to file an appeal against the assessment or until the administrative courts reach an irrevocable (ie, not subject to legal remedies) decision on the appeal.

The provisions on suspension of criminal proceedings were introduced in November 2020 and aim at ensuring that by the time the criminal case is heard, the administrative authorities will have already ruled on the validity of the administrative act, which is crucial for the attribution of criminal liability and the sentencing (in case of conviction).

It should also be noted that tax law violations may trigger reports for money laundering. The Circular E 2038/5.2.2021 of the Independent Authority for Public Revenue entitled “Reports to the AML Authority of Article 47 of the Law 4557/2018”, provides guidelines as to when the tax authorities should send a report to the AML Authority for tax evasion, eg, depending

on whether the taxpayer pays the whole assessment within the deadline provided for in the CTP.

Given the above, the management of a company that is audited by the tax authorities should be given a heads-up that they may be exposed to criminal liability risk. If that risk materialises, the company should be aware of the potential repercussions of criminal proceedings on the corporation and its management.

### *Conclusion*

The preceding analysis indicates the importance of the proper identification and assessment of criminal liability risk for ensuring compliance and effectively addressing potential problems.

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