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Greece

WHITE COLLAR CRIME

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This country-specific Q&A provides an overview of white collar crime laws and regulations applicable in Greece.

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GREECE

WHITE COLLAR CRIME



1. What are the key financial crime offences applicable to companies and their directors and officers? (E.g. Fraud, money laundering, false accounting, tax evasion, market abuse, corruption, sanctions.) Please explain the governing laws or regulations.

The Greek Criminal Code (hereinafter GCC) contains various provisions regarding financial crimes, including various forms of fraud (articles 386, 386A, 386B, 397 GCC), embezzlement (article 375 GCC), breach of fiduciary duties (article 390 GCC), corrupt practices (articles 236, 237 and 396 GCC) and obstruction of competition (article 395 GCC). A significant number of key financial offences is also prescribed in special criminal laws, e.g. Law 4557/2018 against money laundering (recently amended by Law 4816/2021), Law 4548/2018, which establishes the criminal liability of the Board of Directors of companies, Law 4174/2013 on tax evasion offences, and Law 3959/2011 concerning market abuse. As a rule, only individuals can be held criminally liable under Greek law, while the above offences are divided into misdemeanours (punishable with imprisonment of up to five years) and felonies (punishable with imprisonment of up to fifteen years). Sanctions may as well include administrative fines and monetary penalties against individuals or legal entities.

2. Can corporates be held criminally liable? If yes, how is this determined/attributed?

As mentioned under Q 1, only individuals are, as a rule, criminally liable under Greek law. However, in certain cases, corporate conduct may be punishable, especially in the context of anti-corruption, anti-money laundering and anti-cartel legislation, when it is linked with positive gains or advantages. The company is liable as an entity – notwithstanding the individual liability of employees – when there is some type of profit, gain or advantage to the company. The severity of punishment in these cases (in the form of administrative penalties or fines) usually

depends on the type of profit or gain, and the annual turnover of the company.

3. What are the commonly prosecuted offences personally applicable to company directors and officers?

Criminal liability of corporate executives is commonly sought for financial offences such as fraud, market abuse, anti-competitive practices, corrupt practices, and money-laundering. The commission of said offences by the directors or officers of an entity may be aimed at securing certain advantages or gains to the company, or in cases such as embezzlement or breach of fiduciary duties, etc. they may be directed against the entity itself.

4. Who are the lead prosecuting authorities which investigate and prosecute financial crime and what are their responsibilities?

The responsibility for the investigation of financial crimes lies with regulatory and prosecuting authorities (depending on the scope of the investigation), while the responsibility for criminal prosecution always lies with the Prosecutor's Office. Whereas the prosecution of financial offences falls, as a principle, into the competence of the Financial Crime Prosecutor, serious financial crimes against the interests of the European Union are investigated and prosecuted by the European Public Prosecutor's Office (hereinafter EPPO). Regulatory authorities on the other hand, such as the Competition Commission or the Capital Markets Commission, may initiate an investigation and then forward any findings related to financial offences to the Prosecutor's Office for further actions. It is rather common for the SDOE (Greek Financial Crime Unit) or the Economic Police (a special unit within the Hellenic Police) to undertake the necessary preliminary investigative acts, i.e., evidence gathering, witness interviews etc., following a prosecutorial order. In cases of money laundering, the Greek Financial Intelligence Unit gathers all necessary

information, and if there are grounds for the opening of criminal proceedings, all relevant evidence is forwarded to the Prosecutor's Office. The Prosecutor may subsequently open a case against individuals of interest, following standard criminal procedure, namely by conducting a preliminary investigation, filing charges, and making a referral to investigation (conducted by an investigating judge). In serious and complex cases (e.g., corruption, large-scale money laundering and fraud), it is not unusual for enforcement agencies and the Prosecutor to act to secure evidence, by issuing a warrant for search and seizure or freezing orders, even before any charges are filed or involved persons are called for questioning. As already noted, companies cannot be criminally prosecuted, but sanctions may be imposed against them in the form of administrative penalties for the actions of individuals, whose alleged criminal acts have benefited the company.

5. Which courts hear cases of financial crime? Are trials held by jury?

Whether misdemeanours or felonies, cases of financial crime are heard before courts which are solely composed of judges. Trials of financial crime either take place before the Three-Member Court for Misdemeanours or, most commonly, before the Single-Judge or the Three-Member Appellate Court, which sits as a first-instance court. Appeals are heard by the Three-Member or Five-Member Court of Appeal respectively.

6. How do the authorities initiate an investigation? (E.g. Are raids common, are there compulsory document production or evidence taking powers?)

As a rule, an investigation is initiated by the Prosecutor (usually as a preliminary investigation), unless an agency or enforcement authority (e.g., in cases of money-laundering) gathers evidence and information earlier based on allegations of serious financial crimes. Even at this early stage, the competent authorities and the Prosecutor have broad powers to request from individuals or entities of interest the production of evidence, including collection of documentation and the conduct of witness interviews. In urgent cases, where there is a need for imminent evidence preservation, more assertive measures, like raids or freezing orders, may apply. However, such powers shall not be exercised in a manner that infringes professional secrecy and/or the privilege against self-incrimination.

7. What powers do the authorities have to conduct interviews?

Throughout the pre-trial proceedings, investigative authorities (please see also Q 4) may conduct witness interviews, either in the context of a preliminary or a formal investigation. They may also interview suspects who have the right to silence as well as all the other applicable rights. The relevant framework is primarily to be found in the Greek Code of Criminal Procedure (hereinafter GCCP).

8. What rights do interviewees have regarding the interview process? (E.g. Is there a right to be represented by a lawyer at an interview? Is there an absolute or qualified right to silence? Is there a right to pre-interview disclosure? Are interviews recorded or transcribed?)

Persons who have been summoned for the purposes of witness interviews are principally expected to co-operate with the investigative authorities, although confidentiality issues and professional privilege restrictions may apply. The presence of a lawyer is generally not allowed in the context of witness interviews. Suspects or accused persons on the other hand, have a series of rights, including the right to remain silent and avoid self-incrimination (article 104 GCCP), have access, and receive copies from the casefile before being interviewed, be assisted by a lawyer before and during the interview etc. They are also entitled to file written submissions and ask for evidence to be gathered. Interviews are transcribed and integrated into the casefile. Early disclosure of incriminating evidence in some categories of crimes (e.g., bribery offences) is linked to leniency provisions (e.g., article 263A GCC).

9. Do some or all the laws or regulations governing financial crime have extraterritorial effect so as to catch conduct of nationals or companies operating overseas?

Greek criminal laws are applicable to offences committed by or against nationals abroad (in the latter case including entities with a seat in Greece), on condition that the pertinent acts are also punishable under the criminal laws of the State, where they occurred (articles 6,7 GCC). In exceptional cases, e.g., active bribery of foreign public officials abroad, Greek criminal laws are still applicable, even without the requirement of dual criminality. Despite this

extraterritorial aspect of Greek criminal laws, the enforcement of said provisions or the imposition of penalties for acts committed in another jurisdiction, may be confronted with considerable difficulties, unless the requirements of bilateral or multilateral agreements on mutual assistance in criminal matters are met. Such procedures are more commonly simplified, for example, among member states of the EU. Greek courts may also assume jurisdiction for certain categories of offences governed by the universal justice principle (article 8 GCC).

10. What are the rules regarding legal professional privilege? Does it protect communications from being produced/seized by financial crime authorities?

Financial crime authorities have wide powers when it comes to the collection of evidence and data related to the offences under investigation, not being bound by certain categories of confidentiality restrictions normally applied in various fields, e.g., banking accounts, tax records, telecommunications and so on. Nonetheless, legal professional privilege, which is well established within the Greek legal system, remains intact even in these cases, prohibiting the seizure of material produced between attorneys and their clients (attorney-client privilege), including electronic correspondence, written memos, oral communications and so on. Access to information possessed by certain professionals, except for attorneys, e.g., doctors, clerics etc, can be also denied, pursuant to the relevant provisions of the GCCP (articles 212, 263, 264 GCCP).

11. What rights do companies and individuals have in relation to privacy or data protection in the context of a financial crime investigation?

As explained under Q10, individuals could deny the disclosure of information which falls into the abovementioned categories of professional privilege. Moreover, companies could invoke special legislation applicable to certain types of confidential material (e.g., business patents). It is reiterated though, that the Prosecutor and other related agencies, authorised by law to investigate financial wrongdoing, have wide powers for the collection of evidence and information (please see also Q 4).

12. Is there a doctrine of successor

criminal liability? For instance in mergers and acquisitions?

There can be no such doctrine, since criminal liability, under Greek law, is attributed only to individuals and not to legal entities. However, administrative fines or penalties, which have been imposed on a company due to gains or advantages obtained through criminal acts of its directors, would still be in force, notwithstanding subsequent changes in the legal status of the entity.

13. What factors must prosecuting authorities consider when deciding whether to charge?

The filing of charges by prosecuting authorities requires sufficient incriminating evidence of wrongdoing following the opening of a preliminary criminal investigation. Due to the limited use of alternative mechanisms for the settlement of such cases, standard criminal procedure will then be followed, and the Prosecutor will either open a formal investigation in cases of serious crimes or refer the involved individuals to a trial court. After the closing of the formal investigation, a three-member judicial council shall decide upon the indictment or acquittal of the accused persons.

14. What is the evidential standard required to secure conviction?

Criminal conviction requires proof beyond reasonable doubt. Defendants have the right to be presumed innocent until the hearing of their case and the issuance of a final judgement by the competent criminal tribunal. Reasonable doubts on guilt must result in an acquittal (in dubio pro reo principle).

15. Is there a statute of limitations for criminal matters? If so, are there any exceptions?

According to article 111 GCC, prosecution of criminal offences is time-barred, beginning from the moment these occurred, as follows: felonies punishable with life imprisonment have a statute of limitations of 20 years, felonies punishable with up to 15 years of imprisonment have a statute of limitations of 15 years, with a possible extension of another 5 years during pending proceedings before a trial court; misdemeanours have a statute of limitations of 5 years, with a possible extension of another 3 years as above. In cases of financial crimes, the otherwise applicable statute of limitations (15 years) is extended to 20 years, on condition that the acts are

directed against the property of the Greek State. Exceptional provisions as to the statute of limitations for certain criminal offences may be also included in special criminal legislation.

16. Are there any mechanisms commonly used to resolve financial crime issues falling short of a prosecution? (E.g. Deferred prosecution agreements, non-prosecution agreements, civil recovery orders, etc.) If yes, what factors are relevant and what approvals are required by the court?

DPAs or NPAs are not provided in Greek legislation. Settlement agreements are available in administrative legislation in respect of various categories of offences (e.g., tax and custom offences, cartel offences, environmental offences) both for entities and individuals.

17. Is there a mechanism for plea bargaining?

Plea bargaining has been introduced in 2019 by the new GCCP and its use is gradually expanding in practice, in relation to certain offences. Negotiations must be initiated by the defendant and these take place between the prosecutor and the defendant and/or his/her counsel and the final agreement including a substantial sentence discount must be confirmed by a court.

18. Is there any requirement or benefit to a corporate for voluntary disclosure to a prosecuting authority? Is there any guidance?

Companies which have voluntarily co-operated with enforcement authorities, or have even contributed to the disclosure of unlawful acts (e.g., market abuse offences), may benefit from leniency measures, i.e., reduced sanctions, non-exclusion from public tenders, etc.

19. What rules or guidelines determine sentencing? Are there any leniency or discount policies? If so, how are these applied?

Article 79 GCC refers to several criteria to be considered when determining sentences (for individuals). Factors to be considered by the court include, inter alia, the nature of the offences committed, the special circumstances

under which the perpetrator acted, the personality, the motives of the acts, the financial profit, past convictions, remorse etc. Apart from special provisions to be found in the GCC and other criminal statutes, article 84 GCC contains several generally applicable leniency factors to be taken into consideration before sentencing, e.g., the fact that the defendant led a lawful life prior to the offence or for long after same, or that he/she showed remorse and seriously tried to minimize the consequences of the acts in question. When it comes to the imposition of administrative sanctions on corporations, the competent authorities shall consider a variety of factors, such as entity size, annual turnover, seriousness of the offence, the damage caused, the amount by which the company benefited from the conduct and prior misconduct. Apart from fines, the competent authority may impose additional measures, including prohibition of business activity for a specified period, revocation of licenses and registrations or a ban from public tenders and investment programmes.

20. In relation to corporate liability, how are compliance procedures evaluated by the financial crime authorities and how can businesses best protect themselves?

Through internal compliance procedures, a company is in a better position to timely contain risks connected with criminal wrongdoing or even liaise with prosecuting authorities, with the purpose of using specific leniency tools, especially in the event of a disclosure of financial offences. In this context, compliance reports may facilitate or co-shape the scope and the results of a criminal investigation. In certain areas (e.g., banking sector), entities are obliged to abide by standard compliance procedures, otherwise individuals are likely to be held personally liable (e.g., articles 236 para.3 and 237 para.3 GCC).

21. What penalties do the courts typically impose on individuals and corporates in relation to the key offences listed at Q1?

Depending on the nature of the misconduct, a broad variety of administrative sanctions may be imposed against a company, such as fines, license revocation, a permanent or temporary ban from public tenders or state funding, or a temporary suspension of the business operations of the company. Individuals on the other hand, may face criminal penalties (including imprisonment and monetary penalties), if they are found guilty of a criminal offence. Courts enjoy a wide margin of appreciation with a view to imposing in each case dissuasive and proportionate sentence.

See also Q1 and 19.

22. What rights of appeal are there?

Convictions by a first-instance court may be appealed against by the defendant (and the competent Prosecutor), except for very low sentences imposed for non-serious offences. A second-instance court shall re-examine all aspects of the case. Against the decision of a second instance court the defendant (and the competent Prosecutor) may file an appeal before the Cassation Court (Areios Pagos) only on points of law.

23. How active are the authorities in tackling financial crime?

Prosecuting authorities are usually quite alert in opening cases of alleged financial wrongdoing, especially if such acts are directed against the financial interests of the Greek State. In relation to financial crimes committed within the private sector, a criminal investigation is opened, as a rule, following a criminal complaint submitted by the party claiming a victim status.

24. In the last 5 years, have you seen any trends or focus on particular types of offences, sectors and/or industries?

Recent large-scale criminal cases in Greece are related to the banking and energy sector, military defence technology, pharmaceuticals and, most recently, electronic commerce (e-shops).

25. Have there been any landmark or

notable cases, investigations or developments in the past year?

Large-scale investigations have been initiated during the past months by the Greek Financial Intelligence Unit and the European Public Prosecutor's Office, focusing on the activity of numerous companies in the field of e-commerce (e-shops) and the alleged commission of serious financial offences, including valued-added tax fraud and money laundering. Due to the urgency of the cases, freezing orders were issued against a significant number of legal and natural persons.

26. Are there any planned developments to the legal, regulatory and/or enforcement framework?

The regulatory and enforcement framework in Greece has undergone numerous changes in the past few years, with a view to approaching international standards and adopting guidelines introduced by the European institutions. Legislation must be regularly updated to comply with EU Directives or regulations, OECD standards, regional or international conventions etc.

27. Are there any gaps or areas for improvement in the financial crime legal framework?

Overlapping statutes and continuous changes to the applicable legislation undermine foreseeability and create serious interpretation and implementation problems. Moreover, coordination between state authorities suffers, often resulting in an unfair treatment of affected entities and individuals.

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