LEGAL BRIEFING – Banking & Finance

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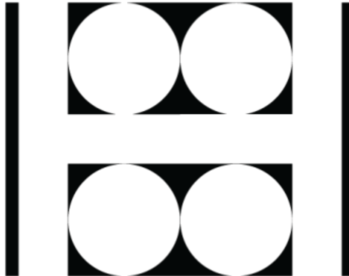

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Foreign Direct Investment Regimes in the time of Covid-19

Undoubtedly, the outbreak of Covid-19 along with the corresponding stringent public health measures, supply chain disruptions, declining demand and bleak financial prospects arising from it, has struck down significantly the Foreign Direct Investment (hereinafter "FDI") flows across the globe. Although it could reasonably be assumed at first glance that this unprecedented situation would lead most countries to adopt legislation to stimulus the flows of FDI, it has instead highlighted the necessity for a more robust FDI control mechanism in order to restrict the uncontrolled FDI inflows, the main reason being to protect domestic companies that have been rendered vulnerable due to the pandemic and to avoid the sell-off of any strategic assets.

In furtherance of the above, several jurisdictions have increasingly adopted a more protectionist approach against the FDI and have tightened their FDI review regimes following the emergence of the current health crisis. In Europe, both at EU level and in several EU Member States (such as France, Germany, Italy, Poland, Portugal, Spain and the UK) this trend for stricter FDI screening measures, already evident before the pandemic, has been reinforced by it. In addition several other states (including but without limitation Australia and the U.S.) have strengthened their FDI control mechanisms and have introduced more rigorous review procedures following the pandemic. The said states (both inside and outside the EU) are aiming to support their local businesses and prevent any FDI from affecting areas of key interest to them (such as national security and public health) through FDI screening.

On March 19th, 2019 the FDI Screening Regulation (Regulation (EU) 2019/452) was enacted with a view to harmonising the screening framework in respect of the FDI within the EU and its entry into force was set for 11th October 2020. This Regulation establishes a common EU screening mechanism which allows for cooperation between EU Member States and the Commission with regard to FDIs, which may pose a threat on security or public order of one or more EU Member States. It sets out a mechanism for the exchange of information in relation to FDIs considered likely to adversely affect security or public order of any EU Member State or EU programmes/ projects. However, Covid-19 pandemic brought to the surface the need for the implementation in advance of more restrictive measures against FDIs in advance of the FDI Screening Regulation's into force. In particular, the EU Commission issued FDI Guidelines on 25th March 2020 encouraging EU Member States to resort to existing domestic FDI screening legislation (if applicable) to protect EU businesses and sectors of critical importance (such as healthcare systems) or (for those EU Members States lacking a complete FDI screening mechanism) to implement FDI screening measures in order to deal with FDIs which may have an adverse effect on security or public order.

In contrast, in emerging economies such as Greece, where the devastating effects of the 10-year economic recession are still apparent and the financial recovery is at an early stage, the FDI flows remain relatively low compared to other EU Member States. The competent authorities in Greece have not yet established a fully-fledged FDI screening mechanism in an attempt to attract more FDI inflows which could have beneficial effects on its financial stability. Therefore, being already a non-attractive destination for FDI, it remains to be seen whether the harmonised FDI control mechanism provided for in the FDI Screening Regulation could put a further obstacle to the Greek government's constant effort to bring FDI capital into the domestic economy.