

Commercial - Corporate

- **Law 4605/2019 on the harmonization of Greek law with Directive 2016/943 of the European Parliament and of the Council of 8/6/16 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure was published in the Government Gazette on 01.04.2019.** The new law establishes a legal framework for the protection of know-how and business information, which remain unprotected under applicable intellectual property law. The provisions of L.4605/2019 include a clear definition of the term “trade secrets” as well as a detailed list of conditions establishing the lawful or unlawful use of trade secrets by third parties. Unauthorized access to the protected information as well as any other conduct contrary to fair commercial practice, such as breach of a confidentiality agreement or any contractual duty not to disclose or limit the use of a trade secret constitute unlawful acquisition, use or disclosure of a trade secret. The person affected by the unlawful acquisition or use of a trade secret (trade secret holder) may apply for interim injunctions or file an action in the context of main proceedings, seeking, *inter alia*, cessation of the use or disclosure of the trade secret, prohibition of the production, import/export, merchandising, storage or use of infringing goods, seizure or destruction or recall of the infringing goods from the market, compensation for pecuniary and non-pecuniary damages etc.
- **The establishment of the Hellenic Industrial Property Academy is provided by the new Presidential Decree 31/2019 published in early April 2019.** The Academy shall operate as an independent office of the Industrial Property Organisation located in Athens and shall be directly accountable to the BoD of the aforementioned Organisation, while enjoying administrative, financial and budgetary autonomy. The objectives of the Academy are, *inter alia*, the development of a national educational system for training and certification in the sector of industrial property, which shall result in the award of a patent attorney certification.
- **In late March 2019, the European Commission launched its new - strictly voluntary - online tool to submit statements and documents in leniency and settlement proceedings in cartel and non-cartel cooperation cases.** The benefits of the EU leniency policy for companies in a cartel that wish to denounce it and offer evidence against it are either total immunity from or a reduction of fines. The e-tool can be used to submit corporate statements, provide comments or make

formal settlement submissions in cartel settlement procedures, or – in non-cartel cooperation proceedings – to acknowledge an infringement of competition law. Through the new online procedure, companies or their legal representatives should be able to apply for leniency online, saving time and cost of traveling to the Commission's premises for on-the-spot filings, as was formerly the case.

- **By virtue of a circular issued earlier this month (12.04.2019) for the application of art. 12 L.4156/2013 on the use of the company's seal, the General Secretariat of Commerce and Consumer Protection reminded interested parties of the repeal of compulsory use of the company's seal as a proof of representation and management of legal entities organized under private law.** More specifically, as of the entry into force of the aforementioned Law (on 31.05.2013), in order for any act of representation or management of a private-law legal entity to be valid only the signature of its legal representative, his/her name and title on the relevant act/deed are required. Banks and other financial institutions are obliged to immediately revise their policy and relevant documentation in case it contains conditions and requirements contrary to this law provision.

Investments and Financing

- **The draft law for the establishment of the "National Development Bank" (NDB) was voted by the Greek Parliament on 16.04.2019.** Under the new legal framework, NDB's initial share capital shall amount to 5 billion Euro. NDB shall operate as a link between international financial markets and organizations and the local economy and at

the same time it shall exploit credit possibilities directly by the European Union and attract investments, in collaboration with the European Investment Bank and the European Reconstruction and Development Bank. NDB shall provide products targeted at financing the SMEs and at micro-credits. At a later stage, NDB shall provide guarantees and grant subsidies to undertakings, provide advice and support to public and private law institutions, know-how and training to undertakings, prepare and develop reports about the macroeconomic and microeconomic environment of the country towards detection and fighting of market inefficiency and market failures, and finance long-term projects producing significant social benefits, such as projects relating to the fighting of the climate change, to renewables and energy efficiency (linked to significant positive environmental externalities for the society in general).

- **The draft law on National Development Program was submitted to open public consultation.** The proposed legislation includes provisions governing the preparation, coordination, management, financing, control and application of development initiatives, which are financed by the national resources of the Public Investment Program.

Tax & Social Security Law Updates

- **A new circular on the application of art.27 par.3 and art.27A of the Income Tax Code (L.4172/2013) on spin-offs of banking divisions by absorption from an existing financial institution or by the incorporation of a new financial institution under the provisions of L.4601/2019 and art.16 of L.2515/1997, as applicable, was issued by the Independent Public**

Revenue Authority (I.A.P.R.) in early April 2019. According to the provisions of the circular the absorbing company/ new financial institution will also acquire the right on certain deferred tax claims, as specified in the provisions of art.27A par.2 of the Income Tax Code, which belong to the transferred division. It should be noted that any tax losses within the meaning of the provisions of art.27 par.1 Income Tax Code shall remain with the contributing company, since the transfer of these losses is not provided by L.2515/1997, as currently in force.

- **A draft law to transpose certain measures of the EU Anti-tax Avoidance Directive (ATAD) was submitted to the Greek parliament on 5 April 2019.** In general, the draft law amends existing national rules provided in the Income Tax Code and other tax legislation. In particular, under the new provisions: **(i) The Controlled Foreign Company (CFC) rule** applies to Greek tax resident individuals and legal entities controlling a foreign CFC. A foreign entity will be considered a CFC if: (a) a Greek shareholder itself or together with associated enterprises holds/owns a direct or indirect participation of more than 50% in the voting rights, capital, or rights to profit of the entity; (b) the actual corporate tax paid by the foreign entity

is less than 50% of what would be payable in Greece; and (c) 30% or more of the foreign entities total income is derived from passive income sources, including dividends, interest, royalties, etc. CFC rules do not apply to companies or permanent establishments resident in EU/EEA Member States provided that such entities carry on a substantive economic activity. Listed companies, previously exempt from the CFC rules, fall within the revised CFC rules. **(ii) The General Anti-Avoidance Rule (GAAR)**, allows tax authorities to ignore an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the applicable tax law, are not genuine having regard to all relevant facts and circumstances (non-genuine arrangements). The burden of proof for the existence of such a non-genuine arrangement is placed on the tax authorities. The GAAR applies to direct taxes for legal entities and natural persons, as well as to a number of other taxes, such as VAT, stamp duty, property taxes. Both domestic and cross-border arrangements within the EU or vis-à-vis third countries fall under the scope of the GAAR rule.
