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NEW LAW ON THE MODERNIZATION OF CORPORATE GOVERNANCE OF SOCIETES ANONYMES

New Law 4706/2020, which replaces Law 3016/2002 and incorporates EU Directive 2017/828, encloses a series of provisions concerning, *inter alia*, **the internal operation of sociétés anonymes with listed shares or other securities in a regulated market** operating in Greece. These best corporate governance structures and practices provides a beneficial role also to companies with shares not listed in a regulated market, including start-ups and family companies, which may adopt voluntarily the provisions of the Law.

AIM OF THE UPDATE

The aforementioned law aims at strengthening the corporate governance structures and procedures of Greek listed companies at a legislative level, in order for companies to meet the increasing demands of the modern capital market. In addition, it aims at providing clarifications to controversial issues, such as the role of non-executive members of Board of Directors. The new Law incentivizes companies to be more competitive, attract investors, enhance the confidence of their shareholders, and meet long-term return of greater value to them, as well as to other stakeholders.



MAIN PROVISIONS OF NEW LAW & OBLIGATIONS OF LISTED SOCIETES ANONYMES

1] Obligation for companies to establish the Policy of Appropriateness (Fit & Proper) of BoD members

The new Law mandates the compilation and implementation of **the Policy of Appropriateness of BoD members** with a minimum content including the criteria for the selection of BoD members, their replacement, and the evaluation of their appropriateness for the specific position. The Policy is adopted under the supervision of BoD, submitted for approval to the General Assembly as well as for any revision thereof and published on the website of the Company.

Law 4706/2020 introduces **two important conditions** for the election and the retention of the status of a BoD member: **i)** minimum representation by gender at a percentage 25% **ii)** non-issuance of court decision recognizing fault of a member or candidate member for prejudicial transactions of the Company with related parties.

In case any of the set criteria ceases to apply, the company should proceed to the replacement of the member within three (3) months.

2] Expanded BoD responsibilities

In addition to duties and responsibilities already enacted by the Company Law 4548/2018, the new Law predicts a detailed enumeration of areas of responsibility of the BoD members. Specifically, it foresees that the BoD shall also supervise the implementation, monitoring and evaluation of the corporate governance model adopted by the Company on a three-year basis and shall ensure the effectiveness and



efficiency of the internal audit system and the compliance with the legal and regulatory framework.

3] Changes in the composition and operation of BoD

The characterization of BoD members into executive, non-executive and independent non-executive is retained.

- ∇ Executive members are responsible for the **implementation** of the strategy decided by the BoD. Executive members must inform in written and without any delay the non-executive members about significant events, which may have an impact in corporate life.
- ∇ Non-executive members have a **supervisory role** and are responsible for the monitoring and the critical review of the company's strategy, the supervision and surveillance of the executive members' actions as well as their effectiveness. The Chairman of BoD shall be a non-executive member. In the event that he is not, the Vice-Chairman must necessarily be a non-executive member.
- ∇ Independent non-executive members have the same supervisory role but are in an **independent relation** with the company.¹ They are elected by the General Assembly or nominated by the BoD and should not be less than 1/3 of all members. As regards the preparation of financial statements or any other subject requiring the approval of General Assembly, with increased quorum and majority, the relevant decision of BoD is valid only when two independent non-executive members attend the meeting. The new Law (art. 9) also enforces the criteria of independence of the independent members by mentioning, in an

¹ Art. 9 provides the definition of an independent non-executive member as the member with a voting right that does not exceed 0.5% of the share capital and is not involved in any financial, family or business relation of dependence with the company that could affect its objective judgement. Moreover, art. 9 provides specific cases of a dependence relation.



indicative way, specific cases of relation of dependency. The BoD shall annually review the fulfillment of criteria.

4] Establishment of Remuneration and Nomination Committee

The obligation of companies to establish **two Committees**, namely the Remuneration Committee and the Nomination Committee, in addition to the Audit Committee, is a new entry of Law 4607/2020.

The two new Committees are constituted at least by three members, the majority of which should be independent, non-executive and assist the BoD in the decision-making.

The Remuneration Committee deals with issues concerning the Remuneration Policy that may be adopted by the company listed in a regulated market according to the provisions of Law 4548/2018. The Nomination Committee is in charge of proposing the most suitable and qualified persons for the position of member of BoD in accordance with the criteria of the Policy of Appropriateness.

It should be noted that these duties could be also performed by one single Committee.

5] Enriched Internal Regulation

Companies should establish a **more detailed** (compared to the previous legal regime) **Internal Regulation of Operation** covering various organizational aspects. The Internal Regulation aims at regulating the **organization and operation** of the Company and includes *inter alia* references about the main characteristics of the Internal Audit System monitoring, the procedure for recruitment of managers, the policies for prevention and handling of conflicts of interests, the training policies, the regulatory compliance function, the procedure for managing the privileged information. A certified auditor or



audit firm must confirm in their Audit Report that the company has indeed adopted an Internal Regulation of Operation in accordance with the required content. Additionally, listed companies should ensure that their major subsidiaries also adopt an Internal Regulation.

6] Internal Audit Unit

The Internal Audit Unit, a new entry of the Law 4607/2020, is an **independent organizational unit within the Company**, responsible for the monitoring and the improvement of operations and policies which the company runs. The Head of the Internal Audit Unit is nominated by the BoD, has direct report to the BoD, should not be member of the latter, attends the General Assembly meetings and collaborates with the Hellenic Capital Market Commission. Any change of the Head of the Internal Audit Unit shall be communicated to the Hellenic Capital Market Commission within 20 days.

7] Adoption of a Corporate Governance Code

Each company has the obligation to adopt and implement a Corporate Governance Code of its preference under the “comply or explain” principle.

“Comply or explain” principle requires, from Companies that have adopted a Corporate Governance Code, to comply with its provisions. In case companies deviate from the Corporate Governance Code, they have the legal obligation to provide the reasons of non-compliance.

8] Disclosure and Transparency obligations to the shareholders and the investing public



The Board of Directors should publish on the company's website twenty (20) days before the General Assembly, in order to inform shareholders, the BoD's reasoned proposal on its candidate members, detailed curriculum vitae of the candidate BoD member, information concerning previous participation of the candidate member in directorship of other companies and ascertainment of suitability and independency criteria.

The Board of Directors should also publish on the company's website the current Articles of Association and its recent amendments and provide explanations to the corporate governance statement.

Moreover, the new Law foresees the establishment of **two new Units**, the A) Shareholders Service Unit, which provides direct and equal disclosure to the shareholders and assists them at the execution of their rights, and B) the Corporate Announcements Unit, which proceeds to the necessary announcements relating to regulated information and corporate facts.

9] Obligations relating to increase of capital or bond issue and disposal of assets

In case of **increase of capital**, the **BoD should inform the General Assembly** on the use of the equity funds raised and on the indicative timetable for the **implementation** of the relevant investment plan. Any deviation from the disclosed use of the funds at a percentage up to 20% of total equity funds raised requires previous decision of BoD and approval from General Assembly.

Furthermore, the disposal of assets of the Company, which exceeds the 51% of the total value of assets, within two years, requires decision of the General Assembly with increased quorum and majority.



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10] Penalties for the breach of the above obligations

The Hellenic Capital Market Commission has a supervisory role over companies governed by the new Law and is responsible for the ascertainment of any breach of its provisions. The Commission may impose grave penalties either on the company (fine up to 3.000.000€ or, in any case, fine not exceeding the 5% of the company's turnover for each year of infringement) or on the members of the BoD (fine up to 3.000.000€).

CONCLUSION

The new Law on the Modernization of Corporate Governance entered into force in 19 July 2020, is expected to contribute to the effectiveness, competitiveness and longevity of sociétés anonymes established in Greece. Finally, it should be mentioned that each company -even non listed in a regulated market- can benefit from these provisions of good governance.

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