

Newsflash

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Law 4635/2019 (Official Government Gazette Issue A' No. 167/30.10.2019) General Commercial Registry (G.E.MI.)

Law 4635/2019 (Official Government Gazette Issue A' No. 167/30.10.2019), repeals all the provisions of the First Part of L. 3419/2005 on the operation of the General Commercial Registry (i.e. the General Electronic Commercial Registry - G.E.MI.), and aims at modernizing and simplifying G.E.MI.'s procedures, establishing a strict time frame for the completion of the commercial publicity by G.E.MI. and imposing penalties in case of infringements of the foreseen obligations.

The main changes brought about by the new law are summarized below:

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Persons to be registered with G.E.MI.

- **There is an update and a detailed listing** of persons obliged to register with G.E.MI., after the abolition of the **optional registration** with the Registry and the explicit provision in the new law exclusively of those persons who are obliged to register with G.E.MI. and those excluded from such obligation.
- The list of persons obliged to register with G.E.MI. is **broadened** to also include Building Cooperatives, Social Cooperative Enterprises (SCEs), Social Cooperatives with Limited Liability (KoiSPEs), companies governed by civil law referred to in Article 784 of the Civil Code, as well as in Article 270 of L. 4072/2012, Joint Ventures, as well as general partners, who are now, under the new provisions, personally obliged to register with G.E.MI. and acquire a unique G.E.MI. number.
- All natural persons who have an establishment in Greece and who carry out commercial acts, but also those individuals who buy and sell goods or provide services, as well as those persons acting as intermediaries in such disposal of goods or services through an organized infrastructure or through the

exploitation of the work of third parties, **have an obligation to register with G.E.MI.**

- **Explicitly excluded from the obligation to register with G.E.MI.**, are: associations of persons and individuals whose purpose is not commercial, and namely, Associations, Foundations, Fundraising Committees, natural persons active in the primary sector, civil companies for the practice of lawyers, notaries and bailiffs, as well as shipping companies provided under L. 959/1979, Pleasure Craft Maritime Companies (N.E.P.A.) provided under L. 3182/2003 and agencies or branches of foreign companies which have an establishment in Greece, according to the provisions of article 25 of L. 27/1975 and those of L. 378/1968.

Registration Procedure

- The deadline for submitting a registration application with GEM I is extended to **20 working days** from the date that the obligation of disclosure has accrued.
- The legality check, the completeness check, the approval or the approval decisions of the District, the Regional Unit or the Regional Governor, provided under the previous regime, are now **replaced** by the control carried out by the competent G.E.MI. Services and the consequent decision of their Supervisor.
- The possibility of automated registration and publication in the G.E.MI.'s Information System of specific acts and data is available, i.e. for the obliged persons themselves to effect this (by using specific codes given to them) and without any prior legality or completeness check by the competent authority G.E.MI. Services (which for specific acts –with the exemption of the notarial acts- shall be limited to sample checks), the procedure and the particulars of which, will be determined by a Ministerial Decision. The deeds and data automatically registered with and

published to G.E.MI. are: (a) notarial acts (which are being registered either by the certified notary, who performed them or by the obliged persons, if the act has been performed by a non-certified notary public), (b) those relating to private companies (except for the cases of dissolution, cancellation and revival) and (c) those relating to capital companies (except for the dissolution, cancellation, revival and amendment of their articles of the association which were not performed by a notary public). Acts regarding Business Transformations, provided by recent Law 4601/2019, are explicitly excluded from the automated registration and publication.

- **The new law aims at the efficient processing** of the registration applications of deeds and data for which a legality check by the G.E.MI. Services is required. A 5-working days deadline is set to the competent G.E.MI. Services upon receipt of the request, in order for the latter to proceed with the check, the registration and the publication of the act on G.E.MI., with a possibility of an extension. The registration procedure may not however, exceed 21 days in total.
- **The G.E.MI. Services are expanded** by incorporating notaries as certified G.E.MI. Services, for the purpose of faster serving the obliged persons. The G.E.MI. Certified Notaries will proceed directly with the filing and the registration with G.E.MI. of the notary acts they perform.

Interoperability of G.E.MI

- **The mandatory interconnection of G.E.MI. with other national registries is established** (i.e. OSDYY-Courts Digital Portal, Trademarks Registry, regarding Greek and European trademarks) and especially with the GSIS, TAXIS, as well as with other special registries kept in electronic form.

Other Provisions

- **For the first time**, the issue of a **Certificate of Good Standing** is provided, which will be valid for a two month period.
- Provision is made for rectifying errors with a **retroactive effect**.
- The new law stipulates that fees paid by those who are required to register with G.E.MI., are fees in return and fall under 4 categories, details of which will be determined by a Ministerial Decision.
- The maximum validity period for the pre-approval of the trade name or/and the distinctive title is **three** months from the application date. After the expiry of the above deadline, a new application must be filed.
- **For the first time** it is provided for and the procedure for it defined, for the revival of legal entities following their removal from G.E.MI. in such cases where despite the completion of their liquidation process and their subsequent striking off from G.E.MI. they wish to operate again.

Consequences of infringements

- **Provision is made for administrative penalties** against obliged persons or their legal representatives for infringement of the provisions of the law and of its delegated acts, the details of which will be defined by a Ministerial Decision. These penalties consist of a fine, which for the first time ranges from EUR 500 to 100 000, depending on the severity of the infringement, after hearing the alleged infringer, while in case of repeat offense the amount of the fine may be doubled or even tripled.
- **Pursuant to an act of the competent G.E.MI. Services**, any legal person which a) fails to comply with the publication obligations of G.E.MI. for two consecutive years, b) for two years after the commencement for any reason of a winding up procedure, has not published a winding up balance sheet or c) if its tax ID has been suspended, it is placed in a state of suspension of registrations, either automatically or upon an application of any third party having a legitimate interest, while the competent Tax Registration Office is being notified electronically for such suspension, as well as for the decision on the withdrawal of the suspension.
- **Failure to comply with the publicity obligations** provided by the new law for persons who are obliged to register with G.E.MI., entails the non-participation of those persons or associations in procedures regarding the assignment of public work contracts, supplies and services with public sector entities and in NSRF programs.

Entry into force

- The provisions of the new law shall enter into force three months after its publication in the Government Gazette.

Comments - Remarks

- The amendments introduced by the new law (conducting of control checks by G.E.MI. Services and abolishing the approval by the competent regional departments) require necessary amendments/adjustments to the relevant articles of L. 4548/2018 (on Société Anonymes) and L. 4601/2019 (on Business Transformations).
- The treatment of self-employed individuals requires further clarifications (more specifically, it is required to be clarified whether the self-employed individuals with an organized structure are obliged to register with G.E.MI., for example lawyers (while law firms are explicitly excluded from such obligation) or electricians (generally freelancers) who operate an individual business using employees).
- All provisions on the data that must be registered at the company's individual Record in the Registry of the obliged person at G.E.MI. which were provided for in ministerial decisions, are being codified. Concern arises regarding the personal data of natural persons - legal representatives of the obliged legal persons

(indicatively, identity Number, tax registration number, home address etc.) which will now be published on the obliged person's Individual Record in G.E.MI. and not only on G.E.MI.'s announcements, contrary to the legislation of personal data and specifically of sensitive personal data.

- The new law's emphasis is on the interoperability of G.E.MI. with the other registries and specifically with the GSIS, TAXIS, with the main aim of modernizing the procedures in place until now.
- The registration deadline creates uncertainty. The new law provides for a deadline of **20 working days** from the date from when the obligation of disclosure has accrued. On the contrary, Law 4548/2018 (on Sociétés Anonymes) sets a **20 full days** deadline for the registration of the Minutes of the Board of Directors with G.E.MI., while the invitation of the General Meeting of the Shareholders must be published within **20 full days** before the day of the meeting.
- A strict timeframe is established for the implementation of the commercial publication by the G.E.MI. Services (5 working days and 21 days at the most), which means that if the registration deadlines are exceeded, by G.E.MI.'s fault, the obliged person – applicant shall be exempted from all G.E.MI. fees for the next year.
- It is necessary to clarify the criteria of the “legitimate interest” which must be proven by any third party who wants to receive certificates regarding acts that are not publicly disclosed, in order to avoid difficulties for both services and citizens.

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This Newsflash aims to provide the reader with general information on the above mentioned matters. No action should be taken without first obtaining professional advice specially relating to the factual circumstances of each case.

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