



# Newsletter

31 March 2020

## Draft law on the modernization of the Corporate Governance of Sociétés Anonymes and on the development of the Modern Capital Market

On 12 March 2020, the long-awaited Ministry of Finance draft law under the title “Corporate governance of sociétés anonymes, modern capital market and incorporation of the 2017/828 EU Directive of the European Parliament and of the Council” was put under electronic deliberation until 2 April 2020.

The provisions of the draft law govern the management and internal operation of sociétés anonymes with shares or other securities listed on a regulated market operating in Greece. These said provisions may however, also be applied voluntarily by companies with shares not listed on a regulated market.

### **The main provisions of the draft law on Corporate Governance**

#### — **Obligation to choose a specific corporate governance model**

Companies must adopt and apply a specific corporate governance framework, depending on the size, nature, range and complexity of their activities. This framework must include four pillars of organisational structure, and in particular:

- a. an effective internal audit system
- b. adequate procedures for identifying and dealing with situations involving conflict of interest
- c. substantive channels of communication with the shareholders and
- d. a remuneration policy that contributes to the company’s long-term interests.

#### — **Changes in the composition and operation of the BoD**

The main changes are the following:

- a. Specific duties and areas of responsibility of the BoD members are provided, in addition to those already enacted by corporate law (L. 4548/2018).
- b. The minimum obligations and responsibilities of the executive and non-executive members are explicitly

provided.

Specifically for the non-executive members, it is explicitly stated that they are responsible, inter alia, for the monitoring and the critical review of the company’s strategy, the supervision and surveillance of the executive members and the monitoring of the effectiveness of the company’s internal audit and risk management systems.

Furthermore, for the non-executive members, the definition of article 3 paragraph 8 of L. 4261/2014 applicable to credit institutions is adopted.

- c. The Chairman of the BoD must be a non-executive member. In the event that they are not, the Vice-Chairman must necessarily be a non-executive member.
- d. The role of the independent non-executive members is strengthened, the minimum number of which is increased from two to three and in any case, not less than the 1/3 of the total number of BoD members.
- e. The criteria for the assessment of the independence of the independent members, the reference of which is now indicative and not restrictive, are tightened.
- f. A minimum number of two independent members is established in order to achieve the necessary quorum in the BoD meetings which are critical.

#### — **Obligation to establish a Policy of Appropriateness of BoD members:**

The draft law provides for the minimum content of this Policy, which is approved by the BoD and submitted, as well as any revision thereof, for approval to the Hellenic Capital Market Commission.

### — **Obligation to establish Remuneration and Nomination Committees**

The obligation to establish both a Remuneration Committee as well as a Nomination Committee as separate committees from the BoD is established by law. Such provision was considered at a "soft law" level until today.

### — **Enriched content of the Internal Regulation and the adoption of an Internal Regulation for the company's major subsidiaries**

The draft law defines the minimum content of the Internal Regulation of listed companies, which should incorporate, inter alia, the key features of the Internal Audit System with a minimum description of internal audit, risk management and regulatory compliance functions.

Additionally, listed companies should ensure that their major subsidiaries, as defined in the draft law, also adopt an Internal Regulation.

It is noted that the provisions of the proposed draft law introduce the obligatory confirmation by a certified auditor or audit firm that the company has indeed adopted an Internal Regulation in accordance with the required content required by the draft law.

### — **Obligation of the listed companies to implement a Corporate Governance Code prepared by a body of recognized status**

The flexibility of the companies to choose their preferred Code is maintained, under the "comply or explain" principle.

### — **Strengthening the responsibilities of the Internal Audit Unit (IAU)**

The responsibilities, the range of tasks, the way of appointment and the impediments referring to the appointment of the staff of the IAU are defined, with an explicit reference to the IAU Head, to whom increased responsibility is given.

A significant amendment is that the internal auditors' reporting requirement to the Hellenic Capital Market Commission no longer requires the prior approval of the company's BoD.

### — **Additional Disclosure and Transparency obligations**

The following disclosure obligations by the company to the shareholders and the investing public are imposed, and in particular:

- a. Publication on the company's website of the BoD's reasoned proposal on its candidate members, twenty calendar days before the General Assembly.
- b. Publication on the company's website, under the responsibility of the BoD, of the current Articles of Association and its recent amendments.
- c. Explanations provided by the BoD in the annual and interim financial statements and reports on the assessment of the company's prospects and its ability to continue to operate on a going concern

basis.

Moreover, specific duties for the Shareholders Service Unit and the Corporate Announcements Unit are also being put forth.

### — **Penalties' increase for the breach of the above obligations**

The Hellenic Capital Market Commission may impose penalties on the company or the members of the BoD, consisting either of a reprimand or fine not exceeding 7% of the company's turnover for each year of infringement.

### **Comments**

- The proposed provisions include a particularly broad and enhanced set of regulations both in relation to the corresponding draft law published in April 2019, as well as in relation to L. 3016/2002.
- The relevant provisions of L. 3016/2002 are repealed without prejudice to the application of the provisions of L. 3016/2002 on acts and omissions committed until the new law enters into force.
- The draft law does not currently include any transitional provisions or adjustment period.
- The proposed provisions shall apply, in principle, as complementary to the provisions of L. 4548/2018. It is expressly stipulated that where special regulation or derogation from the provisions of L. 4548/2018 is introduced, the provisions on corporate governance, as more specific and more recent, shall prevail.
- Although the draft law will be subject to comments and further deliberation until it is voted, its main provisions are not expected to be altered.

### **Conclusions**

- The aforementioned draft 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 ever-increasing demands of the modern capital market.

- Companies will be called upon to develop new structures and procedures, but also to update their existing ones.

It is advisable that companies adopt a holistic approach, which will take into account other corporate governance arrangements arising from corporate law and other legal provisions, as well as the other disclosure and transparency obligations.

Best practices will help companies harmonize their procedures and implement an integrated and effective corporate governance system.

- The investment required is significant. Our view however is that this will contribute to companies' competitiveness, in the attraction of investors and to the long-term return of greater value to their shareholders and other stakeholders.

Furthermore, it will also contribute in the longevity of companies and the protection of stakeholders through

transparency, systematic monitoring and structured risk management.

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