



Newsletter

9 October 2020

Legislative developments with regard to Law 4706/2020 on corporate governance

The Hellenic Capital Market Commission published: A) Circular No 60 entitled «*Guidelines on the Policy of Appropriateness of article 3 of Law 4706/2020*» and B) Decision No 1A/890/18.9.2020 of its Board of Directors entitled «*Specification of the system of determination, calculation and measurement of the rate of penalties per infringement imposed according to article 24 of Law 4706/2020*».

A) Policy of Appropriateness

Circular No 60 of the Hellenic Capital Market Commission («Circular») defines as “Policy of Appropriateness” the set of principles and criteria applied during the appointment, replacement and renewal of the term of office of the members of the Board of Directors (BoD), in the context of the evaluation of their appropriateness, which is divided into individual and collective.

Establishment, monitoring and revision of the Policy of Appropriateness

- The Policy of Appropriateness is established and approved by the BoD, it is submitted for approval to the General Assembly and it is posted in its up-to-date version on the company’s website. According to the Circular, during the establishment of the Policy of Appropriateness and the monitoring of its implementation, the BoD may be assisted by other company departments (indicatively the Internal Audit Unit, the Regulatory Compliance Unit, the Human Resources and the Legal Department).
- The company’s annual Corporate Governance Statement shall refer to the Policy of Appropriateness.

Principals of the Policy of Appropriateness

- The Policy of Appropriateness must comply with the provisions of the company’s Internal Regulation as well as the Corporate Governance Code applied by the latter.
- The Policy of Appropriateness must provide that the BoD is suitably composed and has a sufficient number of members, while the specific description of the responsibilities of each BoD member should also be taken into account.
- Finally, the Policy of Appropriateness must clearly

define the issues of the re-evaluation of the appropriateness of the existing BoD members and of the succession process following their departure.

Appropriateness assessment criteria

- According to the Circular, the assessment of the individual appropriateness is conducted according to the following criteria, which apply to all BoD members regardless of their status:
 - a) Adequacy of knowledge and skills (education, previous experience, acquired knowledge and skills)
 - b) Character references and Good Repute: (examination of any final administrative or judicial penalty against the BoD member)
 - c) Conflict of interest (provision for specific procedures regarding the BoD members)
 - d) Independence of judgment
 - e) Dedication of sufficient time
- Regarding the collective appropriateness assessment, the Circular provides that the BoD must collectively have the skills necessary to exercise actual management and supervision of the company and for this purpose, it shall conduct an annual self-assessment to identify any gaps in the collective appropriateness (such assessment may be conducted by third counselors).
- Emphasis is being put on the selection by the companies of a diverse group of BoD members, with the main feature being the gender representation (at least 25% of the total number of members) and the lack of discrimination (adoption of diversity policy) during the member selection process.

B) Specification of the system for imposing penalties

The Decision No 1A/890/18.9.2020 of the BoD of the Hellenic Capital Market Commission («Decision») specifies the system of determination, calculation and measurement of the rate of penalties imposed for infringements of the provisions of the Law 4706/2020, as well as of those of the Law 4449/2017 regarding the Audit Committee, which are determined by virtue of a decision of the BoD of the Hellenic Capital Market Commission.

- Offenders may be the companies, members of the BoD, members of the Audit Committee or any other natural or legal person falling within the scope of the Law 4706/2020.
- The Decision specifies for the first time the eight factors/ criteria set by the Law regarding the calculation and the measurement of the rate of penalties threatened (severity of the infringement, impact of the infringement, degree of fault etc.). Such criteria do not differ materially from those provided for by the previous framework (Law 3016/2002), with the exception of the emphasis placed for the first time on the risk of causing damage to the interests of the minority shareholders. An important point is the manner in which the criterion of the impact of the infringement on the proper functioning of the market, in particular taking into account the impact on the market, the participation in indices such as FTSE/ASE Large Cap, MSCI Greece, the capitalization of the company as a percentage of the total capitalization of the Stock Exchange, the amount of bond lending, the trading of derivatives with underlying asset the company's share or bonds, the amount of such exposure and the duration or the frequency of the infringement.
- The penalties threatened, consisting either of a reprimand or a fine, are determined according to the severity of the infringement. For the determination of the amount of the fine, the Decision sets out four stages:
 - a) The stage of determining the infringement
 - b) the stage of measuring the factors for the determination of the amount of the fine
 - c) the stage of measuring the factors indicatively mentioned in the Decision, for any increase or mitigation of the amount of the fine and
 - d) the stage of increasing the amount of the fine in case of recurrent infringements.
- In regards to stage b, the infringements are divided, depending on their severity, into Less Significant, Significant and Very Significant, and are weighted according to the degree of the offender's fault.
- The fine's final amount is at the discretion of the Hellenic Capital Market Commission, however, in any case it shall not exceed the maximum limits laid down by the Law (up to EUR 3 million for every offender or

in any case up to five percent (5 %) of the company's total annual turnover for the latter).

- In the event of a repeat infringement, the total amount of the fine is increased.
- The Decision covers infringements committed from 17 July 2020 and onwards.

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

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