

Legal Flash

“Introduction of new corporate type, the Private Company (P.C.)”

April 2012

The new provisions contemplate, inter alia, for a minimum capital of 1 Euro, as well as, for various kinds of contributions (capital and non-capital) for the P.C.

The newly established P.C. should be registered with the G.E.MI. through the One Stop Shop Authority

In the context of improving the current entrepreneurial environment, a new corporate type, that of the Private Company (“P.C.”), was introduced by means of a Bill voted by the Greek Parliament on April 10th, 2012. Amongst the provisions of the abovementioned Bill, the following main provisions with respect to the establishment and operation of the new corporate type are also included. It should be noted that the drafting of the various clarifying directives, as well as, of the respective Ministerial Decisions, referred to in the Bill, is still pending.

1. Main Features of the P.C.

- The P.C. constitutes a **legal entity** and is **commercial** in nature, even if its object is not per se commercial. However, it is prohibited by the P.C. to carry out a business activity that by law requires exclusively a different corporate type.
- The P.C. should have a **capital** of at least **1 Euro**, whilst its partners participate in the P.C. by means of capital, non-capital and guarantee contributions. Holding reserve on the provisions on guarantee contributions, the P.C. remains liable for all corporate obligations/liabilities.
- The **trade name** of the P.C. is comprised of either the name of one or more of its partners, or from the object of the business activity of the P.C. An imaginative trade name is also allowed. The trade name of the P.C. should in any event stipulate the words “Private Company” in full, or the abbreviation “P.C.”.
- The P.C. has its **registered seat** in the municipality referred to in its articles of association, whilst the transfer of the registered seat of the P.C. in another country of the E.E.A. does not necessarily result in the dissolution of the P.C., provided that the recipient country recognizes the transfer and the continuity of legal personality. The P.C. is not obliged to have its actual seat in Greece, whilst the P.C. is capable of establishing various types of secondary establishments either in Greece, or abroad.
- The **term** of the P.C. should necessarily be definite, whereas provided that it is not otherwise stipulated in the articles of association of the P.C. the P.C. has a term of 12 years following its establishment.
- Each document of the P.C. should necessarily **bear** the trade name of the P.C., its capital, the total amount of guarantee contributions, its General Commercial Registrar (G.E.MI.) Number, the registered seat of the P.C. as well as its precise address, also stating whether the P.C. is under liquidation or not.

2. Establishment of the P.C.

- The provisions of One Stop Shop Authority are accordingly applied to the **establishment** of the P.C. The establishment of the P.C. is effected by means of registering the P.C. with the G.E.MI.

- The document containing the articles of association of the P.C. should be in a **notarial form**, only in the event where this is mandatorily stipulated by specific legal provisions (e.g. where real property is contributed to the P.C.).

3. Administration of the P.C.

- The P.C. is **administered** and **represented** by one or more administrators. Unless it is otherwise stipulated by its articles of association, the P.C. is collectively administered and represented by all of its partners, or its sole partner (legal administration).
- The administrator represents the P.C. and conducts in its name all actions pertaining to the administration of the P.C. the management of its assets and in general the pursuit of its objects. Actions of the administrator, even if falling **outside** the corporate objects, **bind** the P.C. vis-à-vis third parties, unless the P.C. proves that the third party knew or ought to have known the violation of the company's objects.

4. The Meeting of Partners of the P.C.

- The partners decide on all corporate affairs. The decisions of the partners are made in a meeting. Said meeting is convened (by the administrator) at least **once per year** and within 4 months from the end of the fiscal year having as an item the approval of the annual financial statements of the P.C. (annual meeting).

5. Capital Parts

- The participation in the P.C. presupposes the acquisition of one or more capital parts. The capital parts should have a **nominal value of at least 1 Euro**. The nominal value shall be the same for all capital parts irrespective to the kind of contribution that each capital part correlates to.
- The contributions of the partners may be of three kinds: **capital, non-capital** and **guarantee**. Each capital part represents **only one** kind of contribution.
- The “**capital contributions**” constitute contributions in cash, or in kind, and comprise the capital of the P.C. Contributions in kind are allowed only where the contribution (in kind) constitutes an asset that may be monetarily valued. The P.C. should have at least one capital part representing a capital contribution. An increase or decrease of the capital parts representing capital contributions may be effected only by means of an increase or decrease of capital.
- The “**non-capital contributions**” are comprised of contributions that cannot be the subject matter of a capital contribution, such as claims deriving from the undertaking of an obligation to execute works, or provide services. Said kind of contributions should be explicitly specified in the articles of association of the P.C.
- The “**guarantee contributions**” are comprised of the **undertaking of liability** (by the partners) vis-à-vis third parties for the debts of the P.C.

The registration of the newly established P.C. with the G.E.M.I. is in any case required

The contributions of the partners may be of three kinds: capital, non-capital and guarantee

Special attention is required as regards the potential personal liability (towards the creditors of the P.C.) of a partner that has undertaken a guarantee contribution

The return of capital contributions is feasible only by means of a capital decrease

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This information is intended only as a general update for interested persons and should not be used as a basis for decision making.

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up to the amount stipulated by the articles of association. The partner granting the guarantee contribution is deemed to be, at all times, in a position to repay the debts of the P.C. up to the above amount. The value of each guarantee contribution is stipulated in the articles of association and should not exceed 75% of the amount of the liability undertaken by each partner.

- The **liability** of the partner extends to all the debts of the P.C. whilst said liability is primary and direct vis-à-vis the creditors of the P.C. who are entitled to a **direct recourse against the partner**.
- The partner who has undertaken a guarantee contribution and consequently paid a corporate debt has **no right of recourse** against the P.C.
- The P.C. is **not entitled** to acquire, either directly or indirectly, **its own capital parts**. Capital parts acquired despite the above prohibition are automatically cancelled. Unless it is otherwise stipulated by the law on P.C. companies or in the articles of association of the P.C., all capital parts have the same rights and obligations, irrespective to the kind of the contribution they represent.

6. Financial Statements

- The P.C. drafts: (a) the balance sheet, (b) the Profit and Loss Account, (c) the Appropriation Account and (d) the Appendix incorporating all required information for the comprehension of the financial statements, as well as, the report of the administrator in relation to the corporate activity for the ending fiscal year.
- For the drafting of the annual financial statements, the provisions of articles 42, 42a, 42b, 42c, 42d, 42e, 43, 43a and 43c of Greek Codified Law 2190/1920, as in force, are accordingly applied. It is the responsibility of the administrator to publish the annual financial statements with the G.E.M.I. and on the website of the P.C. within 3 months of the end of the fiscal year.

7. Dissolution and Liquidation

- The P.C. is dissolved: (a) at any time following a resolution of the partners, (b) when its definite term has expired, unless the term of the P.C. is extended by virtue of a resolution of the partners, (c) if the P.C. defaults and (d) in all other circumstances contemplated by the law or the articles of association.

