



Legal Flash

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Enactment of the new framework for corporate governance

The Greek Parliament enacted the law titled "Corporate governance for listed companies, modern capital market, incorporation into Greek legislation of Directive (EU) 2017/828 of the European Parliament and of the Council, measures to implement Regulation (EU) 2017/1131 and other provisions" (the "Law"). The Law replaces Law 3016/2002 on corporate governance and enters into force 12 months after its publication in the Government Gazette. The present briefly presents the basic changes brought about by the Law in the matters of corporate governance.

Corporate governance modernization framework

The new corporate governance provisions have been formulated taking into account the recent cases of bad corporate governance practices that have caused crisis and lack of confidence in the investing public, and on the other hand the relevant international developments in this very topical issue.

Field of application

The new provisions will apply in addition to the provisions of the company law (Law 4548/2018), but where a special regulation or derogation from the provisions of Law 4548/2018 is introduced, the provisions of the new Law prevail. The new provisions apply to listed companies, with some exceptions (e.g. Bank of Greece), and without prejudice to any specific provisions relating to supervised companies (e.g. banks).

Fit and proper Board of Directors

The new provisions now introduce as mandatory by law the principle that the composition of the board of directors (BoD) should reflect the knowledge, skills and experience required to exercise its responsibilities, in accordance with the business model and strategy of the company (fit and proper). Some formal conditions are also defined (e.g. the non-issuance of a final court decision acknowledging its liability for loss-making transactions of the company, or a non-listed company of Law 4548/2018, with related parties). Corresponding conditions are introduced for the delegation of management and representation powers of the company to third parties or for the maintenance of the relevant delegations in force.

Suitability policy

At the same time, there is an obligation to establish a suitability policy for the company's BoD members at individual and collective level, which will be approved by the General Meeting of shareholders. The Hellenic Capital Market Commission will specify within 2 months from the entry into force of the new provisions the content of the policy appropriate for the staffing as well as the selection and assessment of the BoDs of the companies.

Strengthening the role of independent non-executive members

The chairman of the BoD is primarily appointed as a non-executive member. However, if a person is appointed from among the executive members, a person from the non-executive members must be appointed as vice-president.



The role of the independent non-executive members of the BoD is strengthened. Indicatively, there is a mandatory representation of 2 independent non-executive members to reach a quorum at important board meetings, such as those concerning the preparation of the company's financial statements or those that have an agenda item for which a decision is required with an increased quorum and majority by the General Meeting of shareholders.

The number of independent non-executive members remains as no less than 1/3 of the total members of the BoD and in any case it may not include in its composition less than 2 members. However, when an independent non-executive member is absent from 2 consecutive meetings it is automatically deemed to have resigned from the board. At the same time, the conditions for a member to be considered independent are defined in sufficient detail.

These new provisions, in combination with the diversity rules (including adequate gender representation of at least 25%), are expected to require a review of the composition of the boards of many listed companies – having in mind the entry into force 12 months after the enactment of the Law.

Board of Directors mandate

The responsibilities of the BoD explicitly include the periodic evaluation of the implementation and effectiveness of the corporate governance system at least every three years and the undertaking of any remedial actions as well as ensuring the effectiveness of the internal control system applied by the company. Regarding the requirements pertaining to the supervision by the BoD of the internal control system of the company, special importance is attached to the monitoring and achievement of specific objectives.

Their enumeration in the Law is indicative and includes:

- the consistent implementation of the business strategy;
- the identification and managing of material risks arising from the business;
- the efficient operation of the internal control unit;
- ensuring the completeness and reliability of the data and information required for the financial information and preparation of the required financial statements of the company; and
- compliance with the relevant regulations and legislative framework.

However, the further formation of goals is left to the discretion of the company, depending on its specific needs.

Committees

The establishment of Remuneration and Nomination Committees is now mandatory by law (until now such committees were established based on the principle of best practice), while the possibility of consolidating this work into a single Committee is provided.

Operating regulation

The expansion of the content of the Company's Operating Regulations is foreseen, as well as the periodic evaluation of the Internal Control System by persons who are independent to the company. The Hellenic Capital Market Commission will specialize, within 3 months from the entry into force of the Law, the timing, the procedure, the periodicity and any more specific issues necessary for the implementation of the evaluation of the Internal Audit System.

A summary of the Regulation will be published on the company's website, while further obligation is provided for the preparation of operating regulations also for its important subsidiaries.

A certified auditor must confirm in the audit report that the company has updated Operating Regulations that comply with the provisions of the Law.



Sanctions

Without prejudice to the responsibilities of the European Central Bank and the Bank of Greece, as regards the entities supervised by them, the Hellenic Capital Market Commission supervises and may carry out audits for compliance with the new provisions.

In case of a violation, the Hellenic Capital Market Commission may impose:

- remuneration or fine up to EUR 3 million to the Company and, in any case, up to five percent (5%) of its total annual turnover reprimand or
- fine of up to EUR 3 million to members of the BoD or other natural or legal persons falling within the scope of this.

The Hellenic Capital Market Commission will specialize within 2 months from the entry into force of the new provisions the specific framework for determining, calculating and measuring the sanctioning framework.

Entry into force

The new provisions come into force 12 months after the publication of the Law in the Government Gazette. Therefore, companies should take care as soon as possible both in the direction of adapting their corporate governance framework and re-evaluating the composition of their boards.

It should be noted that each individual case should be examined on the basis of its particular characteristics and the above-mentioned general principles may not necessarily apply in all circumstances. Our specialized consultants are in a position to assist you with regard to any issue that may arise in your individual case.