

Legal Flash

June 2018

The recently enacted **Law 4548/2018** (Government Gazette Issue 104 – 13.06.2018) brought the reform of the law on Sociétés Anonymes.

The most important amendments introduced by the provisions of the new Law 4548/2018 regarding the law of Companies Limited by Shares (S.A.) may be summarized as follows:

A. Establishment – Duration – Trade name

Incorporation by way of private agreement

- The possibility of incorporating an S.A. with a private agreement is now provided, under the condition that the Model Articles of Association (as provided by relevant legislation) shall be adopted and as long as the transfer of the assets to be contributed towards the share capital does not require, formal execution by way of notarial deed subject to a specific provision.

“Indefinite” duration and “fictitious” trade name

- The duration of the S.A. may be indefinite, and the trade name may be fictitious or include another indication (e.g. a web site), which is directly related to the company with continuity.

B. Capital – payment & certification

Minimum share capital increase and possibility of payment outside Greece

- The minimum share capital of the S.A. is increased to 25.000 Euros, and it may be contributed into a special bank account held by the company with a financial institution that operates within the European Economic Area (EEA). S.A.s that already have a capital less than 25.000 Euros, are obliged to increase their capital to at least that amount by no later than 31.12.2019, or convert into another type of corporate vehicle.

Certification of paid-in capital by a chartered accountant or audit firm

- The certification of the paid-in capital (both during incorporation and in the event of a share capital increase) shall be mandatorily provided by a chartered accountant or an audit firm, which must not be engaged in the statutory audit of the company.
- Exceptionally, the certification may also be performed by the Board of Directors (BoD) in the following instances: (a) during incorporation, (b) in the context of small and very small companies (as per applicable definitions of L. 4308/2014), not listed in a regulated exchange, (c) in contribution in kind instances, following the completion of the transfer.

Payment of share capital contribution through a set-off of a debt

- In the event of share capital increase, a share capital contribution may take place by way of set-off of the company's debts, as long as this is stipulated in the corporate decision authorizing the capital increase and is certified by a chartered accountant or auditor. The debt should be - in principle - existing, due and not subject to any form of contingency clause.

C. Share capital decrease

Special methods for decreasing share capital

- A share capital decrease in kind is now explicitly provided, taking place following a valuation of the relevant assets. In case where there is an unanimous decision by the shareholders as to how it will be implemented, no valuation is required
- The possibility of decreasing the share capital with the aim to form a special reserve is also introduced.

D. Shares and other kinds of securities instruments

Introduction of new instruments

- An S.A. may now issue shares, bonds, stock warrants, founders' shares and other security instruments provided in special provisions.

Extraordinary founders' shares

- The possibility of issuing extraordinary founders' shares as consideration for the provision of certain items in kind by the shareholders or third parties.

E. Shares – transfer of shares

Abolition of bearer shares

- The shares of an S.A. will hereafter be registered. Bearer shares already issued should be nominalized by no later than 01.01.2020.

- Every S.A. is obliged to have at least one common share.

Lowering the minimum nominal share value

- The nominal value of each share may be between 0,04 Euro and 100 Euro, and should be the same for all the issued shares in the company.

Electronic register of shares and accounting form of shares

- The possibility of keeping the shareholders book in electronic form is provided as well as maintaining it in the central securities depository, a financial institution or an investments firm.

- The shares may also be maintained in an accounting form, following dematerialization or immobilization according to EU Regulation 909/2014.

Transfer of shares

- Provisions are introduced on the transfer of shares either through special succession or universal succession.
- Regarding the restricted stock units, whose transfer is contingent to company authorization, it is envisaged that the restrictions as to the transfer of these shares are not valid in instances of death, seizure, insolvency or the subjection of the shareholder to any collective procedure for the alienation of his property.

F. Corporate Bond loan

Incorporation of the revised provisions on Corporate Bond loans

- Some of the provisions of L. 3156/2003 on corporate bond loans applicable to S.A.'s have been revisited and incorporated in the present law and the respective articles of L. 3156/2003 (articles 1-9 and 12) are abolished.

The purpose of the relevant amendments is update certain provisions so as to facilitate business financing, while aligning with international market practices.

It is not clear whether the amendment of existing corporate bond loans' provisions, as per the new provisions, if opted by the parties, shall be effective as of 1.1.2019 or retrospectively.

- It is clarified that the bond loan still qualifies as such even when it is incorporated into a single bond or when there is a single bond holder.

This provision aims to resolve ambiguities on the issue that had arisen from the Opinion of the Legal Council of State Nr 514/2006.

- It is further clarified that bond securities may be introduced for trading in any regulated market and multilateral trading facilities/mechanisms, i.e. in Greece and abroad.

This clarification was considered essential from a non-discrimination perspective and in order to mitigate any EU Law violation concerns.

- The competence of the Board of Directors to proceed with the issuance of corporate bond loans, instead of the General Meeting of the Shareholders, is now

explicitly set as the general rule, unless there is a contrary statutory provision in the company's articles of association.

- The release of bond loans interest rate is also introduced.

The same provision had been introduced with L. 4416/2016 capturing bond loans introduced in regulated markets or covered exclusively by professional investors but it has considered as essential the application of a similar provision to all bond loans without any distinction depending on the qualification of the bondholders.

- New financing tools are also introduced, as per international practice, such as Payment-In-Kind (PIK) bonds, Perpetual bonds or Catastrophe (CAT) Bonds.
- The restriction imposed on the conversion of bonds to shares by virtue of a decision reached by the bondholders assembly is now abolished since it is considered as an unnecessary restriction which impedes the freedom to transact.
- The issuance of bond loans with convertible bonds, as well as the possibility to provide for conversion price adjustment mechanisms in case of corporate events are explicitly provided.

This provision was introduced in order to achieve harmonization with most EU jurisdictions legal frameworks given that the absence of an explicit provision created a competitive disadvantage for Greek entities.

G. Board of Directors

Single-member administrative body

- The appointment of a Single-member administrative body (director-administrator), instead of a board of directors, for small and very small companies is provided, contingent to a relevant statutory provision included in the company's articles of association.

Executive committee function

- The constitution and functioning of an executive committee is provided. Such executive committee shall be vested with such powers as the board of directors delegates.

Simplification of sign-off process of Board Resolutions reached without meeting

- The sign-off of Board Decisions/Resolutions, where no meeting was held, by the members of the board of directors (or their representatives) is simplified by introducing methods such as the exchange of emails or any other electronic means.

BoD members duties

- The provisions regulating Board Members issues pertaining to duty of care and conflict of interest as well as the provisions that refer to transparency and supervision of transactions with related parties as set out in Directive 2007/36/EC and Directive 2017/828/EU have been incorporated.

- The liability of the members of the Board of Directors for direct losses caused to the shareholders or third parties is also provided explicitly.

Remuneration of the BoD – Remuneration policy

- The provisions of Directives 2007/36/EC and 2017/828/EU that regulate the adoption of a remuneration policy, which is compulsory for S.A.s with shares listed in a regulated exchange market, have also been incorporated.

- S.A.s with shares listed in a regulated exchange market are obliged to draft a remuneration report.

Provision of shares to members of the BoD and personnel

- An explicit provision has been introduced, whereby the Members of the Board and company personnel may be offered shares, either in the form of a stock option plan or gratuitously, following the relevant decision of the shareholders general assembly.

H. General Assembly

Presence of non-shareholders at the GA

- It is explicitly provided that members of the board of directors as well as the company statutory auditors have the right to participate at the meetings of the shareholders of the general assembly. Following a relevant consent of the president of the general assembly, and under the condition that it is not contrary to the corporate interest, the participation of third parties to the meetings of the general assembly is possible.

Abolition of the second repeated meeting

- The new provisions stipulate that only one repeat meeting of the general assembly may take place and therefore the second repeat meeting as per the C.L. 2190/1920 regime is now abolished.

Simplification of the sign-off of GA resolution reached without holding a meeting

- The sign-off process of AG resolutions where no meeting has taken place is simplified by providing for the exchange of e-mails or by any the use of any other electronic means.

Minority rights

- An individual right for every shareholder is introduced whereby a shareholder may have access to information regarding the following items: (i) the share capital of the company, (ii) the classes of shares issued and (iii) the number of shares of each class.
- The formation of shareholders associations is now provided. Such associations may exercise in their own name, but on behalf of their individual members the shareholder minority rights (minority shareholders activism). These associations acquire legal form, which is that of a Union (regulated by the Greek Civil Code) and assume legal personality following their registration with the Consumers' Unions Registry of L. 2251/1994.

I. Corporate Governance

Introduction of corporate governance provisions

- The model rules on corporate governance are now incorporated in the new legislation. These rules should be adhered to by the S.A.s with traded securities.

J. Dispute resolution

Possibility of arbitration / mediation proceedings

- Dispute resolution, including the instances where differences between shareholders or shareholders and the company arise, can be take place through recourse to arbitration or mediation.

K. Stamp Duty

Application of reduced stamp duty rate to LLCs and Private Companies

- It has been clarified that the provisions of the Stamp Duty Code concerning the application of reduced stamp duty rate to Societes Anonymes are also applicable to Limited Liability Companies (LLCs) and Private Companies.

This provision is applicable as from May, 31st 2018 onwards. It reconfirms the application of the current regime, given the uncertainty created by reason of the abolition of the old article 56 of L. 3190/1955 regarding Limited Liability Companies.

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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. For further details please contact PwC:

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