


**Law 4706/2020
Corporate
Governance
of Listed
Companies**

The recent Law 4706/2020 on “*Corporate Governance of Societe Anonymes, contemporary capital markets, integration in the Greek legislation of the Directive (EU) 2017/828 of the European Parliament and the Council, measures for implementation of the Regulation (EU) 2017/1131 and other provisions*” (Government Gazette No. A' 136 - 17.07.2020, hereinafter “the Law”), and the simultaneous abolishment¹ of the relevant articles of L. 3016/2002 aims at updating the current legislative framework on corporate governance of societies anonymes as well as the clarification of certain matters that have challenged the legal practice and doctrine.

According to art.91 of Law 4706/2020 the articles 1-11 of Law 3016/2002 that regulated until now the corporate governance are repealed.

Following the provisions of the new Law, the Capital Market Commission (the “CMC”), has issued (a) the circular no. 60/18.09.2020 on the Guidelines concerning the Fitness and Propriety Policy, (b) its Board Decision no. 1A/890/18.09.2020 providing sanctions to be imposed in case of infringements of the provisions of the Law and (c) Board Decision no. 1/891/30.09.2020 regarding the assessment of the Internal Audit System. The issuance of the above regulatory acts within the respective tight deadlines provided by the new Law demonstrates the Commission’s intention to, on the one hand, directly and constructively guide and support listed companies in adapting to new provisions and monitor, on the other hand, their compliance.

The provisions of the Law will enter into force twelve (12) months after its publication², unless explicitly provided otherwise in its provisions.

¹According to art. 91 of Law 4706/2020 the articles 1-11 of Law 3016/2002 that regulated until now the corporate governance are repealed.

² Article 92 par.3 Law 4706/2020.

II. The main provisions of the Law

► The main provisions of the Law regarding corporate governance (articles 1-24) that shall be additionally applied with the provisions of L.4548/2018 in societies anonymes with shares or other securities listed in regulated market in Greece.

1. Board of Directors:

a) Fitness and Propriety Policy (art.3): For the first time a Fitness and Propriety policy for the members of the Board of Directors (BoD) is introduced, that is approved by the BoD and implemented in any election of directors of the listed company. According to the CMC Circular no. 60/18.09.2020 regarding the Guidelines for the Fitness and Propriety policy of article 3 of the Law, the Fitness and Propriety Policy has to be unambiguous, sufficiently detailed, to respect the principles of transparency and proportionality and to be in accordance with the Operating Regulation and the Corporate Governance Code that the company follows. The fitness and propriety it can be distinguished to individual and collective. The individual fitness and propriety it is related to sufficient knowledge, skills, experience, independent judgment, character requirements, good reputation, provision of sufficient time etc. for the performance of the duties of a person as a member of the BoD of the company according to the fitness and propriety criteria set by the Fitness and Propriety Policy of the company. The fitness and propriety of all members of the of the BoD constitutes the collective fitness and propriety. In the selection, the renewal of the term and the replacement of a member the assessment of both the individual and collective fitness and propriety is taken into consideration. The Fitness and Propriety policy should provide for the minimum content of the Law such as principles for the election or replacement of BoD members, assessment criteria regarding their fitness as well as diversity criteria for their election, achieving thus variety of opinions and experiences in order to take better decisions. A significant innovation of the Law is the explicit provision that the election criteria of the members of the BoD include at least the sufficient representation per gender in a percentage not lower than twenty-five per cent (25%) of the total number of its members, requesting thus in reality the participation of more women to BoDs of listed companies. The Nominations' Committee takes this criterion into consideration when submitting proposals for appointing of a member of the BoD.

Generally, it must ensure equal treatment and equal opportunities between both genders. This criterion is even extended in providing training to the members of the BoD.

The Fitness and Propriety takes into consideration the specific responsibilities of each member, any participation in other committees, the nature of his duties and his classification as independent or non-independent member independent member as well as special incompatibilities or characteristics or contractual commitments related to the nature of the activities of the company or the Corporate Governance Code that the company follows.

The company shall monitor on a ongoing basis the fitness and propriety of the of the members in order to identify cases where the reassessment of their fitness and propriety is necessary.

The Fitness and Propriety policy and any substantial amendment thereof is subject to approval by the General Shareholders' Meeting (GSM) and it is effective from its approval. Substantial amendments are considered the amendments that introduce deviations or amend significantly the content of the Fitness and Propriety Policy and in particular the applicable general principles and criteria. Moreover, it should be noted that a condition for the election or maintenance of the BoD member capacity as well as for the assignment (or maintenance of the assignment) of management powers and representation of the company to third parties is the lack of any final judgment (within one year before or from the election or the assignment, with the possibility of its extension by virtue of the Articles of Association) holding such member liable for damaging transactions of a company either listed or not with related parties.

The Internal Audit Unit, or/and Regulatory Compliance Unit, the Nominations' Committee and the Secretary of the BoD assist in the monitoring of the implementation of the Fitness and Propriety Policy. A relevant reference should be made in the annual Corporate Governance Statement.

b) Duties and Responsibilities of BoD (art.4): The Law provides in detail duties and responsibilities in addition to those provided by L. 4548/2018. These include, inter alia, the monitoring and periodical assessment at least every three (3) financial years of the corporate governance system, ensuring the effective operation of the internal audit system (whose purposes are indicatively listed), the publication on the company's website of the Company's codified

Articles of Association currently in force and the drafting of the corporate governance statement that should include, among others, a reference to the fitness and propriety policy as well as the activity report of the various BoD Committees etc.

c) Composition - Quorum of the BoD (art.5): The Law maintains the distinction of BoD members in executive; non-executive and independent non-executive provided by law 3016/2002. The capacity of BoD members as executive or not is determined by the BoD. As regards the independent non-executive members, they are elected either by the BoD or the GSM cannot be less than $1/3^3$ of the total BoD members and in any case cannot be less than two (2)⁴. In certain cases (drafting annual FS, BoD meetings on items of the agenda that necessitate the approval of the GSM with increased quorum and majority), the BoD is in quorum when at least two (2) independent non-executive members are present.

d) Executive members (art.6): The Law clarifies their role. The executive members shall ensure especially for the implementation of the strategies adopted by the BoD and they consult with the non-executive members periodically about the suitability of said strategies. Furthermore, they submit reports to the BoD when the circumstances require the adoption of measures that may be reasonably expected to have an impact on the Company e.g. resolutions about risk-taking or business developments, that are expected to impact the company's financial condition.

e) Non-executive members (art.7): The Law clarifies their role. Their duties include indicatively the monitoring and review of the company's strategy, its implementation, its success rate in reaching the goals pursued, ensuring the effective supervision of the executive members and expressing opinions on their propositions.

f) Independent non-executive members (art.9): The Law provides for high independence standards. In order for a member to be considered independent (both upon its appointment and during the course of its term) it is necessary that its shareholding directly or indirectly is lower than 0,5% and that it does not have any financial, business, family or any other dependence relationship whatsoever. The fulfillment of the independence criteria is revisited by the BoD at

³The same percentage was also provided by art.3 Law 3016/2002.

⁴ Chairman of the BoD must be someone from the non-executive members. If an executive member is elected as chairman, then as vice-chairman must be elected someone from the non-executive members (art.8 Law 4706/2020).

least annually and if deemed as missing, it initiates the replacement procedures of this member, as provided by law. These members also submit, jointly or individually, reports to the GSM independently from the reports submitted by the BoD⁵.

The reinforcement of the role of independent members derives also from other provisions of the Law, such as article 10 para 3 that sets that the Chairman of the Committees of Nominations and Remunerations should be an independent non-executive member and article 5 para 3 that provides that the inexplicable absence of an independent member to at least two consecutive meetings of the BoD is considered as a resignation.

2. BoD Committees

a) Remuneration Committee (art.10,11): This Committee is introduced for the first time, it has its own operating regulation, is comprised by at least 3 members who are non-executive, at least two (2) of which are independent non-executive. The independent non-executive members must be the majority of its members, while its Chairman must also be an independent non-executive member. Its duties include the submission of propositions to the BoD regarding the remuneration policy that is subject to the GSM for approval and the remuneration of persons who are falling under the relevant policy as well as executives.

b) Nominations' Committee (art.10, 12): This Committee is introduced for the first time, it has its own operating regulation, is comprised from at least 3 members who are non-executive, at least two (2) of which are independent non-executive. The independent non-executive members must be the majority of its members, while its Chairman must be also an independent non-executive member. Its main duty is identifying persons who are fit and proper to be appointed as BoD members, based on criteria provided by Fitness and Propriety Policy.

c) Audit Committee (Art.10, 74): This Committee was already provided in L. 4449/2017. The law supplements the provisions in terms of composition, member replacement and responsibilities. It should also have its own operating regulation.

⁵ The same was also provided by the art. 4 par. 2 Law 3016/2002

3. Corporate Governance System (Art. 13): The Law provides the implementation of a Corporate Governance System that should include at least an internal audit system (including risk management and regulatory compliance systems), procedures for preventing, identifying and eliminating conflicts of interest, communication mechanisms with the shareholders, remuneration policy.

4. Operating Regulation (Art. 14): The company should have an updated operating regulation for the same and its major subsidiaries, approved by the BoD. The regulation should include provisions at least for issues set at the provisions of the Law, such as reference of the main characteristics of the internal audit system, the procedure for hiring senior executives and assessing their performance, the notification procedure regarding dependence relationships of independent non-executive members, prevention procedures against conflicts of interest etc. According to the resolution of the CMC Board Decision no. 1/891/30.09.2020, in particular for the internal audit system and its assessment the Operating Regulation should include at least the assessment policy of the internal audit system (e.g. the object and the frequency of the audit, assessment range, etc.) as well as the assessment procedure (e.g. the stages of the selection of the candidates who will conduct the assessment, the competent body, the selection procedure and the approval of the assignment of the assessment by the competent body etc.). The persons who will conduct the assessment have to be objective and independent and have relevant professional experience and training. The assessment of the adequacy of the internal audit system must be carried out on the basis of the international best practices. In case of a group of companies, particularly for the parent holding companies, must be determined on the basis of the policy of the company their important subsidiaries to be included in the scope of the assessment. Object of assessment are the environment of the control, the risk management, the control mechanisms and the safeguards, the information and communication system and the monitoring of the internal audit system. The first assessment has to be completed until 31st of March 2022 with reference date the 31st of December 2021 and reference period from the effective date of art. 14 Law 4706/2020.

Furthermore, an auditor should confirm in his Audit Report that the company has an up to date operating regulation⁶.

⁶Art.21 Law 4706/2020

5. Internal Audit Unit

a) Organization and operation (art.15): The Internal Audit Unit is tasked with the monitoring and improvement of the operations and policies of the Company regarding its internal audit system. The Law regulates issues such as the process and the blocks for the appointment of its head, his duties as well as his obligations (submission to the audit committee of the annual audit program and requests for funding for its implementation etc.). In case of change of the head, the Capital Markets' Committee should be informed within twenty (20) days from the change.

b) Duties (art.16): The Internal Audit Unit's duties are indicatively provided for such as e.g. the monitoring, review and assessment of the implementation of the operating regulation and the internal audit system, the drafting of reports towards the audited units, a periodical submission of reports to the audit committee etc. as well as the obligation of the Unit's head to attend the GSM and to provide information in writing to the Capital Markets' Committee.

6. Corporate Governance Code (art.17):

Furthermore, the Law provides for the obligation of the company to apply a corporate governance code, drafted by a renowned advisor.

7. Information of investors

a) Information of the shareholders by the BoD about its candidate members (art.18): The BoD is obliged to publish an announcement (not later than 20 days before the GSM) containing the justification of the proposition of its candidate members, their detailed CV and the affirmation about the fulfillment of the fit and proper criteria as per the company's fitness and propriety policy.

b) Shareholders' Service Unit (art.19): The establishment of said unit aims at providing information to the shareholders in an equal and direct manner and assisting them in exercising their rights as well as for informing them on other matters provided by the Law such as e.g. distribution of profits and free shares, information for the GSM and the relevant decisions taken by them.

c) Unit of Company Announcements (art.20): Unit of Company Announcements makes announcements regarding regulated information (Law 3556/2007) and company issues under L. 4548/2018. In addition, this unit is responsible for the compliance of the company with the obligations of art.17 of EU Regulation 596/2014 on disclosure of privileged information and other applicable provisions.

d) Share Capital increases in cash injection or issuance of bond loan-Changes in the use of the capital raised (art.22): If the GSM is called to resolve upon a share capital increase in cash injection, the BoD is obliged to submit a report thereto where the general directions of the business plan to be funded by the capital increase are mentioned along with an indicative timeline for its implementation and assessment of the use of funds from previous share capital raised provided that three years from the completion of the capital increase have not lapsed. Such information must be included also in the BoD minutes when the BoD proceeds to capital increase pursuant to Law 4548/2018. Deviation greater than 20% in the use of the capital raised, in relation to the use provided in the bulletin and the relevant resolutions of the General Shareholder's Meeting or the BoD, is permissible, if a resolution of the BoD with a majority of 3/4 and approval of the GSM that decides with increased quorum and majority takes place before said deviation. Such deviation is not possible before the expiration of six months from the completion of the raise, unless there are exceptional cases. The above also apply to the issuance of bond loan with public offer and publishing of a bulletin.

e) Disposal of company's assets (art.23): The Law provides that a resolution of the GSM for the disposal of its assets that takes place within two (2) years and whose value is greater than fifty-one per cent (51%) of the total value of the company's assets should be taken with increased quorum and majority in accordance with art.130 paras 3, 4 Law 4548/2018.

8. Sanctions (art.24): As a last remark, the Law also provides sanctions for violations (reprimand, fine⁷ up to EUR 3m) as well as the range factors of the fine (e.g. gravity, degree of liability, repetition of the offense etc.). More specifically, pursuant to the CMC Board Decision no. 1/891/30.09.2020, for the gravity of the action the below factors are considered: the seriousness of the infringement, based on the impact on the operation of the

company, whether the action is in breach of several provisions of corporate governance and whether the infringement is substantive or procedural. It is further examined the duration and its frequency (once or repeatedly infringement). In addition, the degree of probability of damage to the collective interests of the investors and minority shareholders it is also investigated. In relation to liability, this may relate to an infringement committed by either a natural or a legal person. Furthermore, the measures taken by the infringer to remedy the infringement in the future, the level of cooperation with the Capital Market Commission (e.g. speed, effectiveness, completeness of cooperation etc.) are also taken into consideration. Finally, the repeated infringement shall be defined as infringements of Law 4706/2020 committed over the past five years before the date of the infringement.

The infringements may be attributed either to the legal person itself or to its natural persons who consists its BoD, Audit Committee or to other persons entrusted with obligations because of their status and their responsibilities. The infringements depending on their significance are separated to nine categories where they are weighted based on the liability and the relevant sanction is imposed (reprimand for the least important infringement) or fine. For the increase or mitigation of the amount of the fine among to factors that are taken into consideration are e.g. the measures taken by the infringer to remedy the infringement in the future, the level of his cooperation with the Capital Market Commission at the stage of investigation etc.

However, the legal effect of the BoD or the GSM decisions is not affected by a violation of the corporate governance provisions. The sanction system of the law is intended to specify the sanctions with clarity, simplicity, objectivity and transparency. The sanction threatened has to be appropriate and reasonable (mean-purpose relationship). This system of sanction seeks to ensure effective protection of both the market and the investors.

⁷The procedure for the calculation of the fine is consists of four (4) stages: a. the identification of the infringement, b. measurements of the factors for defining the amount of the fine, c. measurement of the factors for the increase or the mitigation of the amount of the fine, d. increment of the amount of the fine for repeat infringements.

III. Aiming at a more secure investment environment

Law 4706/2020 pursues the adjusted fortification of the procedures and the structures of corporate governance in order to address the increased challenges posed by the current capital markets environment. The Law is harmonized to a great extent with the legislative framework of the EU and takes into consideration the international trends in this sector. This may contribute to the creation of a safe and reliable investment environment so as to the law being emerged (also) as a tool for attracting investments.

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