

LAW 4706/2020: CORPORATE GOVERNANCE REFORM

On 17 July 2020, the Greek Parliament enacted Law 4706/2020 (Government Gazette A' 136/17.07.2020)¹ introducing material reforms on the Greek corporate governance legislation. Law 4706/2020 was initiated by the Hellenic Capital Market Commission (HCMC), replacing Law 3016/2002, and it aims to modernize and strengthen the internal structure of listed companies, with a view to appeal to investors in the Greek economy and capital markets.

The provisions of the new Law (in addition to the respective provisions of Law 4548/2018 on Corporations) apply to companies with listed shares or other transferable securities (e.g. notes/bonds) in a regulated market in Greece (the "Companies"), with some exceptions, including the Bank of Greece, and without prejudice to any specific provisions of Union or domestic law with regards to regulated companies, such as banks.

The main provisions and amendments brought by the new Law are summarized as follows:

A. Suitability Policy

According to the new Law, Companies must adopt a board members suitability policy, which will be approved by the Board of Directors (BoD)

and the Shareholders' General Meeting ("SGM"). The policy shall determine the criteria for election of board members, their appraisal and conditions for renewal of their term in office. Diversity and inclusion appears to be introduced for the first time among the criteria. The policy shall be available on the Company's website, including at least the BoD eligibility criteria (such as integrity, experience, reputation, knowledge, gender representation percentage and diversity).

Moreover, the Law introduces for the first time legal impediments for (i) the election of a BoD member and (ii) the delegation of management and representation powers of the Company, such as the absence of a final court decision declaring the person concerned liable for concluding loss making transactions between a Company and/or other non-listed companies and related parties (art. 3 par. 4 and 5).

B. Composition and Operation of the BoD

- The new Law requires that the BoD comprises independent non-executive members as well; they are selected by the General Meeting or exceptionally appointed by the BoD (death or resignation), they are not less than 1/3 of the total number of the

¹ The law also includes provisions regarding the implementation of SRD II, Prospectus Regulation,

and the establishment of Greek alternative investment funds (AIFs).

BoD members (in any case not less than two), and they are evaluated by the BoD on an annual basis.

- The BoD Chairman is a non-executive member; however, in the case he/she is an executive member, a non-executive member is appointed in the position of the Vice-president.
- The BoD shall determine and supervise the implementation of the corporate governance system, evaluate its effectiveness at least every three financial years (undertaking when necessary all appropriate actions), and assure the effectiveness of the Internal Control System (with the settlement of specific objectives).
- The Law introduces a diversity rule, according to which 25% of the total number of BoD members should come from the opposite gender.
- Lastly, a new quorum requirement of the BoD is set; when the BoD resolves on the Company's financial statements or any other matter requiring approval by the Company's General Meeting (by the extraordinary quorum and majority in accordance with Law 4548/2018), the BoD reaches a quorum when at least two independent non-executive members attend such meeting.

C. Committees

Section C of the new Law introduces two new independent committees (apart from the Audit Committee provisioned under art. 44 of Law

4449/2017), i.e. the Remuneration Committee and the Nomination Committee. The two new committees may be consolidated into a single Committee.

- i. The Remuneration Committee (art. 11) (a) makes recommendations to the BoD regarding the remuneration policy (which is submitted for approval to the General Meeting) and the directors' and managers' remuneration and (b) provides the BoD with an opinion following examination of the relevant information included within the final draft of the annual remuneration report, before its submission to the SGM.
- ii. The Nomination Committee (art. 12) identifies and recommends to the BoD qualified candidates to be appointed as BoD members.

Both committees should adopt operation regulation and have them available on the Company's website.

D. Operations Manual & Corporate Governance Code

The Law expands the minimum mandatory content of the Operations Manual, which is approved by the BoD, and requires that a summary of it is available on the Company's website. The Company shall ensure that its significant subsidiaries also avail themselves of Operations Manuals (art. 14). A certified auditor shall verify that the Company retains the Operations Manual updated in compliance with the law (art. 21).

Companies must also adopt and apply a Corporate Governance Code, which is endorsed by a recognized (foreign or domestic) institution (art. 17).

E. Internal Audit Unit

Companies are required to establish an Internal Audit Unit (IAU), which will monitor and enhance the Company's operations and policies in relation to the internal audit system. The IAU is obliged to adopt a function operations manual, which has to be approved by the BoD following a proposal by the Audit Committee (Art. 16), and to submit to the Audit Committee relevant reports on a quarterly basis.

The head of the IAU is appointed by the BoD (following a proposal by the Audit Committee), and cannot be a BoD member nor a member with voting rights in other committees nor closely related to such persons in the aforementioned positions (art. 15). He/she may attend to the general meetings of the shareholders and shall cooperate and provide the HCMC with any necessary information upon request.

F. Transparency requirements towards the shareholders

The BoD is obliged to publish on the Company's website 20 days prior to the SGM information about the candidacy of a BoD member, namely a justification for the proposition of the election of such candidate, a detailed curriculum vitae,

and compliance with the suitability policy (art. 18). The new provisions, also, require that a Shareholders' Service Unit shall provide the shareholders of the Company with prompt, accurate and equal access to information and service in relation to their rights and the distribution of dividends (art. 19). Lastly, the Law requires the establishment of a Corporate Communications Unit, which will proceed with all necessary announcements concerning the regulating information (as per Law 3556/2007) and the corporate events (in compliance with Law 4548/2018) in order to inform the Company's shareholders or owners of other transferable securities (art. 20).

G. Sanctions

Without prejudice to the responsibilities of the ECB and the Bank of Greece, in case a Company infringes the provisions of the new Law, the HCMC imposes sanctions as follows:

- i. reprimands the liable Company; or
- ii. imposes a fine up to 3 million Euro (not to exceed 5% of its annual turnover).

Same sanctions may apply to the BoD members or other natural or legal persons being held liable within the scope of the new Law.

The new provisions summarized above will come into force 12 months after the publication of the Law, i.e. on 17 July 2021.