Reform of the legal framework regarding Sociétés Anonymes

Greek Parliament enacted Law 4548/2018 amending the law on Sociétés Anonymes (SAs) (Law 4548/2018, Greek Government Gazette – FEK- A' 104/2018) with effective date 01.01.2019.

The law introduces new provisions that significantly change the operation of SAs. Tapping into technology and innovation according to the standards of foreign jurisdictions, the new law introduces changes that, according to past experience, were necessary for the modernisation of the SA's status and for the creation of a more favourable entrepreneurship environment.

The main changes brought upon by Law 4548/2018 to the existing legislative status of the SAs are the following:

Incorporation – General provisions

Incorporation

A SA may be incorporated either by means of a notarial deed or by a private instrument. In the latter case, use of the model articles of association under Minister of Economy and Development Decision no. 31637/2017 or article 9 of Law 4441/2016 is mandatory.

Legal Name

- The company's legal name may be fictitious or include an internet address and may be written in whole or in part in Latin characters.
- The wording of the legal name applying to a Single-Shareholder SA must include the mention "Single-Shareholder". Said mention may be added or removed from the company's legal name by simple registration with the Greek General Commercial Registry (the "GEMI") without obligation of a relevant amendment of the articles of association.

Corporate documents

- The corporate documents, whether in hard-copy or electronic form, including letters, advertisements, purchase orders, etc., must include:
  (a) the SA's commercial registry (GEMI) number;

(b) the company's legal form, legal name, registered office, and any mention of the company being under liquidation or under any insolvency collective action.

- If the corporate documents mention the company's share capital, the subscribed and paid-up share capital must be included.

- The duration of a SA can henceforth be indefinite.

- Legality review carried out by the authorities of the relevant Region is limited to matters related to the amendment of the articles of association, the conversion of the SA into any other legal form and vice-versa, the dissolution and the revival of dissolved companies, and any other company transformations.

- The General Commercial Registry (the "GEMI") is competent for the registration of any other corporate changes (e.g. change of representation authorities) following a standard review of the corporate documents.

- By way of exception, the incorporation and amendment of the articles of association of:
  (a) public interest companies;
  (b) large entities under par. 6, article 2 of Law 4308/2014;
  (c) SAs licensed by the Capital Markets Committee; and
  (d) any other company, to the extent a provision of law expressly provides so, is subject to a legality screening and to the approval of the Minister of Economy and Development.

Capital – Contributions

- The minimum share capital requirement is increased from Euro 24,000 to Euro 25,000.

- Any SAs that on 01.01.2019 have a share capital under Euro 25,000 must either increase their share capital or convert into another company form by 31.12.2019.

- After 31.12.2019, any SAs not having complied with the foregoing requirement regarding the amendment of their share capital, shall not be able to make any further filings with the General Commercial Registry (the "GEMI").

Certification of Initial capital contributions or capital increases

- Certification of Initial capital contributions or capital increases is carried out by a chartered auditor-accountant or by an auditing firm for medium-sized and large SAs, and by the Board of Directors for small and very small SAs. Upon formation of the company, said certification may be carried out by any one of the above.

- The valuation of the contributions in kind by means of a three-member experts committee of the Ministry of Economy and Development is abolished. From now on, said assessment shall be

carried out by means of a valuation report drawn-up by two (2) chartered auditors-accountants or by an auditing firm or by two independent certified valuators.

- The shareholder's contribution may be set-off against a company's debt to the shareholder, provided there is a relevant provision in the resolution approving the share capital increase. Any set-off requires a statement from a chartered auditor-accountant or an auditing firm verifying that the debt is due and payable and not subject to any conditions.

- The special bank account for the payment in cash of the initial share capital or any increases thereof may also be kept with a credit institution operating in the EEA.

- Decrease of the share capital in kind is expressly provided, whether for creating a special reserves account with the exclusive purpose of its recapitalisation, or for its set-off aiming to amortise losses of the Société Anonyme.

The law provides for an additional method of redemption, through the waiver of the obligation of the shareholders to pay the paid and non- paid up share capital, in accordance to the respective provisions regarding share capital decrease.

Shares - Bonds

General

In addition to the issue of shares and bonds, the new Law provides for the issue of:
(a) warrants;
(b) founders' certificates; and
(c) any other instruments provided for under special provisions.

Abolishment of bearer shares

With effect from the publication of the law (i.e. from 13.06.2018) the issuance of new bearer shares is abolished, and with effect from 01.01.2020, any bearer shares issued by Greek SAs shall be mandatorily converted into registered shares.

Nominal value of shares

The minimum nominal value of each share is set to Euro 0.04 (from Euro 0.03) while the maximum nominal value of each share remains at Euro 100. The law provides that same series or same class shares shall have the same nominal value.

Electronic register of shareholders

Under the new law, the articles of association may now provide for the keeping of an electronic register of shareholders with any central securities depositary, credit institution or investment firm that is entitled to hold financial securities. Book entry of the transfer of shares in the registry of shareholders no longer requires a signature, provided:

(a) share ownership titles are kept in an electronic register of shares;

(b) the company receives a copy of the share transfer agreement executed by the parties thereto or the company is notified of its execution as provided for by the articles of association.

Reform of the legal provisions on bonds

- The new law sets forth in detail the legal framework governing bonds and abolishes articles 1-9 (with the exclusion of par. 4, article 2) and article 12 of Law 3156/2003.
- The above amendments allow for the issuance of single-note bond loans, for the subscription of the bond loan by a single person, and for a single bondholder to hold the entirety of bonds. None of the above alter the nature of the loan as a bond loan.
- The competent body to resolve upon the issue of a bond loan is the Board of Directors, subject to any different provisions under the law or the articles of association. The specific terms of the bond loan, e.g. the possibility for it to set the time of repayment at its convenience, are set at the discretion of the issuer, given that the new framework does not expressly set the maturity date of the loan.
- The provision of Presidential Decree 30/1988 regarding the possibility to provide stock warrants to BoD members and staff of the company is incorporated in the law and the respective PD is abolished.

Board of Directors

- In addition to the requirement for a minimum number of three (3) directors that was already in force, the new law provides for a maximum number of fifteen (15) directors.
- From now on, small SAs shall have the right to appoint a single director-administrator instead of a board of directors is introduced, but shall only apply for small SAs, and not for medium, large or listed companies.
- The percentage of directors that may be appointed directly by the shareholder(s) is increased from 1/3 of the total directors number to 2/5.
- Substitute directors may be appointed even without a relevant provision in the articles of association.

- It is possible for a fraction of the members of the board to be elected in one time instead of collectively or for consecutive terms of office for each class of directors, (staggering board).

- The directors may no longer carry out internal audits of the SA.

- The articles of association may provide for the setting up of an executive committee to which the Board may sub-delegate certain powers or duties.

- It is expressly provided that the corporate seal is abolished.

- The chair, vice-chair and managing director or any other persons acting under any other capacity and duties may be appointed by means of the articles of association.

- The Board's minutes may be signed by the directors attending the meeting (and not by the Chair of the Board as was the case under the previous law).

- The new law extends the possibility of adopting written resolutions by rotation without previous meeting of the board, even to majority decisions, provided all the members of the Board or their proxies agree to the taking of the decision.

- The signatures of the Board members may be replaced by email or other electronic communication, provided there is a relevant provision in the articles of association.

- Non-listed companies may keep a single book of minutes for both the meetings of the Board of Directors and the GM.

- The Law enacts special provisions on defective Board decisions. Any decisions that:
  (a) are contrary to law and to the articles of association; or
  (b) are taken in a manner contrary to law and to the articles of association, are null and void. In the second case, the invalidity is remedied provided the decision is unanimous. Said invalidity may be invoked by the Directors and/or by third parties that may, but need not be, shareholders, with personal and special legal interests.

- The new provisions redefine the liability of the Directors and define the required level of diligence (to that of "a prudent entrepreneur carrying out business under similar conditions"). Moreover, it is now expressly provided that the relevant rules also apply to any persons with management and representation powers even when said persons are not Directors, including any persons that are appointed under a defective instrument of appointment.

- It is also provided that any claims of the company against Directors shall be subject to a three-year limitation period starting from the time of the faulty action or omission. Limitation periods do no run while the relevant person serves as a Director or as a representative. However, limitation periods can in no case be longer than ten years starting from the time of the act or omission.

- The law defines the process, conditions and terms of payment applying to the remuneration of Directors, and stipulates that non-listed companies may have a remuneration policy in place, while it sets the requirement of a remuneration report, in line with the requirements of Directive (EU) 2017/828.

Related-party transactions

- Article 23a is abolished and replaced by new provisions on the transactions between SA and related parties (related -party transactions), in line with Directive (EU) 2017/828, however who the related parties are remain more or less the same.

- The provisions apply to all SAs, with the exception of certain specific provisions applying exclusively to listed companies.

- As a general principle, contracts between the SA and related parties are prohibited as not valid, and no security or guarantee may be granted to any third parties for the benefit of said related parties without previous consent of the Board or the GM. The new law provides for exceptions from the foregoing prohibitions in certain cases, and lays down the procedure for the consent of the Board or the GM required for the taking place of the related-parties transaction.

- The consent for a related party transaction or for the provision of encumbrances and guarantees to third parties in favor of related parties can be granted also by the Board, and is valid for six (6) months. The consent is effective following the lapse of ten (10) days following the publication of said consent to the GEMI and provided that shareholders representing 1/20 of the paid up share capital of the SA have not convened the GM.

- The explanatory memorandum of the new law clarifies that in any transactions with foreign companies, the Greek company must comply with the provisions of the law, and stipulates that the validity of the transaction from the perspective of the foreign company shall depend on the applicable law which governs it.

General Meeting

Three General Meeting (GM) types are provided:
(a) Annual GM;
(b) Extraordinary GM;
(c) Statutory (which amends the AoA and can be either the Annual or an Extraordinary GM).

Meeting Attendance

- Any person that, on a specific date (which in no case can be earlier than 5 days prior to the initial GM), is a shareholder, is entitled to participate in the GM. This provision now applies to non-listed companies as well.

- GMs may take place:
  - (a) through long-distance communication means without physical presence of the shareholders; and
  - (b) by distance-voting ballot.

- The requirement which provided for a Notary Public to attend a GM in case only one shareholder was present has been abolished.

Decision-Making process

- Non-listed SAs' GMs may adopt resolutions without a meeting previously having taken place, provided there is a relevant provision in the articles of association which defines which types of resolutions may be taken in such a manner and which sets forth the exact decision-making process.

- It is possible to draw-up and sign a GM written resolution minutes without a meeting previously having taken place, not only for unanimous but also for majority decisions, provided the entirety of shareholders or their proxies consent to this decision-making process.

Minutes

- The signatures of the shareholders or their proxies may be replaced by email or other electronic communication, provided there is a relevant provision in the articles of association.

- Board Meetings and GM Minutes that are subject to publication requirements must be filed with the General Commercial Registry (the "GEMI") within twenty (20) days from the date of the meeting or the date of the resolution, as applicable.

Minority Rights

- It is expressly provided that any court ruling granting permission for the convocation of an extraordinary GM following a relevant application of shareholders representing 1/20 of the share capital may not be contested by any judicial remedies.

- It is provided that minority rights may be exercised by associations of shareholders, whether on their behalf or on the behalf of their members, provided their members meet at all times the amount required for the exercise of each minority right.

Appropriation of Profits

- Minimum dividend is still 35% of net profits after the applicable statutory reductions and in principle its distribution is made in cash. However, dividend may be decreased to a minimum of 10% by resolution of a qualified quorum and majority GM.

- It is now provided that distributable profits as a minimum dividend may be, by resolution of a qualified quorum and majority GM:
  (a) capitalised and distributed to all the shareholders in the form of shares at par value; or
  (b) distributed in the form of securities or other assets (i.e. distribution in kind).

- It is expressly provided that the competent body to decide upon distribution of interim dividends shall be the Board of Directors.

- It is provided that the distribution of profits and optional reserves is permitted within the current fiscal year following a relevant resolution of the GM or the Board, which shall be subject to publication requirements.

Dissolution – Liquidation

- The rejection of a bankruptcy application due to insufficiency of the debtor's assets to cover for the proceeding expenses is now included in the reasons for corporate dissolution of SAs.

- It is provided that, following application filed by either a shareholder representing 10% of the share capital or the liquidator, the court may order the omission or the termination of the liquidation stage and the immediate deregistration of the SA from the GEMI Registry, if it is estimated that the assets of the SA will not be sufficient to cover the liquidation expenses.

- The time limit after which the liquidator must convene a GM in order to submit a plan for the expeditiousness and completion of the liquidation, is reduced to three (3) from five (5) years.

- The liquidation is deemed completed on the fifth anniversary of its commencement date.

- It is allowed for the liquidation product to be distributed to the shareholders in kind (i.e. for the assets of the company to be directly distributed to the shareholders) provided all shareholders agree so.

Miscellaneous

- Any decision of the Board or the GM that is based on an amendment of the articles of association which has not yet been published is valid, but shall enter into force and effect starting from the amendment publication date.

- Any disputes that according to law are referred to litigation, shall be referred to the exclusive jurisdiction of the single-member court of first instance seated in the company's registered office, unless the law explicitly provides for a different competent court. Companies may also opt to insert a mediation or arbitration clause in their Articles of Association.

- It is provided that a dissolved SA may revive under a different company form, on certain conditions.

- The fines imposed as penalties for violations of the law by founders, members of the Board or managers and auditors of SAs amount from Euro 5,000 to Euro 100,000, depending on the type of the violation (currently the relevant fines amount to Euro 1,000 at a minimum).

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