

## Corporate Governance Reform: Law 4706/2020

Law 4706/2020 enacted on 17 July 2020 includes provisions<sup>1</sup> which aim to reform, strengthen and modernize the Greek Corporate Governance Framework (CGF) applicable to listed companies. The new CGF will become effective as of 18 July 2021.

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#### A. Scope

1. The new CGF applies to companies limited by shares (sociétés anonymes), the shares or other transferable securities (eg bonds/notes) of which are listed on a regulated market operating in Greece or a multilateral trading facility operating in Greece, provided, in the latter case, that their articles of association explicitly provide so (each a Company).
2. With respect to Companies which are subject to a regulatory framework with specific corporate governance rules (notably credit institutions, insurance companies and investment firms), the

application of the new CGF is subject to such specific rules.

#### B. Overview of Changes in the Composition and Operation of the Board of Directors (BoD)

1. The minimum number of independent directors should not be less than 1/3 of the total number of the BoD members and in any event at least two.
2. The majority of the members of the two new committees introduced pursuant to the new CGF (ie the Remuneration Committee and Nomination Committee) should be independent directors.
3. The Chairman of the BoD or, alternatively, the vice Chairman of the BoD should be non-executive.
4. At least 25% of the total number of the BoD members should come from the opposite gender (diversity rule).
5. In addition to the BoD duties laid down in corporate Law 4548/2018 (Law 4548), inter alia the BoD should:
  - a. define the Company's system of corporate governance, monitor its implementation and assess its effectiveness every three financial years; and
  - b. ensure that the Company's system of internal control is sufficient and effective, and its

<sup>1</sup> Law 4706 further includes provisions in connection with, among other matters, the implementation of the Prospectus Regulation and SRD II, the establishment and operation of Greek Alternative Investment Funds.

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functions are independent from the Company's business segments which are subject to internal audit.

## C. New Quorum Requirement of the BoD

1. Each time the BoD is convened to resolve on:
  - a. the Company's financial statements; or
  - b. any other matter requiring approval by the general meeting of the Company's shareholders by extraordinary quorum and majority in accordance with Law 4548;at least two independent directors should attend such meeting.

## D. Directors

### 1. Executive directors

Under the new CGF, executive directors:

- a. are responsible for the implementation of the Company's strategy, as defined by the BoD, and should frequently consult with non-executive directors on the suitability of the implemented strategy; and
- b. each time the Company is facing a crisis or risks, or where the circumstances so dictate, in particular if decisions should be made which are likely to affect the Company's business and the risks it undertakes, each of which is likely to impact the Company's financial condition, they should, acting alone or jointly, inform the BoD in writing and without delay by submitting a special report containing their estimations and recommendations.

### 2. Non-executive directors

Non-executive directors, including the independents, should monitor and consider the Company's strategy and its implementation, as well as the achievement of the Company's goals, ensure that the executive directors and their performance are effectively supervised and assessed and examine and express their views on

recommendations made by the executive directors.

### 3. Independent non-executive directors

- a. The new CGF introduces stricter independency criteria. More specifically, in order to be considered independent, directors should:
  - i. not hold, directly or indirectly, more than 0.5% of the Company's voting rights; and (cumulatively)
  - ii. not maintain, at the time of their appointment as well as during the term of their office, an economic, business, family or other kind of relationship with the Company which may affect their independency.
- b. The new CGF indicatively lists the following dependency indicators:
  - i. where the director receives significant remuneration<sup>2</sup> or allowance by the Company or a related company<sup>3</sup>; or
  - ii. participates in a share option or any other remuneration scheme related to the performance<sup>4</sup> of the Company or any of its related companies.
- c. In addition, the director and the persons closely associated to such director (each a PCA)<sup>5</sup> should:
  - i. not have, or have had within the last three financial years from the director's appointment, a significant business relationship with:
    - the Company or a related company;
    - a person related to the Company; and
    - a shareholder of the Company who holds, directly or indirectly, at least 10% of the share capital of the Company or a related company during the last three financial years prior to the director's appointment, provided such relationship affects or

<sup>2</sup> What constitutes significant remuneration must be defined the Company.

<sup>3</sup> Within the meaning of IFRS 24.

<sup>4</sup> Customary fees received for the director's participation in the BoD or other Committees and fixed payments, including deferred payments, received under pension schemes are excluded from this provision.

<sup>5</sup> Within the meaning given by Article 3 par. 1 (26) of the Market Abuse Regulation.

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- is likely to affect the business of either the Company, the director concerned or their PCA, in particular if the person concerned is a significant supplier or customer of the Company;
- ii. not have served as a member of the BoD of the Company or its related companies for more than 9 financial years cumulatively at the time of the director's election;
  - iii. not have been a manager or an employee of the Company or a related company for three financial years prior to the director's appointment;
  - iv. not be a close family member or husband/spouse (or equivalent) of a BoD member or a senior manager or shareholder holding at least 10% of the share capital of the Company or its related company;
  - v. not have been appointed directly by a shareholder;
  - vi. not represent on a discretionary basis shareholders holding, directly or indirectly, at least 5% of the Company's voting rights at the general meetings of the Company's shareholders during the director's term of office;
  - vii. not be, or have been within the last three financial years prior to the director's appointment, an auditor or a partner or employee of the present or former external auditor of the Company or a related company; this rule also applies to the director's close family members and husband/spouse; and
  - viii. not be an executive director in another company in which an executive director of the Company participates as a non-executive director.

### E. Suitability Policy

1. Based on the pre-existing model applicable to credit institutions and investment firms, Companies should adopt a policy for the assessment of the suitability of their directors, the minimum content of which is set out in Law 4706.
2. The suitability policy and any amendments thereto, should be approved by the BoD and the general meeting of the Company's shareholders.
3. The eligibility of directors is conditional on the absence of a final judicial decision declaring the person concerned liable for concluding unprofitable transactions between the Company or/and other non-listed companies and any related parties thereof.
4. The same restriction also applies to all third persons who are proposed to be given powers to manage and represent the Company (delegation of powers).

### F. Remuneration and Nomination Committees

1. In addition to the Audit Committee, Companies should also set up a:
  - a. Remuneration Committee; and
  - b. Nomination Committee.Each committee should adopt a charter (operating rules) which should remain available on the Company's website.
2. The Remuneration Committee should:
  - a. make recommendations to the BoD in relation to the remuneration policy to be submitted for approval by the general meeting of the Company's shareholders;
  - b. make recommendations to the BoD in relation to the directors' and managers' remuneration, including the remuneration granted to the head of the Internal Audit Division; and
  - c. examine the information included in the final draft of the annual remuneration report and provide an opinion to the BoD before such report is submitted to the general meeting of the Company's shareholders.

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3. The Nomination Committee should identify and recommend candidates for election or appointment as BoD members.
4. The aforementioned competencies may be granted to a single committee.
5. Each of the Committees shall be composed of at least three non-executive directors, of whom the independents should form a majority.
6. The chairman of each Committee should be an independent director.

## G. Internal Audit Division

1. The number of the internal auditors should be proportionate to the size of the Company and the total number of its employees and other divisions or entities subject to audit.
2. The head of the Internal Audit Division is appointed by the BoD following a proposal by the Audit Committee. BoD members, members with voting rights in other committees as well as persons closely associated with such members are not eligible for this position.
3. The head of the Internal Audit Division should be a full time employee of the Company and attend the general meetings of the Company's shareholders.
4. The Internal Audit Division should have and comply with a specific charter approved by the BoD.
5. The head of the Internal Audit Division should provide the Hellenic Capital Market Commission (HCMC) with any requested information without seeking the prior approval of the BoD.

## H. Operating Regulation

1. The Company is required to have a charter (operating regulation) which is drawn-up and approved by the BoD and a summary should be available on the Company's website. The Company should also ensure that its significant subsidiaries will also have their charter<sup>6</sup>.

2. The Company's charter should include a Training Policy<sup>7</sup> as well as policies and procedures for the periodic assessment of the operation of the Internal Audit Function and the compliance with the new CGF in accordance with recognized standards for evaluation. This assessment should be conducted by experienced professionals that fulfil the independency criteria discussed above.
3. The Company's statutory auditor should verify in terms of sufficiency the content of its charter in a respective audit report.

## I. Code of Corporate Governance

1. Companies should further adopt a Corporate Governance Code drafted by a recognized domestic or foreign organization and justify any deviations from such code, in accordance with the 'comply or explain' principle.
2. This new provision essentially deprives Companies from the freedom to draft and adopt their own Corporate Governance Code, as permitted by the previous regime of Law 3601/2002.

## J. Sanctions

1. Should a Company infringe the new CGF, the HCMC may:
  - a. hold the Company liable to reprimand; or
  - b. impose an administrative fine of up to €3 million on the Company which shall in no case exceed 5% of the Company's annual turnover as set out in its approved financial statements.
2. The same sanctions may also be imposed on the members of the BoD or any other natural persons or legal entities that may be held liable for the infringement.

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<sup>6</sup> Meaning those subsidiaries (either directly or indirectly controlled by the Company) which may materially affect the Company's financial position or business activity or economic interests in general.

<sup>7</sup> Such policy refers to the training of the members of the BoD, the Company's managers as well as other employees, notably persons exercising internal audits, risk management, IT systems and compliance.

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