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The long-awaited reform of the Greek Law on Sociétés Anonymes

This Newsletter aims to give the reader a small taste of the major revisions brought by the Law and does not include an exhaustive outline of all the changes. A detailed analysis on the relevant reform per sector may follow by separate special newsletters.

I. Introduction

It has been common ground that the legislative framework on sociétés anonymes (SAs) originally legislated back in 1920, has been, despite the various reforms since then, to some extent dysfunctional and "old-fashioned". The limited and fragmental reform to the C.L. 2190/1920 in 2007 through Law 3604/2007 as well as a number of other amendments effected mainly for the purposes of transposing into the Greek jurisdiction company law related EU Directives were not proven sufficient to redress the above.

Law 4548/2018 (the "***Law***"), which was passed by the Hellenic Parliament on June 13, 2018 and was published in the Government Gazette no. 104/13.06.2018, introduces an overall and significant reform to the respective legislative framework. The scope of such reform is two - fold:

(i) To ***systemize*** the rules regulating the SAs by (a) consolidating to the extent possible into one legal instrument all the various provisions dispersed in various laws; (b) abolishing rules, which were long outdated; and (c) enacting rules to adopt matters, which have been extensively applied in legal practice despite the lack of explicit regulation under the C.L. 2190/1920;

(ii) To introduce innovative rules and modernize the law on SAs aiming to render the legislative framework more flexible and business friendly, to moderate administrative burdens and to focus state supervision to those entities, which attract public interest. In this context, the Law in certain cases draws a distinction on the application of certain obligations depending on whether an SA is a large undertaking, a medium sized, a small or a micro-undertaking, or a public interest entity.

The Law repeals in its entirety the C.L. 2190/1920, with the exception of the law provisions on the companies' reorganization, which continue to remain in force until the enactment of a special respective legislation applying uniformly to all types of undertakings. The Law **comes into force on January 1, 2019** (subject to particular exceptions and grand fathering provisions). Therefore, stakeholders have almost six (6) months to be familiarized with the new legislative tool, while SAs are given the flexibility to amend their Statutes in order to align them with the new legislative framework. Such alignment can be passed through a general meeting of the shareholders by simple quorum and majority, provided this is effected until 31.12.2019.

II. SYSTEMISATION OF THE LEGISLATION ON SAs

The most material revisions introduced by the Law in the context of the systemization of the legislation on the SAs are:

Bond Loans

The Law abolishes articles 1-9 and 12 (with the exception of para 4 of article 2) of Law 3156/2003 regulating bond loans and incorporates the relevant provisions of the aforesaid law. In addition, the Law adopts a number of innovative rules, which have been applied extensively in the international practice, such as indicatively the perpetual bonds and the issuance of bonds carrying the right to participate in the company profits.

Stock Options

The Law abolishes in its entirety the Presidential Decree no 30/1988 and incorporates the rules on the issuance of stock options.

Debt-equity swap

The Law explicitly regulates the capitalization of debt and provides that this is possible (without the need of a valuation), if this is supported by a certificate of a chartered auditor confirming that debt is existing, unconditional, due and payable. If the capitalized debt is not due and payable, its value should be evaluated in accordance with the valuation process applied in the contribution in kind.

Board of Directors (BoD) & BoD Meetings

The Law adopts provisions which have been developed in practice in respect of the Chairman and Vice-Chairman of the Board of Directors. Although the C.L. 2190/19210 includes a number of provisions as to the powers of the Chairman, there were no specific rules in place as to its appointment. In addition, the Law clarifies that if no Chairman has been appointed, chairmanship duties may be exercised by the shareholder holding the highest voting rights.

With regard to BoD meetings, the Law clarifies that it is possible to hold the meeting by means of teleconference in respect of part of the Directors. Although this was applied in practice, it was not explicitly provided under the law. In this context, the Law further provides that a Director may request to personally participate in the meeting through teleconference, if he/she resides in a different place or for any other serious cause.

The Law further clarifies and enhances the process of adopting BoD circular resolutions signed by all Directors, without an actual meeting.The Law further clarifies that the above alternative is valid, even if the resolution is not reached by a unanimous consent, for as long as all Directors agree that the opinion of the majority of the Directors is reflected in the written resolution and such is signed by all Directors.

Capital Decrease through distribution in kind

The Law explicitly adopts the applied in practice method of distributing in kind capital decrease proceeds (e.g. shares in lieu of cash) in whole or in part, which had been already endorsed by the opinion of the State Council no 167/2012. The value of the assets distributed in kind should be evaluated according to the new evaluation process, unless the terms for the consummation of the capital decrease have been resolved by the shareholders by a unanimous resolution, in which case an evaluation shall not be required.

Rules on the transferability of shares

The Law explicitly provides that the Statutes of an SA may include standard restrictions on the transferability of the shares, which are extensively applied in practice, such as indicatively pre-emption rights, drag-along and tag-along rights. In addition, the Law provides that put and call option agreements can be registered with the shareholders ledger, thus enhancing the transaction security of such agreements.

Distribution of profits

The regime on the profits distribution has been slightly amended to clarify that earnings which do not correspond to actual earnings are not distributable. In addition, article 3 of the mandatory law 148/1967 is abolished and the relevant provisions on the mandatory dividend are incorporated in the Law. The amount of the mandatory dividend remains equal to an amount of 35% of the net profits (after statutory deductions). The above ratio may be decreased to a ratio not less

than 10% of the net profits by a General Assembly resolution reached by the increased quorum and majority thresholds. The General Assembly may decide not to distribute dividends through a resolution reached by increased quorum (of ½ of the paid in share capital for the initial General Assembly meeting and 1/3 in case of an adjourned meeting) and an increased majority of 80% of the shareholders present or represented in the General Assembly. The Law explicitly permits the distribution of dividends in kind (which was disputable under the previous regime), subject to fulfillment of particular conditions.

III. Innovative Rules

Form of Articles of Incorporation

The general requirement providing that the Articles of Incorporation of an SA should take the form of a notarial deed is abolished. It is possible to incorporate an SA by means of a private agreement, provided the Statutes of the newly incorporated SA include only the provisions of the model Statutes provided by Law 4441/2016. In all other cases, the Articles of incorporation of an SA should take the form of a notarial deed.

Trade Name

For the purposes of allowing the use of more market friendly terms, it is possible to include in the SA's trade name a fictional term, an e-mail account or other type of indication relevant to the company.

Term

The Law permits the option to incorporate an SA for an indefinite period of time. This option releases from the burden of extending the initial term of an SA, something, which in practice, has also caused confusion, in the event where the extension was resolved after the expiry of the term.

State Supervision

The state supervision exercised upon the SAs is amended with the aim to enhance state supervision on those undertakings, which attract public interest, and to reduce administrative involvement on all other SAs. The amount of the share capital, which is applied under the current legal regime as a criterion for the type of supervision, is replaced by the size and type of the supervised SA. More particularly, the incorporation, amendment to the Statutes and restructuring of the SAs which are either (i) large undertakings, (ii) state interest undertakings or (iii) undertakings licensed by the Capital Market Commission is approved by the Minister of Economy and Development (upon a legality review). The incorporation of all other type of SAs continues to fall under the supervision of the Commercial Registry, while the restructuring and amendments to the Statutes of such SAs are approved by the pertinent Regional Authority.

In addition, the general requirement to submit with the Commercial Registry copies of GA resolutions, which in practice has fallen into disuse, is abolished. The publication requirement is limited to those corporate resolutions, which are subject to the registration/publicity formalities.

Share Capital & Minimum par value of shares

The minimum share capital of an SA is set to €25.000 (instead of € 24.000). Existing SAs with a lower share capital should adjust it by means of a share capital increase in compliance with the above minimum requirement by 31.12.2019 at the latest or be converted into a company of another legal form. The minimum par value of a share is lowered to €0,04 (thus enabling enhanced liquidity of the shares).

Valuation of contributions in kind

With the aim of weakening state supervision, the valuation committee provided under art. 9 of C.L. 2190/1920 is abolished and, henceforth, contributions in kind are subject to valuation by two chartered auditors or an auditing firm or, as the case may be, by two independent certified appraisers.

Payment & Certification of payment of the share capital

The process for the certification of payment of the share capital is also reformed. In general, and subject to exceptions, the BoD forfeits its competence to certify the payment of the share capital. The payment of capital (initial and of its increases) is now certified by a chartered auditor or an auditing firm; the BoD continues to be competent to certify the payment of the share capital in non-listed, micro or small undertakings. Exceptionally, upon the incorporation of an SA, the payment of the initial share capital can optionally be certified either by a chartered auditor / an auditing firm or by the

BoD. For payments in cash credited to the bank account of the company, the certification should be supported by a relevant bank account statement, while the Law explicitly permits the wiring of the capital to a bank account kept within the European Economic Area.

Shares & Other instruments

Warrants, which are a flexible fund raising tool, are also introduced. More particularly, the SAs are explicitly permitted to issue warrants, and any other instruments specifically provided for in special legislation. The warrants grant to their holders the option to acquire shares in an SA against a special consideration payable at the time the relevant right is exercised. The company issuing these instruments can receive a consideration even at the time of issuance and distribution of the warrants. The Law includes, also, provisions regulating the exercise of the rights attached to the warrants as well the acquisition of owned warrants.

Bearer shares are abolished (for reasons mostly relating to the need for transparency of the beneficiaries of the shares) and SAs are henceforth only permitted to issue registered shares; as from 13.6.2018 (being the publication date of the new law) Greek SAs can no longer issue bearer shares, whereas any bearer shares existing already must be converted into registered shares until 1.1.2020.

The Statutes of an SA may provide that the shareholders ledger can be kept physically or in an electronic form, either by the SA itself or by a central securities depository, a financing institution or an investment firm, as long as these are entitled to keep financial instruments. Furthermore the shares may be held in book-entry form after dematerialisation or immobilization.

Redeemable shares can be either callable or/and puttable shares, pursuant to the relevant provisions of the Statutes.

Board of Directors

The three (3) major innovations introduced in the BoD are:

(i) the option to appoint a **single –member management body,** which is only available to non-listed small and micro-undertakings; the obvious purpose of this option is to permit such companies to reduce their operating costs;

(ii) the ability to form a **management committee** to which the BoD may assign part of its powers and duties; and

(iii) the possibility to set a partial renewal or successive expiry of the term of Directors (**staggered board**). This permits the SA for example to decide that the term of a portion or a specific number of the Directors shall be renewed at regular intervals.

In addition to the above, the Law increases the number of the percentage of Directors who can be directly appointed by a shareholder from 1/3 to 2/5, reinforcing thus the minority rights. In this context, the Law further provides that the above right may be exercised jointly by more than one shareholder.

In respect of the convocation of the BoD meetings, the Law allows the flexibility to non-listed SAs to either shorten the relevant time periods set by the Law or to provide other convocation formalities.

Moreover, the Law provides that the Book of Minutes of the BoD Meetings can be kept electronically, while it also allows the option in case of written resolutions adopted without a physical meeting to consider that these have been signed by the Directors through an exchange of e-mails or through other electronic means.

Although the new provisions on the Directors' liability do not materially deviate from the current regime, the Law details the obligations of the Directors in case of conflict of interests and further explicitly requires them to abstain from the voting process in case of a conflict of interest.

Related Party Transactions

The rules on the related party transactions currently regulated by article 23a of the C.L. 2190/1920 are significantly revisited. The Law transposes the provisions of article 9c of the Directive 2007/36/EU, as this has been amended by Directive 2017/828/EU.

The classification provided under the current legal regime to the related party transactions depending

on their type (i.e. loan, security, commercial or other agreement) is no longer adopted by the Law. All types of related party transactions are regulated in a uniform manner. Therefore, the current absolute restriction for the grant of upstream loans and credits to affiliated entities whose financial statements are not consolidated with those of the lending SA, is lifted. Transactions entered into in the ordinary course of business and concluded on normal market terms continue to fall outside the scope of the restrictions. The competence to approve the related party transactions is now shifted to the BoD, unless (i) the BoD cannot reach such resolution for conflict of interest reasons or (ii) if shareholders representing 1/20 of the paid in share capital request within a specific time period set by the Law that the matter is shifting to the GA, in which case the resolution on such matter is made by the GA. The other conditions for the grant of the approval differ depending on whether the concerned entity is a non-listed or a listed SA.

General Assembly (GA)

The Law enhances the conduct of GA meetings through modern technology and new communication tools for the purposes of facilitating the decision-making process. In the same context, the Law reinforces the concept of adopting GA circular resolutions signed by all shareholders or their representatives, without the need of an actual meeting. The Law regulates in detail the process for holding GA meetings through signed written resolutions, which is available only to non-listed SAs. The process is initiated by the BoD and can be blocked by shareholders representing 1/5 of the paid-in share capital.

The minimum quorum and majority requirements for the adoption of GA resolutions are amended with the aim of accelerating and allowing flexibility in the decision making process:

(i) Quorum

The minimum quorum (i.e. 1/5 of the paid in share capital for the initial GA meeting and any present or represented part of the paid in share capital for the adjourned meeting) deciding on matters, which fall under the simple quorum thresholds (Simple Matters) remain the same. The minimum quorum for the initial GA meeting deciding on matters falling under the increased quorum thresholds (Reserved Matters) is lowered to 1/2 of the paid in share capital (as opposed to 2/3 under the current regime) and for the adjourned meeting is lowered to 1/3 (as opposed to 1/2 under the current legal regime), while the second adjourned meeting is abolished. The Statutes may increase the above quorum thresholds for the Reserved Matters without limitation, while for the Simple Matters at a ratio, which in any event cannot be higher than 2/3 of the paid in share capital.

(ii) Majority

The majority thresholds on both Simple and Reserved Matters remain unchanged, i.e. absolute majority (50%+1) and 2/3 of the present or represented shareholders. However, the Law now permits the flexibility to set in the Statutes higher majority requirements on both the Simple and the Reserved Matters without limitations. Therefore, it is possible to agree majority thresholds for the adoption of resolutions on Simple Matters, which are equal or higher than the ones applying to the Reserved Matters and can even reach unanimity of the present or represented shareholders at the GA meeting.

Minority Rights & Exercise of Shareholders Rights

The Law introduces new minority rights of an informative nature as to total number of shares, their class and their rights attached thereto, allowing the minority shareholder to assess its shareholding status in the company (notably for the purposes of exercising its shareholders rights or in case of an intended transfer of shares).

In addition, the Law introduces the new concept of "shareholders' unions", which basically act as collective unions and are entitled to exercise the minority rights on behalf of their members. These unions may consist of shareholders of the same or different SAs.

Dissolution and liquidation:

A newly introduced by the Law reason for the dissolution of an SA is the rejection of the request

for bankruptcy due to insufficiency of funds of the insolvent entity to cover the expenses of the process.

In additional, various measures are adopted in order to accelerate the liquidation process, amongst which:

- upon the request of shareholders representing 10% of the paid-in share capital or of the liquidator, the court may order the discharge from or the cease of the liquidation process and the immediate de-registration from the Commercial Registry, if it is substantiated that the SA's assets are not sufficient to cover the expenses of the liquidation process;
- the acceleration and completion liquidation plan should be submitted within three (3) years (instead of 5) as of the start of the liquidation process;
- the liquidation procedure is deemed complete upon the lapse of five (5) years as of the start of the process; (this presumption however may be rebutted by the liquidator).

The Law goes a step forward allowing the option to distribute in kind in whole or in part the company's assets (in lieu of liquidating such and distributing the liquidation proceeds, which is the only option under the current regime), provided that all shareholders are in agreement.

Penalties/Sanctions

The amount of penalties for the Director's criminal offences provided under the current regime have been significantly increased. The penalties for the BoD members now range from €10.000 to € 100.000 or €5.000 to € 50.000, depending on the type of the offence, and from € 10.000 to € 50.000 for the auditors, while few other types of offences have been introduced.

Contact

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