18 June 2018

Law 4548/2018 (Official Government Gazette Bulletin A' 104/13.06.2018) "Reform of the Law on Sociétés Anonymes".

Company's Establishment and Supervising Authorities

- It is provided that the Company's Articles of Association may be amended not only by virtue of a decision of the General Meeting but also by virtue of a decision of the Board of Directors, in such cases as set out by law.
- The company's lifespan may be either fixed (determined in years) or indefinite.
- The corporate name may be formed not only by the name of one or more shareholders or by the company's object of activity, but also by other verbal indications. The company's corporate name may be imaginary or include an email address or other indication, which is directly and continuously related to the company.
- The amendment of the Articles of Association, the conversion to a company of another form and vice versa, the dissolution of the company by virtue of a decision of the General Meeting, the revival of the company and any other reform are approved following a limited review for the compliance with law and the Articles of Association by the supervising authority. Other changes (e.g. changes in the representation of the company) are registered following a typical review (review of completeness of the required documents and of their compliance with the requirements of the law, without review of their content). Certain companies specifically mentioned in the law (e.g. public interest companies etc.) are established following an extended review of legal compliance (the same applies to the amendment of their Articles of Association). The provision in question appears rather vague as to the content of the review.
- The founders are responsible for the company's restoration of damages or to bona fide third parties arising from their specific acts or omissions during the pre-establishment stage. This responsibility is subject to a 5-year limitation period from the company's establishment.

Provisions on the share capital

- The minimum share capital is set to EUR 25 000 (from EUR 24 000 under the previous law) and consists either of cash or of contributions in kind, but the contributions in kind must be assets which can be evaluated in cash.
- Going forward, the valuation of contributions in kind is carried out by two certified auditors or an audit firm or, occasionally, by two independent certified evaluators.
- Going forward, the share capital certification of payment is carried out by a certified auditor, except for a) the certifications of the payment in very small or small non listed in a regulated market companies b) the certification of payment of the initial share capital (upon the establishment of the company), which can also be effected by the Board of Directors.
- The deadline for the payment of the share capital increase cannot be less than fourteen (14) days (from fifteen (15) provided for under the previous law) and no more than four (4) months from the date of registration of the decision of the corporate body with the General Commercial Registry (GEMI) (under the previous law, the time period ran from the taking of the decision by the competent body). Under certain conditions, the payment of the contribution may be effected by offsetting a corporate debt against the contributor.
- For the first time share capital can also be paid by deposit in a special account of the company in a credit institution in the European Economic Area.

— The procedures and consequences for the non payment of the remaining value of the share in case of partial payment of capital are amended.

— Any General Meeting decision on the company's share capital decrease must now also be posted on the company's website.

— In case of share capital reduction, the deadline for any creditors' objections, whose claims arose prior to the publication of the decision on the share capital reduction and are overdue, is shortened to fourty (40) days from the publication of the decision (from sixty (60) days provided for under the previous law).

— Full or partial share capital decrease in kind is permitted after the valuation of the contributions in accordance with the procedure of the law (unless the shareholders decide unanimously on the method of implementation of the reduction). The reduction of the share capital to form a special reserve, which can be only used for the purpose of its recapitalization or its offsetting with the company's losses, is also permitted.

— The minimum amount of the share's nominal value is reduced to EUR 0.04 (from EUR 0.30 provided for under the previous law). The maximum nominal value remains the same. Different nominal value of shares of the same series or category is permitted only by exception.

— The issuance of bearer shares and temporary titles is abolished.

— Shareholders are registered in the Shareholders' Book, which going forward can now be maintained electronically or, if so provided in the company's Articles of Association, by a central securities depository, credit institution or investment firm that has the right to hold financial instruments.

— The restrictions that may be provided for by the Articles of Association regarding the issuance and transfer of blocked shares, including issues relating to options rights are redefined.

— The possibility of the companies to issue, inter alia, warrants is introduced. In practice, the issuance of warrants is an alternative method to raise capital which was introduced in the Greek market for the first time in 2010 in combination with subsequent Acts of the Ministerial Council within the context of the Greek banks' recapitalization.

  In this way the titles' holders acquire (presumably for a price) the right and not the obligation to buy a fixed number of shares at a preset price (exercise price), on fixed dates until their expiry. Consequently, the titles in question do not provide the beneficiary with any dividend or other income, whereas in case they are not exercised until their expiry date, they expire and lose any value.

  Furthermore, it is stated that these titles are issued as registered, within the context of the effort to avoid abusive practices connected to their anonymity.

— With respect to bonds, it is attempted to collect to the maximum degree possible, all provisions scattered across different legislative texts. As part of this effort, the law includes, inter alia, provisions on stock options as well as provisions regulating bond loans, abolishing the respective provisions of Law 3156/2003. The relevant regulations for the securitization of receivables and property claims of articles 10 and 11 of Law 3156/2003 remain in force, given their specific nature.

  In essence, the new law does not significantly deviate from the provisions of Law 3156/2003. The changes are summarized as follows:

a) It is explicitly stated that the bond loan does not lose its bond character due to its incorporation into one bond or due to the fact that the bondholder has been limited to one person.

b) The trading venues are adjusted in accordance with article 4 par. 23 of Law 4514/2018, introducing additional trading venues, the Organized Trading Mechanisms.

c) The Board of Directors, instead of the General Meeting that was previously set as competent under the previous law, is provided as the competent body for the issuance of a bond loan, unless the law or the Articles of Association provide otherwise, except for the cases of convertible and profitable bond loan, where special provisions apply.

d) It is provided that other bonds issued by the issuer for this purpose may be paid to the bondholders instead of interest payment.

e) The issuance of a bond loan without explicit expiry is permitted, and consequently the issuer repays the bond loan on a date of its choice.

f) It is explicitly stated that the transfer of bearer bonds is effected in accordance with the provisions governing the transfer of movable assets.

g) It is provided that the bondholders must obligatorily group into a team in case of issuance of a loan of any nature which is listed in a regulated market or Multilateral Trading Mechanism, unless its term, at the time of issuance is less than one (1) year, disconnecting this obligation from the dematerialization of bonds (as provided for under the previous provisions).

h) It is possible for bondholders, other than credit institutions, to be represented by other supervised persons providing similar services, i.e. central securities depositories, alternative investment fund managers (AIFMs), venture capital managers and multilateral development banks.

— Regarding the purchase by the company of founders' shares, the total price payable cannot exceed the average annual dividend during the last five years multiplied by ten, subject to the provisions on profits' distribution. The provisions regulating transfer of shares apply in the transfer of founders' shares as well.

— The decision of the General Meeting on the issuance of founders' shares in exchange of assets in kind requires increased quorum and majority and is taken on the basis of an assessment evaluation of certified auditors.

Corporate Bodies' Provisions

Board of Directors

— Additionally to the minimum number of Board members (three members), a maximum number of fifteen members is provided going forward.

— In very small and small non listed in a regulated market companies, the Articles of Association can provide for the appointment of one (1) individual as Director– Administrator, instead of the Board of Directors.

— The possibility of appointment of a legal entity as a Board member continues to apply, but for the first time it is provided that the individual to be appointed for the exercise of the duties of the legal entity in its capacity as Board member is jointly liable with the legal entity for the corporate administration. Failure to appoint an individual within fifteen (15) days from the appointment of the legal entity as Board member, qualifies as resignation of the legal entity from its position as Board member.

— The percentage of the total number of Board members to be directly appointed by certain shareholder(s) is increased to two fifths (2/5) (from one third (1/3) provided for under the previous law).

— Alternate Board members can be elected in certain cases irrespective of whether such possibility is provided in the company's Articles of Association (for instance, conflict of the Board member's interests with those of the company, if it is provided so in the act of election or appointment of the alternate Board member etc.). Alternate members can attend the Board of Directors' meeting without voting right and take the chair at the Chairman's discretion.

— The Board members' eligibility conditions are explicitly set out for the first time (legal capacity and conditions set out in the Articles of Association).

— The use of a corporate stamp is no longer required for the company to be bound on representation acts.

— It is provided that in case of non appointment of a Chairman or his deputy, the Chairman duties are temporarily exercised by the shareholder holding most shares with voting rights.

— The possibility to have the company's internal audit assigned to members of its Board of Directors is abolished.

— The possibility of constitution of an executive committee entrusted with powers or duties of the Board of Directors is provided.

— It is provided that the Book of Board of Directors' minutes can be maintained electronically and, as far as companies non listed in a regulated market are concerned, jointly with the Book of the minutes of the General Meetings. Further, it is also provided that the signatures of the Board members (or their representatives) can be replaced by exchange of messages by electronic mail or other electronic means, provided that the Articles of Association provide so.

— The duties, obligations and non competition obligation of the Board members and the persons entrusted with the administration and representation of the company are redefined.

— The provisions of Directives 2007/36/EC and 2017/828/EC on the transparency of intercompany transactions are incorporated in Greek law through the redefinition of the agreements requiring the approval of the General Meeting.

In this regard:

a) the persons with which the company is not permitted to contract without the special permission of the General Meeting or the Board of Directors are redefined.

b) the transactions not covered by the restriction are redefined (transactions not exceeding usual corporate transactions, agreements concerning the fees of the Board members, of the General Manager and his deputy (if any) as well as of the administrative executives in accordance with the International Accounting Standards, agreements with credit institutions on the basis of measures aiming to safeguard their stability, agreements of the company with its subsidiaries, types of transactions explicitly defined by the company's Articles of Association etc.). Finally, it is provided that any agreement of the company with the persons in question is not deemed to be usual as to its volume if its value amounts to ten per cent (10%) (or more than ten per cent (10%) in case companies with shares listed in a regulated market) of the assets of the company in accordance with the company's last published Balance Sheet or, in case no such Balance Sheet exists, in accordance with the Balance Sheet which is especially drafted for this purpose.

c) finally, the procedure for the provision of the permission of the Board of Directors for the conclusion of the transaction with the affiliated party and its publicity is explicitly regulated.

— The liability of the Board members is redefined to also cover the persons carrying out administration or representation actions or whose act of appointment as Board members is defective. Claims of the company against the members of the Board of Directors expire following three years from the act or omission (and in any case following the lapse of ten years).

— Within the context of the release of the Board of Directors from their liability for the actions carried out during the accounting year, the entire administration performance can be approved.

— The framework of payment of the Board of Directors' fees, the procedures and terms of payment are reformed. As far as companies with shares listed in a regulated market are concerned, the law provides for the obligation to have in place a Remuneration Policy, also setting out its minimum content, as well as a Remuneration Report in harmonization with European legislation.

General Meeting – Minutes - Revocability and Invalidity of the decisions

— The exclusive competence of the General Meeting is extended to also include the approval of the entire administration performance of the accounting year in question, the approval of the payment of fees or of the advance payment of fees to members of the Board of Directors and, as far as companies with shares listed in a regulated market are concerned, the approval of the Remuneration Policy and of the Remuneration Report.

— Shareholders (individuals) of companies listed in the Athens Stock Exchange Market participating in the company's Board of Directors are not entitled to vote during the General Meeting on the assignment of the audit of the Financial Statements to an auditor or an auditing firm.

— The rules on the invitation of the General Meeting and its publication, the shareholders' rights before the General Meeting, the conditions of the shareholders' participation in the General Meeting are explicitly set out. Special bodies, such as the receiver, the special liquidator etc. as well as the company's auditor (provision annulled by Law 4336/2015) are provided with the right to convene a General Meeting.

— Further, the General Meeting of Shareholders of companies non listed in a regulated market can be convened from a distance, by mail vote, by electronic means etc.

— In regards to the signing of the minutes by all shareholders or their representatives without a meeting, the signatures of the shareholders or their representatives can be replaced by exchange of messages by electronic mail or other electronic means if so provided in the company's Articles of Association.

— Each shareholder has the right to request from the company to be informed separately by electronic mail on imminent General Meeting at least ten days before the date of the meeting.

— Special regulations on all the above issues are provided for companies with shares listed in a regulated market.

— Members of the Board of Directors, the company's auditors and, under the responsibility of the Chairman of the General Meeting, other persons, to the extent their presence does not contradict corporate interest, can participate in the General Meeting.

— The appointment by the Shareholder of a representative for more than one General Meetings is introduced.

— The increased quorum percentages are increased to 1/2, 1/3 and 1/5 of the paid up share capital for the first, second and third repetitive meeting (from 2/3, 1/2 and 1/3 applying respectively under the previous law). The company's Articles of Association can provide for higher quorum requirements, which however cannot exceed 2/3 of the paid up share capital for issues requiring simple quorum. Finally, the time period for the convocation of a repetitive meeting without a new invitation is shortened to at least five days between the cancelled and the repetitive meeting (from 10 days provided under the previous framework).

— Shareholders now have the right to collect copies of the General Meetings' decisions filed with the Registry (GEMI), in case of the company's refusal to provide them.

— The provisions for the revocability of the decisions of the General Meeting are not significantly amended, but the deadline for the exercise of the related lawsuit is extended to four (4) months from the reaching of the related decision or its registration with GEMI in case the decision is subject to publication (from three (3) months from the filing of the related minutes with the competent authorities or its registration with the Registry as provided for under the previous law).

— The provisions for the invalidity of the decisions of the General Meetings are not significantly amended, but:

a) the method of raising the invalidity (before court or by means of a written explicit extrajudicial notice to the company) is specified,

b) the point of commencement of the deadline for raising the invalidity is amended (taking of the decision or its registration with GEMI in case the decision is subject to publication),

c) similarly to the provisions on revocability, the possibility of the court to order interim measures even before the filing of the lawsuit for the recognition of the invalidity is introduced.

Minority Rights

New minority rights are added to the ones provided for under the previous law. For instance:

a) the Board of Directors' obligation to inform any shareholder at their request of the capital, categories of shares issued etc. is provided.

b) the company's obigation, subject to the provisions of personal data protection and provided that the Articles of Association provide so, to provide to any shareholder that asks for with the Table of Shareholders, also indicating the name, address and number of shares of each shareholder (the company is released from the obligation to include in the table in question shareholders holding up to 1% of the share capital).

Furthermore, following a request of shareholders

representing 1/20 of the share capital for the postponement of reaching decisions by the Chairman of the General Meeting, the meeting must continue within up to twenty (20) days from the date of postponement (from thirty (30) days provided for under the previous law).

Extraordinary audit Petition

- The right of the Minister of Development or the competent authority to request before court for the company to be audited is abolished.
- Going forward, the extraordinary audit can now also be conducted by an auditing firm (and not only by a certified auditor/accountant as provided under the previous framework) or, upon assessment of the special circumstances of the company, also by other persons with special knowledge who are appointed as additional auditors in case of appointment of 1st class accountants/members of the Economic Chamber as auditors.

Shareholders' Unions

- Shareholders of one or more companies can establish unions (under the form of a union regulated by the provisions of the law and of the Civil Code which acquires legal personality as of its registration with the Registry of Consumers' Unions) to exercise the minority rights provided in the law in their names but on behalf of their members (with the exclusion of rights which can be exercised by each shareholder personally). In order for such rights to be exercised by the shareholders' union, the company whose shareholders participate in the union, must be notified of the valid establishment and of the articles of association of the union. The manner of operation of the shareholders' union will be specified by a Presidential Decree to be issued in future.

Annual Financial Statements and Reports

- It is explicitly provided that the preparation, audit and approval of the annual and consolidated financial statements are regulated by Law 4308/2014 and any other special provision regulating these issues.
- It is provided that corporate books must be maintained in Greek, unless use of a foreign language is permitted.
- In addition to the corporate representatives, the annual financial statements will be signed by the accountant responsible by law for the preparation of the financial statements who must be certified by the Chamber of Commerce and holder of a 1st class license (instead of the person entrusted with the administration of the accounts department as provided for under the previous law).

Profit Distribution

- The conditions and the limit on profit distribution to the shareholders are redefined. No distribution to the shareholders can take place if on the closing date of the last accounting year, the net equity is or following the distribution will become less than the entity's share capital increased with the addition of the reserves whose distribution is restricted by law or the provisions of the Articles of Association, by the remaining credit balances of the statement of income not representing earned profits.
- The distribution of the net profits to the company's shareholders, is redefined. For the distribution of the net profits, the deduction of the credit balance of the statement of income not constituting earned profits takes precedence. In addition, the minimum amount of dividend is redefined. Specifically:
  a) the minimum dividend is calculated on the basis of the net profits following the deduction of the amount required for the formation of the statutory reserve and of the remaining credit balances of the statement of income, not constituting earned profits.
  b) by virtue of a decision by the General Meeting, taken with increased quorum and majority, the minimum amount of dividend (which is equal to 35% of the net profits following the above deductions) can be further reduced, but not below ten percent (10%).
  c) by virtue of a decision by the General Meeting, taken with increased quorum and majority of eighty percent (80%) of the share capital represented at the meeting, the minimum dividend may not be distributed.
  d) by virtue of a decision by the General Meeting, taken with increased quorum and majority, profits that should be distributed as minimum dividend, can be capitalized and distributed to all shareholders in the form of shares calculated at their nominal value or, as far as companies subject to an obligatory or optional statutory audit by a certified auditor/accountant or an audit firm are concerned, in the form of titles of local or foreign companies, listed in a regulated market or in the form of own titles owned by the company, provided that they are listed as well.
- The distribution of interim dividends is redefined, and is conditional upon:
  a) a decision of the company's Board of Directors taken within the accounting year,
  b) the drafting of financial statements evidencing that the amounts to be distributed exist,
  c) the filing of the above financial statements to be published two (2) months before the distribution (instead of twenty (20) days provided for under the previous law).
- The amount of interim dividends cannot exceed the amount of profits which can be distributed to the shareholders based on the provisions of the law (and not half of the net profits per the statement of accounts provided for under the previous law).
- Optional reserves can be distributed during the current accounting year by virtue of a decision by the

Board of Directors or of the General Meeting, which is subject to publication.

Company Dissolution

- The possibility of a petition for the company's dissolution on grounds of reduction of the company's net equity below 1/10 of its share capital is abolished, whereas the dissolution by virtue of a court decision on grounds of failure to file with the General Commercial Registry financial statements is conditional upon the non filing of the statements of two (2) consecutive accounting years (instead of three (3) provided for under the previous law).
- The reasons for dissolution are expanded to also include the rejection of the bankruptcy application on grounds of insufficiency of the debtor's assets to cover the procedure's expenses.
- The time period which can be provided to the company by the court in case of petition for the company's dissolution (filed by shareholders or anybody with legal interest) for the rectification of the dissolution reasons is reduced to four (4) months at the maximum without any possibility for extension (from six (6) months with a possibility of three (3) month extension provided for under the previous law).

Liquidation

- A shareholder representing one tenth (10%) of the company's share capital or the liquidator can request before court that the liquidation stage be either omitted or interrupted and the company be immediately deregistered from GEMI if it is anticipated that the corporate property will not suffice for the payment of the liquidation expenses.
- Shorter deadlines are provided for the liquidation actions, for instance:
  a) It is explicitly stated that the inventory of the corporate property by the liquidators must be completed within three (3) months from the assumption of their duties,
  b) The liquidators can sell corporate real estate, corporate property either in its entirety or by sectors or fixed assets of the company following the lapse of three (3) months from the company's dissolution (from four (4) months provided for under the previous law).
- The liquidator is obliged to convene a General Meeting of Shareholders with which an Acceleration and Completion of Liquidation Plan will be filed for the latter's approval if the liquidation is not completed within three (3) years from its commencement (instead of five (5) years provided for under the previous law). In case of non approval of the plan in question by the shareholders, shareholders representing 1/20 of the company's paid up share capital or the liquidator can request before court, in addition to the approval of the plan, the determination of other appropriate measures for the acceleration of the liquidation procedure.
- The liquidation is presumed to have been completed in case of lapse of five (5) years from its commencement.
- Provisions on the deregistration (following the request not only of the liquidator but also of anybody with legal interest) of the company from GEMI upon the completion of liquidation are introduced. Furthermore, provisions on the revocation of the deregistration act following the request of anybody with legal interest under conditions, are introduced.
- Subject to special tax or accounting provisions, the Corporate books and documents must be maintained by the company's last liquidator or the person to be appointed by court for a period of ten (10) years. In addition, data of the company in paper form must be maintained by GEMI for a period of twenty (20) years following their filing with the latter and for a period of five (5) years from the company's deregistration, whichever comes first.
- Provisions on the revival of the company in case of dissolution because of lapse of its duration or by virtue of a decision of the General Meeting (provided that the net equity of the company is not less than the minimum required share capital) or because of declaration in bankruptcy and completion of the bankruptcy because of final ratification of the reorganization plan or payment of all creditors are introduced. Furthermore, the law provides that the procedures provided for by Law 2190/1920 on the merger or division also apply to companies dissolved because of lapse of their duration or by virtue of a decision of the General Meeting provided that the net equity of the absorbing or new company are not less than the minimum required share capital. In this case, the completion of the merger or division qualifies as revival of the absorbing or benefited company.

Penal Provisions

- Penal provisions are reformed, grouped and modernized in comparison with the previous legislative framework (for instance, infringements of the Board of Directors members, of the auditors, infringements concerning the smooth operation of the company etc.).
- The majority of breaches provided for by law entail imprisonment or monetary penalty up to EUR 100 000, whereas most of the breaches committed by Board members entail both the above sanctions.

Disputes Resolution

The Single Member First Instance Court of the area where the company is registered has exclusive competence for the resolution of judicial disputes; these disputes can also be subject to arbitration if so provided in the company's Articles of Association.

Final and Transitional Provisions

- The law comes into force on 1 January 2019, unless otherwise specifically provided.

- The Articles of Association of existing companies can be harmonized with the provisions of the law by virtue of a decision of the General Meeting taken by simple quorum and majority, on the condition that the decision in question is taken within one year from the entry of the law into force. Harmonization at a later stage can be effected only in accordance with the general provisions of the law.
- Companies with share capital less than EUR 25 000 must either increase their share capital to the minimum provided or be converted into another form by 31 December 2019.
- Bearer shares are obligatorily converted into registered on 1 January 2020.
- By virtue of a decision of the company's Board of Directors at the latest until 1 July 2019, the company must notify through GEMI and by other appropriate means, the method by which the shareholders or other beneficiaries will announce their shares' rights.

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This Newsletter aims to provide the reader with general information on the above-mentioned matters. No action should be taken without first obtaining professional advice specifically relating to the factual circumstances of each case.

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