

## **CORPORATE GOVERNANCE**

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The new legislation on Corporate Governance, Law N. 4706, which has passed from the Greek Parliament, without any doubt, is a positive step towards the improvement the management of the listed corporations in the Athens Stock Exchange and/or other regulated markets by the relevant Greek Authorities.

The new law consists of five chapters, namely: 1. the General provision, 2. the Board of Directors, 3. The Provisions for the Committees to the Board of Directors, 5. Organization Provisions for the Information of Investors.

In comparison to the previous relevant law N. 3016/2002 that consisted of 11 articles the New law is made up by 24 detailed articles.

There is an undisputed positive impact on competitiveness and growth, stemming from the effective applications by the Companies of the provisions law of Corporate Governance. Its best practices favor those companies that shall adopt such provisions of the law.

The provisions of the new law, in substance, concerns only those entities listed in its provisions. Highlights of the provisions of the law are set out below:

**1. Concerned Entities:** At a typical level, this law, deals with companies whose shares or other securities are listed in the Athens Stock Exchange or other regulated markets in Greece.

**2. The Fitness Policy:** Relates to the members of the Board of Directors. The relevant provisions aim to ensure the formation of a Board of Directors, by the most fit for the post persons. Corresponding requirement did not exist in the above stated previous legislations. The necessary eligibility criteria are both mandatory and interesting and are:

- The minimum quota per sex (namely: 25% of female members) and
- The non-involvement of a member (or candidate member) into loss-making transactions of a company to which the related parties are involved.

**3. Responsibilities (related to the corporate governance) of the Board of Directors:** The legislators have elected to provide detailed provision concerning the responsibilities of the Board of Directors. Amongst the specific responsibilities, of particular importance are:

- The monitoring and periodic evaluation of the institution as to its corporate governance.
- Ensuring the effectiveness of the internal control system that the company applies.

#### **4. The structure of the Board of Directors and the individual tasks of each category of its members:**

The new law maintains the pre-existing distinction of the board members. Namely:

- executive directors,
- non-executive directors and
- directors of independent status.

For each of the above categories, the law also defines their responsibilities. In summary:

- **Executive members:** Are appointed to be responsible for the implementation of the Strategy of the Board of Directors.
- **Non-executive members:** Are to be informed by the Executive members, immediately, and in writing, when major corporate events shall take or take place.
- **Independent non-executive members:** They have a supervisory role over the executive members.

**5. The Chairman of the Board of Directors.** is usually elected from the category of Independent non-executive members. The new law aims to strengthen their role and their true independence. In the later context, it establishes more dependency criteria

**6. Committees of the Board of Directors.** This is another innovation of the new law. It provides for the establishment of two supplementary Committees, apart to the Internal Control Unit, to assist the Board of Directors. These are:

- **Remuneration Committee** and the
- **Nominations Committee.**

The new law provides, for the first time, for an Internal Control Unit, termed otherwise internal audit committee, whose members, may not be members of the board of directors. The unit's chairman is appointed by the board. The Head of the Internal Control Unit is proposed by its members and based on such proposal the Board of Directors appropriately appoints him/her. Objectives of the new committees are:

- The **Remuneration Committee:** to deal with the treatment of remuneration issues such as: Remuneration Policy, which is introduced for approval in the General Assembly.
- **Nominations Committee:** to identify the most suitable persons (based on the criteria of The Suitability Policy) to fill the positions of the members of the Board of Directors

**7. Content of the Operating Regulations.** Is provided that it shall be are drawn up by the Board of Directors. This is not a new arrangement. It is shaped by more demanding content. The competent statutory auditor must confirm in his Audit Report its existence and its updated content. – Another burdensome task for the auditors.!

**8. Operation and staffing of the Internal Audit Unit:**

The new law provides, for the first time, the existence of an Internal Control (Audit) Unit. The members of the unit are not permitted to be members to the Board of Directors. The Chairman of the Internal Audit Unit shall be appointed by the Board of Directors.

**9. Corporate Governance Code.** The new law provides for the adoption and implementation of a Corporate Governance Code to be mandatory. However, the provisions of the law do not state that the Company must compulsory choose a specific Code. In the past we had CGC to which a company could adopt.

**10. Informing investors and shareholders:** The operation of a Shareholder Service Unit and a Corporate Announcements Unit shall be planned. Their announcements are set out on the Company's Web site. Loaded on such site, is the Data on the candidates, to be elected, members of the Board of Directors are posted (in time) on the Company's website. The data, in particular, shall be certifying their suitability of proposed members.

**11. Disposal of significant assets of the company:** The new law has specific provisions for the disposal, within two years, of assets exceeding 51% of the total value of its assets: It requires a decision of the General Assembly taken by an increased quorum and majority.

**12. Management of divergences in the use of raised funds:** The Governing Council «BoD» is obligated to submit to the General Assembly a report on the use of the funds raised (from a capital increase). In order to implement a deviation in their use (more than 20% of the total) a special resolution by the Board of Directors is required with an increased majority (3/4 of its members). Also required is the approval by the General Assembly with increased quorum and majority.

### **13. Penalties for non-compliance and violations.**

In case of violation of regulations of this law, the penalties threatened are heavy. Fines of up to €3,000,000 (compared to € 1,000,000 based on the provision of previous' law). The new Corporate Governance Act is moving in the right direction. The objections raised are, to some extent, understandable. But it is not enough for a negative assessment.

### **14. Conclusions**

The new Corporate Governance Act is moving in the right direction. The objections raised, especially on the subject of penalties are, to some extent, understandable. But are not enough for a negative assessment.

The central theme of Corporate Governance does not change: Best practices in Corporate Governance will have a positive, inevitable effect on competitiveness and growth of the concerned entities. Through them, the Greek stock market and the national economy shall also be benefited.

Sources: 1. Law N. 4706 Newspapers articles and Internet articles.