

# SOCIETE ANONYME COMPANY LIMITED BY SHARES GENERAL PROVISIONS ADMINISTRATION GOVERNMENT SUPERVISION

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## INTRODUCTORY NOTE

Law 4548/2018 (the “Law”) which has been recently passed by the Hellenic Parliament (Government Gazette Vol. A, No. 104/June 13, 2018) introduces an overall and significant reform to the legislative framework regulating the Sociétés Anonymes (SAs) in Greece. The Law, which repeals almost in its entirety the existing Law 2190/1920 on SAs, will come into effect on January 1st 2019.

## GENERAL PROVISIONS

### Which are the basic legal characteristics of an SA?

An SA is a capital company with legal personality. It is solely liable for its debts with its own property, while the liability of its shareholders is, in principle, limited to the amount of their shareholding (capital contributions).

### *Formation*

#### How many parties are needed to establish an SA?

No restrictions exist as to the number of parties (either natural persons or legal entities) who/which may establish an SA. It may also become a single member company by having all of its shares concentrated to one (1) person only.

What kind of document is required for establishing an SA?

An SA may be incorporated by way of execution of either a notarial deed (public document) including the Statutes or a corporate agreement (private document) provided, in the latter case, that the content of the model Statutes provided for by Law 4441/2016 is adopted without any deviation.

### *Share capital*

#### What is the minimum by law share capital of an SA?

The minimum amount of the share capital required by the Law for both the incorporation and the operation of as SA is set at € 25,000. Existing SAs with a lower share capital pursuant to the precedent legal regime will have to increase it in order to meet the above minimum

requirement or be converted into a company of another legal form by December 31st 2019, at the latest.

### **Which options are provided by law for the payment of the share capital?**

The share capital, whether at incorporation or following a share capital increase, is payable either in full or in part, subject to the special conditions provided by the Law. However, partial payment of the share capital is neither allowed in case of contributions in kind nor is applicable to listed SAs.

### **How can the share capital be formed?**

The share capital may be formed either in cash or by contributions in kind. Any contributions in kind shall consist only of assets which can be valued in money.

Contributions in kind are subject to valuation by two (2) chartered auditors or an audit firm or, as the case may be, two (2) independent certified appraisers. Any contributions in kind cannot be made later than six (6) months from the signing date of the respective valuation report; otherwise, a new valuation should be conducted.

### **Does the payment of the share capital need to be certified and by whom?**

The actual payment or a non-payment of the share capital is subject to certification. The Law specifies cases whereby the certification of payment of the share capital can be made either by a chartered auditor/audit firm or by the BoD as the case may be.

## **Shares**

### **What is the type and nominal value of the shares issued by an SA?**

Bearer shares are no longer applicable as from the publication date of the Law (i.e. June 13th 2018) and only registered shares can henceforth be issued.

The nominal value of each share can be set at an amount between € 0.04 and € 100.00. The issue of shares below the par value is prohibited.

## **GOVERNMENT SUPERVISION**

### **Which are the basic characteristics of the state authorities' supervision on the SAs?**

The incorporation, the amendment(s) to the Statutes and the restructuring/transformation of the SAs which are either (i) large undertakings, (ii) state interest undertakings or (iii) undertakings licensed by the Capital Market Commission are subject to the approval of the Minister of Economy and Development following a legality examination. On the other hand, the incorporation of all other types/sizes of SAs continues to fall under the supervision of the General Business Registry (GBR) following a legality examination, while the amendment(s) to the Statutes, the dissolution, the revival and the restructuring/transformation of such SAs are subject to the approval of the pertinent per case Regional Authority (upon a legality examination, too). Other corporate changes of a minor importance, such as

changes to the representation of the SAs and adjustments in the text of their Statutes, are only subject to formality examination conducted by the GBR.

## **Publicity requirements**

### **Where are the corporate acts and data of an SA published?**

The corporate acts and data which are by law subject to publicity are filed with the GBR kept by the competent per case Chamber following registration of the SA therewith.

## **ADMINISTRATION**

### **Board of Directors (BoD)**

#### **How many members may the BoD consist of?**

The BoD may consist of at least three (3) but not more than fifteen (15) members. The exact number of the BoD members is determined either by the Statutes or by the General Assembly of the shareholder(s) when the Statutes provide for a minimum and a maximum number of such members.

The Statutes may also allow the General Assembly to elect a single member management body (being a natural person only) in non-listed small and/or micro-sized SAs instead of a minimum 3-member BoD.

#### **Who can be elected/appointed as a BoD member?**

Any shareholder(s) or third parties, whether individuals (with full legal capacity) or legal entities, can be elected or appointed (as the case may be) as BoD members, who/which may always be reelected and are freely recalled. A legal entity elected/appointed as BoD member should appoint an individual (with full legal capacity) to exercise the duties of a BoD member. If the legal entity does not appoint its representative in the BoD within fifteen (15) days from its election/appointment, it is considered as resigning from its office.

#### **Who is entitled to elect/appoint the BoD members?**

In general, the BoD is elected by the General Assembly of the shareholder(s). At the incorporation of the SA, the first BoD may be determined by the Statutes.

The Statutes may provide that candidate BoD members are proposed on the basis of lists. Another option provided in the Statutes is for specific shareholder(s) to directly appoint BoD members not exceeding two fifth (2/5) of their total number.

If so permitted by the Statutes, the BoD itself may also decide to form a management committee to which it will assign part of its powers and duties.

#### **What is the BoD members' term of office?**

The BoD members may be elected and/or appointed for a maximum six (6) year term; the maximum duration of their term is determined by the Statutes within the above time limit provided by the Law. It is further provided that their term may be prolonged until the expi-

ration of the deadline provided by law for the convocation of the immediately next annual General Meeting of the shareholder(s) but in no case later than the date that the relevant GA resolution is adopted.

The General Assembly may also decide on a partial renewal or a successive expiry of the term of the Directors (staggered Board).

### **Where can the BoD meetings be held?**

The BoD can meet at any place the Statutes provide for and at any such other place where all its members are present and/or represented and none of them objects to have that meeting held and decide on the items of its agenda.

Subject to the provisions of the Statutes or the consensus of the BoD members, it is also possible to hold a BoD meeting by teleconference.

Further, the Law explicitly provides for the BoD written resolutions (minutes) in lieu of a meeting; these minutes must be signed by all BoD members (or their representatives) even if such resolutions are not unanimously adopted. The Statutes may also provide that such above written resolutions will be adopted through an exchange of emails or other electronic means.

### **What is the process for convoking a BoD meeting?**

A BoD meeting is convoked by its Chairman (or his deputy) by invitation notified to the Directors at least two (2) business days prior to the meeting day or at least five (5) business days if the meeting will not be held at the registered offices of the SA.

A BoD meeting may be also convoked upon request of at least two (2) BoD members addressed to the Chairman (or his deputy); in such case the BoD meeting should be convoked within seven (7) calendar days from submission of the request, otherwise the requesting BoD members are entitled themselves to convoke it within five (5) calendar days from expiration of the above 7-day deadline by notifying the other BoD members accordingly.

The Law further allows the non-listed SAs to either shorten the invitation deadlines or introduce other convocation formalities in their Statutes.

### **What quorum and majority is required for the BoD decision-taking?**

The BoD is in quorum and validly meets when half of its members plus one (1) are present or represented at the meeting; yet, the number of the present or represented Directors cannot be less than three (3). The decisions are validly taken by an absolute majority of the present and represented Directors. In the event of a tie, the Statutes may provide for the Chairman's casting vote.

### **Do the BoD resolutions need to be recorded?**

The BoD resolutions must be recorded in summary form in a special minutes book, which may be also kept electronically. Non-listed SAs are allowed to record both the BoD and the GA minutes in a single book. The BoD minutes are signed by the Directors being present at the meeting, while copies of such minutes are issued by the Chairman or other person

either determined by the Statutes or specifically authorized by the BoD. Any registrable per law BoD minutes should be filed with the GBR within twenty (20) days from the meeting day.

## **Directors' liability**

### **What kinds of liabilities do the BoD members bear?**

In general, each person having the capacity of a BoD member bears corporate, civil and/or criminal liabilities.

**Corporate liability:** Each BoD member is liable towards the SA for any damage the latter may suffer due to his/her acts or omissions being in breach of his/her management duties. Such liability shall not exist if the BoD member proves that he/she has managed the company's affairs with the diligence of a prudent businessman. In addition, said liability does not exist in respect of acts or omissions that have been based on a lawful GA resolution or constitute a reasonable business decision taken (i) in good faith, (ii) on the basis of sufficient per case information and (iii) exclusively in favour of the company's interests.

Any claims of the SA against the BoD members are subject to a 3-year statute of limitations from the date the act was committed or the omission occurred or to a maximum 10-year statute of limitations from such above date in case of suspension of the statute of limitations for as long as the liable person has the capacity of a BoD member.

**Civil liability:** The Directors are also liable towards any shareholder or third party for any damage the latter may directly suffer as a result of their acts or omissions (especially in cases of tort).

**Criminal liability:** Subject to the provisions of the Penal Code and other related criminal laws, the Law explicitly provides for a number of acts or omissions of the BoD members occurred in the course of their duties which are subject to criminal sanctions, i.e. to a maximum 5-year imprisonment and/or a fine ranging from € 5,000.00 to 100,000.00 depending on the per case breach of law (e.g. false statements in relation to the amount of the share capital, inaccurate financial statements, false or incomplete management reports, distribution of profits not reflected in the financial statements etc.).

## **General Assembly (GA)**

### **Which issues fall within the exclusive competence of the GA?**

The General Assembly has exclusive competence to decide on any amendments to the Statutes; the election of the BoD members and the auditors of the company; the approval of the overall management of the corporate affairs by the BoD (per fiscal year) and the discharge of the auditors; the approval of the annual (and any consolidated) financial statements; the annual profit distribution; the approval of the BoD members' remuneration; for listed SAs, the approval of the remuneration policy and the remuneration report; the merger, demerger, conversion, revival, extension of duration and/or dissolution of the company; and the appointment of auditors.

## How are the GA resolutions adopted?

In principle, the GA resolutions are adopted following a General Meeting of the shareholder(s). Additionally, for non-listed SAs the Law provides for the options of written resolutions or circular resolutions in lieu of an actual meeting.

## Where can the GA meetings be held?

The GA can meet at any place the Statutes provide for and at any such other place where all shareholders with voting rights are present and/or represented and none of them objects to have that meeting held and decide on the items of its agenda.

In addition, the Statutes may provide for a GA meeting where the shareholder(s) can vote by mail or other electronic means prior to such meeting, while specifically for non-listed SAs the Statutes may provide for a virtual GA meeting, i.e. a meeting by teleconference or videoconference, if so decided by the BoD.

## What process and/or formalities are required for convoking a GA meeting?

A GA meeting is in principle convoked following invitation of the BoD to the shareholder(s). A General Meeting may be also held following request addressed to the BoD Chairman by (i) shareholders representing one twentieth (1/20) of the paid-in share capital and/or (ii) the auditor(s) of the SA. However, no invitation is required in the event that shareholders representing the total share capital are present or represented in the meeting and none of them objects to have that meeting held and decide on the items of its agenda.

The BoD invitation must be registered with the GBR at least twenty (20) calendar days prior to the meeting day. Especially for listed SAs, the BoD invitation must be further uploaded in the company's website.

## What are the quorum and majority thresholds for adopting GA resolutions?

A GA is in quorum and validly meets to decide on simple matters when shareholders representing at least one fifth (1/5) of the paid-in share capital are present or represented in the meeting. If such quorum is not achieved, the repetitive GA meeting is in quorum irrespective of the portion of the paid-in share capital being represented therein.

With regard to the reserved matters [i.e. changes in nationality or the company's scope of business, increase of shareholders' obligations, increase/decrease of the share capital, change in the appropriation of profits, merger, demerger, conversion, revival, extension of the duration or dissolution of the SA, granting or renewal of the BoD powers to decide on the increase of the share capital] the GA is in quorum and validly meets when shareholders representing half (1/2) of the paid-in share capital are present or represented in the meeting. If such quorum is not achieved, the repetitive GA meeting is in quorum when at least one third (1/3) of the paid-in share capital is present or represented therein.

The Statutes may increase the above quorum thresholds for the reserved matters without limitations, while for the simple matters at a ratio which in no event can be higher than two third (2/3) of the paid-in share capital.

The majority thresholds applying to both simple and reserved matters are respectively (i) absolute majority (50%+1) and (ii) two third (2/3) of the present or represented shareholders. The Statutes may also provide for higher majority thresholds.

## Do the GA resolutions need to be recorded?

The GA resolutions must be recorded in summary form in a special minutes book. Non-listed SAs are allowed to record both the BoD and the GA minutes in a single book. Any registrable per law GA minutes should be filed with the GBR within twenty (20) days from the meeting day.

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