

# WATSON FARLEY & WILLIAMS

## BRIEFING

### NEW LEGISLATION ON GREEK SOCIÉTÉS ANONYMES & BOND LOANS

MARCH 2019

- BEARER SHARES NO LONGER PERMITTED
- €25,000 MINIMUM SHARE CAPITAL
- SINGLE-MEMBER BOARD FOR MICRO AND SMALL SAS
- IN-KIND DISTRIBUTION OF LIQUIDATION PROCEEDS
- SHAREHOLDERS' UNIONS
- ELECTRONIC BOOK OF SHAREHOLDERS
- NO MAXIMUM INTEREST RATE FOR BOND LOANS



After almost 100 years since the introduction of Law 2190/1920 on Greek companies limited by shares (usually referred to by the French term *Sociétés Anonymes*, or "SAs"), and a considerable number of amendments thereto ("CL 2190"), Law 4548/2018 on the "Reformation of the law on SAs" (as amended by Law 4587/2018, "Law 4548") came into force on 1 January 2019. According to its introductory notes, the purpose of Law 4548 includes the introduction of modernised provisions for the operation of SAs, clarification of any previously ambiguous provisions, improvement of the quality of the company law, incorporation of provisions applicable to SAs which were previously included in legislative acts other than CL 2190 (such as the provisions on bond loans which are only issued by SAs and provisions on stock options) into a single legislative act and a partial adoption of Directive (EU) 2017/828<sup>1</sup>. Law 4548 adopts also certain provisions of Directive (EU) 2017/1132<sup>2</sup>. The most notable provisions introduced by Law 4548 in relation to the law on SAs are summarised as follows:

#### Term & corporate name

- It is now permitted for an SA to have an indefinite term. The SA of indefinite term is dissolved on the same grounds applicable to fixed-term SAs (other than the lapse of the fixed term).

<sup>1</sup> Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement.

<sup>2</sup> Directive (EU) 2017/1132 of 14 June 2017 relating to certain aspects of company law (codification).

- The corporate name of a SA no longer has to be formed by either the name of one or more founders or the purpose of the company, but can also be imaginative or include an electronic address or any other indication that is directly and continuously related to the SA.

### Capital

- The minimum capital requirement is now set at €25,000. The capital (in cash) must be paid into a special bank account of the SA held with a credit institution operating in Greece or any other country of the European Economic Area.
- Any SAs existing on 1 January 2019 with capital less than €25,000 must either increase their capital to cover at least said minimum amount or be converted into a different corporate form no later than 31 December 2019.
- Valuation of capital contributions in kind is to be performed by two chartered auditors/ accountants or an audit firm or (as the case may be) two independent certified valuers<sup>3</sup>.
- The payment of the capital is to be certified by means of a report by a chartered auditor accountant or an audit firm. For non-listed micro- and small undertakings, certification of capital payment may be made by the board. The payment of the capital on incorporation may be certified either by a chartered auditor accountant, an audit firm or by the Board.
- The capital reduction by distribution in kind is permitted subject to valuation of the relevant assets. No valuation is required if the shareholders unanimously resolve on the implementation of such capital reduction.

### Shares and other securities

- SAs may issue shares, bonds, warrants, founders' titles and any other securities provided in special provisions.
- SA shares must now be registered. Any existing bearer shares must be converted to registered shares by 1 January 2020. If the Articles do not provide the process for converting bearer shares into registered shares, the process set out in the relevant transitional provisions of Law 4548 (Article 184) should be followed.
- The minimum face value of each share is reduced to €0.04 while the maximum nominal value of each share remains the same (€100).
- The shareholders' register may also be kept in electronic form or by a central securities depository, credit institution or investment firm authorised to hold financial instruments.
- SA shares may be dematerialized or immobilized and be held as book entry records pursuant to the provisions of Regulation (EU) 909/2014.
- Share transfer restrictions provided in the Articles do not apply in case of a shareholders' death, seizure, bankruptcy or if the shareholder is subject to any other collective asset liquidation process. The Articles may, however, provide that

<sup>3</sup> Certified valuers provided in Law 4152/2013 (article first, paragraph Γ').

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in such cases the shares may be purchased by a person indicated by the company at a price determined by the court; it can also be provided that the remaining shareholders have a pre-emption right in relation to the sale of such shares pro rata to their shareholding.

- Provisions on call and put options in relation to shares of non-listed companies have been introduced.
- The SA may issue warrants, namely securities entitling their holders to acquire shares in the company against a certain price payable at the exercise of such right.

### Bond loans

- It is explicitly provided that a bond loan qualifies as such even if only a single bondholder subscribes for bonds or all the bonds are later acquired by a single one bondholder, or if the loan obligations are incorporated in a single bond.
- Unless the law or the Articles provide otherwise, the Board (rather than the General Meeting of Shareholders) is competent to resolve on the issuance of a bond loan.
- It is clarified that the bonds can also be traded in regulated markets, Multilateral Trading Facilities or Organised Trading Facilities of other EU Member States.
- The bonds may be printed or electronic, registered or in bearer form. The bonds may be issued and kept as book entry records following their immobilization or dematerialization pursuant to the provisions of Regulation (EU) 909/2014.
- New bond forms are introduced: (i) payment in kind (PIK) bonds; (ii) perpetual bonds; and (iii) catastrophe bonds.
- The provisions limiting non-bank and other specific lenders to a maximum contractual interest rate are no longer applicable to any bond loans<sup>4</sup>.
- Interest on common bond loans may be payable either throughout the term of the loan or at its expiry.
- It is explicitly provided that it is possible to issue bonds which are mandatorily convertible into issuer's shares on the terms and conditions of the bond loan.
- It is clarified that the security interests which secure the claims under the bond loans may be created even before the issuance of the bond loan.
- The list of regulated entities which may be appointed as bondholders' representative has been expanded. If there is only one bondholder, it may be appointed as bondholders' representative even if it does not meet the relevant qualification requirements provided by law.

<sup>4</sup> Before Law 4548 such restriction for maximum interest rate did not apply to bond loans subscribed by banks and (pursuant to Law 4416/2016) to bond loans exclusively subscribed by qualified investors or listed in regulated markets or multilateral trading facilities of Law 3606/2007.

- The bondholders' representative may hold security interests on behalf of the bondholders but also on behalf of other persons with claims against the issuer connected with the bond loan (such as hedging counterparties).

### Board of Directors

- A maximum number of Directors is introduced. The Board must have at least 3 and no more than 15 Directors.
- The Articles of non-listed micro- and small undertakings<sup>5</sup> may provide for the appointment of a single-member administrative body (instead of a Board) consisting of an individual elected by the General Meeting of Shareholders.
- The right of a shareholder to directly appoint Directors is maintained, but the maximum number it can appoint is increased to 2/5 of the total number of Directors instead of 1/3 previously applicable. Such right may be granted to one or more shareholders separately or to one or more shareholders jointly.
- Staggered Board. The General Meeting of Shareholders may resolve on the partial renewal of the Board or different expiry of Directors' terms, provided that this is permitted by the Articles.
- The internal audit of the company may be assigned only to persons who are not Directors.
- If permitted by the Articles, the Board can assign certain powers or duties of the Board to an executive committee comprising of Directors and non-directors.
- The provisions on Board meetings via teleconference are maintained but even if such possibility is not stipulated in the Articles or the entire Board does not consent thereto, a Director may now demand to participate in a Board meeting via teleconference if he/she is not residing in the country where the meeting takes place or if there are other important grounds.
- Passing Board resolutions by signature of minutes by all Directors (or their proxies) without a meeting applies now also to majority and not just unanimous resolutions of the Board provided that all Directors agree to such process. The Articles may provide that the signatures of the Directors are replaced by email exchange or other electronic means.
- Each Director is obliged to disclose any conflict of interest relating to it or any party related to him/her<sup>6</sup> promptly and in sufficient detail.
- The Board minute book may be kept in electronic form.
- Provisions on the transparency and approval of related party transactions<sup>7</sup> have been incorporated in Law 4548 in harmonisation with Directive (EU) 2017/828.

<sup>5</sup> As micro- and small undertakings are defined in Law 4308/2014.

<sup>6</sup> The related parties set out in Article 99 of Law 4548 which adopts Article 9c of Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement, as amended by Directive (EU) 2017/828 of the European Parliament and of the Council.

<sup>7</sup> In particular, Law 4548 transposed into Greek law Article 9c of Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement, as amended by Directive (EU) 2017/828 of the European Parliament and of the Council. Law 4548 expands the application of such provisions also to non-listed SAs.

- Law 4548 has incorporated provisions in relation to the remuneration policy for directors (and, if applicable, the general manager and its deputy) of companies with shares admitted to trading on a regulated market<sup>8</sup>, in harmonisation with Directive (EU) 2017/828.

### General Meeting of Shareholders

- If the Articles so provide, a majority resolution of the General Meeting of Shareholders may also be passed by written resolution, provided that all shareholders have notified their electronic communication details and that no objection to this procedure is raised by shareholders representing 20% or more of the company's capital (Article 135 of Law 4548). The right of the General Meeting to take decisions by written resolution does not apply to companies whose shares are admitted to trading in a regulated market.
- Any shareholder evidencing its capacity on the day of the General Meeting may participate. The formalities in respect of the shareholders' participation in the General Meeting which applied under CL 2190 (such as prior deposit of the shares to the company's treasury or any bank in Greece, the drafting of a table with information about the shareholders entitled to participate in the General Meeting) no longer apply, unless provided expressly in the Articles.
- As regards resolutions of the General Meeting which require increased quorum, only one repeat meeting will take place if the first meeting is not quorate in order to expedite decision making: the increased quorum for the first meeting is now 1/2 and, if such quorum is not achieved, the quorum for the second meeting is 1/3 (or 1/5 in relation to capital increase).
- The Articles may provide for all or some matters higher quora than those provided by law. However, the quorum for resolutions which require the usual quorum shall not exceed 2/3 of the company's paid-up capital.
- The Articles may provide for all or some matters higher majority percentages than those provided by law.
- The attendance of a notary public at General Meetings of a single-shareholder SA is no longer required.

### Minority shareholders' rights

- A new individual shareholders' right is introduced for non-listed SAs: any shareholder may ask the Board at any time for information in relation to the capital of the company, the classes of shares issued, the numbers of shares of, and the rights conferred on, each class, the number of any blocked shares and the restrictions applicable thereto, as well as the number and class of its shares pursuant to the shareholders' book.
- The institution of shareholders' unions is introduced into Greek law by Article 144: a shareholders' union may exercise minority rights on behalf of its members,

<sup>8</sup> In particular, Law 4548 transposed into Greek law Articles 9a and 9b of Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement, as amended by Directive (EU) 2017/828 of the European Parliament and of the Council. The Articles may provide that the provisions of Law 4548 on remuneration policy apply also to the key management personnel, as defined in International Accounting Standard (IAS) 24, paragraph 9. A non-listed company may also be subject to the provisions of Law 4548 on remuneration policy if this is provided in its Articles.

provided that the total shares held by its members is at least the number of shares required for the exercise of the relevant minority right.

#### Dispute resolution

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- The Articles may provide that the resolution of any disputes may take place through recourse to arbitration or mediation.

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## FOR MORE INFORMATION

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Should you like to discuss any of the matters raised in this briefing, please speak with a member of our team below or your regular contact at Watson Farley & Williams.



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Publication code number: 63971576© Watson Farley & Williams 2019

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