

The International Comparative Legal Guide to:

# Corporate Governance 2008

A practical insight to cross-border corporate governance



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## 1 Setting the Scene - Sources and Overview

### 1.1 What are the main corporate entities to be discussed?

The companies covered in the below answers are companies incorporated as Sociétés Anonymes Companies whose securities are listed for trading on the Athens Stock Exchange (“**Listed Companies**”).

The Athens Stock Exchange (“**ATHEX**”) was initially established as a self regulated public institution. In 1995, ATHEX was converted into a Société Anonyme and in March 2000 Hellenic Exchanges S.A. (HELEX) was established as the holding company of ATHEX. The main purpose of ATHEX is the operation of the single institutional stock market in Greece.

### 1.2 What are the main legislative, regulatory and other corporate governance sources?

The main corporate legislation is contained within the codified Law 2190/1920 on “Sociétés Anonymes” (“**Company Law**”), which was currently amended by Law 3604/2007 (published in Official Gazette A’ 189/8.8.2007), and is already in force. The recent amendments to the Company Law seek to minimise the bureaucracy, strengthen competition and attract foreign investors to establish an operation in Greece. Company Law applies to both Listed Companies and companies incorporated as Sociétés Anonymes that are not listed in ATHEX. Yet, some provisions of the Company Law apply explicitly to Listed Companies and some others apply explicitly to Sociétés Anonymes that are not listed in ATHEX.

Listed Companies must adhere to Law 3016/2002 on “Corporate Governance, board remuneration and other issues”, as in force, (“**Corporate Governance Law**”), published in Official Gazette A’ 110/17.5.2002, which applies simultaneously with the Company Law. In case of conflict between the two laws, the former prevails over the latter. Corporate Governance Law refers to the composition of the Board of Directors (“**BoD**”) and its duties, the internal regulation and the organisation of the internal control of the Listed Companies.

Furthermore, Listed Companies must adhere to a series of additional laws, rules and regulations, including decisions and circulars of the independent body that regulates the Greek financial industry and imposes sanctions to the Listed Companies due to violation of the relevant capital market legislation, the Hellenic Capital Market Committee (“**HCMC**”). These include:

- Law 3556/2007 on “Transparency Requirements in relation

to information about issuers whose securities are admitted to trading on a regulated market” (“**Transparency Law**”), published in Official Gazette A’ 91/30.4.2007, which implements the Directive 2004/109 EC and imposes disclosure obligations for the issuers and the shareholders whose securities attach voting rights when specific thresholds are met. Transparency Law also governs the periodic and continuing obligations of the Listed Companies towards the public. HCMC Decision No 1/434/3.7.2007 and Circular No 33/3.7.2007 provide further details and specifications in relation to Transparency Law.

- Law 3340/2005 on “Protection of the Capital Market by acts of persons who hold inside information and by acts of market manipulation”, published in Official Gazette A’ 112/10.5.2005, which implements the Directive 2003/6 EC and contains issues regarding the possession and use of inside information and market manipulation. HCMC Decision No 3/347/12.7.2005 and Circular No 30/17.3.2006 provide further details and specifications in relation to the aforesaid law.
- Law 3371/2005 on “Capital Markets issues and other regulations”, published in Official Gazette A’ 178/14.7.2005, which imposes, among others, obligations of the Listed Companies towards the HCMC and towards the public.
- Law 3606/2007 on “Acquisition of the Financial Instruments and other provisions, published in the Official Gazette A’ 195/17.8.2007, which implements the 2004/39/EC Directive, known as MiFID, HCMC Decision 4/452/1.11.2007, as well as other HCMC Decisions provide provisions regarding corporate governance, exclusively, in Investment Firms, Mutual Funds etc.
- Law 3601/2007 on “Relating to the taking up and pursuit of the business of Credit Institutions, adequacy of Credit institutions’ and Investment Firms’ own funds”, published in the Official Gazette A’ 178/1.8.2007, which implements the 2006/48 Directive, and the 2577/2006 Act of the Governor of the Bank of Greece provide provisions regarding corporate governance, exclusively in the Credit Institutions.

Listed Companies must have articles of association which must include, indicatively, the relationship between shareholders, powers and duties of the BoD, audit issues etc.

### 1.3 What are the current topical issues and trends in corporate governance?

The aspects of corporate governance in Greece are crucial for the successful operation of the Listed Companies. Upon the implementation of the Corporate Governance Law in 2002 a series of laws was enacted on the harmonisation of the EU Directives targeting a safe and sound financial system. As a result, issues

regarding disclosure requirements, internal control and duties of the BoD are strictly regulated in favour of the shareholders and the investors.

## 2 Shareholders

### 2.1 What rights and powers do shareholders have in the operation and management of the corporate entity/entities?

Articles of Association state the rights and powers of the shareholders in relation to the operation of the corporate entity. Articles of Association also delegate the BoD to administer the Company, usually by granting to its members certain powers and duties. Moreover, upon a resolution of the General Shareholders' Meeting, shareholders may assign specific powers and duties to the members of the BoD. Several issues such as amendments of the Articles of Association, approval of the company's balance sheet, the appropriation of the annual profits, require, exclusively, a resolution of the General Shareholders' Meeting. Furthermore, transactions between the Company and members of the BoD seek a specific General Shareholders' Meeting approval.

Resolutions regarding the change of the company's nationality, the modification of the statutory purpose of the company, the increase of the shareholders' obligations, and the company's merger are taken by a majority of two thirds (2/3) of the votes represented in the General Shareholders' Meeting. Moreover, the General Shareholders' Meeting has quorum and validly meets on the aforesaid subjects of the agenda, when the shareholders represent at least 2/3 of the paid-up share capital. In any other case, provided that there is not any other diverse explicit provision in the Articles of Association, the resolutions of the General Shareholders' Meeting are taken by the absolute majority of the votes represented in the meeting.

### 2.2 Do indirect shareholders (e.g. beneficial shareholders who hold through nominees), have direct rights in relation to the corporate entity/entities?

A shareholder who holds shares in Listed Companies may nominate any person to exercise rights and duties (disclosure requirements, voting etc.) on his behalf. In such a case, a power of attorney granted by the shareholder to the nominee is required. The nominee implements the indirect shareholder's requests until the power of the attorney is revoked.

### 2.3 Are there any limitations on, and disclosures required, in relation to interests in securities by shareholders?

There are no limitations on the number of securities a shareholder can hold or the speed with which they can build a stake in a company with the exception of the shareholders that want to acquire more than 20% of the share capital of companies with national strategic importance. In such a case an approval of a special governmental Committee is required.

Regarding disclosure under Transparency Law a shareholder acquiring or disposing of securities including derivatives attached with voting rights must inform the issuer and the HCMC of the percentage of the voting rights held by him where the percentage reaches, exceeds or falls below the thresholds of 5%, 10%, 15%, 20%, 1/3, 50%, 2/3 of the total share capital.

### 2.4 What shareholder meetings are commonly held?

Listed Companies hold at least an annual General Shareholders' Meeting, yet, they may also hold other general meetings as and when they need to. Listed Companies need to invite all shareholders to the General Shareholders' Meetings. The invitation is published (i) in the Bulletin of the Government Gazette (Sociétés Anonymes Companies and Limited Liability Companies Bulletin,; (ii) in one daily political newspaper, (iii) in one daily financial newspaper and (iv) in one daily or weekly local newspaper or weekly newspaper with nation wide circulation that it has its registered seat in the area where the company has its registered seat.

Following a request by the shareholders who represent 1/20 of the paid-up share capital, the BoD must convoke an Extraordinary General Shareholders' Meeting. The request must include the subject of the agenda.

The General Shareholders' Meeting is in quorum and validly meets on the subjects of the agenda when the shareholders represent at least 1/5 of the paid-up share company's capital.

(See also question 2.1.)

### 2.5 Can shareholders call shareholder meetings or put resolutions?

As mentioned in question 2.4, shareholders have the right to request at any time from the BoD, the convocation of an Extraordinary General Shareholders' Meeting, provided that the request is made by shareholders who represent at least 1/20 of the paid-up share capital. The request should include the subject of the agenda.

Provided that specific thresholds in terms of the percentage of voting rights are met, the shareholders may request from the BoD indicatively to:

- include in the agenda of the General Meeting, which has already been convoked, any additional subjects;
- provide specific information with request to the company's matters; or
- provide information regarding the amounts paid to the members of the BoD or the managers of the company during the last two years etc.

(See also question 2.4.)

### 2.6 Is electronic communication to or by shareholders possible?

Under the Transparency Law electronic communication is possible between a Listed Company and a shareholder, yet, a written consent of the shareholder and a resolution of the General Shareholders' Meeting is required. The electronic communication may contain information regarding the place, time, and subjects of the agenda of the General Shareholders' Meetings, submission of a proxy with the notice concerning the shareholders' meetings, notices regarding the allocation and payment of the dividends, the issuance of new shares etc.

### 2.7 Can shareholders be liable for acts or omissions of the corporate entity/entities?

Shareholders cannot be liable for acts or omissions of the corporate entity. However, a shareholder may be liable due to violation of Law 3340/2005 on "Protection of the Capital Market by acts of persons who hold inside information and by acts of market manipulation".

## 2.8 Can shareholders be disenfranchised?

Shareholders cannot be disenfranchised unless a shareholder who holds securities representing at least 95% of the company's share capital attached with the voting rights exercises the squeeze out right. The squeeze out right applies also to take over bids. Specifically, the offeror who holds securities representing at least 90% of the voting rights of the shares in the offeree company is able to require all the shareholders of the remaining securities to sell him those securities.

## 2.9 Can shareholders seek enforcement action against members of the management body?

Upon a resolution of the General Shareholders' Meeting, shareholders may raise claims against the members of the BoD arising from the management of the company's affairs. The resolution of the General Shareholders' Meeting is taken by the absolute majority of the votes represented in the meeting and if the shareholders who are present, represent at least 1/5 of the paid-up share capital.

Also, upon a request of shareholders who represent 1/10 of the paid-up share capital, shareholders may raise claims against the members of the BoD. The abovementioned apply to all the members of the BoD and also to persons who are not members, yet, they are assigned by the BoD to administer the corporate affairs. It should be stressed that the company as a legal entity sues the members of the BoD due to the damages occurred to the company's assets. Shareholders cannot sue the members of the BoD claiming damages for themselves (1285/80 Supreme Court Decision).

# 3 Management Body and Management

## 3.1 Who manages the corporate entity/entities and how?

The Listed Companies are managed by the BoD. The number of BoD members cannot be less than 3 and their term cannot exceed 6 years.

Under the Corporate Governance Law, the BoD must be composed by executive and non-executive members. The executive members deal with the day-to-day management issues and the non-executive members promote all corporate issues. At least one third of the members of the BoD must be non-executive. At least two members of the non-executive members must be independent. The BoD is not obligatory to be comprised by independent non-executive members if members of the BoD are representatives of the minority of the shareholders. The independent non-executive members during their term cannot hold more than 0.5% of the total share capital of the company and they must not have any dependence relationship on the company or on any person affiliated with the company. A relationship of dependence occurs, indicatively, when a member of the BoD a) has a business connection with the company, or with an affiliate, as defined in Corporate Law, such as a supplier or customer of the company, b) is the president of the BoD or manager of the company or has the aforesaid capacities or is an executive member of the BoD to another affiliate, c) is a relative up to second degree or is a husband or wife of an executive member of the BoD or of an executive manager or shareholder that holds the majority of the share capital of the company or of an affiliate, or d) has an employment relationship with either the company or an affiliate.

## 3.2 How are members of the management body appointed and removed?

Shareholders appoint and remove the members of the BoD, including the independent members, upon a resolution of the General Shareholders' Meeting. However, during the establishment of the company the Articles of Association appoint the first BoD.

The Articles of Association may also a) grant to any specific shareholder or shareholders the right to appoint members of the BoD not exceeding one third of their total number determining simultaneously the terms which such right is to be exercised, b) provide that the candidates for composing the BoD can be proposed on the basis of lists, and c) provide that the BoD may elect its members in replacement of other members that have resigned, died or lost their capacity in any other way.

The BoD appoints which members will be executive and non-executive. Within 20 days of convening the BoD, both the minutes of the General Shareholders' Meeting, through which the independent members of the BoD are chosen, and the minutes of the BoD, through which the qualification of each member as executive or non-executive is determined, must be submitted before the HCMC.

Upon a decision of the General Shareholders' Meeting taken by the absolute majority of the votes represented, any member of the BoD can be replaced anytime.

Members of the BoD may be natural persons that are at least 18 years old and have legal capacity. The Articles of Association may provide that a legal entity can be a member of the BoD. In such a case the legal entity is obliged to appoint a natural person to exercise the duties of the legal entity as a member of the BoD. Also, foreigners may be members of the BoD.

(See also question 3.1.)

## 3.3 What are the main legislative, regulatory and other sources impacting on directors' contracts and remuneration?

Directors may provide their services with remuneration. In such a case a contract for providing services is required signed by the Director and the Company (20/2007 Supreme Court Decision). However, members of the BoD may provide their services without remuneration. In such a case the relationship between the Director and the Company is based on the Civil Code (art. 713 of Civil Code regarding order). The remuneration of the non-executive members is based on the frequency of their appearances in the BoD Meetings. The remuneration of the non-executive members is indicated as a separate category in the Annex of the annual financial statements.

Under Corporate Law, any remuneration paid out of the profits to the members of the BoD shall be taken out of the balance of the net profits after the deduction of the amounts set aside as a statutory reserve and the amount required for the distribution to the shareholders of the dividend equal to at least 35% of the paid-up share capital. Any other remuneration or compensation, the amount of which is not specified in the Articles of Association, granted to a Director for any reason whatsoever, shall burden the company only if approved by a special resolution of the ordinary General Shareholders' Meeting. Such remuneration or compensation may be reduced by the Court if, in fair judgment, it is considered exorbitant and an objection to the resolution by the shareholders representing 1/10 of the share capital has been expressed.

Following a request by the shareholders representing 1/20 of the paid-up share capital, the BoD must announce to the General Shareholders' Meeting the amounts which during the last two years were paid to each member of the BoD.



### 3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body?

For Listed Companies, members of the BoD are permitted to own shares in their companies. There are no limitations on the number of shares a member of the BoD can hold or the rate with which they can build a stake in the company. However, the independent non-executive members during their term cannot hold more than 0.5% of the total share capital of the company and they must not have any dependence relationship on the company or on any person affiliated with the company. Under Law 3340/2005 on “Protection of the Capital Market by acts of persons who hold inside information and by acts of market manipulation” Listed Companies must notify the HCMC for any transactions conducted by the managers and are related to shares issued by the Company (it also applies to the derivatives or other financial instruments connected to the abovementioned shares). Managers are obliged to inform the company for the abovementioned transactions.

Regarding disclosure requirements the Transparency law applies mutatis mutandis to the members of the BoD.

(See also question 3.1.)

### 3.5 What is the process for meetings of members of the management body?

The BoD Meeting is convoked by its President or his substitute by invitation notified to its members at least two business days prior to the meeting. The invitation must clearly state the subjects of the agenda, otherwise the decision taken is permitted only if all the members of the BoD are present or represented and none of them objects thereto. The convocation of the BoD may be requested by two of its members by means of an application to the President or his substitute who are obliged to convoke the meeting of the BoD within seven days from the submission of the application. The application must clearly state the issues discussed by the BoD. In case the BoD is not convoked by the President or his substitute within the above deadline, the members who have requested the convocation of the Board, are permitted themselves to convoke the BoD within 5 days from the expiration of the aforesaid 7 days period notifying the other members of the BoD.

### 3.6 What are the principal general legal duties and liabilities of members of the management body?

The principal general legal duties and liabilities of the members of the BoD are:

- To represent the company before the courts and represent, in general, the Company towards the public.
- To decide on every act concerning the management of the company.
- To act under the lawful decisions of the General Shareholders' Meetings.
- To administer the company's assets.
- To promote the long term success of the company and, in general, the corporate interest.
- To provide information to the public when required by the law.
- To keep absolute secrecy on confidential matters of the company.

Every member of the BoD is liable towards the company for any fault committed by him during the management of the company's affairs, particularly for any omissions or untrue statements in the

balance sheet concealing the true financial condition of the company. Such liability does not exist if the member of the BoD proves that the management of the company's affairs was made under the diligence of the prudent businessman (business judgment rule). Moreover, this liability does not exist in respect of acts or omissions that are based on a lawful decision of the General Shareholders' Meeting or constitute a reasonable business decision taken in good faith on the basis of sufficient information and exclusively in favor of the corporate interest.

### 3.7 What are the main specific corporate governance responsibilities/functions of members of the management body?

The main specific corporate Governance responsibilities/functions of members of the management body are, indicatively:

- Act in favour of the corporate interest.
- Appoint the internal auditors. The BoD is obliged to provide all the necessary data to the internal auditors and cooperate with them.
- Draft an annual report regarding the transactions of the company with the affiliated companies, as defined in the Corporate Law.
- Avoid conflicts of interest.

### 3.8 What public disclosures concerning management body practices are required?

Public disclosures concerning management body practices are required, indicatively, in the following subjects:

- Change of the members of the BoD, including executive, non-executive and independent members.
- Granting of the signing powers of the members of the BoD.
- BoD resolutions, when required by the Corporate Law.

### 3.9 Are indemnities, or insurance, permitted in relation to members of the management body and others?

It is not mandatory for the company to provide insurance to the members of the BoD who grant their services under a contract for providing services or who grant their services without remuneration. Nonetheless, it is up to the Articles of Association and/or a resolution of the General Shareholders' Meeting to determine these issues.

The Company burdens the legal fees if an action is raised against the Company and a member of a BoD must represent the company before the court.

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The Company burdens the legal fees if an action is raised against the Company and a member of a BoD must represent the company before the court.

## 4 Corporate Social Responsibility

### 4.1 What, if any, is the law, regulation and practice concerning corporate social responsibility?

Applicable regulations do not exist regarding this question.

### 4.2 What, if any, is the role of employees in corporate governance?

Employees do not have a specific role in corporate governance. Corporate Governance Law and Corporate Law do not require presentation of an authorised employee before the BoD Meetings, yet, it is not prohibited.

## 5 Transparency

### 5.1 Who is responsible for disclosure and transparency?

The Transparency Law provides disclosure requirements imposed on a) the shareholders, and b) the issuers. As mentioned in question 2.3, a shareholder acquiring or disposing of securities (including derivatives) attached with voting rights must inform the issuer and the HCMC of the percentage of the voting rights held by him where the percentage reaches, exceeds or falls below the thresholds of 5%, 10%, 15%, 20%, 1/3, 50%, 2/3 of the total share capital. Also, shareholders that hold at least 10% of the shares attached with voting rights must also inform the issuer and the HCMC for any increase or decrease of at least 3% of their shares.

The aforesaid obligation applies to the issuers when the company acquires or disposes its own securities where that proportion reaches exceeds or falls below thresholds of 5% or 10% of the voting rights. The BoD as whole is required to provide this information and not specific members of the BoD.

### 5.2 What corporate governance related disclosures are required?

Listed Companies must publish:

- The annual financial reports which include the audited financial statements and the relevant BoD report.
- Semi-annual financial reports which include the semi-annual audited financial statements and the relevant BoD report.
- Quarter financial reports.
- Important equity stakes in companies, as defined in the Transparency Law.

(See also question 5.1.)

### 5.3 What is the role of audit and auditors in such disclosures?

The certified auditors must, during the financial year, follow up the accounting and administrative condition of the company, having the right to access any book, account or document including the minutes of the General Shareholders' Meeting and the BoD's minutes. They also have the obligation to make any necessary suggestion to the BoD and in case of violation of the provisions of the law or the Articles of Association, they must inform the supervising Minister of Commerce. Moreover, the auditors have the right to request to the President of the BoD the convocation of an Extraordinary General Shareholders' Meeting. The certified auditors must prepare the reports as described in question 5.2.

### 5.4 What corporate governance information should be published on websites?

Under Company Law the websites of the companies, listed and not listed, must include information regarding a) the Registry of the company, b) the number of the Registry of the Company, and c) the legal type of the company, its corporate name, and its legal seat. Furthermore, if the company is under liquidation it must be mentioned in its website.

Under Circular 33/3.7.2007, the Listed Companies must include in their websites information regarding the Transparency Law and especially the notifications required by the shareholders to the issuer and the HCMC.

(See also question 2.3.)

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## BAHAS, GRAMATIDIS & PARTNERS

Bahas, Gramatidis & Partners traces its origins to the Law Office Marios Bahas in 1970. In 1988, the original firm merged with Law Office Y.Gramatidis to form Bahas, Gramatidis & Associates with the participation of Dimitris Emvalomenos in 1990. Finally, in 2002, Bahas, Gramatidis & Associates merged with Law Office Athanassios Felonis & Associates and with Law Office Spyros G. Alexandris & Associates, to form Bahas, Gramatidis & Partners.

The firm's corporate team advises companies and businesses on a daily basis and all aspects of carrying business in Greece from commercial regulatory matters to regulatory compliance. Mergers & Acquisitions transactions completed by its corporate team include acquisitions for Regal Petroleum plc, Berry Bros & Rudd, Allied Lyons plc and others. The firm advises on joint ventures (between Greek and non-Greek parties), takeover bids and private equity investments. Further it has a very broad general corporate practice including company formation and follow-up, holding arrangements, participations, etc. Finally, the firm has contacted an impressive number of legal due diligences mainly in relation to companies applied for listing in the Athens Stock Exchange, and in restructuring and acquisition cases. In litigation, the firm is highly ranked by various reputable legal directories.