

GREECE  
International Securities Law  
by  
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### General Introduction

1. Greek Securities Legislation traditionally divides the most common types of securities into the following three categories: securities to the bearer, securities payable to order and nominal securities.

Existing types of securities were enriched by virtue of Law Number 2651/1998 with “any exchangeable value defined as security by decision of the Capital Market Commission”.

Besides certain articles of the Civil Code (especially articles 888 – 900) and the Commercial Code, securities are regulated by a plurality of legislative texts, such as Law Number 5325/1932, Law Number 5960/1933, Law Number 2190/1920 and Presidential Decree dated 17<sup>th</sup> July/13<sup>th</sup> August 1923.

2. Athens Stock Exchange (Chrimatistirio Athinon) was initially a public legal entity whose only shareholder was the Hellenic State. By virtue of Law Number 2324/1995 it became a company limited by shares, with shareholders being again the Hellenic State, stockbrokers and stock-broking companies. The Capital Market Commission, on the other hand, is a public legal entity operating under the supervision of the Ministry of Economy and Finance and holds a significant institutional and operational role.

The basic legislative framework regarding the Athens Stock Exchange includes Law Number 3632/1928, Law Number 348/1985, Law Number 350/1985,

Law Number 1806/1988, Presidential Decree Number 489/1989, Presidential Decree Number 50/1992, Presidential Decree Number 51/1992, Law Number 2188/1994, Law Number 2324/1995, Law Number 2533/1997, Law Number 2651/1998, Law Number 2733/1999, Law Number 2842/2000, Law Number 2892/2001, Law Number 3152/2003, Law Number 3283/2004 (which brings changes in the sector of mutual funds) and the Athens Stock Exchange Regulation (entered into force on 16.6.2004).

Also, relevant substantial dispositions are provided by Ministerial Decisions and Resolutions of the Board of Directors of the Athens Stock Exchange, such as Decision of the Minister of Economy concerning the Athens Secondary Market, Decision of the Capital Market Commission Number 182/25-1-2000, Decision of the Capital Market Commission Number 1/195119-7-2000, Decision of the Board of Directors of the Athens Stock Exchange Number 46/22-9-2000, Decision of the Capital Market Commission Number 202/24-10-2000, Decision of the Capital Market Commission Number 5/204/14-11-2000, Decision of the Board of Directors of the Athens Stock Exchange Number 57/2001, Decision of the Capital Market Commission Number 1/216/17-5-2001, Decision of the Capital Market Commission 18/291/22-1-2004, Decision of the Capital Market Commission 1/295/1-3-2004, Decision of the Capital Market Commission 1/302/26-5-2004, Decision of the Capital Market Commission 3/302/26-5-2004, Decision of the Capital Market Commission 7/304/10-6-2004 and 7/306/22-6-2004 etc.. Also, the application on listed companies of International Accounting Standards introduced by Law Number 3229/2004 is expected to offer coherence, facilitate the function of the Athens Stock Exchange, enable the investors to be better informed by comparing companies' figures under the same criteria and forms.

The Ministry of Economy and Finance, the Board of Directors of the Athens Stock Exchange S.A., as well as the Capital Market Commission are the authorities that supervise the operation of the Athens Stock Exchange.

3. Under Greek legislation it is possible for foreign companies to go public, provided specific legal requirements are met, pertaining to the company itself and/or its shares. By virtue of Presidential Decree Number 489/1989 unlisted securities may be traded on another market established in the Athens Stock Exchange, called the Secondary Market of the Athens Stock Exchange (Parallili Agora).

Furthermore, two new markets, the New Stock Market (Nea Chrimatistiriaki Agora) and the Hellenic Market of Emerging Stock Markets (Parallili Agora Anadyomenon Agoron) were introduced pursuant to Law Number 2533/1997 and Law Number 2733/1999. The criterion for the listing of a company within the Primary Market of the Athens Stock Exchange, its Secondary Market, or the New Stock Market is its share capital.

The Athens Stock Exchange transactions can take place during its regular session with participation of a member (in-market transaction), or without such participation (off-market transaction). Moreover, it is possible for members of the Athens Stock Exchange to conclude transactions by performing buying and selling orders even without participating in the session (transaction by counterbalancing entry).

### Types of Securities

Shares, bonds<sup>1</sup> and Hellenic certificates (EL.PIS.)<sup>2</sup> could be described as the standard securities according to Greek Securities Legislation. Securities negotiable with the Athens Stock Exchange are shares and bonds belonging to Greek and foreign companies, under the condition that they are listed with their national Stock Exchange. In all cases, it is imperative that all shares and

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<sup>1</sup> Securities negotiable with the Athens Stock Exchange are mainly shares and bonds belonging to Greek and foreign companies, under the condition that they are listed with their national Stock Exchange, bonds, promissory notes and treasury bills issued by the Hellenic State and foreign states etc.

<sup>2</sup> This type of securities refers to foreign shares (and not domestic shares) that a bank has by virtue of a relevant contract passed between the bank and a foreign company (the issuer of the said shares). The bank administrates or allots the shares on behalf of the foreign issuer. Capital Commission's permission is necessary.

bonds listed with the Athens Stock Exchange be dematerialized. However, since shares constitute the core of every stock market system, those are further elaborated below.

Shares may be categorized as follows:

#### Nominal shares

Nominal shares bear the name and other particulars of the holder, which are registered with the Shareholders Register. Every company may issue nominal shares provided such possibility is stipulated in its statutes; however, for certain categories of companies, such as banks and insurance companies, issuing nominal shares is obligatory. This type of shares is transferable by endorsement of the central securities depository titles and registration with the Shareholders Register.

#### Shares to the bearer

These shares do not bear the name and particulars of their owner, that is why they are called “anonymous”. Their transfer is effectuated by simple handing over and they are the most widely spread in Greece.

#### Common shares

This category of shares certifies that their owner is associate to the company according to the percentage of the owner’s shares. These shares entitle their owner to participate to the limited liability company’s profits, to vote in the Shareholders General Assembly, for the election of the Board of Directors and the amendment of the balance etc.

#### Privileged Shares

This type of shares offers their owner further rights, among which the right (privilege) to take dividend even when there are no profits. Companies listed with the Athens Stock Exchange are not entitled to issue privileged shares

unlimitedly: only forty per cent of their capital may be privileged shares<sup>3</sup>. They may, however, issue convertibles, namely privileged shares that may be converted into common shares, the time of conversion being defined already. In principle, in Greece this category of shares does not grant owners a voting right.

## Admission

The admission with any of the three aforementioned Markets of the Athens Stock Exchange (Primary, Secondary and New) is regulated by various legislative texts, as well as by Resolution Number 38 of the Athens Stock Exchange Board of Directors passed during the session of July 22<sup>nd</sup>, 2004 and the Athens Stock Exchange Regulation<sup>4</sup>.

### A. Admission with the Primary Market of the Athens Stock Exchange

Listing of shares with the Athens Stock Exchange is possible provided certain legal requirements are met, as those are set by Presidential Decree 350/1985 in combination with the Athens Stock Exchange Regulation.

#### I. Legal requirements regarding the applicant company

1. In more details, the companies admissible for applying for listing must fall into the category of limited liability company (Societe Anonyme) (*anonymi etairia*). The applicant company's legal status must be in accordance with the legislation and regulations to which the same is amenable, as regards its incorporation and statutory operation.
2. The company's owned capital must amount to a minimum of 5.869.405,72 Euros<sup>5</sup>, amount which may be adjusted by decision of the Ministry of

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<sup>3</sup> Further details are regulated by Law Number 876/1979 on the development of the Capital Market.

<sup>4</sup> Pursuant to the Approbatory Resolution of the Capital Market Commission Number 1/304/10 June 2004 published in the Official Gazette (900/B/16.6.2004).

<sup>5</sup> This requirement however does not apply in case of listing of a complementary series of shares that belongs in the same category as the shares already listed (Presidential Decree 350/1985, as amended).

Economy following recommendation of the Athens Stock Exchange Board of Directors and the Capital Market Commission. Indeed, in application of the above delegation, by virtue of Decision Number 3/302/26-5-2004 of the Board of Directors of the Capital Market Commission<sup>6</sup>, the above amount was increased to twelve million (12.000.000) Euros<sup>7</sup>.

3. Furthermore, pursuant to the relevant legislation that governs each applicant company, the same must have published or submitted its annual financial statements for at least three years prior to its application for listing with the Athens Stock Exchange. These statements must have been audited by a chartered accountant. The law also requires that the applicant company's last balance sheet shows satisfactory operating results and assets. The Athens Stock Exchange Regulation indicates that the financial statements may be free of remarks that the chartered accountants may have performed during the last published year, which may have a negative effect on the company's real financial status<sup>8</sup>.

4. However, the Capital Market Commission, following opinion of the Board of Directors of the Athens Stock Exchange, may exceptionally permit to a company to go public, even if it has been operating for less than three years. Such deviation is possible provided the listing is in favor of the company or the investors, and sufficient information were given, in the sense that the investors have formed a distinct opinion regarding the applicant company and its shares.

If the above apply, then any of the following preconditions is also demanded:  
i) more than ninety (90) per cent of the company's assets are invested in shares of one or more companies, of which one at least is an affiliated company publishing or submitting its annual financial statements for at least three years prior to the parent company's application; and ii) the applicant company

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<sup>6</sup> Official Gazette B' 900/16-6-2004 and B' 994/5-7-2004.

<sup>7</sup> The said decision repeats that the above do not apply in case of listing of a complementary series of shares that belongs in the same category as the shares already listed.

<sup>8</sup> Article 213 of Athens Stock Exchange Regulation.

emerged from amalgamation, fission or secession of a sector of a company that at the time of amalgamation, fission or secession had been already publishing or submitting its annual financial statements for at least three years prior to the company's application.

5. Apart from the above, the company applying for the first time for listing with the Athens Stock Exchange must have undergone tax audit covering all financial years prior to the application, for which annual financial statements have been published. In all cases, at the time when the Capital Market Commission grants the company a permit to go public, the applicant company must have been examined from a taxation point of view for all financial years, from the termination of which at least ten months have elapsed. In case the applicant company prepares consolidated financial statements, then the said examination also covers the integrated companies. However, in that last case, the company may request the Athens Stock Exchange to be exonerated from the above obligation, should the participation of the tax-liable company to the consolidation is not significant<sup>9</sup>.

6. The results of the said tax audit must have become definitive<sup>10</sup>. Such results are not considered definitive in the following cases: i) relevant reservations have been expressed pertaining to pending court decisions or the regulation of specific matters or the participation of the applicant company to other companies for which there is no obligation for tax audit; and ii) should there be other reason which is provided for by other particular disposition or Resolution of the Athens Stock Exchange.

Finally, attention should be drawn to the fact that, should the company, which is subject to tax audit, has its headquarters abroad, then the examination is concluded by an accounting house of international prestige, which drafts a report on the company's fiscal obligations<sup>11</sup>.

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<sup>9</sup> Article 213 of Athens Stock Exchange Regulation.

<sup>10</sup> Article 213 of Athens Stock Exchange Regulation.

<sup>11</sup> Should after the company's application to go public a ten-month period elapse from the last unexamined financial year and the permit for going public have not been granted, or - in

## II. Legal requirements regarding the shares

1. The shares' legal status must be conformable to the legislation and regulations to which the same are amenable, fully paid up and freely negotiable. However, shares already listed in an organized market abroad, the acquisition of which is subject to approval or restrictions pursuant to the law governing the issuing company, may be accepted for listing with the Athens Stock Exchange provided the approval or restrictions do not exceed 50 per cent of the totality of shares and their listing with the Athens Stock Exchange will not disturb the normal and smooth operation of the market. The last condition is to be decided by the Board of Directors of the Athens Stock Exchange. The permission for the listing of the above shares is also granted by decision of the Board of Directors of the Athens Stock Exchange, which has the discretion to permit the listing of all the company's shares or of part of them, as well as set particular terms and conditions for the negotiation of the said shares, in order to ensure the smooth operation of the market and the investors' protection.

In case the shares to be listed have been issued by public offering, their listing is carried out after the expiration of the period during which it is possible to file for listing. Furthermore, the application for the listing of shares with the Athens Stock Exchange has to refer to all the issued shares of the same category. In any case, listing for negotiation of a category of ordinary voting shares is a requirement for the listing of other categories of shares with the Athens Stock Exchange.

When shares are listed with the Athens Stock Exchange through public offering, then part of the issued - new or existing – shares may be offered to a limited cycle of persons without public offering, under the following strictly

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other cases - should the information bulletin have not been approved, then the company has to file a new application for the listing of its shares, as well as submit an updated bulletin together with tax audit certificates. The competent Tax Authority should give the relevant certificates to the companies within a period of three months following their application before the said Authority (an extent of three months may be granted in certain exceptional cases following justified decision of the said Tax Authority's director).



stated conditions<sup>12</sup>: for instance, the distribution price of the shares that are not subject to public offer, with the exception of shares given to the company's employees – is not lower than the price of the shares that are subject to public offer etc.

2. In the precedent form of Presidential Decree 350/1985 extensive reference was made to the dispersion of shares. Currently, the same legislative text confines itself to setting a general obligation, pursuant to which each Stock Market shall ensure sufficient dispersion of the shares that are going to be listed for negotiation to the public. In the light of the above, the said subject is governed mostly by the Athens Stock Exchange Regulation.

In more details, it is considered to be a sufficient dispersion of shares provided the shares that are “applicant” for listing are dispersed to the public at a percentage of at least 25 per cent on the totality of the shares of the same category. In any case, sufficient dispersion is accomplished, in case the shares have to be dispersed to at least two thousand (2.000) persons, none of which may hold a percentage higher than two per cent of the totality of shares the listing of which the company applies for<sup>13</sup>. It is possible that shares are exceptionally listed with the Athens Stock Exchange even without the required dispersion, in case dispersion has been reached at a level of not less than 5per cent of the totality of the shares to be listed.<sup>14</sup>

Special reference should be made to the exemption from the dispersion of shares of the percentages on the capital of the following persons, in the sense that their shares do not count in: i) members of the Board of Directors of the applicant company; ii) the managers and personnel of the applicant company; iii) the major shareholders' and the managing personnel's relatives of first degree of kinship; iv) suppliers or persons collaborating with the company, v) existing shareholders that acquired shares within the last civil year prior to the

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<sup>12</sup> Article 3 par.4 of Presidential Decree 350/1985.

<sup>13</sup> Article 16 of the Athens Stock Exchange Regulation.

<sup>14</sup> The above exception requires that the applicant company followed particular procedures, as described in Articles 92 and 121 of the Athens Stock Exchange Regulation.

company's application (unless they are institutional investors or companies of business sharing (εταιρίες επ'αμοιβαίω συμμετοχόν)). Apart from the above, exceptions are provided for under specific terms and conditions, especially due to the applicant company's size, the large number of its shares etc..

In case the applicant company has shares already listed and negotiated with a Stock Exchange of one or more state-members of the European Union, or of a third country, their dispersion counts in the dispersion for the listing with the Athens Stock Exchange. However, it is anyhow necessary that such company secure a minimum dispersion within the Hellenic territory regarding both the percentage of the capital and the number of shareholders. Similarly, should the company intend listing its shares with the Athens Stock Exchange and an other Stock Exchange as mentioned above, the dispersion achieved abroad will be calculated here in Greece.

3. Finally, the Presidential Decree 350/1985 sets two further conditions for the listing of shares with the Athens Stock Exchange, which pertain to applicant companies having their seat at a state-member of the European Union other than Greece: the presentation of these shares must observe the dispositions of that state-member. The Capital Market Commission must notify the public in case the above dispositions are different from the ones being in force in Greece. On the other hand, the presentation of shares issued by companies that have their seat in a third country, must provide sufficient safeguards for the investors' protection. The Board of Directors of the Athens Stock Exchange may reject an application for listing for shares that have been issued by a company having its seat to a third country, as long as an application for listing with the Stock Exchange of the country where the company has its seat or of the country of the shares' primary circulation has been rejected.

Regardless of the company's seat, it remains to the Athens Stock Exchange discretion to reject an application for listing if the same considers that the issuing company is in a status adverse to the investors' interests. It may also set further specific terms that it deems necessary for the investors' protection and

notify those terms in an explicit way to the applicant company. Finally, it may even deny listing of shares with the Athens Stock Exchange already listed in another Stock Exchange of a state-member of the European Union, as long as the issuing company does not observe the obligations emanating/resulting from their listing in that State.

#### **B. Admission with the Secondary Market of the Athens Stock Exchange**

Resolution Number 38/2003 of the Capital Market Commission is the principal legislative text regulating the listing of a domestic or foreign company's shares with the Secondary Market of the Athens Stock Exchange.

1. The applicant company must be a limited-liability corporation, the legal status of which must be in accordance with the legislation governing its incorporation and operation. The company's capital should amount to a minimum of three million (3.000.000,00) Euros<sup>15</sup> and the shares that will be given to the public shall have to cover it. Moreover, the said company must have published its annual financial statements for at least two years<sup>16</sup> prior to its application for listing with the Secondary Market of the Athens Stock Exchange. As in the case of the Primary Market of the Athens Stock Exchange, it is essential that the company has enough assets and satisfactory operating results. Moreover, at least 80% of the totality of the shares allotted to the public should emanate from the increase of the company's share-capital<sup>17</sup>.

2. The dispersion of shares for listing with the Secondary Market of the Athens Stock Exchange is considered sufficient provided thirty (30) per cent of the total shares of the same category are allotted to the public. In any case, the requirement for sufficient dispersion is considered met, if the shares were dispersed to at least one thousand (1.000) persons, and on condition that each

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<sup>15</sup> Decision Number 2/305/18.6.2004 of the Board of Directors of the Capital Commission, published at the Official Gazette(1360/B/3 September 2004)

<sup>16</sup> Decision Number 2/305/18.6.2004.

<sup>17</sup> Decision Number 2/305/18.6.2004

person does not have more than 2 per cent of the totality of shares that the company requires to list.

Reference should be made to the fact that the restrictions mentioned above under II, 2 par. 3 also apply. Thus, the shares belonging to categories such as members of the Board of Directors of the applicant company, suppliers or persons collaborating with the company, the managers and personnel of the applicant company etc. are exempted from the estimation of the dispersion. Likewise, Article 216 Athens Stock Exchange Regulation makes provision for further exceptions under specific terms and conditions, especially due to the applicant company's size, the large number of its shares etc..

Finally, it is possible for a company to transfer its shares to the Primary Stock Market (following approbatory decision of the Board of Directors of the Athens Stock Exchange issued upon the company's relevant application) provided the candidate company meets the requirements that the law demands for its listing with the Athens Primary Stock Market. Further preconditions should be also fulfilled, including the following: the said shares have remained to the Secondary Market for two years at least; the company has not committed serious or recurring violations of the Stock Market legislation etc.

### C. Admission with the New Stock Market of the Athens Stock Exchange

Law Number 2733/1999 established the New Stock Market with the Athens Stock Exchange, a pole of attraction for many dynamic small and medium enterprises, and regulated many relevant matters, in combination with Decision 7/306/22.6.2004 of the Capital Commission.

1. The applicant company must be a company limited by shares, and its legal status must be in accordance with the legislation governing its incorporation and operation. The company's capital should not be less than 586.941 Euros. At least 100.000 shares should be allotted for listing through public and at least eighty per cent of these shares has to come from the increase of the company's capital. It is also worth mentioning that shares may be exceptionally allotted by

private placement solely to the company's employees and only for a percentage up to five per cent of the total of shares that were allotted by public offering. The applicant company must have published its annual financial statements for at least two years prior to its application for listing with the New Stock Market of the Athens Stock Exchange.

Moreover, the company should prepare together with the undertaker an Investing Plan (*Epichirimatiko Schedio*), which is also taken into consideration by the Stock Exchange during the examination and review of whether the rest of the requirements are met. The Investing Plan is a detailed description of technical and financial data, market data on which the company bases its strategy, as well as the means that will be used for achieving its developmental targets.

Decision of the Board of Directors of the Athens Stock Exchange Number 38/22.7.2004 provides a detailed exemplar of such an Investing Plan, which contains the following sections<sup>18</sup>: 1. a general introduction, where reference is made to intended strategy for the company's development and the aims pursued by the company; 2. general data on the company, such as its object and the scope of its establishment, description of its activities and evolution, presentation of its installations, any leasing contracts, reference of the company's significant steps (such as introduction of new products, expanding of activity abroad etc.), its most important investments, any legal abeyances etc.; 3. an analysis of the organizational structure, namely information on the company's organization chart, its corporate governance, its remuneration policy for executives, on the evolution of the number of employees (how this number has been increased or decreased, as well as how it is expected to change in the medium-termed future) and evaluation of the personnel; 4. a thorough description of the company's products and/or services, including characteristics and factors that make them competitive in the respective market, legal registrations, regulations governing the products' disposal or the

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<sup>18</sup> We refer to some of the data figuring per section in the exemplar as an indication.

rendering of the services, as well as the company's policy for research and development; 5. an analysis of the market and sales, such as data on the growth rate of the market, the consumers' criteria, the position held by the company in the respective market, identification of main competitors, the company's sales structure (i.e. the products' cost and profitability), predictions on the company's development, advertising strategy etc.; 6. the investing plan, where the company should thoroughly describe how it is going to do business and invest in the next three years, specify the sources for its necessary funds, describe which actions (specific both in time-frame and in content) secure the company's profitability, mention the amortization of a third company, or the participation to affiliated companies or subsidiaries, refer to any risks and dubious factors that may obstruct the company's development and its Investing Plan etc.; 7. financial data, namely any documented information on the company's financial status (balance-sheet, results, cash flow, indexes etc. for the next three years and statement of accounts data etc. of the past two years).

Further to the above, shareholders owning shares, the nominal value of which corresponds to at least five per cent of the capital of the company applying for listing with the New Market, have to covenant that for at least three years following the company's listing they will not allot in any way eighty per cent of their shares<sup>19</sup>. However, this prohibition does not apply in several cases, such as for instance when shares are transferred by virtue of hereditary succession, or due to amalgamation of the company etc.

2. Sufficient dispersion of shares is also required for listing with the New Stock Market of the Athens Stock Exchange. In the case in point, adequate dispersion is achieved when twenty-five (25) per cent of the total shares of the same category are allotted to the public, and in any case when the shares were dispersed to at least five hundred (500) persons, and on condition that each

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<sup>19</sup> Already the above percentage was changed to 70% for the first year of listing with the New Stock Market and 50% for the second year, pursuant to Resolution of the Capital Commission.

person does not have more than 2 per cent of the totality of shares that the company requires to list.

It should be pointed out that members of the Board of Directors of the applicant company, its managers and personnel, its major shareholders' and the managing personnel's relatives of first degree of kinship, suppliers or persons collaborating with the company etc.<sup>20</sup> are not counted in when appreciating the sufficiency of the dispersion.

Shares listed with the New Stock Market may be transferred to the Primary Market or the Secondary Market of the Athens Stock Exchange, under two conditions: i) the general requirements set for the listing with any of the above markets are met; and ii) all the following requirements are met: the company has completed at least three years listed with the New Market, it has observed and accomplished its Investing Plan and has not committed serious or recurring violations of the Stock Market legislation.

### International Accounting Standards

Pursuant to Law Number 2190/1920, the fundamental legislative text for limited liability companies, as amended by Law Number 3229/2004, companies (including parent companies) with shares and other securities listed with an organized stock market, have to draft Annual Financial Statements and Quarterly Intermediate Financial Statements pursuant to the International Accounting Standards adopted by the European Union. The said obligation also extends to any other periodical financial statements, which have to go public by the law, as well as the Annual Financial Statements of the companies associated with the parent company, that reside in Greece or abroad, provided their national legislation offers them the discretionary possibility of applying the International Accounting Standards. Non-listed companies may also follow the International Accounting Standards, provided such possibility was decided

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<sup>20</sup> See above, II, 2 par. 3.

by the General Shareholders Assembly and at least for five consecutive periods.

However, a recent draft of law was submitted to the Parliament with clarification and instructions on how the International Accounting Standards should be observed and implemented by the listed companies in Greece. According to the above text, it is suggested that the obligation for limited liability companies, listed or not, to apply the International Accounting Standards for Quarterly Financial Statements be abandoned, and a relevant obligation be imposed regarding Semi-annual Financial Statements. The obligation for observation of the International Accounting Standards starts on January 1<sup>st</sup> 2005 and companies must apply these Standards on their Semi-annual Financial Statements of the following year.

### Information Obligations

Greek legislation credits the importance of proper information of the investors, not only because it secures the due operation of the market, but also because it gains the investors' trust who will continue to be active.

#### Information before Listing: Prospectus

1. A company, the securities of which constitute the object of invitation to the public or for which an application for listing with the Athens Stock Exchange has been submitted, must issue an informative prospectus in Greek<sup>21</sup>, pursuant to presidential decrees Number 348/1985, Number 350/1985, Number 50/1992, Number 52/1992 and Law Number 2651/1998. Such issuance is a condition sine qua non for a company's listing with the Stock Exchange, provided the prospectus received approval by the Capital Commission<sup>22</sup>.

The prospectus must mention data that are necessary – considering the features and characteristics of the applicant company and of the securities that

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<sup>21</sup> Article 7A of Presidential Decree Number 348/1985.

<sup>22</sup> This prospectus is different than the prospectus of offer, which refers to securities that are already listed. The aim of this prospectus is mainly to attract the investors' attention.



the legal entity wants to list, so that the investors and their consultants may assess the property, financial status, results and perspectives of the company, as well as the rights embodied to the relevant securities.<sup>23</sup> The content of the prospectus is specified in Article 26 of Presidential Decree Number 348/1985 and its appendixes, by indicating three detailed patterns to be followed by applicant companies. Consequently, the prospectus should contain information on the individuals responsible for the prospectus and for the control of the accounts, on the securities and their listing with the Athens Stock Exchange, on the issuing company, its capital, activities, property, financial status and results, information on the administration, management and supervision of the issuing company, as well as on the latter's plans and perspectives. In all cases the prospectus has to be complete, true and accurate, and never misleading for the public. The issuing company is responsible for the prospectus's exactness, accuracy and verity (actually, its responsibility is larger than the responsibility of the underwriter) and is regulated by the dispositions of ordinary law.

The prospectus is not issued unless it is approved by the Stock Exchange, and this approval is granted provided all the requirements set in the said presidential decree are met. The Commission has to decide within three months following the submission of the relevant application. The prospectus must be published at least 45 days before the securities' negotiation, either by registration with one of the daily newspapers authorized for the publication of financial figures belonging to companies limited by shares and limited liability companies, either in printed form available to the public for free by the Stock Exchange, the company's seat etc.. The whole prospectus or an announcement mentioning where the same has been published and the location where the prospective investors may find it, may figure in a publication as defined by the Capital Commission.

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<sup>23</sup> Article 5 of Presidential Decree 348/1985.

2. The Capital Commission may opt for the partial or entire exemption of disclosing certain information as an exception, for instance in cases where the securities for which there is an application for listing are shares given for free to beneficiaries of shares, that are already listed in the same Stock Exchange, or securities that were the object of public offering, or have been listed with a Stock Exchange of an other state-member of the European Union for at least three years prior to the application for listing with the Athens Stock Exchange etc<sup>24</sup>. Also, pursuant to Article 8 of Presidential Decree Number 348/1985, the Capital Commission may allow to applicant companies not to disclose certain information, should the Commission consider that such information either are insignificant and therefore not able to influence the evaluation of the company's financial status and results, or contradict to the public interest or finally may seriously damage the issuing company (under the condition such "concealment" is not likely to mislead the public on the facts and circumstances which are important for evaluating the said securities.

The importance of the prospectus lies in the fact that it constitutes the only formal mean allowing investors to preserve their rights, via information on the company and data relevant to the market itself, thus enabling the public to form a realistic overview of potential gains and enterprising risks involved.

#### Information following Listing<sup>25</sup>

The Greek Stock Exchange legislation and especially Presidential Decree Number 350/1985 imposes on listed companies the obligation to disclose at fixed intervals information pertaining to their financial status and economic situation<sup>26</sup>.

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<sup>24</sup> More exceptions are provided for in Article 7 of Presidential Decree Number 348/1985.

<sup>25</sup> Article 275 following of the Regulation of the Athens Stock Exchange treat the matter of information in every detail and provides for periodic disclosure of information, unscheduled disclosure of information and disclosure of information for special categories.

<sup>26</sup> Pertinent obligations are provided for by Presidential Decree 51/1992, which stipulates information that need to be published in cases of acquisition and transfer of significant participation to a company, the shares of which are already listed with the Athens Stock Exchange.

In more details, any company that has already gone public with the Athens Stock Exchange is obliged to assure to the investors all the necessary facilities and information to make possible for the latter to exercise their rights, inform them of the assembly of General Meetings and allowing them to exercise the right to vote. Furthermore, it has to publish announcements or distribute circulars regarding the distribution and payment of dividends, for the issuance of new shares etc. Moreover, the companies should place to the investors' disposal as soon as possible its last annual financial statements and last administration report. If the above documents are not in conformity with the relevant European Directives and do not describe the company's property, financial situation and results in a faithful manner, then it should offer to the public more detailed or supplementary information.

Furthermore, listed companies are also obliged to place to the investors' disposal a report on their annual financial standing and their administration, as well as grant any other information required. The aforementioned report should provide a complete description of the company's assets, financial situation and results in a way that guarantees the rights of the investors (i.e. information on the distribution of dividends, issuance of new shares and their distribution, shareholders' meetings, amendment of the company's statutes, the progress of the company and any important events).

A listed company also has to inform the public each time there is an important event which pertains to the company's activity, is not accessible to the public and which may affect the company's financial situation or the course of its affairs, affecting therefore the fluctuation of the shares' price.

However, provided certain legal requirements are met, the Board of Directors may exempt a company from the obligation to provide the investors with general information on its activities, if such disclosure is likely to damage the company's legal rights.

Supervision

The issue of supervising the stock market is undeniably multidimensional, given the fact that the same needs both a free market in order to be developed and the state control, which has to be formed according to the current social, financial and political conditions.

Greece observes the general rules of IOSCO (International Organization of Securities Commissions), given the fact the Capital Commission is a member of the above organization.

On a national level, supervision is exercised by the following vehicles: the Ministry of Finance, which constituted the supreme supervising authority; the Capital Commission, which is a very important organ vested with various authorities, among which supervising the Stock Exchange and its members; the Board of Directors of the Stock Market, which plays an important deciding role, and finally, the Stock Exchange's members themselves, the comportment of which must abide by the Code of Ethics in force.

In any case, the effort for an increasing independence of the Capital Commission from the Ministry of Finance becomes more and more distinct, together with a rather clear tendency for “interioration” of supervision.

### Corporate Governance

The need for enacting principles that will be observed by companies limited by shares and shall apply together with the rest of the legislation led the Athens Stock Exchange to elaborate a relevant specific study in 1998, whilst the Capital Commission proceeded to the formulation of general principles of corporate governance.

In this context, Law Number 3016/2002 introduced to the Hellenic legislative actuality corporate governance. This institution's main objectives in Greece are determining duties, responsibilities and comportments within a company (especially regarding the company's Board of Directors), charging the company's administrative organs with particular responsibilities towards the

market and the investors and assuring transparency in the company's transactions and operation in general.

1. Corporate governance issues are regulated by Law Number 3016/2002, which, pursuant to its Article 1, governs limited liability companies that list or have already listed their shares or other securities with organized stock markets. The law sets as the primary and general obligation of the Board of Directors of a listed company to constantly pursue the long-lasting financial value of the latter and vindicate the company's general interest.

It is forbidden for any member of the Board of Directors or any third person entrusted with relevant duties to pursue own interests that contravene the company's interests. The above persons should disclose such potential or existing conflicts of interests to the other members of the Board of Directors. It should be mentioned that the above obligations also cover the applicant or listed company's associated companies, as those are defined in Article 42E of Law Number 2190/1920<sup>27</sup>.

The composition of the Board of Directors comprises executive and non-executive members. Executive members handle everyday administrative matters, while non-executive members promote all other corporate issues. Unless minority shareholders' representatives participate in the Board of Directors, it is essential that at least two of the non-executive members are independent.<sup>28</sup> Members are considered independent<sup>29</sup>, among other cases, when they do not have any professional or business relationship with the company or any associated company, which may affect the company's activity (especially in case this individual is a client or a supplier); when they are not the Chairman to the Board of Directors or managers of the company itself or of its affiliated companies; when they are connected to the company or to an affiliated by virtue of dependent employment or stipendiary mandate. It is important to notice that, during their term with the Board of Directors,

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<sup>27</sup> The above disposition covers affiliated companies, etc.

independent members are not allowed to own shares exceeding 0,5% of the company's total capital share.

2. Moreover, in order for a company to be listed with the Athens Stock Exchange a further requirement is set, according to which an Operation By-law has to be submitted. The Operation By-law is drawn by the Board of Directors and its minimum content consists, among other things, of the structure of the company's services, of their objects and of the relationship between these services and the administration; the definition of the duties of the Board of Directors (executive and non-executive members); the procedures for employing and evaluation of managers; monitoring procedures of the transactions performed by the members of the Board of Directors, the company's managers, as well as any other party, which may have had access to any internal information on securities, as a result of the person's relationship with the company; the procedures for heralding and announcing to the public major transactions etc.; the rules governing transactions between associated companies, the monitoring of said transactions and their timely disclosure to the company's organs and shareholders.

Furthermore, it is necessary that there is internal control, performed by a company's special service, not hierarchically involved with any other service of the company. The internal controllers must be independent, in the sense that under no circumstances may members of the Board of Directors, managers or relatives up to 2<sup>nd</sup> grade become controllers. The company must facilitate in any way the controllers' task, i.e. by informing them, granting them access to all and every document, bank account etc. Among the Control Service duties are included monitoring of the observation of the Operation By-law, reporting to the Board of Directors any conflicts of interests, reporting to the Board of Directors at least once every three months the outcome of the control etc.

“Fair play”

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<sup>28</sup> It is the Board of Directors that designates which members are executive and which not. Independent members are designated by the General Assembly.

It should be noticed that there is an obligation of professional secrecy borne by all individuals who exercise or have exercised activities within competence given by virtue of Presidential Decree Number 348/1985. This obligation covers all confidential information that have obtained as professionals, and which they are not allowed to disclose to no individual or authority, unless otherwise imposed by the Law<sup>30</sup>. On the other hand, transparency of the transactions is considered a safety valve and a protection measure for both investors and listed companies.

In the above framework, Greek legislation condemns several cases of behavior that injure the transactions, both the credit and performance of the market and the investors' interests<sup>31</sup>. In more details, direct fraud and fraud which has been committed through information systems constitute delinquencies or felonies, depending on their qualification by the Penal Code made according to given criteria. One of the infringements falling into the above category are dummy transactions, namely transactions performed between market factors (such as artificial increase of demand) with the scope of manipulating the market. "Insider trading", which also constitutes a delinquency under Greek Law, is the case when a person, whether or not a member of the Athens Stock Exchange, who having become aware of classified information about a company, uses such information to conclude transactions in order to obtain personal profit or seriously damage a third party.

### National Treatment and Reciprocity

Listing of foreign companies with the Athens Stock Exchange is possible, and in principle they fall under the same restrictions and have the same rights and obligations as Greek companies. Also, a very significant – if not the preponderant - role is reserved to the legislation of the state of "origin".

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<sup>29</sup> The above are concluded in contradistinction to Article 4 of Law Number 3016/2002.

<sup>30</sup> However, in terms of reciprocity, the obligation for professional secrecy does not prevent the Athens Stock Exchange to communicate information to the opposite numbers of Stock Exchanges of other members-states of the European Union (par.2 of Article 25 of Presidential Decree Number 348/1985).

<sup>31</sup> Such infringements induce penal and administrative sanctions.

Given the above<sup>32</sup>, the applicant company should mention in its application whether it has already filed an application with the Stock Exchange of another European Union state-member or intends to do so in the near future. In that case, the application for admission with the Athens Stock Exchange of the shares of a company as listed securities imposes on the legal entity the obligation to cooperate with the respective authorities of other state(s)-member(s) of the European Union, should at the same time a relevant application be submitted in (an) other state(s)-member(s)<sup>33</sup>. For instance, if the prospectus of a company having its seat in one of the European Union members-states has been already approved by the competent Authority abroad, then the Hellenic Capital Commission accepts the same<sup>34</sup>. In general, the authorities of both countries shall exchange any information necessary for the acceleration of the admission procedure. Nevertheless, still the Athens Stock Exchange is often cautious in disclosing information concerning the applicant company, since such information is protected by the principle of confidentiality.

### Jurisdictional Conflicts

Jurisdictional conflicts arisen between members-states of the European Union are handled pursuant to the dispositions of the Council Regulation Number 44/2001 where the territorial link<sup>35</sup> remains the most important element, while special jurisdictions are also stipulated: for instance in matters relating to a contract persons may be brought before the courts of the member state, which constitutes the place of performance for the obligation in question.

Other conflicts are resolved pursuant to the dispositions of the Brussels Convention of 1968, which deals with international jurisdiction issues, as well as with the execution of judgements in civil and commercial cases and was ratified in Greece by Law Number 1814/1988.

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<sup>32</sup> Also, see above the “Admission” part of this chapter.

<sup>33</sup> The relevant European Directives give the details.

<sup>34</sup> Presidential Decree 52/1992.

<sup>35</sup> Domicile for natural entities and seat for legal entities.



According to the Brussels Convention the most important territorial element for determining the competent court is the defendant's residence. Exceptionally, the defendant can be brought before the courts of the state where a civil obligation (by contract) was to be executed or (by incident) took place. Criminal law cases are brought before the courts of the state where criminal charges have been filed, given the fact that the punishable act entails a claim for compensation. Of course, pursuant to the Brussels Convention the parties involved are free to choose jurisdiction by contract.

However, in case a conflict arises with a party that has not ratified the Brussels Convention, then the principles of Greek Civil Law and Greek Private International Law are applicable and actually prevail. A transaction performed in Greece is governed by Greek Law; should international elements interfere, the determination of the most important territorial link (for instance the issuer's nationality) leads to the applicable law.