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LEGAL BRIEFING – Corporate

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A breath of fresh air in Greek corporate governance

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*Greek Law 4706/2020 (the "**Law**") will take effect in July 2021. The Law brings about broad reforms in the landscape of corporate governance, aiming to upgrade compliance standards, enhance transparency and restore investor trust. Following is an overview of selective key aspects of the Law, together with our preliminary assessment of the proposed new approach.*

Background

Greece's first corporate governance law was introduced in 2002. In the eighteen years that followed, local capital markets experienced a long period of relaxed mandatory standards on corporate governance, coupled with inadequate supervision and enforcement. In that environment, results with securities issuers have varied significantly.

At the one end of the spectrum, extrovert firms with regular activity in the international capital markets led the way in voluntarily committing to higher standards and enhanced transparency, reaping the rewards of access to diversified sources of capital at reduced cost. On the other end of the spectrum, there have been instances of breaches, alleged malfeasance or even outright scandals; although only relevant to a handful of entities, such incidents had a more general impact on how investors perceive Greece as an investment destination. Against that backdrop, 2018 signalled a first step in the right direction. As part of a comprehensive and more business-friendly reform, the reformed corporations' law introduced more workable and efficient rules that touch on corporate governance, including provisions on financial statements

and disclosure, related-party transactions, director remuneration, and conflicts.

The new Law

The 2020 Law builds on that backbone to bring about a more ambitious reform, seeking to address issues that are at the core of corporate governance. Its 24 articles regulate a major overhaul of the admittedly inefficient and now repealed Law 3016/2002, drawing on EU legislation, international best practices, lessons learnt and established precedent in the regulation of financial institutions. The Law applies to listed sociétés anonymes with certain exceptions (e.g., the Bank of Greece) and subject to any special corporate governance rules (e.g., those applicable to credit institutions or insurance companies).

Its overall compliance approach is comprehensive and considerably more prescriptive than the predecessor regime, yet underpinned by the principles of proportionality and reasonableness. The outcome clearly prioritizes substance over form. Three implementing decisions have been issued, signalling the commitment of the Hellenic Capital Markets Commission (*HCMC*) to back the timely implementation of reforms. In parallel, the HCMC's leadership has been active in advocating the benefits of the new regime and raising awareness of issuers and investors in this area.

Reforms: directors and the board

The Law introduces a number of vital reforms in respect of directors, as well as the structure and operation of the board, including the following:

- The requirement for issuers to adopt and implement a suitability policy, outlining the requirements for individual and collective suitability of directors, with the aim of bringing together the skills, knowledge and expertise required to guide the corporation. The requirements for integrity, sound reputation and independent judgment are emphasized.

- As part of the suitability requirements, boards will be required to justify to the general meeting of shareholders the selection of candidates. A nominations committee will assist in identifying suitable candidates.

- Corporations are encouraged to promote diversity and inclusion at the level of their boards. Part of this initiative is reflected in the requirement for a minimum 25% quota for representatives of each gender.

- The Law introduces specific duties for non-executive directors (NEDs), seeking to catalyze the formation of more active boards and promote constructive debate.

- More realistic and substance-driven criteria are introduced to assess independence of independent NEDs. Independence must be reviewed at least annually.

- Independent NEDs (including the Chair or Vice-chair) must regularly attend board meetings or face the risk of deemed resignation. Special quorum requirements

(conditioned on the attendance of independent NEDs) apply for the passing of resolutions regarding financial statements or to adopt recommendations to the shareholders' meeting on matters requiring increased quorum/majority.

Reforms: policies and procedures

The Law envisages a comprehensive set of policies and procedures that include the following components:

- Issuers must adopt and implement a Corporate Governance Policy (GGP). The GGP is an overarching set of principles defined by the board as key drivers of the governance approach and tailored to the corporation's scale, size, the nature of its operations and the risks it faces. The GGP must, at a minimum, address internal audit (including RM and regulatory compliance), conflicts, communications with shareholders and the remuneration policy.

- Issuers must put in place an Internal Audit System, understood as "*A comprehensive set of internal audit mechanisms and procedures, including risk management, internal audit and regulatory compliance that covers on a continuous basis every activity of the Company and is conducive to its safe and efficient operation*". The Operating Regulation (please see below) must contain procedures for the periodic evaluation of the Internal Audit System by independent experts (particularly as to financial reporting, risk management and regulatory compliance, as well as compliance with the new law).

- The Law maintains the pre-existing requirement for an Operating Regulation, but requires a series of enhancements, including: (a) the requirement for the regulation to be verified by the statutory auditor; (b) major scope *additions*, such as the inclusion of the key features of internal audit system and a compendium of various corporate policies (such as disclosure of dependence, conflicts, compliance, related-party transactions, MAR compliance, director training, sustainable development, etc.); (c) the extension of the requirement to significant subsidiaries; and (d) perhaps most importantly, the requirement for periodic independent evaluation of the Internal Audit System.

- Last, but not least, issuers must adopt and abide by a recognized corporate governance code.

Reforms: organizational components

In terms of organizational components, the Law elaborates further on the Internal Audit Unit (an upgrade of the former Internal Audit Service), a separate function headed by a full-time employee benefiting from enhanced independence, which, inter alia, controls and evaluates the implementation of the Operating Regulation, the Internal Audit System and the Corporate Governance Code and submits reports to the supervised units and the Audit Committee. The Law also envisages a Shareholder Support Department and the Corporate Announcements Department, serving the effective information and exercise of shareholders' rights and corporate transparency, respectively.

Reforms: sanctions

The HCMC is entrusted with monitoring compliance with the Law and imposing sanctions for its violations either on the corporate issuers themselves or BoD members and other persons for whom the Law provides – in both cases, either reprimands or fines up of to €3 million (in no case exceeding 5% of the annual turnover for corporations). The HCMC has issued a decision detailing the criteria and factors to be taken into consideration for the purpose of establishing the nature and form of sanctions.

Our thoughts

The Law introduces ambitious and rigorous reforms as part of a coherent strategy, seeking to elevate minimum standards to acceptably high levels. It is envisaged and hoped that securities issuers will embrace the reforms and contribute towards a new environment where observance of corporate governance standards, transparency and regulatory compliance are the rule rather than the exception.

The fact that the Law introduces a set of credible, yet proportional, sanctions is most likely going to facilitate taking the first steps in that direction. The quality of ongoing monitoring and enforcement by the HCMC will play a significant role in maintaining a healthy long-term framework to help re-establish Greece as an attractive destination for capital markets investors. In particular, it is expected that institutional investors will take into account the positive changes in the legal landscape and consider more favourably their exposure on Greek assets.

However, the long-term success of the reform cannot rely on sanctions alone. Corporations will need to realize the tangible benefits of compliance and transparency, including access to diversified capital sources and lower cost of capital. The ideal outcome would be for the community of Greek securities issuers to eventually forge a culture of compliance with robust corporate governance standards. Culture universally embraced by the market is more powerful and can deliver more long-lasting results than regulation imposed.