

COMMITTEE ON CORPORATE GOVERNANCE IN GREECE
under the coordination of the
Capital Market Commission

**PRINCIPLES ON CORPORATE
GOVERNANCE IN GREECE:
Recommendations for its Competitive
Transformation**

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PREFACE

The achievement of high growth rates and competitive corporate performance in Greece requires continuous investment activity and the provision of cost-efficient finance. These requirements in the modern competitive world cannot be met by resorting to the traditional sources of finance. Modern Greek corporations seek healthy equity capital by resorting directly to the capital market through the public offering of new securities.

The expansion of public offering of new equity has resulted in the transformation of corporate ownership structure. Thus, the main corporate ownership feature of modern private and state-owned listed corporations in Greece is their joint-stock ownership. Joint-stock ownership leads to the separation of corporate ownership from control and the subsequent appearance of a class of professional managers in the corporation.

The separation of ownership from control, however, is associated with the incident that professional managers may govern the corporation to their own interest rather than the interest of the corporation and its shareholders-owners. The effective containment of such practices is, moreover, associated with the incidence of considerable cost. In this respect, the solution to this corporate governance problem essentially amounts to the effective subjection of management and other special interests to the general interest of the corporation.

Thus, the solution involves the effective clarification of rights and responsibilities of all different agents involved in the governance of the corporation as well as their consequences for the latter's performance and prospects. It requires the design and implementation of appropriate monitoring mechanisms for the control of the corporation's activity, aiming at the efficient allocation of its resources. It comprises the examination of the whole range of prevailing practices in order to ensure the protection of the interests of the shareholders as well as of all those holding a legal stake in the corporation.

Today, corporate governance issues and their impact on national competitiveness are a central subject matter in the advanced and emerging economies. As a result, the corporate restructuring programs adopted by these economies focus on the expanded privatisation and securitization policies of state-owned enterprises, the improvement of transparency levels in the operation and behaviour of listed corporations, the establishment of efficient management and the resolution of conflicts of interest among the different agents in the corporation. In general, efficient corporate governance has become world-wide a basic reference point in all debates among financial regulation authorities, productive agents and organisations.

The process of competitive transformation in corporate governance practices is already under way in the Greek economy. The *Capital Market Commission* has expressed its interest in the establishment of efficient corporate governance practices in Greece. This led to the undertaking of the initiative of setting up the *Committee on Corporate Governance in Greece*. The *Committee* proceeded with the recommendation, in collaboration with all relevant agents in the Greek economy, of a set of concrete principles and best practice rules that form an efficient corporate governance framework. These recommendations are incorporated in a White Paper, titled *Principles of Corporate Governance in Greece: Recommendations for its Competitive Transformation*, which, it is hoped that for their own interest, will be adopted by the Greek listed corporations.

The work of the *Committee on Corporate Governance in Greece* has provided a bridge between current international corporate governance practices and domestic realities. Its mandate is to help establish a competitive framework of corporate behaviour, which would contribute to the effective restructuring of the country's productive and financial system.

The Capital Market Commission

INTRODUCTION

The success of the Greek economy depends on good performance and efficient growth of the Greek companies. Entrepreneurial success requires sufficient and proper investment activity, which is largely made possible by the expansion of opportunities for raising equity capital through the capital market. It also requires improvement in the terms and conditions of corporate governance.

Several factors affect the process of corporate expansion. These are the increasing globalisation of capital and money markets, the introduction of the common currency – the Euro - in the European Union, the effective progress in real convergence among the Union's member states, the rapid and full incorporation of the Greek economy in the international system of settlement and payments and the rapid developments in transactions and trading technologies. These factors affect the general level of domestic output and the extent of commercial and financial trading, the terms and conditions of financial transactions and subsequently the size and efficiency of the Greek capital market. In many areas, the changes involve considerable restructuring and activity transfer among different companies and sectors.

The achievement and preservation of satisfactory corporate and national economy efficiency levels in Greece requires the reduction in the cost of equity capital. Sufficient and efficient-cost corporate finance is mainly the result of a favorable business environment, which depends, among other things, on the steady and continued improvement in competitive flexibility of corporate development strategies and the level of transparency of their operations. It is also the result of the acceleration of timely and consistent disclosure and dissemination of all necessary information to the shareholders, their consultants as well as the domestic and foreign institutional investors.

If Greece wishes to remain the center of decision-making in the Balkan region with the ultimate mandate of sustaining its long-term economic growth process, it should proceed with the undertaking of strong initiatives for the competitive restructuring of the regulatory framework conditioning the operation of financial markets. However, in the modern increasingly globalized economy, the Greek regulatory framework should not be viewed in isolation. It constitutes a part of the more general national infrastructure for development. The importance and role of this framework are clearly reflected on the increasing mobility of financial activity on a global scale.

There are many factors contributing to the inception and making of business decisions of globalized corporations as regards the choice of their location and development strategy. Among them, the general level of consistency, stability and predictability of the entire business environment is the key-factor. The government, the productive agents and all others involved in business activity should ensure that the national financial markets regulatory framework is not a countermotive, owing to its obsolescence, in the establishment and further development of business.

The adoption of a transparent and internationally recognized business regulation framework also contributes to the effective containment of problems that may arise from the involvement in extensive international transactions and the development of international business collaborations. These two phenomena are increasingly met in everyday domestic business activity. The failure to develop and adopt an appropriate regulatory framework governing corporate behavior will mean that sooner or later domestic business activity will move to places and countries that offer more flexible, properly supervised and business-oriented environments. The failure will also impair the economy's ability to attract additional foreign investment. It will, moreover, mean the contraction of investors' general level of confidence on the ability of domestic productive capacity to adjust adequately and efficiently

to modern competitive requirements. Such developments will tend to raise the cost of capital required to finance investment, owing to the different compliance requirements, the possible contraction of activity, the subsequent retardation of technological modernisation of domestic consulting agencies and the difficulties involved in the process of market supervision. Thus, an effective and competitive business behavior and operation framework conducive to cost-efficient finance is a central part of national competitiveness and success.

The achievement of competitiveness makes necessary that corporations, specially those whose shares are listed in the Athens Stock Exchange, move toward with an increase in the flexibility of strategic actions, the rational expansion of capital base and, more importantly, the efficient restructuring of the entire range of relations among the shareholders, managers and other stakeholders, at a higher pace and more closely to the internationally prevailing corporate governance rules and procedures.

There are different frameworks of corporate governance in the different countries. However, the consideration of the character and efficiency of each framework has a common basis. This basis emphasizes, on the one hand, the examination of the relations between the different agents of the corporation's governance and, on the other hand, the impact of these relations on the corporation's performance and long-term prospects. The consideration focuses on the design and effective implementation of appropriate mechanisms for the management, monitoring and control of the dispersed business activity with the mandate of securing the efficient use of the corporation's resources. It comprises the entire range of practices adopted by the corporation in order to ensure its efficient operation and the protection of its shareholders-owners and all other stakeholders in an increasingly globalized and competitive environment. These practices should fall within a wide net of principles and best practice rules that ensure the functionality and stability of the entire governance framework.

The issues pertaining to the efficiency of the corporate governance frameworks originate essentially in the distinction between ownership and control of the corporation. The rights and responsibilities of all agents are examined with the view of securing the best possible outcome in the performance of the corporation and the subsequent rise in its market value. Efficient governance should also take into account the rights and responsibilities of other stakeholders in the corporation. Finally, efficient governance means that, in view of the accomplishment of good long-term corporate performance and sustainability, executive management should be endowed with considerable flexibility and freedom of movement which would make possible the proper and timely acquisition and implementation of organizational and technological knowledge. Efficient knowledge is an essential prerequisite for the effective confrontation of modern competitive challenges. In such a flexible framework, the required long-term commitment and efficiency of management will be secured by the proper development, consistent monitoring and effective supervision of the capital market.

There are considerable and important particularities in the structure and operation of Greek companies, given the development trajectory of the country's productive and financial structure. With respect to the corporate ownership structure, existing studies show high concentration levels in production and decision-making processes and low dispersion in the market for corporate control.

The picture, however, recently tends to be reversed. The increasing maturity of capital market conditions and the gradual globalization of financial transactions have laid the foundation for the structural transformation of the Greek economy. The changes are already under way. They will be successful if they are fully supported and systematically absorbed by the general business establishment. The particularities in the Greek corporate structure should be respected, but should not stand as an impediment to the structure's competitive transformation. It is widely acknowledged that the pace and direction of the required changes

are in modern times determined more by the intensity and character of international competition and less by the internal dynamic and economic policy within the country.

For those reasons, the *Committee on Corporate Governance in Greece*, which was set up by a *Capital Market Commission* initiative, considers the establishment of a modern corporate governance framework as an essential prerequisite for the competitive transformation of the Greek capital market and economy. The *Committee on Corporate Governance in Greece* has the view that the rights and responsibilities of all agents participating in the governance of the Greek listed corporations as well as the terms and conditions for their operation should be made clear and transparent.

The *Committee on Corporate Governance in Greece* considers the efficient transformation of the national corporate governance framework as a *sine qua non* condition for national competitiveness. The *Committee's* work has led to the formation, on a consenting basis involving all relevant agents in the economy, of a set of principles and best practice rules for corporate governance in Greece. The consenting formulation of these principles and best practice rules take the form of a *White Paper*, which may provide the basis in due time for the undertaking of an initiative by the government for the transformation of the entire corporate legal framework conditioning the operation and behaviour of listed and non-listed corporations.

This initiative expresses the wish by the *Committee on Corporate Governance in Greece* to contribute to the acceleration of the competitive transformation of the framework of corporate governance in Greece, according to the prevailing practices of the member-states of the European Union as well as the recommendations of the OECD, contained in the *OECD Principles on Corporate Governance*.

In Greece there are tens of thousand of legally operating enterprises. Their range varies from the very small ones in their initial development stage (start-ups) to the very large ones with a long history and a variety of activities domestically and abroad. Among them, approximately 280 companies are listed in the Athens Stock Exchange, including the most important ones. The number of companies aiming at raising capital in the near future through the capital market is growing very fast.

Both the setup and operation of listed and non-listed companies take place within the same legal framework. The basic legislation is contained in the Law 1920/20 and its successive modifications. Even though there is differentiation in treatment according to the size and kind of companies, the same basic rules essentially apply to all companies.

The *Committee on Corporate Governance in Greece* is of the view that the Law 2190/20 has constituted an essential contribution to the development of the legal framework for the corporate operation and behaviour the last 80 years. However, the Law, including its successive modifications, is rather inadequate – and justifiably so – in providing the basis for the effective settlement of current corporate issues as they arise in the modern corporate world. Indeed, the Law does not include basic concepts, terms and conditions required for the development of a modern and efficient corporate governance framework. The subsequent issuance of Presidential Decrees 350/1985 and 512/1992 and a series of Ministerial Decisions have contributed significantly in the meeting of considerable regulation needs, without however providing a full solution to the problem.

More specifically, existing legislation does not adequately deal with the issue of transparency, disclosure of information and its dissemination to the shareholders of listed companies, as regards the effects of economic and non-economic events expected to affect the performance and prospects of the company and the publication of financial statements. Existing legislation does not provide sufficient recognition and protection of minority shareholder rights in joint-stock companies, nor does it provide a modern and clear basis for the identification of terms and conditions that need to be met for the incidence of complex,

large-scale capital transactions, such as mergers and acquisitions among companies. In addition, existing legislation does not secure sufficient levels of transparency in the corporations' internal governance processes, the market for corporate control, the structure and compensation of the different agents governing the corporation. Finally, existing legislation does not provide a good enough basis for the solution of problems that are due to the increased complexity of the modern decision-making processes as well as for the resolution of conflicts among the different parties with legal stakes in the corporation.

The prevailing framework of corporate governance in Greece is not simply considerably outdated, but may cause potential problems regarding the provision of cost-efficient equity finance that is required to raise national competitiveness. The *Committee on Corporate Governance in Greece* wishes to emphasize that the formulation of the set of principles and best practice rules for efficient corporate governance does not constitute an academic exercise aiming at the organization and resettlement of a wide range of already existing regulations. Neither do they reflect a wish for the introduction of changes for their own shake. Both the motive and the success for the recommendations included in the White Paper are reflected in the firm establishment of a regulatory framework that will provide the basis for a more efficient operation, accountable behavior and cost-efficient finance of listed corporations. It is expected that such a framework will contribute decisively in the improvement of international competitiveness of Greek firms and the further development of the national economy and welfare.

The members of the *Committee on Corporate Governance in Greece* are aware of the different character and profile of the Greek listed corporations. However, they opt for a single set of recommendations for all companies belonging to the same class. Different recommendations would lead to a multitude of principles and rules that would result in a contraction of the required flexibility and might moreover end up causing potential problems in the public profile of certain companies or sectors. Of course, changes in the rights and responsibilities of corporations, involving additions and subtractions according to their kind and size, have already taken place within the existing regulatory framework. It is therefore expected that a modern corporate governance framework should take into account these particularities. This amounts to allowing certain special classes of companies to be subjected to special regulations as regards the disclosure and dissemination of information, financial statements and auditing procedures. This is indeed very important with respect to the small- and medium-size firms aiming at raising equity capital through the listing of their shares in the recently formed New Financial Market, established by the recent Law 2733/99. In general, the *Committee* has the view that the question of relevance and appropriate adjustment of the suggested recommendations will always remain open.

Given the level of capital market development in Greece and the character of the Greek listed companies, the *Committee on Corporate Governance in Greece* considers essential to have a consenting basis for the recommendations contained in the White Paper. This is important given that these recommendations may eventually lead to special statutory regulations. However, the members of the *Committee* recognise that any direct introduction of statutory regulations involves many times the risk of enforcing compliance to the letter rather than the spirit of efficient governance. Thus, the *Committee* suggests that the responsibility for the introduction of such regulations should fall within the domain of the existing regulation authorities, according to the maturity of circumstances and following the necessary public debate. The members of the *Committee* prefer in the first place the consenting formulation of these principles and best practice rules. However, their effective enforcement will largely depend on the decree of their adoption by the productive agents in the economy.

Given the considerable differentiation of the companies listed in the Athens Stock Exchange, the recommendations should be flexibly implemented and allow for both future improvements and the realisation of differential pace during their adaptation process.

The members of the *Committee on Corporate Governance in Greece* have the view that without a strong motive for changing behaviour, listed corporations will comply in a very slow pace. Thus, it is suggested that an informal establishment be made of the possibility to comply or selectively 'explain' non-compliance. The adoption of this approach means that the recommendations contained in the White Paper are associated with the possibility of listed corporations to justify possible behaviour divergence from that implied by the recommendations. It is moreover suggested that adequate transparency levels, disclosure and dissemination of information be properly introduced as a formal requirement in the register of listing requirements in the Athens Stock exchange.

The recommendations are made on the basis of internationally accepted terms and conditions that reflect the experience of other countries and having into consideration problems that arose during the implementation of other regulations by financial authorities.

The members of the *Committee* have based their recommendations on the satisfaction of three basic principles: (a) transparency, (b) consistency and (c) accountability. Transparency constitutes the basis for the establishment of trust among the shareholders, managers and all those who have a legal stake in the corporation, in a manner that meets the intensified competitive challenges. Improved transparency increases competitiveness and overall corporate performance, because it establishes high levels of investor confidence and allows the Board of Directors and executive management to react, when the market demands, promptly and efficiently. Consistency requires that the financial statements, reports and all other relevant information disclosed by the corporation present, in a comprehensive manner, the true and complete profile of the corporation.

The *Committee on Corporate Governance in Greece* recognizes the central role for efficient governance of the corporation's Board of Directors. The Board has the responsibility to deal with the corporation's affairs exclusively in the interests of the corporation and its shareholders within the existing regulatory framework. The Board has the main responsibility for ensuring the establishment of efficient governance rules and must be accountable to the General Shareholders Meetings for its activities and performance. The Board has the main responsibility for setting the corporation's long-term goals and making all strategic decisions, making available all required resources for the achievement of strategic goals as well as the appointment and supervision of management. At the same time, the General Shareholder Meeting has the responsibility of appointing the Directors in the Board, the external and internal auditors and approve the corporation's general strategy.

The *Committee* thinks that a competitive corporate governance framework must guarantee a reasonable balance among the rights and responsibilities both within the Board of Directors and among all agents in the corporation's governance. The corporate governance framework should moreover ensure the conditions for best corporate performance and long-term sustainability. All functions of the Board of Directors and the General Shareholder Meetings should aim at the enhancement of the entire performance of the corporation within an adequately supervised and informed environment. It is important to establish the specification and distribution of tasks between executive and non-executive Board members and management, empower the authority of the General Shareholder Meeting and establish the rights of the minority shareholders.

The members of the *Committee on Corporate Governance in Greece* consider that the suggested recommendations be re-examined every three to four years, so that it becomes possible to incorporate the implications of the developments in the domestic and international corporate practices. The composition of the *Committee* is presented in the Appendix.

RECOMMENDATIONS

1. THE RIGHTS AND OBLIGATIONS OF SHAREHOLDERS

The corporate governance framework should protect shareholder rights

- 1.1 Basic shareholder rights include the right to:
 - 1.1.1 Secure methods of ownership registration.
 - 1.1.2 issue, transfer and acquire shares
 - 1.1.3 obtain sufficient and relevant information on the corporation on a timely and regular basis
 - 1.1.4 participate and vote in general shareholder meetings
 - 1.1.5 share in the corporations' residual profits
 - 1.1.6 protect sufficiently the rights of minority shareholders in a manner that establishes their representation and their ability to exercise control of managers
 - 1.1.7 cast a vote for each share, regardless of class

- 1.2 Shareholders should have the right to participate equitably and efficiently in the general shareholder meetings and be sufficiently, timely and properly informed on the decisions that need to be made regarding fundamental changes in the corporation. These changes include, without being confined to, the following:¹
 - 1.2.1 the approval of modifications of the corporations' article of association or other constitutional documents related to the corporation's governance
 - 1.2.2 the approval of increases in the corporation's share capital and the determination of percentage increase
 - 1.2.3 the approval of unusual and complex capital transactions, such as mergers, acquisitions and sales of the corporation's assets
 - 1.2.4 the solution of problems related to the designing, reporting and maintaining transparency in the financial statements and profit sharing policies, following the recommendations of the Board of Directors
 - 1.2.5 the approval of the appointment and/or dismissal of the members of the Board of Directors, their duties and compensation
 - 1.2.6 the approval of the appointment and/or dismissal of the chief executive officer (CEO), his/her duties and compensation, following the recommendations of the Board of Directors
 - 1.2.7 the approval of the appointment and/or dismissal of the external and internal auditors, their duties and compensation, following the recommendations of the Board of Directors
 - 1.2.8 the adoption of voting procedures compatible with the market's prevailing exchange ethics as regards voting influence and the concentration of corporate ownership

¹ . The duties and procedures for calling a regular general shareholder meeting as well as the matters related to ownership registration, transfer of shares and distribution of dividends are described by the Law 2190/1920. The specific clauses of the law that regulate the promotion and protection of shareholder rights are defined by the Presidential Decrees 350/1985 and 53/1992.

- 1.3 The shareholders of the corporation should have the opportunity to actively participate and vote in the general shareholder meetings and be fully and timely informed about the rules and procedures of voting:
 - 1.3.1 Shareholders should have sufficient and timely information regarding the date, the place and the agenda of the general shareholder meeting as well as the issues on which the general shareholder meeting will have to make decisions.
 - 1.3.2 Shareholders, provided that they represent a sufficient amount of shares, should have the opportunity to ask questions to the members of the Board of Directors and recommend actions to them.
 - 1.3.3 Shareholders should be able to vote in person or through a representative, and equal effect should be given to votes whether cast in person or through a representative
- 1.4 The corporate governance framework should ensure the shareholders that the operation of the corporation is characterized by fairness and transparency:
 - 1.4.1 The rules and procedures governing the selection of the members of the Board of Directors, the acquisition of control of a listed corporation and the execution of unusual and complex transactions (mergers, acquisitions and sales of a considerable portion of the corporation's assets) should be fully analysed and disclosed so that investors know their rights and the procedure. The price of these transactions should be transparent and be settled in terms and conditions that protect the rights of the shareholders.
 - 1.4.2 Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.
 - 1.4.3 Devices that limit or prevent merger and acquisition activity should be adopted only when they are considered to be in the interest of the corporation and its shareholders.
- 1.5 Shareholders, and particularly institutional investors and pension funds should be encouraged to use their voting rights in a manner that promotes the efficiency of the corporation and the market. The encouragement to make use of voting rights should take into account the increasing internationalization of the corporation's shareholder base and not be confined within the national limits. The use of voting rights by institutional investors should not be opposed to the interests of small private investors.
- 1.6 Multiple voting procedures and the issuance of non-voting privileged shares should be discouraged.
- 1.7 The solution of problems and the settlement of differences among the corporation's agents is encouraged to be done in a consenting manner taking into account the long-term interests of the corporation.

2. THE EQUITABLE TREATMENT OF SHAREHOLDERS

The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain an effective redress for violation of their rights.

- 2.1 All shareholders of the same class should be treated equally:
 - 2.1.1 Within any class, all shareholders should have the same voting rights. All investors should be able to obtain information on the voting rights affiliated with all classes of shares before their purchase of shares. Any changes in voting rights between or within classes should be subject to shareholder vote.
 - 2.1.2 Votes through a representative should be cast after consultation with the legal owner of the shares.
 - 2.1.3 Procedures for general shareholder meetings should ensure the equitable treatment of all shareholders. The procedures of the corporation should make it simple and inexpensive to cast votes.
- 2.2 Actions and transactions based on insider information or undertaken for private benefit should be prohibited.
- 2.3 Members of the Board of Directors and executive managers should be required to disclose information on any private material interest involved in transactions or other matters affecting the corporation.

3. THE ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE

The corporate governance framework should recognise the rights of stakeholders in the corporation, as established by law, and encourage active participation between corporations and stakeholders in creating wealth, jobs and the sustainability of financially sound enterprises.

- 3.1 The corporate governance framework should ensure that the rights of stakeholders that are protected by law are respected.
- 3.2 Where law protects stakeholder interests, stakeholders should have the opportunity to seek effective redress for violation of their rights.
- 3.3 The corporate governance framework should encourage the role of stakeholders in the corporation in a manner that enhances the performance of the corporation and the market. There should be provision for the disclosure of information, which is relevant to the interests of stakeholders.
- 3.4 Where stakeholders participate in the corporate governance processes, they should have access to relevant information.

4. TRANSPARENCY, DISCLOSURE OF INFORMATION AND AUDITING

The corporate governance framework should ensure the full, timely and detailed disclosure of information on all material matters, including its financial situation, performance, ownership structure and governance of the corporation.

- 4.1 The establishment of transparency involves the disclosure of information on:
 - 4.1.1 The financial and operating results of the corporation²
 - 4.1.2 The corporation's ownership structure
 - 4.1.3 Members of the Board of Directors and management
 - 4.1.4 Quantitative and qualitative matters concerning employees and other stakeholders in the corporation
 - 4.1.5 Governance structures and policies
 - 4.1.6 Corporate targets and prospects
 - 4.1.7 The execution of unusual and complex transactions, transactions on derivative products and their level of risk.
- 4.2 Information should be prepared, audited and disclosed according to the prevailing rules of the European Union and should be in the spirit of the rules of the Organisation for Economic Co-ordination and Development.
- 4.3 Channels for dissemination of information should provide fair, timely and cost-efficient access to relevant information.
- 4.4 The Board of Directors should present to the general shareholder meeting a clear and credible evaluation of the existing situation and the prospects of the corporation. The annual report and the quarterly financial statements should contain consistent reporting of the entire financial situation of the corporation, supplemented by the provision of sufficient information on the corporation's performance and prospects. According to the corporation's nature, the annual report and the quarterly financial statements should contain all necessary information, in comprehensive form, required by investors and their consultants for the formation of a clear profile of the corporation's financial situation and prospects.
- 4.5 The Board of Directors should ensure the general shareholder meetings that the external auditors have no relationship with the corporation, directly or indirectly, which could affect their judgement and evaluation.
- 4.6 The Board of Directors should ensure the general shareholder meetings that the internal (independent) auditors are given the required financial and operating

² . Presidential Decree 350/1985 defines the manner in which (a) information capable of affecting the corporation's growth is disclosed, (b) notification of the public regarding participation and ownership changes is provided and (c) listed corporations are obliged to publish annual financial statements (certified by a registered accountant) and managerial reports. In addition, the Law 2533/1997 obligates listed corporations to publish both six-month and quarterly financial statements. However, large shareholders – which in their majority serve as managers too – have still considerable autonomy and wide enough limits to overcome their obligation for information disclosure or to provide misinformation. Finally, in many occasions, financial statements are not constructed nor reported with the required transparency level and completeness.

autonomy to accomplish their task completely. Internal auditors should be subject to oversight in a satisfactory manner.³

- 4.7 The establishment of an Internal Audit Committee should be encouraged, which will consist of non-executive members of the Board of Directors whose power and duties are clearly described during the approval of their appointment by the general shareholder meeting. The Internal Audit Committee:
 - 4.7.1 Should be established as a sub-committee of the Board of Directors to which it is accountable and should inform regularly. The operation of the sub-committee should be characterised by clearly defined reference terms, which describe adequately participation, authority and duties. The meetings of the sub-committee should take place regularly, two or three times per year.
 - 4.7.2 Should include in its composition at least three non-executive members of the Board of Directors.
 - 4.7.3 Should communicate with the internal (independent) and external auditors of the corporation with the purpose of achieving a settlement of all unresolved issues in the corporation.
 - 4.7.4 Should have the authority to enquire into all matters that fall into its domain, have the required financial resources as well as have access to all necessary information required to accomplish its tasks. The Internal Audit Committee should be able to obtain external advice and, if necessary, to invite external specialists to attend the works of the committee.
 - 4.7.5 Should disclose its composition in the corporation's annual report.
- 4.8 The Board of Directors should make available the resources required to assist the exercise of proper and efficient internal auditing.
- 4.9 The members of the Board of Directors should disclose to the Internal Audit Committee all necessary information regarding the prospects of the corporation.

³. Even if Law 2190/1920 establishes the oversight of the auditors by the Board of Directors and their presence in the general shareholder meetings, the enormous growth and diversification of corporate activity makes necessary the further expansion of these regulations by establishing systematic internal and external auditing as well as wider and more efficient monitoring through the establishment of a special auditing sub-committee in the Board.

5. THE BOARD OF DIRECTORS

The corporate governance framework should ensure the strategic leadership of the corporation, the efficient monitoring of management by the Board of Directors and the accountability of the Board to the corporation and its shareholders.

- 5.1 The Board of Directors is the authority that governs the corporation. Its duties involve decision-making and the responsibility for exercising full and efficient monitoring of all activities of the corporation.⁴ Thus, the Board should meet at least once a month (according to the size of the corporation and the sector it belongs to) and monitor continuously the corporation's executive management. The members of the Board of Directors should have all relevant information, act in good faith and with all required diligence and care in the interest of the corporation and its shareholders.
- 5.2 In the case where the decisions of the Board of Directors may affect the different classes of shares in a different manner, the Board of Directors should treat all shareholders without discrimination.
- 5.3 The Board of Directors has the responsibility, more specifically, for the following:
 - 5.3.1 The design of the general strategy and planning of the corporation, the formation of the corporation's annual budget and business plan, the determination of the corporation's performance targets and the monitoring of the efficacy of governance practices followed during the operation of the corporation and in large capital transactions.
 - 5.3.2 The adoption and implementation of the corporation's general policy based on the suggestions and recommendations by executive management.
 - 5.3.3 The selection, appointment and monitoring of executive management and the determination of their compensation by taking account of the corporation's interests as well as the executive management's dismissal and replacement.
 - 5.3.4 The consistency of disclosed accounting and financial statements, including the report of the (independent) certified accountants, the existence of risk evaluation procedures, supervision, and the degree of compliance of the corporation's activities to existing legislation.
 - 5.3.5 The monitoring and resolution of conflicts among executive management, the members of the Board of Directors and the shareholders, including the cases of mismanagement of the corporation's assets and of privately beneficial transactions.
 - 5.3.6 The reporting of the corporation's activities to its shareholders.
- 5.4 The monitoring of the efficacy of governance practices, which characterise the operation of the Board of Directors and the decision-making procedures.

⁴ The special functions of the members of the Board of Directors and their responsibility are described in the Law 2190/1920. However, the clauses of the Law do not guarantee sufficient independence among the members of the Board as regards their provision of information and differentiation in important matters which conflict with the large shareholders interests. Of course, more recent legislation reduces the problem, with respect to the large capitalization corporations, specially through the spreading out of share distribution (see the changes in Presidential Decree 350/1985 and the article 55 of the Law 2396/1996, brought about by the Law 2733/1999).

- 5.5 The separation of duties and responsibilities in the highest levels of the corporation's governance should be encouraged with the purpose of achieving a balance between authority, functions and their control.⁵ The effectiveness of the chairman of the Board of Directors in monitoring the operation of the Board is obviously weakened when that person exercises simultaneously the duties of the Chief Executive Officer (CEO) of the corporation.
- 5.6 It is considered a good practice to have the majority of the members of the Board of Directors consisting of non-executive members so that independent judgement is ensured.
- 5.7 The Board of Directors should operate on the basis of collective responsibility, and no class of members should be any different with respect to authority or responsibility.⁶
- 5.8 The Board of Directors should establish rules governing the procedures for special transactions, such as mergers, acquisitions and other import capital transactions in the corporation.
- 5.9 Procedures should be established that allow the Board of Directors to obtain advice by external advisors, which would assist the exercise of their duties. The corporation should meet the cost of external advice.
- 5.10 Internal audit procedures should be established ensuring that all members of the Board have timely, full and equitable access to all information required for the exercise of their duties.⁷
- 5.11 For reasons of flexibility in the decision-making process, it is recommended that the maximum number of Board members be no higher than thirteen.⁸
- 5.12 All members of the Board of Directors should exercise their duties in an independent manner, taking into account exclusively the interest of the corporation and its shareholders.
- 5.13 The structure and operational procedures of the Board of Directors should ensure the establishment of best performance conditions for the corporation. The corporate governance framework should discourage the use of devices that prevent merger and

⁵. The duties and functions of the chief executive officer (CEO) and his/her responsibilities are described in the Law 2190/1920.

⁶. Certain members – executive or non-executive – may undertake special duties regarding certain corporate tasks for which they are accountable to the Board of Directors that meets in full membership. Regardless of these special duties, however, the Board of Directors has the responsibility of accomplishing fully its general duties.

⁷. It is essential that the members of the Board have full access to all information required under the responsibility of the chief executive officer and the secretary of the Board.

⁸. The Board of Directors should recommend to the general shareholder meeting the number of Board members required for the corporation's efficient and flexible governance in the best possible way and having available all relevant information. Therefore, the Board of Directors should consist of a sufficient number of members in order to secure conditions of efficient interaction and exchange of ideas.

acquisition activity. However, any such use should take place only in the interest of the shareholders.

- 5.14 The members of the Board of Directors should devote adequate time in their duties.

6. THE NON-EXECUTIVE MEMBERS OF THE BOARD OF DIRECTORS

- 6.1 Non-executive members of the Board should form independent judgements especially with respect to the corporation's strategy, performance, asset management and the appointment of management. The compensation of non-executive members of the Board should be comparable to the time they devote for Board meetings and decision-making. Compensation should not be tied to the corporation's performance. Compensation may take the form of stock options but should not take the form of participation in the corporation's insurance or pension programs. Total compensation of non-executive members of the Board should be reported separately and with the required justification in the corporation's annual report.
- 6.2 Certain non-executive members of the Board should be independent from executive members and the majority shareholders in the corporation and have no business relation with the corporation or other commercial involvement that may affect their independent judgement. Any negotiations with the corporation should be confined only to compensation matters.⁹
- 6.3 The independence of non-executive members of the Board is considered sufficient provided that the following applies for each member:¹⁰
- 6.3.1 S/he is not a member of executive management or of a Board of Directors of a corporation, directly or indirectly connected with the corporation, presently or in the past year.
 - 6.3.2 S/he is not related to other executive members of the Board.
 - 6.3.3 S/he is not simultaneously a member of the group forming the majority of shareholders of the corporation, has not been elected as a candidate by that group nor is s/he involved in any transactions with the group.
 - 6.3.4 S/he has no other relationship with the corporation, which by its nature may affect his/her independent judgement; more specifically, s/he is not a supplier

⁹. The number of independent Board members should be sufficient for their views to carry adequate weight in the decision-making process. Ultimately, it depends on the Board of Directors' judgement to decide whether an independent member meets the criteria for independence. It also depends on the Board to decide whether independence is achieved by decentralization or through contract.

¹⁰. The law 2533/1997 regulates issues related to price manipulation and insider dealing by restricting 'natural persons', their spouses or first degree relatives to simultaneously participate in the Board of Directors of a listed corporation and/or a brokerage firm. By exclusion, permission is granted to 'natural persons' to participate as members of the Board of a bank listed in the Athens Stock Exchange or a brokerage firm operating as a bank's subsidiary, provided that they do not hold simultaneously in both companies the positions of general manager, division manager or chief executive officer. In addition, according to a clause of the Law 1969/1991, it is restricted to 'natural persons', their spouses or first degree relatives to participate simultaneously in the share capital of a brokerage firm and the Board of Directors of a listed corporation or in the share capital of another brokerage firm.

of goods or services to the corporation, nor a member of a corporation that provides consulting services to the corporation. Any negotiations with the corporation should be confined only to compensation matters.

- 6.4 It is a good practice that the non-executive members of the Board are not elected for many terms.

7. EXECUTIVE MANAGEMENT

- 7.1 It is a good practice that management compensation be tied to corporation's general level of profitability and overall performance. It is a good practice that the total compensation of management be disclosed and justified in the financial statements of the corporation. It is a good practice that concrete determination procedures be adopted for management compensation.
- 7.2 It is a good practice that a review committee, consisting of the majority of non-executive Board members, is established by the general shareholder meeting, which would review management compensation. The review committee's composition should be disclosed in the corporation's annual report.
- 7.3 It is a good practice that a *financial* chief executive officer is appointed as part of the management team.

APPENDIX

The composition of the *Committee on Corporate Governance in Greece* is the following:

Name	Position
Dr. Harilaos V. Mertzanis (coordinator of the <i>Committee</i>)	Department of Research, <i>Capital Market Commission</i>
Seraphim Varvaris	Department of Audit and Supervision, <i>Capital Market Commission</i>
Dr. Harilaos Harakas	Legal Advisor, <i>Federation of Greek Industries</i>
Vasilios Nikolettopoulos	Member of the Board of the <i>Athens Chamber of Commerce and Industry</i>
Clare Pavlou	Lawyer, Collaborator with the <i>Athens Chamber of Commerce and Industry</i>
Marina Vasilikou	Foreign Relations Director, <i>Union of Institutional Investors</i>
Stephan Karaiskakis	Lawyer, Collaborator with the <i>Union of Institutional Investors</i>
Nicholas Tsoutsanis	Legal Advisor, <i>Union of Members of the Athens stock Exchange</i>
Sophia Zafeiropoulou	Director, <i>Union of Members of the Athens stock Exchange</i>
Nickolas Pimples	Legal Advisor, <i>Athens Stock Exchange</i>
Dianantini Papastefanatu	Director, Division of Joint-Stock Companies, <i>Ministry of Development</i>
Emmanuel Vamvakaris	Chairman of the Board, <i>Institute of Internal Auditors</i>
Costas Tavlaridis	Director-Advisor, <i>Union of Greek Banks</i>
Anastasios Alexandridis	General manager, <i>Federation of Northern Greece Industries</i>
Dr. Emmanuel Xanthakis	<i>University of Athens</i> , former chairman of the Board of the Athens Stock Exchange
Dr. Dimitrios Papoulias	<i>University of Athens</i> , former chairman of the Board of the Hellenic Telecommunications Organization
Dr. Helen Tsipouri	<i>University of Athens</i> , European Commission expert

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