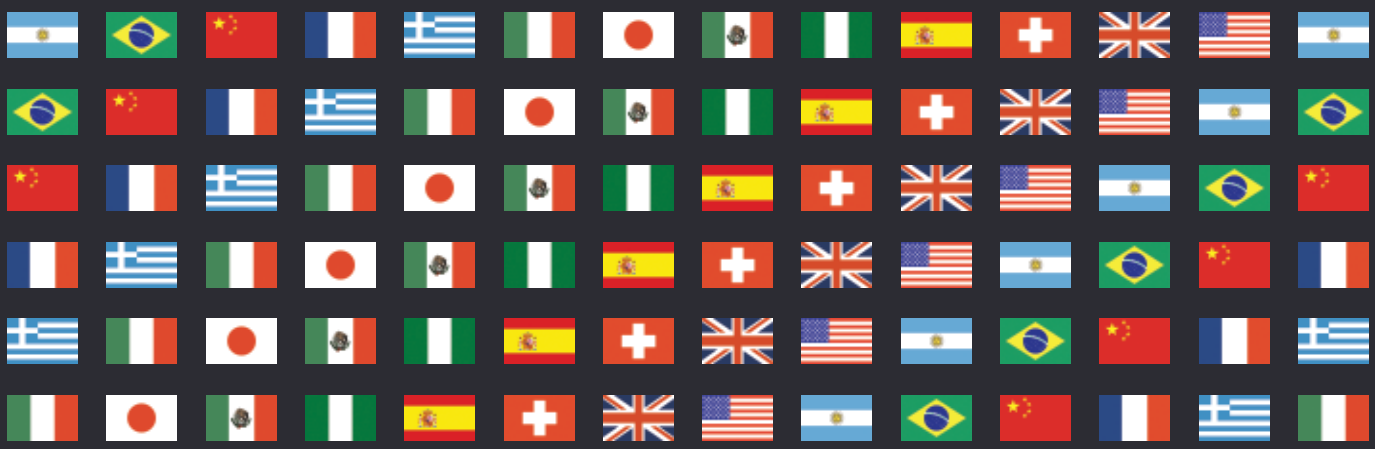
Risk & Compliance Management 2020

Contributing editor
Daniel Lucien Bühr



LEXOLOGY®
Getting The Deal Through

Publisher
Tom Barnes
tom.barnes@lbresearch.com

Subscriptions
Claire Bagnall
claire.bagnall@lbresearch.com

Senior business development manager
Adam Sargent
adam.sargent@gettingthedealthrough.com

Published by
Law Business Research Ltd
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL, UK

First published 2017
Fourth edition
ISBN 978-1-83862-399-9

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

Risk & Compliance Management 2020

Contributing editor
Daniel Lucien Bühr
LALIVE

Lexology Getting The Deal Through is delighted to publish the fourth edition of *Risk & Compliance Management*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on France.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Daniel Lucien Bühr of LALIVE, for his continued assistance with this volume.

LEXOLOGY®
Getting The Deal Through

London
April 2020

Reproduced with permission from Law Business Research Ltd
This article was first published in May 2020
For further information please contact editorial@gettingthedealthrough.com

Contents

Greece

VAP LAW OFFICES

LEGAL AND REGULATORY FRAMEWORK

Legal role

1 | What legal role does corporate risk and compliance management play in your jurisdiction?

The focus of the European Union on the subject of corporate governance in the past few decades has resulted in the development of some ground rules regarding the Greek corporate environment. More specifically, in early 2000, a series of best practice principles based on recommendations from the Organisation for Economic Co-operation and Development (OECD) were issued by the Hellenic Capital Markets Committee, and from that point on pieces of legislation regarding corporate governance and risk management began to be adopted gradually. Nevertheless, it seems that the role of corporate risk and compliance management is still being defined under the Greek legal framework. Following the global financial crisis in 2008, and as a result of the Greek recession, Greek enterprises are proving willing to incorporate best practices regarding risk and compliance management functions into their structures. For this purpose, new legislation has already been adopted in the form of amendments to existing legislation and the incorporation of EU directives.

Laws and regulations

2 | Which laws and regulations specifically address corporate risk and compliance management?

The main pieces of legislation set out below are considered to be of the highest priority for Greek undertakings.

Law No. 3,016/2002 on Corporate Governance, Remuneration and Other Issues
As amended in force, this law provides the minimum corporate governance requirements for listed companies.

Law No. 4,548/2018 Reform of the Law of Sociétés Anonymes
The SA Law, which amends and reforms Law No. 2,190/1920, the core piece of legislation for sociétés anonymes, entered into force on 1 January 2019.

As with its predecessor, the SA Law applies to both non-listed and listed public limited liability companies (under the corporate form of sociétés anonymes), setting rules for:

- general meetings;
- roles of the board of directors;
- relationships between the members of the board of directors and the company; and
- rights of minority shareholders, etc.

The SA Law has not introduced major amendments in the corporate governance sectors and Law 3,016/2002 on Corporate Governance, Remuneration and Other Issues will continue to apply and to be monitored by the Hellenic Capital Markets Commission in the context of its supervision competencies. Nevertheless, discussions have arisen regarding the need to amend Law 3,016/2002 to incorporate the new provisions of the SA Law.

Law No. 4,449/2017 On the Statutory Audit of the Annual and Consolidated Financial Statements, Public Oversight of the Audit Work
This law is referred to by every undertaking that is obliged to keep financial statements.

There is also specific legislation containing risk and compliance obligations that applies to credit institutions (Law No. 4,261/2014) and insurance undertakings (Law No. 4,364/2016). Also, in addition to the obligations imposed by the above legislation, a set of basic principles and best practices was introduced in the Hellenic Governance Code For Listed Companies, which was published in October 2013 by the Hellenic Corporate Governance Council.

Further to the above, the following are the most important areas related to compliance and risk management that apply to and concern all the aforementioned undertakings, but mainly credit institutions and, where relevant, financial institutions.

Supervisory framework for credit institutions

- Law No. 4,261/2014;
- Decision of the Governor of the Bank of Greece No. 2,577/2006; and
- Law No. 3,746/2009 On the Insurance of Investment and Deposits Fund.

Protection of bank secrecy and confidentiality
Legislative Decree 1,059/1971, as applicable, on the protection of bank deposits.

Protection of market abuse
Law No. 3,340/2005, as applicable, on insider dealing and market manipulation, in combination with Law No. 4,443/2016 on market abuse regulation transposing Regulation (EU) No. 596/2014 and several guidelines of the Hellenic Capital Market Commission.

Markets in financial instruments and transparency (covering areas of investor protection – the Markets in Financial Instruments Directive (MiFID) and inside trading)
Law No. 3,606/2007, as amended by Law No. 4,514/2018, transposing the MiFID II directive, regarding markets in financial instruments, and Law No. 3,556/2007, as applicable, on transparency regarding issuers whose shares are admitted to an organised financial market.

Money laundering
Law No. 3,691/2008, as applicable on the prevention and suppression of legalising income from criminal activities and financing of terrorist

activities, was amended by Law No. 3,932/2011, under which the Anti-Money Laundering, Counter-Terrorist Financing Commission was renamed as the Anti-Money Laundering, Counter-Terrorist Financing and Source of Funds Investigation Authority. According to this law, as amended by Law No. 4,389/2016, the Authority aims to combat the legalisation of proceeds from criminal activities and terrorist financing, and assists the security and sustainability of fiscal and financing stability by collecting, investigating and analysing any suspicious transactions forwarded to it by legal undertakings and natural persons, under special obligation, together with any other information as regards the relevant crimes.

In addition, the Banking and Credit Committee Decision No. 281/2009 on the supervision of credit institutions by the Bank of Greece regarding legalisation of income from criminal activities and financing of terrorist activities is also applicable.

Combat against bribery

Law No. 2,656/1998, as applicable, on the ratification of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, and the OECD Guidelines (2011) on responsible behaviour of multinational companies globally.

Data protection

- Law No. 2,472/1997, as applicable, on the protection of natural persons with regard to the processing of personal data;
- Law No. 3,471/2006, as applicable, on data protection in electronic communications: Decisions by the Data Protection Authority;
- EU General Data Protection Regulation (Regulation (EU) 2,016/679), which has been in force since May 2018; and
- Law No. 4,624/2019, as applicable, on measures implementing the GDPR.

Consumer protection

- Law No. 2,251/1994, as applicable, on consumer protection;
- Law No. 3,862/2010, as applicable, on payment services in the internal market; and
- Decision of the Governor of the Bank of Greece No. 2,501/2002 on the informing of interested parties regarding credit transactions and relevant contract terms.

Protection of competition

Law No. 3,959/2011, as applicable, on the protection of free competition.

Moreover, for undertakings active in financial markets (namely collective investment undertakings and portfolio investment companies), Decision 3/645/30.4.2013, as amended by Decision 10/773/20.12.16, of the Hellenic Capital Market Commission contains detailed provisions regarding risk measurement and prediction of risk exposure and risk for the contracting party.

Types of undertaking

3 Which are the primary types of undertakings targeted by the rules related to risk and compliance management?

As stated in article 1 of Law No. 3,016/2002, provisions regarding corporate governance in general, and thus, also including types of risk and compliance management, apply to companies that use the legal form of a société anonyme (defined and organised by the SA Law) which, additionally, are admitted in a regulated financial market (listed companies).

In addition, for specific categories of undertakings, such as financial, credit institutions and insurance undertakings, particular pieces of legislation apply, imposing tailored obligations on them. Specifically, for credit institutions, Law No. 4,261/2014, transposing Directive 2013/36/EU, includes a set of corporate governance and specified risk management provisions. Moreover, for insurance undertakings, Law No. 4,364/2016, transposing Directive 2009/138/EC, introduces detailed provisions on governance systems and risk management.

Regulatory and enforcement bodies

4 Identify the principal regulatory and enforcement bodies with responsibility for corporate compliance. What are their main powers?

The supervisory body for listed companies is the Hellenic Capital Market Commission. It is responsible for monitoring the compliance of listed companies within the provisions of Law No. 3,016/2002 and Law No. 4,449/2017 on corporate governance and obligatory audits. That said, Decision 5/204/14.11.2000 of the Commission refers to detailed obligations of listed companies regarding the subjects of internal organisation regulation and audit. Non-compliance results in administrative fines being imposed by the Commission.

By the same token, the Hellenic Competition Commission has broad enforcement powers in the area of collusive practices, abuses of dominance and merger control. This body is empowered to take decisions on finding an infringement of the Competition Act and to impose administrative fines. It also forms a policy for combating antitrust behaviour, competition distortion, etc, through its reports and opinions.

According to the articles of association of the Bank of Greece (as applies, after the last amendment by Law No. 4,099/2012), the latter is entrusted with the overall monitoring of the financial and insurance sectors as well as of other types of undertakings. In this regard, it is competent to review certain procedures regarding risk management (eg, annual review of the cash flow plans of credit institutions according to Law No. 4,261/2014) and for the imposing of administrative sanctions according to the relevant legislation. Furthermore, in a transnational context, the European Central Bank, through the Single Supervisory Mechanism, is in charge of supervising systemically significant credit and financial institutions. The Bank of Greece is responsible for specifying the recommendations and guidelines conducted by the Committee of European Banking Supervisors and hereafter the European Banking Authority.

Special reference must be made to the Anti-Money Laundering, Counter-Terrorist Financing and Source of Funds Investigation Authority. The Authority has been restructured into three individual units: the Financial Intelligence Unit, the Financial Sanctions Unit and the Source of Funds Investigation Unit. Its president is an acting Public Prosecutor to the Supreme Court appointed by a Decision of the Supreme Judicial Council, and serves on a full-time basis.

Definitions

5 Are 'risk management' and 'compliance management' defined by laws and regulations?

In the Greek legislation concerning listed companies, there is no definition of the terms 'risk management' and 'compliance management'. However, the results to be attained by the establishment of such systems are indeed described in legislation. For instance, according to Law No. 3,016/2002, the audit committee is responsible, among other things, for the monitoring of the internal organisation regulation and the articles of association of the company, as well as for the company's compliance with the applicable legislation. Additionally, according to Law No. 4,364/2016 for insurance undertakings, the risk management systems in place must include the strategies and policies suitable for the identification, measurement, monitoring, management and reporting of the risks faced by the company, in an individual or collective manner, along with any interdependencies connected to them.

Processes

6 | Are risk and compliance management processes set out in laws and regulations?

The national legal framework comprises both statutory legislation and pieces of soft law (ie, codes of conduct) and provides a sufficient description of the processes followed for risk and management compliance.

Standards and guidelines

7 | Give details of the main standards and guidelines regarding risk and compliance management processes in your jurisdiction.

For listed companies, apart from the obligations imposed by the above discussed legislation, a set of basic principles and best practices has been introduced by the Hellenic Governance Code For Listed Companies, published in October 2013 by the Hellenic Corporate Governance Council. The aim of the Code is to enlighten the board of directors members of listed companies regarding corporate governance areas that are not covered by legislation, and thus to provide a complete best practices approach. The Code is considered to be a set of basic principles, guidelines and suggestions rather than a legally binding document.

In general, the standards introduced by the Code are divided into the general principles addressed to all sociétés anonymes companies and the special practices to be applied only by listed companies. Especially for the latter, some of the additional requirements to those of legislation are: the obligation to disclose a statement identifying the core risks faced by the company, and the main features of the internal control system applied, and the adoption of detailed policies regarding conflicts of interest of the board of directors' members. Following the reformation of law regarding sociétés anonymes in Greece, the corporate governance statement is an obligation of boards of directors, imposing criminal liability in the case of misconduct.

As for the context, the Code contains four sections, each covering the following areas: the board of directors and its members, internal control, remuneration and relations with shareholders.

Furthermore, according to the Decision of the Governor of the Bank of Greece No. 2,577/2006 concerning credit and financial institutions, these undertakings are obliged to abide by the standards of an efficient organisational structure, and have a sufficient internal audit system with a primary focus on the functions of internal review, risk management and regulatory compliance.

Instruction No. 51/13.03.2013 of the Hellenic Capital Market Commission is considered to be a reference point regarding compliance management for companies providing investment services. The Instruction contains clarifications about transposing the European Securities and Markets Authority guidelines of 6 July 2012 (ESMA/2,012/388) into the Commission's supervisory practice. These guidelines are based on two axes: the competencies of regulatory compliance function (ie, risk assessment, supervisory programme, reports submission, etc) and the organisational requirements of the regulatory compliance function (ie, efficiency, independency, permanency of the function, etc).

Obligations

8 | Are undertakings domiciled or operating in your jurisdiction subject to risk and compliance governance obligations?

According to Law No. 4,449/2017 and Act No. 2,577/9.3.2006 of the Governor of the Bank of Greece, compliance and risk management apply to undertakings having their registered seat and operating in Greece. Specifically, Law No. 4,449/2017 is applicable to companies that have their shares listed in a regulated financial market in Greece and that are additionally governed by Greek law or the laws of any EU member state.

Regarding credit institutions, according to Act No. 2,577/9.3.2006 of the Governor of the Bank of Greece, branches of foreign credit institutions are obliged to disclose to the Bank of Greece the internal audit processes adopted, as well as the results from audits performed by the home state supervising authority and external auditors concerning the branch's activities with regard to the related provisions (namely the prevention and suspension of money laundering, processes that ensure the transparency of transactions and provide sufficient information to interested parties, and any other obligation applicable to undertakings under the legislation of the host country).

9 | What are the key risk and compliance management obligations of undertakings?

Listed companies

Law No. 3,016/2002 on corporate governance introduced the obligation for participation of non-executive and independent non-executive directors in the board of directors, with certain criteria determining when independence is indeed secured (article 4). Additionally, this law obliges listed companies to set an internal audit function characterised by autonomy from the other functions of the company and monitored by the board of directors' non-executive members, without any member of the board of directors being allowed to be also a member of the audit function. Duties of the audit function include the monitoring of the corporate and legal obligations of the company and the referral of cases of conflicts of interest to the board of directors. With regard to consequences of non-conformity with the said provisions, Law No. 3,016/2002 provides for an administrative fine issued by the Hellenic Capital Market Commission.

Law No. 2,190/1920 on sociétés anonymes was recently replaced by the SA Law. The latter also applies to listed and non-listed companies limited by shares, and it serves as the main piece of legislation for the functioning of the above undertakings. Hence, it provides a general framework for compliance and risk management issues.

Primarily, board of directors members are responsible for fulfilling the scope of the company's management, managing the company's assets and the corporate object in general. They are also entrusted with a duty of loyalty, a duty of care, an obligation of non-competitive conduct, etc. Article 96 constitutes a novelty in the Greek legislation for sociétés anonymes since it introduces a general clause regarding the general duties of their board of directors. In particular, members of a board of directors are required to:

- exercise their duties according to law, the articles of association of the company and the resolutions of the general assembly;
- manage the company's business in favour of the company's interest;
- oversee compliance with their decisions and the resolutions of the general assembly, and
- inform the other members of the board of directors for any company's business.

Furthermore, according to paragraph 2 of article 96, a board of directors is required to keep relevant records and books and to disclose and publish an annual financial statement, an annual management report and a corporate governance statement, where applicable, according to law. These obligations, in combination with the one that calls for carrying out an extraordinary internal audit, is of utmost importance for the purposes of the regulatory provisions in force. Reference should be made to the audit carried out in terms of the law, the statute and the decisions of the general meeting (articles 142 and 143). The annual management report (articles 150 and 151) should comply with the obligations of risk management and of the battle against corruption and bribery.

According to article 12, the appointment and the cessation for any reason whatsoever of the following persons are subject to publication: persons who carry out the management of the company or have the

power to represent the company jointly or individually, or are competent to carry out regular audits.

The articles of association may specify the matters in respect of which the power of the board of directors is exercised in whole or in part by one or more members thereof, company directors or third parties, as stipulated in article 87. It may also authorise or require the board of directors to entrust the internal audit of the company to one or more members or third parties, without prejudice to other provision of the law. Such persons may authorise other members or third parties to exercise the powers conferred on them. Thus, related to article 102, every member of the board of directors shall be liable for compensation towards the company for any act or omission constituting a breach of their duties. They shall be responsible for any omissions or false entries in the balance sheet concealing the actual position of the company. The annual management report and the corporate governance statement, where applicable, shall be drawn up and are also subject to this kind of obligation to be published.

The content and information of an annual management report is specified according to the article 150, and may differ depending on the size of the company and on whether the company under consideration is a subsidiary of another company that requires a consolidated management report or a separate report. It is further clarified that the provisions for the corporate governance statement under the article 152, regarding sociétés anonymes with transferable securities admitted to trading on a regulated market, specify the content of the corporate governance statement that must be incorporated in the management report of said companies. The content of the corporate governance statement also differs depending on the size of the company. One of the introduced reformations is the provision about the criminal liability of the board for missing any of the required information in both the management report and the corporate governance statement.

The duties of the members of the board of directors' follow in exactly the same vein, providing that they shall keep absolute secrecy on confidential matters of the company, while refraining from any action pursuing their own interests contrary to the company's interests. They are also required to disclose to the other members of the board of directors their own interests, which may arise from company's transactions falling within their duties. In the event of a conflict of interests, any member of the board of directors dealing with the concerned conflict shall abstain from the relevant voting procedure, and should the necessary quorum be not achieved, the non-concerned members shall call for a general assembly, in order for the latter to resolve on the relevant matter.

The executive committee is a noticeable introduction in the SA Law. In particular, article 87 paragraphs 4 and 5 provide sociétés anonymes with the right to establish executive committees based on a relevant resolution of their boards of directors, or on a relevant provision in their articles of association. The committee may be authorised to exercise some of the powers or duties of a board of directors.

As regards listed companies, they may appoint executive, non-executive and independent members under the requirements and the consequences of Law No. 3,016/2002. These rights are granted also to non-listed companies, should there be such provision in their articles of association.

As far as listed companies are concerned, articles 110–112 of the SA Law introduce an innovation in the remuneration policy of board of directors members, with the purpose to achieve harmonisation with Directive (EU) 2017/828, amending Directive 2,007/36/EC as regards the encouragement of long-term shareholder engagement. Specifically, listed companies are required to establish a detailed remuneration policy for board of directors members and general directors, for a maximum period of four years. The policy is subject to approval by the general assembly of shareholders, in which the shareholders who are also board of directors members or general directors are not allowed to vote and shall not be accounted for the fulfilment of quorum requirements. Hence, the principle of 'say on pay' is introduced, as prescribed in article 9 of the aforementioned directive. By virtue of the latter, shareholders shall have an opinion, on the basis of a binding or consulting vote, on the payments of the senior managerial members.

Greek law adopted the option of the shareholders' binding vote. Furthermore, according to paragraph 6 of article 110, deviations from a company's approved remuneration policy are possible provided that they are necessary for the long-term benefit of the company. Moreover, the said deviations, as well as the relevant procedural details, must be specified. Additionally, the board of directors must introduce, as an agenda item in the general meeting of shareholders, the remuneration statements of the previous use, on which shareholders shall have a consulting vote. Thus, harmonisation with the directive's provisions on the disclosure of the remuneration policy is achieved. The remuneration statement must also be made available on the company's website for a minimum period of 10 years.

There is also a significant obligation for board of directors members regarding shareholder information. To be more specific, board of directors members should provide the general meeting with extensive information for the election of a candidate to the board of directors with regard to the reasons justifying the nomination, a detailed curriculum vitae (including information on the current activity of the candidate, their participation on other boards of directors and other positions, distinguishing between the positions they hold in companies belonging to the same group and positions they hold in companies outside the group, etc) and the criteria to determine whether the candidate is in a conflict of interest (indicating in particular any relationship between the company in which the candidate works or is mainly employed and the company for whose board they are a candidate).

The rights of information granted to minority shareholders by virtue of article 39 of Law No. 2,190/1920, remain in force under the SA Law (article 141). Additionally, it introduces a new set of rights for individual shareholders of non-listed companies. Specifically, by virtue of paragraph 10 of article 141, a shareholder is able to request the following information from the board of directors:

- the company's capital;
- the categories of shares which have been issued;
- the number of shares owned by them; and
- a table of the company's shareholders.

Hence, the shareholder is always able to identify the shares' composition of the company.

Greek public limited companies (as well as branches and agencies of foreign public limited companies) are audited in respect of drawing up the balance sheet, the financial administration and general operations. Furthermore, the Minister of Commerce may, whenever they deem it necessary, carry out such inspections through the appropriate employees of the Ministry or through the inspectors of public limited companies.

Credit and insurance undertakings

Law No. 4,261/2014, which is applicable to credit institutions, includes details of corporate governance as well as specified risk management provisions. That said, credit institutions are obligated to establish a sound and efficient corporate governance system that contains a clear organisational structure, including an efficient division of competencies, internal audit systems consisting of appropriate administrative and auditing processes, and an effective system for the detection, monitoring, management and reporting of risks faced, or possibly faced, by the institution.

Moreover, remuneration policies and strategies must be in line with efficient risk management. The above system must be appropriate

for dealing with the complexity of the risks, as well as suitable for the activities of the institution, and will be closely monitored by the board of directors. Particularly for important credit institutions (as defined in article 68 of Law No. 4,261/2014), a risk management committee consisting of non-executive board of directors members should be in place, having the obligation to report to the board of directors and to provide assistance throughout risk management.

With regard to insurance undertakings, Law No. 4,364/2016 introduces a set of provisions on governance systems and risk management that is very similar to that for credit institutions. As for specific provisions, article 32 of Law No. 4,364/2016, among others, provides the minimum of risks targeted by the system. It also foresees that specific risk management policies shall be set out to address each one of the risks concerned.

Public interest undertakings (listed, insurance, credit and financial undertakings)

Law No. 4,449/2017, on the statutory audit of annual and consolidated financial statements, and public oversight of the audit work, is referred to by the undertakings that are obliged to keep financial statements. The audit must be carried out according to the international auditing standards by an auditor, which may be an auditing accountant or an auditing company. The provisions ensure the objectivity and the independency of the auditor throughout the whole procedure. The auditor conducts an audit report in which they present the conclusions of the audit, having taken into account any reports of third countries' audit work. The audit report must be conducted in writing and must include very specific information and data of the controlling undertaking, as well as the opinion and the conclusions of the auditor, who bears full responsibility for the report. It is worth mentioning that the auditors are also subject to a system of quality assurance (quality control). The competent body for this quality control is the Hellenic Accounting and Auditing Standards Oversight Board.

According to article 44 of the Law, every public interest undertaking has an audit committee, consisting of mainly independent and experienced members. This committee may be either an independent committee or a committee of the board of directors of the controlled undertaking, but the president shall be independent. The committee informs the board of directors about the results of the statutory audit, explains the importance of the audit and generally monitors the procedure of the statutory audit, ensuring the procedural integrity. It also monitors the financial informing by submitting recommendations and suggestions, and monitors the efficiency of the internal systems audit as well. The principal regulatory and enforcement bodies for the supervision of compliance with provisions regarding the committee are the Hellenic Capital Market Commission and the Bank of Greece.

LIABILITY

Liability of undertakings

10 What are the risk and compliance management obligations of members of governing bodies and senior management of undertakings?

Law No. 4,548/2018 (the SA Law) foresees a broad set of competencies for the board of directors and for non-members exercising management duties delegated by the board of directors.

In a nutshell, the board is responsible for deciding upon any corporate issue regarding the management of corporate affairs, the company's assets and the representation of the company. In that sense, a key obligation of the board is to abide by the duty of loyalty and to always act for the benefit of the company, ensuring that there are no conflicts of interest. In this regard, article 97 paragraph 1(b) of the SA Law prescribes the obligation for board of directors members to disclose promptly and sufficiently to the company any conflicts of interest that might exist, not only in relation to themselves, but also in relation to persons connected to them.

Specifically for listed companies, according to Law No. 3,016/2002, board of directors members are responsible for aiming at the long-term improvement of the company's value and also for the safeguarding of the general corporate interest. In that sense, the pursuance of personal interests contradicting the ones of the company is not allowed according to the Law. The internal audit committee is responsible for monitoring those issues, and non-compliance results in the imposition of administrative sanctions against the board of directors.

With regard to public interest entities, mainly listed companies, credit and insurance undertakings, subject to Law No. 4,449/2017, the audit committee in place is entrusted with monitoring the quality of the internal audit systems and the risk management systems, subject to the obligations of the board of directors. That said, the board of directors members are subject to administrative sanctions in the event of improper establishment and functioning of the committee along with the members.

11 Do undertakings face civil liability for risk and compliance management deficiencies?

Yes, third parties have the right to file a claim for damages against an undertaking according to the laws for civil liability (specifically the provisions for wrongful acts pursuant to the provisions of the Greek Civil Code), in cases where non-compliance of the undertaking with the applicable legislation has resulted in damage to the party concerned.

12 Do undertakings face administrative or regulatory consequences for risk and compliance management deficiencies?

In the case of sector-regulated enterprises – namely credit institutions and insurance companies – the special legislation applicable provides for specific administrative and regulatory sanctions for the undertakings' non-adherence to risk and compliance obligations. That said, for credit institutions, non-operation of a corporate governance system, containing efficient risk management among others, results in a series of severe administrative and regulatory measures and fines imposed by the Bank of Greece (dismissal of responsible persons, revocation of the institution's licence, financial fines of up to 10 per cent of the annual finance revenues, etc). Moreover, legislation for insurance institutions (namely, article 256 of Law No. 4,364/2016) foresees a reprimand or fine of up to €2 million placed upon the undertaking, the members of the management and any other person responsible for non-compliance with it. Lastly, the Hellenic Capital Market Commission and the Bank of Greece are responsible for imposing administrative sanctions on companies active in the financial markets sector.

As far as listed companies are concerned, deficiencies regarding risk and compliance management are not punishable by an administrative sanction, and other regulatory consequences affecting the undertaking as such do not apply. However, board of directors members do face administrative consequences in some areas of corporate governance.

13 Do undertakings face criminal liability for risk and compliance management deficiencies?

No, there is no such provision for criminal liability of legal persons in Greek law. Instead, natural persons are subject to criminal liability.

Liability of governing bodies and senior management

14 Do members of governing bodies and senior management face civil liability for breach of risk and compliance management obligations?

Members of the board of directors of a société anonyme are liable against the company for any fault that occurred during the exercise of their competencies as managers of the corporate affairs (article 96, 97 and 102 of the SA Law). However, proving that they have acted as a prudent business person would exclude the above liability. Additionally, the law was amended in recent years to include cases of non-compliance with board obligations regarding the drafting and disclosure of annual economic statements, the management report and the corporate governance report (in cases that are applicable), according to the applicable laws.

Thus, the company has a right to claim damages from the board of directors members in cases where their decisions and actions have resulted in the damage. With regard to the board's liability against the company creditors, the former are held liable to the latter for the damage resulting from their fault according to the civil legislation for wrongful acts, as provisions of the SA Law serve the purpose of safeguarding the creditors' interest; thus, non-compliance with the provisions of the SA Law during the exercise of their duties forms a wrongful act.

Lastly, the legal entity of the company is jointly and severally liable along with the board of directors members against its creditors.

15 Do members of governing bodies and senior management face administrative or regulatory consequences for breach of risk and compliance management obligations?

Board of directors members of listed companies face administrative sanctions for non-compliance with the corporate governance obligations of Law No. 3,016/2002 and Law No. 4,449/2017. The Hellenic Capital Market Commission is responsible for imposing a reprimand or fine ranging from €3,000 to €1 million on the persons performing the duties of board of directors members (members of the audit committee might also be sanctioned according to Law No. 4,449/2007), except for credit and insurance companies, for which the Bank of Greece is the supervisory authority.

16 Do members of governing bodies and senior management face criminal liability for breach of risk and compliance management obligations?

According to the Greek legal system, those entrusted with representing a company as well as the management of its corporate affairs are among the persons who face criminal liability. Therefore, the board of directors members of a société anonyme face criminal liability for breaches of their legal obligations, according to article 176 et seq of the SA Law. Such breaches include, among other things, submission of false statements regarding the payment of corporate capital and the issuing of shares, omission of the annual balance sheet completion and accusations of committing the crimes of articles 375 (embezzlement) and 390 (infidelity) of the Penal Code.

Further to that, as mentioned above, one of the reforms introduced by the SA Law is the provision about the criminal liability of the board of directors in cases where required information is missing in the management report or the corporate governance statement.

Criminal liability of responsible persons is also incurred for the breach of tax and social insurance law obligations, as well as for non-compliance with competition law.

One of the introduced reformations is the provision about the criminal liability of the board of directors when any of the required information in both the management report and the corporate governance statement is missing.

With regard to credit institutions, the relevant legislation (article 59 of Law No. 4,261/2014) foresees the criminal liability of the board of directors members, the president, the auditors and the responsible directors and employees of the credit institution whose actions have resulted in (among other things) the omission or forgery of the appropriate listing of an important transaction; the submission of false or inaccurate reports or data to the Bank of Greece; or obstructing the review of the company's practices by the Bank of Greece.

CORPORATE COMPLIANCE

Corporate compliance defence

17 Is there a corporate compliance defence? What are the requirements?

The Hellenic Corporate Governance Code has been published for listed companies.

As regards the implementation of the Code, it is voluntary and based on a 'comply or explain' approach, meaning that if a listed company deviates from the Code standards, it has to provide detailed reasoning regarding why such actions were necessary. Additionally, a company has to provide specific information about the alternative measures followed by it to tackle the issues for which a deviation from the Code provisions has been chosen. Among other things, risk mitigating actions have to be described in detail and should be in line with the overall principles enshrined in the Code.

Recent cases

18 Discuss the most recent leading cases regarding corporate risk and compliance management failures.

Fine to audit and assurance, advisory and tax services company

In July 2019, the Hellenic Data Protection Authority (DPA) imposed a fine of €150,000 to a significant audit and assurance, advisory and tax services company for processing the personal data of its employees on the basis of consent and not on the basis of the working relationship that existed between the company as an employer and the employees. The Decision (Decision No. 26/2019 of the DPA) pointed out that the legal basis of consent is used only where the other legal bases do not apply. According to the Decision:

> *the choice of consent as the legal basis was inappropriate, as the processing of personal data was intended to carry out acts directly linked to the performance of employment contracts, compliance with a legal obligation to which the controller is subject and the smooth and effective operation of the company, as its legitimate interest.*
>
> *In addition, the company gave employees the false impression that it was processing their personal data under the legal basis of consent, while in reality it was processing their data under a different legal basis about which the employees had never been informed. This was in violation of the principle of transparency and thus in breach of the obligation to provide information under Articles 13(1)(c) and 14(1)(c) of the GDPR.*

A major group active in jewellery and fashion

This case concerns a group of companies in the industry of jewellery and fashion, which has been operating in Greece and has already been active for years in the Asian market.

The group had been publishing financial statements that did not depict the group's actual financial situation, while the founder and

chair, and the chief executive of the mother company were reportedly offering an unusually great number of shares of the mother company. Following that, the newly formed board of directors decided to file a lawsuit against the chair, who had already resigned, the chair of the daughter company in Asia and the financial manager, and raise a civil claim against them before the criminal court.

Fines to construction companies

Another representative example comes from a ruling of the Hellenic Competition Commission, based on Greek antitrust law, that had a severe impact on the earnings of the companies involved. The Commission's judgment on the case found that 15 major Greek construction companies had formed a trust against public construction competition. The fine incurred following the 626/2016 judgment of the Commission was approximately €80 million, which were the highest fines among similar cases within the European Union. Considering that the combined earnings of the four major companies for 2016 was €2.4 million after provisions of approximately €79 million were realised for that fine, it is evident that its impact on their viability was crucial.

Siemens

A typical example involving bribing of public officials is the well-known *Siemens* case that was revealed in 2008 in Greece. According to the given facts, a series of bribes were paid to a number of public officials and politicians concerning the purchase by the Hellenic Telecommunication Company of several telecommunication systems and security systems used by the Greek authorities to ensure public safety during the Olympic Games held in Athens in 2004. The case is under scrutiny by the Greek judiciary system.

Government obligations

19 | Are there risk and compliance management obligations for government, government agencies and state-owned enterprises?

The Greek legal framework, in which risk and compliance management provisions are included, addresses companies using the legal form of a société anonyme. Furthermore, the obligations imposed on the undertakings differ according to their form as listed or non-listed. Additionally, there is specific regulation of certain types of activities of companies, such as providing credit and insurance. That said, whether the ownership of the undertaking is private or public does not play a role in defining the obligations concerned.

DIGITAL TRANSFORMATION

Framework covering digital transformation

20 | Please provide an overview on the risk and compliance governance and management framework covering the digital transformation (machine learning, artificial intelligence, robots, blockchain, etc).

Although there is no established legal framework covering digital transformation in the field of risk and compliance governance and management as yet, companies are becoming familiar with artificial intelligence in practice since the advantages for companies seem numerous.

The use of blockchain technology is making digital governance and e-voting more secure as its encryption methods ensures it is harder to alter the result of voting procedures. Moreover, every act of corporate governance, the transaction and logistic registration, as well as properties of the companies, can be registered to a blockchain, thus ensuring audit procedures are more accurate and precise.

VAP LAW OFFICES

ATHENS | DÜSSELDORF

Vicky Athanassoglou
va@vaplaw.eu

Chrysa Mitka
chrysa.mitka@vaplaw.eu

Marios Petropoulos
mp@vaplaw.eu

Dimitra Savva
dimitra.savva@vaplaw.eu

4 Karagiorgi Servias Street
105 62 Athens
Greece
Tel: +30 210 32 54 237
Fax: +30 210 32 54 237
www.vaplaw.eu

UPDATES AND TRENDS

Key developments of the past year

21 | What were the key cases, decisions, judgments, and policy and legislative developments of the past year?

No updates at this time.

Other titles available in this series

Acquisition Finance
Advertising & Marketing
Agribusiness
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Appeals
Arbitration
Art Law
Asset Recovery
Automotive
Aviation Finance & Leasing
Aviation Liability
Banking Regulation
Business & Human Rights
Cartel Regulation
Class Actions
Cloud Computing
Commercial Contracts
Competition Compliance
Complex Commercial Litigation
Construction
Copyright
Corporate Governance
Corporate Immigration
Corporate Reorganisations
Cybersecurity
Data Protection & Privacy
Debt Capital Markets
Defence & Security Procurement
Dispute Resolution
Distribution & Agency
Domains & Domain Names
Dominance
Drone Regulation
e-Commerce
Electricity Regulation
Energy Disputes
Enforcement of Foreign Judgments
Environment & Climate Regulation
Equity Derivatives
Executive Compensation & Employee Benefits
Financial Services Compliance
Financial Services Litigation
Fintech
Foreign Investment Review
Franchise
Fund Management
Gaming
Gas Regulation
Government Investigations
Government Relations
Healthcare Enforcement & Litigation
Healthcare M&A
High-Yield Debt
Initial Public Offerings
Insurance & Reinsurance
Insurance Litigation
Intellectual Property & Antitrust
Investment Treaty Arbitration
Islamic Finance & Markets
Joint Ventures
Labour & Employment
Legal Privilege & Professional Secrecy
Licensing
Life Sciences
Litigation Funding
Loans & Secured Financing
Luxury & Fashion
M&A Litigation
Mediation
Merger Control
Mining
Oil Regulation
Partnerships
Patents
Pensions & Retirement Plans
Pharma & Medical Device Regulation
Pharmaceutical Antitrust
Ports & Terminals
Private Antitrust Litigation
Private Banking & Wealth Management
Private Client
Private Equity
Private M&A
Product Liability
Product Recall
Project Finance
Public M&A
Public Procurement
Public-Private Partnerships
Rail Transport
Real Estate
Real Estate M&A
Renewable Energy
Restructuring & Insolvency
Right of Publicity
Risk & Compliance Management
Securities Finance
Securities Litigation
Shareholder Activism & Engagement
Ship Finance
Shipbuilding
Shipping
Sovereign Immunity
Sports Law
State Aid
Structured Finance & Securitisation
Tax Controversy
Tax on Inbound Investment
Technology M&A
Telecoms & Media
Trade & Customs
Trademarks
Transfer Pricing
Vertical Agreements

Also available digitally

lexology.com/gtdt

an LBR business

ISBN 978-1-83862-399-9