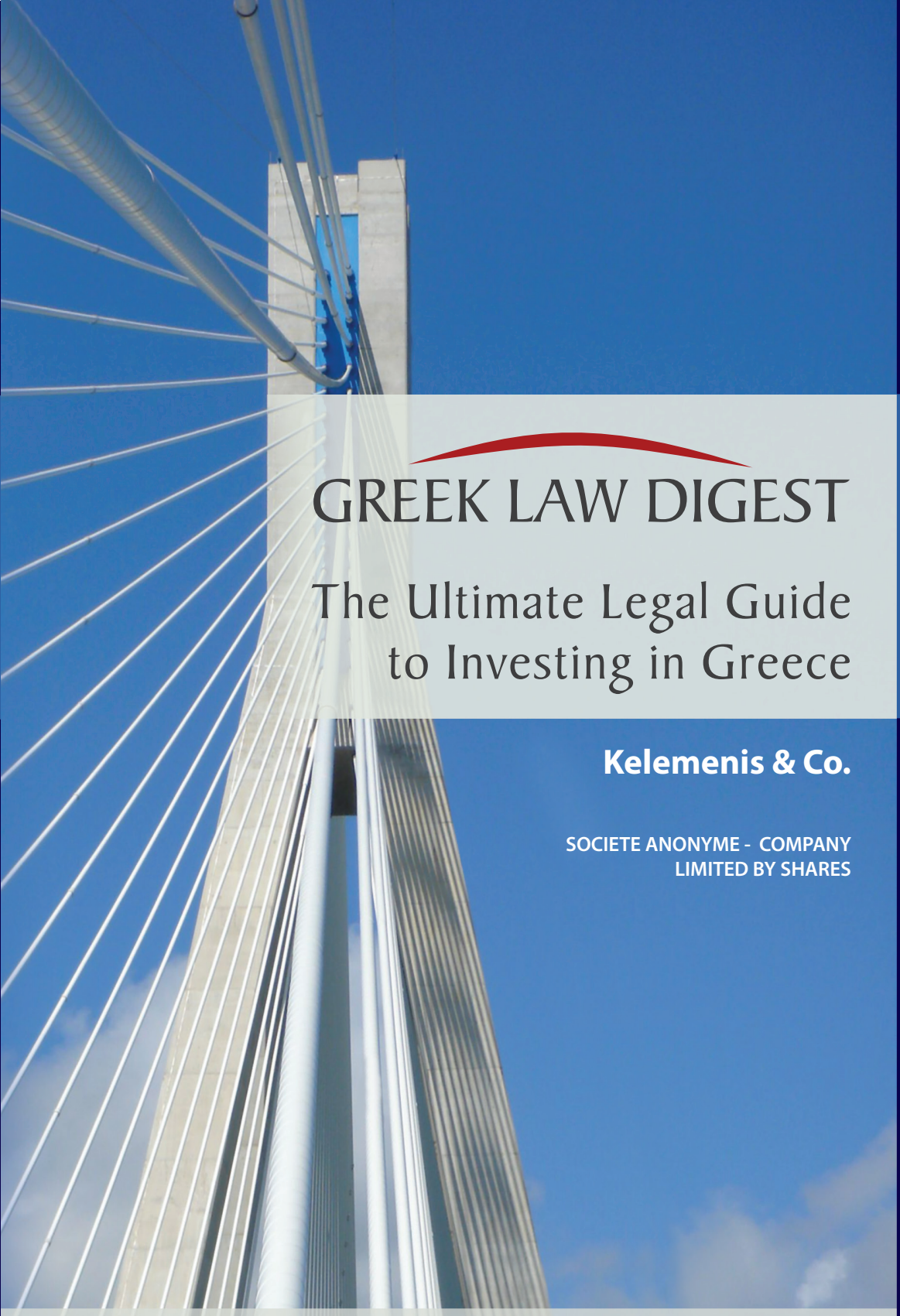

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GREEK LAW DIGEST

The Ultimate Legal Guide to Investing in Greece

Kelemenis & Co.

SOCIETE ANONYME - COMPANY
LIMITED BY SHARES

NOMIKI BIBLIOTHIKI

HELLENIC REPUBLIC
Ministry of Development,
Competitiveness and Shipping

INVEST IN GREECE AGENCY

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BUSINESS ENTITIES

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SOCIETE ANONYME - COMPANY LIMITED BY SHARES
General Provisions - Administration

Kaliope Vlachopoulou, *LL.M.*
Associate at **Kelemenis & Co.**

Which is the key piece of legislation governing Greek Société Anonymes?

A Greek Société Anonyme operates under the provisions of codified statute 2190/1920 and the provisions of the company's Articles of Association (AoA).

What is the liability of the shareholders of a Société Anonyme?

The company is solely liable for its debts and obligations towards third parties only by recourse to the company assets. The liability of shareholders is limited to the amount they contributed to the share capital of the company. Nonetheless, under certain circumstances, shareholders can be directly liable for debts of the Société Anonyme, if pursuant to the doctrine of "lifting the corporate veil", it is established that they have abused the legal personality of the Société Anonyme for the mere purpose of circumventing personal liability.

Are there any number/age and nationality/residency restrictions applicable on shareholders?

The Greek Société Anonyme can be established by one or more persons, legal or natural, Greek or foreign. There are no nationality/residency restrictions.

What is the minimum share capital required for the establishment of a Société Anonyme?

The minimum share capital required for the establishment of a Société Anonyme is currently EUR 60,000.00. However, there are higher thresholds for Société Anonymes operating under sector-specific legislation (e.g. credit institutions, investment services firms, insurance undertakings etc).

How is a Société Anonyme established?

Pursuant to statute 3853/2010, the establishment of a Société Anonyme is now implemented through a simplified procedure, the so-called "one stop system". Under the new regime, all documents required for the establishment of the company are filed with a Greek notary public.

What assets can be contributed to the share capital of a Société Anonyme?

Contributions to the share capital may be in cash and/or in kind (the latter only if the minimum share capital of €60,000 has been secured in cash). Contributions in kind must consist of assets that are of a monetary value and have undergone valuation by experts whom the law acknowledges as competent to undertake such valuation. Valuation may be skipped if certain conditions are met; for instance, when the contributions in kind are securities or financial instruments falling under the provisions of the MiFID Directive 2004/39/EEC.

Is there an upper or lower price threshold for the issue of shares?

The share capital of the Société Anonyme is divided into shares that may be registered or issued to the bearer. The nominal value of each share cannot be lower than €0.30 or higher than €100.00. Shares can be issued with different nominal values, provided they were issued at different stages of share capital increases. The can also represent value above their par in which case the difference between the nominal value and the price actually paid is allocated to a special accounting reserve.

How are the initial share capital and any increase of the share capital paid up?

The minimum share capital of a Société Anonyme must be paid up in full no later than two months following its incorporation. The BoD must certify the payment of the capital by the shareholders and the relevant resolution of the BoD needs to be filed with the competent public authority and published in the Government Gazette. Partial payment of share capital in cash (provided that the minimum share capital has been promptly paid up in cash) is allowed on certain conditions but is disallowed in the case of contributions in kind (article 12 of statute 2190/1920).

Can a Société Anonyme acquire its own shares?

A Société Anonyme is entitled to acquire its own shares under the following conditions:

- The General Meeting of Shareholders has authorised such acquisition.
- The nominal value of the shares acquired, including the shares which the company had previously acquired and still retains, and the shares acquired by a person acting on behalf of the company, cannot exceed 1/10 of the paid up share capital. However, this limit is not applicable if the acquisition takes place for the distribution of shares to the company's personnel (stock options) or to the personnel of an affiliated company.
- The acquisition concerns only shares that have been fully paid up.

Which corporate body is competent to decide changes to the capital of a Société Anonyme (capital increase or decrease) and under what conditions?

In principle, any change to the share capital of the Société Anonyme is subject to the competency of the General Meeting of its shareholders. However, the AoA may exceptionally authorise the BoD to increase the capital within a specific time period, which cannot normally go beyond the 5th anniversary of the company's incorporation, and for an amount which cannot normally be more than the amount of the initial share capital (article 13 statute 2190/1920).

A decision to increase or decrease the share capital requires a quorum of at least 2/3 of the paid up share capital. If such quorum is not attained in the first meeting, the General Meeting is convoked again within 20 days from the initial convocation and the quorum required in this case is reduced to at least ½ of the paid up share capital. If this quorum is again not reached, the third convocation takes place after 20 days and a quorum is deemed to have been attained when at least 1/3 of the paid up share capital is represented. Nonetheless, the AoA may provide for higher (but not lower) majorities and quorum requirements.

The resolution of the General Meeting of the shareholders must be filed with the competent Prefecture (or the Chamber of Commerce for Société Anonymes incorporated under the so-called "one stop system") and published in the Government Gazette.

Can the share capital fall under the minimum amount of EUR 60,000?

The share capital must not fall under the minimum amount of EUR 60,000 unless the decision for its decrease simultaneously provides that the share capital will be increased at least to the minimum amount required by law.

What are the administrative bodies of a Société Anonyme?

The key administrative bodies of a Société Anonyme are its General Meeting of Shareholders and its Board of Directors.

What is the minimum and the maximum number of members of the Board of Directors (BoD) of a Société Anonyme prescribed by law?

According to article 18 (2) of statute 2190/1920, the BoD must consist of at least three members. There is no maximum number of board members stipulated by law.

Under which conditions can a legal entity be appointed as member of the BoD?

The AoA of the company may provide that a legal entity can be a member of the BoD. In this case, the legal entity must appoint an individual for the exercise of the entity's duties as member of the BoD.

How are the BoD members appointed and removed?

BoD members are appointed and removed with a resolution of the General Meeting of the Shareholders. However, the AoA may provide that a shareholder is entitled to appoint members of the BoD not exceeding one third of the BoD's total number. In this case, the AoA must also determine the conditions under which such right can be exercised. Directors appointed by a shareholder pursuant to the above may be removed at any time by the shareholder and be replaced by others.

Moreover, the AoA may provide that the BoD elects replacements for members who have resigned, died or lost their right to be a member, provided that the General Meeting of Shareholders had not elected alternate members for such cases. Alternatively, the AoA can provide that in the event of resignation, death or loss of capacity, the remaining members of the BoD can continue the administration and representation of the company, provided that the number of its members is never less than three.

What is the term of BoD members?

The term of the BoD may not exceed six years. Exceptionally, the term of the BoD is prolonged until the expiration of the deadline within which the next annual General Meeting must convene.

What is the process for meetings of the BoD?

The meeting of the BoD is convoked by its chairperson or his/her substitute by invitation notified to its members at least two full business days prior to the meeting. The invitation must also clearly state the agenda of the meeting, otherwise a resolution is permissible if all members of the BoD are present or represented, and none objects. Moreover,

the convocation of the BoD may be requested by two of its members by means of an application to the chairperson or his/her substitute The BoD convenes at the registered address of the company but may also lawfully convene outside Greece, if provided in the AoA or if all members are present or represented in the meeting and no member objects. The BoD may also hold a meeting by teleconference. In practice, BoDs often do not convene and merely execute the minutes of the resolution.

Under which conditions is a BoD decision valid?

A valid BoD meeting requires a quorum of half of its members plus one, provided that at least three directors are physically present. The AoA may provide that in the event of a tie, the Chairperson of the BoD has the casting vote.

What are the main duties of the BoD?

The main duties of the members of BoD are indicatively the following:

- the duty of care

The directors' duty of care towards the company derives from articles 18, 22 and 22a (1) and (2) of statute 2190/1920. In light of their duty of care, BoD members must exercise their representative and administrative powers with the aim of promoting the company's interests and in compliance with the relevant provisions of the law, the company's AoA and the lawful resolutions of the Shareholders' General Meetings.

- the duty of loyalty

The directors have the duty of confidentiality with regard to the company's affairs made known to them in their capacity as the company's directors. Moreover, they are not allowed to pursue personal interests which are likely to harm the company's interests and are under the obligation to disclose any personal interests to the BoD. Finally, the company's directors may not compete against the company.

- other duties

The directors are prohibited to enter into agreements with the company (self-dealing), unless specific conditions of the law are met; for instance, if such agreement has been approved by a resolution of the General Meeting prior to its execution or if the contract falls within the limits of the company's day to day transactions with third parties. Moreover, the BoD must provide to the General Meeting with specific information on the company's matters if such information is requested by its shareholders five full days before said General Meeting.

What are the issues for which the General Meeting of Shareholders is exclusively competent to decide?

The General Meeting of Shareholders is solely competent to decide on such matters as the following:

- amendments of the AoA (e.g. increase or reduction of share capital, amendment of the company's scope),
- the election (and removal) of the members of the BoD and auditors appointed pursuant to the AoA,
- the approval of the company's balance sheet,
- the distribution of profits,

- the company's merger, division, conversion, revival, extension of duration or dissolution; and
- the appointment of liquidators.

Under what conditions is a decision of the General Meeting of the Shareholders valid?

With the exception of resolutions requiring increased quorum and majority, the General Meeting of Shareholders is in quorum and validly convenes on the items of the agenda, when shareholders represented or attending themselves the meeting, represent at least one-fifth (1/5) of the paid-up share capital. If such quorum is not attained, the General Meeting of Shareholders meets again within 20 days from the date of the adjourned meeting. The new meeting is in quorum and validly resolves on the items of the initial agenda irrespective of the percentage of the paid-up capital being represented. The General Meeting of Shareholders validly resolves by absolute majority of the votes represented in the meeting.

What exactly is the internal liability of the BoD members?

The BoD members are liable towards the company for any fault committed by them (by act or omission) during the management of the company affairs.

Under which conditions can BoD members be released from their (internal) liability?

The BoD members may be released from liability in the following cases [Article 22 a (1) of statute 2190]:

- if he/she proves that he/she has managed the company's affairs "with the diligence of a prudent businessman". This means that the BoD member must prove that he/she has acted according to the diligence which is normally expected given his/her position as manager of a Société Anonyme.
- BoD members may be released from liability if it is proven that they acted in accordance with a lawful resolution of the General Meeting of Shareholders.
- Directors may be also released from liability according to the "Business Judgment Rule". This rule applies when (a) the Director's action constitutes a reasonable business decision and (b) such decision must have been made in good faith on the basis of sufficient information and exclusively in the company's interest.

Under which conditions may the company waive its claims against a BoD member for damages it suffered as a result of his/her unlawful action?

The company may waive its claims against a BoD member for damages it suffered as a result of his/her unlawful action or reach a settlement following the lapse of a two-year period. The decision waiving the company's rights is taken by the BoD on the conditions that: (a) the General Meeting of Shareholders consents to the waiver and (b) no opposition is made at the relevant meeting by minority shareholders representing at least one-fifth (1/5) of the share capital represented at the meeting.

What is the statutory limitation applicable to the company's claims against BoD members for damages?

The claims of a société anonyme against the BoD members are subject to a three-year statutory limitation from the date the action was committed or to a ten-year statutory

limitation, if the action of the director that resulted in the company's damage was intentional.

What exactly is the external liability of the BoD members?

The BoD members may be liable for damages towards third parties such as company creditors and the State.

The BoD members cannot be held personally liable for the company's contractual obligations given that when they execute contracts they act in their capacity as managers of the company. However, according to Article 71 of the Greek Civil Code, BoD members of a société anonyme may be jointly and severally liable with the company for any liability arising from tort. Moreover, BoD members can be held liable under specific provisions of the Greek Bankruptcy Code. In this case, BoD members are directly liable towards the company's creditors for restoration of the damages the creditors suffered due to the company's bankruptcy. Moreover, BoD members are both civilly and criminally liable for, indicatively, tax liabilities of the company, and non-payment of accrued salaries and of social security contributions.

Which public authority exercises the government supervision on Sociétés Anonymes?

Government supervision has been delegated by the Ministry of Development to the Prefectures with the exception of certain categories of Sociétés Anonymes (credit institutions, insurance undertakings, listed companies), in connection with which supervision remains centralized and exercised by the Ministry.

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