

CORPORATE GOVERNANCE REFORMS IN GREECE AND CYPRUS

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Abstract

The recent International and European reforms concerning corporate governance and the need for effective capital markets “dictated” a reform in company law and corporate governance regimes in Greece and Cyprus. The latter are both small or medium sized markets, based on family owned companies and banks. Despite the cultural link between the aforesaid countries and their geographical proximity, their approach towards the adoption of corporate governance principles and best practices is not similar and depicts a difference due to historical and political reasons. This paper has two objectives, namely:

- i) to present the main aspects of corporate governance in Greece and Cyprus and the basic legal framework implementing the fundamental principles of good governance and
- ii) to attend an evaluation of these regimes and integrate them within the international and European debate of reforming corporate governance, while in the meantime, to strike out the different choice of legal tools in implementing corporate governance.

Firstly, I will review the Greek corporate governance legal framework. Secondly, I will describe the equivalent regime in Cyprus and finally, I will summarize the overall findings in an attempt to compare and assess them in a more critical way, with reference to cultural aspects of corporate governance and as regards the international and European corporate governance framework applied.

Keywords Corporate Governance, Greece, Cyprus, cultural aspects, codes, reforms, assessment, enforcement

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Introduction

Corporate governance is a widely discussed issue among academics, financial market regulators, investors and International Organizations. In Europe the discussion is more recent than in the US when was first argued in 1932 by Berle and Means¹. The Securities Acts of the 1930's in the US were quite determinative for the function of their capital markets and the reforms that followed until the recent provisions of Sarbanes-Oxley Act of 2002². In Europe, corporate governance aspects were involved in the FSAP³ and in the Company Law Action Plan of 2003⁴ as well, but one could find earlier pieces of

corporate governance regulations dispersed in the different member-states' corporate governance codes.

Three main factors contributed to the reform of the Continental Europe corporate governance frameworks; the need for a common regulatory framework for EU financial markets, especially in disclosure and transparency related issues⁵, the request for the national capital markets – in which international competition for equity of capital increased due to deregulation, globalisation and large

¹ A. Berle and G. Means, (1932) ‘*The modern corporation and private property*’, The Macmillan Company, New York.

² Sarbanes-Oxley Act 2002, Pub. L.107-204, 116 Stat. 745, enacted 2002-07-30, also known as the Public Company Accounting Reform and Investor Protection Act of 2002 and commonly called SOX or Sarbox.

³ European Commission, Financial Services: Implementing the Framework for Financial Markets: Action Plan (COM 1999), 232.

⁴ European Commission Communication to the Council and the European Parliament: Modernising Company Law and

Enhancing Corporate Governance in the European Union- A Plan to Move Forward, Brussels 21 May 2003 (COM 2003), 284. The basis for the Action Plan was the Report of the High Level Group of Company Law Experts chaired by Jaap Winter in 2002, A Modern Regulatory Framework for Company Law in Europe- Report of the High Level Group of Company Law Experts (European Commission Brussels 4 November 2002) 161 p. reprinted in G. Ferrarini, and others (eds), ‘*Reforming Company and Takeover Law in Europe*’, (2004) Oxford.

⁵ E. Ferran, ‘*Building an EU Securities Market*, (2004), Cambridge, Cambridge University Press.

scale privatisations⁶ - to be more attractive to foreign investors and finally, the need for a prompt response to corporate scandals, in Europe too, such as the Parmalat case⁷ and other financial fraud scandals in Germany (e.g. Metallgesellschaft) and France⁸. Investor's confidence still constitutes a key concept in European financial and company law⁹. Many definitions can be found for corporate governance from an economic, legal or business perspective. Shleifer and Vishny¹⁰ define corporate governance as the way in which the "suppliers" of finance to corporations assure adequate returns of their investments. Corporate governance problems arise from the separation of ownership and control, known as agency theory¹¹. In line with the OECD principles¹², corporate governance is only part of the larger economic context in which firms operate, including, for example, macroeconomic policies and the degree of competition in product and factor markets. The corporate governance framework depends also on the legal, regulatory and institutional environment. Factors, such as business ethics and corporate awareness of the environmental and social interests of the communities, in which a company operates, can also have impact on its reputation and its long-term success¹³. Causality between culture and governance is supported by the literature as well¹⁴. According to the Sapir-Whorf hypothesis, language and culture supplement each one another, the language being the stable factor constraining the development of cultural norms¹⁵.

Corporate governance has significant implications for economic growth and is evaluated and revised periodically. Legal origin of law leads to a better understanding of the shaping of financial development; however, it does not explain financial development beyond legal origin's ability to explain cross country variability in legal system adaptability¹⁶,¹⁷. The criteria, on which every country bases its corporate governance system, differ for many reasons. The 'law and finance' theory¹⁸ has shown legal origin matters and has explained the underdevelopment in many Continental Europe capital markets throughout the 20th century, as a result of poor investor protection¹⁹,²⁰. The comparison between Greece and Cyprus in this research paper can constitute an example, since both countries are Mediterranean, they are correlated in terms of history and culture, they have medium sized –family-companies usually with one controlling shareholder²¹, as most Continental Europe law countries²²; the Greek legislator issued a law on corporate governance whereas, the Cypriot legislator insisted in a 'milder' (soft law) solution, based on the revised Code of Corporate Governance²³.

In this paper, both framework of Greece and Cyprus are examined, as a vivid example consisting of two small capital markets with common historical and cultural roots, but with a difference in treating corporate governance regulation. The Greek context provides a recently liberalised principally dominated

⁶ E. Kamar, 'Beyond Competition for Incorporations' (2005) 42 *ECGI Law Working Paper*; 05-13 *USC Law Legal Studies*; (2006) 94 *Georgetown Law Journal* 1725

⁷ G. Ferrarini and P. Giudici, 'Financial Scandals and the Role of Private Enforcement: The Parmalat Case', *ECGI Law Working Paper* 40/2005.

⁸ L. Enriques, 'Bad Apples, Bad Oranges : A comment from old Europe on Post-Enron Corporate Governance Reforms', (2003), *Wake Forest Law Review*, 38(3):911-34.

⁹ N. Moloney, 'The Regulation of Investment Services in the Single Market: The Emergence of a New Regulatory Landscape' (2002) 3 *Eur Business Organization L Rev* 293, 297 ff.

¹⁰ A. Shleifer and R. Vishny 'A survey of Corporate Governance', (1997), *Journal of Finance*, 52, pp. 737-784 .

¹¹ M. Jensen and W. Meckling, 'Theory of the Firm: Managerial Behavior, Agency Costs and Ownership structure' (1976) *J of Financial Economics* and M. Jensen 'A Theory of the Firm: Governance, Residual Claims and Organizational Forms' (2000) Harvard University Press.

¹² OECD Corporate Governance Principles 2004.

¹³ *Ibid.*

¹⁴ A. Licht, Ch. Goldschmidt and S. Scharzt, 'Culture Rules: The Foundation of the Rule of Law and Other Norms of Governance', (2007), *Journal of Comparative Economics*, Vol. 37, pp.659-688, G. Tabellini, 'Culture and Institutions: Economic Development in the Regions of Europe', , (2007) IGIER Working Paper No. 330.

¹⁵ E. Sapir, Language in D.G. Mandelbaum (ed.), (1970), *Culture, Language and personality: Selected essays* 1-44, Berkeley, University of California Press

¹⁶ T. Beck, A. Demirguc-Kunt and R. Levine, 'Law and Finance: Why does Legal Origin Matter?', (2003) 31 No. 4 *Journal of Comparative Economics*.

¹⁷ Individual values and convictions about the scope of application of norms of good conduct provide the 'missing link' as it is argued in G. Tabellini *see supra* ftn. 14.

¹⁸ R. La Porta, F. Lopez-de-Silanes, A. Schleifer and A. Vishny, ' Law and finance' (1998), 106 *Journal of Political Economy* 1113; La Porta, F. Lopez-de-Silanes, A. Schleifer and A. Vishny ' Corporate Ownership around the world' (1999) 54 *J of Finance* 471.

¹⁹ *Ibid.*

²⁰ However, the view of 'law and finance' theory that civil law systems are inferior to the common law ones would be only partial, *see* in G. Ferrarini, 'Corporate Governance Changes in the 20th Century: A View from Italy' in Hopt, Wymeersch, Kanda, Baum (eds.) '*Corporate Governance in Context: Corporations, States and Markets in Europe, Japan and the US*', (2005) Oxford.

²¹ For an evaluation of controlling the controlling shareholders *see* R. Gilson and J. Gordon, 'Controlling controlling shareholders' (2003) *Columbia Law and Economics Working Paper No. 228*; *Stanford Law and Economics Olin Working Paper No 262*.

²² In Germany, Italy and France and Belgium approximately 40 per cent to 60 per cent of the listed companies have one shareholder controlling more than 50 per cent of the votes, in C. Vand der Elst, ' Economic View on Corporate Law in Europe', (2006), *Economic Analysis of Law: A European Perspective*, available at : http://papers.ssrn.com/sol3/papers.cfm?abstract_id=935013

²³ However, from the comparative analysis of both regimes that follows, the core of corporate governance practices is similar in both countries.

by family-controlled firms and banks. In the so-called “family-capitalism”, the agency problem refers to the conflicting relationship between strong blockholders and minority shareholders^{24,25}. The Greek legislator made the choice, as of 2002, to proceed with a general principles law concerning corporate governance, mandatory for all companies listed in the Athens Stock Exchange (hereinafter called “ASE”), whereas more complicated corporate governance issues were left to be treated either by the company law or by codes and regulations of the ASE or by every listed company at its discretion.

The Cypriot context provides a different approach to corporate governance. Though it is also based on family-owned companies and banks, it treats corporate governance issues through soft law, utilizing the revised Cypriot Code on corporate governance²⁶ as the main corporate governance tool. The choice of soft law reflects the great influence of Anglo-Saxon corporate principles in the Cypriot regime that has its roots in the history of the island and the close bonds with the legal tradition of the UK. Also in Cyprus, the leniency of the regime is depicted in the formation of the company law and its requirements, especially as regards taxation, since Cyprus economy was based – to a great extent - on the attraction of many off-shore company seats for reasons related to looser taxation²⁷.

The paper consists of three parts; part I includes the description and the main characteristics of the Greek corporate governance framework; part II includes the description and the main characteristics of the Cypriot corporate governance framework and, finally, part III includes the assessment and the regimes’ evaluation.

Part I

1. Corporate Governance Reforms in Greece

1.1. The Greek legal framework

In Greece, the subject of corporate governance has become the topic of discussion for the last years. As the company law reform proceeded at an international and European level, the same reform became a necessity at a national level too. Greek capital market has experienced many transformations during the last ten years.

The Greek capital market came across a major crisis at the end of 1999, when the massive entrance of individual and institutional investors increased abnormally and rapidly the stock prices and the liquidity. Many short-term speculative placements were effected at that time and the result was a significant divergence between actual and equilibrium prices. The Greek stock market crisis generated a reform of Greek Companies and capital markets law that led to: (i) the adoption of Law 3016/2002 (hereinafter the ‘Act’)²⁸, a codifying law of the partially adopted corporate governance principles in Greece²⁹, simultaneously, (ii) the introduction of new rulings and codes of conducts affecting corporate governance in listed companies by the Hellenic Capital Market Commission (hereinafter called ‘HCMC’) and the ASE and, (iii) The Act 2577/2006 of the Governor of Bank of Greece³⁰ that regulates the corporate governance of financial institutions and applies in parallel with the general framework set by the Act.

The new corporate governance framework in Greece is mainly focused on protecting individual and minority shareholders’ interests that could not affect the company’s decisions significantly³¹.

HCMC is the main regulatory authority of the Greek capital market and is responsible for supervising the implementation of rules and acts in this market. It

²⁴ R. Morck, and L. Steier, L, ‘The Global History of Corporate Governance : An Introduction’, NBER, (2005), Working paper No. 11062.

²⁵ Apart from the traditional agency theory, emphasis has been put on self-dealing by the literature and the modern theory, where corporate insiders (either controlling shareholders or managers) tend to divert corporate wealth to themselves under the name of ‘ private benefits of control’ see S. Dankov, R. La Porta, F. Lopez-de-Silanes and A. Shleifer, ‘The Law and Economics of Self-Dealing’ (2007 revised) Harvard University - Department of Economics; National Bureau of Economic Research (NBER); European Corporate Governance Institute (ECGI).

²⁶ Cypriot Corporate Governance Code (2007 revised).

²⁷ Unlike other ‘tax heavens’ for off shore companies, Cyprus offers great tax incentives due to its favourable tax regime and its wide network of double tax treaties. Even after the change of tax regime in Cyprus in 2003, as a consequence of the island’s accession to the EU, 10% corporate tax still gives Cyprus the lowest rate in EU after Ireland.

²⁸ Law 3016/2002 on corporate governance issues, *Greek Official Gazette 110 A/17.5.2002*.

²⁹ The issue of corporate governance was first raised in Greece in 1998. After the OECD edition of corporate governance principles, the HCMC set up a Committee on corporate governance in Greece that issued a White Paper with the title: “*Principles of Corporate Governance in Greece : Recommendations for its competitive transformation*”. This voluntary code of conduct was based on internationally accepted practises of corporate governance and incorporated many OECD principles. It contains 44 recommendations and is divided in 7 main categories: 1. the shareholders’ rights and obligations, 2. the equitable treatment of shareholders, 3. the role of stakeholders, 4. transparency, information disclosure and audit provisions, 5. the BoD responsibilities, 6. the members of BoD (about the non-executive members) and 7. the management (CEOs and CFOs appointment and compensation).

³⁰ Act 2577/2006 of the Governor of Bank of Greece, *Official Gazette of the Greek Government A 59*.

³¹ H.V. Mertzanis, ‘Principles of Corporate Governance in Greece’, (2001) 9 *Corporate Governance: An International Review*, 89.

aims mainly at safeguarding the integrity of the market, eliminating the systemic risk and protecting investors through the enhancement of transparency.

Greek Limited Companies (the equivalent of Sociétés Anonymes) are governed by Law 2190/1920, as recently amended by Law 3604/2007³². According to this law, the General Assembly of shareholders is the decisive body in the company. A unitary board structure is applied and the shareholders elect directly the directors through the shareholders' General Assembly³³. The Board holds both supervisory and managerial powers, while the executive managers are dealing with the every day agenda. The Board consists of - at least - three members and as regards the listed companies, at least 1/3 of the total number of Directors must be non-executive ones, while at least two of them must be independent. The Greek legislation, as of decree 4237/1962 regarding limited companies, has not changed significantly until the present date, except for the adoption of European directives and regulations that regulate specific matters and do not result in a general reform of the company law framework.

According to the new Law 3604/2007 on Limited Companies³⁴, the most important changes involve the following:

- the reduction of the State's interference in the launch and functioning of Limited Companies;
- the enhancement of shareholders' role;
- the simplification of the procedure for statutory amendments;
- issues concerning the creation and functioning of Limited Companies, as well as the business environment;
- transitory clauses;³⁵

For many years corporate governance and its provisions consisted a *terra incognita* for Greece. It is true that the Greek capital market is small and has no significant tradition in trading to exhibit³⁶. The ASE

was established in 1876 but its contribution to the Greek economy actually started late 1990's. It contributed significantly to the development of Greek economy, especially during the last years; however, a benchmark, as compared to the international regulations for organized trading markets and a corporate governance regime is difficult to be adopted as far as Greece is concerned.

Given that the ASE was hit by the "1999 bubble", coming as a consequence of the international stock market crisis that affected almost every regulated trading market, it became more than evident that Greek capital market was unprepared in dealing with issues involving trading, market abuse actions and corporate governance. At that time the HCMC issued Decision no. 5/204/14-11-2000 applicable to all ASE listed companies³⁷. The decision's main purpose was to introduce and, rather, enforce specific rules related to the composition of the Board of Directors, the executive management and the external auditors of the companies listed to ASE. Furthermore, the decision included several obligations for the disclosure regime of the companies' and related parties' transactions that can *or could* affect share price, since all companies' decisions should be released to the public³⁸. HCMC recently issued a circular concerning details for the proper and timely release of companies financial provisions as an addendum to its Decision no. 3/347/12.7.2005 concerning the release of inside information³⁹.

In general, the Greek legal framework consists of laws and rules of the HCMC. The Corporate Governance Act is the law introducing effective corporate governance mechanisms⁴⁰ in Greek legal

(HCMC). The Law 3371/2005 and the recent Law 3606/2007 regulated as a whole the capital market and the regulated trading markets in Greece, see C. Gortsos, P. Staikouras and C. Livada, *To θεσμικό και κανονιστικό πλαίσιο της κεφαλαιαγοράς (The institutional and legal framework of the capital market)*, (2007), Hellenic Banking Association (ed.).

³⁷ It consists of a code of conduct that set behaviour standards for ASE listed companies, specified obligations of main company's shareholders, the executive management and every other individual or entity connected to them. Articles of this code of conduct are elaborated by the Law 3016/2002 and from time to time amended by the HCMC, its core principles however are still in effect and it consists a necessary tool for the application of corporate governance regime in Greece.

³⁸ For example, the appointment or dismissal of a director, the strategic decision to invest in a foreign country, the acquisition or disposal of a subsidiary etc.

³⁹ HCMC Circular no. 36 OF 16/05/2008 with regard to HCMC Decision no. 3/347/12.7.2005 concerning the obligations of release of inside information.

⁴⁰ Law matters in forming corporate governance. This is supported also from an historical approach of the history of the evolution of corporate governance, for more see R. Morck., 'A history of Corporate Governance Around the World: Family Business Groups to Professional

³² Law 3604/2007 for the "Reform and amendment of codified law 2190/1920 concerning Limited Companies – Incorporation in the Greek framework of the Directives a) 2006/68/EC of the European Parliament and Council of the 6 September 2006 b) 2003/58/EC of the European Parliament and the Council of 15 July 2003", *Greek Official Gazette* 189 A' / 8.8.2007.

³³ Articles 34-44 of the 3604/2007 Law.

³⁴ *Supra* fn 32.

³⁵ See below under 'Enhancement of the shareholders' role in the recent Law 3604/2007.

³⁶ The Athens Stock Exchange was created in 1876 and constituted an independent public entity. It was ruled by the Laws 3632/1928 and 1806/1988. In 1995, it became a limited company with single shareholder the Greek state. By the 1999 as it was partially privatized the Greek States capital shares were restricted in the total amount of 47,75%. The total privatization of the ASE was completed in 2003 and the same year the adoption of the Law 3152/2003 defined the new legal framework of Regulated Markets in Greece. The majority of the administrative powers are transferred to the Hellenic Capital Market Commission

practice. As a specialized law on the issue at hand, it is applicable even if a more general rule of law 2190/20, amended to law 3604/2007, has to be applied or even if there is a controversial matter that is also ruled by the HCMC. Corporate governance is highly evaluated by the listed companies, while improvements are observed in the internal function of those companies complying with the Act and acquiring good corporate governance principles, a fact that confirms the importance of legal approach to corporate governance⁴¹. A typical example is that of financial institutions, which apply a more severe corporate governance regime, but are considered to be the most prosperous listed companies in Greece –even after the turmoil of 2008-2009. Corporate governance comes as an indispensable part of prudential regulation of banks and, as stressed by the Basel Committee, “it constitutes an element of the safe and sound functioning of a bank and may affect the bank’s risk profile if not implemented effectively”⁴².

Greek corporate governance is much more precise nowadays, yet amendments have to be made. The mandatory rules of the Act set the ground for the sound performance of the listed companies, whilst many corporate matters are regulated by the companies themselves. The Act has introduced the independent non-executive members of the BoD, however it was criticized for not requiring the disclosure of business and management risks by the company and also, for not enhancing shareholders’ participation to general meetings⁴³.

1.2. The correlation of laws 3016/2002 and 2190/1920 (now 3604/2007)

The appropriate function of the Greek capital market is based on a series of laws and decisions made by the competent authorities. In their majority, these laws and decisions transfer and apply to the Greek framework directives and rulings concerning the crucial topics of corporate governance and the optimal efficiency of capital market’s function. Prior to the issuance of both

Act and decisions, a public hearing of the competent authorities and the market operators is conducted, in order to assure the needs of the market, the maturity of its players and the compliance with the European capital market law. The law and the decisions concerning corporate governance in Greece affect the matters presented below:

- procedure of investor’s information and the policy of corporate disclosures and transparency;
- forms of financial statements;
- composition and the role of the Board of Directors;
- remuneration of directors and managers
- takeovers

The Greek legislator, as opposed to other countries’ corporate governance choices (like Cyprus as presented below), chose to codify and give mandatory vigour in the least corporate governance exigencies in listed companies in the Greek regulated trading market. This implicates that the Act addresses special issues that cannot be regulated by other laws or decisions and in case there is a controversy, then the Act should prevail. The adoption of the Act was the result of an extended period of negotiations with the market operators, after the Stock Market bubble. The voluntary code of corporate governance of October 1999 can be considered as a forerunner; it was issued by the Corporate Governance Committee in Greece under the auspices of the HCMC⁴⁴ and many of its principles became obligatory in the Act.

The Act’s provisions are implemented in every issuer listed in the ASE without regard to the law applicable to the listed company. There is though controversy on whether the said legislation should be finally applicable to foreign issuers, since a non-compatibility of the Act with the companies law systems of their countries of origin could arise; for instance, in case of company law providing for a two-tier system. From the European law perspective, equal treatment problems could arise with the Act, at least when foreign issuers are admitted to the ASE⁴⁵. This

Managers, (2005), The University of Chicago Press, Chicago and London.

⁴¹ For an analysis of the importance of legal approach to corporate governance see R. La Porta, F.Lopes-de-Silanes, A.Shleifer, and R. Vishny, ‘Investor protection and corporate governance’, (1999), *Journal of Financial Economics* 58, 1-25. According to them, when minority shareholders’ rights are protected through the enforcement of regulations and laws (e.g. disclosure and accounting standards, the rights to vote for directors and to call extraordinary shareholders’ meetings) the investors are willing to finance firms, encouraging the equity markets development.

⁴² Basel Committee on Banking Supervision: Framework for internal control systems in banking organizations, 1998, para.11.

⁴³ S. Mouzoulas, ‘Corporate Governance in Greece after Law 3016/2002’, (2005), in *UAE Symposium (minutes) about Corporate Governance-Transparency and Investor’s Protection in Listed Companies*, Bruylant, Bruxelles.

⁴⁴ It was evident from the code of 1999 that a binding regulation should follow as it contained many recommendations of optimal practices in corporate governance that could result in a formal regulation of corporate governance principles.

⁴⁵ The implementation of the Act to foreign listed in ASE companies raises some practical issues. For instance, this is not the case for European companies listed in ASE as according to the article 17 of the Directive 2003/71/EC: “Without prejudice to Article 23, where an offer to the public or admission to trading on a regulated market is provided for in one or more Member States, or in a Member State other than the home Member State, the prospectus approved by the home Member State and any supplements thereto shall be valid for the public offer or the admission to trading in any number of host Member States, provided that the competent authority of each host Member State is notified in accordance with Article 18. Competent authorities of host

is a controversial matter that the legislator chose not to touch, but should be reconsidered in a future review. The Greek legislator will probably proceed with the mitigation of certain mandatory rules allowing for wider margins of self-regulation and adopting, in the meantime, the application of the “comply or explain” rule for corporate governance structures and practices. In other words, the market environment is favourable to opt self-regulation and, in this sense, the adoption of voluntary regulations can be proved beneficial in several ways⁴⁶.

The provisions of the Act are not obligatory for the non-listed Greek limited companies. However, this fact doesn't impede any company from voluntarily complying with it, in order to create a more efficient corporate environment for its function and maximize the company's value.

The Act encompasses the effort of the Greek legislator to introduce mandatory corporate governance rules, in order to improve the daily company management function, the market

transparency and integrity and to enhance investors' confidence in the capital market.

1. 3. The articles of the Act in brief

The Basic rules that the Act introduced in Greece are as follows:

- i. the scope of the new act is to enhance shareholders' rights and maximize the value of their shares⁴⁷. According to the Act, it is crucial that ‘every member of the board of directors or any other third person pursues the best interest of the company, whilst being obliged to disclose any kind of conflicting interest between them and the company’.
- ii. At least one third of the Members of the Board of Directors of the listed companies should be non-executive and two of them should be independent. However, if representatives of the minority participate in the Board of Directors, then the number of independent non-executive members can change.
- iii. Listed companies are expected to abide to an internal control regulation following a board decision that should include the provisions of article 6 of the Act.
- iv. Listed companies should create an internal control body mechanism in order to adopt the provisions of article 8 of the Act.
- v. In the case of a share capital increase of listed companies, the Board of Directors shall submit a report to the General Assembly including the general directions of the investment plan of the company, an indicative time schedule for the realization of the plan and a statement including the use made of the capital deriving from the previous share capital increase.

The above legislative measures constitute *ius cogens* and cannot be modified by self-regulating codes of corporate governance or other self-regulations adopted by the listed companies.

The competent authority to impose administrative sanctions is the HCMC⁴⁸.

1.3.1. Board duties

The Corporate Governance Act consists of 11 articles. The nature of its provisions is a combination of

Member States shall not undertake any approval or administrative procedures relating to prospectuses”. Furthermore, according to article 23 of the same directive : “1. Where the competent authority of the host Member State finds that irregularities have been committed by the issuer or by the financial institutions in charge of the public offer or that breaches have been committed of the obligations attaching to the issuer by reason of the fact that the securities are admitted to trading on a regulated market, it shall refer these findings to the competent authority of the home Member State. 2. If, despite the measures taken by the competent authority of the home Member State or because such measures prove inadequate, the issuer or the financial institution in charge of the public offer persists in breaching the relevant legal or regulatory provisions, the competent authority of the host Member State, after informing the competent authority of the home Member State, shall take all the appropriate measures in order to protect investors. The Commission shall be informed of such measures at the earliest opportunity”. However, the act 3016/2002 does not refer to the case of conflicting issues with the legislation of other non-European-foreign issuers and the applicable law in conflict. On the contrary, the German code for Corporate Governance declares that no provision is implemented in any foreign issuer whereas the American legislation provides that it is implemented in foreign issuers listed in American stock markets thus having extraterritorial effects.

⁴⁶ Corporate governance codes can be proved beneficial according to Tsibanoulis in the ways that: stimulate public discussion upon corporate governance issues, encourage companies to adopt widely-accepted corporate governance standards, explain to investors the rules of law and the self-regulated practices, they can be used as standards to evaluate the supervisory and management bodies and they can help prepare the ground for changes in securities regulation and company law where these changes are necessary, see D. Tsibanoulis, ‘Corporate Governance Developments in Greece’ available at www.unece.org/ie/wp8/documents/corpgov/tsibanoulis_corp_gov.pdf.

⁴⁷ According to the Act's general provision : “ the essential obligation and duty of the Director Board Members of the listed companies is the continuous solicitation of the enhancement of the lasting economic value of the company and the protection of the general interest of the company”.

⁴⁸ It is entitled to impose a fine approximately to 587.000 € in maximum.

corporate and financial regulation⁴⁹. It affects every company listed in the Greek regulated trading market, i.e. the ASE.

The Board of Director's duties are described in articles 2-5. Article 2 of the act specifies the fiduciary duties of the management and the board members in the company⁵⁰. Board members are prohibited from pursuing their own interests at the expense of the company's interest, which they should promote continuously. In any case of a conflict of interest, the board members are obliged to assure the "well-being" of the company and to disclose to the remaining board members the conflicting interests with the company or even with the rest board members. It is also provided that the board members make decisions about the general remuneration system in the company, especially for the remuneration of managers and internal control executives. The legislator places particular emphasis on the regulation of conflicting interests between the board and the company. This can be explained by the peculiarities met in the Greek capital market regime and the companies listed in Greece. Most of these Companies are family-companies that were transformed into public ones and are still controlled by a small number of controlling shareholders (one or two). Consequently, the boards of listed companies are formed by members that, either belong to the main shareholders, or are in a close connection to them (relatives). These members, despite their special relation, are expected by the Greek legislator to promote the company's interests, rather than their own⁵¹. The duties of the board members are not exclusively specified in article 2 and, if non regulated, a recourse to the general principle of the fiduciary duty of the board members is made.

1.3.2. Board Members

The Act distinguishes between executive, non-executive and independent members of the board⁵². It

⁴⁹ According to the recommendatory report of the law, the discrimination between corporate and financial law of the provisions of the act is not very facile to be adopted, see Recommendatory Report of the Corporate Governance Act, Official Gazette of the Greek State 110 A', 17.5.2002.

⁵⁰ The management and the board members are expected to promote the interests of the company and to foresee and eliminate any possible threat in the realization of company's missions.

⁵¹ Although this article is mandatory for the listed companies, it is widely accepted that can be applied to non-listed companies as well in order to protect a company's best interest, see E. Perrakis 'The limited company's law : Special topics of corporate governance', (2005) 10, Nomiki Bibliothiki (ed.), 42.

⁵² The discrimination between executive and non-executive members does not consist a novelty in the Greek legislation. Although it was not clearly expressed in the company law of 2190/1920 it consisted a common practice in the boards of listed companies see S. Mouzoulas supra fn. 40 p. 42

constitutes *ius cogens* cannot be deported from either through a general assembly's decision or the company statutes. The number of non-executive board members should not be less than one third of the total number of board members. At least two independent non-executive directors should exist in the board. However, compliance with this provision is not mandatory in case representatives of the shareholders minority are appointed and participate in the board of directors as its members. According to article 4 of the Act, independent directors may hold shares in the company for less than 0.5% of the share capital and may have not any relation of dependence with other members of the board or the company itself. According to the Act, a relation of dependence exists if a member of the Board of Directors:

- maintains a business or other professional relationship with the company or any of its associated firms in the meaning of article 42 e. par. 5 of Law 2190/1920, which, relationship, as of its nature, influences the business activity of the company, where the member in particular is an important supplier or client of the company;
- holds the position of Chairman of the Board of Directors or is the Executive Officer of the company, or the member has the above capacity or is an executive member of the Board of Directors in a firm associated with the company according to article 42e par. 5 of Law 2190/1920 or maintains a relationship of dependent employment or paid mandate with the company or any of its associated firms;
- is related up to second degree with or is the spouse of an executive member of the Board of Directors of the company or an executive officer or of a shareholder possessing the majority of the shares of the paid up share capital of the company or of any of its associated firms in the meaning of article 42e par. 5 of Law 2190/1920;
- has been appointed in line with article 18 par. 3 of Law 2190/1920⁵³.

The growing number of independent non-executive members and can guarantee more independence in the boards. However, it is difficult to measure the degree of independence. The Act foresees the factors determining a dependence relation and by that provision one can infer which are the independency's criteria. A close friendly relationship with the controlling shareholder(s) of the company- especially in family companies- could actually exclude independence.

1.3.3. Remuneration of the board members

The remuneration of directors, either executive or non-executive is one of the most debated issues in

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corporate governance⁵⁴. The Law 2190/1920 provides that remuneration must be proportionate to the time the members devote to board meetings and to the accomplishment of duties delegated to them. Articles 3 and 5 of the Act provide that the remuneration system of directors and top executives, in general, is described in 43a of Law 2190/1920, and that it is proportionate to the time the members dedicate in company related issues. It is of great importance to institutional investors that the board members are compensated in a way that aligns their interests with those of the company they run⁵⁵. Article 5 of the Act strikes out the difference in the compensation of non-executive members. This difference is justified by the corporate governance theory, because the nature of responsibilities of non-executive board members differs. A major duty of the non-executive members is to control the decisions of executive members⁵⁶. In order to complete an efficient control of the executives' resolutions, it is anticipated that the compensation of non-executive board members is not affected by the executive ones. With regard to Law 2190/1920, the General Assembly makes decisions about the remuneration of executive, non-executive and independent board members⁵⁷. No distinction is made as to the nature of compensation. The criteria taken into account for the compensation are the following:

- the time devoted in the affairs of the company
- the fulfilment of their responsibilities, according to the statute of the company, the board and the law

Directors remuneration must also be disclosed in the annex of the annual financial statements for each separately⁵⁸.

The Act provides that the total amount of remuneration or any other form of payment should be reported separately in the Annex of the annual financial statements⁵⁹. However, it failed to follow the UK example⁶⁰ or adopt the EC recommendation⁶¹ on

director's remuneration concerning detailed disclosure of information on director's remuneration and statement incorporated in the Annual report⁶².

1.3.4. Internal control mechanisms- Articles 6-8 of the Act

Articles 6-8 of the Act foresee the minimum requirements of the internal control system that should be adopted in every listed company in the Greek regulated trading market. The Act specifies both the method to organize the internal control system of the company and the responsibilities of the internal audit control department.

These provisions had already been anticipated by Decision 5/204/2000 of the Hellenic Capital Market Commission (HCMC); however with the corporate governance Act they became binding for all listed companies. The Board of Directors is responsible for the formation and the supervision of internal control mechanism of the company. The relevant system consists of an internal function regulation (art. 6), the organization of internal control services in the company (art. 7) and the fundamental responsibilities thereof (art. 8). The Act points out the need for the adoption of an internal control system in the company, as well as its vital role in the efficacy of the company's function. This is already acknowledged internationally, since one of Sarbanes-Oxley Act of 2002 primary aims is the improvement of internal control mechanisms and the publication of financial statements of the company in a way that accurately describes so as to depict its financial conditions and enhances investors' confidence in the company⁶³. Moreover, the UK Combined Code identifies an internal control mechanism broader than the one provided by Sarbanes-Oxley Act 2002, to the extent that every aspect of risk management is included in order to assure the protection of the shareholders' investment and the company's capital⁶⁴. Even more so, the Financial Securities Authority (FSA) according to para. 12.43A of its Listing Rules, imposes to the listed companies the duty to comply with the principles of the Combined Code or else to explain the reasons for

⁵⁴ For a detailed analysis of executive remuneration in EU see G. Ferrarini and N. Moloney, 'Executive Remuneration and Corporate Governance in EU: Convergence, Divergence and Reform Perspectives', in *Reforming Company and Takeover Law in Europe*, (2004), G. Ferrarini, K. Hopt, J. Winter and E. Wymeersch, (eds.), Oxford.

⁵⁵ Kyriakakis in S. Mouzoulas, 'Corporate Governance N. 3016/2002', (2003), Sakkoulas, Athens, 358

⁵⁶ Article 3 of the 3016/2002 Corporate Governance Act.

⁵⁷ However, exceptionally the board of directors can decide for the remuneration of a member of it, see A Gouskou – Selekou, 'Remuneration of the board members of a corporation', (1999), Sakkoulas, Athens.

⁵⁸ Usually companies of smaller capitalization do not disclose the remuneration of every board member separately but as a whole.

⁵⁹ Art. 5 of the Act.

⁶⁰ UK Director's Remuneration Report Obligations 2002 (Charter 7 of the UK Company Law Reform Bill).

⁶¹ EC Recommendation of 14 December 2004 for an appropriate regime for the remuneration of directors of listed companies OJ L 2004 385/55.

⁶² P. Staikouras, 'Corporate (Mis)Governance?', (2006) *EBLR*, p.1158

⁶³ Sarbanes-Oxley Act 2002, art. 302 and 404 and SEC, Management's reports on internal control over financial reporting and certification of disclosure in Exchange Act periodic reports, Release nos. 33-8238, 34-47986 in effect since 14.8.2003.

⁶⁴ Combined Code- Principles of Good Governance and Code of Best Practice, following the report of the Hampel Committee on Corporate Governance, 1998, art. 4.5. of the Code and 5.16 of the report, as a continue of the Cadbury Report on the financial aspects of Corporate Governance of 1992.

non-application thereof⁶⁵. No ‘comply or explain’ rule is included in the Greek Act. One could find it as a voluntary principle in the Corporate Governance Code of 1999, but evidence from Greek listed companies has shown that most Greek firms do not provide reasons for non compliance⁶⁶.

With respect to the Act, internal audit department (or service) in the company listed in the ASE is compulsory. This service must employ at least one professionally competent in this area person. The internal controllers must be independent and are supervised by one up to three non-executive members of the BoD. This implies the creation of an Internal Control Committee consisting of the board members responsible for the supervision of the internal control procedure. However, the Act does not clearly requires the creation of a similar committee. Neither the Act foresees the exact number and type of board members that should join this committee (non-executive only or also independent ?) and it does not provide for its supervisory responsibilities and authorities⁶⁷. As to the internal auditors, the Act states that they are appointed by the board and that they can request all information relevant for the performance of their duties, such as the books of the company, documentation, banking accounts or portfolios and that they must have free access to any service of the company. The board should always cooperate with the internal auditors and facilitate their research in every possible manner.

Article 6 of the Act specifically requires listed companies and companies planning to go public to adopt an internal regulation⁶⁸. The board is the competent body for adoption of an internal regulation⁶⁹. Every member of the company’s bodies and staff

has to implement its rules⁷⁰. The content of the internal regulation must be appropriate for the realization of the company’s aims. This provision offers an example of “quasi intermediate” self-regulation, because the Act generally provides for the adoption of an internal regulation, the content of which has to be specified for each company according to its needs.

In American legislation, the internal audit system design and procedure is Sarbanes-Oxley Act’s primary target. In the Greek legal framework the provision for internal audit design is also a fundamental priority. Sarbanes-Oxley Act in articles 302 (a) (4) (A) and 404 imposes to the management the assessment of the internal control regime of the company⁷¹. The Greek Act does not explicitly provide for an assessment of internal control system design, however a similar duty can be inferred by the rules on directors liability and other provisions of the Act. In addition, the Greek firms which are cross-listed to NYSE or NASDAQ include in their 20-F form a management’s assessment over reporting the internal control of the company and thus extraterritorially implementing article 404 of Sarbanes-Oxley Act’s requirements for foreign issuers.

The internal audit control is based on two principles. The first principle consists in the contribution to the company’s management. The system of internal control is a means that assists and improves the efficiency of the company function and its financial results. As a consequence, the BoD is the sole responsible body for hiring or dismissing internal auditors⁷². The second principle highlights the independence of internal auditors; their responsibility is based on their contractual relation with the company⁷³. The company must inform the HCMC for every change in the persons or the internal control system within a ten-day period after the aforesaid change⁷⁴. The Act does not imposes the adoption of an audit

⁶⁵ In the UK, the principles concerning internal control were elaborated by the report of the Institute of Chartered Accountants in England & Wales : Internal Control, Guidance for the Directors on the Combined Code, 1999 (Turnbull Report).

⁶⁶ A. Florou and A. Galarniotis, ‘Benchmarking Greek Corporate Governance against Different Standards’, (2007) 15 No 5 *Corporate Governance: An International Review* 978

⁶⁷ A majority of listed in ASE companies has adopted the creation of internal control committee of the board, but there are omissions in small and medium capitalization companies. See available list of listed companies and capitalization the ASE site : www.ase.gr.

⁶⁸ Internal regulation provision we can find in the French law about règlement intérieur *see* Le Cannu, ‘Droit des Sociétés’, (2003), 206, 391, 426, Merle, *Sociétés Commerciales*, 1992, p. 65 as well as in the German law there is provision for such an internal text by the para. 77 (b) of the German law on limited companies (Geschatsordnung) of the BoD (Vorstand). In the American law there is the provision of bylaws that are compiled by the shareholders and consist different part of the the certificate of the incorporation, as art. 109 of Delaware law on companies provides.

⁶⁹ The HCMC can grant some exceptions of mandatory adoption of internal regulation for companies that are listed or about to list in a regulated market. Till today this kind of

exception has never been granted by the HCMC, *see* Tountopoulos in Perrakis as in fn.13

⁷⁰ In the case of violation of the internal control rulings of the BoD members or the company bodies’ members there is provision for civil responsibility according to art. 22a of Law 2190/1920 as amended by the art. 30 of the Law 3604/2007.

⁷¹ The ongoing monitoring of internal control is envisaged in the art. 32 and 33 of the UK Turnbull Report, in the Basel Committee On Banking Supervision, Framework for internal control systems in banking organizations, 1998 , principles 10 and 13 , as it was revised in July 2006 and for US the SEC, Final Release, 14 Rule 15d-15 (c) Securities and Exchange Act. In Greece, the decision 2438/1998 of the Governor of Bank of Greece contains a provision for the completed assessment of the internal control system of banking institutions by external auditors every three years and the submission of the assessment report in the Bank of Greece.

⁷² There can be an exception though for the companies that are state controlled and for the internal auditors decides the general assembly as described in art. 26.para.7 of Law 3165/2003.

⁷³ See also art. 37 para. 3 b of the Law 2190/1920.

⁷⁴ Article 7 para.3 c of the Act.

committee, however, this is proposed by the 15.2.2005 Recommendation of the EC⁷⁵ along with the qualitative criteria for companies listed in the ASE. The BoDs of the largest capitalization companies form an audit committee that deals especially with all the internal control matters and controls the efficiency of the risk management and the internal control procedures. The COSO⁷⁶ committee contributed on an international basis towards this need, while Sarbanes-Oxley Act 2002 404 results as well have shown that a good corporate governance is widely based on the internal control mechanisms efficacy.

In Greece, in order to eliminate business risks, the internal control mechanisms lies in the BoD, thus, prohibiting the participation of any other body or corporate officer in the business risk management procedures. The BoD, or its audit committee, should be responsible for the determination of business risk management procedures, while management should be responsible for the daily implementation of it. Until recently only financial institutions were obliged to establish a business risk management unit and determine their internal controls procedures. The same is proposed to every listed company, since this is the best practice that can result in the early identification of potential risks and the accurate evaluation of the company's performance.

1.4. HCMC acquires general sanction authority⁷⁷

The ultimate objective of the HCMC is the integrity of the market and the investor protection through transparency and enhanced disclosure. In the framework of article 10 of the Act, HCMC is competent to impose the sanctions described in art. 1 para. 4b of Law 2836/2000 in case a member of the BoD or anyone exercising similar powers does not abide by the rules of articles 3 to 8 and 11 of the Act. The HCMC is also responsible for any violations of the rules by financial institutions even though these are supervised by the Bank of Greece⁷⁸. The HCMC must run off its control in order to ascertain the violation of the articles of the Act with and/or without prior notice by the interested parties. Having the violation been detected, the HCMC can either impose administrative fines or decide the suspension of trading of financial

⁷⁵ Recommendation 15.2.2005 O.J.E.U. L 52/51.

⁷⁶ Committee of Sponsoring Organizations of the Treadway Commission (COSO): Internal Control Integrated Framework, 1992.

⁷⁷ For the financial institutions formed in Greece the supervisory and sanction authority is the Bank of Greece, *see supra* fn. 6. Though, as *Perrakis* notes, for the violation of articles 3/8 and 11 of the Law 3016/2002, the HCMC reserves the authority to impose administrative sanctions even to financial institutions that are normally supervised by the Bank of Greece, in *Perrakis*, *supra* fn. 18.

⁷⁸ G. Zavoleas in S. Mouzoulas (ed.), 'The law 3016/2002 for corporate governance', (2003), Sakkoulas, Athens, 297-325.

instruments, in case the company did not adopt the internal organization required by the Act and HCMC decision 5/204/14.11.2000 or requests the deregistration of the trading of financial instruments⁷⁹.

1.5. Enhancement of the shareholders' role in recent law 3604/2007

Attention should be drawn to the enhanced role of the shareholders in the new law on limited companies. The enhancement of their role motivates more investments in Greek capital markets and protects investors' confidence. The shareholders' minorities were not equally treated by Law 2190/1920. As a result, it was really important to improve their position in the company. On the other hand, this improvement could not be radical. Consequently, the reform of minority rights of the new law is not as intensive as one would expect. Indeed, no new right was added to the minority right's list of the article 29 of Law 2190/1920, except for the right to add a new topic in the daily agenda, that was already being implemented through the case law. Furthermore, the percentage for the execution of minority rights was reduced from 1/3 to 1/5 and the right to information that could be exercised by the 1/20 of the shareholders became personal in which case each shareholder can separately ask for it. New are also the options for board election under voting paper (ballot), lower percentages for the cancellation of a general meeting's decision and the minority shareholders' right to ask for the dissolution of the company or the buying out of its shares in certain cases by the company (to the exclusion of listed companies) or the majority shareholder. Finally, the new law adopts a mechanism of opt-in / opt-out for certain provisions of articles of association. It is difficult to assess the impact of the new law on Greek corporate governance a short time after its adoption. However, the law is expected to enhance, and simultaneously, loosen up the minority shareholders' position in the company rather than tie it up through strictly regulated provisions.

1.6. Compliance with the European and International framework of corporate governance

The actual framework of corporate governance in Greece is in compliance with the European directives and regulations. The Act (as analyzed above) and the implementation of the market abuse directive, the transparency directive, while the takeovers related directive becomes the "umbrella" under which corporate governance is exercised in Greece.

With regard to the new framework:

- Law 3340/2005 on market abuse aims at the protection of investors from insider trading and

⁷⁹ For a more detailed analysis *see* Gortsos, Staikouras and Livada *supra* fn. 35, p. 213-218.

market manipulation. It transfers the basic rulings and principles of the MAD Directive 2003/6/EC to the Greek Law. The market manipulation prohibition was introduced in Greece for the first time, while the concept of insider trading became broader.

- Law 3461/2006 on takeovers incorporates Directive 2004/25/EC on takeover bids in the Greek legislation. By the adoption of the new law, a new takeover regime was created replacing HCMC decision 2/258/2000 about takeovers in Greece. HCMC Decision 1/409/2006 for the “sell-out” right was issued in order to specify the selling out procedure provided for by article 28 of the law.
- Law 3556/2007 implemented Directive 2004/109/EC on transparency for issuers, whose securities are admitted to trading on regulated markets. This law creates a new regulatory framework for the disclosure duties of issuers based in Greece and replaces older articles of the presidential decrees 360/1985 and 51/1992.

The aforementioned laws modify several articles of HCMC’s decision 5/204/2000, that was the forerunner for the adoption of internal control mechanisms, the creation of an investors relations department in companies listed in Greece and the disclosure of corporate information. The said HCMC’s decision - when first introduced - incorporated many of the 1999 OECD principles⁸⁰ as well and enabled the compliance with the international framework on corporate governance practices too.

Yet, there is much discussion on whether the Greek company law regime is as mature as those in the US and the UK. Despite being harmonized to European standards, Greek company law is not as strict as its US counter. This can be partly explained by differences in the securities markets, including the participation of institutional investors and, also, by the difference in corporate governance. The crisis of 1999 led to a more strict regulation by law 3016/2002 leaving some space for self-regulation. Topics not addressed by the legislator either because they were difficult to deal with or premature to be addressed can be covered by codes of good practices⁸¹ and self-

regulation, leaving companies free to choose. The practice of “laissez-faire” in corporate governance has become popular amongst practitioners and academics and consequently, it is followed by legislators.⁸² Once a mandatory corporate governance framework is in place in every developed country including Greece, the need for detailed regulation is less apparent. The “comply or explain” principle applicable to companies listed on the LSE might be the right solution also for companies listed on the ASE, in order to improve their corporate governance and to maximize shareholders’ value. This principle could lead companies to offer a more stable corporate environment by implementing accepted corporate governance practices.

It is worth to mention though, a shift of the traditional continental law in the Greek binding legal framework for corporate governance that is revealed under the proposal of the new Greek law of July 2009 that transposes in Greece the European directives 2006/46/EC and 2007/63/EC. According to the proposal, the article 43a of the Law 2190/1920 is amended and the BoD of every listed firm should mandatory file the annual corporate governance report giving precise explanations on:

- The corporate governance code used by the firm or voluntarily applied by it
- The international corporate governance practices that the firm follows apart from the mandatory Greek laws
- A clear description of the system of internal control mechanisms adopted by the firm and the risk management procedures
- The composition and the function of the BoD and every other committee active in the firm

In the same paragraph however, it is provided that the firm can *comply with the rule or explain* and justify the reasons it is applying a different code of corporate governance or whether chooses the application of different corporate governance practices. The novelty in the Greek framework is the mandatory provision for the filing of the annual corporate governance report and the “comply or explain” provision in the Greek legal text. The turmoil of 2009 and the corporate governance failure in the way BoDs function has awoken the Greek legislator, who, however, keeps two paces; in one hand he makes binding provisions and in the other hand, he tries to eliminate the mandatory weight by introducing the comply or explain rule. Nevertheless, this approach is indicative of a more convergent and flexible national regime regarding the international implications of corporate governance.

⁸⁰ The OECD Principles of 1999 guided much of the reform on corporate governance in developing countries. The Principles have become a widely accepted global benchmark that is adaptable to varying social, legal and economic contexts in individual countries. They have also helped to spur reforms in regions as diverse as Asia, Latin America, Eurasia, Southeast Europe and Russia, see B. Witherell, ‘Corporate Governance: Stronger Principles for Better Market Integrity’, (2004), available at: www.oecdobserver.org/news/fullstory.php/aid/1231/Corporate_governance%3A_Stronger_Principles_for_better_market_integrity.html

⁸¹ On the contrary, the efficiency of good practices of corporate governance and their benchmark role is being questioned in the research paper of S. Turnbull, ‘Correcting

the Failures in Corporate Governance Reforms’, (2007) available at: http://www.ssrn.com/abstract_id=1021482

⁸² In Greece, the Federation of Greek Industries has a firm position insisting in the corporate governance codes being voluntary and argue that the legislator should refrain from legal enforcement.

Part II

2. Corporate Governance Reforms in Cyprus

2.1. The Cypriot framework

Cyprus capital market regime is rather recent. The Cyprus Stock Exchange (hereinafter called 'CSE') was established under the Securities and Stock Exchange Law in the form of a public corporate body in April 1993. The official CSE was inaugurated on March 29th 1996 and is the successor of the previous unofficial "over-the-counter" market at the Chamber of Commerce and Industry.

The issue and trade of securities in Cyprus has been much codified. The all-changing regime aims at the harmonization with the European directives and regulations. In brief, the legal framework consists of the following:

- i. The Companies Law, Chapter 113 of the Laws of Cyprus
- ii. The Cypriot Stock Exchange and Securities Law
- iii. The Cypriot Securities and Stock Exchange Regulations of 1995, as amended
- iv. Different regulations passed under sections 19 (3), 60A and 71 of the Securities and Stock Exchange Law
- v. The Law 73(I)/2009 concerning the structure, the function and the power and the responsibilities of the Cypriot Capital Market Commission and other issues
- vi. The Law 190 (I)/2007 providing for transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market
- vii. The Law 36 (I) of 1999 on Possession, Use and Announcement of Privileged Confidential Information for insider trading prohibition
- viii. The Law 27 (I) of 1996, Central Depository and Central Securities Register Law
- ix. Clearing Procedures in the form of the Trading Rules of the Stock Exchange (Electronic System),
- x. Regulations 100 of 1997⁸³.

As mentioned in *Neocleous et al*⁸⁴, Cyprus lacks a comprehensive financial services law similar to the UK Financial Services and Markets Act regulating all aspects of business investment.

The corporate governance regime of Cyprus is in its infancy, though the Cyprus Corporate Governance Code (hereinafter "CCGC") that was introduced by the CSE on September 2002, integrated through an *addendum* in 2003 and revised in 2007, contains the basic and fully acknowledged practices of good corporate governance. For the Cypriot based banks, basic corporate governance elements were not taken

seriously into account⁸⁵ until the Central Bank of Cyprus issued on the 16th May of 2006 a Directive on a 'Framework of Principles of Operation and Criteria of Assessment of Banks' Organisational Structure, Internal Governance and Internal Control Systems'⁸⁶ that is mandatory since January 2007 for all banks incorporated in Cyprus and their overseas branches as well as for those Cyprus branches of foreign banks incorporated outside the European Economic Area that according to the Central Bank are not subject to equivalent supervisory framework to that exercised by the Central Bank of Cyprus⁸⁷.

The basis of the Cyprus Code reflects the Anglo-Saxon model of corporate governance; the Cyprus Company's Law, Chapter 113 of the Laws of Cyprus, is identical to the UK's former companies Act of 1948⁸⁸. The link with the UK's framework on companies and their governance can be explained by historical and economic reasons⁸⁹. It is widely known that the Cypriot legal system draws on Common Law heritage. As a consequence, English Common Law and equity principles play a vital role in the securities trading field and operate as a benchmark for the corporate governance principles of the new CCGC.

The CCGC aims at enhancing the supervisory role of the BoD in listed companies, protecting their minority shareholders, adopting transparency and prompt disclosure of information and improving the level of independency in the BoD's decisions⁹⁰. Furthermore, the adoption of procedures of corporate governance compliance (like the application of compliance indexes) by IPO, firms and their monitoring by institutional investors, will result in the listed companies compliance with internationally accepted principles. The Code provides for the establishment of three committees by the BoD:

- i. the Nomination Committee
- ii. the Remuneration Committee and
- iii. the Audit Committee.

Companies are not precluded from establishing other committees voluntarily. The tasks of every BoD committee should be specified in the annual corporate

⁸⁵ Only the four banks listed in the Cyprus Stock Exchange were voluntarily implementing corporate governance principles until the mandatory implementation of the Central Bank of Cyprus' Directive.

⁸⁶ Central Bank of Cyprus, *see* the Directive's text available at

http://www.centralbank.gov.cy/nqcontent.cfm?a_id=3480&l_ang=en

⁸⁷ S. Stavrinakis in *Corporate Governance in Financial Institutions*, 2007 / 3 SUERF studies, Vienna.

⁸⁸ *Ibid* p. 317.

⁸⁹ M. Krambia-Kapardis and J Psaros, 'The Implementation of Corporate Governance Principles in an Emerging Economy: a critique of the situation in Cyprus', (2006), *Corporate Governance: An International Review*, Vol. 14, n. 2, March, pp.128.

⁹⁰ Corporate Governance Code, Cyprus Stock Exchange, 2nd revised edition, 2007.

⁸³ See analytically Neocleous et al., 'Introduction to Cyprus Law', (2000), 353-354

⁸⁴ *Ibid*, pp. 354.

governance report of each. The CCGC's four sections refer to the:

- i. BoD and its responsibilities,
- ii. Directors' remuneration
- iii. Responsibility and Audit Control and
- iv. Shareholders' relations

The Code's three annexes deal with:

- i. The Remuneration policy,
- ii. The disclosure of BoD members' remuneration and
- iii. Share-based remuneration

2.2. The articles of the Corporate Governance Code of Cyprus (CGCC) in brief

2.2.1. BoD and its responsibilities

a. The BoD

The Board of Directors (BoD) must meet periodically and at least six times per year. It makes decisions on its official agenda and it is the only body to decide about the topics included in the agenda. It is important for the BoD to include a balance between executive and non-executive and independent directors. The non-executive independent members must be half (50%) of the BoD members in all companies listed in the CSE, excluding its Chairman⁹¹. If a company fails to meet this provision, then it should explain the reason for non-compliance⁹² in the second part of its annual report. At first, this provision caused the reaction of Cypriot based financial institutions, since the BoD of main Cypriot banks had to change. BoD must also disclose the names of the independent non-executive directors and nominate one of them as lead independent non-executive member assigned to be in direct contact with the shareholders.

The role of CEO and of Chairman of the Board should be separate. Otherwise, a justification should be published in the annual report. For the effectiveness of its duties, it is essential that the BoD receive accurate, prompt and full information about the company. It is expected that BoD members dedicate the appropriate time to be informed and the Chairman assures the proper information of his directors.

The role of the BoD is heavily stressed in the aforementioned Central Bank of Cyprus Directive on corporate governance and internal control, as the Board becomes ultimately responsible for the operations and the financial soundness of banks. The fiduciary duties of the Board towards the banking corporation and their shareholders are a proper way of enhancing the banks' corporate governance.

b. Nomination Committee

The BoD should form a Nomination Committee that should be comprised of independent non-executive

members of the BoD. There must be a transparent procedure for the appointment of new directors. The CCGC requires all directors to submit themselves for re-election at least every three years. The non-executive directors should be appointed for a specific term and their appointment must not be automatic.

For the nomination of new members of the board, the nomination committee should assess their knowledge, experience, integrity and personality. However, in Cyprus many companies are family owned-like in Greece- and most members of the BoD are members of the family of the main shareholder of the company. The CCGC permits the Chairman of the Nomination Committee to be also the Chairman of the BoD. The fact that the code permits the above and taking into account that the Chairman and the CEO are often the same person in Cyprus, the practical result is a closely controlled board⁹³.

2.2.2. Remuneration policy of BoD members and disclosure

According to the CCGC, companies must adopt official and transparent procedures for the remuneration policy of directors. In view of avoiding any potential conflict, the BoD should establish a Remuneration Committee, to consist exclusively of non-executive directors that will be involved in the remuneration policy schemes. The majority of the members of the Remuneration Committee must be independent⁹⁴. Every year a remuneration report of the BoD is disclosed to the shareholders, which should also include the names of the members of the Remuneration Committee. During the annual meetings, the shareholders should approve the remuneration packages. However, as it is noted⁹⁵, while this appears to be an effective control, the shareholders rarely ask for the remuneration policy. Moreover, compensation might be low, but other fringe benefits could be granted without being disclosed to the public.⁹⁶ As in almost all corporate governance codes, the remuneration packages must be sufficient in order to attract experienced directors willing to devote time and knowledge to the company's supervision. The remuneration policy according to CCGC is closely linked to the company's efficiency and directors' performance. According to *Ferrarini and Moloney* however, there are limits to the amount of remuneration, which can be linked to company performance and in, particular, share

⁹³ See supra fn. 50.

⁹⁴ As shown in *Krambia-Kapardi and -Psaros* paper, in a research of 2002, 86% of companies had a normally constituted remuneration committee, every remuneration committee had a majority of non-executive directors and 44% were comprised only by independent members, supra fn. 50, pp. 135.

⁹⁵ See *Krambia-Kapardis and Psaros*, supra fn. 50, pp. 130.

⁹⁶ E.g. a family member of a director appointed to the company with a high salary etc.

⁹¹ For companies that are not listed in the CSE main market it is expected that one third of the BoD members are non executive and at least two of them should be independent.

⁹² Article A.2.3. of the CCGC.

performance, as difficulties arise with risk allocation⁹⁷. With respect to this, the Remuneration Committee is responsible for compensation packages which should not be set at excessive levels and should always reflect company's performance⁹⁸. In case there is clear connection of the compensation of executive members to the company's performance, executives' interests are aligned with those of shareholders. The CCGC contemplates share options for executive directors requiring however an approval of the shareholders' meeting.

The BoD is required to disclose its remuneration policy. Directors' remuneration is disclosed divided into groups of £50,000 (total remuneration and number of directors by category). The BoD is expected to annually disclose a report of remuneration to the shareholders of the company. It is either a part of the annual report of the company or it is attached to it. The context of the remuneration report is described in full in Annex 1 of the CCGC and involves the disclosure of the remuneration policy for executive members of BoD, in general, and for CEO's (in case they are not members of the BoD).

2.2.3. Audit Control

a. Internal audit control

The CCGC includes provisions for establishing an internal control department in the company. Other than Greek law, the CCGC works on 'a comply or explain' basis. Therefore companies which are not bound to create such a department should explain in their annual report why they did not comply - if this is the case - with this provision. In particular, those companies, which are listed on the Cyprus Stock Exchange (hereinafter 'CSE') and do not establish such a department, are expected to give assurances that, as regards internal control matters, they are based on outsourcing by external internationally reputed auditing firms. The CCGC, in this case, seems more lenient than the Greek Act, but practically if a company is listed on CSE, then it is supposed to establish an internal control department or to search for outsourcing. The result is that in both cases there must be a control of the audit procedures, whereas in Cyprus is given the additional option of 'outsourcing of control'. In any case and according to international practices for good corporate governance, the internal control is one of the most essential - and widely discussed- topics in corporate governance especially after the accounting scandals⁹⁹ and there should be notification of who supervises the internal control in each firm. In the CCGC, there is a provision similar to articles 302 and 404 of Sarbanes-Oxley Act, since the

BoD in its annual report on corporate governance should confirm that is not aware of any company's breach of the Securities Law and Regulations of Cyprus. Furthermore, the CCGC impedes external auditors to offer services of internal control in the same company. In case they offer other services and external auditing, then a confirmation of their independency and objectivity must be included in the annual report. Similarly, every loan granted to managers and executives of the company or to their relatives related up to first degree with them¹⁰⁰ must be disclosed in the annual corporate governance report.

b. BoD audit committee

The Board should appoint an Audit Committee with at least two non-executive members. The Chairman of the committee should have an accounting or finance background and the committee must meet at least twice per year. Their duties include the supervision of auditors and its cost effectiveness, their independency and good practices in the company. The Audit Committee can report to the BoD for every accounting policy, the compensation of auditors, their duties and their effectiveness, as well as the preparation of the Corporate Governance report included in the Annual report of the company, confirming the compliance with the code or explaining any deviation from it. It should be noted and is very interesting that the CCGC provides also for a corporate governance officer who ensures the compliance with the CCGC requirements.

2.2.4. Shareholders' relations

In its fourth part, the Code provides for the enhancement of the role of shareholders in the general meetings and requires their stimulation in order to participate more vividly and permanently in them. Article D.1.4 provides that there should be given a wide explanation to shareholders for the sudden discussion of subjects not included in the agenda and there should be much time left to them before the meetings in order to consider over the agenda and proceed to the meeting well informed. Shareholders up to 5% of the share capital can request the inscription of a topic in the general assembly's agenda at least ten days prior to its taking place.

BoD members and managers are obliged to promptly disclose through the Annual report and the financial statements of the company to the BoD and the shareholders for every individual interest and conflict with the company. The shareholders must also be notified on every possible takeover bid, for its consequence and their rights. An investor liaison officer is appointed by the BoD as the link of the shareholders to the BoD. In every possible change, individual and institutional investors must be

⁹⁷ G. Ferrarini and N. Moloney., 'Executive Remuneration and Corporate Governance in the EU', (2004), in *Reforming Company and Takeover Law in Europe*, Ferrarini, Hopt, Winter, Wymeersch, (eds), 280.

⁹⁸ Article B.2.2. of CCGC.

⁹⁹ Enron, Worldcom, Adelphia etc.

¹⁰⁰ Article C.2.3. of the CCGC.

immediately notified. Changes to be disclosed to shareholders are:

- The company's financial statements
- Scope and activities of the company in case of a modification
- Main shareholders and voting rights
- Potential Risks
- Employees and shareholders changes
- Structure of the governance and policies
- Non-usual transactions of the company.

2.2.5. Annual report of Corporate Governance

Listed companies must include in their annual report, a special report of the BoD for corporate governance issues. In the first part of the report the company complies with the CCGC and explains how it applies its principles. In the second part of the report, the company must reassure that it has applied the CCGC's provisions or else it must explain the reason for non-compliance ('*comply or explain rule*')¹⁰¹. This depicts the great influence of the UK's corporate governance regime in forming the Cypriot framework. The provision is identical to the prerequisites by the LSE rule 12.43A for companies listed on the London Stock Exchange. The report of corporate governance is also an influence of the American Sarbanes-Oxley Act 2002 that requires the management to assess practices of good corporate governance, specifically about the financial statements and verify them. A crucial difference, however, is that the Cypriot regime is voluntary and consists of soft law, whereas American law is mandatory for all listed companies. This can be explained by the size of the market and the disperse ownership of the capital, as well as by the different history of the company law and the maturity level of the market.

Eventually, it is the BoD's responsibility to control the good corporate governance practices in the company and the application of the CCGC principles. In this way, transparency and disclosure can strengthen the relationship between the BoD and the shareholders and, consequently, regain investors' confidence in the company.

Part III

3. Assessment of the regimes

The two regimes have many elements in common though they stem from different regulatory nature. The Greek framework better reflects the continental European corporate governance model to the extent that the fundamental principles of good corporate governance are fixed through mandatory provisions. On the contrary, the Cypriot regime is more

representative of the Anglo-Saxon tradition including the adoption of soft law through a corporate governance code. No doubt, in the last few years many reforms¹⁰² occurred in major European countries concerning corporate governance. However, these reforms imported into regulation already existing principles of corporate governance included in codes and described by widely accepted practices. In the U.S. and for a long time period – i.e., as of the introduction of the 1930's securities Acts until the last reform of securities regulation by Sarbanes-Oxley Act in 2002 - central government has played a much more important role in regulating corporate governance. The effectiveness of the American securities regulation system is ensured by an aggressive set of enforcement institutions, such as the Securities Exchange Commission (SEC), the US Department of Justice and the securities plaintiff bar¹⁰³. US private enforcement through class actions is a policy not common in Europe since, until recently, talking about private law remedies, as deterrent tools, was a taboo in many legal circles¹⁰⁴. Even the more so, according to Hopt, the right instruments and appropriate sanctions are useless without enforcement¹⁰⁵. Questions are raised concerning the choice between self-regulation and enforcement and the use of class actions as they exist already in some member states, while in others investors and their associations bring action under specific circumstances. However, in Europe enforcement lies in the hands of member-states, which are traditionally far from strict public enforcement in cases of violations of companies and securities laws.

One could find similarities between the Greek traditional company framework and French law. Managerial power has historically been concentrated in the hands of the CEO, who usually acted as a Chairman of the BoD and in most family owned companies was the dominant shareholder or the owner. Despite its similarities to the French regime, however, Greek law did not provide enough protection for the minority shareholders. The Act and the new law 3604/2007 about limited companies made an effort to bridge this gap and enhance shareholders' role in the

¹⁰² So many were the introductions of new directives that it is considered that financial markets suffer from regulatory fatigue and Brussels is widely seen as the source of trouble and complaints about ever-increasing compliance costs, see K. Lannoo, 'Fighting Regulatory Fatigue', (2007), *Wall Street J.*, January 10.

¹⁰³ That is lawyers who bring class action suits on behalf of large number of investors.

¹⁰⁴ P. Giudici, 'Private Law Enforcement in a Formalist Legal Environment: The Italian Sai-Fondaria Case', presented at CRELE inaugural conference in Bolzano, November 2007.

¹⁰⁵ In K. Hopt 'European Company Law and Corporate Governance: Where Does the Action Plan of the European Commission Lead?' in Hopt, Wymeersch, Kanda, Baum (eds.) '*Corporate Governance in Context: Corporations, States and Markets in Europe, Japan and the US*', Oxford 2005.

¹⁰¹ As discussed in the paper of Krambia-Kapardis and Psaros, 71% of the listed in Cyprus Stock exchange companies in 2002 did not comply with the Code nor expressed their intention to comply with it, see *supra* fn.50

company. This is a consequence of the mass intrusion of foreign institutional investors to ASE¹⁰⁶ and the wider opening of the Greek capital market during the last five years.

In both economies of Greece and Cyprus, medium-sized family companies are representative of the market's participants. On average, it is sometimes argued¹⁰⁷ that family controlled firms can often be better managed than widely held ones¹⁰⁸. However, this does not imply that family owned companies are always better governed, but it could signify a higher assurance for shareholders' interests protection against managerial abuses. But when better management is linked only to maximization of the firm value and not to the protection of shareholders' interests, then there is evidence that the firm lacks fundamental corporate governance mechanisms. In fact, in Greece and Cyprus corporate governance was not acknowledged as a necessary practice until recently, following the stock market crises of the years 1999-2000 and the European need for a reform of the company law. Consequently, with the openness of the markets, especially to foreign institutional investors and the movement of capital in EU level, the framework had to be regulated. Even more importantly, after the current financial crisis of 2009, that has been partially attributed to corporate governance failure, the corporate governance framework is under serious re-regulation.

Corporate practices in Cyprus reflect a non-binding regime but rather fully adjusted to the international best practices of corporate governance. Although Cyprus is a small country and its stock market is new, it was triggered by a crisis through the years 1999-2000, similar to the Greek bubble and similar to the one that had triggered most of the international stock markets. Cyprus did not have a framework for corporate governance, but immediately after the crisis issued the CCGC after detailed negotiations with the market operators and taking into consideration the widespread principles of good corporate governance. Its Anglo-Saxon orientation led to the acquisition of a code, rather than a law, and left to companies the initiative to comply with the Code or explain the reason for non-compliance. One could make the assumption that the Cypriot framework is mature and that the capital market is efficient enough, thus, not restricting companies through mandatory rules; but this is not the case. Corporate governance in Cyprus is not mature enough because it is newly implemented and also because the capital market is

rather new and medium-sized. The Cypriot market might not be mature and its corporate governance not very detailed but has responded promptly to the need of a construction of a safe corporate environment. So, Cyprus could be rated as more liberal in comparison to other countries and to Greece as well, because it avoided excessive regulatory provisions that do not maximize market values.

On the other hand, Greek legislator preferred to adopt a rather general but binding framework for corporate governance in all listed companies, reflecting no confidence in the market players and in initiatives of self-regulation that could achieve better governance. The choice of the Greek legislator is also explained by the company's law background primarily based on French law and its Code de Commerce. Also, the nature of most listed companies in Greece as family owned, governed by a dominant shareholder led the legislator to adopt mandatory rules in order to restrict investors' expropriation. In the same sense, it is noted by *Enriques and Volpin*¹⁰⁹, that private contracting and social norms instead of regulation are not enough for protecting the expropriation of investors by dominant shareholders.

In both regimes (Greek and Cypriot) the role of directors has been re-examined. Currently, in case of every direct or indirect interest of directors or conflict with the company's interests they are obliged to disclose this information and avoid any involvement in the transaction. A fundamental addendum to both regimes is the provision of independent directors on the board and in Cyprus the percentage is even higher, as the CCGC requests half of the board of companies listed in the CSE to consist of independent directors. Furthermore, the role of shareholders was enhanced in both regimes; in Greece rather recently, by the new company law 3604/2007 and not by the Act, and in Cyprus through the CCGC. Companies allow now remote voting through electronic mechanisms (such as Internet and telecommunication technology). Also, there is a written provision in the Greek law 3604/2007 that every shareholder has the right to request daily information about the company and not the 1/20 of the capital as the case was in the past. However, there should be given more incentives to the shareholders to participate regularly in the general meetings and this is not provided for by any written provision in none of the countries examined. In addition, both countries adjusted their legislation to European disclosure and transparency regime through the implementation of specific directives. On the other hand, little has been done for strengthening public enforcement and for introducing tools of private enforcement. The competent authorities of both countries have a wider power now in imposing sanctions, but private enforcement as a whole, differently from the US, is in its infancy in Europe.

¹⁰⁶ As it is considered that today approximately 60% of the ASE trading capital belongs to foreign institutional investors.

¹⁰⁷ See R Anderson and D. Reeb, 'Founding Family Ownership and Firm Performance', (2003), *Journal of Finance*, 58 (3):1301-28. They find a significantly higher Tobin's q for family controlled firms than for widely held ones.

¹⁰⁸ L. Enriques and P. Volpin, 'Corporate Governance Reforms in Continental Europe', (2007), *Journal of Economic Perspectives*, Vol. 21, N. 1-Winter 2007, pp.122.

¹⁰⁹ *Ibid*, pp. 125.

The American example of class actions is far from being applied in Greece or in Cyprus¹¹⁰.

Both regimes show adjustment to the reforms that take place at an international and European level¹¹¹. The new proposal of law in Greece containing the comply or explain rule for the compliance with a corporate governance code in the annual corporate governance report shows an adjustment to a more Anglo-Saxon environment by convergence. The data analysed in a previous relevant research by *Tsipouri and Xanthakis*¹¹² shows that Greek companies demonstrate a fairly satisfactory degree of compliance with the corporate governance framework. Adoption of more demanding and less binding corporate governance standards seems to be a relatively unknown practice in Greece. Greek firms might not be yet ‘convinced’ of the merits of corporate governance and still face it as an unavoidable cost¹¹³. But this should be another implication of a healthy corporate governance regime; not only should corporate governance mechanisms be implemented but this implementation should be made known to the investors. And it might be that the disclosure and the information in Greek market is still lacking.

On the contrary, Greece is one of the few countries where Greek listed companies must pay a percentage of their earnings to their shareholders. As reported by *La Porta et others*¹¹⁴, Greek listed companies have to pay 35 per cent (35%) of their earnings to shareholders as dividends and this is the second highest payout ratio in a research sum of 49 countries. For this reason and for several other specific reasons related to a specific country or firm (such as : level of regulation, government ownership, life cycle of the firm, the balance of power between capital and labour etc.) it might be that Greek firms diverge from the national and, particularly, international guidelines as noted by *Florou and Galarniotis*¹¹⁵. However, in Greece one should seek currently to evaluate the effectiveness of the new company law concerning shareholder rights in combination with every other

existing corporate governance rule in practice. Nevertheless, it is required for the Greek cross listed companies to have a higher quality of corporate governance mechanisms. The case is even stricter with the Greek banks, as they are more exposed to the information asymmetry problem and the regulatory response to the acute systemic risks comes with the introduction of ‘official safety nets’ as discussed by *Staikouras*¹¹⁶. In Cyprus the implementation of corporate governance has become mandatory only since 2007, and before the formal imposition of the principles, only the four banks listed in the CSE had encompassed the basic corporate governance principles voluntarily¹¹⁷. In any case, sound corporate governance of banks may have a positive externality on the economy as a whole¹¹⁸. Currently, the corporate governance in Cyprus based banks is mandatory whereas the voluntary basis of corporate governance of companies leads them to a ‘comply or explain’ practice. *Krambia-Kapardis-Psaros*¹¹⁹ report that only a small minority of Cypriot public firms comply with the national code and that the need for a better compliance with the CCGC is evident in Cyprus .

The reform related effort is being continued in Europe since good corporate governance is a never-ending target and there is the need for frequent re-evaluations according to market expectations. In this case, the application of soft law rather than rigid rules can be proved to be more effective. Besides, in Greece, or in Cyprus or at an international level, what counts in practice is the maximization of value of the company and, under this aspect, companies seek for the best framework to achieve their objectives ; and both countries should be able to offer a competitive regime while respecting their shareholders’ interests¹²⁰.

4. Conclusion

The overall corporate governance regime in both countries, either mandatory or voluntary, is broad

¹¹⁰ In Italy, another continental law country, in December 2007 was adopted a new law adhering a type of class actions. Its results cannot be evaluated yet as it is too early, however this attempt is reflecting the need for private enforcement also in traditional continental company law countries.

¹¹¹ Regulatory competition process though may be less likely to arise in European member states than in US because of many specifically European barriers such as language, culture, history and politics as discussed by K. Hopt, see supra fn.87.

¹¹² L. Tsipouri and M. Xanthakis, ‘ Can Corporate Governance be Rated? Ideas Based on the Greek Experience’ (2004) 12 (1) *Corporate Governance: An International Review* 16

¹¹³ A. Florou and A. Galarniotis, ‘ Benchmarking Greek Corporate Governance against Different Standards’, (2007) 15 No. 5 *Corporate Governance : An International Review* 977

¹¹⁴ See supra fn. 18.

¹¹⁵ Supra fn. 100.

¹¹⁶ P. Staikouras, ‘ The Regulatory Big Bang on the internal corporate governance of Greek banks and its implications’, (2007) Vol. 8, 3 *Journal of Banking Regulation*, 201. Poor corporate governance may contribute to bank failures, imposing significant public costs and affecting the economy as a whole and for this reason the corporate governance internal control of banks is more regulated and detailed.

¹¹⁷ Supra fn. 85.

¹¹⁸ J. Barth, G. Caprio and D. Nolle, ‘ Comparative International Characteristics of Banking’, (2004), Working Paper.1, US Treasury –Office of the US Controller of the Currency Department Economic and Policy Analysis

¹¹⁹ See supra fn. 76.

¹²⁰ The best corporate governance regime could be achieved through initiating better or ‘smart regulation’ with the meaning of smart regulation described by H. de Vauplane and E. de Lenquesaing in ‘Globalization and European Integration: The Need for Smart Regulation’, presentation presented in symposium on Building the Financial Agenda of the 21st Century in Armonk, April 2008, available at *Symposium Report of PIFS,(2008) Harvard Law School and Centre for European Policy Studies.*

enough, not to mention a little vague, but with the support of actual enforcement could lead to a better market efficiency, in a way of protecting investors and assuring the optimal allocation of capitals. Consequently, there is no need for more regulation; self-regulation can elaborate the obligatory rules set by the Corporate Governance Act in Greece and motivate shareholders. Staikouras shares the opinion that soft law and self regulation rather than conventional law-making –channels (e.g. Acts, Presidential Decrees and Delegated Legislation) is better suited to reflect the ‘one does not fit it all’ character of accepted corporate governance practices¹²¹. Indicative of the new trend is the adoption of the Greek legislator of the “comply or explain rule” in the annual report of corporate governance of the firm concerning the compliance (or not) with the corporate governance code. On the other hand, in Cyprus the basic provisions of the Company law, as regards the BoD structure in accordance with the CCGC, provide the companies with the option to become more competitive and to seek benefits from their being listed in such a liberal trading market. When Lannoo notes¹²² that it is an illusion to believe that there could be a regulatory pause in financial markets and as the industry’s capacity to innovate and develop is almost unlimited, there will always be a need for regulators to react to the changes, not to mention the regulatory need that has arisen after the current financial crisis. But before reaching to new regulation, self-regulation and self-commitment of the companies to principles and the rise of healthy competition in financial markets could be a step forward. Self-regulation can result in cost efficiency for medium and small sized companies, whereas it does not importantly affect larger ones¹²³. Since Greek and Cypriot companies are medium sized in general, self-regulation might be the key for a better corporate governance, more effective in practice that could drive to a stronger competition and maximize the firms values. Both markets show willingness to respond to the current trend of corporate governance and adjust to the modern markets needs. It is an interactive process between regulators, companies and market players and it is subject to change as long as the needs change too.

In conclusion, the evaluation of both frameworks reflects the legal origin of each country but it should now be focused more on the enforcement instruments rather than on acquiring new regulation or requesting for more self-regulation.

¹²¹ See Staikouras supra fn.60.

¹²² Supra fn. 63.

¹²³ As recent researches on Sarbanes-Oxley Act art. 404 results have shown, larger companies did not face many problems to comply with it but the problem was more intense in terms of costs for medium and small sized ones.

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