

(Emblem of the Hellenic Republic)  
Hellenic Capital Market Commission  
Legal Entity of the Public Sector

Decision  
1A/890/18.9.2020  
of the Board of Directors

Re: Particularization of the system on the determination, assessment and measurement of the amount of the sanctions per infringement that are imposed pursuant to article 24 of Law 4706/2020.

**THE BOARD OF DIRECTORS  
OF THE HELLENIC CAPITAL MARKET COMMISSION**

Having considered:

1. Paragraphs 1 and 4 of article 24 of Law 4706/2020 (GG 136/A/17.7.2020) on the “Corporate Governance of societies anonymes, modern capital market, implementation of the Directive (EU) 2017/828 of the European Parliament and the Council, measures on the application of the Regulation (EU) 2017/1131 and other provisions”.
2. Paragraph 4 of article 44 of Law 4449/2017 in conjunction with article 74, paragraph 3 of article 92 and paragraph 1 of article 93 of Law 4706/2020
3. Article 90 of the P.D. 63/2005 “Codification of the legislation on the Government and governmental bodies” (A 98).

**Unanimously decides**

**I. General Provisions/ Scope**

1. This decision particularizes the system on determination, assessment and measurement of the sanctions per infringement (“System on the imposition of sanctions” or “System”).
2. The infringements arising from articles 1-23 of Law 4706/2020 and 44 par. 1 and 3 sec. a, b and c of Law 4449/2017 that are detected against natural or legal entities that fall within the scope of articles 24 of Law 4706/2020 and 44 par. 4 of Law 4449/2017, fall within the scope of this decision.

**II. Definitions**

Persons: The natural or legal entities supervised by the Capital Market Commission that fall within the scope of articles 1-23 of Law 4706/2020 and articles 44 paragraph 1 and 4 of Law 4449/2017 such as but not limited to, the companies in the context of section 3 of article 2 of Law 4706/2020, the members of the Board of Directors thereof, the members of the Audit Committee of section 17 of article 2 of Law 4706/2020.

Infringement: The infringement of the provisions of articles 1-23 of Law 4706/2020 and 44 par. 1 and 3 sec. a, b and c of Law 4449/2017 as applicable, detected based on a decision of the Board of Directors of the Capital Market Commission.

Infringer: The person that has been found to have infringed the provisions.

Sanction: The administrative sanction imposed based on a decision of the Board of Directors of the Capital Market Commission on infringements.

System on the imposition of sanctions or System: The set of principles and rules applied by the Capital Market Commission regarding the imposition of sanctions.

### **III. General Principles**

#### **1. Scope of the system on the imposition of sanctions**

The primary goal of the imposition of sanctions is the promotion of high standards of conduct of the Persons by preventing them to commit any similar or further infringements as well as the consolidation of the market benefits arising from the compliant conduct.

#### **2. Simplicity, objectivity and transparency**

The System aims to determine the sanctions with simplicity, clarity, absence of any contradictions, objectivity and mitigation of the individual criteria to any extent possible.

#### **3. Effective protection of the market and the investors and proportionality**

Each sanction is considered on a case-by-case basis as appropriate, necessary and reasonable (mean-ends relationship). In particular, the sanction shall aim to prevent Persons from repeating any similar conduct in the future but also prevent any other person from any such conduct in order to ensure the smooth operation of the market but also upon consideration on a case-by-case basis of the appropriateness of the means to achieve the intended goal.

Each infringement for which a fine is imposed is correlated with a specific quantitative range depending on the detected infringement as linked to its impact on the smooth operation of the market, the level of liability of the person and any special circumstances.

### **IV. Factors/criteria for the assessment and the measurement of the amount of the sanctions**

According to paragraph 2 of article 24 of Law 4706/2020 in the course of the measurement of the fine, the seriousness of the infringement, the impact of the infringement on the smooth operation of the market, the risk of causing harm to the interest of the investors and the minority shareholders of the company, the level of liability, the implementation of measures by the infringer regarding the termination of the infringement for the future, the level of cooperation with the Capital Market Commission at the stage of investigation and control, the needs for special and general prevention and any repeat infringement of articles 1 to 23 of the said law.

These criteria are assessed and particularized as follows:

#### **1. Seriousness of the infringement**

As to the seriousness of the infringement, the following are assessed:

- The importance of the infringement based on its impact on the operation of the company based on the general framework on corporate governance.

- The fact that any specific infringement infringes several provisions on corporate governance.
- The fact that the infringement is either procedural or material.

## **2. The impact of the infringement on the smooth operation of the market**

In order to assess the impact of the infringement on the smooth operation of the market, the Capital Market Commission considers in particular the results that occurred or were threatened to occur in the market, considering especially the influence on the market, the participation in benchmarks such as FTSE/ASE Large Cap, MSCI Greece, the capitalization of the company as percentage of the entire capitalization of the Athens Stock Market, the amount borrowed to investors through bonds, the negotiation of derivatives that have as underlying value the share or bonds of the company and the amount of the said open positions.

Moreover, the following are considered:

- The duration of the infringement, i.e. the period of time during which the infringement occurs and
- The frequency of the infringement, i.e. if the infringement has been committed repeatedly.

## **3. The risk of causing harm to the interest of the investors and the minority shareholders of the company**

The risk of causing harm is the degree of probability for causing harm to the collective interests of the investors and the minority shareholders of the company.

## **4. The liability criteria**

Liability is the responsibility of the Persons regarding the performance of the infringement.

### **4.1. Legal entity liability when the infringement occurs due to any infringement by any legal entity.**

The liability of the legal entity is assessed based on the conduct of the persons who when acting collectively or individually, act bindingly according to the decisions of the persons based on company law and Law 4706/2020, the articles of association hereof and the relevant decisions of the statutory bodies.

### **4.2. Natural entities liability**

The liability of the natural persons is assessed mainly based on:

- The identity, occupation, status and competence and the type of their participation in the illegal conduct.
- The type and level of participation in the infringement
- The possibility to prevent or avert any infringement according to the circumstances and the prevention measures that have been introduced or that objectively based on their capacity and role in the infringement could have introduced.
- The abuse of power of the office that the infringers hold or any breach of duty.
- The infringement of the applicable policies and codes.
- The aversion or encouragement of other persons to proceed with an infringement.
- Any mitigation circumstances that the infringer refers to and proves.

**5. The implementation of measures by the infringer regarding the termination of the infringement for the future**

Implementation of measures is the measures that the persons have implemented for the cease of the infringement or or the termination of the infringement for the future by submitting at the same time the relevant evidence. Moreover, the intent to rectify the infringement or the intent to omit any such infringement in the future is examined and the probable compensation to the investors or minority shareholders shall be considered.

**6. The level of cooperation with the Capital Market Commission at the stage of investigation and control.**

The level of cooperation is the level at which the person involved has effectively cooperated with the Capital Market Commission during the investigation of the specific matter. In particular, the speed, the effectiveness and the completeness of the collaboration with the Capital Market Commission are also assessed.

The rejection by the person under review to collaborate or the attempt to cause problems with the duties of the Capital Market Commission during the conduct of the investigation on the said matter, shall also be calculated during the measurement of the fine.

**7. The needs for special and general prevention**

The special and general prevention is the need to prevent the performance of any similar infringements not only by the infringer himself (special prevention) but also by third parties (general prevention) in the future and in particular, in the event that the infringement has a large impact on the smooth operation of the market and a great risk to cause harm to the interests of the investors and the minority shareholders.

**8. Any repeat infringement of articles 1 to 23 of the said law**

The repeat infringement is the imposition of sanctions for infringements of articles 1-23 of Law 4706/2020 and 44 par. 1 and 3 sec. a, b and c of Law 4449/2017 as applicable that took place over the past five years prior to the date that the infringement took place.

**V. Categories of sanctions**

The sanctions are classified as:

- Reprimand
- Fine

**VI. Procedure on the assessment of the fine**

The procedure on the assessment of the fine on legal and natural entities is divided in four stages.

**1<sup>st</sup> stage: Determination of the infringement**

At first the infringement of a specific provision is determined and is subject to the applicable section of article 24 as follows:

- i. Infringement by the company according to section (a) of part. 1 of article

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- The infringement by the company is the infringement that the legal entity of the supervised company allegedly performed and for which the sanctions of article 24 par. 1 sec. a of Law 4706/2020 are imposed.
- ii. Infringement by the members of the Board of Directors, the members of the Audit Committee or other natural or legal entities according to section (b) of part. 1 of article 24
- Infringement by the members of the Board of Directors is the infringement that the natural entities in their capacity as members of the Board of Directors of the supervised company have allegedly performed with regard to the infringements of articles 1-23 of Law 4706/2020.
- Infringement by the members of the Audit Committee is the infringement that the natural entities in their capacity as members of the Audit Committee of the supervised company have allegedly performed with regard to the infringements of par. 1 and 3 of article 44 of Law 4449/2017.
- Infringement by other natural or legal entities is the infringement that results from the non-compliance with any obligation that these persons have due to their capacity and the duties that have specifically been assigned to them.

**2<sup>nd</sup> Stage: Measurement of the factors for the determination of the amount of the fine**

For the assessment of the amount of the fine, the infringements are classified in nine categories depending on the importance of the infringement and they are weighted based on the liability of the infringer.

In particular, the importance of the infringement includes the seriousness of the infringement, the impact of the infringement on the smooth operation of the market and the risk of causing harm to the interests of the investors and the minority shareholders of the company. The infringements are classified based on their importance as follows:

- Less importance
- Important
- Very important

In particular, the categories are the following:

Category of infringement	Importance of infringement	Weighing based on the liability	Sanction/amount of the fine
1	Less important	Low liability of the company or/and the natural or legal entity involved	Reprimand or fine up to 5.000€
2	Less important	Medium liability of the company or/and the natural or legal entity involved	Reprimand or fine up to 10.000€
3	Less important	High liability of the company or/and the natural or legal entity involved	Reprimand or fine up to 20.000€
4	Important	Low liability of the company or/and the natural or legal entity involved	Fine up to 30.000€
5	Important	Medium liability of the company or/and the natural or legal entity involved	Fine up to 100.000€
6	Important	High liability of the company or/and the natural or legal entity involved	Fine up to 200.000€

7	Very Important	Low liability of the company or/and the natural or legal entity involved	Fine up to 300.000€
8	Very Important	Medium liability of the company or/and the natural or legal entity involved	Fine up to 1.500.000€
9	Very Important	High liability of the company or/and the natural or legal entity involved	Fine up to 3.000.000€

**3<sup>rd</sup> Stage: Measurement of the factors for the increase or reduction of the amount of the fine**

The Capital Market Commission may increase or reduce the fine assessed at Stage 2 upon consideration of the following factors that aggravate or mitigate the infringing conduct. Therefore, it may increase or reduce the amount depending on whether the respective aggravating or mitigating circumstances apply.

The factors to be taken under consideration are the following:

- The implementation or not by the infringer of any measures on the termination of the infringement in the future.
- The special and general prevention.
- The level of cooperation with the Capital Market Commission at the stage of investigation and control.
- The implementation of restoring measures.
- The trading status of the company (suspension or supervision).
- The overall turnover of the company according to the financial statements at the end of the year that the infringement concerns and which have been signed by the Board of Directors.

As for the increase or reduction of the amount of the fine, information from the following sources but not limited to may be taken into consideration:

- Declaration on corporate governance
- The Activities Report of the Control Committee
- The Evaluation of the internal audit system by an independent evaluator
- The Evaluation of the corporate governance system by the Board of Directors
- The Audit Report of the Chartered Auditor
- The Confirmation of the Chartered Auditor regarding the Rules of Procedure
- The Supplementing Audit Report of the Chartered Auditor

The amount of the fine as assessed at Stage 3 shall not exceed the maximum amount as set out in article 24 of Law 4706/2020.

Notwithstanding Stage 4, with regard to the increase of the amount of the fine in the event of a repeat infringement, in case of a Less Important Infringement and under the condition that the company or/and the person liable has complied with the provision or the provisions that has/have been infringed, prior to the imposition of the sanction, only a reprimand is imposed.

Notwithstanding Stage 4, with regard to the increase of the amount of the fine in the event of a repeat infringement, in case of any other Infringement, with the exception of the case of a Very Important with High Liability Infringement, under the condition that the person liable has complied with the provision or the provisions that has/have been infringed, prior to the imposition of the sanction, the maximum amount of the

provided fine for the respective category of infringement may be reduced by a percentage of fifty percent (50%). In any case, for the assessment of the final fine, the remaining measurement factors of Stage 3, as mentioned above, are taken into consideration.

**Stage 4: Increase of the amount of the fine in case of repeat infringements.**

In case of a repeat infringement, pursuant to paragraph IV8 hereof, depending on the seriousness thereof, the total amount of the fine is increased by 5% for the less important infringements, 10% for the important and 20% for the very important infringements. In this context, the prior imposition of sanctions for infringements of the capital market legislation are also taken into account.

- VII. It is for the Capital Market Commission based on its judgment and discretion to decide on the final amount of the fine assessed based on the aforementioned procedure.

In any case the amount of the fine shall not exceed the maximum amount as set out in article 24, i.e. up to three (3) million euros to the company and in any case up to five percent (5%) of the total annual turnover thereof, as provided in this article and up to three (3) million euros to the members of the Board of Directors or other natural or legal entities that fall within the scope hereof.

- VIII. Entry into force

This shall enter into force as of the entry in force of article 24 of Law 4706/2020 and on infringements that occur as of its entry in force.

This must be published in the Government Gazette (Band B).

The provisions hereof do not cause for any expenses in the State Budget.

The Secretary

Alexandra Ninasiou

The Chairman

Vasiliki Lazarakou

The 1<sup>st</sup> Vice-Chairman

Nikolaos Kontaroudis

The 2<sup>nd</sup> Vice-Chairman

Anastasia Stamou

The members

Anastasios Virvilios

Christina Papakonstantinou

Panagiotis Giannopoulos

Spyridon Spyrou