How to incorporate the new Greek "Private Company" ("I.K.E.")

-Law 4072/2012

as amended by law 4155/2013-

-business handbook-

This is a comprehensive guidebook structured for providing foreign investors with practical reference and instructions on how to incorporate a Private Company (IKE) in Greece.

AMOIRIDIS LAW SERVICES®

Plateia Dimokratias 1
546 29 Thessaloniki
Greece
+30 2310 512000
+30 2310 501275

Thessaloniki, March 4th, 2013

Introductory remarks - Legislative framework

The rule-making in the field of Greek Corporate Law is located during the last decades in Shareholding Company (S.A.). The Law 2190/1920 on Shareholding Company has been amended several times in order to incorporate the EU directives. And it can be said that the Law on Shareholding Company is now at a satisfactory level. On the contrary, the Law concerning the Limited Liability Company (L.L.C.) which consists of an intermediate corporate form remains unchanged, since the year 1955, without any effort to be updated.

At the same time, during the last years, European legislations have evolved in the reformation of Business Law in order to mainly protect Small-Medium Enterprises (S.M.E), which are distinguished for their flexibility and simplicity and they are more responsive to the practical needs of entrepreneurs. These advances are consistent to the efforts of the European Union to introduce a European type of "private" company, which will be intended for the SMEs. Therefore, it was considered as necessary the modernization of the Greek Business Law towards this direction.

In this context, a new corporate form has been introduced into the Greek law by the Law no. 4072/2012, with the goal to facilitate the business activity through a corporate form which ensures both the limited liability of its partners, but at the same time it is flexible and easy to set up. The P.C. follows the European guidelines for simplification and update of a corporate form, like the one that the EU is working on and shaping on, the European Private Company (Societas Privata Europaea). According to its basic features, it is a type of a capital company, placed in the borderline between S.A. and Company of Limited Liability, corresponding to that one known in other countries as "Private Company" (P.C.).

The main innovation of the new business structure is its flexibility. The interested parties may choose either a purely capital form, containing only capital contributions, or develop an intensely personal form. Specifically, the P.C. consists of the evolution of the Limited Liability Company, aiming to give motives by protecting its members even from its establishment while assisting and enhancing the competitiveness of SMEs. One may say that what the transacting parties can agree and act on within the law of the Limited Liability Company, can all or almost all of them be agreed and acted on through the flexibility provided by the law of the P.C., whereas the reverse does not happen.

What is the P.C.?

The P.C. is a capital company with legal personality and is considered to be a business company even if it is not a commercial enterprise. The P.C. is the only one liable by its assets, for its corporate obligations, excluding the liability undertaken primarily by the partner, with guarantee contributions (articles 43 paragraph 2, 79 of Law no.4072/2012). Main characteristic is that the contribution of at least on partner who will take at least one company share corresponding to a capital contribution with a monetary value of at least one (1) euro is required. (article 77 of Law no.4072/2012). However, it is possible for the partners to provide and to undertake company shares, with other types of contribution: for example the non-capital contributions (article 78 of Law no.4072/2012) and the guarantee contributions (article 7 of Law no.4072/2012), whose value cannot extend beyond 75% of the liability undertaken by the partners against creditors of the company.

In what lies the originality of P.C. compared with other corporate forms in the Greek Business Law?

The originality of the P.C. consists not so in the utilization of the financial assets, such as the company capital and other financial assets, as to the utilization of other goods, for example the promise of work and services or the loan guarantee. Specifically, any business and commercial intent and desire of the parties can be integrated to the P.C., whether the interested parties may choose either a purely capital form, containing only capital contributions, or develop an intensely personal form. In this context, the parties can contribute either funds or other financial assets or promises of labor, services or work, or they can be committed to meet any future company debts against the company creditors. In other words, via the P.C. and through the statutes and the agreements of the partners, arises in law the possibility for these non-capital and guarantee contributions to be capitalized and business profit to be created.

Why choose the corporate form of P.C.?

The corporate form of P.C. contains all the elements required for the set up and the evolution of an enterprise, such as the company capital, the labor, services, projects, and the coverage against the creditors, while all these elements are being capitalized depending on the extend of the participation of each party and afterwards shared among the parties. By this way the partners have equal rights and obligations. All of the above are achieved while the company does not become a personal one, but remains mainly a capital company, regarding its organization and structure.

Denomination

According to the article 43 of Law no. 4072/2012, "a new corporate form is introduced, the Private Company". The aforementioned denomination is considered to be the most appropriate, since it diversifies the Private Company and the Limited Liability Company and reflects the international term of "private company" which also refers to the planned by the EU "societas private europaea" (European Private Company), while the new corporate form is emphasized as a capital one.

Company Name

The company name of the P.C. could be either objective, which means to be formed accordingly the object and the purpose of the enterprise, or subjective, namely to be formed by the name of one or more of the partners, or a combination of the above. It could also be fictional. (article 43 of Law no. 4072/2012) Regardless of the company name, the written mention of the "Private Company" is obligatory, mainly for the information of the transacting parties.

Duration

The duration of the P.C. should only be determined (article 46 of Law no. 4072/2012). If the duration is not determined by the statute, it is presumed that the P.C. lasts twelve (12) years since its establishment. This time period may be extended by decision of the partners. What is important is that the P.C. can be terminated before the expiration of the twelve years, under decision of the Assembly, taken by an absolute

majority of the total numbers of the company shares, without any amendment of the company constitution.

Seat

The seat of the P.C. is one of the essential elements of the statute of the company. According to the Law, the real seat of the P.C. may be located abroad. Moreover, it is clearly recognized the possibility for the statutory seat of the P.C. to be transferred into another Member State of the European Economic Area (article 45 paragraph 2 of the Law no. 4072/2012). According to the article 45 paragraph 3 of the Law no. 4072/2012, it is not obligatory for the real seat of the P.C. to be in Greece, provided that the statutory seat is located in Greece and is governed by the Greek Law. However, what is suggested is the affiliation to the law of the statutory seat. Regardless of this, the P.C. should be governed by the Greek Law as "lex societatis", since it is registered to the General Commercial Registry, even if its real seat is located abroad. Therefore, it is possible for the P.C. to have its seat of administration and develop its financial activity (real seat) in another state, as this feature has been recognized by the European Court for the Justice for the EU area.

Establishment

The P.C. is established and amended by a simple private document, which is under the control of the General Commercial Registry Services. A document by a Notary Public is not required, unless the partners wish to or if assets whose transfer is carried out exclusively by a notarial document (for example, real property contribution) are being contributed to the P.C. The P.C. is simply and fast established, according to the Law no.3853/2010 (establishment of company by service one stop shop). Specifically, there are series of actions which must be undertaken by the parties (article 5 paragraph 1 of the Law no.3853/2010) and series of actions taken by the One Stop Shop Service (article 5 paragraph 2 of the Law no.3853/2010). The P.C. can be set up in one day, while the Law authorizes clearly its establishment, even if an authorization is required for the pursuit of its purpose. The legal entity can receive a value added tax number (VAT) and operate. However, as long as the authorization is not granted, the operation of the legal entity shall be limited to other actions, for example preparatory actions, and definitely not those for which the authorization is needed.

Legal personality - Liability

The law states explicitly that the P.C. has a legal personality which acquires from its establishment and a business status which acquires from the type of company and does not depend on its purpose, namely the exercise of commercial activity. The company is established and acquires a legal personality at the moment of its registration at the General Commercial Registry Services. The relevant law provides for the possibility of the P.C. to be set up as a single firm or a single firm following its establishment by merging all shares to one person. Concerning the corporate obligations, only the legal entity of the company is liable. The partners do not even have a limited liability. Only exception of a partner to have a limited liability for the debts of the company is if he undertakes a guarantee contribution.

How many people need to work together in order to establish a P.C.?

The P.C. consists of one or more natural or legal persons (founders). The law provides for the establishment of the P.C. as a single firm, while as an administrator can be designated a partner or third person.

Which is the amount of capital required for the establishment of the P.C?

One of the main advantages of the P.C. – amid the economic crisis, lack of credit and liquidity and inability to find funding sources- is that for the establishment of a PC the collection of any capital except from the token sum of one (1) euro is not required. This way, the party wishing to participate in a business initiative could seek other ways to contribute to it, beyond the way of a capital injection. The enhancement of the capital of one (1) euro as a matter of projection of the P.C. in order to strengthen entrepreneurship is a conscious choice of the legislator, who selects a critical economic period to boost enterprise against the need to protect the interests of corporate creditors. This is based on the fact that partners can participate in the company with capital, non-capital or guarantee contributions. Capital must be paid at the moment of the establishment.

What are capital contributions?

The capital contributions are services in cash or goods, forming the company's capital.

What are non-capital contributions?

Non-Capital contributions are services which are not directly valued like for example claims arising from commitment, execution of works or services. These services must be specified in the statute and executed for a definite or indefinite period. The value of the contributions undertaken either at the moment of the establishment of the company or at a later moment, is specified in statute. These contributions are mainly found in personal companies; however, even if the capital of a P.C. consists only of such, it cannot expel its main capital status.

What are guarantee contributions?

The guarantee contributions consist in undertaking liability against the company creditors for the company debts, up to the amount which is specified in the statute. The value of any guarantee contribution should be specified in the statute and cannot extend beyond 75% of the liability undertaken by the partners against creditors of the company.

Can a person be a partner of the P.C. by providing various types of contribution?

Regardless of the types of contribution and what they correspond to, a person could be a partner of the P.C. by undertaking one or more company shares, provided that the nominal value of them is a common one for all the undertaken by the partner company shares.

Statute and amendments thereof

Regarding the statute, the amendments thereof and the papers, and provided that they consist of simple private documents, an innovation of the P.C. is introduced, since they can be drafted using one of the official languages of the European Union. In case of a dispute between the Greek and the foreign language draft, the superior text, which is considered to be the current one against the bona fides transacting third parties, is the Greek one. (article 43 paragraph 5 of the Law no. 4072/2012).

Publicity

The disclosure of the P.C. is held either at the website of the company or at the General Commercial Registry, without any publicity in the Official Journal to be required.

Corporate transparency

Regarding the entrepreneurial activities and according to the article 47 of the Law no. 4072/2012, the corporate transparency is being established. Specifically, greater transparency is being introduced, in order the transacting parties and the partners to be totally protected. Due to the specific nature of the P.C., the increased transparency obligations, which are imposed on the P.C., consist of the post on the company's website of the amount of the company's capital, the total amount of the guarantee contributions, information on the partners, the number and the type of the company shares, which are being held by the partners. Due to the existence of the three types of contributions, and mainly due to the non-capital ones, the information on the partners and the kind of the liability, which is being undertaken by them, is absolutely necessary. The protection of the transacting parties is considered to be of a greater value in comparison to the partners' right to remain unregistered. What is remarkable is that any violation of that law, is subject to criminal consequences.

What consists of the liability of the partners?

The liability is up to the amount of the company's capital. The P.C. is the only one liable by its assets, for its corporate obligations, excluding the liability undertaken primarily by the partner, with guarantee contributions. The extent of the aforementioned liability against the company's creditors, if required, is up to the value of the partner's contribution.

The founding Act - Content of the statute

According to the article 49 of the Law no. 4072/2012, the P.C. can be founded by one or more natural or legal persons. The founding act is a simple private document. A document by a Notary Public is not required, unless the partners wish to or it is required by the Law or if assets, whose transfer is carried out exclusively by a notarial document (for example, real property contribution), are being contributed to the P.C. The founding act should contain the statute of the company. The necessary elements which should be included in the company's statute are the following:

a. The name, the home address and email address of any partner of the company.
b. The denomination of the company.
c. The seat of the company.

d. The object and the purpose of the enterprise.
e. The status of the company as a capital one.
f. The amount of the company's capital, the total amount of every type contribution, which is being undertaken by the partners and their value thereof.
g. The total number of the company's shares.
h. The original number of the company's shares of each partner and the type of contribution they correspond to.
i. The management and the representation of the company.
j. The duration of the company.

Finally, any more specific agreements for the promotion of the partnership, which are contained in the company's statute and are not contrary to the Law, are considered to be part of it, and not separate ones.

The transaction security

The capital injection of the amount of one (1) Euro should not be considered to pose more risk in comparison to the Shareholding Company (S.A.) and the Limited Liability Company (LLC). Nor the parties transacting with the P.C. should feel more insecure in comparison to those transacting with the S.A. and the L.L.C. The reason for this is that no matter the existence of a higher amount of capital of the S.A. and the L.L.C., that capital does not remain intact to secure the company's creditors. The existence of the capital means that the amount corresponding to the company capital cannot be distributed to the partners in any case of dissolution of the company, while corporate debts are existed. So, the company capital is not considered to be a guarantee for the company's creditors. The parties transacting with the P.C. have the advantage of knowing from the outset that it is not the company's capital that they need to rely on in order to transact with it, but the belief in its business performance and success.

The protection of the company's creditors

Self-protection of the company's creditors

Under the name "Private Company" the creditors can identify the kind of the company they transact with, so that they can either take self-protective measures or even to refrain from the transaction. Furthermore, the self-protection of the creditors is achieved both through the publicity conditions of the company (articles 52, 63 of the Law 4072/2012) and through the publication of the annual financial statements of the company at the General Commercial Registry and at the company's website. By this way, the company's creditors, the existing partners and the potential (future) partners are being protected, while the transacting parties can assess for themselves the degree of the reliability of the company.

Statutory protection of the company's creditors

According to the article 54 of the Law 4072/2012, the founders of the P.C. are liable against the creditors, in case they have transacted with them in the name of the company before its establishment, provided

that the company will not undertake the abovementioned liabilities absolutely and severally within three months of its establishment. According to the article 47 of the Law no. 4072/2012, there are established obligations for the P.C. in order to be ensured the greatest corporate transparency for the transacting parties. Furthermore, according to the article 110 of the Law 4072/2012, which is devoted to the merger of the P.C., a creditor or creditors of the merging companies whose claims antedate this, have the right to raise written objections and request for sufficient guarantees, if the financial situation of the merging companies makes such protection necessary. Finally, there is the possibility of removing the veil of the company and activating the liability of the partners. The principle of the separate legal entity status is revocated when this separation is either opposite to the law or it is imposed by the good faith. (articles 281,288,200 of the Greek Civil Code)

Litigation

The article 48 of the Law no. 4072/2012 refers to the resolution of corporate disputes with particular reference to the rapid and safe resolution of disputes that arise during the existence of the P.C. Specifically, regarding the cases that are subject to court according to second part of the Law no. 4072/2012, the appropriate court is the County Court, the local jurisdiction is specified by the seat of the P.C., while the appropriate procedure is that of non-Contentious Jurisdiction. Whenever the Law refers to "lawsuit" or liability issues or affairs with third parties arise, the appropriate procedure is that of the ordinary proceedings. Finally, the submission of the cases in arbitration and mediation is significantly encouraged.