



## Landslide revisions on the related party transactions rules introduced by Law 4548/2018

Law 4548/2018 (the “**New SAs Law**”) on the reform of the legislation on the société anonymes (SAs) significantly amends in its articles 99 to 101 the regime of related party transactions that is currently regulated under the well-known Art. 23a of C.L. 2190/1920.

The new regime is based on the following three pillars: (i) transparency, (ii) flexibility and (iii) safeguarding of the interests of the SA and of the minority shareholders, which are echoed through the adoption of the following three (3) new measures on the treatment of the related party transactions:

- (i) all related party transactions are subject to publication formalities;
- (ii) the approval process becomes more flexible, since the competent corporate body to decide on these types of transactions is now the BoD;
- (iii) the involvement of the minority shareholders is significantly enhanced, since they are given the right to shift the decision-making on the related party transactions to the GA, where the concerned related parties are not allowed to take part in.

Further, the classification provided under the current legal regime of C.L. 2190/1920 to related party transactions depending on their type (upstream and downstream loans, upstream and side stream collaterals etc.) is abandoned by the New SAs Law

and all types of related party transactions bear the same treatment. Therefore, the current absolute restriction for the grant of upstream loans and credits to affiliated entities whose financial statements are not consolidated with those of the lending SA is lifted. The New SAs Law reserves special conditions only for the related party transactions concluded by listed SAs.

According to the grandfathering provision of the New SAs Law, the new regime shall regulate the related party transactions entered into as of the effective date of the New SAs Law (01.01.2019).

### General Rule

All type of transactions between an SA, listed or not, and a natural or legal person defined as a “**related party**” are absolutely restricted as null and void, unless such have been approved according the procedure introduced by the New SAs Law.

### Definition of Related Parties

The New SAs Law adopts more or less the same classification with the one applying under the current regime and, in particular, related parties under the new SAs Law are considered:

- With respect to listed SAs, the related persons included in IFRS 24, as well as the legal entities controlled by those persons, according to IFRS 27.

- With respect to non-listed SAs, the Directors, persons that control the SA., close family members of such persons, as well as legal entities controlled by the above persons, as all the above are defined under Law 4308/2018;
- Any other parties which may be defined as related parties under the Statutes of an SA.

### **Exemptions from the field of application of the rules**

The New SAs Law prescribes in detail and widens to a certain extent the type of transactions that fall outside the ambit of the related party rules. In particular, these are:

- Transactions between credit/financial institutions and persons with a special relationship with them;
- Agreements related to the remuneration of the Directors and officers of the SA (since these are subject to a separate legal treatment);
- Transactions entered into in the ordinary course of business: these are defined as transactions which are regular to the business activity of the SA (taking into account its type and size) and are concluded on normal market terms. The New SAs Law goes a step further and introduces a quantitative criterion for the definition of transactions falling within the ordinary course of business. Namely, transactions whose value exceeds 10% of the SA's assets according to the latest published balance sheet, or in case that such balance sheet does not exist, according to a balance sheet that shall be drafted for that purpose, cannot *prima facie* be presumed as falling within the ordinary course of business. The above quantitative presumption can be rebutted only in the case of the non-listed SAs. For the purposes of calculating the 10% threshold, the aggregate of all transactions concluded with the same related party (or another person directly or indirectly controlled by it) in the same financial year are taken into account;
- Agreements concluded by credit institutions in the context of measures aiming to maintaining financial stability;
- Agreements between an SA and its shareholders provided that the possibility to conclude such an agreement is given to all the shareholders, under the same conditions and that all the shareholders

are treated equally and that the interests of the SA are protected;

- Agreements and collaterals' given by an SA to its 100% subsidiary or a subsidiary in which no related person participates;
- Downstream agreements and collaterals Agreements concluded with or collaterals given by an SA to the benefit of a company controlled, directly or indirectly by the SA, for as long as such serve or do not prejudice the interests of the SA and of the minority shareholders. In the case of listed entities, the sufficient protection of the interests of the SA, its subsidiaries and the minority shareholders shall be justified by the BoD in the approving resolution and in the "Fairness Opinion" which has to be drafted for that purpose (see below);
- Transactions with related parties for the acquisition of assets within the first two years as of the incorporation of the SA (since these are subject to a separate legal treatment).

SAs are given the option to further limit, through a relevant provision in their Statutes, the application of the related party transaction rules, for those transactions, which are otherwise approved by the GA, in so far as such other law provisions ensure a fair treatment of all shareholders and the interests of the company, including minority shareholders.

### **Procedure for the approval of the related party transactions**

The approval of the related party transactions is subject to the following conditions:

- Decision by the corporate body;
- Compliance with publication formalities; and
- In case of listed SAs only, preparation of a "Fairness Opinion" regarding the transaction.

#### *The primary competence of the BoD*

The competence to approve the related party transactions is now shifted to the BoD. **The approval has to be granted prior** to the conclusion of the transaction and has a validity period of 6 months. A single approval valid for a one (1) year term may be granted in case of repeated agreements with the same related party: such single approval shall include the key information of the transactions to be concluded.

*The exceptional competence of the General Assembly (GA):*

Exceptionally, the GA shall have the competence to approve the related party transaction in the following cases:

- if the BoD cannot reach such resolution for conflict of interest reasons; To be noted that according to the conflict of interest rules of the New SAs Law (article 97 par. 3) a Director should abstain from voting on a matter to which either itself or persons with whom he/she is linked as a related party are conflicted. In this case, the resolution on the matter is decided by the remaining Directors; if the required quorum is not met by the remaining Directors, then the latter should convene a General Assembly with the exclusive purpose to decide on such matter;
- if shareholders representing 5% of the paid in share capital within ten (10) days from the publication of the approval of the transaction by the BoD request that the matter is shifted to the GA (deciding on simple quorum and majority requirements). The Statutes of the SA may reduce the above percentage to 1%. The shareholder, which is involved in the related party transaction or any related party to such shareholder, are required to abstain from the voting process and are not counted for the calculation of the quorum.

If the transaction has been concluded prior to the GA approval, then such approval may be rejected upon objection of the minority shareholders representing 5% of the paid in share capital (which may be reduced to 1% of the paid –in share capital by the Statutes).

*The publication formalities*

The approval of the related party transaction by either the GA or the BoD should be **published to the Commercial Registry prior to the**

**conclusion of the transaction** and should as a minimum include the following information:

- The relationship of the SA with the related party;
- The date and the value of the transaction to be concluded;
- Any other information justifying the fairness of the transaction to be concluded for the SA as well as for the non-related parties, including the minority shareholders;
- In particular, as for listed SAs, the publication shall be accompanied by the aforementioned “fairness opinion”, which is being published as a whole.

*Fairness opinion relating to the transaction (only for listed SAs)*

In case of a listed SA, the approval by either the GA or the BoD should be accompanied by a report (“**Fairness Opinion**”) conducted by an auditor or an audit firm or another independent third party, assessing whether the transaction is fair and reasonable for the SA as well as for the non-related parties, including the minority shareholders, and explaining the assumptions on which it is based and the methods applied in drafting it. Persons who are considered as related parties should not take part in the preparation of the fairness opinion for transparency reasons.

**The coming into force of the approval**

The transaction, which has been approved by the BoD shall be deemed to be valid only after the expiry of the ten days deadline or the approval granted by the GA or the written declaration of all shareholders of the SA that they do not intend to request the convocation of the GA.

**Transactions between an SA and its sole shareholder**

Transactions between an SA and its sole shareholder (except for those entered in to the ordinary course of business) shall be recorded in the GA or BoD Minutes or shall be concluded in writing on pain of nullity.

## Contact

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