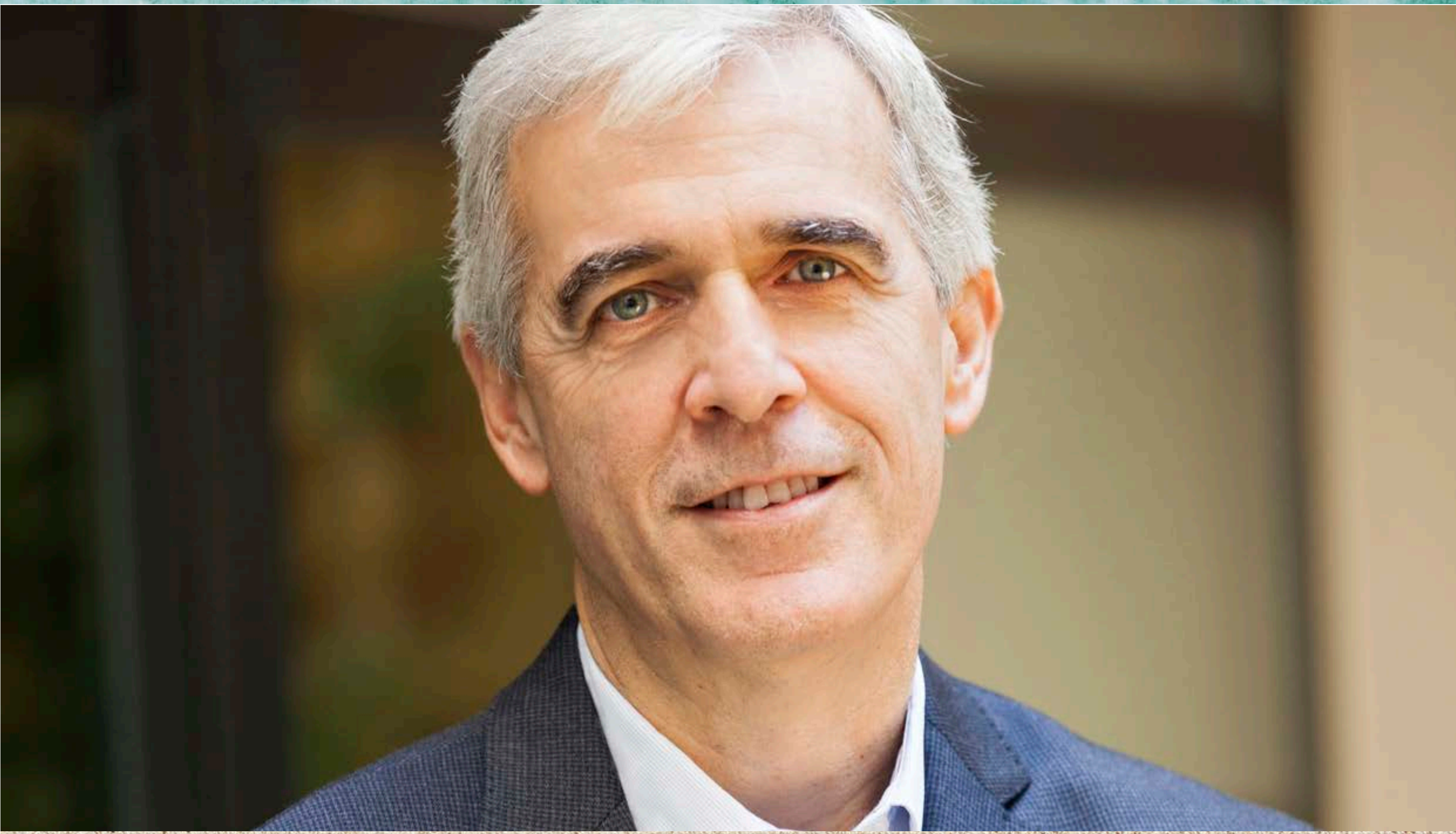
CORPORATE GOVERNANCE PRINCIPLES FOR NON LISTED COMPANIES IN GREECE



Stathis Potamitis
Managing Partner, POTAMITISVEKRIS
Member, Greek Corporate Governance Council

Shareholders of non-listed companies are typically restricted in making their shares available as they are not trading in organized markets. Moreover, there may be additional restrictions in making their shares available, under the provisions of the company's articles of association. Therefore, shareholders of non-listed companies may find themselves "trapped" in the company and with a significant investment risk. An effective corporate governance framework partly offsets this risk, while ensuring maximum possible protection of the interests of minority shareholders by the management. Also, a corporate governance framework can include an exit strategy for minority shareholders who may wish to withdraw from the company. All this shows that the adoption of special practices of good governance by a non-listed company can make the company more attractive to minority investors.

Additionally, non-listed companies, can, by means of adopting special practices of good governance, seek funding not only from associated persons (shareholders, parent companies), but also from banks, investment funds, as well as individual investors. External financiers of such type seek validation that their investment shall be treated equally vis-à-vis the interests of majority shareholders. In this sense, corporate governance can become for non-listed companies a significant tool for identifying new funds.

It is for these reasons that the Hellenic Federation of Enterprises ("SEV") set up a committee to consider the promotion of corporate governance principles and practices to non listed entities. This committee delivered its work product to the Greek Corporate Governance Council which, in 2016, approved it and published it.[1]

What the committee proposed and the Council adopted was not another code for non listed companies but the presentation of the main principles governing good corporate governance and certain best practices that non listed entities could adopt (the "Principles and Practices"). Needless to say, as a category, 'non listed companies' is very broad and inclusive and there are tremendous differences among its members. This was one of the factors limiting the specificity of the Principles and Practices. Proposals are based primarily on identifying the common risks, such as the possibility of abusive exercise of shareholder rights by the majority and of the failure of corporate organs to exercise their power and authority fairly and without bias in favor of the majority. The drafters of the Principles and Practices were also driven by their conviction that good corporate governance is not accomplished by imposition but by persuasion, by convincing

1 *The author was the head of that committee. Alexia Tzouni, an associate with the POTAMITISVEKRIS, an Athens based law partnership contributed substantially to the draft text of the Principles and Practices.*

the interested parties of the applicable principles and approach and by inducing them to apply that reasoning and perspective to the organization of their affairs.

The Principles and Practices are purely voluntary, there is no obligation by any party to accept or apply them. This is why one of the main aims of that document is to identify the benefits to companies from improving their corporate governance practices, which relate to:

- Long term financial performance

- Access to new sources of financing

- Reputation enhancement

- Access to know-how

- Improved understanding of governance challenges

- Self-assessment and benchmarking and the ability to take corrective action where deficiencies are identified

- Enhancement of trust by minority shareholders whose rights are better protected and their visibility on corporate matters increased

- Reducing dependency of the corporate entity of specific key-persons

- Generally, greater trust and transparency for all stakeholders.

Given the variety of entities they are supposed to serve, the Principles and Practices propose that non listed entities may choose to implement recommendations gradually and introduce a process that can span two stages.

Stage 1 includes best practices that can be implemented by all non listed entities. However, Stage 2 best practices are recommended only for the larger and more complex entities within that group.

Principles and Practices is divided thematically in 8 parts, some of which have two stages, as explained above, while others are addressed to and may be applied by all non listed entities.

Part A concerns the board of directors and its members. Stage 1 calls for the clear identification and demarcation of the powers and duties of directors and officers, as well as shareholders. The company is also recommended to ensure that the board is composed of persons with the suitable knowledge and experience and that it shall take into account the obligation of equal and fair treatment of all shareholders. In stage 2, the entities are recommended to specify the role and qualifications of the chairman of the board of directors and to also introduce the performance assessment of directors and officers.

Part B concerns remuneration. Here the guiding principles concern the adequacy of remuneration to attract and retain necessary talent and the transparency to shareholders of the company's remuneration policies and cost. Setting and following such policy is not only helpful for the company's performance but also underlines the necessary separation of the corporate interest from that of the controlling shareholder. Remuneration should be set on the basis of clear and transparent criteria which take into account the performance of the company as well as its achievement of short and longer term goals. Shareholders must be given meaningful information from the company to allow them to assess that those criteria are satisfied and that remuneration policies are respected and applied.

Part C concerns the introduction of a system of internal control ("SIC"). The Principles and Practices adopt a two stage approach for SIC. At the first stage, the board of directors is expected to set up SIC, among other things to identify the nature of the risks threatening the company and the acceptable level of risk taking by the company, as well as control activities, information and communication and monitoring. At the second stage, the company is recommended to set up an audit committee composed on non executive board members, to whom the internal auditor shall refer and report.

Part D deals with risk management; boards of directors are expected to compile a risk manual.

Part E concerns compliance. Stage 1 focuses on the protection of the interest of corporation by ensuring compliance with legal requirements and specifically with the avoidance of corrupt practices. This involves the articulation of relevant policies and procedures and ensuring that all parties involved receive proper training. Stage 2 involves the creation of oversight by and regular updating of the board of directors on implementation, as well as the monitoring of events of non compliance and the adoption of measures to avoid similar future incidents.

Part F concerts the treatment of shareholders, specifically communication and dialogue between the board and shareholders, with special care for the protection of minority shareholder rights. Companies are also encouraged to review their constitutional arrangement and consider the introduction of provisions to address risks and problems that have been identified.

Part G concerns other stakeholders. In stage 1 management is directed to assess the impact of the operation of the company on the market and consumers, human resources, the local economy, the environment, its suppliers and society more broadly and to make suitable adjustments to its activities and action plans. In stage 2, the company is expected to elaborate a special programme that will identify all material issues, set specific goals and the means for measuring performance and success in reaching such goals. Those goals and their performance must also be communicated, for instance by means of a report on corporate responsibility.

Of increasing importance for most companies are its information systems. Part H of the Principles and Practices concerns the assurance that the company adopts the proper practices regarding information technology governance. In stage 1, the board is expected to appoint a person with responsibility for information systems that has the requisite training and experience, and to also elaborate a strategy for its information systems in support of its overall business strategy. Among other things the information strategy shall set out current and future information infrastructure needs. In the stage 2, the company is expected to develop detailed policies and procedures for the operation and management of information systems; should address access, data protection, system protection, daily use and user support, information project management, a business continuing plan and a disaster recovery plan.

The Principles and Practices also discuss special challenges confronting family enterprises. Their recommendations concern primarily conflict avoidance and resolution among the family members, equal treatment including also access to information about the company, ways to resolve deadlock that may involve exit strategy for family members, as well as rules and procedures to ensure smooth succession. More generally, it is recommended that the family members develop a common vision for the future of the enterprise, as well as identifying clearly the roles of each member in the company, clearly distinguishing roles within the family from roles in the company. Another important issue is the fair and non discriminatory treatment of non family members who are engaged by the company.

Greece is slowly coming out of a profound economic crisis which left it with a loss of nearly 33% of its GDP, a contraction of 83% of its capital market, a mountain of non-performing loans and other liabilities, a much weaker banking system and a large number of enterprises in distress. As Greece attempts to rebuild its economy on a sounder basis and to produce its new set of stars and champions, the adoption of the Principles and Practices by companies that have not yet approached the capital markets may prove to be of great assistance.

PUBLISHED BY HAWKAMAH INSTITUTE FOR CORPORATE GOVERNANCE