Chinese Business Review, Jan.-Mar. 2026, Vol. 25, No. 1, 14-19
doi: 10.17265/1537-1506/2026.01.002

Due Diligence of Accountants in Greece: Doctrinal Evolution, Regulatory Expansion and the Functional Reconfiguration of Professional Liability

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This paper examines the evolving role of due diligence within the Greek accounting profession and argues that its contemporary application reflects a structural transformation in its legal and functional nature. While due diligence is formally defined as a standard of professional conduct grounded in proportionality and ex ante evaluation under European Union law, its operationalization within enforcement practices increasingly incorporates retrospective and outcome-based elements.

Keywords: due diligence, enforcement, framework, compliance

Introduction

Due diligence constitutes one of the central organizing principles of professional responsibility within modern legal systems. Traditionally, it has been conceptualized as a standard of conduct embedded in the broader framework of negligence, where liability arises only when a professional fails to meet the level of care expected under the circumstances. This understanding is closely tied to the notion that professional behavior should be evaluated prospectively, based on the information available at the time of decision-making and the reasonable judgment exercised within that context. In this sense, due diligence operates as a mechanism for aligning legal responsibility with epistemic capacity, ensuring that professionals are not held accountable for outcomes that could not have been reasonably anticipated.

Within the accounting profession, accountants are expected to process, classify and report financial information in accordance with applicable legal and professional standards, relying primarily on data provided by their clients. Their role is fundamentally mediatory rather than investigative, situated between the economic

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activity of the client and the regulatory requirements of the legal system. This structural positioning has traditionally defined both the scope and the limits of their responsibility, anchoring due diligence within a framework that recognizes informational constraints and the division of roles between different professional actors.

However, the regulatory environment within which this framework operates has undergone significant transformation. The expansion of anti-money laundering regimes, the increasing complexity of financial transactions, and the intensification of tax enforcement within the European Union have collectively reshaped the expectations placed on professionals.

Literature Review

The academic literature on due diligence spans multiple disciplines, including legal theory, accounting, and economic analysis, yet it remains fragmented in its treatment of the concept. In legal scholarship, due diligence is typically situated within the framework of fault-based liability, emphasizing the evaluation of conduct rather than outcomes. This approach reflects a normative commitment to fairness and proportionality, ensuring that liability corresponds to the professional's ability to act under given circumstances. Economic analyses of law further reinforce this perspective by conceptualizing liability as a mechanism for incentivizing efficient behavior, where standards of care are calibrated to balance deterrence and feasibility (Shavell, 2007; Cooter & Ulen, 2016).

In accounting and auditing research, due diligence is most often discussed in relation to compliance obligations, assurance processes, and professional standards. Scholars have noted the increasing regulatory pressure placed on professionals, particularly in the context of financial reporting and corporate governance, where expectations of oversight and risk management have expanded significantly (Sikka, 2009). However, much of this literature assumes the conceptual stability of due diligence, focusing on its application rather than questioning its underlying structure.

The literature on financial regulation and anti-money laundering introduces an additional dimension by emphasizing the role of risk-based approaches. International standards, such as those developed by the Financial Action Task Force, highlight the importance of proportionality and professional judgment in environments characterized by uncertainty and incomplete information (FATF, 2020).

From an economic perspective, the interaction between due diligence and regulatory enforcement has been examined through the lenses of information asymmetry and principal-agent theory. Akerlof's (1970) analysis of asymmetric information demonstrates how unequal access to information can distort decision-making and reduce the effectiveness of market mechanisms. Similarly, Jensen and Meckling (1976) highlighted the structural tensions inherent in relationships where one party controls information while another bears responsibility for outcomes.

Research Question and Analytical Approach

The central question guiding this study is whether due diligence, as applied within the Greek accounting profession, continues to function as a standard of professional conduct or whether it has evolved into a broader mechanism of responsibility attribution. This question arises from the observation that the evaluation of professional behavior increasingly incorporates retrospective elements, raising concerns about the alignment between formal legal principles and practical enforcement.

Doctrinal Foundations of Due Diligence

At the core of due diligence, lies the distinction between obligations of means and obligations of result, a foundational concept in the theory of liability. Due diligence belongs to the former category, requiring professionals to exercise reasonable care without guaranteeing specific outcomes. This distinction ensures that responsibility remains aligned with the professional's capacity to act, preserving the balance between obligation and feasibility.

Greek legal doctrine reflects this understanding by emphasizing that liability arises only where there is a deviation from the behavior expected of a reasonably prudent professional under comparable circumstances (Georgiadis, 2010; Stathopoulos, 2018). This approach anchors the evaluation of conduct in an ex ante perspective, focusing on the information available at the time and the reasonableness of the decisions made. Within the accounting profession, this doctrinal framework is reinforced by structural considerations. Accountants rely on client-provided information and do not possess independent authority to verify underlying economic realities beyond the scope of that information.

Greek case law has consistently affirmed this doctrinal structure by emphasizing that professional liability must be assessed on the basis of ex ante criteria, grounded in the knowledge and circumstances available at the time of action. In particular, the Areios Pagos 1351/2010 held that liability arises only where a professional deviates from the conduct expected of a reasonably prudent professional under comparable conditions, taking into account the information that was actually available at the relevant time. This approach explicitly rejects any form of retrospective evaluation based solely on the outcome. A similar line of reasoning is adopted in Areios Pagos 1738/2017, where the Court emphasized that the assessment of professional diligence must be anchored in the factual and informational context existing at the time the act was performed. The decision underscores that the standard of care cannot be reconstructed ex post on the basis of subsequent developments, thereby reinforcing the prospective nature of due diligence.

Furthermore, the requirement of foreseeability is strongly articulated in Areios Pagos 1227/2007, where the Court clarified that liability presupposes not only a breach of the duty of care but also the objective possibility of foreseeing the harmful outcome. The judgment highlights that professionals cannot be held responsible for consequences that were not reasonably predictable, thus linking due diligence directly to epistemic capacity.

European and National Regulatory Framework

The contemporary understanding of due diligence within the accounting profession cannot be fully apprehended without a careful examination of the regulatory framework that governs its application. At the European level, the legal architecture is primarily defined by the Directive (EU) 2015/849 and its subsequent amendment, the Directive (EU) 2018/843.

However, the formal structure of the European framework does not exist in isolation; it is mediated through national legal systems, which play a crucial role in shaping its practical application. In Greece, this framework is implemented primarily through Law 4557/2018, which transposes the core elements of the directives into domestic law.

The European Model and the Greek Enforcement Practice

The comparison between the European model of due diligence and its application within the Greek context

reveals a distinction that is both subtle and structurally significant. At the level of regulatory design, the European framework is explicitly forward-looking. It conceptualizes due diligence as a process of risk identification and management, where the professional evaluates potential exposure to financial crime based on available information and applies proportionate measures accordingly. The emphasis is placed on conduct, judgment, and the reasonableness of actions taken at the time.

In contrast, the practical application of due diligence within Greek enforcement contexts increasingly exhibits a retrospective orientation. Regulatory and tax authorities often assess professional behavior after irregularities have been identified, using the existence of such irregularities as a starting point for evaluating whether due diligence was adequately exercised. This shift in temporal perspective introduces a different evaluative logic, in which outcomes play a central role in shaping the assessment of conduct.

The significance of this divergence lies in its implications for the normative structure of due diligence. In the European model, the standard is defined independently of outcomes; it is concerned with whether the professional acted reasonably under the circumstances. In the Greek enforcement context, however, the existence of an irregular outcome may influence the interpretation of what constitutes reasonable behavior. This does not necessarily imply that the standard has been formally redefined, but it suggests that its application is no longer purely conduct-based.

Due Diligence as a Regulatory Proxy

The developments described above can be more fully understood through a reinterpretation of due diligence as a regulatory proxy. Under this perspective, due diligence does not merely function as a standard governing professional conduct, but also as an instrument through which regulators address the structural limitations of enforcement.

In complex financial environments, the direct verification of individual conduct is often impractical. Regulators face significant informational constraints, limited resources, and the inherent difficulty of reconstructing decision-making processes ex post. As a result, they rely on observable indicators—such as discrepancies, unexplained transactions, or inconsistencies—as proxies for underlying behavior. These indicators do not provide direct evidence of professional fault, but they create a basis for inference.

Due diligence plays a critical role in enabling this inferential process. Because it is defined as a standard of reasonable conduct, it provides the conceptual framework within which regulators can assess whether the professional should have identified and addressed the irregularity. In this way, due diligence functions as a bridge between observable outcomes and attributed responsibility.

Legal and Economic Interpretation

The reinterpretation of due diligence as a regulatory proxy can be further elucidated through the analytical framework of law and economics. As noted by Richard Posner (2007), liability rules operate as instruments for shaping behavior under conditions of uncertainty, providing a structured mechanism through which legal systems allocate risk and incentivize precaution. Within this framework, legal rules are understood not merely as normative prescriptions but as functional tools designed to influence behavior under conditions of imperfect information and constrained enforcement capacity.

Information asymmetry, as analyzed by Akerlof (1970), highlights the structural imbalance between parties who possess information and those who must act on its basis. In the context of accounting, this

asymmetry is particularly pronounced. Clients control the underlying financial data, while accountants are expected to process and report it in accordance with regulatory requirements. This creates an inherent limitation on the professional's ability to detect irregularities, especially where such irregularities are intentionally concealed.

Principal-agent theory (Jensen & Meckling, 1976) further clarifies this dynamic by emphasizing the misalignment of incentives and the difficulties associated with monitoring behavior. From this perspective, the expansion of due diligence can be seen as an attempt to mitigate agency problems by increasing the accountability of intermediaries.

However, regulatory enforcement theory (Becker, 1968; Stigler, 1971) introduces an additional dimension. Regulators must allocate limited resources in a manner that maximizes deterrence and compliance. In doing so, they rely on observable outcomes as signals of potential non-compliance. Large discrepancies or unexplained financial movements become focal points for enforcement action, not because they prove misconduct, but because they are efficient indicators of risk.

European Legal Principles and Critical Evaluation

The principle of proportionality, as articulated in Case C-331/88 Fedesa, requires that measures adopted by authorities be appropriate and necessary for achieving their objectives, and that they do not impose excessive burdens. This principle is particularly relevant in the context of due diligence, where the scope of professional obligations must remain aligned with the professional's capacity to act.

The retrospective application of due diligence, as observed in enforcement practice, raises concerns in relation to both principles. When responsibility is attributed based on outcomes that were not foreseeable at the time of action, the link between conduct and liability becomes attenuated. Professionals may find themselves evaluated against standards that are effectively reconstructed after the fact, undermining the predictability of the legal framework.

The doctrinal clarity reflected in Greek Supreme Court jurisprudence stands in notable contrast with contemporary enforcement practices. While judicial decisions consistently emphasize that due diligence must be assessed ex ante and in relation to foreseeability, administrative enforcement increasingly operates through ex post evaluation mechanisms that rely on the identification of irregular outcomes.

This divergence is not merely theoretical, but structurally significant. On the one hand, case law such as Areios Pagos 1738/2017 explicitly rejects retrospective reconstruction of the standard of care, reaffirming that professional responsibility must be linked to the conditions prevailing at the time of action. On the other hand, enforcement practices often infer responsibility from the existence of irregularities, effectively allowing outcomes to shape the interpretation of prior conduct.

Policy Implications and Conclusions

The analysis developed in this paper suggests that the current trajectory of due diligence raises important policy considerations. One of the primary challenges lies in maintaining the balance between effective enforcement and the preservation of a coherent and predictable framework of professional responsibility. A first avenue for reform involves the clarification of the boundaries of professional obligations. Distinguishing more explicitly between accounting, auditing, and compliance functions would help align expectations with institutional roles and reduce the risk of interpretative expansion. A second consideration concerns the

development of interpretative guidelines that provide greater specificity regarding the application of due diligence. Such guidelines would enhance legal certainty without eliminating the flexibility inherent in risk-based approaches. Finally, the introduction of safe harbor mechanisms could provide a structured means of balancing responsibility and capacity.

The analysis presented in this paper suggests that due diligence within the Greek accounting profession is undergoing a process of functional transformation. While formally grounded in a conduct-based standard aligned with European legal principles, its practical application increasingly incorporates outcome-based elements that reshape its role within the system of professional liability. This transformation reflects broader dynamics within contemporary regulatory systems, where enforcement constraints and informational asymmetries drive the evolution of legal concepts.

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