

## LAW 4706/2020: GREEK AIFs

The new Law 4706/2020 (Government Gazette A' 136/17.07.2020), enacted on 17 July 2020, regulates, inter alia, the establishment of Greek Alternative Investment Funds (AIFs). More particularly, articles 37-56 of the new Law set the legal framework for the establishment, marketing and operation of AIFs as mutual funds.

While Law 4209/2013 transposed the AIF Managers' EU Directive (AIFMD) into Greek law, regulating the establishment and operation of the managers of the AIFs in Greece, the new Law regulates the establishment, distribution, operation and transparency requirements of AIFs in Greece.

### A. Greek AIFs

According to the new Law, an AIF is a pool of assets, managed for the benefit of its unitholders, and consists of tangible or intangible transferable securities, company shares, cash, financial instruments, real estate, and other related assets. It may be open-ended or closed-ended, may comprise multiple investment compartments, is owned by its unitholders, in proportion to their units, and has no legal personality. Such an AIF shall be established in Greece following a license provided by the Hellenic Capital Market

Committee (HCMC), its total minimum value of assets shall be Euro 1 million, and shall be managed either by a Greek or EU authorized AIF Manager (AIFM), who represents the unitholders. More specifically, the AIF shall be managed:

- either by a Greek AIFM, a Société Anonyme AIFM (AEDOEE) licensed by the HCMC in accordance with the provisions of law 4209/2013,
- or by an AIFM licensed in another EU member state in accordance with the provisions of Directive 2011/61/EU of the European Parliament and the Council on AIFMs (the so-called AIFMD), subject to the passporting process before the HCMC.

### B. Licensing requirements

The establishment of the AIF requires a license by the HCMC. The AIFM submits the licensing request (in the Greek language) to the HCMC with the required documentation, i.e.

- the AIF's Regulation,
- statements by the AIFM and the Custodian confirming their assigned roles,
- the personal data of the natural persons responsible for its management, and
- a statement for the commitment of the minimum amount of Euro 1 million.

Furthermore, since the AIF may comprise multiple investment compartments (sub-funds), each sub-fund also requires a separate license by the HCMC.

The HCMC prior to granting such license ensures that the AIF's Regulation, the AIFM and the Custodian comply with the provisions of new Law and other applicable law, and that each individual carrying out the work of the AIFM or the Custodian is reliable and has sufficient professional experience.

### **C. Eligible Investments - Investment Restrictions**

The AIF may invest in tangible or intangible transferable securities, company shares, cash, financial instruments, real estate, and other related assets, provided that:

- i. they are not pledged unless the AIF's investment policy requires it,
- ii. they are subject to reliable and accurate valuation in accordance with the IFRS and art. 19 of law 4209/2013, and
- iii. their liquidity permits the AIF to comply with its redemption policy.

On the other hand, an AIF cannot invest more than 20% of its assets (i) in financial instruments issued by one issuer or (ii) in real estate (in the case of investments in real estate). It is also provided that the Minister of Finance may issue a decision in order to classify the AIFs with respect to their investment purposes and structures, and may impose additional

investment restrictions on the AIFs according to the types of the potential investments and the potential investors.

### **D. Distribution of units**

The new Law provides for the distribution of units not only to professional investors, but also to retail investors, under the conditions set out in law 4209/2013, and provided that:

- i. each retail investor invests at least Euro 100,000 in the AIF,
- ii. such retail investor acknowledges and accepts the potential risks of the investment, and
- iii. it is provided for in the AIF's Regulation.

Distributed units and their respective holders are registered with a specific electronic registry of unitholders, kept by the AIFM. Moreover, the closed-ended AIF's Regulation may provide that investors can undertake capital commitments by making the respective payments and acquiring the units successively.

The units of the AIF may be distributed directly by the AIFM or indirectly through third parties to which the AIFM has outsourced such distribution.

### **E. Custodian**

According to the new Law, the AIF shall appoint a custodian, who will be responsible for the safekeeping of the AIF's assets. The custodian must have its registered office or a branch in Greece and may either be an authorized credit institution or an authorized Greek Investment Services Firm. According to the new Law, the

custodian also approves the AIF's Regulation, which is drafted by the AIFM. In case the custodian is replaced, the new custodian shall be approved by the HCMC, as per the provisions of the new Law.

#### **F. Dissolution & Revocation of license**

Article 48 of the new Law sets the reasons for dissolution of an AIF, which is followed by the distribution of its assets in accordance with the provisions of the AIF's Regulation. One of the causes of dissolution is the revocation by the HCMC of the license of the mutual AIF. The HCMC may revoke the license if the minimum capital of Euro 1 million is not fully subscribed, if the license given was based on false or misleading information, the requirements based on which the license was granted are no longer met, or the AIFM fails to fulfil its obligations.

Following the dissolution of an AIF, the AIFM notifies without delay its unitholders.

#### **G. Transparency requirements**

The new Law requires the AIFM to draft information material for the (potential) investors and an annual financial report, which shall be published and submitted to the HCMC.

#### **H. Administrative Sanctions**

The HCMC may impose on any natural or legal person who infringes the provisions of the new Law the following:

- i. reprimand, or
- ii. financial penalty, amounting from Euro 1.000 to Euro 3 million or twice the amount benefited by the infringer.

#### **I. Tax treatment**

In relation to the taxation of AIFs established in Greece, article 56 of the new Law makes explicit reference to the taxation of the Venture Capital Mutual Funds (the so-called AKES) in Greece (as per art. 7 of L. 2992/2002), which are tax transparent, i.e. the AIF is not subject to tax and any income its unitholders realize from their participation in the Fund is taxed at unitholders' level in their capacity as joint holders of the AIF underlying assets. The Law, also, provides that the management of EU AIFs does not constitute "exercise of effective management" in Greece for the purposes of Greek income taxation. Finally, the management fees of AIFs are exempt from VAT.