



Legal Flash

July 2020

New regime introducing the establishment of Greek AIFs – Update of publication requirements for the offer of securities to the public

The Law under the title “Corporate governance for listed companies, modern capital market, incorporation into Greek legislation of Directive (EU) 2017/828 of the European Parliament and of the Council, measures to implement Regulation (EU) 2017 / 1131 and other provisions” (hereinafter “the Law”) was voted by the Greek Parliament. Apart from Corporate Governance matters, the Law introduces the establishment of Greek Alternative Investment Funds (AIFs). This development, along with the recent licensing of several Alternative Investment Fund Managers (AIFMs) from the Hellenic Capital Markets Committee, may lead in the creation of a significantly larger investments’ market in Greece. Additionally, the Law amends the publication requirements and obligations for issuing prospectus and information documents for the offer of securities to the public or the admission of securities to trading.

A. New regulation for Alternative Investment Funds

Establishment and legal form of AIFs

AIFs collecting funds on behalf of investors in order to invest them according to the Fund’s investment policy, which are not classified as UCITS (Undertakings for Collective Investment in Transferable Securities), are established as Mutual Funds and are regulated by articles 37 to 56 of the Law. Real Estate Investment Companies (REICs), the Closed – end Venture Capital Mutual Funds and Real Estate Mutual Funds are explicitly excluded from the scope of application of the Law.

AIF assets - Investment Funds

The AIF, as a group of assets that is managed for the benefit of its unitholders, may consist of tangible or intangible securities, company shares, units of collective investment undertakings, cash, real estate or other related assets. The assets in which the AIF invests should be provided for in its Rules of Operation, they should be free of encumbrances (with the exception of pledges that can be concluded in the context of the AIF investment policy), and their valuation must be carried out in accordance with the legal provisions applicable to UCITS. The total value of the AIF’s assets must be at least EUR 1,000,000. An AIF can be open – end or closed - end, while the Law provides for the possibility of establishing an AIF with more than one investment fund, each of which is considered an independent AIF and corresponds to a separate part of the assets and issues independent units.

Investment restrictions

It is prohibited to invest more than twenty percent (20%) of the assets of the AIF in financial instruments of the same issuer, while, in the case of real estate investments, it is prohibited to invest more than twenty percent (20%) of assets in real estate. The Law provides an option for further categorization of AIFs based on their investment purpose and the provision of additional investment restrictions, however for such further categorization the issuance of a Ministerial Decision is required.



| | |
|--|--|
| Management | The AIFM must be a Société Anonyme for the Management of Alternative Investment Funds that has received an operating license under Law 4209/2013 or an AIFM that has received a license in another Member State, provided that the passporting process before the Hellenic Capital Market Commission is followed. |
| Licensing | The AIF is established following a relevant license from the Hellenic Capital Market Commission, which is issued at the request of the AIFM. In order to grant the license, it must be ensured that the Administrator and the Custodian operate in accordance with the requirements of the applicable legal framework and that the natural persons who in practice carry out the work of the Administrator are reliable and have sufficient professional experience. |
| Distribution of units | The distribution of units is allowed to both professional and private investors, under certain conditions and in accordance with the procedure provided by Law. The units can be distributed by the AIFM directly or indirectly through entities to which the AIFM has outsourced the distribution (Greek Investment Services Companies or Investment Services Companies with a branch in Greece, credit institutions, Investment Intermediaries and other AIFMs established or operating in Greece). |
| Dissolution and revocation of the license | The grounds for the dissolution of the AIF are specifically provided by the Law, and the dissolution of the AIF is followed by the distribution of its assets in accordance with the procedure provided in the AIF's Rules of Operation. Amongst others, an AIF may be dissolved following the revocation of its own license, the AIFM's license or the custodian's license, if no replacement is found within two months from said revocation. The Hellenic Capital Market Commission may also revoke a license if certain legal conditions for its issuance are not complied with. |
| Custodian | Appointing a custodian and assigning the AIF's assets for safekeeping is mandatory. Credit institutions and Greek Investment Services Companies may be assigned as custodians. |
| Taxation | As regards the taxation of AIFs established in Greece, the Law specifically refers to the taxation of the Closed – end Venture Capital Mutual Funds (AKES), which are in practice tax transparent, in the sense that the fund is “looked through” and investors are treated for tax purposes as if they held their proportionate share of the underlying investments directly. For AIFs established in the EU, it is clarified that they are not taxable in Greece, and that the management of EU established AIFs in Greece does not constitute an exercise of effective management of the AIF in Greece for the purposes of determining the tax residence. |

B. Updates on the publication requirements for prospectus and other information documents

| | |
|--|--|
| Update of publication requirements | In order to restructure the framework that regulates the publication requirements during the public offering of securities or the admission of securities to trading in a regulated market, but also to adopt measures for the implementation of Regulation (EU) 2017/1129, Chapter C Part B of the Law (articles 57 to 68) updates the provisions regarding the prospectus and its publication. |
| Introduction of an obligation to issue an information document for public offers with a small transaction value | The obligation to publish a prospectus for public offers remains for those public offers that exceed the limit of EUR 5,000,000 (transaction exchange value calculated over a period of 12 months), however, for public offers whose transaction value ranges from EUR 500,000 to 5,000,000, the Law introduces the obligation to issue an information document, the content of which will be determined by a relevant decision of the Hellenic Capital Market Commission. |



Amendment to the quantitative limits of exemptions from the obligation to publish an information document

Changes are introduced by the Law regarding the exceptions from the issuance of an information document when the public offer is made through an electronic system (electronic platform).

In particular, in order for a public offering to be covered by this exemption, the total value of the securities offered must not exceed EUR 1,000,000 per issuer over a period of 12 months (under the previous regime the limit was EUR 500,000).

At the same time the participation of private clients should not exceed the amount of EUR 10,000 (based on the previous regime it was EUR 5,000) and, in any case, ten percent (10%) of the average income declared with the tax return of the previous three years per issuer and EUR 50,000 (based on the previous regime it was EUR 30,000) per year, per Investment Service Company, AIFM or credit institution.

It should be noted that each individual case should be examined on the basis of its particular characteristics and the above-mentioned general principles may not necessarily apply in all circumstances. Our specialized consultants are in a position to assist you with regard to any issue that may arise in your individual case.

www.pwc.gr

This information is intended only as a general update for interested persons and should not be used as a basis for decision making. For further details please contact PwC: 268, Kifissias Avenue 15232 Halandri tel. +30 210 6874400

© 2020 PricewaterhouseCoopers Business Solutions AE. All rights reserved. PwC refers to the Greece member firm, and may sometimes refer to the PwC network. Each member firm is a separate legal entity. Please see www.pwc.com/structure for further details.