



CAPITAL MARKETS UPDATE

On new legislation mainly re: UCITS V, corporate bonds, crowdfunding

Law 4416/2016 ("Law") was adopted by the Hellenic Parliament on 1 September 2016 and entered into force on 6 September 2016 (Gov. Gazette A' 160/6.9.2016).

The Law incorporates into Greek law Directive 2014/91/EU of the European Parliament and the Council for the amendment of Directive 2009/65/EC on the coordination of laws, regulations and administrative positions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions ("UCITS V Directive") (section I below) and addresses various capital markets issues, such as the interest rate of specific corporate bonds and crowdfunding (section II below).

I. Incorporation of the UCITS V Directive into Greek national law

The new Law amends Law 4099/2012 which had transposed into Greek law EU Directive 2009/65 on UCITS. The provisions of the new Law mirror those of the UCITS V Directive regarding (a) the custodians, in particular with regard to their duties and liability, (b) the remuneration principles that apply to fund managers and (c) the sanctions imposed in case of breach by the supervisory authority, the Hellenic Capital Market Commission ("HCMC").

A. Custodians

A key amendment introduced as a result of the UCIS V Directive is that an Investment Company of Variable Capital («ICVC», or AEEMK in its Greek acronym) and a Mutual Fund Company (known with its Greek acronym as "AEDAK"), for each of the funds it manages, will appoint only one custodian which may have a seat in Greece or in another EU Member State, but with a branch in Greece, subject to the approval of the HCMC.

The definition of the custodian is now broadened in order to include not only credit institutions, but also investment firms, provided that they are authorized to provide safe-keeping to their clients and their own funds are at the same level as their initial

share capital. Furthermore, the Law provides for a written agreement for the appointment of the custodian and a list of duties and obligations of the custodian.

Article 5 of the Law adds a new provision (Article 36a) into Law 4099/2012 and concerns the delegation of functions by the Custodian. The general rule is that the main duties of the custodian (Article 36 par. 4 and 5) cannot be delegated to third parties. Delegation of specific duties (i.e. those referred to in par. 6 and relate mainly to the safekeeping of securities and the monitoring of the other assets) is permitted if specific conditions apply. The Law stipulates the characteristics of a third party to which the custodian's duties can be lawfully delegated, including that such sub-custodian should be subject to efficient supervision in the jurisdiction concerned. There is an exemption for sub-custodians of a third country only under specific conditions such as previous notification of the UCIT holders, etc.

The UCITS V Directive has also increased the liability of the custodian. The custodian is now liable for any loss of UCITS assets held in its custody or in the custody of the sub-custodian, except for specific instances, i.e. mainly when the loss is due to an event beyond the reasonable control of the custodian.

B. Remuneration policies

The provisions of Law 4099/2012 have been amended in order to discourage excessive risk-taking and to ensure the efficient and sound management of risks and to enhance the transparency of remuneration practices. The remuneration policies introduced are in line with those stipulated in the EU Directive on Alternative Investment Fund Managers (2011/61/EC).

Specifically, Article 3 of the Law inserts two new provisions in Law 4099/2012 (Articles 23a and 23b), concerning respectively the remuneration policies and practices in relation to the senior executive personnel of a Mutual Fund Management Company ("AEDAK") and the personnel which undertakes risks or exercise control duties or such personnel that has remuneration similar to the aforementioned persons of an AEDAK.

Such policies and practices include fixed and variable components with respect to salaries and optional pension benefits; however variable fees are restricted on the basis of specific criteria. Furthermore, specific principles in relation to remuneration policies have been adopted (e.g. in relation to annual review of such policies and their adoption and implementation). The new provisions also introduce the requirement for the appointment of a remuneration committee by AEDAK which are deemed to

be of significant size or manage a fund of significant size (which will be further defined through a decision of the Board of Directors of the HCMC).

C. Sanctions:

The new Law has inserted a new section setting out the administrative sanctions that the HCMC may impose in case of infringement of the relevant provisions with a view to ensuring harmonization with the other EU Member States.

I. Other capital market issues, such as new provisions on Corporate Bonds, Crowdfunding and others

A. Advisory Committee of the HCMC

Article 19 of the Law provides for the addition of a new member, the Association of Hellenic Ventures Capitals, to the Advisory Committee of the HCMC, which increases its members to a total of eight.

B. Bond Loans

Several provisions were adopted in relation to Bond loans:

(a) Interest rate

In an attempt to expand the market for bond loans and following the reduction of the ECB interest rate used for estimating the maximum interest rate for bond loans, Article 20 of the Law abolishes the cap on interest rate for the following types of bond loans:

- 1) bond loans offered publicly;
- 2) bond loans offered through private placement to qualified investors in accordance with Article 2 par. 1 (6) of Law 3401/2005 (incorporating into Greek law Directive 2003/71/EC (the so called "EU Prospectus Directive")).

(b) Listing of bond loans on MTFs

Article 21 of the Law permits now the listing of bond loans on Multilateral Trading Facilities that are operating in Greece.

(c) Bond Holders Representative

Article 21 of the Law provides that the representative of the bondholders is no longer required to be an investment firm that provides underwriting but it can

be any investment firm providing asset safe-keeping services to its clients under its authorization permit. Thus, a greater number of investment firms may now be appointed as representatives of Bondholders in case of a bond loan issuance. The Central Depository of Titles may also become a representative of bondholders.

C. Amendments on REICs (art. 22 of the Law)

Article 22 of the Law does not require anymore that a Real Estate Investment Company (REIC or AEEAP if the Greek acronym is used) established under Law 2778/1999 to have a subsidiary in order to manage real estate property and such management may be done through another entity. This facilitates the formation of joint ventures among REICs or other companies in order to exploit and manage tourist or other real estate projects jointly.

D. Crowdfunding (alternative source of financing)

Greece lacked specific legislation concerning crowdfunding prior to the adoption of the Law and the relevant participants had to comply with Law 3606/2007 on the Markets of Financial Instruments (implementing in Greece Directive 2004/39/EC (the so called “MiFID”)) with respect to the provision of investment services and Law 3401/2005 on Prospectus in relation to the obligation to issue a Prospectus in case of public offers. Articles 23 and 24 of the Law now provide for amendments to the aforementioned legislation in order to provide specifically for crowdfunding with a view to facilitating this new alternative type of raising finance. In particular, the Law lays down the following key provisions:

1. With respect to the public offering provisions, a public offering may take place without the preparation of a prospectus if the following conditions are met:
 - a. the offer takes place via an electronic “platform” with specific requirements, which is managed by a Greek investment firm (AEPEY) that has been authorized to provide at least the investment service of reception and transmission of orders and the ancillary service of safekeeping, or by a Greek Management Company of Alternative Investment Funds «AIFs» (AIFM or AEDOOE if the Greek acronym is used) authorized also to provide reception and transmission of orders (services of art. 6 para 4 sec b of L. 4209/2013) or by a credit institution also providing reception and transmission of orders;
 - b. the securities offered have a total value of less than 500,000 Euro; a limit which is computed for each issuer within 12 months;

- c. the participation of each retail client (non-professional under MiFID definition) does not exceed the amount of 5,000 Euro and, in any case, it does not exceed, per issuer, 10% of the average of the income declared in the tax declarations during the previous three-year period, and the amount of 30,000 Euro per year and per each crowdfunding platform manager (i.e. per each AEPEY or AEDOOE or credit institution). Such monetary limits may change by a decision of the Minister of Finance following a proposal of the HCMC.

2. As regards the provision of investment services by the entity managing the crowdfunding platform, Article 24 of the Law has amended Law 3606/2007 on Markets of Financial Instruments in order to require that the aforementioned eligible entities notify HCMC or the Bank of Greece (in case of credit institutions) of their intention to manage such platforms and submit all relevant data, including the new organizational chart, the persons that will be occupied with this activity and their qualifications, the criteria used for the selection of the relevant issuers whose securities will be offered through the platform, the monitoring procedures etc. The HCMC or the Bank of Greece may object to this intention, within two (2) months after submission, if it considers that the relevant requirements of such Article are not met. Such requirements as well as the information that the platform managers must submit to the relevant supervisory authorities may be further specified with a Decision of the HCMC or the Bank of Greece.

The Law further specifies the information that AEPEYs, AEDOOEs and credit institutions managing crowdfunding platforms must offer to their clients.

E. Reduction of the minimum share capital of Greek Investment Intermediary Companies

Article 24 of the Law provides that the initial share capital of Greek Investment Intermediary Companies (i.e. specific type of companies providing only the investment service of reception and transmission of orders and investment advice) is now required not to be lower than 40,000 Euro (instead of the 75,000 Euro threshold applied to date). Furthermore, their own funds, according to the latest balance sheet, should not fall below 30,000 Euro (instead of the 37,500 Euro threshold applied to date).

F. Quarterly financial statements of credit institutions

Article 25 of the Law provides that credit institutions that are listed on an organized market are required to prepare quarterly financial statements for the first and the third quarter of the fiscal year and publish such statements within 3 months after the end of each such quarter. In case, the credit institutions are preparing consolidated financial statements, this obligation concerns only the quarterly consolidated financial

statements drafted in accordance with IAS that are applicable in the intermediary financial reporting provided for in Regulation 1606/2002. In addition, the Law provides that in case of listed credit institutions headquartered in Greece, such quarterly statements shall be signed by the persons responsible for their preparation and shall be approved by the Board of Directors.

G. Tax provisions for EBRD and IFC

Article 26 of the Law provides that loan, guarantee, or other types of financing agreements (including their settlement, payment of interest or commissions, guarantee, security, assignment and any other relating action or agreement), where either the European Bank for Reconstruction and Development (EBRD) or the International Financial Corporation (IFC) is as contracting party, are exempted from any taxes, levies, duties or charges (including stamp duty and the special levy of Law 128/75) in favor of the State or any third party.

The same exemptions (excluding income tax and VAT) apply also to financing granted by local or foreign credit institutions with respect to certain public works and concessions (including self-financed / co-financed projects), provided that such public works / concessions have been financed by either the EBRD or the IFC.

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This information is intended only as a general update and should not be used as basis for decision making. For further information, please contact:

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