

# KARATZAS & PARTNERS

Capital Markets Alert



## **The establishment of alternative mutual funds in Greece is, for the first time, possible.**

### **Introduction:**

Articles 37-56 of the recently enacted Law 4706/2020 (the **AIF Provisions**) set a modern and flexible legal framework for the establishment, operation and marketing of contractual Alternative Investment Funds (**mutual AIFs**), enabling the creation of private equity, hedge and real estate AIFs, outside the scope of existing legislation on mutual funds pursuant to the UCITS Directive.

Until the entry into force of Law 4706/2020, Law 4209/2013 transposing AIFMD in Greek Law (**AIFM Law**) provided for the establishment of managers of mutual AIFs in Greece, but not of mutual AIFs.

### **What is a mutual AIF?**

A mutual AIF subject to the AIF Provisions is a distinct pool of assets divided in units, which is established in Greece, either as an open-ended or as a closed-end fund, upon authorisation by the Hellenic Capital Market Commission (**HCMC**). A mutual AIF:

- has no legal personality;
- is owned by its unitholders, in proportion to their units; and
- is managed by a Greek or EU authorised Alternative Investment Funds Manager (**AIFM**), which represents all unitholders.

### **Which are the authorisation requirements?**

An authorisation request is submitted by the AIFM to HCMC in Greek language, accompanied by the relevant supporting documents (including the mutual AIF's regulation, statements of the AIFM and the depository confirming they have assumed the respective roles, and a capital commitment for at least EUR 1 million).

### **Which are the eligible investments of a mutual AIF?**

A mutual AIF can invest in cash, transferable securities and other financial instruments, interests in partnerships, real estate and other related assets, provided that:

- they are not pledged (save for implementing the mutual AIF's investment policy); and
- they are liquid enough to allow a mutual fund to comply with its redemption policy, being subject to valuation in accordance with IFRS and article 19 of AIFM Law.

### **Is a mutual AIF subject to risk diversification requirements?**

Yes, a mutual AIF cannot invest more than 20% of its assets in:

- financial instruments issued by a single issuer;
- real estate.

Moreover, the Minister of Finance is authorised to classify mutual AIFs in specific categories, based on their investment purpose and structure, and impose further investment restrictions per category, depending on the types of potential investments and investors targeted.

### **Which are the eligible investors?**

A mutual AIF can be distributed to:

- professional investors; and
- retail investors under the conditions provided for in article 41 of AIFM Law, including that: a) this is provided for in the mutual AIF's constitutive documents, b) each retail investor invests at least EUR 100,000 in a mutual AIF; and c) the suitability of the investment, in view of an investor's knowledge, experience and risk appetite, has been confirmed by the AIFM marketing the mutual AIF.

### **Are umbrella structures permitted?**

Yes, a mutual AIF can comprise sub-funds (investment compartments), which are established, authorised by HCMC and liquidated as independent mutual AIFs, have segregated assets and issue separate units. Cross-investments between sub-funds of the same mutual AIF are permitted within the limits laid down in the AIF Provisions.

### **Which entities can be appointed as the depositary of a mutual AIF?**

Credit institutions and investment firms satisfying certain regulatory capital requirements, which are either established in Greece or established in an EU member state and passporting their services in Greece through a branch.

### **Can investors make capital commitments?**

Yes, investors in closed-end mutual AIFs can undertake capital commitments, so that they make the payments required and acquire the relevant units successively, provided that the regulation of the mutual AIF allows for it.

### **Which are the transparency requirements?**

The AIFM of a mutual AIF is required to draft, submit to HCMC and publish an annual report, as well as to make available to investors the information provided for in Article 23 of AIFM Law.

Is a mutual AIF subject to voluntary, or only to compulsory liquidation?

A mutual AIF is subject to both compulsory liquidation (for instance, in case of authorisation withdrawal or absence of a validly designated AIFM and failure to replace it within 2 months) and to voluntary liquidation, in accordance with the regulation of the mutual AIF.

### **Which is the tax treatment of mutual AIFs?**

Mutual AIFs are tax exempt. The tax exemption under the AIF Provisions also applies to EU AIFs, while the management of an EU AIF does not per se amount to “exercise of effective management” for the purposes of Greek income tax legislation.

### **Does a mutual AIF benefit from the EU passport?**

Yes.

### **Can a mutual AIF be listed and traded on a regulated market?**

In principle, yes. The currently applicable listing rules of the Athens Exchange (**ATHEX**) provide only for mutual funds pursuant to the UCITS Directive to be listed on the ATHEX. It should be clarified whether the above will be amended to cover the new Greek mutual AIFs.

### **Which are the major differences between a mutual AIF and a mutual fund subject to the UCITS Directive?**

In contrast to a mutual AIF, a mutual fund pursuant to the UCITS Directive (as transposed in Greece by Law 4099/2012) can be established only as an open-ended fund, which invests solely in transferable securities and other liquid financial assets, pursuant to strict investment restrictions and risk spreading requirements.

### **Authors**

Nikolaos Askotiris, Senior Associate

Alexandra Th. Kondyli, Partner