

CMS Guide to Passporting – Rules on Marketing Alternative Investment Funds

Accessing Investors post AIFMD

December 2022



Greece

Summary of private placement provisions for fund interests (if applicable)

Law 4099/2012 implemented in Greece Directive 2009/65 of the European Parliament and of the Council on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (“**UCITS**”). Law 4099/2012 is applicable only to UCITS established within the territories of the EU member states. However, when enacting Law 4099/2012, the Greek legislature added a provision (Article 92) which is not included in Directive 2009/65. Article 92 provides, inter alia, that any undertaking for collective investments that is seated in a Non EU member state needs to be licensed by the Hellenic Capital Market Commission (“**HCMC**”) before making offerings in Greece.

Moreover, Law 4209/2013 implemented Directive 2011/61 of the European Parliament and of the Council on Alternative Investment Fund Managers (“**AIFM**”). Law 4209/2013 is applicable to AIFMs (either EU or Non EU based) which manage and/or market alternative investment funds (“**AIFs**”) in the EU. However, Greece opted not to implement Article 42 of Directive 2011/61 which provides the conditions for Non EU AIFMs to make offerings to professional investors within an EU member state.

In light of the above non EU funds are governed by the special provision of Article 92 of Law 4099/2012.

The AIFMD, which came into force on 22 July 2013, seeks to establish a harmonised regulatory framework for firms that manage or market AIFs in the EU. An AIF has been defined broadly and catches a variety of non UCITS investment vehicles such as closed-end listed vehicles (e.g., investment trusts) and private equity, real estate and hedge funds.

AIFMD is likely to affect most private equity fund managers who manage funds or have investors in the EU if they are identified as the AIFM of a particular fund or funds. Limited grandfathering provisions apply, generally exempting closed-end funds which will end prior to 2016 or are fully invested by 2013. Those EU funds with non EU managers may be required to become authorised by 2015. AIFMs managing funds below de minimis aggregate thresholds may only be subject to lighter touch requirements, which include registration with regulators, notification of investment strategies, and certain investment reporting.

There is no specific definition of private placement under Greek law but the concept of “private placement” is determined by opposition to public offer and by referring to the exemption from the requirement to publish a prospectus under the provisions of Law 4706/2020 (“**Prospectus Law**”).

Private placement in Greece is a placement that:

- (a) is addressed solely to qualified investors. As per Article 2 of Regulation 2017/1129 EU, “qualified investors” means persons or entities that are listed in points (1) to (4) of Section I of Annex II to Directive 2014/65/EU, and persons or entities who are, on request, treated as professional clients in accordance with Section II of that Annex, or recognised as eligible counterparties in accordance with Article 30 of the Directive 2014/65/EU, unless they have agreed to be treated as non professional clients in accordance with the fourth paragraph of Section I of same above Annex and/or
- (b) is addressed to fewer than 150 natural or legal persons other than qualified investors per each EU member state; and/or
- (c) is addressed to investors who acquire securities for a total consideration of at least EUR 100,000 per investor, for each separate offer; and/or
- (d) refers to securities whose denomination per unit amounts to at least EUR 100,000; and/or

- (e) refers to securities where the total consideration for the offer in the EU is less than EUR 5,000,000 calculated over period of twelve months.

If a fund meets any one (or more) of the above criteria then it is subject to private placement provisions.

Other forms of possible placement options for fund interests outside fund regulations

The following fall outside of the scope of the law covering the placement of fund interests:

- (a) reverse solicitation (i.e. following a genuine unsolicited request by the investor);
- (b) non equity securities issued by an EU Member State or by public international bodies of which one or more EU Member States are members or by the European Central Bank or by the central banks of the EU Member States;
- (c) shares in the capital of central banks of the EU Member States;
- (d) securities unconditionally and irrevocably guaranteed by an EU Member State;
- (e) securities included in an offer where the total consideration for the offer in the EU is less than EUR 5m calculated over a one-year period; and
- (f) non equity securities issued in a continuous or repeated manner by credit institutions where the total consideration for the offer in the EU is less than EUR 75m calculated over a one-year period, provided that those securities are not subordinated, convertible or exchangeable and that they do not give a right to subscribe to or acquire other types of securities and that they are not linked to a derivative instrument.

Consequences of non compliance with placement regimes for fund interests

If there is a violation of private placement provisions, the contract may be declared null and void under the applicable provisions of the Greek Civil Code. A breach of the applicable laws and regulations creates civil liability to fully indemnify any injured party.

Main regulatory sanctions are:

- (a) a public statement indicating the natural person or the legal entity responsible and the nature of the infringement in accordance with Article 42 of Regulation 2017/1129 EU;
- (b) an order requiring the natural person or legal entity responsible to cease the conduct constituting the infringement and not repeat it in the future;
- (c) administrative pecuniary sanctions of at least twice the amount of the profits gained or losses avoided by the infringing parties due to the infringement, where those can be determined;
- (d) in case of a legal person, maximum administrative pecuniary sanctions of at least EUR 5,000,000, or 10% of the total annual turnover of that legal person according to the last available financial statements approved by its management body. Where the legal person is a parent undertaking or a subsidiary of a parent undertaking which is required to prepare consolidated financial accounts in accordance with Law 4308/2014, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income in accordance with the relevant EU in the area of accounting according to the last available consolidated accounts approved by the management body of the ultimate parent undertaking;
- (e) in case of a natural person, maximum administrative pecuniary sanctions ranging from EUR 500 to EUR 5,000,000.

Private placement rules for non fund investments available

Non fund investments which are generally subject to private placement opportunities outside fund regulation include financial instruments such as shares in companies; bonds or other forms of securitised debt; certain other securities; units in collective investment undertakings; options, futures and swaps and other derivative contracts. These financial instruments are subject to private placement provisions when the exemptions from the duty to publish a prospectus apply.

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