



Newsletter on transposition into Greek law of EU Directive 2019/1160 on cross-border distribution of funds (CBDF Directive)

On 12 April 2022, the Greek Parliament passed law 4920/2022 (Government Gazette A' 74/15.04.2022) (Law 4920) which, amongst others, transposed into Greek law, with a delay of 9 months, the CBDF Directive introducing amendments to the applicable framework on the distribution of undertakings for collective investment in transferable securities (UCITS) and alternative investment funds (AIFs).

Although the CBDF Directive had to be transposed into Greek law until 02.08.2021, transposition finally took place through Law 4920, which came into effect on 15.04.2022 and following a public consultation period of only few days. Law 4920 introduces significant amendments to Greek law 4099/2012 on UCITS (**Law 4099**) and Greek law 4209/2013 on alternative investment fund managers (**AIFMs**) implementing respective provisions of the CBDF Directive, which together with EU Regulation 2019/1156 on facilitating cross-border distribution of collective investment undertakings (the **CBDR**) aim to increase harmonisation on the marketing of UCITS and AIFs within EU, reduce regulatory barriers, improve cost efficiencies and enhance investor protection.

The key changes introduced by Law 4920 are:

- alignment of UCITS marketing communications with those of AIFs in line with CBDR
- removal of the physical presence requirement for marketing of UCITS in Greece
- introduction of “pre-marketing” concept of AIFs to institutional investors
- introduction of a new regime for the deregistration of AIFs and UCITS

UCITS | What do you need to know?

- Marketing communications for UCITS of EU member states distributed in Greece are now regulated only by CBDR which has replaced the respective provisions of EU Directive 2009/65 (UCITS Directive) and Law 4099; however, the local requirement for a specific disclaimer on the non-guaranteed performance of UCITS on all advertising material (except for the key investor document) distributed to investors in Greece still applies.
- UCITS marketing communications to investors have still to be notified to the Hellenic Capital Market Commission (the **HCMC**), but no prior notification is necessary.
- Facilities in relation to the marketing of UCITS of other EU member states currently administered by a local agent (i.e. distributor, paying agent) may be provided remotely by electronic means **and thus a physical presence in Greece is no longer required**; UCITS/fund management company itself, or a third party (or both) may perform the relevant tasks in relation to the marketing of UCITS, subject to specific regulation governing the tasks to be performed.
- Conforming changes of a more technical nature have been made in respect of the notification procedures for UCITS of other EU member states obtaining marketing passport for Greece, such as in the content of the notification letter and in the process of imple-

menting changes in the initial notification letter. Changes in the initial notification letter or changes in share classes to be marketed must be now notified not only to the HCMC but also to the UCITS home member state authority, at least one month before implementing the change.

- To de-register a UCITS, a blanket offer to repurchase or redeem (free of charge) all shares held by investors in Greece must be made, along with a public announcement and termination of contractual arrangements with delegates to ensure no further offering of shares. De-registration notifications must be made via the home member state authority.

AIFs | What do you need to know?

- Principles applicable to UCITS in relation to marketing communications (under the CBDR) are extended to AIFMs as well, thereby resulting in a high standard of protection, regardless of the type of investor.
- Same as UCITS, marketing communications for AIFs have to be notified to the HCMC, but no prior notification is necessary.
- In case of marketing of AIFs to retail investors in Greece, requirements applicable to UCITS in

relation to the facilities which must be made available to investors apply to AIFs as well.

- The concept of pre-marketing has been introduced allowing EU AIFMs to test market interest before establishing an AIF or registering an AIF under a marketing passport in Greece (subject to the requirements set out in the CBDF Directive). However, any subscription within 18 months of the AIFM beginning pre-marketing will be considered to be the result of the marketing and will be subject to the applicable notification procedures referred to in AIFMD. This practically means that in many cases, reliance on reverse solicitation will no longer be available if pre-marketing of the fund has been conducted.
- The de-registration of AIFs (except for closed-ended AIFs) will be subject to similar requirements applicable to UCITS. Furthermore, in case an AIF is de-notified from marketing, for a period of 36 months from the date of de-notification, the AIFM may not engage in pre-marketing of that AIF, or any other AIF with a similar investment strategy or investment idea, in Greece.
- Law 4920 does not introduce any change in the current regime applicable to non-EU AIFMs.

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