Amendments on legislation applicable to investment firms and crowdfunding operators

This newsletter focuses on changes relating to Greek investment firms and the crowdfunding regime introduced by Greek law 4920/2022 (**Law 4920**).

Law 4920, which was published on 15 April 2022, transposed into Greek law the Investment Firm Directive (Directive (EU) 2019/2034 - IFD) as well as MiFID II "Quick Fix" Directive (Directive (EU) 2021/338). It also introduced provisions supplementing the Investment Firm Regulation (Regulation (EU) 2019/2033 - IFR) and the Crowdfunding Regulation (Regulation (EU) 2020/1503) respectively.

1. Implementation of IFD

Classification of investment firms according to their size

The new rules under IFD/IFR classify investment firms in three main categories, i.e. Class 1 – Systemic investment firms, Class 2 – Investment firms that are not systemically important but exceed certain thresholds, and Class 3 – Smaller and non-interconnected firms that are subject to reduced requirements.

Class 1 investment firms that meet cumulatively certain conditions, i.e.:

- they are authorised to provide the investment services of dealing on own account in financial instruments or underwriting financial instruments or placing financial instruments on a firm commitment basis; and
- their total consolidated assets (either on a stand-alone basis or at a group level) exceed the amount of EUR 30 billion)

fall now within the definition of "credit institutions" and need to be authorised by the Bank of Greece (**BoG**) in accordance with Greek law 4261/2014 (Law 4261). In general, the European Central Bank (**ECB**) will take over the direct supervision of such firms since the ECB is the direct supervisor of significant institutions (including in terms of size, i.e. where the total value of assets exceeds EUR 30 billion). Class 1 investment firms are subject to the capital and prudential requirements of Regulation (EU) No 575/2013 (CRR)/ Directive 2013/36/EU (CRD).

Pursuant to the IFR, investment firms authorised to carry out the investment services of dealing on own account in financial instruments or underwriting financial instruments or placing financial instruments on a firm commitment basis **and** whose total consolidated assets (either on an individual basis or at a group level) are equal to, or exceed, EUR 15 billion may still be determined by the competent authority as Class 1 investment firms falling within the scope of prudential requirements of CRR/CRD.

In addition, Law 4920 empowers the Hellenic Capital Markets Authority (**HCMC**) with the discretion to apply the CRR requirements as well as the prudential supervision under Law 4261 to Greek investment firms that carry out the investment services of dealing on own account in financial instruments or underwriting financial instruments or placing financial instruments on a firm commitment basis where their total consolidated assets are equal to, or exceed, EUR 5 billion and certain conditions are met (e.g. the failure or distress of such firm could lead to systemic risk, it is significant for the economy of the EU or Greece, the HCMC considers it to be justified in light of the size, nature, scale and complexity of the activities

of the investment firm concerned etc.). The Commission Delegated Regulation (EU) 2021/2153 has been adopted to specify certain criteria for subjecting certain investment firms to the requirements of CRR. Therefore, the aforementioned investment firms remain licensed as investment firms under Directive 2014/65/EU (MiFID II), but have to comply with the CRR/CRD governance and prudential requirements.

Class 2 investment firms are no longer subject to the CRR/CRD regime, but they need to comply with the new prudential and governance regime introduced by IFR and Law 4920.

Class 3 investment firms are those firms that are considered as small and non-interconnected, where all conditions set out in article 12 (1) of IFR are met. Class 3 investment firms are subject to less stringent requirements under Law 4920 since they are exempted from the majority of the provisions set out thereby, but in any case they should continue to comply with the MiFID II framework.

Investment firms' share capital and capital requirements

The minimum initial capital of Greek investment firms changes and ranges between EUR 75,000 and EUR 750,000 depending on which investment services are included in their license.

The minimum capital of investment firms should be in line with the own funds composition set out in IFR. The IFR/IFD package includes new capital requirements of Class 2 and Class 3 investment firms to be calculated in accordance with the K-factor methodology as well as new rules on prudential consolidation, liquidity and concentration risk.

Internal governance, risk management and transparency

The new regime introduces internal governance, transparency, treatment of risks and remuneration requirements that apply to investment firms (mainly of Class 2). For example, Law 4920 includes specific governance requirements, including the obligation to have clear organisational structure with well-defined lines of responsibility, effective processes to identify, manage, monitor and report the risks that investment firms are exposed to, adequate internal control mechanisms and gender neutral remuneration policy (including the necessity of establishment of a remuneration committee and specific provisions in relation to the variable remuneration of the staff).

Investment firms must also have robust strategies, policies, processes and systems for the identification, measurement, management and monitoring of risks and the relevant impact on own funds. Such requirements apply also to investment firms qualifying as small and non-interconnected investment firms, although Class 3 firms are in principle excluded from the scope of the governance, transparency, risk treatment and remuneration regime of Law 4920.

New disclosure and transparency requirements for Greek investment firms are included in the new regime. Indicatively, Greek investment firms are required to disclose country-by-country information in relation to the turnover, results and taxes of their branches and subsidiaries in countries other than Greece and have such information audited and annexed to their annual financial statements.

Group of investment firms and third-country groups

Law 4920 widens the scope of consolidated supervision in respect of EU groups which include as members investment firms. Therefore, EU parent investment firms, parent investment holding companies and parent mixed financial holding companies may be subject to consolidated supervision and have to comply with own funds, governance and other regulatory requirements.

Investment firms belonging to third-country groups should also observe the new requirements of Law 4920. One of the changes in this regard is the fact that the EU competent authority will assess whether effective supervision at a group level takes place and in case two or more EU investment firms are subsidiaries of a third-country parent undertaking, the relevant competent authority may request the establishment of an investment hold-

ing company in the EU. The IFR introduces amendments to the provisions of Regulation (EU) 600/2014 (MiFIR) pertaining to the equivalence decisions taken by the Commission in relation to third counties.

2. MiFID II "Quick Fix"

Law 4920 has transposed the so called MiFID II "Quick Fix" Directive aiming to support the economy recovery from the Covid-19 pandemic. The changes of Greek law 4514/2018 (implementing MiFID II in Greece, Law 4514) are mainly in relation to the following:

a) **phase-out of the paper-based default method of communication:** all client communications will be provided in electronic form. Investment firms must inform existing and new retail clients that an automatic switch to the electronic format will occur, but they will be still able to opt in and request the provision of communication on paper;

b) **product governance exemptions:** investment firms are exempted from the product governance rules of MiFID II (i) while carrying out investment services in relation to bonds with no other embedded derivative than a make-whole clause or (ii) where financial instruments are offered exclusively to eligible counterparties. The product governance exemption applicable to bonds embedding a make-whole clause has been further clarified by the ESMA in its Q&As;

c) **standardised information on costs and charges:** information on costs and charges is no longer required to be disclosed to professional clients and eligible counterparties, except when offering investment advice or portfolio management services;

d) **best execution reports:** the obligation to produce best execution reports has been suspended until 28 February 2023;

e) **research:** the provision of research by third parties to investment firms providing portfolio management or other investment or ancillary services to clients is allowed under certain conditions. Investment firms are now allowed to pay jointly for the provision of research and for the provision of execution services provided certain conditions are met;

f) **switching:** the definition of switching is included in the new law, while it is also provided that the obligation of investment firms to carry out a cost-benefit analysis in case of switching a financial product when offering investment advice or portfolio management has been abolished towards professional clients (but they may request to opt in);

g) **commodity derivatives:** the scope of the commodity derivatives position limits regime is being narrowed since it applies only to agricultural commodity derivatives and critical or significant commodity derivatives (i.e. with an open interest of at least 300,000 lots on average over a one-year period) that are traded on trading venues and to economically equivalent OTC contracts. MiFID II did not allow hedging exemptions for any financial entities, but Law 4920 now introduces a narrowly defined hedging exemption for financial entities that is available where, within a predominantly commercial group, a person has been registered as an investment firm and trades on behalf of that commercial group.

In addition, the ancillary activity exemption from the requirement to obtain authorisation as an investment firm in case of persons that trade in commodity derivatives or emission allowances or derivatives has changed.

3. Crowdfunding service providers

Crowdfunding service providers licensed under the Crowdfunding Regulation are explicitly exempted from the scope of application of Law 4514. On the other hand, Greek investment firms and credit institutions must obtain a specific authorisation under the Crowdfunding Regulation but may continue offering crowdfunding services for a transitional period until they obtain an authorisation under the Crowdfunding Regulation or until 10 November 2022, whichever is earlier.

The HCMC is the competent authority to exercise the supervisory tasks and duties under the Crowdfunding Regulation, unless the relevant services

are offered by credit institutions, payment institutions or e-money institutions, in which case the BoG has undertaken the relevant tasks.

Crowdfunding service providers licensed under the Crowdfunding Regulation are also explicitly exempted from the obligation to publish an information memorandum under Greek law 4706/2020 in case of public offers, provided that the crowdfunding offers do not exceed EUR 5,000,000 over a period of 12 months.

4. Administrative powers of the HCMC and sanctions

A revised list of administrative powers of the HCMC is set out in Law 4920, including the power of the HCMC to impose sanctions to Greek investment firms and crowdfunding operators as well as the power to carry out, as a host-member authority, on-the-spot inspection of Greek branches of EU investment firms.

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