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Legal Guides**



Public Investment Funds

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1 Registration

1.1 Are funds that are offered to the public required to be registered under the securities laws of your jurisdiction? If so, what are the factors and criteria that determine whether a fund is required to be registered?

In short, yes, funds are required to be registered under local laws, except for the very limited number of cases where there is a genuine reverse solicitation. The type of registration differs depending on the fund's and fund manager's country of origin and the fund's legal structure.

Please note that in the absence of cross-jurisdictional certainty on the scope of "securities laws", this response covers rules relating to both listed securities within the meaning of "transferable securities" in the MiFID II and unlisted financial instruments falling within the broader meaning of "units in collective investment undertakings".

Funds (whether domestic or non-domestic) offered to the public in Greece fall under two regimes: (i) Greek Law No. 4099/2012, as amended, and in force ("Greek UCITS Law") implementing the Undertakings for Collective Investments in Transferable Securities Directive 2009/65/EC ("UCITS IV") as amended by Directive 2014/91/EU ("UCITS V"); and (ii) Greek Law No. 4209/2013 ("Greek AIFMD Law") implementing the Alternative Investment Fund Managers Directive 2011/61/EC ("AIFMD").

The factors and criteria determining the type of registration, are dependent on whether a fund qualifies as an undertaking for collective investments in transferable securities ("UCITS") or as an alternative investment fund ("AIF").

(i) UCITS

UCITS are undertakings: (a) raised with public capital on the principle of risk-spreading, whose sole object is collective investment in transferable securities or in other liquid financial assets fulfilling the criteria of the UCITS Directive; and (b) whose units are repurchased or redeemed, at the holders' request, directly or indirectly, out of the assets of these undertakings. UCITS include two basic types of collective investment undertakings: mutual funds; and Variable Capital Investment Companies ("ICVCs"). Both fund types are open-ended.

(ii) AIFs

AIFs are non-UCITS collective investment undertakings (and their compartments) that raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors. Contrary to UCITS, which can only be open-ended, AIFs may be incorporated as either open-ended or closed-ended.

In addition to the general definition set out above, certain types of locally regulated collective investment undertakings (some of which are internally managed) fall under the definition of an AIF. These domestic AIFs fall under the registration requirements of the AIFMD unless they have assets under management up to €100 million (leveraged) or €500 million (unleveraged), in which case the relevant Greek Law requirements apply.

- a. Closed-ended venture capital funds under Greek Law 2992/2002 ("AKESs").
An AKES is a group of assets owned jointly by individuals and legal persons (unit holders), the sole purpose of which is to participate in the capital structure of other companies by investing primarily in shares and bonds of non-listed companies.
- b. Portfolio investment companies under Greek Law 3371/2005 ("AEEEXs").
An AEEEX is a company formed as a Greek *Société Anonyme* whose sole purpose is to manage a portfolio of investments.
- c. Closed-ended investment companies under Greek Law 2367/1995 ("EKESs").
An EKES is a company formed as a Greek *Société Anonyme* whose sole purpose is to participate in the capital structure of other companies by investing primarily in shares and bonds of non-listed companies.
- d. Real estate mutual funds and real estate investment companies under Greek Law 2778/1999 ("AEEAPs" or "REICs").
An AEEAP is a Greek *Société Anonyme* whose sole purpose is acquiring and managing real estate assets, rights to assets and, more generally, investments set out in the relevant law.

1.2 What does the fund registration process involve, e.g., what documents are required to be filed?

The fund registration process involves registration of the fund itself and the fund manager (where the fund is externally managed). Marketing notifications are addressed in the marketing section below.

UCITS and UCITS managers

Prior approval (up to six months for a UCITS Manager and an internally managed ICVC) is required from the Hellenic Capital Market Commission ("HCMC"), following a submission of:

- constitutional documents that set out its investment strategy and goals and investment restrictions of the fund, and that are signed by the management company and the custodian;
- a statement by the custodian confirming that it agrees to its role and responsibilities;

- a statement by the UCITS Managers confirming that it agrees to its role and responsibilities;
- a list of which permitted services the UCITS Manager intends to provide;
- details of at least two persons who effectively conduct the business of the UCITS Manager and evidence that they are of sufficiently good repute and have sufficient experience to carry out their role;
- proof of capital;
- an outline of the organisational structure that proves that appropriate and sufficient processes, internal controls and checks and balances are in place;
- a business plan;
- financial projections;
- information on direct and indirect shareholders holding at least 10%;
- questionnaires completed by shareholders and those members who effectively conduct the business of the UCITS Manager; and
- other relevant information, including a prospectus or marketing documents and a key investor information document (“KIID”).

Some of the documents above will need to be provided in Greek as well as English.

AIF and AIFM

Under the standard AIFMD registration process, prior approval from the HCMC is required for an AIFM (up to three months from the submission of a full application unless extended by the HCMC for another three months), following a submission of:

- information on the persons effectively conducting the business of the AIFM;
- information on the identities of the AIFM’s shareholders or members that have qualifying holdings and on the amounts of those holdings;
- a programme of proposed activities setting out the organisational structure of the AIFM, including information on how the AIFM intends to comply with its obligations;
- information on the remuneration policies and practices;
- information on arrangements made for the delegation and sub-delegation to third parties;
- information on each AIF managed by the AIFM, including its investment strategy, its country of incorporation, its constitutional documents and assigned depository;
- a list of which permitted services the AIFM intends to provide;
- proof of capital;
- information on direct and indirect shareholders holding at least 10%;
- financial projections;
- questionnaires completed by shareholders and those members who effectively conduct the business of the AIFMs; and
- information on outsourcing arrangements.

Smaller domestic AIFs with assets under management up to €100 million (leveraged) or €500 million (unleveraged) are not required to comply with the standard AIFMD registration process. Instead, these domestic AIFs have their own bespoke registration requirements that are set out in the relevant national laws. AEEEs, EKESs and AEEAPs are also under an obligation to list on a regulated market within a set time limit following incorporation.

1.3 What are the consequences for failing to register a fund that is required to be registered in your jurisdiction?

In relation to breaches of the Greek AIFMD and the Greek UCITS Law, the HCMC has wide discretion to impose penalties, including:

- fines to the company in breach but also any directors, managers and employees of the company, as well as any custodians;
- a public statement naming the person responsible for the infringement; and
- suspension or revocation of the regulatory licence (where applicable).

In relation to breaches of the Greek UCITS Law, in addition to the above, the regulator may also impose:

- a cessation order for the unlawful conduct and order to refrain from such conduct in the future;
- permanent disqualification from exercising management functions; and
- criminal penalties (in exceptional circumstances only).

1.4 Are there local residency or other local qualification requirements that a fund must meet in order to register in your jurisdiction? Or are foreign funds permitted to register in your jurisdiction?

Greek AIFMs, AIFs, UCITS and UCITS Managers are required to be headquartered in Greece. Central management of Greek AIFMs needs to be based in Greece.

Non-Greek EU AIFs and UCITS marketed to retail investors should have local facilities available for these investors in order to enable the performance of various tasks including processing investors’ subscription orders, facilitating the handling of information and documents, etc.

2 Regulatory Framework

2.1 What are the main regulatory restrictions and requirements that a public fund must comply with in the following areas, if any? Are there other main areas of regulation that are imposed on public funds?

i. Governance

A fund’s manager must have at least two persons who effectively conduct its business. It must also have a sound organisational structure in place with policies and procedures to prevent conflicts of interest, ensure appropriate risk management and portfolio management, fair treatment of investors, and appropriate remuneration.

ii. Selection of investment adviser, and review and approval of investment advisory agreement

The investment adviser should be appropriately authorised (if needed) to carry out its activities. Any advisory agreement should be structured and drafted in such a way to ensure that the rules on outsourcing and delegation are complied with.

iii. Capital structure

UCITS must have initial capital of at least €300,000 (or at least €800,000 for internally managed ICVCs).

Internally managed AIFs may also have initial capital of at least €300,000. Where there is an external manager of the AIF, this AIFM shall have initial capital of at least (a) €125,000, plus (b) 0.02% of the value of the portfolios of the AIFs it manages

in excess of €250 million, subject to a cap of €10 million. The AIFM is exempted from providing up to 50% of the amount in (b) if it presents to the HCMC a guarantee from an EU bank or insurer for that same amount. The issuer of the guarantee may be a non-EU bank or insurer, provided that it is subject to prudential requirements at least equivalent to those in the EU.

Smaller domestic AIFs with assets under management up to €100 million (leveraged) or €500 million (unleveraged) that fall under the national regimes have distinct capital requirements, indicatively:

- a. AKES – a minimum share capital of €3 million plus €100,000 minimum initial capital for the Management Company. There is also a requirement for its shares to trade on a regulated market or a Multilateral Trading Facility.
- b. AAEX – a minimum share capital of €500,000, but with a requirement of an initial public offering (“IPO”) within six months and a minimum IPO of €10 million.
- c. EKES – a minimum share capital of €300,000, but with a requirement for its shares to trade on a regulated market or a Multilateral Trading Facility, within 24 months from establishment (unless extended by the HCMC for a further 24 months).
- d. AEEAP – a minimum share capital of €25 million, but with a requirement for its shares to trade on a regulated market within 24 months from establishment (unless extended by the HCMC for a further 24 months).

iv. Limits on portfolio investments

UCITS have a number of limits on portfolio investments prescribed by law. Indicatively, they can invest no more than:

- a. 10% of its assets in transferable securities or money market instruments issued by the same issuer;
- b. 20% of its assets in deposits made with the same credit institution; and
- c. 40% of the value of its assets in transferable securities and money market instruments held by the UCITS in issuers, if the UCITS invests more than 5% of its assets in each of these issuers. This limitation does not apply to deposits or over-the-counter derivatives.

AIFMs are required to employ appropriate risk management and liquidity management systems and procedures and comply with these provisions on an ongoing basis.

For smaller domestic AIFs that are not subject to the full suite of the AIFMD, additional restrictions under Greek Law apply, broadly:

- AKESs have limitations on exposure to securities of the same issuer;
- AEEEs have prescriptive restrictions on exposure to transferable securities or money market instruments of the same issuer, undertaking or group of undertakings;
- EKESs have restrictions on the proportion of assets that can be invested in listed companies and related undertakings; and
- AEEAPs have detailed restrictions on the proportion of assets in real estate and rights, shares or units in real estate, other movable and immovable property serving operational needs and residential buildings.

v. Conflicts of interest

UCITS Managers and AIFMs are subject to prescriptive obligations relating to conflicts of interest. They must take all reasonable steps to identify, prevent, manage, monitor and disclose conflicts of interest that arise, among others, between (a) the fund manager (including its employees and other persons linked to it) and the fund, (b) two or more of its funds or their

investors, (c) different clients of the manager, (d) investors wishing to redeem their investment, and (e) those wishing to keep their investment. There are various related requirements such as rules on personal transaction reporting, internal processes and policies.

vi. Reporting and recordkeeping

For each of its funds, a UCITS manager is required to publish: (a) a prospectus; (b) an annual report; and (c) a half-yearly report. Managers are also required to provide various pre-contractual disclosures in a KIID.

AIFMs are subject to extensive reporting obligations towards investors before they proceed with their investments. These include information on the AIF’s investment strategy and objectives, fair treatment, valuation, liquidity, etc. In terms of periodic reports, they are required to periodically disclose to investors information on liquidity, risk management and leverage. They are also required to provide audited annual reports to their home state regulator and investors.

In relation to securitisations specifically, there are additional applicable initial checks and ongoing monitoring and reporting obligations.

vii. Other

Sustainability risks and sustainability factors are required to be considered by AIFMs, UCITS and investment managers following the changes to the AIFMD, UCITS and the MiFID II through EU Delegated Regulations. AIFMs are required to categorise their funds as brown, light green or dark green and make various relevant disclosures to investors and regulators.

2.2 Are investment advisers that advise public funds required to be registered and/or regulated in your jurisdiction? If so, what does the registration process involve?

The types of activities performed by investment advisers in this context may include investment advice and/or the reception and transmission of orders under MiFID. As a result, the investment adviser of public funds is usually (i) employed by the fund manager, (ii) an unlicensed entity other than the fund manager that is able to rely on the MiFID intra-group exemption for the provision of investment advice, or (iii) less often, a separate firm licensed as an investment firm or portfolio manager that is either in Greece or in another EU country but passports its services into Greece.

2.3 In addition to the requirements above, are there additional regulatory restrictions and requirements imposed on investment advisers that advise public funds?

No, there are not.

2.4 Are there any requirements or restrictions in your jurisdiction for public funds investing in digital currencies?

There are no requirements specifically addressing public funds’ (domestic or foreign) investments in digital currencies. Certain forms of Greek AIFs, e.g. the AAEX and EKES, which permit only lower risk investments in the fund portfolio or, e.g. the AKES, which only allows designated subcategories of investments, are unlikely to be able to invest in digital currencies.

2.5 Are there additional requirements in your jurisdiction for exchange-traded funds?

There are no additional requirements, other than their obligations to comply with the rules of the exchange on which they are traded; in the case of the Athens Stock Exchange (“Athex”), this is the Athex Code.

Certain domestic subcategories of AIFs – EKESs, AEEEXs and AEEAPs – are required to become exchange-traded within a certain time period of time from their incorporation. This timeframe may be extended by the HCMC. However, if within the relevant timeframe their shares are not listed, these funds must either be dissolved or their operating licence will be revoked by the HCMC, and any benefits received as a result of their categorisation will likely be revoked.

3 Marketing of Public Funds

3.1 What regulatory frameworks apply to the marketing of public funds?

Fund marketing rules are mostly driven by EU legislation as adopted into Greek law. The Greek AIFMD Law and the Greek UCITS Law (implementing the relevant EU legislation) set out the requirements for fund managers to market shares or units to investors in Greece using the EU passport. EU Directive (EU) 2019/1160 on the cross-border distribution of collective investment undertakings, which was transposed into Greek law through Greek Law 4920/2022, sets out standardised provisions for marketing collective investment undertakings and marketing communications directed at investors. There is also the directly applicable Regulation 1286/2014 on key information documents for packaged retail and insurance-based investment products (“PRIIPs”), which is applicable only for such specific types of products. For completeness, the EU Prospectus Regulation 2017/1129 is also relevant, albeit most often inapplicable on the basis that fund marketing falls short of the threshold for marketing “to the public”.

Greek Law 2251/1994 on consumer protection (“Greek Consumer Protection Law”), though not specifically aimed at fund marketing, has broad application. In this context, the consumer is an individual not acting for professional purposes relating to his trade, business, craft or freelancing profession. The Greek Consumer Protection Law: (a) prohibits unsolicited communication and dispatch of marketing material; (b) requires service providers to provide clear and transparent pre-contractual information as appropriate for the relevant service; (c) prescribes withdrawal rights for the consumer; and (d) prohibits unfair or abusive terms (whether general terms or pre-determined contractual terms) and requires clarity and transparency in the contract.

The Greek regulatory framework applying to fund marketing in Greece is further defined by regulatory decisions of the HCMC and coloured by fund marketing practice to date.

3.2 Is licensure with a regulatory authority required of persons (whether entities or natural persons) engaged in marketing activities? If so: (i) are there commonly available exceptions that may be relied on?; and (ii) describe the level of substantive regulation applied to licensed persons.

EU funds can be marketed in Greece through the UCITS and AIFMD passport regimes, provided that the fund manager has

successfully activated the passport into Greece (if non-Greek) and entered the HCMC’s register. No further licence is required for AIFMs and UCITS. Smaller domestic AIFs, i.e. with assets under management up to €100 million (leveraged) or €500 million (unleveraged), are able to benefit from the less onerous domestic regulatory regime but, in turn, cannot rely on a passport for marketing within the EU.

Non-EU funds managed by a non-EU manager cannot be marketed in Greece. This is because, contrary to other EU countries, Greece has not implemented the national private placement regime envisaged by Article 42 AIFMD (conditions for the marketing in Member States without a passport of AIFs managed by a non-EU AIFM).

EU and non-EU funds can be made available through reverse solicitation. However, consistent with the rest of the EU, this is not a marketing strategy and can only be relied on when the facts support a genuine reverse solicitation.

After Brexit, there has been increased scrutiny in the EU on the types of activities carried out by people engaged in fund marketing and the extent to which these would be regulated. As a general rule, and consistent with the rest of Europe, certain fund marketing activities, when performed in Greece from anyone other than the fund manager, may amount to the reception and transmission of orders under the MiFID II and therefore require that the relevant persons are either regulated or employed by an entity that is regulated.

3.3 What are the main regulatory restrictions and requirements in the following areas, if any, that must be complied with by entities that are involved in marketing public funds?

i. Distribution fees or other charges

The AIFMD imposes restrictions on distributions in the first two years after the AIF acquires control of a company. AIFMs are not allowed to facilitate, support or instruct any distribution, capital reduction, share redemption and/or acquisition of their own shares.

ii. Advertising

AIFMs and UCITS Managers must ensure that all marketing communications addressed to investors are identifiable as such and describe the risks and rewards of purchasing units or shares of an AIF or units of a UCITS in an equally prominent manner. Also, all information included in marketing communications must be fair, clear and not misleading.

UCITS Managers shall ensure that all marketing communications indicate that a prospectus exists and that the key investor information is available.

iii. Investor suitability

Managers with MiFID top-ups or MiFID licensed distributors are required to comply with MiFID rules on suitability and appropriateness.

iv. Custody of investor funds or securities

For each fund it manages, the AIFM or UCITS Manager shall ensure that a single custodian is appointed. The appointment of the custodian should be in writing. The custodian can be (broadly): (a) a credit institution; or (b) an investment firm with its registered office in Greece or another Member State of EU.

The custodian is entrusted with the safekeeping of fund assets and shall be liable to the fund for the loss of financial instruments held in custody. However, he shall not be liable if able to prove that (a) the loss is due to *force majeure*, or (b) there is a

written contract between the custodian and the third party that expressly delegates the custodian's liability to that third party (albeit condition (b) applies only to AIFs and not UCITS).

3.4 Are there restrictions on to whom public funds may be marketed or sold?

AIFMs are allowed to sell units of the AIFs that they manage to both professional and retail investors in Greece. Marketing to or subscription by retail investors comes with more onerous obligations, including the potential requirement to prepare a PRIIPs Key Information Document.

3.5 Are there other main areas of regulation that are imposed with respect to the marketing of public funds?

The EU's Directive (EU) 2019/1160 on the cross-border distribution of collective investment undertakings, which was transposed into Greek law through Greek Law 4920/2022, sets out various requirements, notably in relation to pre-marketing, which had long been a topic of national divergence within the EU.

4 Tax Treatment

4.1 What are the types of entities that can be public funds in your jurisdiction?

There are two main types of legal structures that can be used in the establishment of a public investment fund: UCITS; and AIFs. All Greek AIFMs and UCITS Managers are *Sociétés Anonymes*.

4.2 What is the tax treatment of each such entity (both entity-level tax and taxation of investors in respect of allocations of income or distributions, as the case may be)?

The Greek tax legislation provides for special tax treatment of legal structures related to public investment funds. The AKES operates as a closed-ended investment vehicle with no legal personality, whose main purpose is to participate in the capital of companies. The AKES may also invest in convertible bonds or bonds providing a right to profits distribution.

From a tax point of view, the AKES is a "look-through" entity, and consequently not subject to any tax. Investors are taxed on income earned in their capacity as joint owners, shareholders, and beneficiaries of the assets of AKES. In addition, the participation of foreign investors in AKES is facilitated, as the acquisition of a stake in it does not imply the acquisition by the unitholder of the status of resident in Greece or of a permanent establishment in Greece. Also, the contract for the establishment and management of AKESs and the payment of unitholders' participation are exempt from any Greek tax.

The AEEX operates in the form of a *Société Anonyme*, listed on the Athex, whose sole purpose is to manage its portfolio. The AEEX, as a company, is taxed at a rate of 10% on the respective intervention rate of the European Bank (reference rate), increased by one percentage point, while the taxable base consists of the six-monthly average of its investments, in addition to those available, at current prices. The third type of investment structure is the EKES. The EKES is a *Société Anonyme* whose sole purpose is to participate in the capital of undertakings. The current legislation enables an EKES, *inter alia*, to invest in shares and

bonds that are not listed or listed under conditions, and provide guarantees for the granting of loans to the companies in which it participates, as well as its services to the above companies for market research, their organisation, etc.

From a tax point of view, the taxable base of the EKES is not its profits but rather the distribution of profits to its shareholders. In particular, subject to income tax are the profits distributed to its shareholders and not the profits it acquires on an annual basis. Such distributed profits are subject to income tax at a flat rate of 20%. As dividends may also include dividends from tax-free income or income taxed at a reduced rate without further taxation, a pro-rate mechanism applies to assess the part of the distributed dividends that is subject to income tax and exclude any dividends deriving from tax-free or reduced tax rate revenues.

The above tax treatment entails, *inter alia*:

- a. reduced taxation of its capital gains, arising: (i) from the application of a reduced rate of 20% (instead of 22%, which is the current applicable rate to *Sociétés Anonymes*); and (ii) from the differences in calculation of taxable income compared to ordinary *Sociétés Anonymes*;
- b. deferred taxation, as profits are taxed when they are distributed and not during the financial year in which they arose; and
- c. exemption from 5% withholding tax on dividends distributed by EKES to its shareholders.

Apart from the above legal structures, REICS seem to be spreading rapidly in Greece. The Greek legal framework for REICs provides a preferential tax regime for REICs:

- a. REICs are not subject to corporate income tax. Instead, a tax is imposed on their average net asset value. That tax rate is 10% of the applicable European Central Bank ("ECB") intervention interest rate (the interest reference rate) increased by 1%, plus any available funds, at their current value.
- b. No income taxation is imposed on transferable national or foreign-sourced securities, except for nationally sourced dividends acquired by individuals or legal persons or entities not subject to withholding taxation.
- c. No tax or duty is imposed on the issuance of REIC shares.
- d. No tax or duty is imposed on the transfer of real estate to an REIC.
- e. Exemption from real estate transfer tax is provided in respect of any property acquisitions.
- f. Transfer tax of 3.09% applies to real estate property transferred by the REIC.
- g. Exemption from Special Real Estate Tax ("SRET") is also provided.

Real estate mutual funds enjoy the same tax treatment as REICs.

As regards the investors, in accordance with the REIC regime, no withholding tax is levied on dividends distributed by Greek REICs and no income tax is levied on capital gains from transfers of non-listed shares.

Furthermore, capital gains deriving from the sale of listed REIC shares are taxed as follows:

- a. Individuals who participate in the share capital of the REIC at a percentage of at least 0.5% are subject to capital gains tax at a rate of 15%.
- b. Greek tax-resident legal persons or entities, or foreign legal persons or entities with permanent establishment in Greece, are subject to a tax rate of 22%.
- c. Foreign legal persons or entities with no permanent establishment in Greece are not subject to tax.

Finally, the sale of REIC listed shares is subject to the 0.1% transaction tax.

4.3 If a public fund, or a type of entity that may be a public fund, qualifies for a special tax regime, what are the requirements necessary to permit the entity to qualify for this special tax regime?

In most cases, the main requirement for a legal entity to qualify for the special tax regime is its corporate structure and specifically its establishment as a *Société Anonyme*. However, depending on the type of investment vehicle, the respective legislation may also provide for additional requirements to be fulfilled in order for a public fund to qualify for the special tax regime.



Maria Nefeli Bernitsa is specialised in financial services law, with a focus on high-impact legislative and regulatory changes. She advises on finance and capital markets transactions involving listed and private companies, in particular on large-scale deals carried out in the context of regulatory changes. She has experience in leading on financial services matters arising from group restructures of global multi-strategy asset managers, new authorisations of regulated firms and regulatory issues in private placements and initial public offerings. Maria Nefeli advises on Environmental, Social and Governance (“ESG”) issues, with a focus on the application of the Sustainable Finance Disclosure Regulation (“SFDR”) and the Taxonomy Regulation on alternative investment managers. Prior to joining the Firm, Maria Nefeli was a senior associate in a tier 1 financial services and markets team in London and was seconded to a global investment firm to implement European ESG legislation. Maria Nefeli holds an LL.B. (Hons) from University College London (“UCL”) and an MBA from INSEAD. She is admitted to the Law Society of England & Wales (2015) and the Athens Bar (2019).

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