

# Fund Management 2019

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# Fund Management 2019

**Contributing editor****Michelle Moran****K&L Gates LLP**

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Lexology Getting The Deal Through is delighted to publish the fifth edition of *Fund Management*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new Global Overview and new chapters on France and Thailand.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to Michelle Moran of K&L Gates LLP, the contributing editor, for her assistance in devising and editing this volume.



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# Greece

Michael Tsibris and Giannis Koumettis

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## Fund management

### 1 How is fund management regulated in your jurisdiction? Which authorities have primary responsibility for regulating funds, fund managers and those marketing funds?

Fund management is governed by two main sets of rules, depending on the nature of the collective investment undertakings (funds) the fund manager purports to manage: more specifically, the implementing regime of the EU Undertakings for Collective Investments in Transferable Securities Directive 2009/65/EC (UCITS IV) as amended by Directive 2014/91/EU (UCITS V) and the Alternative Investment Fund Managers Directive 2011/61/EC (AIFMD).

The Greek UCITS IV implementing regime consists of Law No. 4099/2012, as amended, and in force and the Hellenic Capital Market Commission (HCMC) Decisions Nos. 15/633/20.12.2012; 16/633/20.12.2012; 17/633/20.12.2012 and 1/756/18.5.2016, as well as Circular No. 55 of the HCMC and regulates the management of funds that qualify as UCITS under the UCITS IV and V Directives and their managers.

UCITS include two basic types of collective investment undertakings: mutual funds and variable capital investment companies. Both fund types are open-ended and they will collectively be referred to below as 'UCITS'.

The Greek AIFMD implementing regime, consisting of Law No. 4209/2013, as amended, regulates the management of funds that qualify as alternative investment funds (AIFs) under the AIFMD. Certain types of locally regulated collective investment undertakings fall under the definition of an AIF, more specifically the following:

- closed-ended venture capitals regulated under Law No. 2992/2002 (AKESs);
- portfolio investment companies regulated under Law No. 3371/2005 (AEEXs); and
- real property management companies regulated under Law No. 2778/1999 (AEEAPs).

Other, non-regulated types of non-UCITS funds also fall under the definition of an AIF.

The supervisory authority for both types of funds and their managers, as well as those marketing funds, is the HCMC.

To the extent fund marketing includes the provision of investment services (eg, investment advice), persons engaged in this activity are also subject to the local Markets in Financial Instruments Directive 2014/65/EU (MiFID II) implementing regime, namely, Law No. 4514/2018, and HCMC Decision No. 1/808/7.2.2018.

The local UCITS, AIFMD and MiFID regimes do not deviate from the respective EU Directives.

### 2 Is fund administration regulated in your jurisdiction?

Fund administration is included in the broader scope of the term 'fund management' in respect of both UCITS managers and AIFs. The functions consisting of fund administration are subject to the aforementioned laws and regulations, but are not, per se, regulated.

### 3 What is the authorisation or licensing process for funds? What are the key requirements that apply to managers and operators of investment funds in your jurisdiction?

The authorisation process depends on the type of the fund.

#### UCITS

For the establishment of a UCITS fund (mutual fund or variable capital investment company), the prior authorisation of the HCMC must be obtained. This requires filing the following documents, in Greek, with the HCMC:

- the fund's regulation or constitutional documents signed by the management company and the custodian;
- a statement of the credit institution about the acceptance of its appointment as custodian; and
- a detailed list of the fund's assets, the total of which must be at least €300,000.

The fund is granted a licence provided that the HCMC has approved the above documents after having ascertained that they are compliant with the provisions of Law No. 4099/2012.

#### AIFs (generally)

There is no obligation for AIFs to be authorised; the authorisation obligation applies to alternative investment fund managers (AIFMs).

#### AKESs

No licensing or authorisation procedure is provided for AKESs; however, these entities must comply with the provisions of Law No. 2992/2002.

#### AEEXs

An HCMC licence must be obtained before operating an AEEX. The procedure involves filing a set of documents with the HCMC proving that:

- the AEEX has the necessary technical and financial resources;
- the AEEX's directors have the necessary professional experience, skills and reliability (the criteria are also stipulated in HCMC Decision No. 4/452/1.11.2007);
- the AEEX's shareholders are also suitable for holding a shareholding in the AEEX;
- a credit institution authorised in Greece has accepted its appointment as custodian for holding the assets of the AEEX; and
- the AEEX has fully paid the initial share capital.

The HCMC must reply to the application by granting a licence or rejecting the application, within three months of its filing. Within six months of obtaining an authorisation, AEEXs are obliged to have achieved the listing of their shares on a regulated market operating in Greece. Otherwise, authorisation is revoked by the HCMC.

#### AEEAPs

An HCMC licence must be obtained before establishing an AEEAP. This requires the prior granting of an authorisation to the fund management company and the approval of the appointment of the custodian, as well as the funds' regulation.

In order to obtain a licence, the AEEAP must file an application to the HCMC, accompanied by documentation proving that:

- the said requirements (authorisation of fund management company, etc) have been fulfilled;
- the managers or directors and the custodian of the fund have the necessary experience in the area of real estate investments; and
- the regulation of the fund includes sufficient provisions for the protection of the interests of its unitholders.

Furthermore, the AEEAP must submit a detailed list of its assets (which must have a minimum value of €10 million) and a detailed analysis of its investment plan. There are also certain requirements for the managers, which depend on whether each manager qualifies as a UCITS manager or an AIFM.

#### UCITS managers

Entities that intend to provide UCITS management services must obtain a prior authorisation by the HCMC. To this end, they must submit an application to the HCMC that must include, inter alia, a list of the services they intend to provide, details of their shareholders, information about their organisational structure and their technical and financial resources, so as to prove that they have in place appropriate and adequate administrative and accounting procedures and internal audit policies to reduce the risk of investors suffering losses. Simultaneously with such filing, the applicant must pay the HCMC initial fees that amount to €5,000 for the basic authorisation (fund management only) plus €2,000 for each additional service (such as portfolio management and investment advice). The HCMC must reply to this application within six months. UCITS managers authorised by the competent supervisory authority of another member state regarding their intention to market units or shares in Greece are subject to a set filing fee of €1,000 plus 2.4 per cent stamp duty per sub-fund or per UCITS with no sub-fund, and annual (maintenance) fees of €1,000 plus 2.4 per cent stamp duty per sub-fund.

#### AIFMs

Entities that intend to provide AIF management services in Greece must also obtain a prior authorisation by the HCMC, unless they fall within the exemption provided in article 3 of Law No. 4209/2013 (ie, the assets under their management do not exceed the amount of €100 million when leverage has been used, or €500 million when leverage has not been used). To this end, they must submit an application to the HCMC, which must include detailed information regarding, inter alia, the following:

- the natural persons conducting their operations;
- identities of their shareholders with qualified holdings;
- their programme of activities and information on their remuneration policies and practices; and
- information on arrangements for the delegation and sub-delegation of their functions to third parties.

Moreover, applicants must provide detailed information about the AIFs they intend to manage, including information about their investment strategies, rules of incorporation and place of establishment of their master and feeder AIFs, and information about their depositary. The above-mentioned filing fees apply accordingly to Greek AIFMs (ie, €5,000 for the basic authorisation (fund management only) plus €2,000 for each additional service) as well as the initial and maintenance fees (€1,000 plus 2.4 per cent stamp duty), which also apply to AIFMs authorised by the competent authority of another member state, regarding their intention to market units or shares in Greece.

#### 4 What is the territorial scope of fund regulation? Can an overseas manager perform management activities or provide services to clients in your jurisdiction without authorisation?

The fund regulatory regime is applicable to fund management services provided in Greece. An overseas manager performing fund management activities or providing services in Greece may not do so without the proper local authorisation unless an EU passport is used.

#### 5 Is the acquisition of a controlling or non-controlling stake in a fund manager in your jurisdiction subject to prior authorisation by the regulator?

Any acquisition of a shareholding in a UCITS manager that results in a shareholder reaching, exceeding or falling below 20, 33.3 or 50 per cent

of its share capital is subject to the prior approval of the HCMC. To this end, the respective shareholder must notify the HCMC in advance of the purported share transfer.

#### 6 Are there any regulatory restrictions on the structuring of the fund manager's compensation and profit-sharing arrangements?

##### UCITS funds

There are no regulatory restrictions. However, clear reference must be made in the fund's regulation as well as the key investor information document about the amount (or method of calculation) of the fund manager's compensation, and the timing and procedure of distributing profits to unitholders. The UCITS in both subscription and redemption forms must indicate the exact commission rate with which the unitholder is charged when subscribing or redeeming its units or shares. Recently, two new articles, 23A and 23B, were introduced to Law No. 4099/2012, setting out the principles for the establishment and application of remuneration policies and practices in respect of staff and senior management of fund managers.

##### AIFs

There are no regulatory restrictions. However, the fund manager must disclose to investors a description of all fees, charges and expenses and of the maximum amounts thereof that are directly or indirectly borne by investors. Extended rules have been laid down about remuneration of staff and senior management of fund managers, which are detailed in article 13 of Law No. 4209/2013, implementing Annex II of the AIFMD.

#### Fund marketing

#### 7 Does the marketing of investment funds in your jurisdiction require authorisation?

Yes. Marketing of investment funds is permitted on the condition that the fund and the fund management company hold a licence granted by the HCMC. To the extent marketing activities involve the provision of one or more investment services (eg, investment advice), a MiFID II licence is also required. The UCITS funds authorised in another member state intending to market units or shares in Greece must appoint, in writing, at least one paying agent and a distributor that will be responsible for the marketing in Greece.

The paying agent must be a credit institution domiciled either in Greece or in another country with a branch located in Greece. The paying agent is the intermediary responsible for providing the financial services of a UCITS fund, responsible for fulfilling the monetary elements of the subscription and redemption orders and other transactions necessary for the marketing activities. In particular, the paying agent has to provide at least the following financial services:

- receiving the cash equivalent funds for subscriptions and making payments for redemptions;
- making coupon and dividend payments; and
- dealing with any settlement differences arising when switching between compartments.

The distributor may take the form of a credit institution, management company, insurance company or investment firm, either domiciled in Greece or in another country with a branch located in Greece. The distributor is the intermediary responsible for providing at least the following marketing services: processing subscription and redemption forms to the paying agent and supplying a series of requisite information to unitholders. The distributor must also report to the HCMC the statistical data of the UCITS marketed in Greece.

A UCITS fund may appoint more than one paying agent or distributor, or both, and where the latter is a credit institution, it may be appointed with both intermediary roles.

#### 8 What marketing activities require authorisation?

There is no specific list of activities that qualify as 'marketing' and thus require authorisation. However, the regulatory position taken by the HCMC is that all active marketing activities (including, for example, sending fund material, making personal communications via telephone, fax, email, personal meetings or roadshows, using local media or websites dedicated to Greek investors to promote funds or making

public announcements) must be deemed to constitute licensable marketing activities, as long as they are product-specific. Therefore, generic discussions about the manager or the general financial and investment environment, generic brand advertising (without naming a specific fund), as well as actions such as the distribution of business cards, the distribution of newsletters or other presentations or announcements not naming a specific fund, are not included in the scope of the authorisation requirement. Passive marketing (ie, responding to unsolicited requests submitted by investors or potential investors (reverse solicitation)) is not deemed to constitute marketing in this respect and therefore does not require authorisation. However, to be considered unsolicited, a client request must be product specific and the manager may only provide the requested product. It is advisable that reverse solicitation is evidenced in writing.

**9 What is the territorial scope of your regulation? May an overseas entity perform fund marketing activities in your jurisdiction without authorisation?**

All activities performed towards Greek residents when in Greece are included in the scope of the licensing requirement. Activities towards Greek residents when they are outside Greece are not included in the scope of the said requirement.

**10 If a local entity must be involved in the fund marketing process, how is this rule satisfied in practice?**

All actual contact towards Greek investors or potential investors must be performed by licensed entities. In the case of AIFs, marketing activities may only be performed by the fund manager of the AIF or locally authorised investment firms and credit institutions.

**11 What restrictions are there on intermediaries earning commission payments in relation to their marketing activities in your jurisdiction?**

There are no specific restrictions regarding commission payments for intermediaries' marketing activity to the intermediary itself. However, according to fund management requirements, the procurement policy must be clearly defined in the UCITS rules (see question 6). For remuneration payable to intermediaries, in particular, the fund manager must disclose to the UCITS any procurement to third parties, accurately and reasonably, prior to the provision of the service. Such remuneration shall be paid in order to enhance the quality of the relevant service and does not preclude the fund manager to act in the best interests of the UCITS.

**Retail funds**

**12 What are the main legal vehicles used to set up a retail fund? How are they formed?**

The main legal vehicles for setting up a retail fund are: a UCITS open-ended fund, an AKES, an AEEX and an AEEAP. Since the recent amendment of article 109 of Law No. 4209/2013, implementing the AIFMD, all types of funds can now be marketed and sold to retail investors under the conditions set out therein. Therefore, all existing fund types are retail funds. The main characteristics of the said fund types are the following.

**UCITS**

This is a fund that is compliant with the UCITS IV Directive. UCITS are structured as open-ended collective investment schemes and can take the form of a mutual fund or a variable capital investment company. The assets of a mutual fund must be managed by a dedicated fund management company, whereas a variable capital investment company may be self-managed.

**AKES**

This is a closed-ended fund. Its manager must have been authorised as an AIFM. Its establishment requires the execution of an agreement between its unitholders, the fund manager and a custodian. The HCMC supervises the operation of AKESs. Its fund manager must have an initial share capital of at least €100,000 and the total assets of the fund must be at least €3 million.

**AEEX**

This is a closed-ended fund (in corporate form), whose initial share capital must be at least €500,000. Before establishment, an AEEX must obtain approval from the HCMC. To this end, it must file with the HCMC documentation about its internal policies and procedures and evidence about the appropriateness of its directors, managers and shareholders.

**AEEAP**

This is a closed-ended fund investing in real property. It is managed by a fund management company with an initial share capital of at least €25 million, which is fully payable upon establishment of the company. The fund management company must be 51 per cent controlled by an authorised credit institution or insurance company.

**13 What are the key laws and other sets of rules that govern retail funds?**

The principal laws governing retail funds are as follows:

- UCITS: Law No. 4099/2012 (implementing UCITS IV), HCMC Decisions Nos. 15/633/20.12.2012; 16/633/20.12.2012; 17/633/20.12.2012 and 1/756/18.5.2016 and HCMC Circular No. 55 (in English);
- AIFs (generally): Law No. 4209/2013 (implementing the AIFMD);
- AKESs: Law No. 2992/2002;
- AEEXs: Law No. 3371/2005; and
- AEEAPs: Law No. 2778/1999.

**14 Must retail funds be authorised or licensed to be established or marketed in your jurisdiction?**

Yes. Retail funds must be authorised by the HCMC in order to be established or marketed in Greece.

**15 Who can market retail funds? To whom can they be marketed?**

Only authorised entities (fund management companies, investment firms and credit institutions) can market retail funds. UCITS funds can be marketed to both retail and professional investors.

All funds that qualify as AIFs (ie, AKESs, AEEXs and AEEAPs) can be marketed to both professional and retail investors.

Professional investors are defined within the meaning of Annex II of Law No. 4514/2018, implementing MiFID II. These are deemed to include the following:

- credit institutions;
- investment firms;
- other authorised or regulated financial institutions;
- insurance companies;
- collective investment schemes and management companies of such schemes;
- pension funds and management companies of such funds;
- commodity and commodity derivatives dealers;
- local corporations;
- portfolio investment companies and other institutional investors;
- large undertakings meeting at least two of the following requirements: a balance sheet total of at least €20 million, a net turnover of at least €40 million and ownership of at least €2 million in funds;
- national and regional governments, public bodies that manage public debt, central banks, international and supranational institutions such as the World Bank, the International Monetary Fund, the European Central Bank (ECB), the European Investment Bank and other similar international organisations; and
- other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

Retail investors are investors other than those described above as professional investors, provided that the following conditions are met: the investors undertake to invest at least €100,000 per AIF and per investor; and they state in writing, in a document separate from the agreement concluded for the undertaking of the investment, that they are aware of, and fully understand the risks connected with, the relevant investment.

### 16 Are there any special requirements that apply to managers or operators of retail funds?

Other than those set out in question 3, there are no special requirements applicable to managers or operators of retail funds.

### 17 What are the investment and borrowing restrictions on retail funds?

Depending on their type, each fund is subject to different investment and borrowing restrictions.

#### UCITS

The UCITS IV rules on permitted investments and restrictions generally apply (articles 59 to 60 of Law No. 4099/2012, implementing articles 51 to 54 of UCITS IV).

#### AIFs

There are no specific investment or lending restrictions applicable to all AIFs. However, each particular type of fund (AKES, AEEX and AEEAP) has its own investment restrictions, as described below.

#### AKES

An AKES may invest in businesses established in Greece or another EU member state. It may also invest in businesses established in third countries provided that such businesses are active in the production or rendering of services in Greece. It may invest in listed or non-listed equity. In the case of investment in listed equity, the AKES may not participate in the share capital of an issuer with a percentage of less than 15 per cent. It may also invest in business bonds, also subject to the 15 per cent condition. Finally, it may deposit its reserves in bank accounts and money market instruments.

An AKES may not invest more than 20 per cent of its assets to transferable securities of the same issuer. It may also not invest to transferable securities of entities related to a unitholder or issuers whose share capital belongs to a unitholder or his or her relatives, to a percentage equal to or greater than 25 per cent. The aforementioned restrictions do not apply if the investment is approved by 100 per cent of the unitholders and on the additional condition that the said investment does not exceed 30 per cent of the total assets of the AKES.

#### AEEX

The investments of an AEEX shall comprise transferable securities, money market instruments, UCITS, non-UCITS, deposits and derivatives. AEEXs may not invest in precious metals and may not enter into borrowing to an extent greater than 35 per cent of the current value of their assets. AEEXs' investments are also subject to certain qualitative restrictions for the purpose of avoiding exposure to a single issuer and to the same type of financial instruments (eg, units of other collective investment schemes).

#### AEEAP

An AEEAP may only invest in the following assets: real estate at a rate of at least 80 per cent of its assets; money market instruments; and cash, deposits or equivalent liquidity credit securities, up to 10 per cent of its assets. An AEEAP is not permitted to invest in precious metals or warrants related thereto.

### 18 What is the tax treatment of retail funds? Are exemptions available?

The establishment of a UCITS, an AEEX or an AEEAP is generally exempted from any tax, duty and charges. Incomes of UCITS from transferable securities are also exempted from any tax or duty, with the exception of income from dividends distributed by Greek issuers, which is subject to a withholding tax with the respective rate of 10 per cent. In respect of interest rates from bond loans in particular, the exemption applies under the condition that the respective bonds have been acquired at least 30 days before their coupon date.

The UCITS manager is obliged to pay a tax calculated on a daily basis on the six-month average of its assets. The tax rate, depending on the type of investment of the fund, ranges between 10 and 11 per cent of the applicable 'main refinancing operations rate' determined by the ECB.

Any income and capital gains obtained by unitholders from their participation in a UCITS fund is free of all taxes, duties and charges.

The AEEAP and its subsidiaries are obliged to pay an annual asset tax that is equal to the 10 per cent tax of the respective ECB current intervention rate (reference rate), incremented by one percentage point and calculated on the average of their investments, plus their reserves, at current market prices as shown in the biannual investment statements. This tax rate cannot be lower than 0.75 per cent on an annual basis. The tax is payable to the competent tax authority within the first 15 days of the month following the period recorded in the biannual investment statement. Upon payment of this tax, the tax liability of the company and its shareholders is exhausted.

There are no similar exemptions for other types of funds and therefore the respective revenues are taxed with the applicable income tax rate. Unitholders of an AKES are taxed as co-owners of the assets that belong to the AKES for any income obtained thereby.

### 19 Must the portfolio of assets of a retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

The assets of funds must be held by a separate custodian, which must be a credit institution licensed either in Greece or in another EU member state and subject to the Capital Requirements Directive (CRD). The applicable provisions of Law No. 4261/2014, implementing the CRD, govern the keeping of the assets and cash of the funds.

### 20 What are the main governance requirements for a retail fund formed in your jurisdiction?

The main governance requirements for UCITS funds can be summarised as follows. A UCITS must:

- be authorised by the HCMC;
- have in place adequate regulations or constitutional documents;
- adhere to specific rules regarding the evaluation of its assets;
- be managed by an authorised fund management company;
- appoint an authorised credit institution or investment firm (which fulfils the preconditions specified in article 36, paragraph 1(b) of Law No. 4099/2012) as custodian for holding its assets;
- provide specific information and documents to investors;
- adhere to specific investment rules and restrictions;
- have in place and comply with specific risk management rules and policies;
- adhere to specific transparency requirements (publication of annual and semi-annual reports); and
- adhere to specific promotion and advertising rules.

The main governance requirements for AIFs can be summarised as follows:

- AIFMs must ensure the proper and independent evaluation of all AIFs they manage;
- annual reports must be published for every AIF managed;
- proper procedures and policies must be in place for ensuring that delegation is not affecting compliance with the applicable provisions;
- appropriate information must be provided to investors;
- reports must be submitted to the HCMC; and
- notifications must be made in the case of significant shareholdings in non-listed companies and in the case of acquiring control over such companies.

### 21 What are the periodic reporting requirements for retail funds?

UCITS are obliged to make available to investors an annual and a semi-annual report with the content described in Law No. 4099/2012 (article 77), their prospectus (article 76) and a key investor information document. The prospectus shall consist of the documents specified in Schedule A of Annex I of Directive 2009/65/EC, whereas the annual and semi-annual report shall consist of all the information included in Schedule B of the said Annex (this is detailed in HCMC Decision No. 17/633/20.12.2012).

AIFMs must make available to investors an annual report for each fund they manage. The annual report must have the content specified in Law No. 4209/2013, implementing the AIFMD (article 23), including at least their balance sheet or statement of assets and liabilities, their income and expenditure account, an activities report and the total remuneration amount – both fixed and variable – of both ordinary staff and senior management.

AIFMs must also report to the HCMC on the principal markets and instruments in which they trade on behalf of the AIFs they manage. The information to be included in the said reporting is also specified in article 24 of Law No. 4209/2013, implementing article 24 of the AIFMD without significant changes.

**22 Can the manager or operator place any restrictions on the issue, transfer and redemption of interests in retail funds?**

Restrictions on the issue, transfer and redemption of interests in funds are specified by the respective laws and regulations and the fund manager may not place additional restrictions.

**Non-retail pooled funds**

**23 What are the main legal vehicles used to set up a non-retail fund? How are they formed?**

There are no types of fund under Greek law that are classified as non-retail because all fund types can be (and typically are) offered to both professional and retail investors.

**24 What are the key laws and other sets of rules that govern non-retail funds?**

See question 23.

**25 Must non-retail funds be authorised or licensed to be established or marketed in your jurisdiction?**

See question 23.

**26 Who can market non-retail funds? To whom can they be marketed?**

See question 23.

**27 Do investor-protection rules restrict ownership in non-retail funds to certain classes of investor?**

See question 23.

**28 Are there any special requirements that apply to managers or operators of non-retail funds?**

See question 23.

**29 What is the tax treatment of non-retail funds? Are any exemptions available?**

See question 23.

**30 Must the portfolio of assets of a non-retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?**

See question 23.

**31 What are the main governance requirements for a non-retail fund formed in your jurisdiction?**

See question 23.

**32 What are the periodic reporting requirements for non-retail funds?**

See question 23.

**Separately managed accounts**

**33 How are separately managed accounts typically structured in your jurisdiction?**

This activity is described as 'portfolio management' and it is a MiFID II investment activity that can be duly exercised by locally licensed investment firms or entities using their EU passport. This activity may also be exercised by UCITS fund managers and AIFMs on the condition that they hold a 'top-up' licence for this activity. This licence can be procured by application to the HCMC, on the condition that the respective fund manager already holds or has applied for a licence for its basic activity, namely, fund management.

**34 What are the key legal issues to be determined when structuring a separately managed account?**

The MiFID II organisational and conduct of business rules apply when providing portfolio management services to clients. The level of liability of the portfolio manager can be contractually agreed between the parties in accordance with applicable law; note, however, that, pursuant to the Greek Civil Code (article 332), liability owing to gross negligence or willful misconduct cannot be contractually waived. The provisions of the Consumer Protection Law (No. 2251/1994) are also applicable when services are provided to persons qualifying as 'consumers'.

**35 Is the management or marketing of separately managed accounts regulated in your jurisdiction?**

The management of separately managed accounts is regulated as a MiFID II investment service (portfolio management) in Greece. The provision of portfolio management to Greek clients must be in line with the provisions of Law No. 4514/2018, implementing MiFID II, as well as HCMC Decision No. 1/808/7.2.2018.

Fund managers providing portfolio management via separately managed accounts are also subject to the aforementioned legal and regulatory provisions while exercising this activity.

**General**

**36 Are there proposals for further regulation of funds, fund managers or marketers of funds in your jurisdiction?**

No such proposals have been submitted to the Greek parliament for approval, nor are any currently under discussion. It should be noted that, in January 2018, Law No. 4514/2018, implementing MiFID II,

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came into force; however, its provisions have not yet radically affected the Greek fund management regime.

Upon issuance of the European Commission's delegated act referred to in article 67(6) of the AIFMD, certain changes may also occur in the provisions of Law No. 4209/2013. According to the Commission's letter addressed to the European Securities and Markets Authority (ESMA), the relevant decision is intended to be taken when a sufficient number of countries have been appropriately assessed; the first wave of countries has already been assessed using ESMA's advice, published in September 2016.

It is also possible that changes in the tax treatment of funds and unitholders will be effected in the near future.

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**37 Outline any specific requirements for stock-exchange listing of retail and non-retail funds.**

The listing of a UCITS on a regulated market operating in Greece (exchange traded funds) requires the appointment of a market maker and the full deposit of all assets of that UCITS to a custodian, as per the applicable UCITS IV rules. In the case of delisting, the unitholders may request the redemption of their units (sell-out right).

For the listing of an AEEX to a regulated market operating in Greece, the minimum amount of the initial public offering is €10 million. If an AEEX does not reach this subscription amount, the listing is cancelled and any amounts paid by investors for their participation therein are returned to them.

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**38 Is it possible to redomicile an overseas vehicle in your jurisdiction?**

Yes. For this purpose, the fund must obtain authorisation by the HCMC.

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**39 Are there any special rules relating to the ability of foreign investors to invest in funds established or managed in your jurisdiction or domestic investors to invest in funds established or managed abroad?**

There are no specific rules on this matter. There are generally no restrictions on the investment of foreign investors in Greek funds.

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