



# KARATZAS & PARTNERS

Capital Markets Alert

## New provisions on public offerings in Greece

Articles 57 to 68 of the recently enacted Law 4706/2020 (the **Prospectus Provisions**) repealed articles 1-26 of Law 3401/2005 (which had transposed in Greece Directive 2003/71/EC) supplementing the new framework in relation to public offerings in Greece already established by Regulation 2017/1129/EU (the **Prospectus Regulation**).

The Prospectus Provisions are in force as of 17.07.2020.

The scope of the Prospectus Provisions is limited since the vast majority of the provisions of the Prospectus Regulation are directly enforceable in EU jurisdictions and few matters on which Member – States may exercise their discretion.

Below is an overview of the key Prospectus Provisions:

### Overview of key Prospectus Provisions

#### Obligation to publish a Prospectus in case of a public offer in Greece

Further to what is already in force pursuant to the Prospectus Regulation, Greece did not opt for the application of the Prospectus Regulation's maximum exemption threshold of an 8 million euro total consideration in the European Union (article 3(2) of the Prospectus Regulation) and exempts from the obligation to publish a prospectus any public offering with a total consideration in the European Union of less than EUR 5 million calculated over the course of a 12-month period.

For public offerings of securities with a total consideration over EUR 500.000 and up to EUR 5 million calculated over the course of a 12-month period, there is an obligation to publish an information document, subject to the exemption of public offerings of a total consideration of each such offer of 1 million euro which is conducted solely through an electronic system and where other requirements listed in the Prospectus Provisions apply cumulatively. The Prospectus Provisions explicitly provide that all acts of the Hellenic Capital Markets Commission (the **HCMC**) issued under the previous regime remain in force, therefore HCMC decision 12/697/10.11.2014, as amended and in force, continues to apply with respect to the content of such information document.

The vast majority of the information that must be included in the information document is the same with the information required to be included in a prospectus pursuant to the Prospectus Regulation, including information on the financial status and business activity of the issuer, an overview of its corporate governance and shareholding structure, as well as information on the terms of the offer and the type of securities thereunder.

### **Language of the Prospectus**

The Prospectus Provisions introduce for the first time the possibility that the prospectus is issued in a language other than Greek, subject to a decision issued by the HCMC permitting the above. Such decision has not been issued to date; however, it is interesting to see whether the HCMC will allow the prospectus to be submitted solely in the English language, especially in case of purely domestic offerings. In any case the prospectus summary should be made available to Greek investors in the Greek language.

### **Advertisements**

The Prospectus Provisions repeat the requirement for an approved prospectus or information document, to the extent applicable, to be available to investors before any advertisement of the public offering or otherwise inducement of the investing public takes place. It is important to note that breach of this requirement triggers administrative sanctions and is not elevated to a criminal offense, as was the case under Law 3401/2005.

### **Civil Liability under the Prospectus**

Provisions regarding civil liability of the persons responsible for the information provided under the prospectus remain unchanged. In summary, responsible persons are liable for any damage suffered by investors having acquired offered securities within 12 months from the publication of the prospectus and caused because the prospectus was inaccurate or incomplete. Burden of proof lies with the investor, while any claims are time-barred after the lapse of 3 years from the date when the prospectus is published. The liability of the aforementioned persons cannot be limited *vis-à-vis* investors by any contractual arrangement entered into between the liable persons.

**Sanctions**

The Prospectus Provisions award extensive powers to the HCMC in its capacity as the local competent authority for the supervision of the due implementation of the Prospectus Regulation and the Prospectus Provisions, reiterating the provisions of article 32 of the Prospectus Regulation. They provide a wide array of administrative sanctions against individuals and legal persons acting in breach of the Prospectus Provisions and the Prospectus Regulation, in line with articles 38 and 39 of the Prospectus Regulation.

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