



The Legal 500 Country Comparative Guides

Greece: Alternative Investment Funds

This country-specific Q&A provides an overview of alternative investment funds laws and regulations applicable in Greece.

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1. What are the principal legal structures used for Alternative Investment Funds?

Under Greek law, an Alternative Investment Fund (**AIF**) can be established as:

a. a mutual fund, i.e. an investment fund in contractual form (a group of assets without legal personality, owned by the unitholders in proportion to their units) managed by an external asset manager authorised as an AIF manager (**AIFM**), and more specifically:

- a venture capital mutual fund (so-called AKES), subject to Law 2992/2002, as amended; or
- a real estate mutual fund (so-called AKAP), subject to Law 2778/1999, as amended; or
- an alternative mutual fund subject to Law 4706/2020 (it is noted that the Greek Minister of Finance is authorised to classify alternative mutual funds in specific categories, based on their investment purpose and structure, but has not exercised this power yet);

or

b. as a *société anonyme*, in the form of a:

- portfolio management company (so-called AEEEX), subject to Law 3371/2005 as amended; or
- a real estate investment company (so-called AEEAP), subject to Law 2778/1999, as amended; or
- a venture capital company (so-called EKES), subject to Law 2367/1995, as amended.

A portfolio management company and a real estate investment company are by definition internally managed AIFs, while a venture capital company is allowed to appoint an external AIFM.

Venture capital mutual funds and real estate investment companies are the most common structures in the Greek market. Alternative mutual funds have not yet been practically tested, as they have been very recently introduced in the Greek market.

2. Does a structure provide limited liability to the sponsor and/or manager vis-a-vis investors?

The concept of sponsor is not legally defined under the relevant Greek law rules; in case the person or entity initiating an AIF is involved in the management of an AIF by participating in the AIF's board of directors, potential claims of AIF shareholders for compensation of losses suffered due to the conduct of such initiator will be subject to generally applicable corporate law provisions.

Furthermore an AIFM and the members of the board of directors of an AIF may be held liable

vis-à-vis investors under generally applicable civil law provisions, in conjunction with any special Greek law rules on AIFMs (particularly Law 4209/2013 transposing the EU AIFM Directive in Greek law).

3. Is there a market preference and/or most preferred structure? Does it depend on asset class?

The structure of an AIF basically depends on the asset class, given that, save for alternative mutual funds, the available structures are focused on one or more eligible asset classes. For instance, a real estate fund is typically established in the form of a real estate investment company, while venture capital mutual funds managed by a registered (not authorised) AIFM are usual in the private equity industry.

There is no market feedback on alternative mutual funds as these have been very recently introduced in the Greek legislation.

4. Does the regulatory regime distinguish between open-ended and closed-ended Alternative Investment Funds (or otherwise differentiate between different types of funds or strategies (e.g. private equity vs. hedge)) and, if so, how?

The distinction between open-ended and closed-end AIFs is reflected in the relevant Greek legislation. In fact, AIFs of the following types can be established only as closed-end AIFs:

- venture capital mutual fund;
- portfolio management company;
- real estate investment company; and
- venture capital company.

In contrast, real estate mutual funds and alternative mutual funds can be either open-ended or closed-end, depending on the provisions of their constitutive documents.

5. Are there any limits on the manager's ability to restrict redemptions? What factors determine the degree of liquidity that a manager offers investor of an Alternative Investment Fund?

In principle, the conditions for, and possible limits (e.g. lock-up periods) to, the redemption of units of redeemable funds (i.e. real estate mutual funds and alternative mutual funds) must be provided for in the constitutive documents of each such fund and more particularly in its so-called Regulation, which must be complied with by the AIFM.

In particular with respect to an alternative mutual fund, the latter is required to be so liquid as to be able to perform all its obligations in connection with the redemption of its units, in accordance with its redemption policy and its Regulation. The suspension of redemption of an alternative mutual fund is possible under exceptional

circumstances and requires the consent of the Hellenic Capital Market Commission (**HCMC**).

6. What are potential tools that a manager may use to manage illiquidity risks regarding the portfolio of its Alternative Investment Fund?

There are no special tools provided for by the relevant laws. Therefore, such tools are primarily decided by the competent bodies and persons of the AIFM based on the relevant policies applicable to each fund under management, taking also into account other factors such as market conditions, usual market practice, any applicable contractual constraints.

There are also redemption suspension powers granted to HCMC under specific circumstances. In particular, upon request of the AIFM, the redemption of units of an alternative mutual fund may be suspended by HCMC, on an exceptional basis: a) in order to protect the interests of unitholders or for another important reason; or b) because the suspension conditions provided for in the Regulation of the fund concerned are met. The redemption of an alternative mutual fund's units can also be suspended *ex officio* by HCMC, in case of a regulatory infringement threatening market integrity or the interests of unitholders.

Moreover, where an investor in a real estate mutual fund has acquired units for consideration in kind (i.e. through contribution of real estate), the redemption of units so acquired is not possible during five (5) years following their acquisition.

7. Are there any restrictions on transfers of investors' interests?

Subject to the provisions of their constitutive documents, units or shares in the AIFs are in principle freely transferable, save for alternative mutual funds, which can be transferred *inter vivos* only between spouses (or parties to a civil partnership) and first and second-degree relatives.

8. Are there any other limitations on a manager's ability to manage its funds (e.g., diversification requirements)?

There are investment limitations and diversification requirements applicable to AIFs, pursuant to specific Greek law rules.

In particular, real estate mutual funds may invest only in real estate assets and certain money market instruments, subject to the financial thresholds provided for in law.

Venture capital mutual funds may invest only in shares of listed and non-listed companies and corporate notes, in all cases subject to certain financial thresholds and other preconditions, bank deposits and money market instruments.

With respect to venture capital companies, similar investment limitations apply, as described in relation to venture capital mutual funds.

Portfolio management companies are also subject to specific investment limitations.

Alternative mutual funds can invest in cash, transferable securities and other financial instruments, interests in partnerships, real estate and other related assets, provided that they are not pledged (save for implementing the mutual AIF's investment policy) and they are liquid enough to allow a mutual fund to comply with its redemption policy. Moreover, an alternative mutual fund cannot invest more than 20% of its assets in: a) financial instruments issued by a single issuer; b) real estate.

Any further to the above investment limitation will only apply if provided for by the relevant AIF constitutive documents.

9. What is the local tax treatment of (a) resident, (b) non-resident, and (c) pension fund investors (or any other common investor type) in Alternative Investment Funds? Does the tax treatment of the target investment dictate the structure of the Alternative Investment Fund?

The tax treatment of investors in AIFs established in Greece would depend on the type of the AIF among those described under 1 above. In case of AIFs established in the form of a société anonyme, investors are not generally taxed for income received by the AIF as dividend distribution, as the corporate tax applied at the level of the AIF, which varies depending on the particular form of the AIF, exhausts tax liability for investors. Investors are taxed upon disposal or otherwise redemption of their shares in the AIF on the difference between the acquisition price and the disposal price. In case of AAEAPs and other types of listed AIFs, tax is triggered solely when the investor holds at least 0,5% in the listed AIF. Greek tax residents are taxed at a flat rate of 15% if individuals, while such income forms part of the business income of the investor that is a legal person and taxed at 24%. The tax treatment of non-Greek tax residents depends on the applicability of any treaty for the avoidance of double taxation. As a general rule, individuals are subject to tax for Greek-source income, while legal persons that are not Greek tax residents and do not hold their participation in the AIF through a permanent establishment in Greece are not deemed as generating any income in Greece.

Greek AIFs established as mutual funds are "transparent", in the sense that the fund is tax exempt and investors are treated for tax purposes as if they held a share directly in the underlying investment that is proportionate to their participation in the AIF. Investors that are Greek tax residents will generally be subject to tax depending on the type of returns realized by the AIF. The general rules on the tax treatment of non-Greek tax residents continue to apply.

10. What rights do investors typically have with respect to the management or operations of the Alternative Investment Fund?

An AIFM manages an AIF at its sole discretion. Investors are not entitled to be involved in the management of an AIF's assets or in day-to-day operational activities, including by making recommendations to the AIFM regarding the investment strategy or other investment decisions.

11. Are managers or advisers to Alternative Investment Funds required to be licensed, authorised or regulated by a regulatory body?

AIFMs are required to hold a valid license granted by HCMC and comply with specific Greek law rules, in order to be appointed as the AIFM of an AIF. However, in case of Greek law 4209/2013 AIFMs, where the assets under management do not cross the relevant de minimis thresholds, an AIFM is allowed to operate following its registration with HCMC and subject to a light reporting regime, without being granted a license.

With respect to third-party providers of services to the AIF and / or the AIFM, it depends on the type of services provided whether such entities need to be granted a license (for example, this would be the case in case of provision of investment services to the AIFM.)

12. Are Alternative Investment Funds themselves required to be licensed, authorised or regulated by a regulatory body?

AIFs are required to be licensed by HCMC, save for venture capital mutual funds and venture capital companies, which do not need a license (but their manager must be an AIFM licensed or at least registered with HCMC).

13. Are there local residence or other local qualification or substance requirements?

Under current legislation, in order to obtain an AIFM license, the AIFM must keep its registered seat in Greece, meet the relevant regulatory capital requirements, provide asset management services only through persons certified by HCMC and comply with the applicable corporate governance requirements.

14. What service providers are required?

At minimum, as provided for by the applicable legislation, a custodian must be appointed, which shall be responsible for safekeeping the relevant AIF's assets and for performing the paying agent function and the depositary functions provided for by the EU and Greek legislation. In case administration services are not provided by the AIFM, further service providers are hired, such as a transfer agent, a portfolio valuator or a distributor. Further potential service providers include investment advisors, auditors, and legal advisors.

15. Are local resident directors / trustees required?

The relevant alternative investment fund legislation does not require the appointment of any local resident as director of corporate form AIFs or of AIFMs, but other generally applicable corporate and tax law considerations must also be taken into account, when composing the competent corporate bodies of the AIF/ AIFMs.

16. What rules apply to foreign managers or advisers wishing to manage, advise, or otherwise operate funds domiciled in your jurisdiction?

AIFMs established and authorised in the EEA can manage Greek AIFs on a cross-border basis and/or through a branch in Greece. To the extent advisory services in relation to portfolios of Greek AIFs constitute or include the performance of a regulated activity, EEA authorised entities are allowed to provide such services in Greece on a cross-border basis and/or through a branch.

In contrast, non-EEA managers cannot be appointed as AIFMs of AIFs domiciled in Greece, the only option currently being to establish a subsidiary in Greece, in order to obtain a license or be registered with HCMC. Moreover, regulated advisory services can be provided by non-EEA authorised entities, if they establish a branch in Greece, subject to authorisation by HCMC.

17. What are common enforcement risks that managers face with respect to the management of their Alternative Investment Funds?

HCMC has the power to impose administrative fines and take other actions against an individual or legal person that is found in breach of the provisions of the Alternative Investment Fund legislation. Administrative fines range from €1,000 to €3,000,000 (and up to two times the benefit derived by breaching legal person or individual, if greater). Other enforcement measures available to HCMC include the right to request freezing or sequestration of assets, request the temporary cessation of professional activity or withdraw the authorization granted to the AIFM, as well as to require the suspension of the issue, repurchase or redemption of units in the interest of the unitholders or of the public.

The type of enforcement action as well as the amount of any administrative fine depends *inter alia* on the impact of the breach to market operation and the actual damage or risk to which investors were exposed as a result of the unlawful actions of the breaching person.

HCMC reserves the right to disclose to the public any measure or penalty that might be imposed for any infringement of the pertinent legislation.

18. What is the typical level of management fee paid? Does it vary by asset type?

Management fees are freely negotiated and agreed between the parties, and in practice they

may vary, depending on the type of AIF and of the relevant asset class.

19. Is a performance fee typical? If so, does it commonly include a “high water mark”, “hurdle”, “water-fall” or other condition? If so, please explain.

Performance fees including “high water marks”, “hurdles” and “water-fall” are freely agreed between the parties, subject to the terms of the constitutive documents of an AIF.

20. Are founder shares (which offer a reduce fee structure for initial investors) typical in raising assets for new fund launches?

Save for real estate investment companies, corporate form AIFs can issue founder shares, subject to provisions of Greek corporate law and of their constitutive documents. However, this is not a standard market practice.

21. Are management fee “break-points” offered based on investment size?

It is not possible to ascertain a standard or consistent market practice regarding management fee “break-points”.

22. Are first loss programs used as a source of capital (i.e., a managed account into which the manager contributes approximately 10-20% of the account balance and the remainder is furnished by the investor)?

First loss programs are not common in practice.

23. What is the typical terms of a seeding / acceleration program?

Seeding / acceleration programs are not common in the Greek market, but several options (such as the creation of a special class of shares connected to certain benefits for early investors) may be available, depending on an AIF’s constitutive documents.

24. What industry trends have recently developed regarding management fees and incentive fees?

The relevant trends include linking fees with the value of the assets under management, or even the impact of MiFID II rules on inducements (notably the prohibition of payment or receipt of benefits by intermediaries distributing AIFs through the provision of discretionary portfolio management and independent investment advice services).

25. What restrictions are there on marketing Alternative Investment Funds?

Marketing to professional investors in Greece

The marketing of EEA AIFs to professional investors in Greece is generally permitted to AIFMs established in Greece and duly licensed by HCMC, as well as to EEA AIFMs that have passported their marketing license into Greece.

The marketing of EEA AIFs by non-EEA AIFMs as well as the marketing of non-EEA AIFs by both EEA and non-EEA AIFMs is subject to a prior license by HCMC.

Marketing to retail investors in Greece

Marketing to retail investors in Greece is only available to AIFMs established in Greece and duly licensed by HCMC as well as to EEA-AIFMs that have passported their license into Greece, provided that the following conditions are met:

- (a) the AIFM markets AIF units either directly or through credit institutions or investment firms;
- (b) the marketed AIF has been authorized by a competent authority of an EEA member-state;
- (c) marketing to retail investors is provided for in the AIF's constitutive documents;
- (d) the minimum amount to be contributed by each investor invests in the AIF or the investment compartment thereof (if applicable) is at least €100,000;
- (e) the AIFM concludes an appropriateness assessment of the marketed AIF for each prospective investor on the basis of information provided by the latter and is required to communicate a warning to the prospective investor depending on the outcome of such assessment.

We note that HCMC has unofficially taken the view that the above restrictions should not apply to EEA AIFMs that benefit from the marketing passport regime. However, on the basis that until today, HCMC has not issued any formal guidance on the matter, it would be advisable that bespoke opinion is asked by HCMC in written form before the commencement of any marketing activity in Greece.

26. Is the concept of “pre-marketing” (or equivalent) recognised in your jurisdiction? If so, how has it been defined (by law and/or practice)?

There is no formal distinction between marketing and pre-marketing activities in the context of Greek AIFM legislation and HCMC has not published any official decision, guidance or other respective document acknowledging and ring-fencing the concept of pre-marketing. Based on the definition of “marketing” as a direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages to or

with investors domiciled or with a registered office in the European Union”, to the extent that marketing does not include information or otherwise reference to an already established AIF, any such communication should not constitute “marketing” within the meaning of Greek AIFM legislation, since no offering of the AIF units or shares can take place and no investment decision can be made by the addressee investors on the basis of the information included in such pre-marketing material.

27. Can Alternative Investment Funds be marketed to retail investors?

Only EEA AIFs can be marketed to retail investors in Greece by either AIFMs that are established in Greece and have been duly licensed by HCMC or EEA AIFMs that have passported their marketing license in Greece and subject to the restrictions mentioned under point 25 herein above.

28. What are the minimum investor qualification requirements?

Please refer to our answer under point 25 herein above.

29. Are there additional restrictions on marketing to government entities or pensions?

There are no additional specific restrictions on marketing of AIFs to government entities. It should be noted in this respect that government entities would not generally qualify as professional investors and therefore restrictions in marketing to retail investors referred to under question 25 would apply. Furthermore, although marketing would not be subject to additional restrictions, government entities’ ability to actually invest in AIFs could be subject to restrictions.

30. Are there any restrictions on the use of intermediaries to assist in the fundraising process?

Depending on the scope of the intermediary’s mandate, provision of intermediary services could qualify as investment services triggering licensing requirements under MiFID II.

From the viewpoint of the AIFM, any marketing of AIFs to investors in Greece by the intermediary would be considered as marketing “on behalf” of the AIFM, thus licensing requirements or passporting requirements could be triggered for the AIFM under Greek AIFM legislation.

31. Is the use of “side letters” restricted?

The use of side letters is permitted, if and to the extent this is compatible with the constitutive documents of an AIF and, as the case may be, general corporate law provisions.

32. Are there any disclosure requirements with respect to side letters?

Yes, in principle transparency must be ensured in favour of all investors, through the disclosure of arrangements that are liable to result in preferential treatment of certain investors.

33. What are the most common side letter terms? What industry trends have recently developed regarding side letter terms?

Side letter terms may refer to the level and structure and of fees, enhanced information rights and most-favoured-nation clauses.