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A.S. Papadimitriou & Partners Law Firm

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IN CIVIL AND COMMERCIAL MATTERS

WILLS AND ESTATES DISPUTES

MUTUAL FUNDS - PORTFOLIO INVESTMENT
COMPANIES - VENTURE CAPITAL

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MUTUAL FUNDS - PORTFOLIO INVESTMENT COMPANIES - VENTURE CAPITAL

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A. MUTUAL FUNDS & INVESTMENT COMPANIES

What is a “mutual fund”?

A mutual fund (“MF”) is a form of undertaking for collective investment in transferable securities (“UCITS”) in the sense of the EU UCITS Directive (as transposed in Greece). The MF is a pool of assets, consisting of transferrable securities, money market instruments and cash, whose assets are divided into units, owned by more than one unit holders. Each unit’s value is the sum of the MF’s assets divided by the total number of units.

Which are the MF’s key persons/entities?

- The unit holders which subscribe to the MF, acquiring units which represent the fraction of each unit holder’s share in the MF’s assets;
- the management company which manages and represents the MF; and
- the depositary, to which the MF’s assets are entrusted.

Is a MF a separate legal entity?

A MF is not a legal person bearing a separate legal personality. Its unit holders are represented in transactions or in front of Courts and authorities by its management company.

What are the establishment requirements?

A MF is established pursuant to an authorization granted by the competent authority of its home Member State, such authorization being valid for all Member States. In Greece, such authorization is granted by the Hellenic Capital Market Commission (“HCMC”) to the management company which submits for approval to HCMC:

- the MF’s regulation;
- a declaration by a credit institution accepting the depositary’s duties and the consequent entrusting of the MF’s assets; and
- an analytical list of the MF’s assets (minimum € 300.000).

HCMC grants the above authorization provided that it approves the compliance of the management company’s, depositary’s and MF’s regulation’s requirements with the law.

Who manages the MF?

The MF’s management is performed solely by a management company, which has been authorized by the competent authority of its registered seat to manage UCITS.

Are unit holders liable in any way?

Unit holders do not bear any liability for acts or omissions of the management company or the depositary.

How are units acquired by the unit holders?

Units are acquired by the unit holder pursuant to a written application form, provision to the applicant of a booklet containing "Basic information for investors" and payment of the consideration, calculated on the unit's value on the application day.

What about reporting requirements?

The management company prepares: (a) a prospectus which includes the information necessary for investors to be able to make an informed judgment of the investment proposed to them, and, in particular, of the risks attached thereto; (b) an annual report which includes a balance sheet or a statement of assets and liabilities, a detailed income and expenditure account for the financial year, a report on the activities of the financial year and any other information pursuant to an HCMC decision, as well as, any significant information which will enable investors to make an informed judgment on the development of the activities of the UCITS and its results; and (c) a half-yearly, less detailed, report. The above mentioned reports are audited by auditors are submitted to HCMC and are supplied to any unit holder on request. The prospectus, reports and any amendment thereof are submitted to HCMC as well.

Are there any restrictions on the investments?

UCITS investments consist solely of:

- transferrable securities and money market instruments admitted or dealt in a regulated market as defined by Directive 2004/39/EC;
- transferrable securities and money market instruments dealt in on another regulated market of a EU Member State which operates regularly and is recognized and open to the public;
- transferrable securities and money market instruments admitted to official listing in a stock exchange or regulated market of a non EU Member State which operates regularly and is recognized and open to the public and have been designated as such by HCMC;
- recently issued transferrable securities, that they are listed in one of the above markets within one year;
- units issued by UCITS as authorized pursuant to the applicable legislation;
- deposits with credit institutions which are repayable on demand or have the right to be withdrawn and maturing in no more than 12 months (under certain conditions relating to the credit institution);
- financial derivative instruments, including cash-settled instruments;
- money market instruments, other than those dealt in a regulated market (under certain conditions).

Are there any restrictions on the investment policy?

There are several investment policy restrictions provided by the applicable legislation, mainly for risk exposure reasons.

How are proceeds being distributed?

Proceeds from interests, dividends or profits may be distributed annually to the unit holders, following the deduction of the financial year's costs. Profit deriving from asset sales is distributed to the unit holders to the extent that it is not exceeded by loss for the same period.

How are units redeemed by the MF?

Units are redeemed upon the request of a unit holder on a price calculated on the unit's value upon the request day. Such redemption may be suspended under exceptional circumstances for a period up to 3 months (which can be extended for an additional 3 months period).

Are units freely transferable?

Transfer is only possible towards spouses, as well as first and second degree relatives, unless units are registered to a regulated market.

What happens on liquidation?

The assets are distributed by the depositary pursuant to the management company's mandate. Upon completion of the distribution procedure, a report, signed by the management company, the depositary and the UCITS' auditor is prepared and submitted to HCMC, uploaded to the management company's web site and is supplied to any unit holder on request.

Are there any tax benefits?

The MF's Act of Incorporation, any UCITS capital contribution, as well as, any offer or redemption of its units are free of any tax, duty, stamp duty or any other taxation measure. Any UCITS income from transferable securities is exempted from income and withholding tax (there are certain conditions relating to income deriving from bond loan interest).

How about other form of UCITS?

Investors may form an investment company in the form of a "joint stock company for investment in transferable securities".

Is the above company subject to authorization from HCMC?

Yes, under almost identical requirements as those of a UCITS management company.

Are there any special requirements?

The above company must have its registered office or its base of operation in Greece. There are also minimum share capital requirements.

B. PORTFOLIO INVESTMENT COMPANIES

What is a “portfolio investment company”?

A portfolio investment company (“PIC”) is a company in the form of a joint stock company having portfolio management as exclusive scope.

Is a PIC a separate legal entity?

Being a joint stock company, the PIC is a separate legal entity bearing a legal personality and is also governed by the legislation relating to joint stock companies.

What are the establishment requirements?

The PIC is established pursuant to an authorization granted by HCMC. The minimum (fully paid up) share capital requirement is € 500,000 and the PIC’s shares must be registered. Furthermore a declaration of a credit institution operating in Greece that it accepts the depositary’s duties and the consequent entrusting of the PIC’s assets is required. HCMC grants the above authorization evaluating:

- the PIC’s organization structure, technical and financial means;
- the management team’s reliability, experience, professional skills and reputation; and
- the suitability of shareholders which hold more than 10% or have significant influence on the management.

Who manages the PIC?

The PIC is managed by its Board of Directors whose members must comply with the requirement posed by the applicable legislation in terms of professional experience and integrity. The PIC’s shareholders have the powers foreseen by the legislation relating to joint stock companies

What are the depositary’s duties?

The depositary is entrusted with the assets that consist the PIC’s portfolio, co-signs the investments lists and certifies that all shares transactions (sale, issue, re-purchase etc), as well as, the shares valuation are performed in accordance with the applicable legislation. The depositary may entrust its duties to another credit institution (which is subject to the same supervision rules) with the consent of the PIC, being jointly liable with such.

Are there any liability issues?

There are several administrative consequences for the Board of Directors and the depositary (and officers, employees or representatives thereof) in cases of infringement of the applicable legislation or any HCMC’s decision. Shareholders do not bear any liability for actions or omissions of the Board of Directors or the depositary.

How are PIC's shares acquired?

The PIC's shares are listed in a regulated market operating in Greece within 6 months from its operating authorization (pursuant to a minimum € 10.000.000 share capital increase effected through public offering) and are traded thereafter.

What happens if the company's shares are not listed pursuant to the previous paragraph?

HCMC revokes the PIC's operating authorization.

What about reporting requirements?

The PIC makes available to the public an investment list every three months. In addition, the PIC's corporate bodies decide on the annual balance sheet and keep its accounting books in accordance with the legislation relating to joint stock companies.

Are there any restrictions on the company's investments?

Yes, there are similar investment restrictions to the ones referred in the Mutual Funds paragraph above.

Are there any restrictions on the investment policy?

There are several investment policy restrictions provided by the applicable legislation, mainly for risk exposure reasons.

How are dividends being distributed?

Dividends are distributed in accordance with the legislation relating to joint stock companies.

What happens on liquidation?

As a general rule, the company is liquidated and its assets are distributed pursuant to the applicable provisions of the legislation relating to joint stock companies. However, in cases of the company's dissolution for any reason other than bankruptcy, the HMCN may decide to invoke a special liquidation procedure whereby it appoints a liquidation supervisor who supervises the ordinary liquidator.

Are there any tax benefits?

The company's Act of Incorporation, as well as, any shares issued are free of any tax, duty, stamp duty, with the exception of capital duty taxes, VAT and duties in favour of HCMC. Income from transferable securities is exempted from income and withholding tax (there are certain conditions from income deriving from bond loan interest). Moreover, PICs pay a semi annual tax on the six month average of their investments calculated on 10% of a sum equal to the applicable ECB interest rate plus 1%. Any withholding tax on dividends, as well

as, capital gain tax regarding the sale of shares, is set-off with any tax declared by the PIC and represents the only tax to be paid by the PIC and its shareholders.

C. VENTURE CAPITAL

How do venture capital firms operate in Greece?

As a general rule venture capital firms operate in Greece within the frame of the Alternative Investment Fund Manager Directive, as EU transposed in Greece. Authorized Fund Managers can market their funds and the latter may operate in Greece under the terms and conditions provided in the above legislation. The following questions/answers relate to a venture capital mutual fund, since this is the most commonly used investment vehicle foreseen by the Greek legislation up to now.

What is a venture capital mutual fund (“VCMF”)?

A VCMF is a pool of assets, consisting of transferrable securities and cash, whose assets are divided into “units” owned by more than one unit holders. The value of each unit is the sum of the VCMF’s assets divided by the total number of units.

Which are the VCMF’s key persons/entities?

(a) The unit holders which subscribe to the fund, acquiring units which represent the fraction of each unit holder’s share in the VCMF’s assets; (b) the management company which manages and represents the VCMF; and (c) the depositary, to which the VCMF’s assets are entrusted.

Is a VCMF a separate legal entity?

A VCMF is not a legal person bearing a separate legal personality. Its unit holders are represented in transactions or in front of Courts and authorities by its management company.

Are there any duration/place restrictions?

The VCMF’s headquarters must be in Greece. Its duration may not exceed 20 years

Is a VCMF supervised by the HCMC?

Yes, subject to the requirements of the Alternative Investment Fund Manager Directive, as this has been transposed in Greece.

What are the requirements for the establishment of a VCMF?

A VCMF is established pursuant to an Incorporation and Management Agreement concluded between the management company, the depositary and the unit holders. There are minimum requirements in relation to the VCMF’s and each unit holder’s assets (€ 3.000.000 and € 150.000 respectively). A copy of the Incorporation and Management Agreement is submitted to the competent fiscal authority.

Who manages the VCMF?

A VCMF's management is performed solely by the management company. However, in cases of ambiguity as for way of management the unit holders representing at least 33% of fund's assets may, under certain conditions, request to the competent Court to order appropriate measures for the VCMF's management.

Are there any liability issues?

There are penal consequences for the management company and the depositary in cases of infringement of certain provisions of the applicable legislation. Unit holders do not bear any liability for actions or omissions of the management company or the depositary

How are units acquired by the unit holders?

Units are acquired by the unit holder either through the conclusion of the Incorporation and Management Agreement or through a subsequent acquisition. However the Incorporation and Management Agreement may contain restrictions on the transfer or encumbrance of units.

What about reporting requirements?

The management company prepares an annual report in relation to each financial year which includes a detailed statement of assets, balance sheet, distributed and reinvested profits, income and expenditure account, units and unit prices, as well as, unit holders changes. The management company prepares also a less detailed report on a semi-annual basis. The above mentioned reports are supplied to any unit holder on request. Any other reporting requirement contained in the Alternative Investment Fund Manager Directive, as this has been transposed in Greece, apply for the VCMF as well.

Are there any restrictions on the investments?

A VCMF may invest either in: (a) companies in Greece or other EU member States; or (b) companies outside the EU provided that their activities relate to production or provision of services in Greece. A VCMF may also invest in listed securities or financial instruments traded in multilateral trading facilities provided that its stake in the respective company is at least 15%; additionally it may invest in bonds.

Are there any restrictions on the investment policy?

There are several investment policy restrictions provided by the applicable legislation, for risk exposure and transparency reasons.

How are proceeds being distributed?

Proceeds from interests, dividends or profits may be distributed annually to the unit holders, following the deduction of the financial year's costs pursuant to the provisions of the Incorporation and Management Agreement.

What happens on liquidation?

In case of a VCMF's liquidation, its assets are distributed by a liquidator pursuant to the respective provisions of the Incorporation and Management Agreement, as well as, the Civil Code.

Are there any tax benefits?

The VCMF's Act of Incorporation, as well as, any subscription by the unit holders are free of any tax, duty, stamp duty or any other taxation measure. The VCMF is not a tax payer and any unit holders' income deriving from the VCMF is taxed on each unit holder separately.

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