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## Legal update

8 November 2018

### Recent reform in the framework of the custody of dematerialized securities

On 4 October 2018, the Hellenic Parliament issued [Law 4569/2018](#)<sup>1</sup> in light of the need for the current national regulatory framework regarding the custody of dematerialized securities to conform with the provisions of Regulation [EU/909/2014](#), the respective draft regulatory technical standards of European Securities and Markets Authority - [CSDR Level 2 measures](#) that specify, amongst others, provisions regarding the authorization of Central Securities Depositories (CSD) as well as general attempts to consolidate the national depository system framework.

These regulatory provisions aim to improve securities settlement (namely securities transfers against payment) in the European Union and CSDs, given that the Regulation lays down uniform requirements for the settlement of financial instruments and rules on the organisation and conduct of CSDs in the Union.

In essence, these provisions are the logical successor to [Target 2-Securities](#) pan-European “services for securities settlement in central bank money” but also form a part of the effort for further harmonisation between Member States regarding the regulatory and supervisory framework in the financial sector.

#### Who are affected by the new provisions?

The total reform of the framework of the depository system framework affects a substantial proportion of the participants in the Market including:

- The Central Securities Depository S.A.
- Issuers and holders of securities and
- Market intermediaries

#### How is Central Securities Depository S.A. affected?

The new regulatory framework also applies to the existing Central Securities Depository S.A. (CSD S.A. - ATHEXCSD) which currently operates as the CSD in Athens and requires ATHEXCSD to resubmit an application for its authorization to the responsible Hellenic Capital Market Commission.

The applicant company must still be legally constituted as a public limited company and its bearer shares must have been converted into registered shares.

Furthermore, it is pointed out that pursuant to the relevant provisions of the Regulation, the recording and the central maintenance of securities accounts cease to form part of the national monopoly of each Member State. Therefore, the CSD may provide its services beyond the territory of its establishment (“EU passport”) without needing to apply for a new authorization.

#### What rights are provided to non-listed companies?

The recording of securities in book-entry form is now provided for non-listed companies for the first time, since this right was provided as an exclusive right to listed companies until now.

#### What is the applicable procedure for recording the securities?

While the approval of the CSD to the issuer’s request to record the securities is still pending, the securities are issued

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<sup>1</sup> Only the first part refers to the provisions for the reform in the framework of the activities of Central Securities Depositories.

exclusively in a dematerialized or immobilized form; the issuance of physical securities is not required. The procedure is completed upon the submission of the securities' owners folder without further delay or any other required administrative actions.

A similar procedure is provided for the conversion of existing physical non-listed securities.

It should be noted that the EU cross-border operation of CSDs provided for pursuant to the Regulation allows issuers to have their immaterialized securities registered with any approved CSD in the European Union according to the provisions of the Regulation, in this way repealing the cross border restrictions of the previous framework.

### **What are the key changes regarding the form of the accounts that are currently maintained by CSDs?**

The current dematerialized securities system (DSS) where the investor must have an exclusive "Investor Share" and "Securities Account" is repealed. A key feature of the previous system was the direct identification of the investor by its account ("End Investor System").

In particular, CSD participants are obliged to offer their clients the option of "omnibus accounts", which are used to hold the securities of a number of clients on a collective basis. In fact, this is a financial transactions tracking system where the identity of the final investor is not directly known and was currently provided solely and exclusively for [Greek government bonds](#).

Considering that the name of the beneficial owner of the collectively held securities does not appear in the register of CSD, special provisions for the protection of the investors that hold "omnibus accounts" and increased obligations for the members/investment intermediaries are introduced for the identification of the respective investors.

"Special accounts", namely the securities' portfolio of the investor or the issuer (as a trustee) held with the DSS, the balances of which usually arise from "Over-The-Counter (OTC) transfers", inheritance or pledge, are repealed.

Any accounting balance of the "special accounts" except those arising from inheritance or which are related to the share of the Consignment Deposits and Loans Fund, must be transferred to the operator account of CSD within specific time-limitations otherwise, the forced sale procedure for the respective securities shall take place.

### **What are the possible issues arising from the new framework?**

The new framework for the functioning of CSDs intends to improve the security and efficiency of securities settlement and of the relevant infrastructures in the EU, while it contributes to the formation of a level playing field between the CSD of the Members that may be granted EU passport rights to provide their services in other member states.

This approach has already been initiated with the direct implementation of the provisions of the Regulation at the national level before the adoption of the current Law. Indicatively, the settlement period has been migrated to T+2 for securities traded on the stock exchange or alternative marketplace since 6 October 2014.

In the same context, the recent [Law 4548/2018](#) «Reform of the Law on Sociétés Anonymes» has been harmonized with some of the provisions of the Regulation.

However, the provisions for the dematerialization or the immobilization of securities appear to be of a significant practical interest regarding only non-listed companies. Specifically, the entry of the latter as new participants of CSDs improves their business operations and enhances their credibility, considering that they are able to use automated corporate procedures, such as record date certification and e-voting. It also ensures the custody of their securities.

At the same time, some of the new provisions seem to raise concerns about the transparency and the stability of the financial transactions. In particular, the inability of daily and nominal updating of any change in share registers in the case of "omnibus accounts" seems to give rise to possible issues. The absence of a relevant regulatory provision may prevent a sufficient wide dispersal of shareholding in listed companies, creating the prospect of a hostile takeover.

Also, the option given to beneficial owners of shareholding rights not to appear in the register of CSDs, undoubtedly marks the start of a new era in corporate law.

In any event, both the legislative provisions in question and the individual provisions of the Regulation which are directly applicable at national level and operate in conjunction with this Law, appear to have a significant impact on all participants in the financial system, requiring their immediate strategic adaption to new conditions, increasing the burden of necessary administrative costs.

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