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Establishment and operation of CMOs in Greece

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Legal forms of CMOs

According to article 8(1) of Law 4481/2017 on the collective management of copyright and related rights, "collective management organisations operate under any legal form under the terms of article 3(a)".

Therefore, upon the establishment of a collective management organisation (CMO) in Greece, the members (ie, the rights holders) themselves are free to choose the legal form that best serves their interests.

Further, according to article 8(2) of Law 4481/2017, a CMO may exist under the form of a public limited company (SA), but all of its shares must be mandatorily registered.

In practice, most CMOs in Greece have chosen the form of limited liability civil cooperatives. In this case, certain deviations from the law on cooperatives (Law 1667/1986) are explicitly provided for in article 8(3) of Law 4481/2017 – for example, that:



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- the operation of such cooperatives is possible on a panhellenic level;
- both natural and legal persons can participate as members of the cooperatives; and
- there is no personal liability of the partners for the debts of the cooperative.

Further, according to article 3(a) of Law 4481/2017, collective management organisations must meet one or both of the following requirements:

- to be owned by its members or to be controlled by them; and/or
- to be organised on a non-profit basis.

Specifically, according to article 3(a) of Law 4481/2017:

'Collective management organisation' means any organisation which is authorized by law or by way of assignment, license or any other contractual arrangement to manage copyright or related rights on behalf of more than one rightholder, for the collective benefit of those rightholders, as its sole or main purpose, and which fulfils one or both of the following criteria: (aa) it is owned or controlled by its members; (bb) it is organized on a not-for-profit basis. (Emphasis added.)

Also, article 13(2) of Law 4481/2017 provides as follows:

The statute of a collective management organisation shall provide for appropriate and effective mechanisms for the participation of all its members in the organisation's decision-making process. The representation of the different categories of members in the decision-making process shall be fair and balanced. (Emphasis added.)

IMEs versus CMOs

Article 3(c) of Law 4481/2017 provides that the following is an independent management entity (IME) and not a CMO:

any organisation which is authorized by law or by way of assignment, license or any other contractual arrangement to manage copyright or related rights on behalf of more than one rightholder, for the collective benefit of those rightholders, as its sole or main purpose, and which is: aa) neither owned nor controlled, directly or indirectly, wholly or partly, by rightholders, and bb) it is organized on a for-profit basis.

An important difference between a CMO and an IME is that the latter (unless they hold a dominant position in the Greek market) is not entitled to collect rights on behalf of their members in cases where the law provides for mandatory collective management (eg, private copy levy or equitable remuneration of performers and producers for communications to the public of legitimate releases of sound recordings).

Cost of rights management by CMOs

Law 4481/2017 also regulates the cost of rights management by CMOs, which must be reasonable. According to article 18(1) of Law 4481/2017:

***Deductions shall be reasonable** in relation to the services provided by the collective management organisation to rightholders and shall be established on the basis of objective criteria.* (Emphasis added.)

Also, article 18(3) of Law 4481/2017 states as follows:

*Management fees of the collective management organisation shall not exceed the justified and documented costs in managing copyright and related rights. **Management fees should not exceed, on average, 20% of the gross rights revenue of the collective management organisation** This 20% percentage does not apply to newly established collective management organisations and up to three (3) years of the commencement of their operations, under the condition that at the end of each management period, the General Assembly or the Supervisory Board of the independent management entities referred to in article 50, examines and confirms the need to maintain the excess of the above mentioned 20% percentage.* (Emphasis added.)

However, article 18(5) states as follows:

With respect to collective management organisations, whose annual gross income does not exceed the amount of five hundred thousand (500.000) euro, management fees must not exceed, on average, twenty-five per cent (25%) of the collective management organisation's gross revenue.

Information requirements for establishment of CMOs

According to article 4 of Law 4481/2017, any CMO, collective protection organisation or IME under article 50 (ie, any IME in a dominant position in the Greek market) established in Greek territory and intending to assume the collective management or protection of the powers deriving from the economic rights of the authors or the holders of related rights is required to obtain an

operating licence granted by the Minister for Culture and Sports.

Under the more specific provisions of article 4(2) of Law 4481/2017, the interested CMO is obliged, before commencing its operations, to file an application with the Hellenic Copyright Organisation (HCO), mandatorily accompanied by the following:

- its statute, which should also include the amount of its capital, to the extent that this is required under its respective legal form;
- its legal representative, the members of the board of directors and the supervisory board and its general director, if any. These persons must not have been charged, by way of final judgment, with a felony, and must not have been convicted for a felony or a misdemeanour to a penalty of imprisonment of more than two years. Regardless of the quantum of the penalty, such persons must also not have been convicted of:
 - crimes against property or property rights;
 - smuggling;
 - counterfeiting or forgery;
 - tax evasion; or
 - active or passive bribery.

To ascertain that there have been no such final criminal charges or convictions, these persons must submit to the HCO a certificate from the competent judicial authority attesting to the absence of criminal charges and a copy of their criminal record, verifying that they have never been convicted in such a manner. Such persons must also submit a statement of information as referred to in article 31(2)(d) of Law 4481/2017, which is a statement regarding any actual or potential conflicts between their personal interests and the interests of the CMO, and between their obligations towards the CMO and their obligations towards any other natural or legal person;

- the number of rights holders who have entrusted or will entrust the organisation with the management or protection of the powers deriving from their economic right;
- a draft of the assignment agreement (between the CMO and the rights holders), indicating the legal form and the duration of management or protection of the rights;

- the rights distribution regulation, indicating the time, the principles and the method of distribution of the rights revenue per category of rights holder;
- the amount of management fees; and
- any other information requested by the Ministry of Culture and Sports or the HCO to ensure the operational sustainability and effectiveness of the organisation.

In addition, according to article 4(4) of Law 4481/2017, the CMO is obliged, no later than three months following the publication of its operating licence in the *Official Government Gazette*, to send to the HCO its tariff table in order for it to be posted on the HCO website.

The operating licence of the organisation is granted, under article 4(3) of Law 4481/2017 – by means of a reasoned decision of the Minister for Culture upon a recommendation by the HCO – only if:

- the requirements of Law 4481/2017 are met; and
- it is evident that the applicant organisation is financially viable and can effectively manage the rights of its members.

Under article 4(6) of Law 4481/2017, if a CMO wishes to extend its competencies, it is required to first obtain an expansion of its corresponding operating licence. For the grant of such an expansion, the aforementioned provisions of article 4 of Law 4481/2017 are again implemented.

Operation of CMOs established in another EU or European Economic Area state in Greece

Article 4(7) of Law 4481/2017, as recently amended by article 51(2) of Law 4761/2020 (*Government Gazette* A 248/13 December 2020), states as follows:⁽¹⁾

Without prejudice to the last subparagraph, collective management organizations and independent management entities established in another EU Member – State, may operate within the Greek territory following the issuance of a decision of the Minister of Culture and Sports, upon a recommendation from the Hellenic Copyright Organization (HCO), by the means of which the notification to the HCO of their intent to operate within the Greek territory and the submission of the following are determined:

a) communication details which include their address, VAT identification number, registered office and legal representative,

b) evidence showing the existence of the establishment to that Member - State,

c) a registration certificate to a commercial register provided there is a relevant provision under the national law of the Member – State of establishment,

d) a prior licensing certificate for the exercise of collective management or of a registration certificate to a relevant register, provided there is a relevant provision under the national law of the Member – State of establishment, otherwise, in the case where there is not a relevant register or a licensing regime into the country of establishment, evidence or documents demonstrating the compliance with the prerequisites of their operation as collective management organizations or independent management entities in accordance with the national law of the Member – State of establishment, shall be submitted.

*Where there is a failure to submit the above and they are not submitted within a reasonable time-limit provided by the HCO, the latter shall not proceed to the recommendation of the first subparagraph and informs the applicant. **A Collective management organization established in another EU Member – State which wishes to operate within the Greek territory, by exercising collective management of rights over works or subject – matters of protection that fall within the regime of mandatory collective management in accordance with the Law 2121/1993 (A' 25), shall be required to obtain an operating license from the competent body of the Ministry of Culture and Sports, in accordance with the provision of this Law.***

For further information on this topic please contact Kriton Metaxopoulos or Elena Nikolarea at A & K Metaxopoulos & Partners Law Firm by telephone (+30 210 725 7614) or email (k.metaxopoulos@metaxopouloslaw.gr or e.nikolarea@metaxopouloslaw.gr). The A & K Metaxopoulos & Partners Law Firm website can be accessed at www.metaxopouloslaw.gr.

Endnotes

(1) Article 2(9) of Law 4481/2017 states that "where, in this Law, a reference is made to the EU, the European Economic Area (EEA) shall also be included".