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# International Briefings

## Greece

**Author** Yiannis Bazinas, Bazinas Law Firm, Athens, Greece

A new framework for the settlement of intermediated securities in Greece

### INTRODUCTION

Until recently, the Greek legal framework for securities in book-entry form, with the exception of Greek Government Bonds, was designed according to the direct holding model. Dematerialised securities were held in segregated securities accounts, directly at the level of the Central Securities Depository (CSD), ATHEXCSD. Each individual investor held a securities account in its own name, with intermediaries performing the function of operators of the relevant accounts. As a result, there was no commingling of assets of various investors and the concept of “omnibus securities accounts” was alien to the domestic market. This relatively simple structure, while providing considerable legal certainty regarding the rights of ultimate investors, presented a number of structural difficulties for cross-border securities holdings. Against this background, the introduction of the Central Securities Depositories Regulation (CSDR) at the European level highlighted the need for significant reform of the domestic framework in order to conform to the CSDR’s objectives, namely to create an integrated market for settlement services across the EU and introduce uniform rules for the authorisation and supervision of CSDs.

### LAW 4569/2018 ON CSDS AND THE INTRODUCTION OF OMNIBUS SECURITIES ACCOUNTS

In light of the above developments, Law 4569/2018 was introduced in order to align the Greek framework with the provisions of the CSDR. The new law terminates the monopoly of ATHEXCSD, which is obliged to receive a new licence and issue new settlement regulations, as any other firm that wishes to provide settlement services in the country. The provisions of the new law will only take effect, when ATHEXCSD receives its new licence, in accordance with the new regulatory requirements, which, at the time of writing, is generally expected to occur within the first half of 2020. Yet, the most significant provisions of Law 4569/2018 refer to the new organisational requirements for CSDs and their obligation to offer their clients the

choice between omnibus segregation and individual client segregation. Thus, the most significant innovation of the new framework is the introduction of the concept of “omnibus securities account” to Greek law.

### Definition of omnibus accounts and rights on intermediated securities

An omnibus account is defined in the new law as an account that contains securities that “belong” to third parties. Omnibus accounts are held for the benefit of third parties, namely end-investors, by intermediaries (usually credit institutions or investment companies), either at the level of the CSD or at lower levels of the holding chain. End-investors acquire their rights on the underlying securities at the time such securities are registered in the intermediary’s omnibus securities account with the CSD. Following this upper tier registration, intermediaries are required to register the securities in the securities account of the respective investor in their own books. In order to avoid any risk of double booking, intermediaries should, at all times, ensure that the securities located in their accounts at the CSD level correspond with the securities registered in their books. As a result, and in contrast to the existing system, the recognition of rights on securities in book-entry form has been rendered an extra-CSD function. Still, the new law favours a look-through approach and thereby ensures that the ultimate investor is identifiable at all times.

### Upper tier attachment and Intermediary insolvency

In order to ensure legal certainty, a number of provisions protect end-investors against the risk of upper-tier attachment as well as the risk of their intermediary’s insolvency. More specifically, the new law stipulates that omnibus accounts at the CSD level may not be subject to attachment. Although the language of the relevant provision can be misleading (since it is not the account that is subject to attachment but rather the securities held in that account), this prohibition ensures that securities, held in omnibus accounts, may not be attached by the intermediary’s creditors. At the same time, such securities may be subject to attachment by the investor’s creditors at the level of the relevant intermediary. Furthermore, in case of the insolvency of the intermediary, the new law provides for the application of a loss sharing rule, as a means of dealing with a potential shortfall in the intermediary’s omnibus account. This ensures that any potential shortfall is shared equally by all investors. Finally, any claims of end-investors for additional compensation are afforded a general privilege over the intermediary’s unsecured creditors, thereby increasing the probability of return, in the case of the intermediary’s insolvency.

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## Cross-border holdings

On the issue of cross-border holdings, the new law specifically stipulates that an authorised CSD in Greece may hold an omnibus account in a foreign (Issuer-) CSD for the purpose of facilitating transactions on securities registered abroad. Since the Investor-CSD will hold securities cross-border for the benefit of end-investors, the law states that the CSD must register the securities it holds in the accounts of participants in its own books. Even though the nature of any rights on securities registered abroad is governed by the law applicable to the foreign CSD, the new law essentially confirms that the Greek Investor-CSD merely acts as a conduit that enables end-investors to hold securities across borders and does not have any rights on the underlying securities.

## Corporate actions

The identification of the ultimate investor is especially important for the purposes of corporate actions on intermediated shares. While Greek law has recently taken a number of steps to facilitate the identification of the ultimate shareholder (including the statutory abolition of bearer shares), omnibus accounts may present a number of additional obstacles to the identification process. As a result, the new law provides that a CSD may agree with an issuer to provide central maintenance services, as defined in the CSDR. In this capacity, the CSD identifies the issuer's shareholders as well as the shares and voting rights that belong to each shareholder. Alternatively, the shareholders (and their corresponding voting rights) may be identified by the relevant intermediaries. For segregated accounts, the registered account holder is considered the shareholder, while for omnibus accounts, the person that is registered in the intermediary's books is identified as the shareholder. The intermediary is also obliged to have adequate procedures and resources in place so as to be able to identify the shareholders in a timely fashion. For the purposes of identification, the CSD (or the registered intermediaries) provides shareholders with certificates,

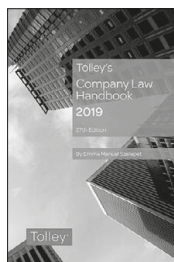
evidencing their rights as shareholders, the amount of shares owned as well as any encumbrances on such shares.

## IMPLEMENTATION OF THE NEW FRAMEWORK

As a result of the above developments, the legal framework for securities in book-entry form is currently in the midst of the most significant reform since its inception. The alignment of the regulatory and substantive framework with the requirements of the CSDR are expected to have a positive impact on the provision of settlement services and facilitate cross-border transactions on dematerialised securities of Greek issuers. A number of specific issues are expected to be clarified when ATHEXCSD obtains an authorisation under the new framework and issues its new Rules, thereby giving effect to the new law. Until then, the existing rules will continue to apply. However, considering the fact that segregated accounts may continue to exist under the new law, certain aspects of the existing framework will survive and continue to apply under the new regime. Existing practice may therefore still serve as valuable guidance to market participants.

Although the new law adopts a practical solution to a number of challenges that are presented in the context of an indirect holding system, Greek law on securities in book-entry form has been in a state of arrested development for almost 25 years, since the first introduction of intermediated shares. As a result, there is a greater need to align such provisions with the wider theoretical framework, in order to decrease legal risk for market participants. For instance, while the new law considers the rights of end-investors on the underlying securities to be proprietary, this creates potential conflict with established principles of property law, which do not recognise the concept of proprietary ownership over a pool of assets. In addition, the nature of such rights, when securities are held across national borders, is another aspect that has yet to receive the necessary attention. In conclusion, it is hoped that this new law will not only increase the attractiveness of the domestic securities market but also serve as an impetus for the further development of Greek securities law. ■

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