

Explanatory Circular on the Provisions of Law 4301/2014 (A' 223)

Following the entry into force of Laws 4235/2014 (Government Gazette A' 32) and 4301/2014 (Government Gazette A' 223), and in response to queries submitted by the Governing Committee of the Panhellenic Holy Foundation of Evangelistria of Tinos, the following instructions and clarifications are provided:

(a) From the wording of the second subparagraph of article 51, paragraph 6 of Law 4301/2014 (A' 223), as well as from the relevant explanatory report, it is clear that Law 349/1976 (A' 149) remains fully in force and is not affected by the repeal of the exemption of the Foundation from the legislative provisions concerning Holy Pilgrimages and ecclesiastical institutions (see Article 51, paragraph 6, point b of Law 4301/2014: "The preceding subparagraph shall not repeal Law 349/1976 (A' 149), as amended up to the publication of this law").

(b) The Foundation was not transformed, by virtue of article 51, paragraph 6, point a, of Law 4301/2014, into a Holy Pilgrimage or an ecclesiastical institution of the Holy Metropolis of Syros. Under Law 590/1977 (Government Gazette A' 146), the Holy Synod may issue a special Regulation, upon proposal of the competent Metropolitan to establish an "ecclesiastical institution" or to designate a specific church as a "Holy Pilgrimage" (articles 29, paragraph 2 and 59, paragraph 1). The possibility of issuing such a special regulation for the Foundation, whereby it would be declared an ecclesiastical legal entity under private law ("ecclesiastical institution" or "Holy Pilgrimage") and Law 349/1976 would be repealed or amended, in whole or in part, is not granted by article 51, paragraph 6 of Law 4301/2014 to the Holy Synod. Subparagraph (b) of the above provision explicitly provides that subparagraph (a) does not result in the repeal of Law 349/1976. The legal form of the Foundation and its supervisory relationship with the State cannot be altered in the future on the basis of article 51, paragraph 6, point a, of Law 4301/2014, nor may regulatory acts be issued that are contrary to the existing provisions of Law 349/1976.

(c) The provision of article 51, paragraph 6, point a, of Law 4301/2014, which repeals the exemption of the Foundation from the legislative provisions of Law 590/1977 concerning Institutions or Pilgrimages of the Church of Greece, in conjunction with the explicit provision of subparagraph b, means that the Governing Committee of the Foundation may apply only those provisions of the law regarding ecclesiastical institutions and Pilgrimages that are not contrary to Law 349/1976. These are exceptional provisions in favor of ecclesiastical institutions and Holy Pilgrimages due to their religious character (e.g. the prohibition of adverse possession against their property, article 62, paragraph 2 of Law 590/1977). This general wording is the legally sound choice, as an explicit enumeration of such exceptional provisions within the text of Law 349/1976, in view of the constant changes in the applicable legislation, would burden the legislature with the ongoing obligation to make corresponding amendments to Law 349/1976.

(d) There are no specific provisions in the Charter of the Church of Greece (Law 590/1977) regarding the administration, organization and management, the officials and personnel of ecclesiastical Institutions and Holy Pilgrimages of the Church of Greece and there is no question of their direct application to the Foundation. Should such provisions come into force in the future, their direct application to the Foundation would presuppose that it had previously been declared an "ecclesiastical institution" or "Holy Pilgrimage" by means of a

special Regulation of the Holy Synod, a fact which, as explained above, is not permitted under Law 4301/2014.

(e) There is no generally applicable legislative provision regarding Institutions in Law 590/1977 providing for supervision by the Holy Synod or the Metropolitan Council of the competent Holy Metropolis over matters of administration, organization or financial management of institutions and Pilgrimages. The provision of article 35, paragraph 5 of Law 590/1977, which provided for such supervision and had been introduced by article 8, paragraph 6 of Law 1700/1987 (Government Gazette A' 61), remained in force until its repeal by article 9 of Law 1811/1988 (Government Gazette A' 231), at which point article 35 of Law 590/1977 was restored to its original form. Article 35 of Law 590/1977 has now be replaced by Article 51, paragraph 1 of Law 4301/2014, which also omits any reference to supervision by the Church of Greece or the Metropolitan Council over Institutions and Pilgrimages. Even in the hypothetical case that such a general legislative provision regarding the supervision of the Holy Synod or the Metropolitan Council of the relevant Holy Metropolis to the ecclesiastical institutions and Holy Pilgrimages is decided, the above observations shall apply. The Foundation has not become, nor can it become, an ecclesiastical institution or Holy Pilgrimage following the entry into force of article 51, paragraph 6 of Law 4301/2014, and it will continue to be exempt from the scope of any future provisions providing for supervision by the Holy Synod or the competent Holy Metropolis.

(f) With regard to the personnel of the Foundation, their employment status remains unchanged, as defined in Law 349/1976 and as currently applies and has been interpreted by the case law of the Greek courts.

(g) Following the exemption of the Foundation from the generally applicable provisions concerning the organization, administration, and overall financial and accounting management of public sector entities and the general government, pursuant to article 68, paragraph 1, subparagraph 3 of Law 4235/2014 (Government Gazette A' 32), and for those matters for which no provision exists in Law 349/1976 or in the provisions to which it refers, a broad margin of substantive autonomy is granted to the Foundation for the regulation of such matters due to its religious character. The Governing Committee shall henceforth act as the general competent governing body of the Foundation, and its authority derives from the general provision of article 2 of Law 349/1976 for the regulation of such matters. Furthermore, the Governing Committee has the option/discretion, but not the obligation, to choose to apply, as appropriate, exceptional legislative or regulatory provisions governing such matters for other legal entities, including those applicable to ecclesiastical institutions or Holy Pilgrimages pursuant to article 51, paragraph 6, point a, of Law 4301/2014. Consequently, the possibility of applying provisions governing ecclesiastical Institutions and Holy Pilgrimages is added to the legal arsenal available to the Governing Committee of the Foundation, provided there is no relevant provision in Law 349/1976 and in view of the Foundation's exemption from the provisions governing the public sector and general government (article 68, paragraph 1, subparagraph 3 of Law 4235/2014). This general competence to regulate matters not addressed by Law 349/1976 had already been recognized by case law regarding the Governing Committee and is now explicitly granted by the legislature through the aforementioned provision of Law 4235/2014.

In conclusion, the Foundation continues, following the new provisions of Law 4301/2014, to be a legal entity under public law with administrative and managerial autonomy and an enhanced degree of self-governance, it is supervised exclusively by the State through the

Minister of Education and Religious Affairs and is governed by Law 349/1976. To date, the Foundation has been exempted from the scope of application of general legislation governing public law entities not merely because it is a self-financed public law legal entity, but primarily due to its dual national and religious character. The provision of article 51, paragraph 6 of Law 4301/2014 must be read in conjunction with article 68, paragraph 1, subparagraph 3 of Law 4235/2014 (Government Gazette A' 32), pursuant to which the Foundation was exempted from provisions concerning the organization, administration, management, personnel and officials of entities belonging to the public sector and general government, and this means that the Governing Committee, as the decision-making (managerial and representative) body of the self-governed Foundation, has the ability/discretionary authority to invoke, for specific matters not regulated by Law 349/1976, provisions applicable to ecclesiastical institutions and Holy Pilgrimages of the Church of Greece, provided that they are not contrary to Law 349/1976.