

Regulatory Update

Newsletter



July 2014

House of Representatives passes the Alternative Investment Funds (AIF) law of 2014

On Thursday 10 July 2014, the House of Representatives passed a Law ("the Law") concerning the Alternative Investment Funds (AIF).

The new legislation will replace the existing law on International Collective Investment Schemes (ICIS) of 1999. The supervision of AIFs will be transferred from the Central Bank of Cyprus (CBC) to the Cyprus Securities and Exchange Commission (CySEC).

The new Law is modernizing the existing legal framework by opening the market to the registration of new type of funds, other than private collective investment schemes. Under the new legal framework, the existing ICIS will be able to keep their structure and continue to operate as Alternative Investment Funds with limited number of persons, or to be transformed into an Alternative Investment Fund.

With the enactment of this Law, Cyprus now offers the full spectrum of legislative framework to all fund products (UCITS and non UCITS) and provides fund managers to structure as Alternative Investments Fund Manager as presented in the relevant EU directive or a MiFID compliant Investment Firm, both offering, EU passporting ability.

Main provisions of the AIF Law of 2014

As mentioned above, the Law provides for AIFs without any limitations as to the number of investors and AIFs with limited number of persons. The main provisions of each type are listed below:

AIFs

- **An AIF can take one of the following legal forms:**
 - Common fund
 - Fixed or Variable capital company
 - Partnership
- **Management of AIFs:** An AIF can be self-managed (only in the case of a company) or appoint a management company. It is noted that depending on the value of the assets of the AIF an Alternative Investment Fund Manager (AIFM) may need to be appointed.
- **Custodian:** AIFs must appoint a custodian for safekeeping and cash monitoring. The custodian can be in an EU member state or a third country, subject to CySEC's approval. The custodian can be a credit institution or an investment company or another category of institution that is eligible to be a custodian. An AIF may be exempted from the requirement to appoint a custodian in the case its assets are not eligible for safekeeping (e.g. real estate).
- **Marketing of AIFs:** Can be marketed to well-informed/professional investors or to retail investors.
- **Umbrella funds:** The Law allows the establishment of an AIF with various different investment compartments, each one of which will have its own investment policy. This entails complete legal and accounting segregation of assets and liabilities within the same AIF.

- **Listing of AIFs:** An AIF may be listed but not traded, on a recognized stock exchange in the EU or in a third country. In addition, an AIF marketed to retail investors may be listed and traded on a recognized stock exchange in the EU or in a third country.
- **Capital requirements:** AIFs are subject to minimum capital requirements. The minimum share capital is expected to be €125.000 or €300.000 in case of a self-managed fund.
- **Investment policy:** CySEC has the right to impose investment restrictions, through the issue of relevant Directives, for risk spreading and liquidity.
- **Licensing process:** In order for a license to be obtained, an application package needs to be submitted for approval to CySEC. The main components of the application package include information on the fund manager (if not self-managed), the custodian, the board of directors (in case of a company), the Prospectus, the Key Investor Information document (if necessary), financial statements, Procedures Manual, etc.
- **Reporting requirements:** The main reporting of an AIF includes the half yearly report, which includes non audited financial information and needs to be submitted to CySEC two months following the end of the six month period and the annual report, which includes information regarding the fund and its activities as well as the audited financial statements and needs to be submitted to CySEC six months following the financial year end of the fund. These reports together with the Prospectus of the fund should be made available to the investors.
- **Limitation on the number and type of investors:** The number of investors in the Fund may not exceed 75 and they need to be well-informed/professional investors.
- **Management of AIFs with limited number of investors:** An AIF can be self-managed (only in the case of a company) or appoint a management company (i.e. an investment firm).
- **Marketing of AIFs with limited number of investors:** Can be marketed only to well-informed/professional investors.
- **Umbrella funds:** The Law allows the establishment of an AIF limited number of investors with various different investment compartments, each one of which will have its own investment policy. However, the limitation on the number of investors is applicable to the whole scheme.
- **Exemption from the requirement to appoint a custodian:** In case the total assets of the fund are less than €5 mln or the fund has up to 5 investors or the assets are not eligible for safekeeping (e.g. real estate), then the fund may be exempted from the requirement to appoint a custodian.
- **Investment policy:** No investment restrictions will be imposed.
- **Licensing process:** In order for a license to be obtained, an application package needs to be submitted for approval to CySEC. The main components of the application package include information on the fund manager (if not self-managed), the custodian (if applicable), the board of directors (in case of a company), the Private Offering Memorandum, financial statements, etc.
- **Reporting requirements:** An AIF with limited number of investors should prepare an annual report, which has to be reviewed by independent auditors, and which includes information regarding the fund and its activities as well as financial information. The annual report has to be submitted to CySEC one month following the reporting period, and to be made available to the investors. In addition, the AIF with limited number of investors is expected to submit, on a quarterly basis, a report to the investors of the fund

AIFs with limited number of investors

A Fund can take the form of an AIF with limited number of investors, as long it does not fall within the provisions of the AIFM Law of 2013. This means that the assets of the Fund do not exceed €100 mln with leverage or €500 mln without leverage and no redemption rights exercisable during a period of 5 years following the date of the initial investment.

An AIF with limited number of investors can take one of the following legal forms:

- Common fund
- Fixed or Variable capital company
- Limited Liability Partnership

which will include information on their investment (e.g. NAV, commissions, etc).

Our Team

PwC has a multi-disciplinary team of specialists who can assist you in all aspects of setting up an AIF, the licensing process and the ongoing maintenance of the Fund.

Our dedicated Funds team has a wide and in-depth knowledge of the local Laws and requirements and, coupled with their international Financial Services experience, can assist you with any challenges you face in setting up and maintaining an AIF and obtaining the relevant licenses.

Our expert tax team has extensive experience in advising on tax planning and international tax structuring and can support you in such matters when setting up the AIF.

Our Services

Licensing application to the Regulator

Choosing the right form of your AIF - We examine the alternative forms that the fund can take so that it meets your requirements.

Preparation of the application package - We can prepare the full application package that needs to be submitted to the Regulator. During this process, our experienced team will advise you on how better to structure your operations and will assist with the preparation of all the necessary documents to be included in the application package.

Follow-up of the processing of the application - We can assist you in replying to any queries or providing additional clarifications as requested by the CySEC during their examination of the application.

Direct and Indirect Tax services

Tax effectiveness - We provide a comprehensive set of Direct and Indirect Tax compliance and advisory services. This ensures that the fund is set up in a tax efficient manner and is compliant with all tax

requirements in Cyprus and abroad. Our services cover both corporate and individual taxes.

Legal support

Incorporation of the entity - We provide assistance and support with the incorporation of the entity to be licensed as an AIF, including the drafting of the constitutional documents.

Ongoing legal support - We provide legal support both during the fund's application process and operation (e.g. preparation of agreements).

Administration services

Provision of ongoing administration services - We have developed systems and procedures to ensure that our fund administration is executed in an efficient and cost effective manner. Our services include:

- Fund Accounting, Management Reporting and Net Asset Valuations including preparation of financial statements in accordance with International Financial Reporting Standards, cash management, etc.
- Unitholder Dealing and Registration including processing share transfers, subscriptions and redemptions, ensuring the fund is administered within the terms of the offering memorandum and CySEC requirements.
- Compliance and Regulatory reporting.
- Statutory and Secretarial Services, including provision of boardroom facilities and statutory secretary, completion of statutory returns, etc.

Assurance services

Annual audit and interim reviews – We provide on-going services with respect to annual statutory audit of the IFRS financial statements as well as interim review, should you wish to prepare interim financial statements on a quarterly and half yearly basis.

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