

Cyprus Alternative Investment Funds (AIFs)

INTRODUCTION

AIFs are defined as collective investment undertakings (and any investment compartments thereof), which collectively:

- (a) Raise capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of investors; and
- (b) Do not require authorization as a UCITS (Undertakings for Collective Investment in Transferable Securities) .

LEGAL FRAMEWORK

AIFs are governed by the Alternative Investment Funds Law of 2014 (the “AIF Law”) and are authorized and regulated by the Cyprus Securities and Exchange Commission (“CySEC”).

The AIF Law applies to AIFs established in Cyprus and regulates the role and responsibilities of persons engaged in the activity of AIFs such as custodians, directors and asset managers.

It is noted that entities such as holding companies, social security schemes covered by Law 59(I)/2010, entities covered by the law regulating Insurance Business 35(I)/2002, entities for occupational retirement, employee participation schemes or employee savings schemes, securitisation special purpose entities and approved investment companies of the Cyprus Stock Exchange are excluded from the scope of the AIF Law.

CATEGORIES OF AIFs

AIFs are categorized as follows:

- (A) AIF with unlimited number of investors (hereafter referred to as “**AIF-UNI**”) (which may be marketed to either (i) retail or (ii) well-informed and/or professional investors);
- (B) AIF with limited number of investors (being 75) (hereafter referred to as “**AIF-LNI**”) (which may be marketed to well-informed and/or professional investors).

Professional investor: Any investor that is considered and/or may be treated on request as a “professional client” within the meaning of the Markets in Financial Instruments Directive 2004/30/EC (MiFID). In general, “professional clients” are defined as clients who possess the experience, knowledge and expertise to make their own investment decisions and who are able to properly assess the risks that they incur in their investment decisions regarding the services products and transactions for which they are suited.

Well-informed investor: an investor who is not a professional investor and fulfills the following conditions: (a) Confirms in writing he is well-informed and aware of the risks associated with investing in the said AIF; and (b) Either (i) invests at least EUR 125,000 in the AIF or (ii) he is assessed as a well-informed investor with the necessary experience and knowledge to evaluate the appropriateness of his/her investment in the AIF in question by a credit institution falling within the scope of the Banking Laws of 1997, OR by a UCITS management company OR by an Investment Firm.

The most common category is the AIF-LNP, which represents the most lightly regulated investment product currently available in Cyprus. It is noted that with the exception of Parts VI, VII and VIII, as well as of certain other sections of the AIF Law applicable to this category mutatis mutandis, the AIF Law does not apply to AIF-LNP. As a result, an AIF-LNP is more lightly regulated in the sense that it is:

- Not subject to investment restrictions
- Not subject to minimum capital requirements
- Not subject to the marketing rules as applicable to an AIF-UNP (but subject to different rules as specified by CySEC Directive(s))
- Not subject to certain investor disclosure, marketing communication rules and other reporting obligations as applicable to an AIF-UNP (but subject to different rules as specified by CySEC Directive(s))
- Subject to less stringent requirements as to the contents of their prospectus

AIF – UNI

Legal Form

In accordance with the AIF Law, an AIF-UNI may be set up in one of the following legal forms:

- (a) as a Common Fund (“CF”);
- (b) as an Investment Company in the legal form of a limited liability company with shares (with fixed or variable capital) (“ICFC” or “ICVC”);
- (c) as a Limited Liability Partnership (“LLP”)

Management of AIF-UNI

An AIF-UNI formed as an Investment Company may either be:

- (A) self-managed provided one of the specified conditions in the AIF Law applies, OR
- (B) be managed by an external manager who is an Alternative Investment Fund Manager (“AIFM”) authorized pursuant to the Alternative Investment Fund Managers Law of 2013 (“AIFM Law”), or who operates in accordance with the provisions of the AIFM Law, or who is a UCITS Management Company, or a Cyprus Investment Firm (CIF).

Each self-managed AIF-UNI and each external manager of an AIF-UNI is subject to registration in accordance with the AIFM Law in the Special Register of sub-threshold AIFMs maintained by CySEC.

Minimum capital: An AIF-UNP formed as an Investment Company is subject to a minimum capital requirement of at least EUR 125,000 or EUR 300,000 where it is self-managed.

AIF – LNI

Legal Form

In accordance with the AIF Law, an AIF-LNI may be set up in one of the following legal forms:

- (a) as an Investment Company in the legal form of a limited liability company with shares (with fixed or variable capital) (“ICFC” or “ICVC”) ;
- (d) as a Limited Liability Partnership (“LLP”)

The establishment of an AIF-LNI is allowed provided its incorporation documents (or partnership agreement, as the case may be):

- (a) Expressly states that the fund is only addressed to professional and/or well-informed investors;
- (b) Limits the number of investors (including co-holders) to 75 (for the calculation of which investors in all investment compartments are taken into consideration);
- (c) Does not allow the issuance of bearer shares.

Management of AIF-LNI

An AIF-LNI formed as an investment company may either be:

- A. self-managed by their board of directors, or
- B. be managed by an external manager who can be (i) a UCITS Management Company, (ii) a Cyprus Investment Firm (CIF), (iii) a company established in a third country, authorized to provide portfolio management services and be subject to prudential regulation regarding the provision of that service (where the portfolio of the AIF-LNI includes financial instruments), or (iv) any company, whose incorporation documents state that it has the sole purpose of the provision of the portfolio management service to the specific AIF-LNI (only where the portfolio of the AIF-LNI does not include any financial instruments. The appropriateness of the external manager in such cases is

assessed by CySEC on the basis of information submitted with the application for establishing the AIF-LNI).

An AIF-LNI must not fall within the scope of the Alternative Investment Fund Managers Law of 2013 (“AIFM Law”), nor shall it be managed by an Alternative Investment Fund Manager (“AIFM”). If an AIF-LNPI is put under the management of an AIFM or if a self-managed AIF-LNI falls under the provisions of the AIFM Law, it is obliged to comply with the provisions of the AIF Law related to an AIF-UNI marketed to professional/well informed investors, as well as with the provisions of the AIFM Law (including registration provisions).

An AIF-LNI formed as a partnership must always appoint an external manager who shall undertake the duties of the General Partner.

Open Ended vs Close Ended

An AIF can be established either as an:

- A. Open-ended fund, where investors have the right to redeem/repurchase their units upon request at (i) any time or, (ii) at regular intervals not exceeding one year; Or, as a:
- B. Closed-ended fund, where investors have the right to redeem/ repurchase their units upon request at (i) regular intervals exceeding one year but less than five years (with the exception of venture capital funds constituted in accordance with EU Regulation 345/2013 in which the initial period of redemptions may be extended up to 10 years from their incorporation date) or, (ii) at a specific point of time which is defined in the fund rules or the instruments of incorporation of the AIF.

DEPOSITARY FUNCTION (CUSTODIAN)

The assets of AIFs shall be entrusted for safe-keeping to a depositary. The depositary must:

- A. have its registered office in Cyprus, or in any other Member State of the European Union or in a third country, provided CySEC has signed a Memorandum of Understanding and Exchange of Information with the competent authorities of such third country; and
- B. be either a credit institution, or investment firm or other institution which is subject to prudential regulation and ongoing supervision and which falls within the categories of institutions which have been defined by their home state as eligible to perform depositary functions.

It is noted that for the safe keeping of assets which are not financial instruments within the meaning of the Investment Services and Activities and Regulated Markets Law of 2007 as amended, the depositary’s role may be undertaken by any entity which performs depositary functions within the context of its professional or business activities for the performance of

which is subject to professional registration recognized by legal, regulatory or administrative provisions or by rules of professional conduct and which can provide sufficient financial and professional guarantees that it will perform its depositary duties sufficiently and meet the commitments associated with such duties.

By way of derogation of the provisions of the AIF Law requiring the appointment of a depositary, a depositary may not be appointed under certain circumstances (e.g. where the AIF's total assets are not eligible for custody).

TAX

AIFs formed as investment companies are subject to tax like any other Cyprus resident company. A company is considered to be tax resident in Cyprus if its management and control is exercised in Cyprus. Cyprus becomes one of the most attractive and competitive tax jurisdictions worldwide.

The main favorable provisions and factors are:

- Corporate Income Tax rate of 12.5%
- Zero tax on profit from disposal of shares and other qualifying titles
- Dividend income is tax exempt (subject to certain criteria)
- No withholding taxes on any payments made from Cyprus to non-Cyprus resident persons (such payments include dividends, interest and royalties)
- Access to benefits of the Cyprus double tax treaty network and relevant EU Directives (helping to eliminate or significantly reduce foreign withholding tax on payments made to a Cyprus resident company)
- No CFC rules
- No thin capitalization rules

WHY CYPRUS

Cyprus has the tools to develop as a preferred platform for the cross border placement of Alternative Investment Funds (AIFs) to professional investors in the EU, while concurrently allowing non-EU managers to access the European market by choosing Cyprus as their Member State of Reference and entrance point into the EU.

- Member of the EU and Eurozone
- On the white list of the OECD
- FAFT approved country, which is relevant for investors and managers alike
- Favorable tax regime which is very efficient for funds and fund investors
- Rigorous anti-money laundering regulations
- Modern and transparent legal system based on common law
- Lower cost propositions, without compromising quality and timeliness of service



TOTALPRO

Services



- Multilingual and highly educated workforce possessing international professional qualifications
- Highly skilled service providers specialised in servicing the fund industry, offering a wide range of customised services in fund and acquisition structuring, fund administration, custody and audit services
- Strategically located in the eastern Mediterranean Sea in the middle of three continents – namely Asia, Europe and Africa – and offering a gateway to the Middle East
- A great place to live and work, offering high calibre business services, efficient tax and cost environment, as well as security and safety for the whole family, culture, history and fabulous weather.

How can Totalpro Services Ltd help?

We can act as your one-stop shop that can cater to all your business needs as it relates to the authorization and operation of your AIF.

Our services include

- advising on the set up and structuring of new AIFs
- preparing the application (including assisting with the constituent documents and offering memorandum) and liaising with CySEC and the Registrar of Companies (where applicable)
- compliance, internal audit, audit and tax services throughout the life of the AIF

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