

# THE CYPRUS ALTERNATIVE INVESTMENT FUNDS

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## INTRODUCTION

The continuous efforts by Cyprus' regulatory authorities and industry professionals to upgrade and modernise the country's legislative and regulatory framework for funds are resulting to Cyprus emerging as a new investment fund centre in Europe.

On 10th of July 2018, the Cyprus parliament approved the new Alternative investment Funds Law 2018 Law which came into force on the 31st of July 2018, repealing the pre-existing regime.

The new AIF Law constitutes a ground-breaking development for Cyprus AIFs as it incorporates a combination of provisions influenced by the respective legislative frameworks of other jurisdictions excelling within the investment funds industry.

Among its key innovations, the New AIF Law introduces the Registered Alternative Investment Fund (RAIF). This is a major advancement in the field, constituting Cyprus AIFs more attractive and more flexible, as it will significantly reduce the time and cost for establishing an AIF in Cyprus.

Another significant reform is the possibility to structure an AIF as a limited partnership (LP) with inherent legal personality, resulting in the AIF having a separate legal personality compared to the AIFs structured as traditional limited partnerships.

Moreover, Cyprus now offers easy EU passporting to the fund management industry providing unparalleled opportunities for cross border and global fund distribution. This is expected to attract EU and non-EU companies interested not only in having access to European Union investors, but also in gaining the badge of an EU compliant manager. Re-domiciliation of funds is also possible.

Besides, it is well known that Cyprus has long been a jurisdiction of choice for companies and individuals in search for an ideal location to structure their investments into Europe, Middle East, Africa, Russia and the CIS. Lately there is also a strong interest in registering alternative investment funds in Cyprus from India, China and Israel. The comparatively low costs and high quality of services make Cyprus an attractive funds jurisdiction and restructuring of existing companies under the new AIF Law can resolve many of the problems posed by increased regulations. Cyprus offers now one of the most international, business friendly and cost-effective environments for fund administration in the EU.

There are also upcoming provisions for funds administrators, as well as mini managers who are allowed to operate below current AIF manager threshold. The country is now on par with other top fund domiciles and the number of service providers is set to grow exponentially thanks to the upgraded legal framework that provides a winning combination of investor protection and freedom of operation for asset managers.

## DEFINITION OF AN AIF

An Alternative Investment Fund (AIF) is defined as a Collective Investment Scheme, including its investment compartments, which:

- Raise capital from a number of investors with a view to investing it according to a defined policy for the benefit of those investors;
- Has the exclusive purpose of the collective investment of its available capital in assets to ensure for the investors the benefit of the results of the management of their assets;
- Has not been authorised as a UCIT under the UCITS IV Directive (2009/65/EC).

## TYPES OF AIFS

AIFs are categorized into the following three types:

### I. AIFS WITH UNLIMITED NUMBER OF PERSONS

- Can take the legal form of a Common Fund (CF), Variable Capital Investment Company (VCIC), Fixed Capital Investment Company (FCIC) or Limited Partnership with or without legal personality (LP)\*;
- May be marketed either to retail or well-informed and/ or professional investors;
- Minimum AUM within the first 12 (+12) months should be EUR 500,000;
- Can be self-managed (in the case of a company or a limited partnership with separate legal personality) or appoint a fund manager;
- For self-managed AIF a minimum share capital requirement of €125.000 in cash or cash equivalent or €300.000 if it falls within the AIFMD thresholds;
- There are no restrictions as regards the assets under management if an AIFM is appointed. Up to 100ml including leverage or 500ml with no use of leverage and no redemption rights for 5 years if no AIFM is appointed;
- Mandatory appointment of a local Depository if managed by an AIFM; Cyprus, EU or in a third country if AIFM not appointed.

### II. AIFS WITH LIMITED NUMBER OF PERSONS

- Cannot exceed more than 50 investors/ unit holders;
- Can only be marketed to professional and/ or well-informed investors;
- Can take one of the following legal forms:
  - a. Variable/ Fixed Capital Company (VCIC/ FCIC);
  - b. Limited Liability Partnership (LLP);
- In the legal form of a company or LP with separate legal personality the AIF can be either externally or self-managed. Have a minimum share capital requirement of €50.000 if self-managed. If externally managed there is no minimum share capital requirement;
- Minimum AUM within the first 12 (+12) months should be EUR 250.000.

The assets under management up to 100ml including leverage or 500ml with no use of leverage have no redemption rights for 5 years.

- Cyprus, EU or depository based in a third country. May be waived if one of the following criteria is met:
  - a. Total assets of the Fund <5m;
  - b. Up to 5 investors;
  - c. No more than 10% of total assets are subject to custody and; investors up to 25 and; minimum investment per investor is at least equal to EUR 500.000.

### III. REGISTERED AIFS (RAIFS)

- Can take the legal form of a Common Fund (CF), Variable Capital Investment Company (VCIC), Fixed Capital Investment Company (FCIC) or Limited Partnership with or without legal personality (LP);
- Can operate as open or close ended, and its units may be listed;
- Can only be marketed to professional and/ or well-informed investors;
- Unlimited number of investors;

- RAIFs are not required to obtain authorization from the regulator (being the Cyprus Securities and Exchange Commission "CySec") but are registered under the "umbrella" of their external manager and are indirectly subject to regulatory oversight through its AIFM. RAIFs can be managed by a full scope Cyprus or EU Alternative Investment Fund Manager (AIFM). To this respect, all RAIFs should be externally managed by an investment manager, who will in turn notify the CySec about the creation of the RAIF and as a result the RAIF will be included in the relevant Register maintained by the CySec;
- Not subject to minimum share capital requirement;
- Minimum AUM within the first 12 (+12) months should be EUR 500,000;
- There are no restrictions as regards the assets under management if an AFM is appointed. Up to 100ml including leverage or 500ml with no use of leverage and no redemption rights for 5 years if AIFM is not appointed;
- Mandatory appointment of a local Depository if managed by an AIFM; Cyprus, EU or in a third country if AIFM not appointed;
- Provided a RAIF is a closed-ended limited partnership and invests more than 70% in illiquid assets, it may be managed by a sub-threshold AIFM which is subject to prudential regulation, a MiFID Investment firm and UCITS management company established in Cyprus or any EU Member State.

## LEGAL FORMS OF AIFS

An AIF can take one of the following forms:

- Fixed Capital Company (FCIC);
- Variable Capital Company (VCIC);
- Common Fund (CF);
- Limited Partnership with or without legal personality (LP) \*

\* A new form of Limited Partnership has been introduced with legal personality. The General Partner may elect upon registration to have legal personality without affecting its tax transparency status. If such election is made, this will allow the AIF as Limited partnership to be internally-managed.

## INVESTOR CLASSIFICATIONS

The investor of an AIF can be:

### I. PROFESSIONAL INVESTOR

An investor that is considered, or may be treated on request, as a professional client as defined in the Markets in Financial Instruments Directive 2014/65/EC (MiFIDII) which includes:

- Authorised entities (i.e. credit institutions, investment firms, insurance companies, funds etc.); or
- Large undertakings being companies meeting two of the following:
  - a. Balance sheet total of EUR 20 million;
  - b. Net turnover of EUR 40 million; or
  - c. Own funds of EUR 2 million; or
- National and regional governments, public bodies, central banks, international and supranational organisations, etc; or
- Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

### II. WELL-INFORMED INVESTOR

A well-informed investor is an investor not considered to be a professional investor but who confirms in writing that he/ she is a qualified investor aware of all risks involved in the investment of the relevant AIF; and meet one of the following two criteria:

- His/her investment in the AIF is at least €125.000; or
- He/she has obtained an attestation from either a licensed bank/credit institution, or an investment firm authorised under MiFID, or a management company authorised under the UCITS IV Directive, certifying the investor's experience and knowledge in order to evaluate the investment opportunity.

### III. RETAIL INVESTOR

Any individual who does not meet the requirements of a "professional" or "well-informed" investor.

## INVESTMENT MANAGER REQUIREMENTS

A Variable Capital Company (VCIC) a Fixed Capital Company (FCIC) or a Limited Partnership with separate legal personality (LP) can be either self-managed, or it may be externally managed. A Common Fund (CF) and a Registered AIF (RAIF) must always appoint an external manager.

For AIFs with Unlimited Number of Persons the External Manager must fulfil the following licensing requirements:

- If established in Cyprus, the external manager must be authorised under the Alternative Investment Managers Law or the Investment Services and Activities and Regulated Markets Law or be a Management Company of the Open Ended Undertakings in Collective Investments Law;
- If coming from another EU Member State, the external manager must be authorised either under the AIFM Directive 2011/61/EU (AIFMD) or the UCITS V Directive;
- If established in a third country, the manager will need to comply with the relevant provisions of the Alternative Investment Fund Managers Directive rules on third country undertakings.

For AIFs with Limited Number of Persons the licensing requirements for an external manager depend on the assets under its management. An AIFLNP does not need to appoint an external manager if the assets under its management do not exceed the limits laid down in section 4(2) of the Alternative Investment Fund Managers Law of 2013 (AIFM Law):

- **Assets under management, including any assets acquired through use of leverage, in total do not exceed a threshold of EUR 100ml;**
- **Assets under management in total do not exceed a threshold of EUR 500ml when the portfolios are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment.**

If the assets under management exceed the limits laid down in section 4(2) of the Alternative Investment Fund Manager Law, then an external manager must be appointed who is:

- A UCITS management company incorporated in the Republic and which may manage collective investment undertakings other than UCITS; or
- A Cyprus Investment Firm (CIF); or
- An AIF authorised in the Republic for the management of AIF investments whose portfolio assets do not exceed the limited provided in section 4(2) of the AIFM Law and are subject to effective prudential regulation and supervision under the relevant legislation of the Republic; or
- A company originating in a third country which has been authorised to provide investment management services; or
- Any company which in accordance with its statutes has the sole purpose of managing the portfolios of that AIFLNP. Its suitability is evaluated by CySEC; or
- A UCITS management company authorised in a member state outside the Republic under its legislation incorporating Directive 2009/65/EC; or
- An AIF authorised in another member state to manage investment of AIF whose portfolio assets do not exceed the thresholds set out in section 3 (3) of Directive 2011/61/EU; or
- An investment firm established in a member state other than the Republic.

In the case of a self-managed AIF (only VCIC, FCIC & LP with separate legal personality), one of the following requirements must be met:

- Assets of the AIF's portfolio including those obtained with leverage do not exceed €100 million;
- Assets of the AIF's portfolio do not exceed € 500 million for AIFs with no leverage, and for which shareholders cannot acquire their share (i.e have no redemption rights) for the first five years since the original investment.

RAIFs can be managed by a full scope Cyprus or EU Alternative Investment Fund Manager (AIFM). Subject to certain provisions a RAIF may be managed by managers other than AIFMs, established in Cyprus or in another EU Member State that are:

- Investment Firms; or
- UCITS Management Companies; or
- Other types of Fund Management Companies authorised to manage collective schemes;
- In such event, the RAIF must necessarily be established as a closed -ended limited partnership and invest more than 70% of its assets in illiquid investments.

## ADMINISTRATOR REQUIREMENTS

An AIF must appoint a Fund Administrator in Cyprus. The Administrator may subcontract a part of its duties outside Cyprus.

The Administrator's duties include:

### I. FUND ADMINISTRATION SERVICES

#### • Representation Services

- Appointment of an Executive Director(s)/Non-Executive Director(s);
- Appointment of a Company Secretary;
- Provision of a Registered Office Address in Cyprus.

#### • Back Office/Transfer Agent Services

- Maintaining full records of subscriptions/redemptions;
- Maintaining the AIFs bank account registers;
- Safekeeping the common seal;
- Maintaining the corporate registers;
- Preparation of the AGM;
- Processing of cash subscriptions.

#### • Middle Office/Trade Confirmation Process

- Verify the portfolio positions on the respective dealing day;
- Obtain necessary authorisations before processing the trade;
- Issuing trade instructions to the broker;
- Issuing confirmations for settlement of trade to the custodian;
- Undertaking cash reconciliations with the custodian;
- Updating security/ledger/register.

### II. REPORTING SERVICES

#### • Statutory Reporting to the Regulator

- Submission to the CySEC the 6-month non-audited financial statements (2 months after the 6-month period i.e. by 31 Aug of same year);
- Submission to the CySEC the yearly audited financial statements (6 month after the year end i.e by 30 June of the next year);
- Reporting to the CySEC on a bi-annual basis;
- Monthly or quarterly Statistical Reporting to the Central Bank of Cyprus.

#### • Investment Reporting

- Weekly/Monthly NAV reporting to Investors as described in prospectus;
- Weekly/Monthly Reporting of NAV to the Investment Manager.

### III. ACCOUNTING AND COMPLIANCE SERVICES

#### • Fund Accounting and Valuation

- Preparation of weekly or monthly NAV calculations as described in prospectus;
- Preparation of monthly accounting records;
- Undertaking cash and nominal reconciliations with Custodian;
- Processing of fees payable to the Cyprus Investment Manager, Cyprus Custodian, Legal advisors and Cyprus Auditor;
- Calculation of NAV per investor share;
- Preparation of bi-annual and annual financial statements under IFRS.

#### • Tax Compliance Services

- Preparation and submission of the provisional tax assessment;
- Preparation and filing of income tax returns;
- Completion and filing of CRS and FATCA reports.

## DEPOSITARY REQUIREMENTS

The assets of the AIF shall be entrusted to a depositary which has its registered office in Cyprus, an EU member state or a third country.

The eligible depositaries for an AIF include Credit Institutions, Investment Firms or an institution under prudential regulation and supervision and recognised by the Member State as eligible to be appointed as depositaries.

AIFs managed by an AIFM must have a depositary located in Cyprus.

AIFs managed by any other entity must have a depositary located in Cyprus or in any other EU member state or third country with which Cyprus has signed a cooperation agreement, among some other requirements.

AIFs must appoint a single and independent depositary whose responsibilities include:

- Safekeeping fund's assets by holding in custody of all financial instruments, which can be registered in the custodian's books and those that can be physically delivered. Also, for other assets, the depositary must verify ownership of the fund and maintain an up-to-date record of all assets;
- Cash flow monitoring in regard to investors and service providers, ensuring the fund's cash flows are booked at eligible entities and are accurately monitored;
- Oversight functions ensuring compliance with the fund's rules and instruments of incorporation, valuation procedures and that they comply with applicable law and regulations.

An AIF with a limited number of persons can be exempted from the requirement to appoint a depositary in case:

- Its total assets are less than EUR 5 million, or;
- The fund has up to 5 investors, or;
- 90% of its assets are not subject to custody and the number of investors are limited to 25 and provided each investor subscribes a minimum of EUR 500,000.

## REPORTING REQUIREMENTS

The main reporting requirements 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 investors.

In the case of an **AIF with Limited Number of Persons** an annual report should be prepared. This needs to be reviewed by independent auditors, and it has to include 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 it has to be made available to investors. In addition, a report to the investors is to be submitted on a quarterly basis with information on the investments.

## UMBRELLA FUNDS

The AIF Law allows AIFs to be set up with several investment compartments, each constituting a separate pool of assets. Such an AIF represents a single legal entity. The different investment compartments have to issue units corresponding solely to the assets of each one. Therefore, asset value per investment compartment may differ. Unit holders of a specific compartment shall only have rights arising from the assets to the specific compartment, while each compartment shall be liable for the obligations arising solely from its constitution, operation or dissolution.

Different compartments within a single AIF can invest in each other only if this is allowed in its constitutional documentation, under the condition of certain defined investment restrictions.

## LISTING IN THE STOCK EXCHANGE

AIFs with Unlimited Number of Persons can only be listed on a recognised stock exchange, and AIFs marketed to retail investors can be traded.

Key Benefits of Listing in the Cyprus Stock Exchange:

- EU Regulated and recognised exchange;
- Improved fund profile and credibility to investors;
- Fast and straightforward listing procedures with minimum bureaucracy;
- Competitive pricing policy for investors and market participants;
- Potential to increase investor base;
- Effective marketing for listed funds;
- High level of visibility and transparency to investors;
- Skilled and professional staff;
- Advanced technology and infrastructure;
- Constant review of rules and diversification of services;
- Access to a rapidly developing new regional market and; one of the fastest growing fund centres in Europe.

Listing Fee or application fee for the Tradable Collective Investment Schemes is € 1.000 and for Non-Tradable Collective Investment Schemes € 500. There is an annual subscription fee of € 1.000 single funds and umbrella funds, plus, each class or sub-fund under the umbrella must pay € 400.

The key requirements for being listed in the **Tradable Collective Investment Schemes Market** are:

- License obtained from the competent authorities of the country of origin;
- Assets of at least € 200.000;
- Appointment of at least one Market Manager on a continuous basis for the purpose of sufficient trading;
- Submission of the registry of unit holders or shareholders to the central depository of the Cyprus Stock Exchange.

In the case of an Exchange Traded Fund (ETF), the index provider must have granted the ETF issuer a license to legally use an underlying index in the name of the ETF.

For **Non-Tradable Collective Investment Schemes**, the requirements to be listed in the market are:

- License from the competent authorities of the country of origin
- Assets of at least € 200.000

## TAXATION

Cyprus is becoming a destination of choice in the EU for Fund Managers and Management Companies for the following reasons:

### I. FUND TAXATION

- Corporation Tax at 12,5% on profits;
- Notional Interest Deduction on new equity (i.e. a deduction granted in respect of new equity issued and fully paid) -capped at 80% of taxable profit;
- Excluded from Tax:
  - Dividends received
  - Profits on sale of securities
  - Capital gains arising from sale of property abroad
  - Capital gains from sale of shares of foreign property companies
- Effectively only interest received is taxed at 12,5%;
- No subscription tax on the net assets of the fund;
- May be exempted from VAT depending on its activities.

### II. INVESTOR TAXATION

#### FOREIGN INVESTORS

**No withholding tax on dividends**

**No taxation on redemption of units**

**No deemed distribution restrictions**

#### RESIDENT INVESTORS

**If the investor is a company, there is no withholding tax on dividends**

**If the investor is a physical person withholding tax on dividends 17%**

**No taxation on redemption of units**

Senior employees and executives of investment fund management companies or internally managed investment funds may opt for a new mode of personal taxation.

One of the lowest income tax regimes in Europe with taxation reaching up to a maximum of 35%. Fund managers enjoy a 50% exemption if income for a ten-year period from date of first employment in Cyprus (if salary is over EUR100.000).

Fund Managers enjoy a 20% or EUR8.550 of remuneration (the lower) exemption of income earned for a five-year period from date of first employment in Cyprus- up to 2020.

Subject to conditions their variable employment remuneration which is effectively connected to carried interest of the fund managing entity may be subject to Cyprus tax at the flat rate of 8% (with a minimum tax liability of EUR 10,000 p.a.) for a period of 10 years in total (subject to the annual election of the individual).

## REDOMICILIATION

Foreign entities have been able to redomicile in Cyprus since 2006. Companies engaged in licensed activities, such as fund management, must produce relevant consent for redomiciliation from the relevant authority in their country. Moreover, a company that intends to undertake licensed activities in the Republic of Cyprus should obtain the appropriate license from the local authorities before commencing activities.

Further to the above, public companies must submit to the Cyprus Registrar of Companies the following documentation:

- The company's most recent public offer for registration;
- If listed, evidence of consent from the foreign stock exchange allowing redomiciliation;
- A certified list of present shareholders.

## WHAT CAN WE DO FOR YOU

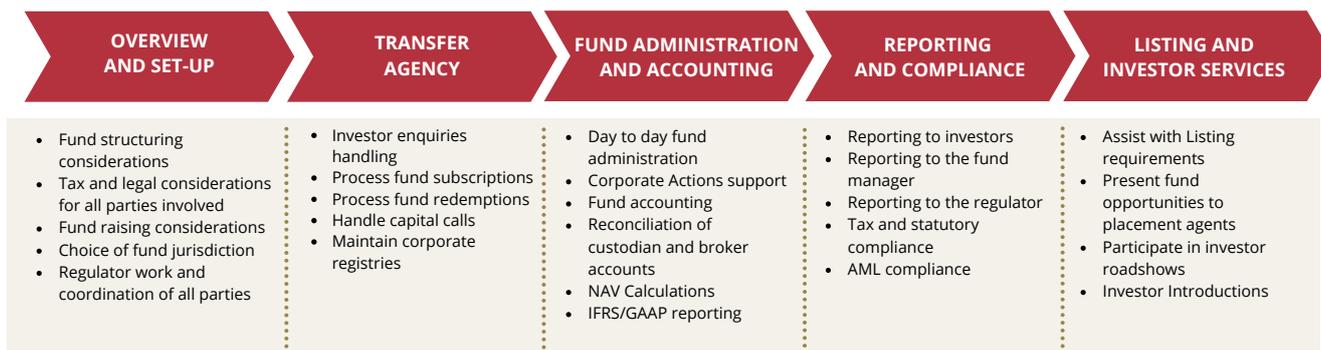
AIFs can be structured to meet the requirements of fund promoters and investors across the whole spectrum of options in terms of licensing process, number of investors, requirement for Minimum Capital, Minimum AUM, who can undertake the Fund Management function and the depositary requirements. This flexibility and cost-efficiency make the Cyprus AIF a very attractive vehicle for collective investments and holding of multiple classes of assets.

Capitalising on our experience in assisting in the licensing and administration of Alternative Investment Funds with diverse portfolios of investment globally we offer the structuring and set-up of funds and the provision of on-going management services. We offer our clients a single point of contact, located in a favourable time zone. We undertake to act as the coordinating party between the principals of the structure and all the professionals involved across all major jurisdictions. The added value of our service lies in the continuous monitoring and advising of clients regarding legislative and compliance requirements and changes, recommending appropriate solutions to safeguard their interests.

Furthermore, we have built strong professional relationships with the local regulatory and governmental bodies, banks and industry professionals, offering our clients with a competitive advantage and value added first class service. Our services cover the full range of Fund Administration, Transfer Agency as well the initial set up advice on Licensing and redomiciliation of existing funds. We offer our services in Cyprus, the UK, Cayman Islands, and the BVI.

**For a FREE Initial Consultation to discuss the specifics of your enquiry please contact Andreas Athinodorou on + 357 22057570 or [andreas.athinodorou@atgfunds.com](mailto:andreas.athinodorou@atgfunds.com)**

## ATG SERVICES



## YOUR TRUSTED SERVICE PARTNER

We pride ourselves for our service approach to our clients, the development of our people, our network of trusted associates and strive to continuously offer our experience and support to the communities which we operate in. We currently have around EURO 1bn Assets under Administration. We serve a number of significant investment structures with focus in Europe, CIS Countries, Middle East and the UK. ATG principals are founding members of the industry representation bodies - Cyprus Investments Funds Association (CIFA) and Cyprus Fiduciary Association (CyFA). Our companies are regulated by Institute of Certified Public Accountants of Cyprus ICPAC and the Cyprus Securities and Exchange Commission CySEC. Get in touch today to schedule a Free Consultation with us.