



Michalis Avraam
& Partners Limited
AUDITORS AND BUSINESS ADVISORS

Alternative Investment Funds - **Cyprus**



Alternative Investment Funds Cyprus

With the aim of modernizing and strengthening the Cyprus funds regime, the Alternative Investment Funds Law ("AIF Law") came into force in July 2014 and has repealed the International Collective Investment Schemes Law of 1999 ("ICIS Law") which was the former legislative framework for investment funds.

Under the provisions of the AIF Law, the Cyprus Securities and Exchange Commission ("CySEC") becomes the competent, regulatory and supervisory body for Alternative Investment Funds ("AIF's"), replacing the former regulator of International Collective Investment Schemes ("ICIS") which was the Central Bank of Cyprus.

WHAT IS AN AIF

An AIF is any collective investment undertaking, including its investment compartments which:

- raises capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors
- has not been authorized as a UCITS

Out of Scope

The AIF Law does not apply to the following entities:

- entities that fall within the scope of the open-ended UCITS law
- holding companies
- social security scheme that falls within the scope of the Social Insurance Law
- entities that fall within the scope of the Insurance Services and Other Related Issues Law
- entities for occupational retirement
- employee participation schemes and employee saving schemes
- securitization special purpose entities
- approved investment companies falling within the scope of the Securities and Cyprus Stock Exchange Law

TYPES OF AIF'S

The two main categories of AIF's are:

- AIF's available to unlimited number of persons which may be marketed to professional, well informed and retail investors
- AIF's available to limited number of persons (cannot exceed 75 investors) which may be marketed to professional and well informed investors

TYPES OF INVESTORS

There are three categories of investors:

- Professional Investor: any investor considered, or may be treated on request, as a professional client as defined in the Markets in Financial Instruments Directive 2004/39/EC ("MiFID")
- Well Informed Investor: every investor who is not a professional investor and fulfils the following:
 - Confirms in writing that he is a well-informed investor and that he is aware of the risks related with the proposed investment, and
 - either his investment in the AIF amounts, at least, to €125 000, or he is assessed as a well-informed investor, either by a banking institution, or by an Investment Firm, or by a UCITS management company and the above mentioned assessment shows that he has the necessary experience and knowledge to be able to evaluate the appropriateness of the investment in the AIF
- Retail Investor: any investor who does not meet the conditions required to be included in the professional or well informed investors category

FORMS OF AIF'S

An AIF may be set-up in one of the following legal forms:

1. As a mutual fund (common fund). Applies only for unlimited number of persons
2. As an investment company in the legal form of a limited liability company with shares registered under the Companies Law and licensed to operate under the AIF Law as:
 - Fixed Capital Investment Company, or
 - Variable Capital Investment Company
3. As a limited liability partnership registered under the Partnerships Law

MAIN NEW CHARACTERISTICS OF AIF'S Compartments

- An AIF may consist of more than one investment compartment each being subject to the provisions of the Law as a separate AIF
- Each investment compartment of the AIF may issue units which correspond to the assets of the specific compartment. The value of the units may vary by investment compartment
- The unit holders' rights derive from the assets of the relevant compartment they have invested in; each investment compartment is liable for the obligations created from its establishment and operations or its dissolution

Common Funds

- The Common Fund is a pool of assets collectively managed for the benefit of its unit holders which are co-owners of each of the assets and are liable only up to the amount of their contribution, which is expressed in units of the common fund
- The Common Fund is separated from the entity that manages it and is not liable for the obligations of this entity or its unit-holders, but is only subject to the obligations and the expenses provided for in the Law

Listing in stock market

The units of an AIF may be admitted for listing and the shares of a retail investor AIF (established in the form of an investment company) may be admitted to trading in a stock market that operates:

- in the Republic or in another member state; or
- in a third country, provided that the Securities and Exchange Commission has signed with the competent authorities of the third country a Memorandum of Understanding and Exchange of Information, in accordance with the relevant provisions of the specific market.

Public Offerings

With the introduction of AIF's there is now the possibility to make public offering of shares/units of funds. Previously the offering of ICIS shares/units was restricted to private placement

KEY SERVICE PROVIDERS Manager

The AIF may be self-managed, where it does not appoint an external manager, if it is established as an investment company and subject to certain conditions:

- The assets of the portfolio, including assets acquired through use of leverage do not exceed €100,000,000
- The assets of the portfolio, where no leverage is employed and the unit holders have no redemption rights during the first 5 years from initial investment, do not exceed €500,000,000
- The Directors or Members of the investment company decide not to appoint an external manager but to exercise internal management in accordance with the provisions of the Alternative Investment Fund Managers Law of 2013 ("AIFM Law")

In the case of Common Fund or Limited Liability Partnership it is mandatory to have an external manager.

An external manager means any of the following persons which manage an AIF:

- Alternative Investment Fund Manager ("AIFM")
- UCITS management company
- Cyprus Investment Firm ("CIF")

Depository (Custodian)

The assets of the AIF shall be entrusted for safe-keeping to a depository which:

- has its registered office in the Republic or in another member state of the EU or in a third country, provided that the Securities and Exchange Commission has signed with the competent authorities of the third country a Memorandum of Understanding and Exchange of Information, and
- is either a credit institution or investment firm or another category of institution which is subject to prudential regulation and ongoing supervision and which falls within the categories of institution which have been defined by their home state as eligible to be a depository.



The duties of the depositary are defined in the AIFM Law and in general include:

- ensure that the AIF's cash flows are properly monitored
- ensure the safe-keeping of AIF's assets
- ensure the compliance with current legislation

An AIF with limited number of persons may not appoint a depositary in case:

- total assets shall not exceed €5,000,000
- the instrument of incorporation (in case of investment company) or the partnership agreement (in case of limited liability partnership) of the AIF shall limit the number of its unit holders during the duration of the fund to up to 5 persons (considering all investment compartments of the fund)
- where the assets of the fund are not subject to custody

Fund Administrators

The administration of the fund includes the following services:

- legal and accounting AIF management services
- disclosure of information services and services to the unit-holders of an AIF
- valuation and pricing, including tax returns
- regulatory compliance monitoring
- maintenance of unit/shareholder register
- distribution of profits of the AIF
- unit/shares issues and redemptions
- contract settlements, including certificate dispatch
- record keeping

Auditors

The independent auditors will be engaged with the annual audit and tax obligations of the AIF in addition with other compliance and regulatory assignments as and when requested by CySEC in accordance with the AIF Law.

Legal Advisor

The legal advisor will draft the Memorandum and Articles of Association (in the case of an investment company) or the partnership agreement (in the case of limited liability partnership) and will in general assist in the legal formation, licensing and regulatory compliance of the AIF.

TAXATION AND OTHER BENEFITS

Tax Incentives

- Taxation of trading income at lowest EU rate of 12.5% on net profits
- Tax exempt gains on securities trading including disposal of shares in subsidiaries
- Tax exempt dividend income (subject to easily met criteria)
- No withholding tax on payments of dividends/interest/royalties (arising from sources outside Cyprus)
- No stamp duties on the subscription, redemption repurchase or transfer of units
- Utilisation of a beneficial and extensive Double Tax Treaty network
- Utilisation of EU Directives (Parent-Subsidiary Directive, Mergers Directive, Royalty and Interest Directive, Mutual Assistance and Cooperation Directive)
- Unilateral tax credit relief for foreign tax paid on income received abroad
- Favourable provisions on the taxation of interest and royalties
- Carry forward of losses for five years
- Investor friendly tax authorities

Non Tax Incentives

- No requirement to appoint external manager (subject to conditions)
- No requirement to appoint depositary (subject to conditions)
- No rules concerning the asset diversification of the fund (applies to AIF with limited number of persons)
- Services for set-up, administration, legal, custody and audit of funds at substantially lower costs in comparison with other reputable fund jurisdictions
- First class service providers (accountants, auditors, lawyers, bankers) and an excellent and mature professional services infrastructure



Michalis Avraam & Partners Limited has taken all reasonable care to ensure that this leaflet is accurate. The information contained is designed as a general guide and readers are advised to verify this information to ensure that it applies in their particular circumstances.

Our professional staff can assist your company to fulfil all necessary obligations towards the achievement of a successful fund registration.

We offer the following fund registration services:

- Drafting the Memorandum and Articles of Association (in case of investment company) or the partnership agreement (in case of limited liability partnership) and registering the Company or Partnership with the Cyprus Registrar of Companies. The company or partnership may then apply for fund license
- Tax and legal advice on the set-up of the Fund, building the scheme structure based on your needs
- Assistance in opening bank accounts or depositary accounts with a reputable bank or other financial institution
- Completion of application forms, checklists, questionnaires and submission to CySEC
- Support in connection with follow up questions from CySEC following the examination of the application package

Following successful registration of the Fund we offer fund administration services including:

- Dealing with subscriptions/redemptions of units by unit holders
- Computing Net Asset Values and communicating to unit holders
- Maintaining up-to-date accounting books and records
- Fulfilling all the funds reporting obligations with CySEC

For specialist advice or further clarifications you may contact one of our professional consultants.

Michalis Avraam & Partners Limited

8 Digenis Akritas Avenue, Office 403 | CY-1045 Nicosia, Cyprus
Tel: +357 22346080 | Fax: +357 22346020 | E-mail: info@amicha.com

www.amicha.com