

FUND SERVICES

CYPRUS ALTERNATIVE INVESTMENT FUNDS ("AIFS") LAW: "A NEW LEGAL FRAMEWORK"

Cyprus, in its efforts to promote itself as an attractive jurisdiction for funds, has updated its legal framework to reflect a harmonization with relevant EU Directives covering UCITS funds, UCITS Management Companies and Alternative Investment Fund Managers (AIFMs) which means that Cyprus now offers opportunities for cross-border and global fund distribution benefiting from an efficient and reliable Fund infrastructure. The modernised regulatory regime together with the flexibility the vehicles offer investors in terms of unlimited restrictions on the type of investments, transparency and favourable taxation rates as well as the low set up and maintenance costs are all factors which are working towards making Cyprus an attractive funds jurisdiction within the European Union which can compete with more traditional, more expensive, more complex, less flexible jurisdictions such as Luxembourg or Malta.

The note below sets out the legal requirements of an Alternative Investment Fund (AIF) including the newly introduced Registered AIF which is rapidly becoming the most popular form of fund in Cyprus due to its flexibility and transparency.

Funds can be structured for various reasons, including but not limited to:

- 1) Family Planning
- 2) Alternative way of financing (shipping, real estate)
- 3) Collective joining of monies
- 4) Substance
- 5) Taxation benefits
- 6) Asset protection

LEGAL BACKGROUND

In July 2018, Cyprus introduced a new AIF regime repealing and replacing the 2014 legislation.

Among its key provisions, the Law 84 (I) 2018 ("New AIF Law") introduces the Registered Alternative Investment Fund ("RAIF"). This is a major achievement making Cyprus AIFs more attractive and flexible by significantly reducing the time frame and cost for establishing an AIF in Cyprus.

Another significant change is the possibility to structure an AIF as limited partnership (LP) with an inherent legal personality, resulting in the AIF having a separate legal personality as compared to the

The AIF Law aims to expand and strengthen the legal and regulatory framework available to asset managers and promoters of AIFs in Cyprus.

The AIF Law should be read in conjunction with the Alternative Investment Fund Managers Law of 2012 ("AIFM Law") which regulates the activities and authorities of the Alternative Investment Fund Manager ("AIFM").

The competent authority for the supervision and authorisation of the AIFs in Cyprus is the Cyprus Securities and Exchange Commission ("CySEC"). The CySEC has the power from time to time to issue directives which further supplement the provisions of AIF Law.

What is an AIF?

An AIF is a collective investment undertaking (including its investment compartments) which:

- Raises external 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, and
- Has not been authorised as an Undertakings for the Collective Investment of Transferable Securities ("UCITS") An AIF can be established in the following forms:
 - In the legal form of a common fund, its name will include the term "common fund";
 - In the legal form of an investment company, its name shall include the term "fixed capital investment company (hereinafter called "FCIC") or "variable capital investment company (hereinafter called "VCIC"), as appropriate; and
 - In the legal form of a limited liability partnership, its name shall include the term "limited liability partnership".

Once the legal entity has been set up, it may proceed with submitting an application for authorisation by CySEC as an AIF under the AIF Law. Then, if applicable, the AIFM may initiate the procedure to market the assets of the Fund in the European Economic Area ("EEA") on a local/ cross border/-passporting basis.

Types of AIFs:

	AIFs	AIFs with Limited Number of Persons	Registered AIFs
Legal forms	<ul style="list-style-type: none"> • Common fund (CF) • Variable Capital Investment Company (VCIC) • Fixed Capital Investment Company (FCIC) • Limited Partnership with or without legal Personality (LP) 	<ul style="list-style-type: none"> • Variable Capital Investment Company (VCIC) • Fixed Capital Investment Company (FCIC) • Limited Partnership with or without legal Personality (LP) 	<ul style="list-style-type: none"> • Common fund (CF) • Variable Capital Investment Company (VCIC) • Fixed Capital Investment Company (FCIC) • Limited Partnership with or without legal Personality (LP)
Eligible Investors	<ul style="list-style-type: none"> • Professional and/or well-informed Investors Or • Retail Investors 	<ul style="list-style-type: none"> • Professional and/or well-informed Investors 	<ul style="list-style-type: none"> • Professional and/or well-informed Investors
Number of Investors	Unlimited	Up to 50	Unlimited
Minimum Capital Requirement	<ul style="list-style-type: none"> • If self-managed: EUR 125,000 or EUR 300,000 for self-managed AIF/AIFM • If externally managed: N/A 	<ul style="list-style-type: none"> • If self-managed: EUR 50,000 • If externally managed: N/A 	<ul style="list-style-type: none"> • Not subject to Minimum Capital Requirement
Minimum AUM within 12 months	EUR 500,000	EUR 250,000	EUR 500,000
Fund Management	Can be self-managed (in the case of a company or limited partnership with separate legal personality) or appoint a fund manager	Can be self-managed (in the case of a company or limited partnership with separate legal personality) or appoint a fund manager	Always appoint a fund manager
Assets Under Management	<ul style="list-style-type: none"> • No restrictions if AIFM appointed • Up to 100 ml including leverage or 500 ml with no use of leverage and no redemption rights for 5 years if AIFM is not appointed 	<ul style="list-style-type: none"> • Up to 100 ml including leverage or 500 ml with no use of leverage and no redemption rights for 5 years 	<ul style="list-style-type: none"> • No restrictions if AIFM appointed • Up to 100 ml including leverage or 500 ml with no use of leverage and no redemption rights for 5 years if AIFM is not appointed
Depositary	<ul style="list-style-type: none"> • Mandatory appointment of local Depositary if managed by An AIFM • Cyprus, EU, or in a third country based of AIFM is not appointed 	<ul style="list-style-type: none"> • Cyprus, EU, or in a third country based. May be waived if one of the following criteria is met: • Total assets of the Fund <5ml • Up to 5 investors • 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 	<ul style="list-style-type: none"> • Mandatory appointment of local Depositary if managed by An AIFM • Cyprus, EU, or in a third country based of AIFM is not appointed

The following are excluded from the provisions of AIF Law:

- Holding companies;
- Social security schemes
- Entities for occupational retirement
- Employee participation schemes
- Employee saving schemes
- Approved investment companies

Why establish an AIF?

- The investment strategy of the AIF can include any asset;
- Annual audited and half year report to be sent to CySEC and the investors (not onerous reporting requirements);
- No subscription tax on the net assets of the AIF – only the legal entity is subject to Cyprus corporation tax i.e. 12.5%;
- Exemption on capital gains tax from sale of shares and other instruments;
- Tax incentive schemes for fund management companies
- No withholding tax on income repatriation or dividends paid to foreign unit holders; **and**
- No capital gains tax on disposal of shares/units by the holders (subject to conditions)

WHY CYPRUS?

- Cyprus is an EU Member State since 2014 and is fully compliant with EU Laws and Regulations;
- Unfettered access (EU passport) to the European Economic Area (EU members plus Liechtenstein, Norway and Iceland)
- Eurozone member;
- Low set-up cost and ongoing management of structures;
- EU passporting ability;
- Listing opportunities to the Cyprus Stock Exchange or other recognized markets; **and**
- Extensive network of double tax treaties allowing efficient structuring

HOW CAN MPC HELP?

Our services include, among others:

- Choosing the right form of your AIF – we can advise you on the suitable form your AIF should take.
- Analysing the provisions of the AIF Law
- Advising on the set up and structuring of new AIFs
- Preparing the application (including the drafting of the constitutional documents and offering memorandum) and liaising with CySEC and the Register of Companies (where applicable) and assistance with substance requirements in Cyprus;
- Assistance with the recruitment of qualified directors and personnel; **and**
- Audit, tax and compliance services throughout the life of the AIF.

EXCELLENCE MATTERS

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