

CYPRUS INVESTMENT FIRM

“CIF”

The Applicable Legislation

The Law governing the Cyprus Investment Firms (the “CIF”) is the Law 144(I)/2007 as amended (the “Law”). The Law has adopted a number of the EU Directives and Regulations in its provisions. Some of the most important Directives adopted are the following:

- Directive 97/9/EC on investor-compensation schemes
- DIRECTIVE 2006/31/EC on markets in financial instruments
- DIRECTIVE 2006/49/EC on the capital adequacy of investment firms and credit institutions
- Commission Directive 006/73/EC for the application of Directive 2004/39/EC of the European Parliament and of the Council on organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive
- COMMISSION REGULATION (EC) No 1287/2006 implementing Directive 2004/39/EC of t as regards recordkeeping obligations for investment firms, transaction reporting, market transparency, admission of financial instruments to trading, and defined terms for the purposes of that Directive

The above Law as amended both by the Cyprus Parliament’s proposals as well as the EU’s input is now the legislation which regulates the provision of investments and ancillary services, as well as the performance of business investment activities such as:

- i. any provision or offer for the provision of investment and ancillary services, made from a place outside the Republic to persons within, or resident or domiciled in the Republic, provided the above provision or offer reaches such persons when they are within or resident or domiciled in the Republic or whether the relevant transaction is concluded within the Republic;
- ii. any provision or offer for the provision of investment and ancillary services, which comes from inside the Republic or from a person within, resident or domiciled in the Republic, to persons that are within, resident or domiciled in the Republic or outside the Republic;
- iii. any provision or offer for the provision of investment and ancillary services, that comes from a person that is within, resident or domiciled within the Republic and acts or purports to be acting in the capacity of an employee or in another capacity, on behalf of a third person who is outside the Republic, to persons that are within, residents or domiciled in the Republic or outside the Republic.

II. Investment Services

The Law identifies as investment services and activities which are regulated and subject to the granting of a license by the Cyprus Securities and Exchange Commission (“**Cysec**”) are the following:

1. Dealing on own account
2. Execution of orders on behalf of clients;
3. Investment advice;
4. Operation of Multilateral Trading Facilities (“MTF”);
5. Reception and transmission of order;
6. Portfolio management;
7. Placing of financial instruments without a firm commitment basis;
8. Underwriting and/or placing of financial instruments on a firm commitment basis.

A potential CIF must apply for at least one of the above regulated services. Further it may be licensed to offer any of the Ancillary Services regulated under the Law, listed below:

1. Safekeeping and administration of financial instruments;
2. Safe custody services;
3. Granting credits or loans to an investor for transaction purposes;
4. FOREX provided they are connected with investment services
5. Services related to underwriting
6. Research and analysis in the investment sector

III. License Requirements

Initial Capital

Depending on which investment services the CIF will be involved in the Capital requirements of the CIF may vary as follows:

1. The minimum initial capital for a CIF, holding client’s assets and providing any of the following services is €200.000:
 - Reception and transmission of orders;
 - Execution of orders on behalf of clients;
 - Portfolio management;
 - Investment advice.

2. The minimum initial capital for a CIF providing reception and transmission of orders and/or investment advice without however handling clients' assets is €40.000 or €80.000. Professional indemnity insurance is required, covering all EU Members States.
3. The minimum initial capital for a CIF providing and/or conducting any of the following investment services is € 1.000.000:
 - Dealing on own account;
 - Underwriting/placing of financial instruments on a firm commitment basis;
 - Operation of MTF;
 - Placing of financial instruments without a firm commitment basis.

Head Office

A CIF's head office must be situated in the Republic and shall be fully staffed. Any person employed by a CIF to perform any of the investment services must be a holder of a certificate obtained after having successfully taken the relevant examination of the Cyprus Ministry of Finance.

Ownership

Cysec will not authorize the performance of any investment services unless they get satisfied with the evidence presented to them of the real owners of the CIF, whether they are direct or indirect shareholders, legal or natural. Cysec needs to reach the ultimate beneficial owner despite the fact that it will not disclose it to any third parties.

Management

The management of a CIF must be undertaken by at least two persons who have sufficiently good reputation and have sufficient experience as to ensure the sound and prudent management of the CIF.

The Board of Directors

The board of directors of a CIF (the "**Board**") shall consist of at least two executive members and two independent non-executive members.

An independent non-executive director of a company is not involved in the day to day management issues of the company but he/she is responsible with the supervision of all the corporate issues. The majority of the member of the board of directors of the CIF must be

residents of the Republic meaning the person who has a permanent residence in Cyprus and is available any time. The people to be appointed directors of the company must:

- be of sufficiently good repute;
- be sufficiently experienced;
- possess appropriate general, commercial and professional knowledge (participate in relevant seminars, monitor relevant legislation issued and any announcements, follow the developments of the field in Cyprus and Europe).

The managing director is usually responsible for the day to day operations of the Company, administering and applying the decisions of the Board of the CIF and acts as one of the persons who effectively direct the business of the company.

IV. Organizational Structure

The CIF must comply with various organizational requirements such as the following:

- Establish adequate policies and procedures in order to ensure that it complies with its obligations under the Law and relevant directives by maintaining an independent compliance unit;
- Maintain effective organizational and administrative procedures to protect clients from any conflicts of interest;
- Ensure continuity of services and activities;
- Take necessary actions to minimize operational risks by establishing a risk management unit to implement and adopt policies for risk management;
- Have proper corporate governance in place with well defined lines of responsibility;

V. Obtaining a CIF License

A CIF, apart from having the above organizational structure it has to:

- Have sound administrative and accounting procedures, internal control mechanisms;
- Maintain sufficient records of all services and transactions undertaken;
- Maintain sufficient identification procedures and internal reporting policies, in line with the Prevention and Suppression of Money Laundering Activities Law;
- Take adequate steps to safeguard clients' ownership rights.

VI. Main Documents Required

The designated application form and standard questionnaires of any company willing to get licensed must be submitted to CySEC and must be accompanied by the following documents:

- Corporate documents (Certificate of incorporation, registered office, good standing, certificate of shareholders, Certificate of Directors and the memorandum & Articles of the Company);
- If the Company already exists the proposed amended Memorandum and Articles of Association must be submitted;
- Detailed Business plan of the applicant company⁹
- Group and organization structure;
- Internal regulation of operation (operations manual);
- Internal procedures manual;
- Certification from the company's representative who will promote the company at CySEC;
- Certification from the company that it possesses or shall possess the initial capital (may vary);
- Evidence proving the source of the initial capital;
- Copy of the insurance contract for professional indemnity;
- Information on service providers established in third countries;
- Information on the central counterparty, clearing and settlement system;
- Annual financial accounts if applicable;
- Audited financial accounts for the last 3 years and consolidated audited financial accounts of the company's group of companies if applicable;
- Certificates of non-bankruptcy and criminal record for all the direct shareholders, members of the Board of Directors, senior managerial staff and other managerial staff;
- Certification by the lawyers and external auditors of the company.

Note that after the initial examination of the above documents, Cysec may on its discretion ask for further clarifications and documentations.

VII. Taxation of a CIF

A CIF is taxable as any other tax resident company established under the Cyprus Companies' Law (Cap. 113). A Cyprus company has one of the lowest taxation in Europe and at the same time has acquired the European status of a respectable entity. Tax resident companies are taxed from 0% to 10% maximum on their net profits subject to the type of the income they have.

Any net profit generated by a CIF as a result of provision of investment services and exercise of investment activities e.g. brokerage services, financial advice, portfolio management etc. shall be liable to 10% taxation on any resulting net profit at the year's end.

Taxation of "other" income:

There is no tax (0%) on profits from the sale of titles i.e. shares, bonds, debentures, founders' shares and other titles of companies or other legal persons, incorporated in Cyprus or abroad and options therein. The Cyprus Income Tax Authorities has circulated an extended list of financial instruments that fall within the definition of "titles". Thus any gain made by a CIF for its own account from the trading of financial instruments falling under the definition of titles, is not taxable;

There is no corporation tax (0%) on dividends received by a CIF from own investments from resident or non – resident companies;

There is no withholding tax (0%) on payments to its non-resident shareholders in respect of dividends, or interest or royalties;

There is no Special Defense Contribution Tax on dividends received by CIF from another Cyprus resident company;

There is no Special Defense Contribution Tax on dividends received by a CIF from a non-resident company.

VIII. The following activities fall outside the scope controlled by Cysec and therefore need no license:

- (a) the members of the European System of Central Banks and other national bodies performing similar functions and other public bodies charged with or intervening in the management of the public debt;
- (b) Insurance undertakings;
- (c) the undertakings for collective investment in transferable securities within the meaning of section 2 of the Open-ended Undertakings for Collective Investments in Transferable Securities

(UCITS) and Related Issues Law, global collective investment schemes within the meaning of Article 2 of the Global Collective Investment Schemes Law, and the funds for occupational retirement provision within the meaning of section 2 of the Establishment, Activities and Supervision of the Funds for Occupational Retirement Provision, including the depositaries and managers of all the above;

(d) Persons which provide investment services exclusively for their parent undertakings, for their subsidiaries or for other subsidiaries of their parent undertakings;

(e) Persons which provide investment services consisting exclusively in the administration of employee-participation schemes;

(f) persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession which do not exclude the provision of that service;

(g) persons who do not provide any investment services or activities other than dealing on own account unless they are market makers or deal on own account unless they are market makers or deal on own account outside a regulated market or an MTF on an organised, frequent and systematic basis by providing a system accessible to third parties in order to engage in dealings with them;

IX. Disclaimer

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