



## **Alternative Investment Funds under Cyprus Law**

**By Ms Katerina Georgiou**

Alternative Investment Funds are defined by the Alternative Investments Law 2014 as “any collective investment undertaking, including investment compartments thereof, which, collectively:

- (a) 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; and
- (b) does not require authorisation pursuant to section 9 of the Open-ended Undertakings for Collective Investments Law of 2012 or pursuant to the legislation of another Member State which harmonises the article 5 of the Directive 2009/65/EC”

The law governing AIFs is the Alternative Investment Funds Law (AIF Law) that repeals the International Collective Investment Schemes Law of 1999 (ICIS Law 47(I)/1999). The Cyprus House of Representatives voted for that on 10<sup>th</sup> of July 2014. The Cyprus Securities and Exchange Commission (CySEC) is the body responsible for the establishment and regulation of AIFs. Also, the operations of an AIF have to be approved by the CySec. CySec will not grant authorisation if the conditions in s13(3) are met. They have to make sure that they fulfil all the conditions.

### ***Legal Forms & Management***

AIF can take the legal form of a mutual fund, of a limited liability company with shares and it is hereof called ‘fixed capital Investment Company’ or ‘variable capital Investment Company’ and lastly it can be formed as a limited liability partnership. If an AIF does fall within the law, it is prohibited to be altered in a way that does not fall within the law. An AIF could be altered from an investment company to a limited liability partnership or a common fund. Investors should ensure that the legal form fall under the AIF Law and the alternation is voted by the board. The management includes the administration of the AIF, the marketing, and the management of the investment and the risks of the activities. Management of operations should be made by at least 2 persons. The manager must satisfy the “fit and proper person test” which means he must have the appropriate education, experience, reputation and capital resources.



It can be managed externally by a third party appointed as the portfolio manager, who is approved either in Cyprus or in another jurisdiction, but authorized, by the national law and the EU Directives. The fund should be managed according to the Alternative Investment Fund Managers Law of 2013; otherwise they will be subject to registration. The external manager shall apply appropriate risk management systems.



Also, management can be made internally where the Board appoints an executive Director if it is a fixed or variable capital company or a general partner if it is limited liability partnership. In that situation, the manager has to be approved by CySec.

Regarding the administration, if a fund does not have a physical presence in Cyprus, then administration work must be carried by another company. Administrator should be based in Cyprus and approved by CySec. Whether a fund should be managed internally or externally depends on the category that falls in, which are explained below.

### ***Redemption – Repurchase Rights***

An AIF can be established either as an open-ended fund or a close-ended fund.

- (a) Open-ended fund: The right to redeem or repurchase by unit holders its by request, (i) at any time, or (ii) at regular intervals which do not exceed one year and are defined in the fund rules or the instruments of incorporation of the AIF;
- (b) Close-ended funds: the right to redeem or repurchase by unit holders is by a request (i) at regular intervals that exceed one year, but shall not extend for more than five years and are defined in the rules or instruments of incorporation of the AIF; or (ii) at a specific time that is defined in the fund rules or the instruments of incorporation of the AIF.

If an AIF is established as a venture capital fund in line with the Regulation (EU) No. 345/2013, the initial period of redemptions may extend up to ten years from the date of its incorporation.

### ***Categories of AIFs***

An AIF can be divided into two categories. The AIF with:

1. **Unlimited Number of Investors (AIF-UNP):** where it can take the form of a common fund, an investment company or as limited. They can be marketed to retail investors, well-informed investors or professional investors. It can be either a close-ended or an open-ended fund. The management of it can be made as mentioned above, either internally or externally. Also, it does have a minimum capital requirement of at least 125,000 or 300,000 euros where it is self-managed and;
2. **Limited Number of Investors (AIF-LNP):** it can take the form of an investment company with shares or a limited liability partnership. The establishment of an AIF-LNP should not fall within the AIFM Law, thus it is not managed by an alternative investment fund manager. Also, its documents should state that it is addressed to professional or well informed investors. The number of investors should not exceed 75 and it does not allow the issuance of bearer shares. An AIF-LNP could be self-managed or externally managed.

The initial capital of both shall be consisted by cash or assets and it is going to be determined by the external manager or the fund itself. The non-cash contributions should be valued by an independent valuer.



According to the AIF Law 2014:

**“professional investor”** means an investor which is considered to be a professional client or may, on request, be treated as a professional client within the meaning of Annex II of the Investment Services and Activities and Regulated Markets Law as amended;

**“well informed investor”** means an investor which is not a professional investor and fulfils the following conditions:

- a. confirms in writing that he is well-informed and that he is aware of the risks related with the proposed investment; and
- b. either his investment in the AIF amounts, at least, to €125 000, or he is assessed as a well-informed investor, either by a credit institution that falls within the scope of the Banking Laws as amended, 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;

### *New Structuring Options*

According to the previous legal framework the following structuring options were not possible. However, under the new law, those four structuring options are now available:

1. **Umbrella structures:** is where there are multiple investment compartments. There could be management of different pools of assets even with different investment policies. Each pool of asset will be according to the AIF Law provisions. It is possible that an investment compartment will invest in an investment compartment within the same AIF. The investors rights will derive from the assets. The liabilities and assets are being ring fenced.
2. **Common funds:** are contractual fund structures where investors participate as co-owners of the assets of the AIF. Investors are liable to the amount of their contribution.
3. **Public Offerings and listing:** it is possible to make public offerings of shares/units of AIFs as well as listing them on the stock market, which increases the AIF's potential investor base and enhances marketability and transparency;
4. **Depositary:** AIFs can be undertaken by different investment policies. Now is possible to be undertaken by a depositary which means by an entity other than a credit/ banking institution, subject to certain conditions. This may aid in the structuring and operations of AIFs; not directly investing in financial and money market instruments. Its role is to safe keep the AIF's assets. It must be based in Cyprus or in an EU Member State or in a Third Country which CySec has signed a cooperation agreement. However, where a depositary is not used this may be because of derogation. Also, where there is an AIF-LNP a depositary will not be possible if the assets under management are less than five million euros, if investors are less than 5 or if investments are not subject to custody.



*Why set up a Fund in Cyprus?*

Cyprus is very attractive for that kind of investments. This is because Cypriot jurisdiction is preferable to others, due to its corporate tax rate which is 12.5% on the taxable profit. There is no capital gain tax on disposal or wealth tax. AIF-LN is not subject to diversifications rules.

Also, Cyprus is a member of the EU and Eurozone, thus Cyprus could be investors' opportunity to enter EU. Cypriot jurisdiction is in line with the anti-money laundering regulations of the EU. Its legal system is based on common law which makes it rigorous and transparent. The country is a member of the MONEYVAL. Moreover, there are lower set-up and operational costs than other countries. Therefore, Cyprus has an advantage and it would be benefited by developing AIFs area.

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