

INVESTMENT FUNDS 2020 EXPERT GUIDE

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Licensing requirements for Cyprus Alternative Investment Funds and their managers

By Dimitris Papoutsis & Ioannis Sidiropoulos

After the application of the EU Alternative Investment Fund Managers Directive 2011/61/EU ("AIFMD"), Cyprus has uniquely managed to combine the benefits of the sound EU framework on alternative investment funds and their managers with the considerable advantages of its common law background, leading financial services status and strategic geographical location of Cyprus.

The national framework regulating such funds and their managers as well the significant investment opportunities have managed to attract specialised expertise locally to serve the needs of EU and non-EU investors and to materialise portfolio investments in the wider region, comprising the Central and Eastern Europe, the Middle East and Asia. This rapid development of the fund industry in Cyprus is also attributed to the expertise, efforts and willingness of market players and the local securities regulator, being the Cyprus Securities and Exchange Commission ("CySEC"), which have maintained an open dialogue with regulated entities, for the benefit of all market participants. Through such dialogue, a completely updated framework was introduced in 2018.

Key legislation

The key legislation applicable to alternative investment funds

(AIFs) in Cyprus is:

- the Alternative Investment Funds Law 124(I)/2018 ("AIF Law"), which replaced the regime that was applicable since 2014; and
- the Alternative Investment Fund Managers Law 56(I)2013 ("AIFM Law"), as amended, which transposes the provisions of the AIFMD.

Secondary legislation, both at an EU level through the competent EU bodies and ESMA as well as at Cyprus level, via directives of CySEC regulate the authorisation, activities and operations of AIFs and their managers.

Authorisation of AIFs

An AIF may be established in the legal form of either a common fund, or of an investment company (with either fixed or variable capital) or as a limited partnership, with or without separate legal personality. Obviously, different authorisation requirements apply depending on the legal form as well as whether the marketing is expected to be made to an unlimited or limited (up to 50 natural persons) number of investors.

However, in common for all forms of AIFs seeking authorisation by CySEC, the following apply:

- The prior authorisation and approval of CySEC is required

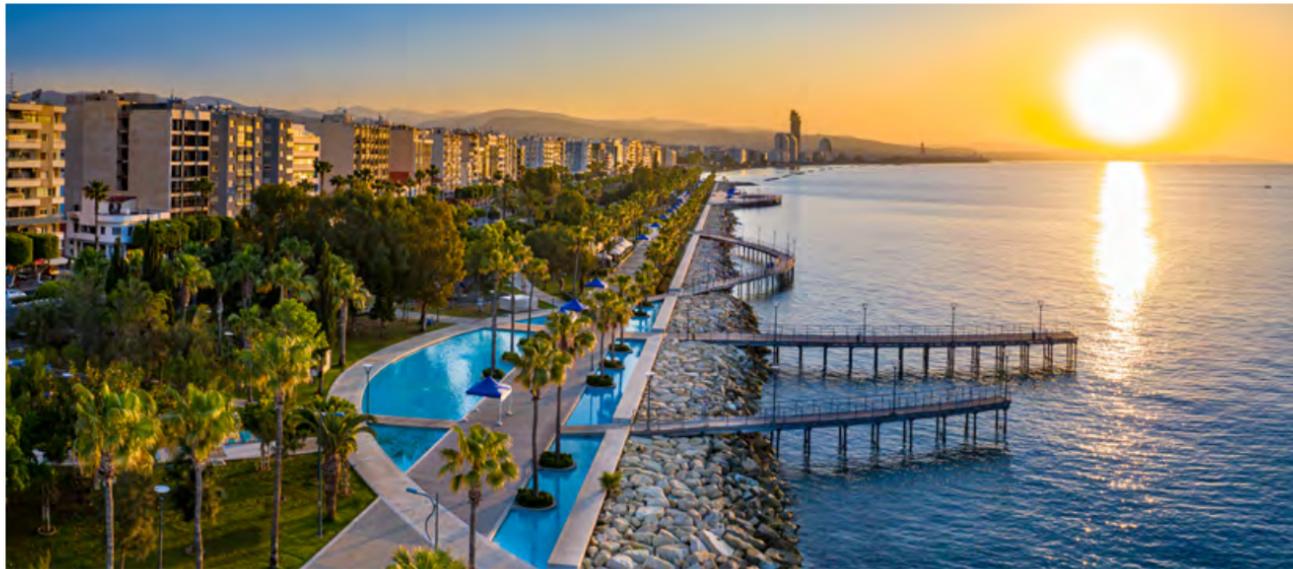
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and no units/shares/ partnership interests can be marketed to any prospective investors before the granting of the requisite authorisation.

- To obtain such authorisation, the entity seeking authorisation (or its external manager) should file an application to CySEC presenting various information on the persons conducting the business of the AIF, the structure of the fund and any delegation agreements that may have been in place, accompanied by evidence of payment of the applicable regulatory fees to CySEC for the examination of the application and a series of documents including:
 - ◊ Questionnaires on shareholders (up to the UBO) and the persons proposed to be the directors of the AIF, senior management and key officers, i.e. Risk Manager, Regulatory Compliance and AML Compliance Officer and Internal Auditor, Data Protection Officer, IT Manager etc (either performed internally or outsourced to professionals);
- All shareholders and persons appointed as directors or members of senior management or officers must be person 'fit and proper' based on experience and reputation.
- It is noted that as external manager of an AIF may be appointed a regulated entity (such as an authorised alternative investment fund management entity (AIFM) or a UCITS Management Company or a management company authorised in Cyprus or in another member state, for the investment management of AIFs, whose assets under management do not exceed the thresh-

olds of article 4(2) of the AIFM Law and is subject to prudential supervision subject to the law of the Republic or its home member state (a "sub-threshold AIFM") or a MiFID-regulated investment firm. Internal management of the AIF may only be undertaken for AIFs operating in the form of an investment company or limited partnership with legal personality. Sub-threshold AIFMs are regarded AIFs the assets under management ("AuM") of which in total do not exceed €100,000,000 (where leverage is utilised), or €500,000,000 (without leverage but subject to a five-year lock up period).

- ◊ Information on the credit institution which will act as depositary for the custody of the assets or the verification of their ownership (if not subject to custody)-subject to limited exceptions from the requirement to appoint a depositary;
- ◊ Drafts of the proposed constitutional documents (such as partnership agreement or memorandum and articles of association),
- ◊ Draft of the prospectus to be used for the marketing of units/shares/interests to investors (categorised as retail or well-informed or professional clients)
- ◊ Draft of the internal operations manual, AML manual and policies and business plan as well as of the key investor document prepared by the AIF when it markets its units/shares/interests to retail investor (including those considered as 'well-informed' investors).
- A six-month statutory deadline is granted to CySEC for the



review of the application, within which CySEC may ask for clarifications, possible additional information and documents at its discretion, if it is deemed necessary for the assessment of the application.

- Upon the granting of the authorisation follows an intermediary period before the commencement of operations (such as for the compliance with any condition of authorisation).
 - ◊ Minimum asset requirements (€500,000 or €250,000 (as applicable depending on the unlimited or limited number of investors of the AIF) must be gathered from investors within 12-months from the granting of the authorisation of AIFs apply as well as initial capital requirements (€125,000 or €50,000 accordingly), as applicable, should be met.

Authorisation of AIFMs

Subject to the provisions of the AIFM Law, Cyprus-based and authorised AIFMs must be incorporated a limited liability companies with shares.

- The authorisation process of such AIFMs is similar to the one for AIFs and the prior approval of CySEC authorization is essential before an AIFM can manage AIFs (either in Cyprus or abroad).
 - ◊ EU-authorized AIFMs can only manage AIFs or market them to investors in Cyprus if they are authorised according to the home member state laws harmonising the AIFMD and have passported their services in Cyprus
- Such application for authorisation to CySEC, should be accompanied with the evidence of payment of the corresponding regulatory fees to CySEC along with information and documents on the identification, expertise and competence of its shareholders, the persons effectively conducting the business of the AIFM and the other key officers and holders of management positions.

- ◊ Together with such documents as the constitutional documents of the AIFM, the prospectus of AIFs, internal operations manuals and policies, the organisational structure of the AIFM, the remuneration policies and practices and information on the arrangements made for the delegation and sub-delegation of functions to third parties are also required.
- ◊ Initial and minimum capital requirements apply, which in the case of an AIFM which is internally managed AIF must not be less than €300,000 and in that of an AIF which is externally managed the initial capital must be at least €125,000.
- A three-month statutory period (extended by further three months, if deemed necessary) is granted to CySEC for the assessment of the application within which it must notify to the applicant AIFM its decision to grant authorisation or not. This period starts from the due filing with CySEC of a fully completed application.
- CySEC will grant authorisation to the AIFM if it meets the prescribed criteria as per the AIFM Law. However, CySEC may grant a partial authorisation, imposing restrictions to the investment strategies of the AIF that the AIFM is allowed to manage.
 - ◊ Authorised AIFMs may perform the portfolio management functions of the AIFMD on the collective management of assets, and other functions such as administration, including legal and fund management accounting services, customer inquiries and valuation pricing and undertake marketing and other activities on the assets of the AIF (i.e. facilities management and real estate administration activities).
 - ◊ Outsourcing of such functions is notified and/or must be approved by CySEC as the case may be.



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