

June, 2020

CYPRUS INVESTMENT FIRMS (CIFs)

INTRODUCTION

The Investment Services and Activities and Regulated Markets Law entered into force on 1st November 2007 and was aimed at regulating the provision of investment and ancillary services as well as the performance of investment activities on a professional basis in Cyprus and the operation of regulated markets. The relevant supervisory and regulatory authority is the Cyprus Securities & Exchange Commission (“CySEC”).

The above was further enhanced via an additional amendment legislation passed by the House of Representatives in Cyprus with effect as from 3 January 2018, which provides for the Provision of Investment Services, the exercise of Investment activities, the operation of regulated Markets and other Related Matters. The said Legislation shall be cited as the Investment Services, Activities, and Regulated Markets Law of 2017. For purposes of this Briefing both the Law 144(I)/2007 and L.87 (I)/2017 amendment shall be hereinafter referred to as (the “**Law**”). This is the national transposition of Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments (MiFID II).

The Law applies inter alia to the provision of investment and ancillary services, as well as the performance of investment activities on a professional basis (i.e. for a fee) in Cyprus, where the provision of investment and ancillary services in the Republic includes-

- a) 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 where the relevant transaction is concluded within the Republic;
- b) 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,
- c) any provision or offer for the provision of investment and ancillary services, coming from a person within, resident or domiciled in 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, resident or domiciled in the Republic or outside the Republic.

AUTHORISATION REQUIREMENTS

No person is allowed to provide investment services and/or perform investment activities on a professional basis in Cyprus, unless such person is a:

- a) Cyprus Investment Firm (“**CIF**”) authorized under the Law;



- b) Market Operator, as defined in the Law;
- c) Member State Investment Firm, as provided under the Law;
- d) Third Country Investment Firm, as provided under the Law;
- e) Bank, as provided under the Law;
- f) Cooperative Credit Institution, as provided under the Law;

An “investment firm” is a firm that operates under an authorisation granted by the relevant competent authority of the jurisdiction of its establishment and which provides one or more investment services to third parties and/or performs one or more investment activities on a professional basis, and includes a CIF but not a credit institution.

A "CIF" means the company that is **established** in the Republic of Cyprus and which is authorised by CySEC to provide one or more investment services to third parties or/and perform one or more investment activities. The CIF authorisation is valid in all member states and allows CIFs to provide such services in all the member states, either through the establishment of a branch or the free provision of services or performance of activities.

The Law is supported by a number of Directives issued by CySEC whose objective is to define, specify or clarify any matters that may require further action pursuant to the Law including, inter alia, the obligations of CIFs.

INVESTMENT AND ANCILLARY SERVICES

The Law defines “investment services” and “investment activities” as any of the services and activities specified in Part I of the Third Appendix of the Law relating to any of the financial instruments listed in Part III of the Third Appendix of the Law.

Part I of the Third Appendix includes the following:

- Reception and transmission of orders in relation to one or more financial instruments
- Execution of orders on behalf of clients
- Dealing on own account
- Portfolio management
- Investment advice
- Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis
- Placing of financial instruments without a firm commitment basis
- Operation of Multilateral Trading Facility



“Ancillary services” means any of the following services, (listed in Part II of the Third Appendix of the Law):

- Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management
- Granting credits or loans to an investor to allow him to carry out a transaction in one or more financial instruments, where the firm granting the credit or loan is involved in the transaction
- Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and the purchase of undertakings
- Foreign exchange services where these are connected to the provision of investment services
- Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments
- Services related to underwriting
- Investment services and activities as well as ancillary services of the type included under Parts I and II of the Third Appendix related to the underlying of the derivatives included under paragraphs 5, 6, 7 and 10 of Part III of the Third Appendix where these are connected to the provision of investment or ancillary services

A CIF is prohibited from conducting any other business, beyond the services or activities stated in its authorisation, except if their exercise contributes to the achievement of the provision of all or some of the services permitted by its authorisation, or if it has received a CySEC permission, which is granted, at its absolute discretion, in exceptional circumstances.

INITIAL CAPITAL

The initial capital requirements will vary depending on the specific services and operations of the CIF in question.

- A. A CIF which does not deal in any financial instruments for its own account or underwrite issues of financial instruments on a firm commitment basis and offers one or more of the following services:
 - (a) the reception and transmission of investors' orders for financial instruments;
 - (b) the execution of investors' orders for financial instruments;
 - (c) the management of individual portfolios of investments in financial instruments, must have an initial capital of:
 - **€125,000** (if it is authorized to hold client money), or;
 - **€50,000** (if it is not authorized to hold client money). Coverage for CIFs falling in this category may also take the form of professional indemnity insurance covering the whole territory of the European Union or some other comparable guarantee against liability arising from professional



negligence, representing at least €1.000.000 applying to each claim, and in aggregate €1.500.000 per annum for all claims; OR a combination of initial capital and professional indemnity insurance in a form resulting in a level of coverage equivalent to that referred to above.

B. A CIF which is other than those referred to in point A above, shall have initial capital of:

- **€730,000**

ORGANISATIONAL REQUIREMENTS

A CIF must comply with the following organizational requirements at all times:

- Establish adequate policies and procedures sufficient to ensure its compliance, including its managers, employees, tied agents and other relevant persons, with its obligations pursuant to the applicable Law and relevant directives, as well as appropriate rules governing personal transactions by such persons;
- Maintain and operate effective organisational and administrative arrangements with a view to taking all reasonable steps designed to prevent conflicts of interest from adversely affecting the interests of its clients;
- Take reasonable steps to ensure continuity and regularity in the performance of investment services, by employing appropriate and proportionate systems, resources and procedures;
- Ensure, when relying on a third party for the performance of investment services or operational functions which are critical for the provision of continuous and satisfactory service to clients and the performance of investment activities on a continuous and satisfactory basis, that it takes reasonable steps to avoid undue additional operational risk. Outsourcing of the above must not be undertaken in such a way as to materially impair the quality of its internal control and the ability of CySEC to monitor the CIF's compliance with all its obligations;
- Have robust governance arrangements which include a clear organisational structure with well defined, transparent and consistent lines of responsibility;
- Have sound administrative and accounting procedures, internal control mechanisms, effective procedures for assessing the risks the CIF undertakes and effective control mechanisms; including appropriate administrative and accounting procedures and safeguard arrangements for information processing systems;
- Arrange for records to be kept of all services provided and transactions undertaken by it;
- To apply appropriate client identification procedures, record maintenance and internal reporting as provided by the Prevention and Suppression of Money Laundering Activities Law and by directives issued pursuant to such law;
- When holding financial instruments belonging to clients, to make adequate arrangements so as to safeguard clients' ownership rights, especially in the event of the CIF's insolvency, and to prevent the use of a client's instruments on own account except with the client's express consent;
- When holding funds belonging to clients, make adequate arrangements to safeguard the clients' rights and, except in the case of credit institutions, prevent the use of client funds for its own account;



INVESTOR COMPENSATION FUNDS

In accordance with the Law, CIFs, Investment Firms authorised and supervised by the competent authority of a third country and credit institutions authorized in Cyprus are not allowed to provide investment services without participating in the Investment Compensation Funds. There are three Investor Compensation Funds operating in Cyprus:

- The Investor Compensation Fund for Clients of Investment Firms
- The Investor Compensation Fund for Clients of Banks
- The Investor Compensation Fund for Clients of Cooperative Credit Institutions

Investment Firms and credit institutions authorised in Cyprus must notify their clients, before concluding an agreement with them, the investor compensation scheme in which they participate. Also the level of compensation paid, the conditions and the procedure for submitting applications for compensation, as well as any other form of equivalent protection that they provide to their clients. CySEC may impose an administrative fine for any violation of the provisions relating to Investor Compensation Funds.

CLIENT CLASSIFICATION

The Law employs a three-tier system of client classification. These are:

- Retail Clients
- Professional Clients
- Eligible counterparties

Retail clients receive the highest degree of protection. The protection provided includes, inter alia, the following:

- Best execution
- Evaluation of the appropriateness of the product or service provided
- Additional client information

Professional clients are clients who possess the experience, knowledge and expertise to make their own investment decisions. They should be able to properly assess the risks that they incur in their investment decisions regarding the services products and transactions for which they are suited. Professional clients can be any of the following:

- (a) Entities which are required to be authorised or regulated to operate in the financial markets. The list below includes all authorised entities carrying out the activities characterized by this classification:



- Credit institutions
- Investment Firms
- Other authorised or regulated financial institutions
- Insurance companies
- Collective investment schemes and management companies of such schemes
- Pension funds and management companies of such funds
- Commodity and commodity derivatives dealers
- Locals
- Other institutional investors

(b) Large undertakings meeting two of the following size requirements, on a proportional basis:

- Balance sheet total of €20m
- Net turnover of €40m
- Own funds of €2m

(c) National and regional governments, public bodies that manage public debt, central banks, international and supranational institutions such as the World Bank, the International Monetary Fund, the European Central Bank, the European Investment Bank and other similar international organisations.

(d) Other institutional investors whose main activity is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions.

Eligible Counterparties can be investment firms, credit institutions, insurance companies, UCITS, and their management companies, pension funds and their management companies, other financial institutions authorized or regulated under Community legislation or the national law of a member state, national governments and their corresponding offices including public bodies that deal with public debt, central banks and supranational organizations. This list should be understood to include third country entities equivalent to the categories mentioned above. For Eligible Counterparties the protection offered under the Law is diminished than for professional clients.

EXEMPTIONS

The following are outside the scope of application of the Law:

- Members of the European System of Central Banks and other similar bodies
- Insurance undertakings



- UCITS, global collective investment schemes and funds for occupational retirement provision including the depositaries and managers of all the above
- Persons providing investment services exclusively for their parent undertakings, their subsidiaries or other subsidiaries of their parent undertakings
- Persons providing investment services consisting exclusively in the administration of employee-participation schemes
- Persons providing investment services which only involve both administration of employee-participation schemes and the provision of investment services exclusively for their parent undertakings, their subsidiaries or other subsidiaries of their parent undertakings
- 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
- 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 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
- Persons dealing on own account in financial instruments or providing investment services in commodity derivatives or derivative contracts included in paragraph 10 of Part III of the Third Appendix, to clients of their main business, provided this is an ancillary activity to their main business, when considered on a group basis, and that main business is not the provision of investment services within the meaning of the present law or banking services under the banking legislation
- Persons providing investment advice in the course of providing another professional activity not governed by this Law, provided that the provision of such advice is not specifically remunerated
- Persons whose main business consists of dealing on own account in commodities/commodity derivatives (provided they are not part of a group the main business of which is the provision of other investment services within this Law or banking services under the banking legislation)
- Firms which provide investment services consisting exclusively in dealing on own account on markets in financial futures or options or other derivatives and on cash markets for the sole purpose of hedging positions on derivative markets or which deal for the accounts of other members of those markets or make prices for them and which are guaranteed by clearing members of the same markets, where responsibility for ensuring the performance of contracts entered into by such firms is assumed by clearing members of the same markets
- Associations set up by Danish and Finish pension funds with the sole aim of managing the assets of pension funds
- "Agenti di cambio" whose activities and functions are governed by Article 201 of Italian Legislative Decree No 58 of 24 February 1998.



The purpose of this legal briefing is to provide a general guideline on the subject and not to be considered, in any way, as legal advice. It is advisable to seek professional and legal advice on this subject before proceeding with any general information provided to you. For further clarifications and advice please contact us at legal@economideslegal.com.