

March, 2015

RECENT LEGISLATIVE AND REGULATORY DEVELOPMENTS ACROSS THE CYPRIOT FINANCIAL SECTOR

INTRODUCTION

Since 2013 there have been a number of legislative and regulatory developments relating to or affecting institutions in the Cyprus financial sector with the enactment of a number of laws and the issuance of a number of directives by regulatory authorities, aiming at improving the local regulatory framework and aligning it, where necessary, with relevant EU legislative developments.

THE ALTERNATIVE INVESTMENT FUND MANAGERS LAW OF 2013 (LAW 56(I)/2013)

On 5 July 2013, Cyprus' House of Representatives adopted the Alternative Investment Fund Managers Law of 2013 (AIFM Law), making Cyprus the second EU member state which transposed Directive 2011/61/EU of the European Parliament and Council of 8 July 2011 on Alternative Investment Fund Managers, into local legislation. The AIFM Law is read in conjunction with EU Regulations No. 231/2013, No. 447/2013 and No. 448/2013, which are directly applicable in all member states.

The AIFM Law regulates the setting up and operation of Alternative Investment Fund Managers (AIFM) in Cyprus, who manage one or more Alternative Investment Funds (AIFs) established in Cyprus, the EU or in a third country. The scope of application of the AIFM Law also extends to AIFMs established within the EU who manage AIFs (EU/non-EU), to AIFMs established in a third country who manage EU AIFs, as well as to AIFMs established in a third country which market AIFs (EU/non-EU) in the EU or in the EEA. The AIFM Law also applies and regulates certain aspects of AIFs managed by AIFMs.

The AIFM Law was amended in early 2015, by the Alternative Investment Fund Managers Amending Law 8(I) of 2015. The objective was to achieve a more effective application of certain provisions of Directive 2011/61/EU, which include, inter alia, provisions relating to the remuneration policies of AIFMs, the conditions pursuant to which prime brokers may also undertake depositary functions, the liability of depositaries in case of loss of financial instruments held in custody by third parties to which they delegated certain functions, the reporting obligations and the annual reports of AIFs which exercise control of non-listed companies.

Furthermore, the 2015 amendment was also made for the purpose of a) exercising the discretion provided by Article 28(1), second paragraph of Directive 2011/61/EE and b) harmonising the AIFM Law with Articles 3 and 4 of Directive 2013/14/EU of the European Parliament and of the Council of 21 May 2013, which amends, inter alia, the risk management provisions of Directive 2011/61/EU, by specifically directing that AIFMs must not solely or mechanically rely on credit ratings issued by credit rating agencies for assessing the creditworthiness of AIF's assets.



THE ALTERNATIVE INVESTMENT FUNDS LAW OF 2014 (LAW 131(I)/2014)

A year later, the Cyprus House of Representatives voted on the enactment of the much awaited Alternative Investment Funds Law of 2014 (AIF Law), in an effort to modernise the local legislative framework on investment fund products in line with the EU legislative developments and to increase eventually Cyprus competitiveness in the investment funds industry. The AIF Law came into force following its publication in the Official Gazette, replacing and repealing its predecessor, the International Collective Investment Schemes Law of 1999.

The AIF Law is supplemented by and read in conjunction with the various directives issued by the Cyprus Securities and Exchange Commission (CySEC) from time to time, which has become with the enactment and pursuant to the provisions of the AIF Law, the competent regulatory and supervisory body of AIFs established in Cyprus.

The AIF Law applies to AIFs established in Cyprus and regulates the role and responsibilities of persons engaged in the activity of AIFs such as depositaries, directors and asset managers.

AIFs are defined as collective investment undertakings (and any investment compartments thereof), which collectively a) raise capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of investors and b) do not require authorisation as a UCITS. An AIF can be categorised as either an AIF with unlimited number of investors (which may be marketed to either (i) retail or (ii) well-informed and/or professional investors) (AIF-UNP) or as an AIF with limited number of investors (being 75) (which may be marketed to well-informed and/or professional investors) (AIF-LNP).

The AIF Law introduces new structuring options (umbrella structures and common fund structures), it further aids the establishment and operation of Cyprus AIFs with a number of different investment policies by permitting the function of the depositary to be undertaken by legal entities other than credit/banking institutions as was the case under the previous legislative regime, under certain conditions, and also allows for the shares/units of AIFs to be the subject of public offerings and admitted to listing on stock markets.

DI144-2007-13 OF THE CYPRUS SECURITIES AND EXCHANGE COMMISSION IN RELATION TO TIED AGENTS

On 17th October 2014, the CySEC Directive DI144-2007-13 in relation to tied agents (Directive) came into force following its publication in the Official Gazette of the Republic of Cyprus.

The Directive affects Cyprus Investment Firms (CIFs) and Investment Firms (IFs) of other jurisdictions wishing to appoint tied agents, as its scope is to clarify and supplement the provisions of section 40 of the Investment Services and Activities and Regulated Markets Law of 2007 to 2012 (IF Law), as in force from time to time, relating to the appointment of tied agents by CIFs or IFs.

Specifically, the Directive sets out the procedure which needs to be followed by CIFs and IFs intending to appoint a tied agent in Cyprus, the procedure to be followed by CIFs intending to appoint a tied agent in another member state, as well as the tied agents' registration or de-registration (deletion) from the public register on tied agents maintained by CySEC.

The IF Law defines a tied agent as a person established in a member state, who, acting under the full and unconditional responsibility of only one IF of a member state, on whose behalf it acts, promotes



investment and/or ancillary services, attracts clients or prospective clients, receives and transmits client orders in respect of investment services or financial instruments, places financial instruments and/or provides advice to clients or prospective clients in respect of those financial instruments or services. Tied agents are required to act exclusively on behalf of their principal as to the services susceptible to representation and only upon their registration in the public register.

The Directive requires principals (CIFs/IFs) intending to appoint a tied agent, to give notification to CySEC before the commencement of their relationship with the tied agent, such notification taking the form specified in the Directive and being accompanied by the requisite details, forms, fees and charges. It is further required that principals notify CySEC immediately upon termination of their cooperation with the tied agent and publish certain details concerning their tied agent on their website (including any details of termination).

THE BUREAU DE CHANGE DIRECTIVE ISSUED BY THE CENTRAL BANK OF CYPRUS

On 13th December 2014 the Central Bank of Cyprus (CBC) issued the Bureau de Change Directive of 2014, setting out the authorisation requirements for persons wishing to engage in Bureau de Change business in Cyprus, making it possible for legal persons incorporated and who maintain their head offices in Cyprus to operate as a traditional Bureau de Change upon acquisition of the requisite bureau de change license by the CBC.

The Directive excludes from the scope of its application foreign exchange transactions entered into by banks (and their subsidiaries where such subsidiaries are included on a consolidated basis in the supervision to which their parent undertaking is subject to) or by investment firms, where such service is related to the provision of investment services which they are authorised to provide. The acceptance of foreign currency for the purpose of paying for the provision of goods and services is also excluded from the scope of application of the Directive.

A Bureau de Change license is issued to a legal person, provided such person meets the criteria and conditions set out in the Directive, which include, inter alia, the following:

1. To maintain an initial capital of EUR 20,000, as well as own funds (throughout its operation) which do not fall below the initial capital amount;
2. To maintain robust governance arrangements, appropriate administrative, accounting, risk and audit procedures as well as adequate internal control mechanisms proportionate to the nature, extent and complexity of its business activities;
3. To maintain segregated bank accounts for its activities as a Bureau de Change at credit institutions based either in Cyprus or another EU member state;
4. To maintain adequate systems and financial resources for the smooth operation of its business.

Shareholders with a qualified holding in the applicant (being a direct or indirect holding in an representing 10 % or more of the capital or of the voting rights making it possible to exercise a significant influence over its management), directors, as well as the managers of applicant shall be assessed by the CBC on the basis of specific questionnaires. No license is granted unless the CBC is convinced that the above persons are fit and proper for the sound and prudent management of the Bureau de Change.



The CBC is required to conclude the assessment of the application within three (3) months from receipt of a complete application and to inform the applicant accordingly.

The CBC maintains a public register on its website, in which all persons licensed pursuant to the Directive, details of their license, their head office address, their branches, their representatives and branches of their representatives, are listed.

AMENDMENTS TO THE PUBLIC TAKEOVER BIDS LAW OF 2007

The Public Takeover Bids (Amending) Law of 2015 amends the Public Takeover Bids Law of 2007 (Takeover Law) by introducing an exemption to the requirement of section 13(1) of the Takeover Law to make a mandatory bid to all holders of securities for all of their holdings at an equitable price when a certain percentage of shareholding of existing voting rights in a company is reached or exceeded.

The above requirement does not apply in cases where the acquisition (or possession) of titles arises due to the application of resolution tools, powers and mechanisms provided for in Title IV of Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending various other Council Directives and Regulations.

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.

Disclaimer *The information and materials contained or referred to in this legal briefing are for general information purposes only and are not intended nor should they be relied upon as constituting legal or other professional advice and are intended only to provide guidelines. It is essential that professional legal advice is sought prior to embarking on any matters forming the subject matter of this legal briefing in respect of which E & G Economides LLC is gladly able to assist.*