

CYPRUS INVESTMENT FIRM



## **INTRODUCTION**

The provision of investment and ancillary services in Cyprus is governed by the Investment Services and Activities and Regulated Markets Law of 2007 to 2012 (Law 144(I)/2007) (the "**Law**") as amended, and is supervised by the Cyprus Securities and Exchange Commission (the "**CySEC**").

The Law incorporates the provisions of the Markets in Financial Instruments Directive 2004/39/EC, the EU directive which provides harmonised regulation for investment services across the member states of the European Economic Area.

## **WHY CYPRUS**

A Cyprus investment firm is taxed as any other company established under the laws of Cyprus and as such any taxable profit generated by an investment firm as a result of the provision of investment services and exercise of investment activities is subject to a 12.5% corporate tax. At the same time, none of the below are considered taxable income:

- Profits from sales of securities;
- FV gains from investments;
- Dividends received;
- Interest income;
- Foreign exchange gains or losses.

## **UNDERSTANDING THE FACTS**

The Law defines Cyprus Investment Firms (the "**CIF**") as companies established in Cyprus and authorised by the CySEC to provide one or more investment services to third parties or/and perform one or more investment activities on a professional basis.

## **INVESTMENT SERVICES AND ACTIVITIES**

The investment services and activities which are regulated by the Law are the following:

1. Reception and transmission of orders in relation to one or more financial instruments;
2. Execution of orders on behalf of clients;
3. Dealing on own account;
4. Portfolio management
5. Investment advice;
6. Underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis;

7. Placing of financial instruments without a firm commitment basis;
8. Operation of Multilateral Trading Facility.

A CIF must apply for at least one of the above regulated services.

#### **ANCILLARY SERVICES**

The CIF may also offer a range of the below regulated non-core activities:

1. Safekeeping and administration of financial instruments for the account of clients, including custodianship and related services such as cash/collateral management;
2. 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;
3. Advice to undertakings on capital structure, industrial strategy and related matters and advice and services relating to mergers and purchase of undertakings;
4. Foreign exchange services where these are connected to the provision of investment services;
5. Investment research and financial analysis or other forms of general recommendation relating to transactions in financial instruments;
6. Services related to underwriting;
7. Investment services and activities as well as ancillary services where these are connected to the provision of investment or ancillary services.

A CIF authorisation cannot be granted solely for the provision of ancillary services.

#### **FINANCIAL INSTRUMENTS**

The above investment and ancillary services are provided in relation to the following financial instruments:

1. Transferable securities;
2. Money-market instruments;
3. Units in collective investment undertakings;
4. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to securities, currencies, interest rates or yields or other derivatives instruments, financial indices or financial measures which may be settled physically or in cash;
5. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to commodities that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event);

6. Options, futures, swaps, and any other derivative contract relating to commodities that can be physically settled provided that they are traded on a regulated market and/or an MTF;
7. Options, futures, swaps, forwards and any other derivative contracts relating to commodities that can be physically settled not otherwise mentioned in paragraph 6 and not being for commercial purposes, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are cleared and settled through recognised clearing houses or are subject to regular margin calls;
8. Derivative instruments for the transfer of credit risk;
9. Financial contracts for differences;
10. Options, futures, swaps, forward rate agreements and any other derivative contracts relating to climatic variables, freight rates, emission allowances or inflation rates or other official economic statistics that must be settled in cash or may be settled in cash at the option of one of the parties (otherwise than by reason of a default or other termination event), as well as any other derivative contract relating to assets, rights, obligations, indices and measures not otherwise mentioned in this list, which have the characteristics of other derivative financial instruments, having regard to whether, inter alia, they are traded on a regulated market or an MTF, are cleared and settled through recognised clearing houses or are subject to regular margin calls

## **CONDITIONS FOR THE GRANTING OF A CIF AUTHORISATION**

### Adequate initial capital

The minimum initial capital of a CIF depends on its activities, as follows:

<b>INVESTMENT SERVICE</b>	<b>SHARE CAPITAL (EUR)</b>
Reception and transmission of orders*	125,000
Execution of orders*	125,000
Portfolio management*	125,000
Provision of investment advice*	125,000
Dealing on own account	730,000
Underwriting or placing of financial instruments on a firm commitment basis	730,000
Placing of financial instruments without a firm commitment basis	730,000
Operation of a Multilateral Trading Facility	730,000

\* A CIF providing any of these services without holding client's assets and/or clients' financial instruments may have minimum initial capital EUR 50,000.

At the final stage of assessment of the application for the granting of CIF authorisation, the CIF is required to submit a confirmation that it possesses the entire initial capital required according to the Law and that it has blocked this amount in a bank account. The initial capital must remain blocked until the CIF authorisation is granted.

#### Suitable shareholders

The shareholders possessing a qualifying holding, whether direct or indirect, must be fit to ensure the sound and prudent management of the CIF.

#### Suitable persons who effectively direct the business

The board of directors of a CIF must consist of at least:

- (a) Two executive members; and
- (b) Two independent non-executive members.

The majority of the members of the board of directors of the CIF must be residents of Cyprus and all members must be of sufficiently good reputation and possess sufficient knowledge, skills and experience to perform their duties.

The management of a CIF must be undertaken by at least two persons (four-eye principle) and who can be the executive members of its board of directors.

#### Suitable staff

The members of the staff of the CIF should:

- (a) Be of sufficiently good reputation and possess sufficient knowledge, skills and experience to perform their assigned responsibilities;
- (b) Render their services with a full and exclusive employment at the CIF; and
- (c) Be determined and accessible any time.

#### Head offices in Cyprus

The CIF's head offices in Cyprus must be fully staffed and specifically, all members of the staff are required to exercise their duties from the CIF's head offices, unless they are members of the staff of the CIF's branch that operates outside Cyprus.

CySEC can grant exceptions from the implementation of the provisions of the Law if the CIF satisfies CySEC that:

- (a) It is impossible to relocate certain of its staff members in Cyprus; and
- (b) This fact does not affect the smooth operation of the CIF as well as the exercise of the effective supervision by CySEC.

However, CySEC does not grant exceptions for the following members of the staff of the CIF, who must exercise their duties from the CIF's head offices:

- (a) At least one of the members of the management;
- (b) Compliance Officer;
- (c) Internal Auditor;
- (d) Risk Management Officer;
- (e) Financial Controller – Accountant;
- (f) Back Office Officer.

#### Member of the Investor Compensation Fund

All CIFs are required to participate to the Investor Compensation Fund subject to initial and annual subscriptions, which vary depending on the investment services which the CIF is entitled to provide (initial contribution) and are determined on the basis of the funds and financial instruments of the CIF's clients (ordinary annual contribution). A CIF providing investment services without holding client's assets and/or clients' financial instruments is exempted from the obligation to pay the initial and annual contribution.

#### Adequate Organizational Procedures

A CIF must comply with the organizational requirements laid down in the Law. Specifically, a CIF must:

- (a) Establish adequate policies and procedures to ensure its compliance with its obligations under the Law and relevant directives;
- (b) Maintain 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;
- (c) Take reasonable steps to ensure continuity and regularity in the performance of investment and ancillary services and activities, by employing appropriate and proportionate systems, resources and procedures;

- (d) Ensure, when relying on a third party for the performance of investment services or activities 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 the CySEC to monitor the CIF's compliance with all its obligations;
- (e) Have robust governance arrangements which include a clear organisational structure with well defined, transparent and consistent lines of responsibility;
- (f) Have sound administrative and accounting procedures, internal control mechanisms, effective procedures for assessing the risks the CIF undertakes and adequate control mechanisms, including sound remuneration policies and practices that are consistent with sound and effective risk management, and adequate safeguard arrangements for information processing;
- (g) Arrange for records to be kept of all services provided and transactions undertaken by it, which shall be sufficient to enable the CySEC to monitor compliance with the requirements of the Law;
- (h) Apply appropriate client identification procedures, record maintenance and internal reporting for the prevention of money laundering;
- (i) When holding financial instruments belonging to clients, make adequate arrangements so as to safeguard clients' ownership rights, especially in the event of the CIF's insolvency, and prevent the use of a client's instruments on own account except with the client's express consent;
- (j) 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.

## **OBTAINING A CIF AUTHORISATION**

Upon submission of a duly completed application for the granting of a CIF authorisation, CySEC must reach a decision and inform the applicant for the granting of authorisation or the rejection of the application within six months from the submission. [Applications for authorisation can be examined under the "fast track" examination scheme following payment of an additional fee \(approximately EUR 1,500\).](#)

## **CONCLUSION**

Royal Pine & Associates Limited has experience in the investment services filed and may assist you by:

- Drafting the Memorandum and Articles of Association of the CIF;
- Preparing the application for the granting of a CIF authorisation, including the drafting all documents supporting the application (including the CIF's business plan and policies and procedures manuals);
- Liaising with the CySEC;

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- Providing non-executive directors and compliance officers;
- Consulting on recruitment of CIF officers and staff;
- Providing post-licensing assistance in relation to the CIF's ongoing obligations.

Royal Pine & Associates is a strong independent provider of trust and corporate services and provides comprehensive and specialized advice and services in all aspects of domestic and international business. Please contact us to find out more about the above matter.

*\* This publication has been prepared as a general guide and for information purposes only. It does not purport to be comprehensive or to render legal advice.*