



THE CYPRUS INVESTMENT FIRM

2015

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## A. INTRODUCTION

The provision of investment and ancillary services in Cyprus is governed by the Law 144(I)/2007 on the Provision of Investment Services, Exercise of Investment Activities, the Operation of Regulated Markets and Other Related Matters (the "**Law**").

The Law came into force on 1<sup>st</sup> November 2007 repealing and replacing the old Investment Firms Law of 2002 and implementing the provisions of the Markets in Financial Instruments Directive ("**MiFID**") into the domestic law. The Law has undergone various amendments with the most recent ones taking place in 2014.

The implementation of this new legal framework and its continuous harmonization with European Directives along with a favorable tax treatment makes Cyprus an attractive place for establishing an investment firm ("**IF**") offering investors and businesses a "single passport" to provide investment services across the European Union ("**EU**").

With this report we shall briefly explain the main features of the Law and present some of the requirements to set up a Cyprus Investment Firm ("**CIF**").

## B. THE SCOPE OF APPLICATION OF THE LAW

The Law regulates the provision of investments and ancillary services, as well as the performance of investment activities, as these will be identified further below in Chapter III, on a professional basis in the Republic of Cyprus (the "**Republic**") including:

- 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 whether the relevant transaction is concluded within the Republic;
- 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;
- any provision or offer for the provision of investment and ancillary services, that comes from a person that is within, resident or domiciled within 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.

### C. INVESTMENT SERVICES

#### I. Investment Services and Activities

The investment services and activities which are regulated by the Law and subject to the granting of a license are the following:

1. Reception and transmission of orders;
2. Execution of orders on behalf of clients;
3. Dealing on own account;
4. Portfolio management;
5. Investment advice;
6. Underwriting 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 Facilities ("MTF").

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

#### II. Ancillary Services

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

1. Safekeeping and administration of financial instruments;
2. Safe custody services;
3. Granting credits or loans to an investor for transaction purposes;
4. Advice on capital structure, industrial strategy and related matters;
5. Foreign exchange services;
6. Investments research and financial analysis;
7. Services related to underwriting.

It is important to note that no license is granted for the operation of a CIF in relation to the provision of ancillary services only.

## D. REQUIREMENTS FOR THE GRANTING OF A CIF LICENSE

### I. Capital Requirements

The initial **issued and paid up** share capital required depends on the activities to be provided:

1. The minimum initial capital for a CIF holding client's assets and/or clients' financial instruments and providing any of the following is €125.000 :
  - Reception and transmission of orders;
  - Execution of orders on behalf of clients;
  - Portfolio management;
  - Investment advice.
2. A CIF providing any of the above mentioned services **without** holding client's assets and/or clients' financial instruments may have minimum initial capital of € 50.000.
3. The minimum initial capital for a CIF providing and/or conducting any of the following is € 730.000 :
  - Dealing on own account;
  - Underwriting/placing of financial instruments on a firm commitment basis;
  - Operation of MTF;
  - Placing of financial instruments without a firm commitment basis.

### II. Head Office

A CIF's head office must be situated in the Republic and shall be fully staffed. Any person employed by a CIF to perform any of the investment services must be a holder of a certificate obtained after having successfully taken the relevant examination of the Cyprus Ministry of Finance.

### III. Ownership

The competent authority shall not authorize the performance of any investment services until there is full disclosure of the identity of the direct or indirect shareholders, being either legal or natural, that have qualifying holdings (10% or more) or which makes it

possible to exercise a significant influence over the management of that undertaking as well as the amounts of those qualifying holdings.

In respect to legal persons, the applicant company must provide information with regards to the identity of the natural persons that they are managed by, as well as the identity of their shareholders, reaching the beneficial owners.

It is important to clarify that no information in relation to the beneficial owner is revealed or made available to the public records of the Registrar of Companies.

#### IV. Management

The management of a CIF must be undertaken by two persons (*four-eye principle*) who shall be of sufficiently good reputation and have sufficient experience as to ensure the sound and prudent management of the CIF.

#### V. The Board of Directors

The board of directors of a CIF (the “**Board**”) shall consist of at least two executive members and two independent non-executive members.

The overall composition of the board of directors must cover a wide range of experiences and knowledge. CySEC must be satisfied for the integrity and experience of the persons who shall effectively manage the applicant company prior to granting the license.

The persons to be appointed as directors of the company must:

- Dedicate adequate time for the execution of their duties;
- Be of sufficiently good repute;
- Possess adequate knowledge, capabilities and experience so as to comprehend the activities and main risks of the CIF

#### VI. Organizational Requirements

The CIF must comply with various organizational requirements such as the following:

- Establish adequate policies and procedures in order to ensure that it complies with its obligations under the Law and relevant directives by maintaining an independent compliance unit;
- Maintain effective organizational and administrative procedures to protect clients from any conflicts of interest;
- Take all necessary measures to ensure continuity of services and activities;
- Take necessary actions to minimize operational risks by establishing a risk management unit to implement and adopt policies for risk management;
- Have proper corporate governance in place with well-defined lines of responsibility;
- Have sound administrative and accounting procedures including internal control mechanisms, risk management and monitoring procedures;
- Maintain sufficient records of all services and transactions taken;
- Apply client identification procedures and maintain internal reporting policies in order to prevent any money laundering activities;
- Take adequate steps to safeguard clients' ownership rights.

The Board of Directors determines, supervises and reports in relation to the implementation of the organizational requirements to ensure the effective management of the CIF achieving at the same time separation of powers and avoiding any conflict of interest.

Furthermore, the CIF must have well defined hierarchy structure and must ensure that the employees are aware of all the procedures and policies of the company in relation to their duties.

A CIF while allocating functions internally must ensure that the senior management and the Board, are responsible for ensuring that the CIF complies with its obligations under the Law and should assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under the Law and the directives and to take appropriate measures to address any deficiencies.

## E. OBTAINING A CIF LICENSE

### I. Competent Authority (Application for Authorization)

The national competent supervisory authority for Investment Firms is the Cyprus Security and Exchange Commission ("CySEC"). CySEC is responsible, among others, to apply the Law, examine applications, issue directives and generally supervise the operation of investment firms in the Republic.

CySEC's headquarters are located in Nicosia and it is administered by the Members of its Board. CySEC must maintain a public register in which all the CIF's are registered.

### II. Procedure for Obtaining a License

The application form must be accompanied by the applicant's relevant confirmation that it possesses or will possess the required initial capital. At the final stage of the applications assessment by CySEC it shall request that the entire initial capital be blocked until authorization is granted.

Applications for CIF authorization must be presented to CySEC using the prescribed application forms. Upon submission of a duly completed application form CySEC is obliged by the Law to reach a decision on the application within 6 months of its receipt.

### III. Main Documents Required

The application form and personal questionnaires of the applicant company's shareholders, directors, senior managerial staff and any other managerial staff (if applicable) must be submitted to CySEC and must be accompanied by the following documents:

- Corporate documents (Certificate of incorporation, registered office, good standing, certificate of shareholders and directors and secretaries. Also a copy of the company's Memorandum and Articles of Association must be submitted);
- Proposed amended draft of Memorandum and Articles of Association to provide that the company operates as an investment company providing the services detailed in its license issued by CySEC;
- Business plan;
- Group and organization structure;

- Internal regulation of operation (operations manual);
- Internal procedures manual;
- AML procedures manual
- Certification from the company's representative who will promote the company at CySEC;
- Certification from the company that it possesses or shall possess the initial capital;
- Evidence proving the source of the initial capital;
- Copy of the insurance contract for professional indemnity;
- Information on service providers established in third countries;
- Information on the central counterparty, clearing and settlement system;
- Information of an applicant established in a third country;
- Annual financial accounts;
- Audited financial accounts for the last 3 years and consolidated audited financial accounts of the company's group of companies if applicable;
- Certificates of non-bankruptcy and criminal record for the following persons:
  - direct shareholders;
  - members of the Board of Directors;
  - senior managerial staff;
  - other managerial staff;
- Certification by the lawyers and external auditors of the company.

CySEC may at any time request additional information to be submitted.

#### IV. License

The CIF authorization shall state the name of the CIF, the number of its authorization, the date of issue and the investment and ancillary services it is authorized to provide.

A CIF authorization is valid in all Member States and shall allow the CIF to provide services for which it has been authorized to in all Member States, through a branch or the free provision of services.

Once the authorization has been granted, the CIF is obliged to comply with the continuing obligations set out in the relevant law and CySEC directives. A CIF must state on its documents the number of its authorization and must have a website.

## F. ESTABLISHMENT OF A BRANCH

### I. Establishment of a Branch by a CIF

A CIF may establish a branch in another Member State or a third country. A CIF wishing to do so should notify CySEC in writing with the following information:

- The Member State or the third country in which it plans to set up the branch;
- The address of the branch;
- The names of those responsible for the management of the branch;
- The programme of operation(s);
- Intention to use tied agents.

CySEC may either approve or reject the establishment of a branch in a Member State within 3 months. In case of approval CySEC notifies the competent authority of the host Member State accordingly.

The branch may be established and commence operations on receipt of a communication from the competent authority of the host Member State or within two months from the date CySEC has communicated its approval to the competent authority of the host country.

### II. Establishment of a Branch in the Republic by an IF of another Member State

An IF of another Member State can establish a branch in the Republic and provide the services that are covered by its licence.

The competent authority of the Member State in which the investment firm is registered shall communicate to CySEC the following:

- Address of the branch;
- The names of those responsible for the management and organizational structure;
- The programme of operations;
- Whether the IF intends to use tied agents and their identity;
- Information regarding the accredited compensation scheme.

The branch may be established on receipt of communication from CySEC or the latest two months from the competent authority's communication.

The Member State IF must compose and send to CySEC within four months after the end of every financial year a report in relation to the activities of the branch.

### III. Establishment of a Branch in the Republic by an IF of a Third Country

An IF that is authorized by the competent authority of a third country may provide investment services in the Republic provided it has obtained prior authorization from CySEC.

CySEC shall grant the authorization provided that:

- The branch complies with the provisions in Part III of the Law;
- The IF must comply with the operational provisions and obligations applicable.

The branch must comply with all the conditions and obligations imposed upon a CIF.

## **G. SINGLE PASSPORT AND FREEDOM TO PROVIDE SERVICES**

### I. A CIF Providing Services in another Member State or Third Country

A CIF may freely provide investment and ancillary services in another Member State or a third country provided the services are covered by its authorization.

A CIF wishing to provide investment service in another Member State or third country must notify to CySEC the following:

- The Member State or the third country it intends to provide the services;
- The program of operations;
- The tied agents in the territory of the host member state or third country.

CySEC must reply to the CIF within one month and forward the reply to the competent authority of the host Member State or third country.

The comments / requirements referred to above under Chapter VI as to the establishment of a branch apply in this section as well.

## II. Providing Services in the Republic by an IF of another Member State

An IF of another Member State has the freedom to provide investment services in the Republic.

CySEC is notified by the competent authority of the home Member State of the permission given to the IF to provide services in the Republic. The notification should include the program of operations, the investment services and any tied agents.

The comments / requirements referred to above under Chapter VI as to the establishment of a branch apply in this section as well.

## **H. TAXATION OF A CIF**

A CIF is taxable as any other tax resident company established under the Cyprus Companies' Law (Cap. 113). A Cyprus company has one of the lowest taxation in Europe and at the same time has acquired the European status of a respectable entity. Tax resident companies are taxed from 0% to 12.5% maximum on their net profits subject to the type of the income they have.

Any net profit generated by a CIF as a result of provision of investment services and exercise of investment activities e.g. brokerage services, financial advice, portfolio management etc. shall be liable to 12.5% taxation on any resulting net profit at the year's end.

### **Taxation of other income:**

- There is no tax (0%) on profits from the sale of titles i.e. shares, bonds, debentures, founders' shares and other titles of companies or other legal persons, incorporated in Cyprus or abroad and options therein. The Cyprus Income Tax Authorities has circulated an extended list of financial instruments that fall within the definition of "titles". Thus any gain made by a CIF for its own account from the trading of financial instruments falling under the definition of titles, is not taxable;
- There is no corporation tax (0%) on dividends received by a CIF from own investments from resident or non – resident companies;

- There is no withholding tax (0%) on payments to its non-resident shareholders in respect of dividends, or interest or royalties;
- There is no Special Defence Contribution Tax on dividends received by CIF from another Cyprus resident company;
- There is no Special Defence Contribution Tax on dividends received by a CIF from *a non-resident company*.

This exemption from taxation is not granted if

- a. the company paying the dividend is engaged directly or indirectly by more than 50% in activities which result in investment income

**AND**

- b. the rate of the foreign taxation on the income of the company paying the dividend is substantially lower than the 12.5% payable by the recipient Cyprus resident company.

In case this exemption does not apply, the dividend income received from the non-resident company is taxed at the rate of 17%.

## I. INCORPORATING A CIF AT THE REGISTRAR OF COMPANIES

CySEC shall grant a CIF authorization to a company that has been ***established in the Republic*** provided it complies with all the requirements stated in the Law and the EU Directives issued pursuant to the Law.

The applicant company may either (i) be newly incorporated with a structure to satisfy the requirements of CySEC upon application or (ii) an already existing company where all necessary changes required by CySEC shall be conferred during the process of the review of the application. In other words, a CIF authorization may be granted to a newly established company or an existing one.

Our office may assist you with any of the above options.

## J. CONCLUSION

The implementation of the provisions of the MiFID Directive into the domestic law gives Cyprus a credible playing role in the field of investment activities, offering investors and businesses a “single passport” to provide services across the EU. Establishing an investment firm in Cyprus offers the investors an excellent legal, accounting and banking support and assistance.

The Cyprus company enjoys the lowest taxation in Europe and at the same time has acquired the European “stamp of respectability”. The recent tax reform has resulted in the creation of a European jurisdiction where advantageous tax planning structures can be achieved. A Cyprus company, with its European diversion and acceptability opens the gates to Europe for those that give value to respect.

In effect, the harmonization with the European directives and the favorable tax environment make the CIF the key player in the world regime of investment services and also a valuable vehicle to the international investor for investment activities within the EU or outside the EU.

## **K. HOW KINANIS LLC CAN ASSIST YOU**

- Acting as legal advisors to the applicant company
- Undertaking the application preparation and relevant documentation for licensing
- Liaising with CySEC
- Assisting to the setup of the offices and recruitment procedure
- Post-licensing assistance

## **Disclaimer**

This publication has been prepared as a general guide and for information purposes only. It is not a substitution for professional advice. One must not rely on it without receiving independent advice based on the particular facts of his/her own case. No responsibility can be accepted by the authors or the publishers for any loss occasioned by acting or refraining from acting on the basis of this publication.

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## Our Firm

**Kinanis LLC**, a law and consulting firm, is one of the leading and largest business law firms in Cyprus and advises for over 30 years the international investor and private clients on all aspects of law, tax and accounting.

Kinanis LLC absorbed the business of its shareholders which are in the legal and consulting profession since 1983, with local and international dimensions.

Experience and practice over the years brought forward the need for transformation from a traditional law firm to a more innovative multidisciplinary firm providing a full range of services combining law and accounting with the extensive expertise in corporate and tax advice to ensure that our clients will obtain the best possible spherical advice adopting the principle as to the services offered "All in one place", so that the client will find a quick, correct and efficient solution to its daily legal, accounting and tax issues in a trustworthy environment.

This combination of legal, accounting and tax services through our well qualified personnel and our involvement and participation in international transactions over the years, have established our firm as one of the key players in the field. Our involvement in international financial transactions has also provided us with the extensive expertise in representing groups, corporations, funds as well as the private client.

The firm is staffed with around 80 young, energetic and ambitious professionals, including lawyers, accountants and administrators who provide prompt, efficient and high quality services and who are capable of meeting the current demanding challenges of the local and international business environment.

We always look to give solutions in a simple and as possible quick way focusing on the needs of each client trying to anticipate the issues before becoming a problem.

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