



# PRACTICAL LAW

MULTI-JURISDICTIONAL GUIDE 2012

## INVESTMENT FUNDS

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# Cyprus



Elias Neocleous and Stephanos Evangelides  
Andreas Neocleous & Co LLC

[www.practicallaw.com/5-504-1597](http://www.practicallaw.com/5-504-1597)

## RETAIL FUNDS

### 1. What is the structure of the retail funds market? What have been the main trends over the last year?

There are two distinct regimes in the Republic of Cyprus (Cyprus) for investment funds:

- Undertakings for collective investment in transferable securities (UCITS).
- International collective investment schemes (ICISs) (see Questions 15 to 27).

#### Open-ended retail funds

The only retail funds are UCITS (there are no retail ICISs) and UCITS are open-ended funds. Therefore, the answers to the following questions on retail funds relate to open-ended funds and deal only with UCITS.

Law 200(I) of 2004 (which was subsequently amended by Law 59(I) of 2008) implemented:

- Directive 85/611/EEC on undertakings for collective investment in transferable securities (UCITS) (UCITS Directive).
- Directive 2001/108/EC amending Directive 85/611/EEC on undertakings for collective investment in transferable securities (UCITS), with regard to investments of UCITS (UCITS Product Directive).
- Directive 2001/107/EC amending Directive 85/611/EEC on undertakings for collective investment in transferable securities (UCITS) with a view to regulating management companies and simplified prospectuses (UCITS Management Directive).

Despite this, the perceived unfavourable tax treatment of UCITS held back the growth of the funds industry. However, following changes in the tax treatment of UCITS introduced late in 2009, the sector has seen a great increase in activity and interest. The market is not developed but this will change with the implementation of new tax measures and the transposition of Directive 2009/65/EC on undertakings for collective investment in transferable securities (UCITS) (UCITS IV Directive) into national legislation. A draft law to transpose the UCITS IV Directive into national law is currently progressing through parliament.

UCITS are usually mutual funds or variable capital investment companies (see Question 8, *Open-ended retail funds*).

#### Closed-ended retail funds

Not applicable (see above, *Open-ended retail funds*).

#### Regulatory framework and bodies

### 2. What are the key statutes, regulations and rules that govern retail funds? Which regulatory bodies regulate retail funds?

#### Open-ended retail funds

**Regulatory framework.** The following provisions apply to UCITS:

- The Law Regulating the Structure, Organization and Operation of Open-Ended UCITS in Cyprus (*Law 200(I) of 2004*) as amended by Law 59(I) of 2008 (UCITS Law).
- The Companies Law (*Cap 113*) (Companies Law).

**Regulatory bodies.** The Cyprus Securities and Exchange Commission (CySEC) regulates UCITS.

#### Closed-ended retail funds

**Regulatory framework.** Not applicable (see Question 1, *Open-ended retail funds*).

**Regulatory bodies.** Not applicable (see Question 1, *Open-ended retail funds*).

### 3. Do retail funds themselves have to be authorised or licensed?

#### Open-ended retail funds

CySEC deals with applications for the establishment of UCITS funds. Local UCITS funds can operate only under a licence from CySEC. UCITS funds licensed by the relevant authority of an EU member state can offer their services throughout the EU pursuant to the passport provisions of UCITS Law.

**Application.** For a licence to be granted to local and foreign funds, all of the following must be submitted to CySEC:

- A duly completed application form and supporting documentation using the prescribed form. Applications must detail the:
  - identity and particulars of the proposed directors of the management company;
  - identity and particulars of the persons responsible for the management of the mutual fund or variable capital investment company;



- name, registered office, identity and particulars of the persons listed in the application as directors of the mutual fund's or variable capital investment company's depository;
- identity and particulars of the individuals that the depository entrusts with the:
  - supervision of the mutual fund or variable capital investment company; and
  - legal management of the management company.
- Any other information that CySEC reasonably requests.

**CySEC review.** CySEC must determine the application within six months of submission of a complete application (*UCITS Law*). Failure by CySEC to reach a decision within this time limit is subject to judicial review before the Supreme Court under Article 146 of the Cyprus Constitution.

CySEC can request further clarifications or additional information as it deems appropriate to:

- Allow it to fully evaluate the application.
- Ensure that the applicant complies with the Investment Services and Activities and Regulated Markets Law of 2007 (*Law 144(1) of 2007*) (Investment Services Law) and any Directives issued under it.

If an applicant provides further information but CySEC is not satisfied with the information, it must inform the directors of the applicant (or the persons duly authorised by them to deal with the application) in writing. The applicant must be given a reasonable period (at least five days) to provide any further information. Failure by an applicant to respond to a request can result in the application being withdrawn.

**Foreign licensed funds.** Foreign funds licensed in an EU member state can offer their products to residents in Cyprus freely on the basis of free movement of services or freedom of establishment. A mere notification to CySEC suffices.

#### Closed-ended retail funds

Not applicable (see *Question 1, Open-ended retail funds*).

#### Marketing

#### 4. Who can market retail funds?

##### Open-ended retail funds

UCITS established in Cyprus or another EU member state can market funds in Cyprus. CySEC authorisation is required to market units or shares of a:

- Fund registered in a member state to which the UCITS Directive does not apply.
- UCITS registered in a third country.

Provided a licence is received, there are no differences between local and foreign funds in terms of marketing retail funds in Cyprus.

Only banks, licensed investment firms and co-operative credit institutions can represent the management company to market funds. To do so they must comply with CySEC standards, including:

- Delivering to unitholders all relevant documents and reports of the UCITS, and any form or document which can be delivered to them by the UCITS.
- Entering into an agreement with the UCITS for marketing its units in Cyprus.
- Abiding by the advertising rules and provisions of the UCITS Law.
- Informing unitholders about the frequency, place and manner of publication in Cyprus of the prices (that is, net asset value (NAV), marketing price and redemption price) of the UCITS, subject to the provisions of the UCITS Law.
- Acting honestly and professionally.
- Ensuring that any charges or commission are justified by the quality and nature of the services provided in relation to the UCITS.
- Having appropriately qualified employees.

#### Closed-ended retail funds

Not applicable (see *Question 1, Open-ended retail funds*).

#### 5. To whom can retail funds be marketed?

##### Open-ended retail funds

With CySEC's prior written authorisation, local funds and foreign licensed funds can be marketed freely to retail investors inside Cyprus. On submitting the prescribed notification to CySEC, these funds can also be marketed freely outside Cyprus.

Provided a licence is received there are no differences between local and foreign funds in terms of marketing retail funds in Cyprus (see *Question 4, Open-ended retail funds*).

A UCITS established in another EU member state which intends to market its units in Cyprus must submit all of the following to CySEC:

- A written standard notification.
- A valid attestation by the home member state.
- The latest full prospectus.
- The latest simplified prospectus.
- The latest annual and any subsequent half-yearly report.
- Information on the proposed manner of marketing of the UCITS in Cyprus.
- The relevant registration fees as set out in the UCITS Law.

#### Closed-ended retail funds

Not applicable (see *Question 1, Open-ended retail funds*).

### Managers and operators

#### 6. What are the key requirements that apply to managers or operators of retail funds?

##### Open-ended retail funds

**Local management companies.** A local management company must:

- Be a company incorporated under the Companies Law whose sole activity is the management of UCITS.
- Have paid-up capital and reserves of at least the minimum set by CySEC (currently just under EUR769,000 (as at 1 November 2011, US\$1 was about EURO.7)).

**Foreign management companies.** Only management companies can provide services in Cyprus. Foreign management companies incorporated in another EU member state can provide their services within Cyprus freely, either on a cross-border basis or by establishing a place of business in Cyprus and can manage a UCITS established in Cyprus.

**Licence.** Local and foreign management companies incorporated in a third country require an operating licence granted by CySEC. The company must make an application before providing services in Cyprus. Provided a licence is obtained, foreign management companies can provide their services to local UCITS.

When considering an application, CySEC will take into account the:

- Fitness and propriety of the shareholders and management.
- Adequacy of the company's human and other resources.

CySEC will assess whether the company is able to provide its services in accordance with the provisions of the UCITS Law without jeopardising the:

- Interests of investors.
- Smooth operation of the capital market.

**Ongoing requirements.** Authorised management companies must:

- Keep CySEC apprised of changes in their personnel (and in some cases obtain prior approval of proposed changes).
- Regularly submit information, including annual audited financial statements and quarterly unaudited financial statements.

##### Closed-ended retail funds

Not applicable (see *Question 1, Open-ended retail funds*).

### Assets portfolio

#### 7. Who holds the portfolio of assets? What regulations are in place for its protection?

##### Open-ended retail funds

The assets must be held by a depository independent of, and distinct from, the management company. Depository services can be provided by either:

- Banks or co-operative credit institutions both:
  - licensed for the purpose by CySEC;
  - based in Cyprus or operating there through a branch.

- Cyprus companies authorised by CySEC which have provided adequate financial and professional guarantees.

Safekeeping of the following can be delegated to an officially authorised depository abroad:

- Foreign transferable securities.
- Other liquid financial assets.
- Shares in Cyprus companies listed overseas.

This delegation must be notified to the management company and does not release the depository from liability for the assets concerned.

CySEC can replace a depository if it both:

- Finds a serious violation of its obligations.
- Considers replacement necessary for the protection of investors' interests.

##### Closed-ended retail funds

Not applicable (see *Question 1, Open-ended retail funds*).

### Legal fund vehicles

#### 8. What are the main legal vehicles used to set up a retail fund and what are the key advantages and disadvantages of using these structures?

##### Open-ended retail funds

**Legal vehicles.** There are two main forms of UCITS:

- **Mutual funds.** A mutual fund is a pool of assets such as transferable securities, money market instruments and deposits belonging to the fund's unitholders. Mutual funds generally refer to their participants' interests as units. A mutual fund is managed by a management company and kept by a depository on behalf of the investors, its owners. The mutual fund has no legal personality and is represented by the management company in a case of dispute.
- **Variable capital investment companies.** A variable capital investment company is a limited liability company. Participants' interests are called shares if the company is incorporated under the Companies Law and registered under the UCITS Law. The value of shares in the company varies according to the NAV divided by the total number of issued shares. A variable capital investment company can manage its own assets but not other companies' assets. It must appoint a depository to have custody of its assets and have an initial paid up capital of at least the minimum set by CySEC (currently about EUR1,709,000).

**Advantages.** Requirements regarding both types of structure are broadly similar and neither has any particular advantages or disadvantages over the other.

**Disadvantages.** See above, *Open-ended retail funds: Advantages*.

##### Closed-ended retail funds

**Legal vehicles.** Not applicable (see *Question 1, Open-ended retail funds*).



**Advantages.** Not applicable (*see Question 1, Open-ended retail funds*).

**Disadvantages.** Not applicable (*see Question 1, Open-ended retail funds*).

### Investment and borrowing restrictions

## 9. What are the investment and borrowing restrictions on retail funds?

### Open-ended retail funds

**Restriction to investing in certain financial instruments.** UCITS can only invest in the financial instruments set out in Directive DI200-2004-01, which include:

- Transferable securities, money market instruments and financial derivative instruments, which are admitted to:
  - trade on a regulated market in a member state;
  - trade on a regulated market which constitutes a controlled market of a member state; or
  - be listed on a stock exchange in a third country.

This is provided the choice of stock exchange or market is provided for in the fund rules, memorandum, articles of association, or the articles of association of the investment company and has been approved by CySEC.
- Financial derivative instruments dealt in over-the-counter (OTC derivatives), subject to certain safeguards.
- Units of both:
  - UCITS authorised in member states under the UCITS Directive;
  - other collective investment undertakings that are subject to a comparable level of regulation and provide comparable investor protection.
- Deposits with credit institutions which are repayable on demand or which mature in no more than 12 months, provided that the credit institution either:
  - has its registered office in a member state;
  - is subject to prudential supervision accepted by CySEC as equivalent to that in Cyprus.
- Money market instruments issued by regulated issuers and underwritten by an appropriate body such as a central bank or state or local authority.

**Restrictions on certain categories of investment.** A UCITS cannot:

- Invest in precious metals.
- Invest more than 10% of its assets in newly issued securities.
- Have an aggregate exposure under financial derivatives contracts that exceeds its NAV.
- Invest more than 10% of its assets in transferable securities or money market instruments issued by the same body.
- Invest more than 20% of its assets in deposits made with the same body.

**Borrowing restrictions.** The investment company, the management company and the depository acting on behalf of a UCITS cannot

contract loans, unless the loans are back-to-back (that is, where companies in different countries borrow offsetting amounts from each other in each other's currency).

The following can also apply:

- An investment company or management company acting on behalf of a UCITS can borrow, for a period up to three months, up to 10% of the UCITS net assets to satisfy applications for redemption of units (if the sale of securities is considered disadvantageous).
- An investment company can borrow up to 10% of its net assets to acquire immovable property essential for the direct pursuit of its activities.
- A management company can borrow up to 15% of its own funds, provided that the loan is to acquire immovable property essential for the direct pursuit of its business.

In addition, the loans referred to in the first two bullet points above must not exceed 15% of the investment company's net assets in aggregate.

### Closed-ended retail funds

Not applicable (*see Question 1, Open-ended retail funds*).

## 10. Can the manager or operator place any restrictions on the issue and redemption of interests in retail funds?

### Open-ended retail funds

**Mutual funds.** Mutual fund units must be redeemable on the holder's demand. The value of the units redeemed must be paid in cash within four working days from the day the application for the redemption of the units is submitted.

In exceptional cases, the management company can suspend the issue or redemption of units for up to one month, provided it obtains prior CySEC approval. This applies either:

- When circumstances or the interests of unitholders make it necessary.
- In cases provided for in the fund's regulations or the investment company's memorandum or articles of association.

Suspension can be extended for up to three months with prior CySEC approval.

**Variable capital investment companies.** Similar provisions apply to the redemption of shares in a variable capital investment company (*see above, Mutual funds*).

### Closed-ended retail funds

Not applicable (*see Question 1, Open-ended retail funds*).

## 11. Are there any restrictions on the rights of participants in retail funds to transfer or assign their interests to third parties?

### Open-ended retail funds

There are no restrictions on transferability under the UCITS Law.

### Closed-ended retail funds

Not applicable (see *Question 1, Open-ended retail funds*).

### Reporting requirements

## 12. What are the general periodic reporting requirements for retail funds?

### Open-ended retail funds

31 December is the accounting reference date for UCITS and management companies, which must compile:

- An audited annual report for each financial year.
- A semi-annual report for the first six months of the financial year.
- Quarterly summaries of assets and expenses. The statement for the fourth quarter should incorporate a profit and loss account, and statement of appropriation of profits, for the whole financial year.

**Investors.** The following rules apply in relation to reporting to investors and regulators:

- The annual and semi-annual reports must be submitted to CySEC and made available to unitholders within two months from the end of the period to which they refer.
- The quarterly statement for each of the first three quarters must be submitted to CySEC and advertised within 15 days from the end of the period to which it relates. The statement for the final quarter of the year must be submitted to CySEC and advertised within two months after the year end.
- The following must be calculated daily and published:
  - the NAV;
  - the number of units outstanding;
  - the net value per unit;
  - the unit issue and redemption prices.

**Regulators.** See above, *Open-ended retail funds: Investors*.

### Closed-ended retail funds

**Investors.** Not applicable (see *Question 1, Open-ended retail funds*).

**Regulators.** Not applicable (see *Question 1, Open-ended retail funds*).

### Tax treatment

## 13. What is the tax treatment for retail funds?

### Open-ended retail funds

**Funds.** UCITS are subject to taxation under the Income Tax Law of 2002, the Special Contribution for the Defence of the Republic Law of 2002, the Capital Gains Tax Laws of 1980 to 2002 and the Immovable Property Tax Laws of 1980 to 2002.

The following main rules apply:

- Companies are subject to tax on profits at 10%. Profits include interest received by collective investment schemes, after deduction of any costs (including financing costs) of earning it.
- There is no taxation of capital gains, apart from gains on disposal of real property in Cyprus and on disposal of shares in companies holding that property.
- Gains on disposal of securities are exempt from tax. The definition of securities includes units in collective investment schemes. Gains from the redemption of units or other participations in UCITS constitute a sale or disposal of securities, and are subsequently tax exempt.
- Dividend income is exempt from corporate income tax. It is also exempt from special defence contribution (SDC tax), unless both:
  - more than 50% of the paying company's activities result directly or indirectly in investment income; and
  - the foreign tax is significantly lower (that is, 5% or less) than the tax burden in Cyprus.

In addition, if a Cyprus-resident UCITS does not distribute a dividend within two years from the end of the tax year, both:

- 70% of accounting profits are deemed to have been distributed.
- SDC at 3% is imposed on that part of the deemed dividend distribution which applies to shareholders or unitholders who are Cyprus residents.

If a Cyprus-resident UCITS is wound up, both:

- Any profits earned in the five years before dissolution which have not been distributed or deemed to have been distributed are considered as having been distributed on dissolution.
- The proportion attributable to Cyprus-resident shareholders or unitholders is subject to SDC tax at 3%.

Dissolution under a qualifying reorganisation scheme is entirely tax exempt.

**Resident investors.** Cyprus-resident individuals are subject to SDC tax at 3% on dividend income received from a UCITS. Capital gains are tax exempt unless they are derived from real property in Cyprus.

**Non-resident investors.** Non-resident investors are not subject to any Cyprus tax liability or withholding in relation to income or gains derived from a Cyprus UCITS.

### Closed-ended retail funds

**Funds.** See above, *Open-ended retail funds: Funds*.

**Resident investors.** See above, *Open-ended retail funds: Resident investors*.

**Non-resident investors.** See above, *Open-ended retail funds: Non-resident investors*.



### Reform

#### 14. What proposals (if any) are there for the reform of retail fund regulation?

A draft law to transpose the UCITS IV Directive 2009/65/EC into national law is currently progressing through parliament (see *Question 1, Open-ended retail funds*). There are no other current proposals for reform.

### HEDGE FUNDS

#### 15. What is the structure of the hedge funds market? What have been the main trends over the last year?

##### Market trends

Cyprus has not traditionally been a domicile for hedge funds. However, its excellent location and infrastructure, combined with recent regulatory changes, are leading to strong interest in establishing in Cyprus.

A large number of hedge funds are currently managed from the UK. However, Cyprus is in a strong position to benefit from the trend of managing hedge funds in other jurisdictions. The government and the private sector are keen to bring in fund operations. In 2005 IKOS, one of Europe's longest established hedge funds, moved its operations from London to Cyprus. Albourne Partners, the London-based alternative investment fund services provider, has also developed a major presence in Cyprus.

##### ICISs

The international collective investment schemes (ICIS) is the most appropriate structure for hedge funds (see *Question 23*). In May 1999, Cyprus introduced legislation enabling the establishment and regulation of ICISs. A number of schemes were established, but due to proposed changes in the regulatory regime, only a small number of new schemes have been established in the last few years. The Central Bank of Cyprus (CBC) is currently responsible for regulating ICISs, but legislation is being prepared to transfer this responsibility to CySEC (see *Question 2, Open-ended retail funds*).

ICISs can be established on an open-ended or closed-ended basis, but hedge funds are typically open-ended.

The CBC currently recognises only private ICISs with 100 or fewer investors, and the answers to the following questions on hedge funds relate to private ICISs.

##### Regulatory framework and bodies

#### 16. What are the key statutes and regulations that govern hedge funds in your jurisdiction? Which regulatory bodies regulate hedge funds?

##### Regulatory framework

The main statutes regulating hedge funds are the:

- Investment Services Law.

- Consolidated Market Abuse Law (*Law 116(I) of 2005*) (Market Abuse Law).
- Prevention and Suppression of Money Laundering Activities Law (consolidated with Law 58(I) of 2010) (Money Laundering Activities Law).
- Transparency Laws of 2007 to 2009 (*Law 190(I) of 2007 and Law 72(I) of 2009*) (Transparency Laws).
- International Collective Investment Schemes Law (*Law 47(I) of 1999*) (ICIS Law).

The following provisions apply specifically to ICISs:

- The Companies Law.
- The Partnership and Business Names Law (*Cap 146*).
- The International Trusts Law 1991.
- The International Collective Investment Schemes Law.

The main statutes regulating hedge fund managers are the:

- Investment Services Law.
- Market Abuse Law.
- Money Laundering Activities Law.
- Transparency Laws.

##### Regulatory bodies

The CBC regulates ICISs (see *Question 15, ICISs*).

#### 17. How are hedge funds regulated (if at all) to ensure compliance with general international standards of good practice?

##### Risk

The CBC regards private ICISs as a private arrangement requiring minimal regulation. A manager or a trustee need not be appointed.

##### Valuation and pricing

See above, *Risk*.

##### Systems and controls

See above, *Risk*.

##### Insider dealing and market abuse

The Market Abuse Law regulates matters concerning the possessors of confidential information relating to financial instruments:

- Which are admitted for trading in a regulated market within Cyprus.
- In relation to which admission to trading has been requested from Cyprus.

The Market Abuse Law applies regardless of whether the transaction itself is concluded in Cyprus. The Market Abuse Law does not differentiate between investment transactions undertaken by hedge funds and those undertaken by any other investor.

## Transparency

The Transparency Requirements Law (*Law 190(I) of 2007*) (Transparency Law) transposed into domestic legislation:

- Directive 2004/109/EC on transparency requirements for securities admitted to trading on a regulated market and amending Directive 2001/34/EC (Transparency Directive).
- In part, Directive 2007/14/EC implementing Directive 2004/109/EC in relation to information about issuers whose securities are admitted to trading on a regulated market.

The Transparency Law applies to issuers of transferable securities listed for trading on a regulated market whose EU home member state is Cyprus. The Transparency Law does not differentiate between investment transactions undertaken by hedge funds and those undertaken by any other investor.

## Money laundering

All undertakings carrying on financial business in Cyprus are equally subject to the Money Laundering Activities Law. Undertakings must (*Money Laundering Activities Law*):

- Put in place and implement adequate procedures regarding identification of customers, record-keeping, and internal and external reporting.
- Put in place and implement other procedures of internal control and communication as can be appropriate to prevent money laundering.
- Keep their employees informed about these procedures and about the legislation relating to money laundering.

## Short selling

See above, *Risk*.

## Marketing

### 18. Who can market hedge funds?

Generally, local private schemes must appoint a custodian, which must be a Cyprus bank, unless the CBC specifically exempts it from this requirement. Private schemes which do not have a physical presence in Cyprus must also appoint a company to carry out the scheme's administration work. This company must be based in Cyprus and be approved by the CBC.

CySEC has issued a number of directives governing the marketing in Cyprus of the products of non-harmonised UCITS domiciled in an EU member state, and UCITS with a state of domicile in a third country. Non-harmonised UCITSs can market their units in Cyprus only where a marketing authorisation has been granted by CySEC. In order to obtain authorisation, an application must be submitted in the form prescribed in Directive DI 200-2004-03. The marketing of units of non-harmonised and third country UCITS in Cyprus must be carried out through a distributor.

### 19. To whom can hedge funds be marketed?

The CBC currently only recognises private schemes (that is, schemes limited to 100 investors or fewer). A private ICIS cannot

make invitations to the public to purchase units in the scheme. More specifically, a private international collective investment scheme is defined as a scheme that, by its constitutional documentation:

- Restricts the right to transfer its units.
- Limits the number of its unitholders to one hundred.
- Prohibits any invitation to the public to subscribe for any units of the scheme.
- Prohibits the issue of bearer units.

## Investment restrictions

### 20. Are there any restrictions on local investors investing in a hedge fund?

The CBC only allows investments of a minimum of EUR50,000 for each investor in a private scheme.

## Assets portfolio

### 21. Who holds the portfolio of assets? What regulations are in place for its protection?

The CBC regards private ICISs as a private arrangement and does not require them to appoint a manager or a trustee.

## Requirements

### 22. What are the key disclosure or filing requirements (if any) that must be completed by the hedge fund?

The CBC regards private ICISs as a private arrangement and does not impose disclosure or filing requirements. However, a policy statement issued by the CBC in 2009 strongly recommended that a private offering memorandum (POM) is prepared, which should be named as such, and include the following paragraphs:

- This Private Offering Memorandum is not a Prospectus under the provisions of Law 114(I)/2005 (Law Providing for the conditions for making an offer to the public of securities, on the prospectus to be published).
- The Central Bank of Cyprus shall not be liable by virtue of its recognition of the ICIS by reason of its exercise of the functions conferred on it by the Law. Recognition of the ICIS does not constitute a warranty by the Central Bank of Cyprus as to the creditworthiness or financial standing of the various parties to the ICIS.

Even though it is not mandatory, it is considered best practice to include this exact wording.

Furthermore, the POM must include a copy of the subscription form, which proposed investors will sign to become unitholders in the ICIS, showing clearly to which bank account the subscription money will be deposited.





### 23. What are the key requirements that apply to managers or operators of hedge funds?

The CBC does not require ICISs to appoint a manager or a trustee, and therefore does not impose requirements on managers. Where a local hedge fund chooses to appoint a manager, it must provide the CBC with the following information:

- The name of the investment manager, irrespective of whether they are:
  - a shareholder and/or a director in the applicant company; or
  - registered with a recognised supervisory body.
- The historical background of the investment manager, including:
  - the names of the directors (in case of a legal entity);
  - the date of commencement of business;
  - the licences obtained from recognised supervisory bodies;
  - the type of services offered;
  - the place(s) of business;
  - any associated business or parties; and
  - any other information relevant to the investment manager's experience, integrity, competence and compliance with laws and regulations.
- Whether the investment manager or board of directors will have final responsibility for the investment policy of the applicant (the number of the paragraph in the company's articles of association or equivalent document referring to the subject matter should be mentioned).

The same information is required for the general partner and/or the investment partner.

Further, the hedge fund must also include information in relation to the investment and/or advisory committees, explaining their:

- Role.
- Composition.
- Authority.
- Responsibility.
- Accountability.

#### Legal fund vehicles and structures

### 24. What are the main legal vehicles used to set up a hedge fund and what are the key advantages and disadvantages of using these structures?

A hedge fund can be structured in Cyprus in the form of an ICIS, which can be an (*ICIS Law*):

- International investment limited partnership (IILP).
- International unit trust scheme (IUTS).
- International fixed capital company (IFCC).
- International variable capital company (IVCC).

These can be of limited or unlimited duration. The CBC currently only recognises private schemes, mostly in the form of variable or fixed capital companies or partnerships. Participant interests in IILPs and IUTSs are called units; in IFCCs and IVCCs they are called shares.

**Advantages.** There are certain tax advantages (*see Question 13, Open-ended retail funds: Funds*).

**Disadvantages.** Only funds in the form of private schemes can be set up, which imposes a limit on the number of investors, restrictions on transfer of shares and so on (*see Question 19*).

### 25. What are the advantages and disadvantages of using onshore and offshore structures?

#### Onshore

**Advantages.** Cyprus is fast becoming a destination of choice for fund managers and management companies. due to advantages including:

- A 10% cap on corporate tax, the lowest in the EU.
- Corporate tax can be reduced to zero since gains from trading in securities are tax exempt.
- Interest received is subject only to corporate tax.
- There is no minimum participation threshold for inward dividends to qualify for tax exemption.
- The liquidation of open and closed end collective schemes is not taxable.
- A transparent, reliable and familiar legal and business infrastructure.
- Flexible regulation and light supervision.
- Substantially lower operating costs than comparable fund centres.
- A 35% top rate of personal income tax.

**Disadvantages.** There are no disadvantages.

#### Offshore

**Advantages.** Given the benefits of basing the fund structure in Cyprus (*see above, Onshore*) it is difficult to envisage circumstances in which an offshore structure would be preferable.

**Disadvantages.** In most circumstances an onshore structure will involve lower costs and taxes and be more beneficial than an offshore structure.

#### Tax treatment

### 26. What is the tax treatment for hedge funds?

#### Funds

*See Question 13, Open-ended retail funds: Funds.*

#### Resident investors

*See Question 13, Open-ended retail funds: Resident investors.*



### Non-resident investors

See *Question 13, Open-ended retail funds: Non-resident investors*.

### Restrictions

**27. Can participants redeem their interest? Are there any restrictions on the right of participants to transfer their interests to third parties?**

### Redemption of interest

Participants can freely redeem their interest under applicable legislation and the internal rules of the scheme.

### Transfer to third parties

An ICIS established as a private scheme cannot transfer shares or units to the public.

### Reform

**28. What (if any) proposals are there for the reform of hedge fund regulation?**

There are no proposals for reform.

## CONTRIBUTOR DETAILS



### ELIAS NEOCLEOUS

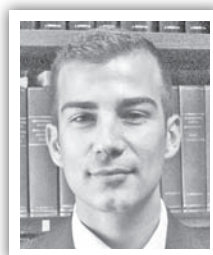
*Andreas Neocleous & Co LLC*

T +357 25 110 000

F +357 25 110 001

E [info@neocleous.com](mailto:info@neocleous.com)

W [www.neocleous.com](http://www.neocleous.com)



### STEPHANOS EVANGELIDES

*Andreas Neocleous & Co LLC*

T +357 25 110 000

F +357 25 110 001

E [info@neocleous.com](mailto:info@neocleous.com)

W [www.neocleous.com](http://www.neocleous.com)

**Qualified.** London, 1992; Cyprus, 1993

**Areas of practice.** M&A; banking and finance; international taxation; corporate and structured finance; restructuring and insolvency.

### Recent transactions

- Advising a major Russian bank in a series of acquisitions to support strategically important businesses.
- Acting for a Russian financial group in connection with the transfer of its holding company from mainland Europe to Cyprus.
- Advising leading global organisations, including Acer Inc and Deutsche Bank on Cyprus law and tax aspects of restructurings.
- Co-ordinating the multi-billion dollar sale of a majority shareholding in one of Russia's largest companies, listed in Moscow and London.

**Qualified.** Cyprus, 2008

**Areas of practice.** M&A; banking and finance; financial services.

### Recent transactions

- Assisting with the multi-billion dollar sale of a majority shareholding in one of Russia's largest companies, listed in Moscow and London.
- Acting in connection with the acquisition of a substantial shareholding in a Cyprus bank.



## **PRACTICE AREAS**

### **COMPANY AND COMMERCIAL**

Mergers and acquisitions  
Banking and finance  
Company restructuring  
Insolvency

### **TAXATION**

International tax planning  
General tax planning  
Trusts

### **DISPUTE RESOLUTION**

Commercial litigation  
International arbitration  
Employment litigation  
Family law

### **ADMIRALTY AND SHIPPING**

Ship registration and finance  
Shipping operations and management  
Insurance  
Charter disputes  
Collision disputes

### **EU AND COMPETITION**

### **INTELLECTUAL PROPERTY**

### **CONSTRUCTION AND REAL ESTATE**

### **PRIVATE CLIENT SERVICES**

## **OFFICES**

### **CYPRUS**

Limassol  
Nicosia  
Paphos

### **INTERNATIONAL**

Moscow  
Brussels  
Budapest  
Prague  
Kiev  
Sevastopol

**“Once again alone at the top of the rankings”**

Chambers Global Guide

**“responsive, friendly, pragmatic and effective”**

Legal 500

**“The most recognised and established firm in Cyprus”**

IFLR 1000

From its formation in 1965 Andreas Neocleous & Co has grown to be the largest firm in Cyprus and is now generally recognised as the leading firm in the region.

With more than one hundred and thirty professionals in Cyprus and mainland Europe, our mission is to provide international clients with service of the highest international standards. We value diversity and our staff speak most major European languages. All are fluent in English.

We specialise in cross-border work and have the scale and depth of resources required to handle complex international assignments in demanding timescales. Alone among Cyprus law firms we have a specialist financial services group advising financial services businesses and their advisers on issues including regulation, compliance and taxation.

We are committed to understanding their objectives rapidly and effectively and to providing timely, clear and practical legal advice and action.

### **Andreas Neocleous & Co LLC**

Neocleous House,  
P O Box 50613, Limassol, CY-3608, Cyprus

Telephone: +357 25 110000

Fax: +357 25 110001

Email: [info@neocleous.com](mailto:info@neocleous.com)

Internet: [www.neocleous.com](http://www.neocleous.com)