

# Multi-jurisdictional fund marketing: Cyprus

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With one of the most favourable tax regimes in Europe and practically no restrictions on movement of capital, Cyprus is a well-established international business hub and is rapidly becoming a popular jurisdiction for fund managers seeking investors to set out their stall. When pursuing investors in Cyprus it would be useful for managers to consider at least the background information set out below.



## Preliminary considerations

Cyprus law does not require funds to be registered locally as a precondition to marketing. In this context marketing means the offering of units (or other types of equity as the case may be) of funds and is not distinguished from the process of distributing marketing materials with respect to such units, since the question whether the two can be distinct actions (with different implications) is a matter for the relevant authorities to determine based on the facts of each specific case.

## Types of fund

The key factor influencing the marketing of funds in Cyprus is the nature of the fund. Different requirements apply to fully harmonised Units in Collective Investment in Transferable Securities (UCITS) established in Cyprus or in another member state, non-harmonised UCITS established in a member state or elsewhere, and mutual funds (further subdivided into hedge funds, equity funds, money market funds and equity funds) that cannot be classified as UCITS, established and managed abroad or established and managed in Cyprus as an International Collective Investment Scheme (ICIS) under the Global Collective Investment Schemes Law.

The marketing of harmonised UCITS is regulated by Law, N 78(I) of 2012 as amended (UCITS Law) implementing the latest relevant European Directives on marketing considerations, offer documents, constitution and governance of such funds. The marketing in Cyprus of UCITS domiciled in a third country or in an EU member state which do not fall within the provisions of [Directive 85/611/EEC](#) (i.e., non-harmonised) is regulated by a separate Directive issued by the Cyprus Securities and Exchange Commission (CySec) pursuant to the UCITS Law (DI200-2004-03 of 2011) which also sets out a requirement for prior authorisation by CySEC before marketing and advertising such units in Cyprus after satisfying, *inter alia*, relevant prospectus and other documentation requirements.

The following paragraphs deal with the marketing of funds other than UCITS (funds).

## Key factors

There are several key factors determining the most appropriate marketing strategy and procedure. These include the number and characteristics of the proposed investors, their location, the nature of the underlying investments (real property, securities, financial instruments) and the origin and current regulatory status of the manager. The most important factor for regulatory purposes will be the number of proposed investors the manager intends to target, which will determine as to whether offering units in such a fund will constitute an offer to the public.

Under the Companies Law, CAP 113, as amended, any marketing constituting an offer of shares or debentures made to the public or any section of the public will create an obligation to satisfy the prospectus requirements of the Companies Law. This provision applies not only to companies incorporated outside Cyprus which have established a place of business in Cyprus, but also to companies which do not have an established place of business in Cyprus but issue a prospectus in Cyprus. Accordingly, marketing units of funds established anywhere in the world may be caught by this provision.

The Companies Law does not say what constitutes an offer to the public but it is clear that an offer or invitation made to a specific person which is not renounceable in favour of another would not be an offer to the public. Shares in the share capital of a company also include stock, except where a distinction between shares and stock is implied; and debentures include debenture stock, bonds and any other securities of a company whether secured by a charge on the assets of the company or not.

Under the Prospectus Law, which implements [Directives 2001/34/EC](#) and [2003/71/EC](#), no offer of securities may be made without the publication of a prospectus approved by CySEC, subject to the following exemptions:

- Offers addressed solely to qualified or professional investors;
- Offers addressed to no more than 100 persons (whether natural or legal);
- Offers with a minimum investment of 50,000 euros per investor for each separate offer; or
- Offers in respect of which the total consideration does not exceed 100,000 euros over a period of 12 months.

Apart from offers falling within these exemptions, no advertisement, announcement, statement or notice may be issued with the aim of inviting the public to participate in any form of investment in financial instruments, except with the prior specific approval of CySEC.

Breach of the prospectus requirements of the Companies Law is a criminal offence punishable by imprisonment for up to two years, a fine of up to 2,562 euros or both. Breach of the Prospectus Law is a criminal offence punishable by imprisonment for up to two years, a fine of up to 170,860 euros or both. For a second or subsequent breach of the Prospectus Law the maximum penalties are doubled to four years' imprisonment, a fine of 341,720 euros or both.

## Investment services and activities

The provisions of the Investment Services and Activities Law 144 (I)/2007 (IF Law) are also relevant to the marketing of funds. The IF Law regulates the provision of investment and ancillary services in financial instruments and requires entities engaged in the provision of such services to apply for, and obtain prior authorisation from CySEC or from the corresponding supervisory authority of another member state (if passporting provisions have been satisfied).

In specific cases fund managers' marketing activities may be exempt from the provision of the IF Law on the basis that the fund manager is deemed to be acting its parent undertaking or a fellow-subsiary (s.2). Whether the exemption will apply and whether any acts will constitute the provision of investment services and activities caught by the IF Law will depend on the exact nature of the fund the fund manager and any possible intermediary and the exact nature of the marketing activities and the overall facts of the case.

Breach of the IF Law is punishable with a fine of up to 512,580 euros, doubled in the case of repeated contravention, imprisonment for up to two years or both.

## Form of offering memorandum

If the offer does not trigger the prospectus requirements of the Companies Law or the Prospectus Law, there are no specific requirements regarding the wording of any offering memorandum issued to Cyprus residents. In practice any such offering memorandum will set out the relevant restrictions on the offer and include a statement that the invitation for subscription is in compliance with the IF Law, the Prospectus Law and the Companies Law.

The Central Bank of Cyprus (CBC), which supervises ICIS, requires that an offering memorandum is produced in respect of any offer by an ICIS and that it is approved by the CBC before publication based on criteria set out in the CBC's guidelines with respect to contents. As a general remark, it must be stressed that the requirements are complex and subject to change and it is strongly recommended that a manager intending to market fund in Cyprus should seek detailed advice from appropriately qualified counsel in each jurisdiction relating to the fund.



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