

# Fund Management

*Contributing editors*

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**GETTING THE  
DEAL THROUGH** 

# Cyprus

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## Fund management

### 1 How is fund management regulated in your jurisdiction? Which authorities have primary responsibility for regulating funds, fund managers and those marketing funds?

The principal laws regulating fund managers in Cyprus are:

- the Investment Services and Activities and Regulated Markets Law, Law 144(I) of 2007, (IS Law), which transposes the provisions of the EU Markets in Financial Instruments Directive (MiFID);
- the Alternative Investment Fund Managers Law, Law 56(I) of 2013 (AIFM Law), which transposes the provisions of the EU Alternative Investment Fund Managers Directive (AIFMD);
- the Open-Ended Undertakings for Collective Investment Law, Law 78(I) of 2012 (UCITS Law) that transposes the provisions of the EU Undertakings for the Collective Investment in Transferable Securities Directive (UCITS IV);
- the Alternative Investment Funds Law, Law 131(I) of 2014 (AIF Law) that regulates AIFs; and
- the Companies Law as amended (the Companies Law).

The Cyprus Securities and Exchange Commission (CySEC) is the national authority primarily responsible for regulating funds, their managers and those marketing funds.

### 2 Is fund administration regulated in your jurisdiction?

While the relevant laws impose rigorous requirements on fund managers in relation to valuation, liquidity and risk management as well as reporting to regulators and investors, which can be delegated to third parties, they do not specifically regulate the service providers as such. However, they do indirectly affect their operation as fund administrators and so they must comply with the respective laws.

### 3 What is the authorisation or licensing process for funds? What are the key requirements that apply to managers and operators of investment funds in your jurisdiction?

#### Licensing of funds

There are currently two distinct regimes in relation to investment funds in Cyprus, namely, open-ended undertakings for collective investment funds (UCITS) and alternative investment funds (AIFs). CySEC is responsible for licensing both.

#### UCITS

For a licence to be granted to a local UCITS fund, a duly completed application form and supporting documentation must be provided to CySEC detailing, inter alia, the identity and particulars of the proposed directors of the management company, the directors of the fund, and the individuals that the depositary entrusts with the supervision of the fund. CySEC may request further clarifications or additional information as it deems appropriate in order to fully evaluate the application. CySEC is required to inform the management company of the UCITS whether its application has been approved or rejected within two months of submission of a complete application. For a variable capital investment company that has not designated a management company the time allowed for a decision is extended to six months.

#### AIFs

A local AIF wishing to be granted a licence must submit a duly completed application form together with the requisite supporting documentation, which requires the applicant to provide similar details to those described above. Similarly, CySEC may request further clarifications or additional information as it deems appropriate. The applicant must be notified of the outcome within three months of the submission of a complete application.

#### Key management company requirements

##### UCITS management company

A UCITS may either be externally managed or internally managed if formed as a variable capital investment company, the management of which is undertaken by its board of directors. In the event that the UCITS is self-managed it must comply with the following requirements:

- a minimum initial capital of €300,000;
- an appropriate organisational structure; and
- at least two directors with the necessary integrity and experience in relation to the business undertaken by the company.

When a UCITS is externally managed by a local management company, the management company must be a limited liability company with a share capital, with its registered office and central management situated in Cyprus and having as its main object the management of one or more UCITS. A licence must be obtained from CySEC before commencement of any business activities in or from Cyprus by the management company. Other requirements include:

- a minimum initial capital of €125,000, which must be fully paid up in cash. If the value of assets managed by the management company exceeds €250 million, the capital of the management company must be increased by 0.02 per cent of the excess over €250 million, up to a maximum increase of €10 million;
- an appropriate shareholder structure, organisational structure and proper staffing, with the requisite financial and technical means in order to be able to provide its services in accordance with the law and without putting at risk the interests of the retail funds under its management; and
- the persons managing the management company must have the necessary integrity and experience in relation to the UCITS managed by the management company.

Foreign management companies licensed in another EU member state may freely provide services in Cyprus either on a cross-border basis or by establishing a place of business in Cyprus, subject to notifying CySEC in accordance with the UCITS Law.

##### AIF management company

An AIF may either be externally managed, or internally managed if formed as an investment company the management of which is undertaken by its board of directors (either with fixed or variable share capital). In the latter event, the principal requirements are:

- a minimum initial capital of €125,000 for companies with assets under management, including any assets acquired through use of leverage, of up to €100 million in aggregate, or up to €500 million where the AIF is not employing leverage and the unitholders have no redemption rights exercisable during a period of five years following the date of initial investment. In the event that the self-managed investment

company falls under the provisions of the AIFM Law (either on an obligatory basis if the assets under management exceed the thresholds mentioned above, or on a voluntary basis by opting in to the AIFM regime) it must have an initial capital of at least €300,000;

- appropriate shareholding structure, organisational structure and proper staffing; and
- at least two directors with the necessary integrity and experience in relation to the business undertaken by the company.

If the AIF is externally managed, its manager should either be a licensed AIFM, UCITS management company or a Cyprus investment firm (CIF).

A local AIFM must be a limited liability company with a share capital, with its registered office and central management situated in Cyprus, and must obtain a licence from CySEC before undertaking any business activities. It must also have:

- a minimum initial capital as for a UCITS management company;
- an appropriate shareholding structure, organisational structure and proper staffing; and
- at least two directors with the necessary integrity and experience in relation to the business undertaken by the company.

As with UCITS, foreign management companies licensed in another EU member state may freely provide services in Cyprus either on a cross-border basis or by establishing a place of business in Cyprus, subject to satisfying notification requirements.

In the event that the AIF management company is a licensed UCITS management company, it must comply with the relevant organisational and other requirements imposed by the UCITS Law.

Finally, in the case of an external manager having the form of a CIF regulated by the IS Law, additional requirements apply that include, inter alia, the obligation to have own funds adjusted to the value of the portfolio of the AIFs under management.

#### **4 What is the territorial scope of fund regulation? Can an overseas manager perform management activities or provide services to clients in your jurisdiction without authorisation?**

Fund regulation generally covers fund-related activities that are carried on in Cyprus. In this respect, the relevant laws allow fund managers authorised in one EU member state to market their funds in Cyprus or to manage Cyprus funds through a regulator-to-regulator electronic notification procedure (the 'passport'). More specifically:

##### **UCITS**

Cyprus law allows a management company authorised in another member state to pursue, within Cyprus, the activity for which it has been authorised (whether management or marketing) either by establishing a branch or under the freedom to provide services. However, it should be noted that a management company registered in another member state wishing to market a UCITS in Cyprus must comply with local rules regarding the distribution of the units. Finally, under the current UCITS regime, non-EU management companies may not manage or market their funds in Cyprus without a relevant licence from CySEC.

##### **AIFs**

Under the AIFM Law an AIF manager licensed in an EU member state is free to manage and market AIFs to professional investors in Cyprus. Non-EU managers require authorisation from CySEC before they can manage or market AIFs in Cyprus. CySEC Directive DI131/56/02 sets out the terms on which third-country managers may manage or market AIFs in Cyprus. In order for a third-country AIFM to market its units in Cyprus without a passport, appropriate cooperation arrangements for the purpose of systemic risk oversight and in line with international standards must be in place between CySEC and the supervisory authorities of the AIFM's home country, and the units may be marketed only to professional investors. The AIFM must notify CySEC of its intention to market the units and provide CySEC with a copy of its licence issued by the competent foreign authority. CySEC intends to put in place arrangements for a third-country passport in the near future, enabling non-EU AIFMs to manage an AIF established in Cyprus that is not marketed to professional investors in the EU, provided that they designate a 'member state of reference', which under certain conditions (including prior authorisation from CySEC) can be Cyprus. Finally, AIFs licensed in the EU cannot be marketed to retail

investors in Cyprus without prior authorisation from CySEC. CySEC has recently published a directive stipulating the detailed requirements for marketing.

#### **5 Is the acquisition of a controlling or non-controlling stake in a fund manager in your jurisdiction subject to prior authorisation by the regulator?**

##### **UCITS management company**

The UCITS Law, following the provisions of the IS Law, stipulates that any proposed acquisition whether direct or indirect, of a qualifying holding (defined as a direct or indirect holding representing 10 per cent or more of the capital or of the voting rights in the company), must be notified to CySEC. Furthermore, CySEC must also be notified of any proposed increase or reduction of a qualifying holding so that the proportion of the voting rights or of the capital that it represents would reach or fall below or exceed 20, 33 or 50 per cent. CySEC may request additional information to assess the suitability of the shareholders of the management company, including those who may not possess a qualifying holding.

##### **AIF management company**

Similar notification requirements apply as for UCITS management companies.

#### **6 Are there any regulatory restrictions on the structuring of the fund manager's compensation and profit-sharing arrangements?**

##### **UCITS management company**

The UCITS Law requires the remuneration policies of the management company and the methods of calculating remuneration to be published in the constitutional documents of the fund. It does not impose any detailed restrictions on the policies, but this is expected to change when the new UCITS V Directive is implemented.

##### **AIF management company**

The AIFM Law includes a series of principles, which are to be established and applied in the manner and to the extent appropriate to the size and internal organisation of the AIFM and to the nature, scope and complexity of the AIFM's activities. These principles include:

- a remuneration policy that promotes sound and effective risk management consistent with the risk, profiles, rules and constitutional documents of the relevant AIFs;
- where remuneration is performance-related, the total amount of remuneration is based on a combination of the individual's performance and that of the business unit or AIF concerned and the results of the AIFMs, and includes financial as well as non-financial criteria;
- staff engaging in control functions are compensated in accordance with the achievement of objectives linked to their functions, independent of business performance;
- guaranteed variable remuneration is exceptional and is limited to new staff, in their first year of employment; and
- an AIFM that is significant in terms of its size or the size of the funds that it manages should establish a remuneration committee that can exercise competent and independent judgement.

##### **Fund marketing**

#### **7 Does the marketing of investment funds in your jurisdiction require authorisation?**

See question 4.

#### **8 What marketing activities require authorisation?**

##### **UCITS**

The UCITS Law defines marketing broadly, as 'the distribution, marketing, promotion or display to the public by any means of units of UCITS or undertakings of collective investments in Cyprus'. Therefore, any activities aimed at attracting Cyprus-based investors will be deemed to be marketing within the meaning of the UCITS Law. CySEC requires a UCITS authorised in another EU member state to have complied with its requirements to notify CySEC before it undertakes any promotion, commercialisation or distribution of its units in Cyprus apart from private placement. Reverse solicitation (ie, where units in a UCITS are purchased at the initiative of

the investor) will not be considered as marketing for the purposes of the UCITS Law and so no notification procedure or local marketing requirements apply.

#### AIF

According to the AIFM Law, marketing constitutes a 'direct or indirect offering or placement at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages to or with investors domiciled or with a registered office in the European Union'. Therefore any restrictions apply only to active marketing. No prohibitions or regulations apply to passive marketing or reverse solicitation.

CySEC Circular CI78-2012-02 sets out CySEC's interpretation of what qualifies as marketing, as the distribution, trading and promotion of units by any means aimed at attracting investors to invest. It does not include any of the following:

- the acquisition of units of UCITS or AIFs in the context of discretionary portfolio management;
- the proposal to invest in units of UCITS or AIFs in the context of provision of investment advice as well as the acquisition of units of UCITS or AIFs following a relevant investment advice; and
- the acquisition of units of a specific UCITS or of an AIF, on the client's own initiative, provided that the acquisition had not been preceded by an invitation to market units for the account of the UCITS or of the AIF.

#### 9 What is the territorial scope of your regulation? May an overseas entity perform fund marketing activities in your jurisdiction without authorisation?

See question 4.

#### 10 If a local entity must be involved in the fund marketing process, how is this rule satisfied in practice?

There is no requirement for the involvement of a local entity in the fund marketing process.

#### Retail funds

#### 11 What are the main legal vehicles used to set up a retail fund? How are they formed?

##### UCITS

UCITS are open-ended funds and therefore the answers to the following questions only deal with such funds.

There are two main legal vehicles used to set up a UCITS – a mutual fund and a variable capital investment company. Both require authorisation from CySEC to operate as a UCITS in or from Cyprus.

A mutual fund is a pool of assets that are jointly owned by its unitholders and deposited with a depositary, forming a collective fund managed by a management company in the interests of the unitholders. The mutual fund has no separate legal personality and its legal interests are represented by the management company.

A variable capital investment company has the following characteristics:

- a limited liability company with a share capital, registered with the Registrar of Companies;
- its principal objective is the collective management of its own portfolio, investing in transferable securities and other financial instruments in the interests of its shareholders, raising capital from the public for this investment; and
- shares may be bought or redeemed from its capital assets at the request of a shareholder and share capital may vary through the issue of new shares or the redemption of existing shares without following the procedure for the increase or decrease of share capital as prescribed by the Companies Law.

##### AIFs

There are four legal vehicles that can be used to set up a retail AIF fund – a fixed capital investment company, a variable capital investment company, a limited liability partnership and a common fund.

Both fixed and variable capital investment companies may be either self-managed or externally managed. They both have the legal form of a limited liability company with shares, with the principal object being the collective management of their portfolio.

A limited liability partnership operating as an AIF must be registered in accordance with the General and Limited Partnerships and Trade Names Law (the Partnerships Law) to collectively manage its portfolio through its general partner. Hence the duties and obligations of the external manager are undertaken by the general partner.

The common fund is a pool of assets that is the subject of collective management for the benefit of its unitholders who are co-owners of the portfolio and are liable only up to the amount of their contribution. It has no separate legal personality and its unitholders are legally represented by its external manager.

An AIF can be open-ended or closed-ended.

An open-ended AIF is one in which unitholders have a right to buy out or redeem their units by application either at any time or at regular intervals of no longer than a year prescribed in the fund's constitutional documents.

In a closed-ended AIF unitholders have a right to buy out or redeem their units by application either at regular intervals of between one year and five years prescribed in the fund's constitutional documents or at a specific time prescribed in the fund's constitutional documents.

#### 12 What are the key laws and other sets of rules that govern retail funds?

The key laws and regulations governing retail funds are:

##### UCITS

- The Companies Law;
- the UCITS Law; and
- CySEC Directives (particularly DI78-2012-01 to DI78-2012-35) and respective Circulars.

##### AIFs

- The AIF Law;
- the AIFM Law;
- the Companies Law;
- the Partnerships Law;
- the IS Law; and
- CySEC Directives (particularly DI-131-2014-01 to DI-131-2014-03, DI-131-2013-01 to DI-131-2013-05 and DI-131/56/02) as well as respective Circulars.

#### 13 Must retail funds be authorised or licensed to be established or marketed in your jurisdiction?

See question 4.

#### 14 Who can market retail funds? To whom can they be marketed?

##### UCITS

A licensed UCITS fund or its management company (as applicable) may market funds in Cyprus either itself or through a licensed investment firm or credit institution. EU licensed retail funds may market their funds freely in Cyprus provided that they have satisfied the CySEC notification requirements. Subject to the satisfaction of any requisite licence or notification requirement (as applicable) with CySEC, UCITS funds may be marketed freely to retail investors and the general public in Cyprus.

##### AIFs

The same applies as for UCITS subject to further requirements in relation to the marketing of AIFs to retail investors. The marketing of AIFs to retail investors requires a licence from CySEC and the continuing observance of additional requirements that include compliance with restrictions and rules regarding the investment policy of the AIF.

#### 15 Are there any special requirements that apply to managers or operators of retail funds?

See question 3.

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

##### UCITS

A UCITS fund may invest in:

- transferable securities and money market instruments admitted or traded in a regulated market in Cyprus or in another member state of the European Union;

- transferable securities and money-market instruments listed on a stock market or traded in a regulated market of a third country, which is either contained in a list of markets compiled by the Ministry of Finance on the recommendation of CySEC or that is provided for in the regulations or constitutional documents of the UCITS;
- newly issued transferable securities provided that their terms of issue require them to be admitted to a regulated market within one year from their date of issue;
- units of UCITS authorised in accordance with Directive 2009/65/EC (UCITS IV) or other collective investment undertakings that are subject to a comparable level of regulation and investor protection;
- deposits repayable on demand or with a term of no more than 12 months with credit institutions registered in an EU member state or in a third country with similar prudential supervision as the EU; and
- other money-market instruments, where the issuer or issuer are subject to regulations for the protection of investors and the instruments are guaranteed by a central, regional or local authority or central bank of an EU member state, the European Central Bank, the European Investment Bank or a third country or an international organisation whose members consist of one or more member states of the EU or such other undertaking approved by CySEC.

A UCITS may not invest:

- in precious metals;
- more than 10 per cent of its assets in any other transferable securities or money-market instruments other than those prescribed by the UCITS Law;
- in general more than 10 per cent of its assets in transferable securities or money-market instruments issued by the same undertaking; and
- more than 20 per cent of its assets in deposits made with the same undertaking.

As regards borrowing rules, a variable investment management company and a management company or depositary acting for a retail fund may generally not borrow, subject to the following exceptions:

- where the borrowing is in a foreign currency on the basis of a back-to-back loan;
- where the borrowing relates to a temporary credit facility for an amount not exceeding 10 per cent of the net asset value of the UCITS; and
- where the borrowing relates to loans not exceeding 10 per cent in value of the net assets of the variable capital investment company for the purposes of acquiring immoveable property.

#### AIFs

AIFs, being defined as funds that are non-UCITS, are free to invest in a variety of assets subject to the requirement that the risk profile of the AIF's investments corresponds to the size, portfolio structure, investment strategies and objectives of the AIF as laid down in its constitutional documents, prospectus and offering documents. However, certain restrictions apply depending on the category of investors to which the AIF is addressed.

In particular, AIFs aimed at retail investors may invest only in the following categories of assets:

- securities;
- money market instruments;
- units in collective investment undertakings;
- derivative financial instruments (under conditions);
- property and assets related to real estate;
- ownership and other registrable titles and prenotations of mortgages;
- titles incorporating receivables, up to 30 per cent of the total investment portfolio;
- commodities, up to 20 per cent of the total investment portfolio; and
- currency, up to 20 per cent of the total investment portfolio.

AIFs addressed to professional or well-informed investors can also invest in any of the following:

- money-market instruments;
- venture capital;
- funds;
- loans; and
- real estate.

As regards leverage, the AIFM Law requires AIFMs to set a maximum level of leverage that they may employ on behalf of each AIF they manage taking account of factors such as the type of the AIF, its investment strategy and the leverage sources. The AIFM must be able to demonstrate that this leverage limit is reasonable and has been adhered to at all times. CySEC is required to assess the risks associated with the use of leverage by each AIFM with regard to the AIFs it manages and to impose limits where deemed necessary to avoid the build-up of systemic risk in the financial system so as to protect its stability and integrity. CySEC is required to notify the European Securities and Markets Authority, the European Systemic Risk Board and the competent authorities of the relevant AIF regarding any such limits it intends to impose.

#### 17 What is the tax treatment of retail funds? Are exemptions available?

##### UCITS

The tax treatment of UCITS and persons (natural and legal) acquiring units in them is governed by the Income Tax Law of 2002 as amended and the Special Contribution for Defence Law of 2002 as amended.

UCITS are subject to the general corporate income tax rate in Cyprus, which is 12.5 per cent. In principle any profits from the disposal of securities are exempt from taxation. Securities are very widely defined and include shares, bonds, debentures, founder's shares and other company securities or instruments such as preference shares, options on titles, short positions on titles, futures or forwards on titles, swaps on titles, depositary receipts on titles such as ADRs and GDRs, index participations where these result in titles, repurchase agreements or repos on titles, participations in companies and units in collective investment schemes of all types.

Dividend income of UCITS is exempt from corporate income tax and is normally not subject to special contribution for defence (SDC tax). Liability for SDC tax (at a rate of 17 per cent) arises only if both the following conditions are met:

- more than 50 per cent of the paying company's activities result directly or indirectly in investment income; and
- the foreign tax on this income is significantly lower than the tax burden in Cyprus. The tax authorities have clarified through a circular that 'significantly lower' means a tax burden rate below 6.25 per cent.

Interest income received by a UCITS is subject to corporate income tax at 12.5 per cent.

There is no withholding tax for dividend distributions to non-Cyprus tax residents and this ensures tax-efficient profit repatriation to investors.

Management companies are subject to corporate income tax on their profits at 12.5 per cent. Management fees are not subject to VAT.

The establishment of a UCITS and the subscription, redemption, repurchase or transfer of its units are exempt from stamp duty.

##### AIFs

The tax treatment of AIFs is identical to the tax treatment of UCITS funds.

#### 18 Must the portfolio of assets of a retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

##### UCITS

The UCITS Law requires the assets of retail funds to be held by a custodian or depositary, who also acts as treasurer of the fund. These functions are restricted to credit institutions licensed or authorised to operate in Cyprus or other undertakings specifically licensed by CySEC for the purpose. Following a recent amendment to the UCITS Law, if the depositary is not a credit institution it must comply with certain requirements including adherence to the capital adequacy requirements specified in articles 315 or 317 of Regulation (EU) 575/2013 and maintenance of records of all services provided and transactions conducted in a way that CySEC or the other competent supervisory authorities are in a position to supervise its activities.

Provided that the regulations or constitutional documents of the retail fund permit it, the custodian or depositary may delegate its functions in relation to all or part of the assets to a third party lawfully authorised to perform the functions of depositary or custodian.

A management company of a retail fund is not permitted to exercise the functions of managing the fund together with the functions of depositary or custodian of the fund. However, a variable capital investment company whose shares are listed on a stock market in Cyprus or another EU

member state may dispense with the services of an outside depository or custodian, subject to the following conditions being met:

- a relevant exemption has been granted by CySEC;
- at least 80 per cent of the company's shares are traded on the stock market concerned;
- any transactions undertaken by the company outside the stock market are made at prices set by the stock market;
- the stock market is mentioned in its constitutional documents; and
- the shareholders of the company have no less protection than the unitholders of retail funds that have a depository or custodian.

The UCITS Law requires depositaries to ensure the proper valuation of the fund's units and the payment of the price for the transactions concerning the assets of the fund, and to ensure that the profits of the fund are distributed according to applicable legislation and the fund's regulations. It is expected that the implementation of UCITS V will define the activities and responsibilities related to safekeeping in line with the AIFMD definition.

#### AIFs

Under the relevant laws, an AIF with an unlimited number of persons is required to have a depository entrusted with the safekeeping of its assets and the monitoring of its cash flows if it is externally managed or if it is self-managed but falls within the scope of the AIFM Law or chooses to opt into it. The AIF may be exempted from the requirement to appoint a depository if its assets are not suitable for safekeeping (eg, real estate).

The depository must have its registered office in Cyprus or another member state of the EU or a third country with whose competent authorities CySEC has concluded a memorandum of understanding and exchange of information. It must be either a credit institution or investment firm or another category of institution that is deemed by its home state as eligible to be a depository. The same entity cannot exercise both the duties of the external manager and the depository of the AIF. If the rules or the instruments of incorporation of the AIF specifically allow it, the depository may delegate the safekeeping of all or part of the AIF's assets to a third party that is qualified to be a depository in accordance with the legislation of its home country.

The depository is obliged to ensure that the AIF's cash flows are properly monitored and that the assets are properly safeguarded. The AIFM regime distinguishes between depository duties relating to financial instruments that can be held in custody and asset monitoring duties relating to other assets (eg, derivatives contracts). Assets belonging to the first category are required to be registered in the depository's books in segregated accounts, whereas for the other assets, safekeeping obligations are confined to ownership verification and record-keeping (ie, maintaining an up-to-date record of these assets).

### 19 What are the main governance requirements for a retail fund formed in your jurisdiction?

#### UCITS

Apart from authorisation by CySEC as described in question 3, the following are the main governance requirements applying to UCITS funds:

- there must be procedures for risk assessment in place that permit the continuous measurement and control of risks associated with the fund's positions and their contribution to the general risk profile of the fund's asset portfolio;
- the total risk exposure in relation to derivative instruments may not exceed the net asset value of the fund's portfolio;
- the manager of a UCITS fund must regularly report to CySEC and place at the disposal of investors the following documents: a prospectus; an annual report for every financial year; a semi-annual report for the first six months of the financial year; and a summary of its assets and expenses for the first, second and third quarters of the year, as well as a summary of assets and expenses for the final quarter of the financial year which contains an account of the use and disposal of profits for the whole of the financial year;
- the manager of the fund must calculate on every working day the net asset value of the fund, the net issue and redemption price of each unit of the fund and the number of units in circulation, and publish this information the next working day in the management company's website;
- there must be at least two persons (the law does not specify whether legal or natural) managing the management company possessing the necessary integrity and experience in relation to the type of fund managed; and

- a local management company must comply with the code of conduct issued by CySEC. This is to ensure that management companies act honestly, lawfully and with proper care and diligence in performing their functions for the benefit of the fund, that they make effective use of their resources for the proper exercise of their functions, and take measures to prevent and resolve any conflicts of interest that may arise.

#### AIFs

Apart from the fund management requirements set out in question 3, the following are the main governance requirements applying to AIFs:

- the external manager of the AIF or the AIF itself if it is self-managed must maintain and apply appropriate risk management systems to identify, measure, manage and duly monitor the risks related to the positions that it undertakes and the contribution of these positions to the overall risk profile of the AIF's portfolio. An external manager is required to maintain an appropriate organisational structure so as to minimise the risk of conflicts of interest arising;
- the assets of the AIF must be valued at fair values on the basis specified in the rules or instruments of incorporation of the AIF. The AIF must value its assets at any date on which distribution and redemption or repurchase of its units takes place, and also on the reference dates for the illustrative data specified in the annual and half-yearly report of the AIF;
- the management of the operations of the AIF must be conducted by at least two natural persons possessing the necessary integrity, experience and specialisation; and
- the management company of an AIF must submit to CySEC and place at the disposal of investors a prospectus, an annual report for the financial year and a semi-annual report for the first six months of the financial year.

### 20 What are the periodic reporting requirements for retail funds?

The reporting framework is described in question 19. Detailed requirements are as follows:

#### UCITS

The annual report must include a balance sheet, an analytical statement of income and expenses, a report on the activities of the fund, and any other important information that allows investors to formulate an informed opinion as regards the progress of the activities and the financial results of the fund. It must be published and submitted to CySEC no later than four months after the end of the financial year.

The semi-annual report must comply with IFRS 34 and contain an interim financial statement and other requisite information. It must be published and submitted to CySEC no later than two months after the end of the half-year.

#### AIFs

The prospectus of the AIF must be submitted to CySEC in the requisite form, together with any amendments that are made.

The annual report must include a balance sheet, an analytical statement of income and expenses, a report on activities of the fund, as well as any other important information that allows investors to formulate an informed opinion as regards the progress of the activities and the financial results of the fund. It must be submitted to CySEC and made available to investors at the points of distribution of the fund's units no later than six months after the end of the financial year.

The semi-annual report must comply with IFRS 34 and contain an interim financial statement and other requisite information. It must be published and submitted to CySEC no later than two months after the end of the half-year.

### 21 Can the manager or operator place any restrictions on the issue, transfer and redemption of interests in retail funds?

#### UCITS

As regards the issue of units in retail funds, the UCITS Law requires the entire amount representing the full price for acquisition of units to be paid to the depository or custodian. Payment may be made in cash or, if the management company or the fund itself (as applicable) accepts, in transferable securities or other money market instruments.

The redemption of any units of a UCITS fund is mandatory, upon the application of any unitholder. Conditional redemptions are not permitted. The value of the units redeemed must be paid in cash within four working days from the date of the valuation on which the redemption price is based. Payment of the amount due for the redemption of units of exchange-traded UCITS and on the basis of the composition of the index is permitted as long as this is provided for in the relevant documents constituting the fund. The redemption price of the units is calculated in accordance with the valuation date specified in the rules or incorporation documents of the UCITS and ascribed by law, and this price should not be calculated prior to the date of submitting the application. The redemption of units of the UCITS can be effected only on a valuation date.

In exceptional circumstances, where the interests of unitholders so require, the management company or the fund itself (as applicable) may suspend the redemption of units for up to one month, subject to CySEC's approval. CySEC may also require a UCITS to suspend the redemption of its units on its own initiative. CySEC may extend the suspension for a month and exceptionally, in order to protect the interests of unitholders and the effective operation of the market, CySEC may extend the suspension for a second month. However, the suspension period may not exceed three months in total.

There are no restrictions on transferability of interests in retail funds under the UCITS Law.

### AIFs

The conditions under which units are issued must be clearly stipulated in the fund's constitutional documents. The AIF Law requires unitholders to pay the amount due for the acquisition of the units in full in cash, or, if agreed by the external manager or the AIF itself if it is self-managed, in the form of assets in which the AIF is allowed to invest in accordance with its investment policy.

As with UCITS the redemption of any units of an AIF is mandatory upon the application of the unitholder. Conditional redemption of units is not permitted. Units are redeemed at the redemption price of the next scheduled redemption date after the submission of the redemption application, calculated in accordance with the constitutional documents of the AIF. Unitholders in an open-ended AIF are entitled to redeem their units by application either at any time or at regular intervals of no longer than a year prescribed in the fund's constitutional documents. In a closed-ended AIF unitholders have a right to buy out or redeem their units by application either at regular intervals of between one year and five years prescribed in the fund's constitutional documents or at a specific time prescribed in the fund's constitutional documents.

In either case, the value of the redeemed units is paid in cash, or in the case of a tradable AIF, in securities related to the composition of the index replicated in the AIF's portfolio, within the period specified in the AIF's constitutional documents. Redemption may be suspended in exceptional cases and only where necessary in the prevailing circumstances or if it is provided for in the AIF's constitutional documents and in the unitholders' interests. Any proposal by the external manager of the AIF or of the AIF itself if it is self-managed requires the approval of CySEC. CySEC may extend the suspension if this is in the interests of the unitholders.

Units of AIFs are freely transferable subject to any restrictions contained in the constitutional documents of the fund.

### Non-retail pooled funds

#### 22 What are the main legal vehicles used to set up a non-retail fund? How are they formed?

The AIF Law provides for the establishment of non-retail AIFs having an unlimited number of persons on the condition that that the constitutional documents specifically provide that the fund is addressed solely to professional or well-informed investors. Such an AIF may be set up as either a fixed capital investment company, a variable capital investment company, a limited liability partnership or a common fund.

In addition, the AIF Law also permits the establishment of an 'AIF with limited number of persons' (AIFLNP), subject to a significantly lighter legal and regulatory framework. It is outside the scope of the AIFM Law and does not have to be managed by an AIFM. Its constitutional documents should explicitly stipulate both that it is restricted to professional or well-informed investors and that throughout its duration the number of its

unitholders is limited to 75. Assets under management cannot exceed the thresholds set out in article 3(2) of the AIFMD (€100 million with leverage or €500 million with no leverage and a five-year lock-in period). An AIFLNP can be established as a fixed capital investment company, a variable capital investment company or as a limited liability partnership.

#### 23 What are the key laws and other sets of rules that govern non-retail funds?

See question 12 with regard to AIFs.

#### 24 Must non-retail funds be authorised or licensed to be established or marketed in your jurisdiction?

See question 4.

#### 25 Who can market non-retail funds? To whom can they be marketed?

A licensed non-retail fund itself or its management company (as applicable) may market funds in Cyprus, either on its own account or through a licensed investment firm, credit institution or a UCITS management company. EU licensed non-retail funds may market their funds to professional investors in Cyprus freely, provided that the mandatory notification has been given to CySEC. Subject to the satisfaction of any requisite licence or notification requirement (as applicable) with CySEC, non-retail funds that restrict their marketing to professional or well-informed investors may be marketed solely to such investors.

#### 26 Do investor-protection rules restrict ownership in non-retail funds to certain classes of investor?

Yes, the AIF Law contains rules that protect investors by restricting ownership in non-retail funds to certain classes of investor only. As described in question 22, AIFLNPs are restricted to professional or well-informed investors. The definition of a professional investor follows that of MiFID. A well-informed investor is an investor not considered to be a professional investor who confirms in writing that he or she is a well-informed investor and has been notified of the risks associated with investing in the AIF in question and fulfils certain further conditions in accordance with the AIF Law. An AIF with an unlimited number of persons may not market its units to retail investors unless it obtains the requisite authorisation from CySEC and complies with any further requirements stipulated by CySEC.

#### 27 Are there any special requirements that apply to managers or operators of non-retail funds?

An AIFLNP that is a company may be self-managed, in which case the portfolio management function is generally exercised by the board of directors. Alternatively, the AIFLNP may appoint an external manager, which is either:

- a UCITS management company authorised in accordance with the relevant law, a CIF regulated by the IS Law, or a company established in a third country that is authorised to provide portfolio management services and provided further that it is subject to prudential regulation regarding the provision of that service, where the portfolio of such an AIF includes one or more financial instruments; or
- any company that, in accordance with its instruments of incorporation, has the sole purpose of providing portfolio management services to the specific AIF, where the portfolio of the latter does not include any financial instruments. In this case CySEC assesses the appropriateness of the external manager on an individual basis. Any change in the information regarding the person to whom the portfolio management will be delegated must be communicated immediately to CySEC.

Any AIF that is managed by a manager that falls within the scope of the AIFM Law must comply with the AIFM Law.

With regard to all other types of AIF see question 3.

#### 28 What is the tax treatment of non-retail funds? Are any exemptions available?

The general tax regime described in question 17 applies to non-retail funds.

### Update and trends

CySEC has recently issued a Directive providing for the possibility of establishing AIFs with the investment policy of investing through loans (ie, to issue loans or acquire loan portfolios or direct rights to loans with the subsequent effect of creating a relationship of lender (AIF) and borrower). Given the high incidence of non-performing loans in the Cyprus banking system, combined with recent legislation prohibiting the sale of credit facilities granted to natural persons or to micro- and small enterprises by authorised credit institutions in Cyprus to overseas purchasers, there is substantial opportunity for the incorporation of funds investing through loans.

The Cyprus authorities and the trade and professional bodies involved in the sector have expressed their commitment to keep the legal and regulatory regime up to date and competitive with traditional funds industry jurisdictions.

### 29 Must the portfolio of assets of a non-retail fund be held by a separate local custodian? What regulations are in place to protect the fund's assets?

Subject to the exemption in the following paragraph, the AIF Law requires the assets of an AIFLNP to be entrusted to a depositary having a registered office in Cyprus, another EU member state or a third country with whose competent authorities CySEC has concluded a memorandum of understanding and exchange of information. It must be either a credit institution or investment firm or another category of institution that is deemed by its home state as eligible to be a depositary. The depositary may not use the assets of the AIF under its custody, including any cash. Any changes in the information regarding the depositary must be notified to CySEC immediately.

An AIFLNP is exempt from the requirement to appoint a depositary in the event that:

- its total assets do not exceed €5 million, or its equivalent in another currency;
- its constitutional documents limit the number of its unitholders during the duration of the fund to five persons; or
- its assets are not subject to custody.

CySEC requires the assets of an AIFLNP that does not appoint a depositary to be deposited with a credit institution in the case of cash, or, in the case of other assets, with other entities authorised by law to undertake safekeeping duties.

No other requirements apply in relation to the safekeeping of the assets of an AIFLNP.

With regard to all other types of AIFs see question 18.

### 30 What are the main governance requirements for a non-retail fund formed in your jurisdiction?

Apart from the requirements set out in question 27, the manager of an AIFLNP (or the AIFLNP itself if it is self-managed) is required to maintain records with regards to all portfolio transactions, all records of orders and applications for subscription and redemption or repurchase as well as a special electronic registry (the 'unitholders register'), which records every subscription of the unitholder. These records must be retained for at least five years, or such longer period as CySEC may require for specific financial instruments or transactions, and must be kept in a way that enables CySEC to examine them. Tax or other legislation may require a longer retention period.

Furthermore, the AIFLNP manager (or the AIFLNP if it is self-managed) must annually report to unitholders, among other things:

- the number of units in the possession of the unitholder, the value of their subscription and their net asset value as at the last working date of the calendar year for which the information is provided; and
- the percentage return of the units of the AIF, from the first to the last working date of the calendar year for which the information is provided.

With regard to all other types of AIFs see question 19.

### 31 What are the periodic reporting requirements for non-retail funds?

An AIFLNP must compile an annual report, audited by an independent auditor, which includes information on the financial condition of the AIF, its total assets and liabilities, and the net asset value of its units during the period covered by the report. The report must be submitted to CySEC within one month from the end of the year it refers to.

With regard to all other types of AIFs see question 20.

### Separately managed accounts

### 32 How are separately managed accounts typically structured in your jurisdiction?

Separately managed accounts are generally structured as client accounts managed by portfolio management investment firms regulated under the IS Law, which permits licensed CIFs to undertake the management of clients' portfolios in accordance with mandates given by clients on a discretionary client-by-client basis. Additionally, the UCITS Law authorises management companies to manage investment portfolios, including those owned by pension funds and institutions for occupational retirement provision, on an individual basis. Furthermore, although the AIFM Law specifically provides that segregated managed accounts are not to be considered as AIFs, it nevertheless makes the same provision as the UCITS Law, allowing external AIFMs to engage in a discretionary client-by-client portfolio management under certain requirements.

### 33 What are the key legal issues to be determined when structuring a separately managed account?

CIFs or fund management companies (as the case may be) providing portfolio management services on a client-by-client basis are required to comply with the provisions of the IS Law, which imposes conduct-of-business rules based upon:

- the fiduciary duty of loyalty, requiring CIFs to act in good faith in the best interests of their clients;
- the informed consent principle, which requires them to disclose relevant material information in their dealings with their clients; and
- the 'know your customer' principle, which requires them to obtain information regarding their clients' financial situation, investment experience and objectives as regards the services requested.

Companies providing such services must be members of the statutory Investor Compensation Fund for Clients of Investment Firms. AIFMs must also have additional own funds or professional indemnity insurance to cover risks arising from professional negligence.

### 34 Is the management or marketing of separately managed accounts regulated in your jurisdiction?

As stated in question 33, portfolio management is regulated under the IS Law and the responsible supervising authority is CySEC.

### General

### 35 Are there proposals for further regulation of funds, fund managers or marketers of funds in your jurisdiction?

Amendments that are expected to be introduced include:

- a special regime for non-EU investment firms, including foreign managers, wishing to provide cross-border services to clients established in any EEA member state in relation to AIFMs, in line with Directive 2014/65/EU (MiFID II); and
- the introduction of more detailed requirements regarding the remuneration policies of UCITS management companies in line with Directive 2014/91/EU (UCITS V).

### 36 Outline any specific requirements for stock-exchange listing of retail and non-retail funds.

#### Retail funds

The UCITS Law allows shares of a variable capital investment company or units of a common fund to be listed on a stock exchange market operating in Cyprus or another member state or in a third country whose competent authorities have signed a Memorandum of Cooperation and Exchange of Information with CySEC, in accordance with the provisions governing the



market concerned, subject to (i) prior authorisation from CySEC; (ii) the appointment of a market maker; and (iii) the inclusion of relevant information into the constitutional documents, prospectus and reports issued by the fund. The Cyprus Stock Exchange Law also provides for the listing of units in collective investment market schemes subject to approval by the Council of the Cyprus Stock Exchange. This requires adequate disclosure arrangements for investors and the proper constitution and clearing of transactions, particularly unrestricted payments from and to investors.

The AIF Law allows AIFs marketed to retail investors to be listed and traded on a recognised stock exchange in the EU or in a third country. As with UCITS, at least one special dealer must be appointed to take all measures to ensure that the market value of the shares of the AIF does not vary significantly from its net asset value. The Cyprus Stock Exchange Law, which previously provided only for the listing of UCITS, has recently been amended to provide for the listing of AIFs having the form of common funds, fixed or variable investment companies, or limited partnerships, either in the Negotiable Collective Investment Schemes Market or in the Non-Negotiable Collective Investment Schemes Market, subject to requirements regarding minimum capital and disclosure arrangements for investors.

#### **Non-retail funds**

The units of a non-retail fund that is addressed solely to professional or well-informed investors may not be listed on a stock exchange. However, the Cyprus Stock Exchange Law provides for the possibility of an AIF with a limited number of persons to be registered on a CSE register, without the possibility of its units being traded.

#### **37 Is it possible to redomicile an overseas vehicle in your jurisdiction?**

Yes. Foreign AIF management companies, as well as foreign funds of a statutory type, whether established in another member state or in a third state, may change their domicile to Cyprus. With regards to UCITS, such provision is made only with regards to UCITS management companies or UCITS funds of a statutory type established in another EU member state. Change of domicile may only take place if it is allowed under the constitutional documents and the law of the country where the foreign management company or fund, as the case may be, is currently domiciled, and is subject to compliance with the relevant provisions of the Companies Law. UCITS common funds registered in another EU member state may continue their operation in Cyprus, subject to authorisation by CySEC.

#### **38 Are there any special rules relating to the ability of foreign investors to invest in funds established or managed in your jurisdiction or domestic investors to invest in funds established or managed abroad?**

No, Cyprus law does not limit foreign investors' freedom to invest in Cyprus funds, nor does it restrict domestic investors from investing abroad.



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