



ALTERNATIVE INVESTMENT FUNDS (AIFs & RAIFs)

Cyprus Alternative Investment Funds (AIFs)

Alternative Investment Funds legislation has aligned Cyprus legal and regulatory framework with the European directives on asset management enhancing transparency and investor protection. Under the Law, all investment products are under the supervision of the Cyprus Securities and Exchange Commission (CySEC) which has become the competent regulatory and supervisory body. Cyprus is now establishing itself as one of the top investment fund centers in Europe.

(A) What is an AIF?

An Alternative Investment Fund (AIF) is a collective investment undertaking which raises external capital from investors with a view on investing it according to a defined strategy.

AIFs are categorized as follows:

- 1. AIF with unlimited number of investors:**
 - may be formed in any of the legal forms mentioned above
 - may be marketed to professional and/or well informed investors or retail investors
 - have freely transferable shares
 - are subject to minimum share capital requirements of €125.000 or €300.000 if self-managed and over the asset thresholds
 - must appoint a depositary

- 2. AIF with limited number of investors:**
 - may be formed as fixed/variable capital company or limited liability partnership
 - may be marketed to professional and/or well informed investors only
 - may have up to 75 investors
 - no minimum share capital requirements
 - under certain circumstances may be exempted from appointing a depositary;
 - has portfolio of assets under the Alternative Investment Fund Managers Directive ("AIFMD") threshold (EUR 100mIn leveraged or EUR 500mIn unleveraged)

Forms of AIFs

- 1. Common fund** with no legal personality where the investors participate as co-owners of the assets
- 2. Fixed capital investment company** incorporated under Cyprus Companies Law and recognized to operate as a fixed capital investment company by the AIF Law. Its share capital cannot vary and remains fixed
- 3. Variable capital investment company** incorporated under Cyprus Companies Law and recognized to operate as a fixed capital investment company by the AIF Law. Its share capital varies according to the participating investors at any given time. The share capital of the company is equal to the net asset value (NAV) of the shares of the company at any time
- 4. Limited partnership** registered under the Cyprus Partnership Law

All forms must obtain a licence by CySEC in order to be recognised as an AIF.

Management and Function

An AIF can either be self-managed or managed by an external manager.

Self-managed:

An AIF, either for limited or unlimited number of persons, may be **self-managed** if it is established as a variable/fixed investment company and one of the following applies:

- a. the assets of the portfolio of the AIF including any assets acquired through leverage, in total do not exceed a threshold of EUR 100mln or
- b. the assets of the portfolio of the AIF, where the AIF does not employ leverage and its unit holders have no redemption rights exercisable for a period of 5 years, do not exceed a threshold of EUR 500mln.

The management must be conducted by at least two persons with sufficient experience and specialisation.

Common funds and limited partnerships must be externally managed. In the case of partnerships, the duties and obligations of the external manager are undertaken by the general partner.

Externally managed funds:

An AIF with unlimited number of persons may be externally managed by an AIFM, a UCITS management company, or a licensed Cyprus Investment Firm.

A fund with limited number of persons may not be managed by an Alternative Investments Fund manager under the AIFM law. It may be externally managed only by a UCITS management company, a licensed Cyprus Investment Firm or a company incorporated for the sole purpose of managing the AIF whose suitability is examined by the Cyprus Securities and Exchange Commission.

Apart from its management a fund must engage:

- **An Administrator**, being responsible for the calculation of the Net Asset Value (NAV) of the fund, its administration, accounting, keeping of registry including processing of subscription and redemption of units. Currently, there is no licensing requirement for the position of the fund administration.
- **An Auditor**, for the audit of the financial statements of the fund, to review the activities of the fund and report to CySEC.
- **A Depositary**, being responsible for custody and safekeeping of assets depending on the type of assets of the fund as well as overseeing the cash movements of the fund.

Qualifications of the Depositary

- have its registered office in Cyprus, or in any other Member State of the EU or in a third country, provided CySEC has signed a Memorandum of Understanding and Exchange of Information with the competent authorities of such third country; and
- be either a credit institution, or investment firm or other institution which is subject to prudential regulation and ongoing supervision and which falls within the categories of institutions which have been defined by their home state as eligible to perform depositary functions.

Advantages of an AIF

- No restrictions regarding the type of investments
- Simple application process and time efficient
- Can be self-managed
- Can be set up as umbrella funds, allowing different asset pools with different investment policies
- Can be listed on Cyprus Stock Exchange or other EU stock exchanges
- Attractive tax incentives
- Low setup and maintenance costs
- Cost efficient management and operations
- Single passport
- Supervised by a competent and accessible regulatory authority

Passporting

Once authorised by CySEC, the AIF can manage, market, and distribute the units of AIFs based in Cyprus to professional investors in all other Member States using the regulator-to-regulator notification mechanism without seeking permission from each Member State and the need to comply with different national laws.

(B) Registered AIF (RAIF)

Registered AIFs (RAIFs) are an innovative fund vehicle launched in July 2018. They are geared to professional and well-informed investors and offer a quick and cost-efficient fund launch of only one month from the date of notification.

The RAIF must appoint an Alternative Investment Fund Manager (AIFM) which is responsible for the regulatory oversight of the fund, therefore no CySEC authorisation is required.

- No licensing required since it is supervised by the external AIFM
- No minimum capital requirements
- No investment restrictions
- Multiple compartments possible
- Can be opened or closed-ended
- Units of RAIFs may be listed
- Must appoint a local Depositary

The RAIF has drastically eased the setting up of a fund by eliminating lengthy procedures as well as reducing the overall set-up costs.

(C) Why Cyprus?

Cyprus is an ideal location for fund domicile and in fact various factors constitute Cyprus to be a strong contender amongst other traditional fund jurisdictions.

- Regulation by Cyprus Securities and Exchange Commission (CySEC), increased status and credibility
- Different types of structure to suit different needs and jurisdictions
- Cyprus is a well-regulated EU member state, combines tax efficient features of a modern financial centre with the necessary infrastructure for the fund's industry
- Low-cost base, efficient and investor friendly government authorities.

- Extensive network of double tax treaties for international tax planning
- Rigorous anti-money laundering regulations
- On the white list of the OECD
- FATF approved country, which is relevant for investors and managers alike
- EU and OECD compliant tax system
- Highly skilled professional services
- Strategic geographical position not far from the heart of Europe where investors and key service providers reside and close to Middle East and Asia where significant investor pools are located

(D) Tax Considerations

- The tax and legal systems are in full compliance with the EU and the OECD requirements against harmful practices; Cyprus as an EU member, has implemented all EU Directives
- 12.5% Corporation Tax
- Cyprus has concluded 65 Double Tax Treaties for the avoidance of double taxation
- No withholding tax on dividends paid by the Cyprus fund to unit holders were non-domiciled Cyprus tax resident individuals or non-Cyprus tax resident individuals
- Profit on sale of titles such as shares (assuming no real estate is held in Cyprus) and bonds is not subject to Cyprus tax
- No tax on redemption of share/unit by the holders

(E) Where to apply

The Cyprus Securities and Exchange Commission (**CySEC**) is the regulatory authority, responsible under the AIF Law for the licensing and supervision of Alternative Investment Funds. The commencement of operations of an AIF requires its prior authorisation. CySEC must review an application and communicate its decision within three months of the submission of a duly completed application.

Pelagias, Christodoulou, Vrachas LLC has established a specialized Financial and Investment Services Department which offers a “one stop shop” for the setting up, fund administration and ongoing legal support of a Cyprus Alternative Investment Fund.