

The private placement of funds in Cyprus

Our guide below briefly summarises the key aspects on the private placement of funds in Cyprus, focussing on marketing by non-EU and sub-threshold managers and funds looking to access investors based in or operating out of Cyprus.

Summary of private placement provisions for fund interests (if applicable)

The private placement regime in Cyprus is contained in Directive DI131/56/02 of the Cyprus Securities and Exchange Commission (the **CySEC Marketing Directive**), which is implemented further to the Alternative Investment Fund Manager Law 2013 (**AIFM Law**) and the Alternative Investment Fund Law 2018 (**AIF Law**). There is no definition of private placement in the Cyprus regime, but the term is generally taken to mean any placement outside of the scope of the AIFMD as implemented in Cyprus.

The CySEC Marketing Directive distinguishes between diverse categories of AIFs, AIFMs and target investor bases and the rules that will apply will vary accordingly.

In respect of Alternative Investment Fund Managers (**AIFMs**) seeking to market units of Alternative Investment Funds (**AIFs**) without a passport to professional investors in Cyprus, the AIFM must communicate its intention to CySEC and submit the required documentation outlined in the CySEC Marketing Directive. The AIFM may commence the marketing of units in the AIF following the expiration of two months from the date of submitting the notification unless CySEC expressly rejects the submission.

Sub-threshold AIFMs intending to market to professional and “well-informed investors” must seek express prior authorisation from CySEC to do so. Well-informed investors refer generally to an investor which is not a professional investor, confirms its status as such and invests at least €125,000 (or its expertise is subjected to assessment by a credit institution). The documentation required to be submitted for authorisation is set out in an Annex to the CySEC Marketing Directive. CySEC must decide on the authorisation within three months of submitting a complete application and the Sub-threshold AIFM may commence marketing following authorisation.

AIFMs intending to market AIFs to retail investors in Cyprus may do so provided they obtain authorisation in a similar way to sub-threshold AIFMs (see above) and on the understanding that the relevant AIF is subject to continuous prudential supervision and other requirements

relevant to funds marketed to retail investors.

The CySEC Marketing Directive imposes on-going obligations on persons marketing AIFs in Cyprus on a notified or authorised basis as outlined above.

The obligations include certification of individuals involved in marketing, transaction reporting requirements, disclosure obligations towards unit-holders and obligations relating to marketing over the internet.

Other forms of possible placement options for fund interests outside fund regulations

Reverse solicitation, ie the acquisition of fund interests at the initiative of the investor, lies outside the fund regulations noted above. However, any intermediary where applicable, eg an investment advisor, must not receive any other remuneration apart from the investment advice fee, in order for the reverse solicitation to be lawful (a practice now generally consistent with rules against retrocession and soft commission arrangements under MiFID II).

Another placement possibility outside the scope of the fund regulations is where a portfolio manager acting under a discretionary portfolio management mandate decides to include fund units in the client’s portfolio. In the case of non-discretionary portfolio management, no additional remuneration, other than the management fee, must be received, for the purchase to take place outside the fund regulations.

Further, interests in European Social Entrepreneurship Funds (**EuSEF**), within the meaning of Regulation (EU) 346/2013 and in European Venture Capital Companies (**EuVECA**), within the meaning of Regulation (EU) 345/2013 are out of the scope of the marketing provisions of the AIFM and the AIF Law.

Consequences of non-compliance with placement regimes for fund interests

If there is a breach of the AIFM Law marketing provisions, the AIFM Law sanctions will apply. These consist of administrative and criminal sanctions. Administrative

sanctions in the form of an administrative fine are provided in section 74 of the AIFM Law.

The administrative fine may be up to €350,000 and may increase to €700,000 for repeated breaches. Where the person in breach of the AIFM Law marketing provisions obtains a benefit pursuant to the breach, the administrative fine imposed may be up to twice the amount of the benefit. Criminal sanctions are laid down in section 75 of the AIFM Law, and apply to a breach of AIFM Law marketing provisions in the following situations:

- Marketing of AIFs by an unauthorised person takes place. In such a case the applicable criminal sanctions will be imprisonment of up to five years and monetary sanctions of up to €700,000
- A false, misleading or deceiving statement or submission of documents is made, or evidence is concealed or omitted to be submitted or the exercise of CySEC's controlling or investigatory duties is obstructed. In these cases, the applicable criminal sanctions will be imprisonment of up to five years and/or monetary sanctions of up to €700,000. Administrative fines according to section 74 of the AIFM Law may also be imposed; advertising material or subscription forms relating to AIFs which are not permitted to be marketed in Cyprus under the AIFM Law are knowingly issued, circulated or distributed. In these cases, the applicable criminal sanctions will be imprisonment of up to three years and/or monetary sanctions of up to €200,000

Sanctions under the AIF Law also comprise administrative and criminal sanctions. The administrative fines imposed may be up to €350,000 and may increase to €700,000 for repeated breaches. Where the person in breach of the AIF Law marketing provisions obtains a benefit pursuant to the breach, the administrative fine imposed may be up to twice the amount of the benefit. In addition to administrative fines, administrative sanctions also include withdrawal of the relevant marketing licence.

Criminal sanctions are laid down in the AIF Law, and apply to a breach of AIF Law provisions, including marketing provisions, in the following situations:

- When, in the course of providing information for any matter regulated under the AIF Law, including marketing of AIFs; a false, misleading or deceiving statement or submission of documents is made, or evidence is concealed or omitted to be submitted or the exercise of the controlling or investigatory duties of the CySEC is obstructed. In these cases, the applicable criminal sanctions will be imprisonment of up to five years and or monetary sanctions of up to €350,000

- Use of a brand, name or description that creates the false impression of an AIF being licensed under the AIF Law. In these cases, the applicable criminal sanctions will be imprisonment of up to five years and monetary sanctions of up to €350,000
- Advertising material or subscription forms relating to AIFs, which are not permitted to be marketed in Cyprus under the AIF Law, being knowingly issued, circulated or distributed. In these cases, the applicable criminal sanctions will be imprisonment of up to three years and monetary sanctions of up to €200,000; and Administrative fines according to section 110 of the AIF Law may also be imposed

Private placement rules for non-fund investments available

The AIFM Law provides that the following non-funds are subject to private placement opportunities:

- Institutions for occupational retirement provision; supranational institutions, in the event that such institutions or organisations manage AIFs and in so far as those AIFs act in the public interest
- Governmental bodies and institutions which manage funds supporting social security and pension systems
- Employee participation and savings schemes
- Securitisation special purpose entities
- Investments offered by a holding company
- AIFMs in so far as they manage AIFs whose only investors are the AIFMs themselves or their parent undertakings, their subsidiaries or other subsidiaries of their parent undertaking and where those investors are not themselves AIFs

Regulation under the Prospectus Regulation EU 2017/1129 should also be considered when seeking to market on a private placement basis. To avoid the requirement to prepare a prospectus, the person marketing would need to ensure that the offering in Cyprus does not constitute an offering of securities to the public or otherwise qualifies for a safe harbour.

The Cypriot Companies Law (Cap. 113) also imposes a requirement for a prospectus in relation to an offer to the public. There is an exemption for shares or debentures to which the EU Prospectus regime applies.



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