



# Andreas M.Sofocleous & Co. LLC

Advocates & Legal Consultants

## The Alternative Investment Funds Law (2018)

The Alternative Investment Funds Law 2018, has enabled Cyprus to develop the fund industry and align it to the European directive of Alternative Investments Funds ("AIF"), thus strengthening the fund regime in Cyprus by creating an attractive, competitive, trustworthy and prestigious industry for the creation of investment activities. The new developments in the Law have enabled Cyprus to offer an attractive regime for the creation of funds combining flexibility, effective regulations and incentive to investors since the creation of AIFs in Cyprus provide both cost benefits in terms of its incorporation as well as tax benefits enjoying the 12.5% corporate tax rate.

The AIF Law provides the possibility for a collective investment to take place raising capital from a number of investors with the aim of investing this capital in accordance with a defined policy for the benefit of the investors, thus enabling them in case of a successful management of the fund to receive dividends. Assets can also form part of the Fund, following an asset valuation. The valuation procedures must ensure that assets are valued and that the net assets value per unit is calculated at least once a year. The valuation will be conducted by an independent external valuer.

The formation of a fund can take place following an application to the Cyprus Securities and Exchange Commission (CySec) that is the regulatory body for AIFs. Following the application to CySec, and subject to the fulfilment of all the requirements for the formation of the Fund, CySec will proceed with the registration of the fund.

AIFs that are established under domestic Cyprus fund legislation can be sold on a private placement basis or marketed to professional investors across the EU under the AIFMD passport.

The AIF Law further provides the opportunity for the creation of two types of AIFs providing for a wider use of the funds and meeting the needs of all kind of investors.

The two types of AIF that can be created are as follows:

### [I] AIFs available to the public with unlimited number of investors.

- This type of AIF can be marketed either to well-informed/professional investors or to retail investors;
- The management of AIFs can be either internally managed or managed by a management company, depending on the value of the assets.
- This type of AIF can be listed, and provide for the possibility to make public offerings of shares/units
- Umbrella Funds can be created where an AIF can manage multiple investment compartments where each compartment is managed in a different way, involving different investment policies with separate assets and liabilities.
- This type of AIF must, within twelve (12) months from the date its authorisation was granted, raise at least five hundred thousand euros (€500.000) worth of capital from investors.
- Reporting requirements include half yearly report, and annual report, which includes information of the fund and its activities as well as the audited financial statements.

#### Limassol Office

Proteas House ,155 Makariou III Avenue  
Limassol 3026 ,Cyprus  
P.O. Box: 58159 Limassol 3731

Phone:+357 25 849000  
Fax: +357 25 849100  
E-mail: info@sofocleous.com.cy  
Website: www.sofocleous.com.cy

#### Kiev Office

36-D Saksagavskgov Str.  
Office2 ,Kiev 01033  
Ukraine

Tel: +380-444902003/4/5  
Fax: +380-444902006  
Email: kiev@sofocleous.com.cy



- Subject to certain investment restrictions for the purpose of risk spreading and ensuring liquidity.

### [II] AIFs with limited number of persons – AIFLNP

This type of Fund, is the one we propose for your case as this type of fund offers a flexible arrangement of AIFs. Under this arrangement investors may invest their money in the fund for a specific purpose or investment strategy which will be managed by experience and professional managers, and in the case of successful management derive profits from such investments, some of the main characteristic of this type of fund can be fund below:

- The maximum number of investors is limited to a maximum of fifty (50) natural persons
- It is addressed only to well-informed and/or professional investors.
- May be set up either as internally managed AIFLNP or a externally managed AIFLNP
- The marketing of AIFLNP units is forbidden before to the granting of authorisation and notification of authorisation by the Securities and Exchange Commission
- The AIFLNP must, within twelve (12) months from the date its authorisation was granted, raise at least €250.000 worth of capital from investors
- The internally – managed AIFLNP shall have, at any time, either in cash or assets readily convertible to cash, an initial capital of at least 50.000
- Reporting requirements include an annual report which has to be reviewed by independent auditors, including information in respect of the fund and its activities.
- Freely transferable investor shares with the condition that their shares does not result in the AIF having more than 50 investors.
- Umbrella funds can be created under this type of fund, where a Fund can manage multiple investment compartments, however in this case the limitation on the number of investors is applies to the whole scheme. An AIF that consists of more than one investment compartments constitutes a single legal entity, with the unit holders' rights derived from the assets of the relevant

compartment they have invested in; each investment compartment is liable for the obligations created from its establishment and operations or its dissolution.

- Assets under management do not exceed the AIFMD threshold of €100 million or of EUR 500 million when the portfolios of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF.

### Investor Classification:

**Professional Investor:** means an investor who is considered to be a professional client or may, on request, be treated as a professional client within the meaning of the Second Appendix of the Investment Services and Activities and Regulated Markets Law

**Well-informed investor:** means every investor who is not a professional investor, but fulfils the following criteria: (a) the investor confirms in writing (i) that he has sufficient knowledge and experience in financial and business matters to evaluate the merits and risks associated with the prospective investment and that he is aware of the risks associated with the prospective investment or (ii) that his business activity is related to the management, acquisition or sale of assets, either on the investor's own account or on behalf of third parties, and are of the same type as the investments of the AIF (b) (i) invests at least €125.000 in the AIF or (ii) has been assessed by a credit institution, an AIFM, a UCITS Management Company, an IF or an external manager of AIFs authorised in the Republic or another Member State for the management of AIFs whose assets do not exceed the limits provided for in article 4 (2) of the Alternative Investment Fund Managers Law or the corresponding article 3(2) of Directive 2011/61/EU, and the above assessment shows that he has the necessary knowledge and experience in financial and business matters, to evaluate the merits and risks associated with the AIF's prospective investment based on the AIF's investment policy or (iii) is employed by one of the persons referred to in subparagraph (ii) of paragraph (b), receiving total remuneration that takes him into the same remuneration bracket as the natural persons who effectively conduct the business of the person referred to in subparagraph (ii) of paragraph (b) or the executive members of their governing body, who effectively conduct the their business (c) by way of derogation from paragraphs (a) and (b), the investor is



a person who effectively directs the business of the AIF or its external manager or is a person engaged in the AIF's investment management functions:

Retail Investor: means an investor who does not qualify as a professional investor nor as a well informed investor.

### **Key benefits of the Cyprus AIF.**

- Increased flexibility as a number of assets classes can be included in an AIF investment strategy.
- An AIF enjoys similar taxation benefit of a Cyprus tax resident company being one of the lowest corporate income tax rates in the EU at 12.5%.
- Cyprus is an EU member state compliant with EU laws and regulations.
- Dividends distributed to Cyprus tax residents are subject to 3% Social Defence Contribution (compared to 17% that normally applies).
- No subscription tax on net assets of a fund.
- Exemption from tax on profits from sale of shares and other instruments.
- No withholding tax on income repatriation or dividends paid to unit holder.
- No capital gains tax on disposal of shares/units by the holders
- Tax exemption on capital gains from the sale of immovable property located outside Cyprus.
- An extensive Double Tax Treaties in place 50 countries worldwide.

### **Experts and other parties required for the formation of an AIF.**

For the creation of an AIF, parties having sufficiently good reputation, skills, knowledge and expertise to manage the Fund have to be appointed and subsequently approved by CySec. AIFs can be managed by either external or internal managers that have to be licensed by CySec in order to provide such services. For the formation of AIF the following parties have to be appointed:

**Administrator:** is responsible for keeping the fund's books and records, accounting, compliance, reporting filling, share issue and other services.

**Auditors:** Professional Auditors have to be appointed, that will be responsible for the annual audits of the Fund.

**Depository:** responsible for safekeeping and cash monitoring. The Depository can be a credit institution or an investment company or another institution eligible to be a Depository.

**Directors:** are parties with the experience and knowledge necessary to be responsible for the management and control of the fund. Their knowledge has to be connected with the subject matter of the Fund.

**Manager:** means the persons that actually manage the operations of the AIFM, undertaking the operation of its business activity. An AIF can be managed by an internal or an external manager having the license to act as such.

Time for the creation of the fund will take approximately 3-6 months from the day of submission of all relevant documentation needed for the submission of the application with CySec.