

**International
Comparative
Legal Guides**



Alternative Investment Funds

2024

12th Edition

Contributing Editors:

Jeremy Elmore & Emily Clark
Travers Smith LLP

glg Global Legal Group

Industry Chapter

1

Alternative Investment Funds – Thriving Amid Volatility
Tom Kehoe, AIMA

Expert Analysis Chapters

4

The Stakes Are High – The Increasing Prevalence of GP Stake Sales
Jeremy Elmore, Travers Smith LLP

9

Fund Finance: Past, Present and Future
Wesley A. Misson & Trent E. Lindsay, Cadwalader, Wickersham & Taft LLP

Q&A Chapters

11

Andorra
Cases & Lacambra: Miguel Cases Nabau & Laura Nieto

19

Angola
VdA: Pedro Simões Coelho, Carlos Couto, Joana Lobato Heitor & Patrícia Nunes Mesquita

27

Brazil
Lefosse Advogados: André Mileski & Gustavo Paes

36

Canada
Borden Ladner Gervais LLP: Jonathan Doll, Sarah Gardiner, Ron Kosonic & Grace Pereira

46

Cayman Islands
Maples Group: Grant Dixon, Andrew Keast & Stephen Watler

56

Cyprus
Patrikios Legal: Angelos Onisiforou & Angeliki Epaminonda

66

England & Wales
Travers Smith LLP: Jeremy Elmore & Emily Clark

77

Finland
Waselius: Olli Kiuru, Lauri Liukkonen & Mia Rintasalo

85

France
Joffe & Associés: Olivier Dumas

93

Hong Kong
ONC Lawyers: Raymond Cheung, Elaine Ho & Steffi Chan

102

Ireland
Dechert LLP: Carol Widger & Daniel Clifford

115

Japan
Anderson Mōri & Tomotsune: Koichi Miyamoto, Takahiko Yamada, Akira Tanaka & Yoshiko Nakamura

125

Luxembourg
GSK Stockmann: Corinna Schumacher, Katharina Schiffmann & Philipp Krug

136

Mozambique
VdA: Pedro Simões Coelho, Carlos Couto, Patrícia Nunes Mesquita & Luís Maria

143

Norway
Arntzen de Besche Advokatfirma AS: Snorre Nordmo, Eyvind Sandvik, Karl Rosén & Håvard Røksund

150

Poland
Adwokaci i Radcowie Prawni Żyglicka i Wspólnicy sp.k.: Jarosław Rudy, Ewa Lejman, Maciej Marzec & Dorota Brzęk

158

Portugal
VdA: Pedro Simões Coelho, Francisco Cabral Matos, Carlos Couto & Patrícia Nunes Mesquita

170

Scotland
Brodies LLP: Andrew Akintewe & Bob Langridge

179

Singapore
Joseph Tan Jude Benny LLP: Kay Yong & Tio Siaw Min

187

Spain
Cases & Lacambra: Miguel Cases Nabau, Toni Barios, Laura Nieto & David Navarro

196

Switzerland
Bär & Karrer Ltd: Daniel Flühmann & Peter Ch. Hsu

207

USA
K&L Gates LLP: Lance Dial, Christopher Phillips-Hart, Joel Almquist & Tristen Rodgers

Cyprus

Patrikios Legal



Angelos Onisiforou



Angeliki Epaminonda

1 Regulatory Framework

1.1 What legislation governs the establishment and operation of Alternative Investment Funds?

The establishment and operation of Alternative Investment Funds (“AIFs”) is governed by the Alternative Investment Funds Law 124(I)/2018 (“AIF Law”) and any secondary legislation issued in the form of derivatives/circulars by the Cyprus Securities and Exchange Commission (“CySEC”) as well as by the European Securities and Markets Authority (“ESMA”). In addition, and depending on whether an AIF is internally and/or externally managed, the Alternative Investment Fund Managers Law of 2013 (“AIFM Law”) and Directive 2011/61/EU (“AIFMD”) provide further regulation in relation to this sector.

1.2 Are managers or advisers to Alternative Investment Funds required to be licensed, authorised or regulated by a regulatory body?

Yes, external managers of AIFs are required to be licensed, authorised, regulated and/or approved by CySEC.

The following entities can take the role of an external manager of an AIF:

- i) an Alternative Investment Fund Manager (“AIFM”), in accordance with the AIFM Law;
- ii) a UCITS Management Company authorised in accordance with the Open-Ended Undertakings for Collective Investments Law (“UCI”) Law of 2012;
- iii) a Mini Fund Manager authorised by Law 81(I)/2020 for the management of AIF investments whose assets under management do not exceed the limits laid down by Article 4(2) of the AIFM Law or Article 3(2) of the AIFMD; or
- iv) an AIFM authorised in another Member State that is subject to prudential rules under the relevant legislation of its Member State of origin.

1.3 Are Alternative Investment Funds themselves required to be licensed, authorised or regulated by a regulatory body?

Yes, CySEC is the regulatory body responsible for the licensing, authorisation and regulatory compliance of AIFs. The Registered Alternative Investment Fund (“RAIF”) does not need to receive authorisation by CySEC; it merely needs to be registered with CySEC.

1.4 Does the regulatory regime distinguish between open-ended and closed-ended Alternative Investment Funds (or otherwise differentiate between different types of funds or strategies (e.g. private equity vs hedge)) and, if so, how?

Yes, the regulatory regime in the Republic of Cyprus distinguishes between open-ended and closed-ended AIFs. An AIF may be of the open-ended type if its shares or units are, at the request of any of its shareholders or unitholders, repurchased or redeemed prior to the commencement of its liquidation phase or winding up, directly or indirectly, out of the assets of the AIF and in accordance with the procedures and frequency set out in its fund rules or instruments of incorporation, prospectus or offering document of the AIF. In all other cases they are of a closed-ended type. An AIF is classified as having a particular strategy if it invests more than 60% of its assets in a single category of a particular asset.

1.5 What does the authorisation process involve for managers and, if applicable, Alternative Investment Funds, and how long does the process typically take?

AIFMs

In order for an AIFM to be licensed in the Republic of Cyprus, the following main documents must be provided:

- a) information on the persons effectively conducting the business of the AIFM;
- b) information on the identities of the AIFM’s shareholders or members, whether direct or indirect, natural or legal persons, that have qualifying holdings and on the amounts of those holdings;
- c) a programme of activity setting out the organisational structure of the AIFM; and
- d) information on the remuneration policies.

CySEC shall inform the applicant AIFM, in writing, within three months of the submission of a complete application, whether or not authorisation has been granted. The Commission may prolong this period for up to three additional months where it considers it necessary due to the specific circumstances of the case and after having notified the AIFM accordingly.

AIFs

The authorisation process involves submission to CySEC of the following information.

Common Fund

- i) the name and the data identifying and certifying the appropriateness of the AIF’s external manager, as well as

- the identity of the persons responsible for the risk management and portfolio management functions;
- ii) a statement by the external manager confirming that it agrees to perform the investment management functions for the AIF;
- iii) a statement by the depositary confirming that it agrees to perform the depositary functions;
- iv) the identity of the person or persons appointed by the depositary as responsible for monitoring the activity of the AIF;
- v) a draft of the AIF's fund rules, signed by the AIF's external manager;
- vi) a draft of the AIF's offering document;
- vii) a draft of the AIF's key investor information document ("KIID"); and
- viii) any other information as provided in Article 30(1) of the AIFM Law.

Investment Company

- i) in case of a company under incorporation, the persons that will sign the instruments of incorporation; or
- ii) in case of an existing company, the members of the board of directors; and
- iii) when the Investment Company is externally managed, the following must be submitted to CySEC:
 - a) the name, registered address, and headquarters address of the AIF;
 - b) sufficient information and data, including a résumé, of the persons who effectively direct the business of the internally managed AIF;
 - c) the name and the data identifying and certifying the appropriateness of the AIF's external manager, as well as the identity of the persons responsible for the risk management and portfolio management functions;
 - d) a statement by the external manager, where one is appointed, confirming that it agrees to perform the investment management functions for the AIF;
 - e) a statement by the depositary confirming that it agrees to perform the depositary functions;
 - f) the identity of the person or persons appointed by the depositary as responsible for monitoring the activity of the AIF;
 - g) a draft of the AIF's instruments of incorporation;
 - h) a draft of the AIF's offering document;
 - i) a draft of the AIF's KIID; and
 - j) any other information as provided in Article 30(1) of the AIFM Law.

Limited Partnership

The external manager or the general partner of the Limited Partnership, in case of a self-managed AIF, in addition to the application for authorisation, shall submit the following:

- i) the name and address of the registered office and the place of basic activity of the Partnership;
- ii) sufficient information and data, including a résumé, for the persons who effectively direct the business of the internally managed AIF;
- iii) the name and the data identifying and certifying the appropriateness of the AIF's external manager;
- iv) a statement by the external manager, where one is appointed, confirming that it agrees to perform the investment management functions for the AIF;
- v) a statement by the depositary confirming that it agrees to perform the depositary functions for the assets of the AIF;

- vi) the identity of the person or persons appointed by the depositary as responsible for monitoring the activity of the AIF;
- vii) a draft of the AIF's Partnership agreement;
- viii) a draft of the AIF's offering document;
- ix) a draft of the AIF's KIID; and
- x) any other information as provided in Article 30(1) of the AIFM Law.

CySEC shall grant authorisation to the AIF only if it approves:

- i) the relevant application as described above;
- ii) the rules or instruments of incorporation;
- iii) its choice of external manager or, in case of a self-managed AIF, the persons who effectively conduct the business; and
- iv) its choice of depositary, if one is appointed.

CySEC shall inform the external manager of the AIF or the self-managed AIF within six months of the submission of a complete application file. The process can take longer than six months if CySEC considers that the file submitted is incomplete.

1.6 Are there local residence or other local qualification or substance requirements for managers and/or Alternative Investment Funds?

AIFs that operate in the form of an Investment Company must be authorised by CySEC and have their registered office in the Republic of Cyprus.

In the case of an internally managed AIF, the board of directors shall undertake the responsibilities of the external manager, which shall appoint at least one person responsible for the portfolio management who must have the following credentials:

- i) he holds academic qualifications and/or has experience related to the assets in which the AIF is allowed to invest;
- ii) he is certified to provide portfolio management services in accordance with the provisions of MiFID II, as amended; and
- iii) he is registered in the public register kept by CySEC, in which the persons who succeed in the exams of CySEC are registered.

Lastly, an AIFM established in the Republic of Cyprus must have its registered office and central management in the Republic of Cyprus.

1.7 What service providers are required?

This highly depends on the structure of the AIF in question. The usual service providers of an AIF (other than the AIFM) are the depositary, the fund administrator and the auditor.

1.8 What rules apply to foreign managers or advisers wishing to manage, advise, or otherwise operate funds domiciled in your jurisdiction?

An AIFM of another Member State that is authorised in accordance with the AIFMD may undertake the following either directly or by establishing a branch:

- i) manage AIFs established in the Republic, provided that the AIFM is authorised to manage that type of AIF; and
- ii) provide in the Republic of Cyprus the services that are covered by the AIFM licence.

An AIFM of another Member State that intends to manage AIFs established in the Republic for the first time may start providing its services in the Republic upon receipt of the transmission notification from the competent authorities of its home Member State.

For non-EU AIFMs, the procedure is more complicated and includes, amongst others, the following additional conditions:

- i) the non-EU AIFM must indicate the Republic as the Member State of reference supported by the marketing strategy to be followed;
- ii) a legal representative established in the Republic must be appointed;
- iii) the legal representative shall, together with the non-EU AIFM, be the contact person of the non-EU AIFM for the investors of the relevant AIFs, for ESMA and for the competent authorities as regards the activities for which the AIFM is authorised in the EU and shall at least be sufficiently equipped to perform the compliance function pursuant to this Law;
- iv) appropriate co-operation arrangements must be in place between CySEC and the supervisory authorities of the third country where the non-EU AIFM is established in order to ensure, at least, an efficient exchange of information;
- v) the third country where the non-EU AIFM is established must not be listed as a Non-Cooperative Country and Territory by the Financial Action Task Force;
- vi) the third country, where the non-EU AIFM is established, must have signed an agreement with the Republic, which fully complies with the standards laid down in Article 26 of the Organisation for Economic Co-operation and Development's ("OECD") Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including any multilateral tax agreements; and
- vii) the effective exercise by the competent authorities of their supervisory functions is neither prevented by the laws, regulations or administrative provisions of a third country governing the non-EU AIFM, nor by limitations in the supervisory and investigatory powers of that third country's supervisory authorities.

1.9 What relevant co-operation or information sharing agreements have been entered into with other governments or regulators?

CySEC maintains a wide range of co-operation agreements and/or memoranda of understanding with many jurisdictions. For further information on the memoranda of understanding, please refer to: <https://www.cysec.gov.cy/en-GB/cysec/INTERNATIONAL-AFFAIRS/MoU>.

2 Fund Structures

2.1 What are the principal legal structures used for Alternative Investment Funds (including reference where relevant to local asset holding companies)?

The legal structures available for AIFs are:

- i) An AIF with an unlimited number of persons, which can take the form of a Common Fund or Variable/Fixed Capital Investment Company subject to the Companies Law Cap. 113 or of a Limited Partnership with or without legal personality subject to the General and Limited Partnerships and Business Names Law Cap. 116. An AIF is addressed to both retail and professional and/or well-informed investors and no limit on the number of investors that can participate is imposed. The minimum capital requirement is €125,000 at all times for externally managed AIFs and €300,000 for self-managed AIFs.

- ii) An AIF with a limited number of persons ("AIFLNP"), which can take the form of a Variable/Fixed Capital Investment Company subject to the Companies Law Cap. 113 or of a Limited Partnership with or without legal personality subject to the General and Limited Partnerships and Business Names Law Cap. 116. The minimum capital requirement for a self-managed AIFLNP is €50,000 at all times. If the AIFLNP is externally managed, there is no minimum capital requirement.

An AIFLNP is addressed only to professional and/or well-informed investors. The number of investors that can participate in this type of fund is limited to 50 investors. Where the AIFLNP is structured as an umbrella fund with multiple investment compartments, the limit of 50 investors applies to the total number of investors and not to each investment compartment separately.

- iii) A RAIF, which can take the form of a Common Fund or Variable/Fixed Capital Investment Company subject to Companies Law Cap. 113 or of a Limited Partnership with or without legal personality subject to the General and Limited Partnerships and Business Names Law Cap. 116. A RAIF is addressed only to professional and/or well-informed investors. There is no limit on the number of investors that can participate in the fund and there are no minimum capital requirements.

For the avoidance of doubt, a well-informed investor is an investor who confirms in writing that (i) he has sufficient knowledge and experience in financial and business matters to evaluate the merits and risks associated with the prospective investment, or (ii) 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 he either (a) invests at least €125,000 in the AIF, or (b) has been assessed by a credit institution, an AIFM, a UCITS Management Company, an Investment Firm or an external manager of AIFs authorised in the Republic or another Member State that he has the necessary knowledge and experience in financial and business matters to evaluate the merits and risks associated with the AIF's investment policy.

2.2 Do any of the legal structures operate as an umbrella structure with several sub-funds, and if yes, is segregation of assets between the sub-funds a legally recognised feature of the structure?

Yes, all structures can operate as an umbrella structure and the segregation of assets is a legally recognised feature of such structure.

2.3 Please describe the limited liability of investors in respect of different legal structures and fund types (e.g. PE funds and LPACs).

The liability of investors is generally limited to the amount they have invested regardless of the structure used. Although rarely used, in the case of a Partnership structure, the liability of the general partner is unlimited.

2.4 What are the principal legal structures used for managers and advisers of Alternative Investment Funds?

A manager usually takes the form of a private limited liability company pursuant to the Companies Law Cap. 113. Please also refer to question 1.2 above.

2.5 Are there any limits on the manager's ability to restrict redemptions in open-ended funds or transfers in open-ended or closed-ended funds?

The suspension of redemption or repurchase of units of an AIF, irrespective of whether it is an open- or closed-ended fund, is only allowed in exceptional cases where this is mandated by the circumstances or as allowed in the AIF's rules and, in any case, if this is in the best interests of the unitholders. Furthermore, the relevant suspension of redemption or repurchase requires the prior approval of the external manager, or the AIF in case it is internally managed, as well as authorisation by CySEC, which is communicated by the external manager, or the AIF in case it is internally managed, to the competent authorities of the other countries where the units of the AIF are marketed. The decision to suspend redemption or repurchase sets the timeframe of the suspension of the redemption or repurchase. Any extension of this timeframe is only permitted after authorisation by CySEC. In addition, CySEC may decide to extend the suspension period where this is justified by the interests of the unitholders of the AIF and where it is necessary in order to ensure the proper functioning of the market.

2.6 Are there any legislative restrictions on transfers of investors' interests in Alternative Investment Funds?

The general rule is that no legislative restrictions exist on the transfer of investors' interests in AIFs subject to any restrictions contained in their rules of operation and/or their constitutional/formation documents.

Please also refer to questions 2.1 and 2.5 above.

2.7 Are there any other limitations on a manager's ability to manage its funds (e.g. diversification requirements, asset stripping rules)?

Other than the investment restrictions and limitations imposed by CySEC as described below in question 4.2, and the limitations imposed by the AIFMD and the AIFM Law relating to asset stripping, there are no limitations on an AIFM's ability to manage AIFs.

2.8 Does the fund remunerate investment managers through management/performance fees or by a combination of management fee and carried interest? In the case of carried interest, how is this typically structured?

Usually, an AIF remunerates investment managers through management or performance fees and/or a combination of both. Needless to say, the remuneration fees must be fully disclosed to the investors.

3 Marketing

3.1 What legislation governs the production and use of marketing materials?

The production and use of marketing materials is governed by the AIF Law and the AIFM Law. CySEC has also detailed domestic guidelines issued from time to time. In addition, Regulation (EU) 1286/2014 ("PRIIPS Regulation") governs the

production and offering of the KIID where units are offered to retail investors. Furthermore, Regulation (EU) 2019/1156 specifies further rules regarding the cross-border distribution of collective investment undertakings.

3.2 What are the key content requirements for marketing materials, whether due to legal requirements or customary practice?

Prospective investors are provided with the offering document of the AIF, fund rules or the instrument of incorporation and its latest annual and half-yearly reports, and disclose to a prospective investor the latest net asset value ("NAV") of the AIF or the latest market price of its units.

The following information is disclosed prior to investment:

- i) a description of:
 - a) the investment strategy and objectives of the AIF;
 - b) the procedures by which the AIF may change its investment strategy, investment policy or both;
 - c) the main legal implications of the contractual relationship entered into for the purpose of investment;
 - d) how the AIFM is complying with the AIF Law;
 - e) any delegated management functions;
 - f) the AIF's valuation procedure and the pricing methodology for valuing assets;
 - g) the AIF's liquidity risk management;
 - h) all fees, charges and expenses of the AIF; and
 - i) how the AIFM ensures fair treatment of investors;
- ii) the identity of the AIFM, the AIF's depositary, auditor and any other service providers and a description of their duties and the investors' rights;
- iii) the procedure and conditions for the issue and sale of units;
- iv) the historical performance of the AIF; and
- v) the identity of the prime broker.

For open-ended AIFs addressed to retail investors, a KIID is also given to the applicant free of charge.

As a general rule, all marketing communications of an AIF to the investors shall be precise, clear and not misleading.

3.3 Do the marketing or legal documents need to be registered with or approved by the local regulator?

Core marketing materials such as those indicated in question 3.2 need to be approved by CySEC.

3.4 What restrictions (and, if applicable, ongoing regulatory requirements) are there on marketing Alternative Investment Funds?

Marketing of AIF units to another Member State or third country

The external manager, or the AIF in case it is internally managed, may market in another Member State or third country the units of the AIF to professional and/or well-informed investors, only if this is allowed by the legislation of that Member State or third country, or to retail investors. In the case of retail investors, however, further notification requirements are applicable. Before the marketing of the units of the AIF in the Member State or third country begins, the external manager, or the AIF in case it is internally managed, shall submit to CySEC confirmation by the competent authorities of the Member State or third country that the appropriate marketing procedures regarding the marketing of units of the AIF in its jurisdiction provided by the legislation of the host country have been followed.

Marketing of units of AIFs from another Member State or third country into Cyprus

An AIF established in another Member State or third country, which is externally managed by an AIFM, may market its units in the Republic of Cyprus in accordance with the provisions of the AIFM Law.

AIFs established in another Member State or third country that do not fall within the scope of the AIFM Law may market their units in the Republic of Cyprus only where they are subject to effective supervision in their home Member State, in accordance with the applicable legislation, to ensure the protection of investors and on the condition that they have been authorised by CySEC for the marketing of their units in the Republic of Cyprus.

AIFLNP

The marketing of an AIFLNP's units is forbidden prior to the granting of authorisation and notification of authorisation by CySEC.

RAIFs

The marketing of RAIF units to its investors is carried out in accordance with the AIF Law.

Please note that there are further restrictions on marketing to retail and well-informed investors; please see question 3.5 below.

3.5 Is the concept of "pre-marketing" (or equivalent) recognised in your jurisdiction? If so, how has it been defined (by law and/or practice)?

Directive 2019/1160/EU of 20 June 2019 on cross-border distribution, which regulates pre-marketing, has been fully transposed into Cyprus law by Regulation (EU) 2019/1156.

Pre-marketing is defined as the provision of information or communication, direct or indirect, on investment strategies or ideas by an EU AIFM or on its behalf to potential professional investors domiciled or with a registered office in the EU in order to test their interest in an AIF or a compartment that is not yet established, or which is established but not yet notified for marketing in that Member State where the potential investors are domiciled or have their registered office, and which, in each case, does not amount to an offer or placement to the potential investor to invest in the units or shares of that AIF or compartment.

3.6 Can Alternative Investment Funds be marketed to retail investors (including any specific treatment for high-net-worth individuals or semi-professional or similar categories)?

AIFs can be marketed to retail investors in Cyprus provided that the AIF has been granted authorisation by CySEC in accordance with the relevant provisions of the AIF Law and the AIFM Law.

Where the AIF is addressed to retail investors, additional requirements exist as follows:

- i) marketing communications must specify where and in which language the offering document may be obtained by the investors and the authorisation number of the AIF;
- ii) all marketing communications and every document or message that contains, directly or indirectly, an invitation to purchase units of an AIF, including those posted on the internet, must include in a prominent section that the performance of investments in units of the AIF is not guaranteed and that previous returns do not ensure future ones. In case of an AIF with guaranteed performance, the above reference shall be limited to the fact that past performance does not guarantee the same performance in the future;

- iii) in case an AIF replicates a stock exchange index, all marketing communications must include a specific statement in a prominent section on the attention the investors need to give to the investment policy of the AIF; and
- iv) in case the NAV of an AIF has high volatility because of the composition of its portfolio or the management techniques used, all marketing communications shall include a specific statement in a prominent section drawing the attention of the investors to this aspect.

3.7 What qualification requirements must be met in relation to prospective investors?

Please refer to question 2.1 above.

Under the laws of Cyprus, there is a distinction between:

- i) a professional investor (an investor that is considered to be a professional client or may, on request, be treated as a professional client within the meaning of MiFID II);
- ii) a well-informed investor (every investor who is not a professional investor as specified in question 2.1 above and further defined in the AIF Law); and
- iii) a retail investor (an investor who does not qualify as a professional investor nor as a well-informed investor).

3.8 Are there additional restrictions on marketing to public bodies such as government pension funds?

No particular restrictions exist on marketing AIFs to public bodies.

3.9 Are there any restrictions on the participation in Alternative Investment Funds by particular types of investors (whether as sponsors or investors)?

There are no restrictions on the participation in AIFs subject to the internal onboarding procedure of each particular AIF and the anti-money laundering restrictions.

3.10 Are there any restrictions on the use of intermediaries to assist in the fundraising process?

No particular restrictions exist on the use of intermediaries provided that they have a licence to provide such service. The relevant marketing requirements, including the requirements of Directive 2019/1160/EU must also be complied with.

4 Investments

4.1 Are there any restrictions on the types of investment activities that can be performed by Alternative Investment Funds?

No particular restrictions exist on the types of investment activities; however, all its investment activities and/or investments must be made in accordance with its defined investment policy as approved by CySEC.

4.2 Are there any limitations on the types of investments that can be included in an Alternative Investment Fund's portfolio, whether for diversification reasons or otherwise?

AIFs that are addressed to retail investors are allowed to invest in, *inter alia*, one or more of the following:

- a) transferable securities;
- b) money market instruments;
- c) units of collective investment undertakings;
- d) derivative instruments that satisfy certain conditions;
- e) deposits with credit institutions;
- f) immovable property and property related to immovable property;
- g) mortgage-related securities;
- h) securities that encompass claims of up to 30%;
- i) commodities of up to 20%; and
- j) exchanges of up to 20%.

Further restrictions and conditions apply for AIFs addressed to retail investors with respect to investing in shares giving them voting rights in other AIFs, entering into loan agreements secured by assets of the AIF, investing in cash in the same organisation, investing in Collective Investment Funds, investing in securities not admitted or traded on regulated market and investing in securities of the same issuer, etc.

4.3 Are there any local regulatory requirements that apply to investing in particular investments (e.g. derivatives or loans)?

Investing is allowed subject to certain requirements set out in a domestic directive issued by CySEC, namely Directive 131-2014-03.

4.4 Are there any restrictions on borrowing by the Alternative Investment Fund?

An AIF addressed to retail investors may enter into loan agreements that do not exceed at any time 25% of the NAV of the AIF's assets. No restrictions exist for AIFs addressed to professional and well-informed investors.

4.5 Are there any restrictions on who holds the Alternative Investment Fund's assets?

The assets of an AIF are held by a depositary, which is the party responsible for the safekeeping of the assets of the fund. For the avoidance of doubt, a person acting as a depositary, or a person to whom the depositary has delegated its safekeeping function, must be allowed by its terms of authorisation to provide such service.

5 Disclosure of Information

5.1 What disclosure must the Alternative Investment Fund or its manager make to prospective investors, investors, regulators or other parties, including on environmental, social and/or governance factors?

The fund rules or instruments of incorporation of the AIF shall specify the way the NAV of AIF units, as well as the subscription price and redemption price of AIF units, are disclosed to investors.

The external manager, or the AIF in case it is internally managed, shall prepare and submit, without undue delay, to CySEC:

- i) every material change in the offering document of the AIF;
- ii) an annual report for each financial year; and
- iii) a half-yearly report covering the first six months of the financial year. The annual and half-yearly reports of the AIF shall be communicated to CySEC by the external

manager of the AIF, and made available to the investors by the external manager of the AIF at the points of distribution of its units within the following time limits from the end of the period to which they relate:

- a) six months in the case of the annual report; or
- b) two months in the case of the half-yearly report.

The offering documents of the AIF, its fund rules or instruments of incorporation and its latest annual and half-yearly reports are provided to any potential investors of the AIF.

The AIF shall provide the investors, free of charge, with its annual report, following a relevant request by them.

In the case of a RAIF, the cover of its offering document shall include in a prominent section that:

- i) the RAIF is not authorised by CySEC;
- ii) the RAIF is addressed only to professional and/or well-informed investors; and
- iii) the registration of the RAIF in the RAIF Register is not equivalent to authorisation by CySEC.

Additionally, the provision of Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial sector ("SFDR") must be complied with, as well as the provisions of Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment and the SFDR as regards pre-contractual documents.

5.2 Are there any requirements to provide details of participants (whether owners, controllers or investors) in Alternative Investment Funds or managers established in your jurisdiction (including details of investors) to any local regulator or record-keeping agency, for example, for the purposes of a public (or non-public) register of beneficial owners?

According to the Directive regarding the Central Register of Beneficial Owners of Companies and Other Legal Entities issued by the Registrar of Companies ("Registrar"), the Registrar maintains and publishes exclusively in electronic form the information regarding the beneficial owner ("BO") register. Filing of beneficial ownership details with the BO register will be performed by entering the required information for each BO through the online portal. There are no paper forms to be submitted or any filing fee. The relevant entities are:

- i) Companies incorporated or registered under the Companies Law Cap. 113.
- ii) European public limited liability companies.
- iii) Partnerships. On the basis of a legal opinion obtained from the Attorney General's Office, partnerships are considered legal entities and as such they must disclose BO details to the register.

The following entities that are registered with the Department as UCIs constitute Investment Funds:

- i) UCITS – Undertakings for Collective Investment in Transferable Securities.
- ii) AIFs – Alternative Investment Funds.
- iii) AIFLNP – Alternative Investment Funds with a Limited Number of Persons.
- iv) RAIFs – Registered Alternative Investment Funds.

With respect to the above Investment Funds, the filing of BO information in the register must be submitted both for natural persons holding management shares as well as for natural persons holding investor shares. Where the Investment Fund is structured as an "umbrella-type fund" with more than one investment compartment, the definition of BO shall apply to the legal entity registered at the umbrella level. It is provided that the "umbrella-type fund" constitutes a single legal entity. In

order to determine the BOs (persons holding more than 25% of the value of the shares of an Investment Fund), the most recent official calculation of the NAV shall be considered. Investment Funds must notify any changes with respect to the BOs within 45 days from the official calculation of the NAV:

- i) If an Investment Fund calculates the NAV on a quarterly basis, then every quarter it should notify the changes with respect to its BOs, if any, in the register.
- ii) In case of an *ad hoc* NAV calculation, at any given time, and within 45 days from the said calculation, relevant notification should be made to the register of the changes, if any, to the information with respect to the BOs already registered.

In the case of externally managed Investment Funds, where no natural person can be identified as the BO, or where there is doubt as to the natural person identified as the BO, given that all possible means have been exhausted and given that there is no reasonable suspicion, the general manager of the external manager of the Investment Fund will be declared as the BO in the BO register. To conclude, where no natural person can be identified as the BO, or where there is doubt as to the natural person identified as the BO, given that all possible means have been exhausted and given that there is no reasonable suspicion, the person or persons holding the position(s) of senior executive director(s) of the Investment Fund will be declared as the BOs.

5.3 What are the reporting requirements to investors or regulators in relation to Alternative Investment Funds or their managers, including on environmental, social and/or governance factors?

In relation to AIFs with an unlimited number of persons, the annual audited report as well as the half-yearly unaudited report must be submitted to CySEC and made available to investors. In relation to AIFLNP, the annual audited report must be submitted to CySEC and must be made available to investors. No particular reporting requirements for RAIFs exist; instead, CySEC will rely on the regulated status of the AIFM to ensure both compliance and supervision of the RAIF.

AIFMs shall regularly report to CySEC the following:

- i) the principal markets and instruments in which they trade on behalf of the AIFs they manage; and
- ii) the main categories of assets held by each AIF. For each of the EU AIFs they manage and for each of the AIFs they market in the EU the following must be disclosed to CySEC:
 - a) the percentage of the AIF's assets that are subject to special arrangements due to illiquidity;
 - b) any new liquidity arrangements of the AIF and results of liquidity stress tests;
 - c) risk profile of the AIF, risk management systems employed and results of periodic stress tests; and
 - d) main categories of assets in which the AIF is invested. The frequency of these reports is dependent on the size of the fund.

5.4 Is the use of side letters restricted?

The use of side letters is not restricted. An AIFM, however, is subject to certain operating conditions, including the obligation to treat unitholders fairly and to ensure that no unitholder obtains a preferential treatment unless such preferential treatment is disclosed within the AIF's constitutional documents.

6 Taxation

6.1 What is the tax treatment of the principal forms of Alternative Investment Funds and local asset holding companies identified in question 2.1?

Standard taxation rules apply.

AIFs, AIFLNP and RAIFs that are established in the form of Variable Capital Investment Companies benefit from the following standard corporate taxation rules:

- i) corporation tax is set at 12.5%;
- ii) gains from trading in securities are tax exempt;
- iii) profits on sale of securities are exempt;
- iv) Notional Interest Deduction ("NID") for new equity may reduce the taxable base for interest received by up to 80% (for company-type funds), reducing the effective tax on interest to 2.5%;
- v) dividends received and capital gains arising from the sale of property abroad, as well as capital gains from the sale of shares of foreign property companies, are exempt from tax;
- vi) no subscription tax on the net assets of the fund;
- vii) fund management services provided to AIFs are not subject to VAT;
- viii) each compartment of an AIF, although not legally treated as a separate entity, is treated as a separate taxpayer for tax purposes; and
- ix) Cyprus tax resident funds can benefit from a wide array of double taxation treaties.

AIFs in the form of a Common Fund or a Limited Liability Partnership are considered tax-transparent funds. In such case, the national tax laws of the investor will be applied.

6.2 What is the tax treatment of the principal forms of investment manager/adviser identified in question 2.4?

Fund managers are usually incorporated in the form of companies and benefit from the standard company taxation rules, as set out in question 6.1 above.

6.3 Are there any establishment or transfer taxes levied in connection with an investor's participation in an Alternative Investment Fund or the transfer of the investor's interest?

There is no capital gains tax on the gains arising from the disposal or redemption of units in funds unless the fund owns immovable property in Cyprus. However, even if it owns immovable property in Cyprus, no capital gains tax arises if the fund is listed on a recognised stock exchange.

6.4 What is the local tax treatment of (a) resident, (b) non-resident, and (c) pension fund investors (or any other common investor type) in Alternative Investment Funds?

Foreign Investors

- No withholding tax on dividends.
- No taxation on redemption of units.
- No deemed distribution restrictions.

Resident Investors

- A withholding tax on dividends of 17% if the investor is an individual who is both tax resident and domiciled in Cyprus. General healthcare system tax is applicable on

income, including dividends at the rate of 2.5% if the investor is a natural person.

- No taxation on redemption of units.
- No withholding tax if the investor is a company.
- Option of 8% flat-rate taxation on performance-based variable remuneration for certain employees.

Resident Investors – Non-Domiciled

- Exemption from the 17% withholding tax on dividends.
- No taxation on redemption of units.
- No withholding tax if the investor is a company.
- General healthcare system tax is applicable on income, including dividends at the rate of 2.5% if the investor is a natural person who is a tax resident.
- Option of 8% flat-rate taxation on performance-based variable remuneration for certain employees.

6.5 Is it necessary or advisable to obtain a tax ruling from the tax or regulatory authorities prior to establishing an Alternative Investment Fund or local asset holding company?

No requirement to obtain advance tax clearance is necessary.

6.6 What steps have been or are being taken to implement the US Foreign Account Tax Compliance Act 2010 (FATCA) and other similar information reporting regimes such as the OECD's Common Reporting Standard?

The Minister of Finance of the Republic of Cyprus signed the FATCA Intergovernmental Agreement between Cyprus and the US (Intergovernmental Model 1 Agreement Foreign Account Tax Compliance Act) with the US ambassador on 2 December 2014.

On 29 October 2014, following a Council of Ministers decision dated 22 October 2014, the Republic of Cyprus signed the OECD Multilateral Competent Authority Agreement for the automatic exchange of financial information of financial accounts, which now includes more than 80 signatories.

The Cyprus government has issued Decrees that translate FATCA and Common Reporting Standard requirements into domestic law. Cyprus has also implemented the regime that provides for the reporting of cross-border arrangements ("DAC6").

6.7 What steps have been or are being taken to implement the OECD's Action Plan on Base Erosion and Profit Shifting (BEPS), in particular Actions 2 (hybrids/reverse hybrids/shell entities) (for example, ATAD I, II and III), 6 (prevention of treaty abuse) (for example, the MLI), and 7 (permanent establishments), insofar as they affect Alternative Investment Funds' and local asset holding companies' operations?

On 5 April 2019, Cyprus voted in the first implementation law of ATAD and, more specifically, the interest limitation rule, the controlled foreign company rule, and the general anti-abuse rule, which are effective for tax years commencing from 1 January 2019.

On 19 June 2020, Cyprus voted in the second implementation law with respect to the remaining measures provided for in ATAD, effective as follows:

- Exit taxation provisions: 1 January 2020.
- Hybrid mismatch rules: 1 January 2020 (except for specific reverse hybrid mismatch provisions effective as of 1 January 2022).

Cyprus signed the Multilateral Convention to Implement Tax Treaty Related Measures ("MLI") to Prevent Base Erosion and Profit Shifting ("BEPS") on 7 June 2017. Subsequently, Cyprus ratified the MLI on 23 January 2020. The date of "entry into effect" as regards Cyprus' application of the MLI was 1 May 2020.

6.8 What steps have been or are being taken to implement the OECD's Global Anti-Base Erosion (GloBE) rules, insofar as they affect Alternative Investment Funds' and local asset holding companies' operations? Do the domestic rules depart significantly from the OECD's model rules, insofar as they affect Alternative Investment Funds' and local asset holding companies' operations?

A draft law, namely the Safeguarding of a Global Minimum Level of Taxation of Multinational Enterprise Groups and Large-Scale Domestic Groups in the Union Law of 2023, is in the process of being approved and is intended to harmonise the Cyprus tax framework with the OECD's Global Anti-Base Erosion ("GloBE") rules. It is expected that the same will not depart significantly from the OECD's GloBE rules.

6.9 Are there any tax-advantaged asset classes or structures available? How widely are they deployed?

Cyprus allows tax optimisation for fund structures. Specialised advice needs to be sought depending on the nature of the underlying asset.

6.10 Are there any other material tax issues for investors, managers, advisers or AIFs?

There are no further material tax issues for investors managers and/or advisers of AIFs.

6.11 Are there any meaningful tax changes anticipated in the coming 12 months other than as set out at question 6.6 above?

The government will be providing further tax incentives in order to put Cyprus at the forefront of the tax industry sector as one of the most competitive industry players.

7 Trends and Reforms

7.1 What have been the main trends in the Alternative Investment Funds space in the last 12 months?

As stated by the Cyprus Investment Funds Association, Cyprus is becoming one of the fastest-growing Investment Fund centres in Europe through its prompt response to legislative and regulatory needs and its strong financial services sector, which is at the forefront of industry developments. Assets under management in 2023 are estimated to be in the region of €10 billion with the target being to increase the industry's assets under management to €25 billion in the medium term and attract more worldwide fund managers, custodians and other participants to the market. Cyprus is currently witnessing an increasing trend from Indian, Israeli and Japanese fund managers wishing to establish a structure in Cyprus.

7.2 What reforms (if any) in the Alternative Investment Funds space are proposed?

The AIF realm in Cyprus is a rapidly growing and developing area, and reforms are constantly considered. As indicated in many fund forums held on the island, the government is considering new incentives for entrepreneurs and industry players alike in order to constitute Cyprus as an attractive destination for funds. It must be noted that the Republic of Cyprus

offers market access to more than 500 million EU citizens who enjoy not only a modern and transparent legal and regulatory background but also a coherent and attractive tax regime that offers significant advantages and incentives when compared with other jurisdictions. It is worth noting that AIFMD II was published in the Official Journal of the European Union on 26 March 2024 and will enter into force on 15 April 2024. EU Member States have two years after publication to transpose the rules into national law.



Angelos Onisiforou is a Partner at Patrikios Legal, overseeing the Financial, Commercial, and VAT departments. With extensive experience in corporate, commercial, and financial law, he specializes in M&A transactions, shareholder disputes, and regulatory matters. Angelos has successfully represented clients in landmark cases, building a strong reputation for achieving positive outcomes. His expertise also includes providing strategic advice to Cyprus Investment Firms and Alternative Investment Funds, and he is well-versed in blockchain technology, having earned a diploma in Blockchain, Law, Regulation, and Policy. In addition to his legal practice, Angelos is responsible for the firm's VAT practice and serves on the Board of Directors and technical committee of the Cyprus VAT Association. He has contributed to the firm's success in high-profile tax cases. Regularly participating as a panellist at conferences, Angelos continues to expand the firm's network of clients and associates, solidifying his standing as a trusted legal expert both locally and internationally.

Patrikios Legal

Patrician Chambers, 332 Agiou Andreou Str.
3035 Limassol
Cyprus

Tel: +357 25 871 599

Email: aonisiforou@pavlaw.com

LinkedIn: www.linkedin.com/in/angelos-onisiforou-310766172



Angeliki Epaminonda is the Financial, Corporate and M&A Partner of the firm. Angeliki has extensive expertise in financing transactions and in particular setting up of security packages for major European and other international banks and financial institutions. She has undertaken numerous out-of-court security enforcements for leading banks and has worked on a large array of financing transactions, including acquisition finance, airport construction finance, factory and hotel construction finance, fertiliser plant construction, gas plant construction, etc. She is considered an expert in corporate law matters (for both private and public companies) and in particular corporate governance, shareholder stake structuring, corporate restructurings, negotiation of shareholder rights, advising on employment participation schemes, MTOs, and also undertaking complex cross-border acquisitions and acquisition finance, having been involved in numerous complex corporate sale/purchase transactions with bank financing aspects requiring extensive negotiation and planning. Angeliki has undertaken numerous local and cross-border mergers and reorganisations and is an expert in providing group structuring advice and solutions. She has produced the ICMA/SLRC industry opinion for Cyprus every year for the last 14 years with respect to GMRA/GMSLA/OSLA/MESLA agreements and has been involved in a number of securities lending, repurchase and derivative transactions. She advises major credit institutions on securities lending and derivative transactions (including ISDA-based OTC derivatives) and the regulatory requirement in connection thereto. Angeliki provides advice to investment firms, funds and fund managers in terms of set-up and compliance, is a leading Partner in the Financial Services department of the firm and has also been certified as a Blockchain expert.

Patrikios Legal

Patrician Chambers, 332 Agiou Andreou Str.
3035 Limassol
Cyprus

Tel: +357 25 871 599

Email: aepaminonda@pavlaw.com

LinkedIn: www.linkedin.com/in/angeliki-epaminonda-0b262818

Patrikios Legal is a multi-award-winning, leading law firm based in Cyprus. With 60 years of experience in the local and international legal market, the firm has developed distinguished expertise in dispute resolution and ADR, and has a renowned legal consulting department. The dispute resolution practice, the largest and most experienced department of the firm, handles a wide range of claims and disputes both locally and internationally, with a focus on corporate and commercial disputes, fraud and conspiracy claims, injunctive relief, registration and enforcement of foreign judgments and arbitral awards, as well as insolvency proceedings. Additionally, the team handles general civil, banking and criminal litigation, as well as administrative recourses to the Administrative Court of Cyprus.

www.pavlaw.com



International Comparative Legal Guides

The **International Comparative Legal Guide** (ICLG) series brings key cross-border insights to legal practitioners worldwide, covering 58 practice areas.

Alternative Investment Funds 2024 features one industry chapter, two expert analysis chapters and 22 Q&A jurisdiction chapters covering key issues, including:

- Regulatory Framework
- Fund Structures
- Marketing
- Investments
- Disclosure of Information
- Taxation
- Trends and Reforms

The International Comparative Legal Guides are published by:

glg Global Legal Group

