Registered alternative investment funds – an overview

16 October 2018 | Contributed by Patrikios Pavlou & Associates LLC

Capital Markets, Cyprus

Cyprus is fast becoming an international fund hub and a well-respected player in both the European and international fund industries. The reason behind this transformation has been the steady yet progressive improvement of the island's legislative regime which is capable of attracting high-calibre entrepreneurs and industrialists. One of the long-awaited milestones in this regard was the enactment of Law 124(I)/2018, which substituted the old statutory regime and further modernise Cyprus's investment fund legislative regime.

Legislative framework

Law 124(I)/2018 allows for the establishment of a new type of investment vehicle: the registered alternative investment fund (RAIF). An RAIF is a hybrid legal creature which combines the elements of authorised and regulated funds without extensive bureaucracy or, more importantly, the need for authorisation from the Cyprus Securities and Exchange Commission (CySEC). Nonetheless, as the definition suggests, an RAIF must be registered with CySEC.

For an undertaking to qualify as a fund it must satisfy the definition of an 'alternative investment fund' set out in the EU Alternative Investment Fund Managers (AIFM) Directive (2011/61/EC), which has been transposed into national legislation via the AIFM Law 2013. Accordingly, a fund must:

- raise capital from several investors with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and
- not require authorisation pursuant to Article 5 of the EU Undertakings for Collective Investment in Transferable Securities (UCITS) Directive (2009/65/EC). The above criteria are equally applicable to the RAIF regime.

RAIFs are externally managed vehicles aimed at professional and well-informed investors. They can take the form of:

- a common fund;
- an investment company with variable or fixed capital; and
- a limited liability partnership.

An RAIF can be established as a single fund or an umbrella type fund, with multiple investment components, each with a distinct investment policy and can be structured as an open-ended or closed-ended entity.

The RAIF is essentially an alternative investment fund (AIF) that combines elements and features of AIFs, albeit with a more entrepreneur-friendly approach and without unnecessary delays that might occur during the authorisation process.

Safeguards

The regulatory element or safeguarding features of these structures derive from their managers. Accordingly, investors' protection is based on the fact that an RAIF is externally managed by a regulated external manager, usually an AIFM. An AIFM is subject to regulation and supervision by the respective regulatory body under which it is authorised. Cyprus was one of the first EU member states to implement the AIFM Directive into national legislation and is fully compliant with its provisions.

An AIFM is subject to the AIFM Directive's strict regulatory conditions, which ensure that investors are adequately protected and their interests sufficiently safeguarded throughout the duration of their investment. As per the AIFM Directive, an AIFM must:

- act with due care and diligence in the investors' best interests;
- take all reasonable steps to avoid conflicts of interest; and
- comply with all regulatory requirements applicable to the conduct of its business activities.

More specifically, an AIFM is responsible for providing the following management functions to an RAIF:

- portfolio management;
- risk management;
- administration services;
- activities relating to the fund's assets; and
- marketing services.

One of the many advantages of having an AIFM appointed as an external manager is the ability to market the units of the RAIF to investors in other EU member states via a relatively simple notification procedure. A further advantage is the delegation arrangements allowed under the AIFM Directive. This allows other entities to be appointed and provide portfolio or risk management services to the RAIF in a specialised manner, enhancing the level of its overall management.

Assets under management

No diversification requirements apply other than when the manager of an RAIF is not an AIFM. An RAIF can be invested in any type of asset provided that its manager follows a sound investment strategy which is in the investors' best interests.

Where an RAIF is managed by an AIFM, it must collect €500,000 via contributions from investors within 12 months from its establishment.

Submission requirements

The external manager of an RAIF must file, within one month from the date that the RAIF is incorporated with the registrar of companies, the following documents with CySEC:

- information regarding the RAIF's investment policy, including any details concerning the fund's risk profile;
- the RAIF's memorandum and articles of association;
- information regarding the depositary who has been appointed;
- the RIAF's prospectus; and
- the AIFM's authorisation licence.

CySEC will register the RAIF within one month from the date on which it receives the above information. This is a registration rather than an authorisation process. Nonetheless, CySEC retains authority and will check and confirm that the AIFM's authorisation licence allows it to be appointed and implement the investment policy that the RAIF purports to follow.

Key players

Depositary

An RAIF must appoint a depositary who must have the appropriate professional expertise to perform their safekeeping duties. A depositary must uphold the AIFM Directive's obligations and responsibilities.

Auditor

An independent auditor must be appointed with the appropriate experience, knowledge and expertise to perform their duties and fully understand the accounting information provided.

Advantages

As outlined above, an RAIF combines the characteristics of a regulated fund and can be set up relatively easily, without unnecessary delays that the regulator could cause during the authorisation process.

More particularly, the advantages of RAIFs are that they:

- have low incorporation costs;
- have a fast incorporation process;
- can be structured in the same way as other regulated AIFs;
- can achieve investor protection via a regulated manager; and
- are directly governed by applicable provisions of the AIFM Law.

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