



TYPES OF FUNDS IN CYPRUS

Over the last decade, Cyprus has introduced and significantly developed attractive legislation on funds which is constantly being modernised offering ideal tools for building sophisticated fund structures. There is an array of benefits to be reaped ranging from tax efficiency, cost efficiency, transparency, collective investment planning, pooling of investments, building economies of scale, professional management and administration, compartmentalization and umbrella structures. What better opportunity for an investor to invest in a highly diverse pool of assets which is professionally managed and regulated! As a jurisdiction which is heavily reliant on the financial services sector Cyprus boasts highly skilled personnel with exceptional expertise in the financial services sector; professionals who can easily adapt, offering a sustainable infrastructure and the perfect environment for fund incorporation, fund management and fund administration to thrive.

There are two types of funds available in Cyprus. Open Ended Undertakings for Collective Investments - the so called “**UCITS**” - and Alternative Investment Funds - the so called “**AIFS**”, with further sub-types.

The formation and operation of the aforementioned is based on the following legislation:

- (a) The Open-Ended Undertakings for Collective Investment (UCI) Law 78(I)/2012 as amended by amending Law 88(I)/2015 and Law 52(I)/2016 and 134(I)/2019 (the “**UCI Law**”) with respect to the licencing and regulation of: (a) common funds established in Cyprus or (b) variable capital investment companies having their registered office in Cyprus under the Companies Law Cap. 113 (the “**Companies Law**”) which are authorised to operate as undertakings for collective investment in transferable securities; and
- (b) The Alternative Investment Funds Law 124(I)/2018, as amended (the “**AIF Law**”) for the licensing and regulation of: (a) an investment company registered subject to the Companies

Law either as a company limited by shares or as a variable capital investment company, (b) a limited liability partnership or (c) a common fund authorised to operate as an alternative investment fund.

UCITS UNDER THE UCI LAW

UCITS are undertakings whose sole object is the collective investment in transferable securities and/or other liquid financial instruments, which operate on the principle of risk-spreading, and the units of which are, at the request of investors, redeemed or repurchased, directly or indirectly out of the undertaking's assets. Strong regulation of UCITS following harmonisation of the UCITS law with EU legislation ensures optimum investor protection. UCITS can be structured as, *inter alia*, master feeder funds, where the feeder fund invests its portfolio in another fund or as an umbrella fund containing several investment compartments each one concentrating a separate pool of segregated assets.

A UCITS may be constituted either (i) under the law of contract as a common fund managed by a management company, or (ii) under statute as a variable capital investment company.

The UCITS Common Fund

The common fund is a UCITS of the open-ended type (that is, the investors have a right to redeem or sell their interest in the fund on the basis of the net asset value). It is a pool of assets which belong jointly and ab indiviso to the unit-holders, which are deposited with a depository and which constitute a collective portfolio managed by the management company to the interest of the unit holders. The common fund has no legal personality. The management company exercises all the rights deriving from the assets of the common fund and the unit-holders are not responsible for any actions or omissions of the management company.

The UCITS Variable Capital Investment Company

It is more common for a UCITS to be formed on the basis of a variable capital investment company rather than as a common fund. It has the legal form of a limited liability company with shares and it must satisfy all the following conditions, that have to be met cumulatively:

- (a) Its sole purpose is the collective management of its portfolio, by investing in transferable securities and other financial instruments to the interest of its shareholders,
- (b) It collects the funds it invests for the purposes of paragraph (a) from the public,
- (c) It operates on the principle of risk-spreading, and
- (d) Its shares are redeemed or re-purchased, directly or indirectly, by its assets, following an application of its shareholders, whereas its capital is increased or decreased by the issue of new shares or the redemption or re-purchase of the old ones, without resorting to a capital increase or decrease under the Companies Law.

Management of a UCITS

Where a management company is required, the management company takes the form of a limited company by shares which is governed by the provisions of the UCI Law and the provisions of the Companies Law. A UCITS management company must have its registered office and central administration with Cyprus and its main objective is the management of one or more UCITS. The management company requires prior authorisation from the Cyprus Securities and Exchange Commission (“**CySEC**”). The passporting benefits allow fund managers based in Cyprus to take advantage of the low-cost operating environment and robust legislative framework of Cyprus whilst providing their services on a European Union scale. The management activities undertaken by a management company include, among others, the following, some of which can be delegated to a fund administration company subject to the regulatory safeguards set out in the UCI Law being respected:

- (a) The investment management of the UCITS
- (b) The administration of the UCITS which includes the following services:
 - Legal and UCITS management accounting services
 - Provision of information and service of the UCITS unit-holders
 - Valuation of the UCITS portfolio and pricing of their units, including taxation issues
 - Regulatory compliance monitoring
 - Maintenance of unit-holder register
 - Distribution of profits of the UCITS
 - Unit issue, redemption and repurchase
 - Settlement of contractual obligations, including the dispatch of documents and certificates

- Record keeping
- (c) Marketing of the UCITS

UCITS in the form of an Umbrella Fund

Generally, UCITS, whether in the form of a common fund or a variable capital investment company may comprise of several independent investment compartments (in the form of the so-called umbrella fund), each of which constitutes a separate pool of assets and is governed by the provisions of the UCI Law. A UCITS containing several investment compartments constitutes a single legal entity but each investment compartment is liable for the obligations arising from its constitution, operation or dissolution. A UCITS operating with multiple compartments, bears a unitary generic name, which is accompanied, for each investment compartment, by an element which specifies each compartment, in accordance with the investment policy of this compartment, and by the reference currency of this investment compartment. Each compartment of a UCITS is dissolved and goes into liquidation separately. A UCITS operating with multiple compartments has a unitary regulation or unitary constitutional documents as well as a unitary prospectus, for the aggregate of its investment compartments. The UCITS prospectus must describe clearly the investment policy of each investment compartment. In terms of accounting, the accounting entries relating to the assets of each investment compartment are conducted separately from the other compartments of the same UCITS in the reference currency of that compartment.

AIF UNDER THE AIF LAW

The modern and EU compliant AIF Law offers the possibility to set up a versatile fund with broader investment strategy opportunities. A fund established as an AIF is considered as a collective investment undertaking, including investment compartments thereof which collectively raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors and does not require authorisation pursuant to the UCI Law or analogous legislation of a member state. An AIF can be directed towards a limited number of persons, the so called “**AIFLNP**” or an unlimited number of persons or simply be a registered fund, the so called “**RAIF**”. Generally the AIF investors must be professional or well informed investors.

An AIF can take the form of: (i) a common fund, (ii) an investment company or (iii) a limited liability partnership. It can be structured as an AIF either: (a) of the open-ended type, where 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 wind-down, 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; or (b) of the closed-ended type, in all other cases.

An AIFLNP may be established in one of the following legal forms: (a) as an investment company, registered subject to the Companies Law either as a company limited by shares or as a variable capital investment company or (b) as a limited partnership, with or without separate legal personality, registered subject to the General and Limited Partnerships and Business Names Law.

A RAIF can operate in the form of a common fund, an investment company or a limited partnership. It is addressed only to professional and/or well-informed investors and it is externally managed. It does not require authorisation by CySEC in order to commence operations as long as it is externally managed by an AIFM established in Cyprus or in another Member State. Nevertheless, the establishment of the same is notified to CySEC which includes the same in a special register maintained by CySEC. In general, the RAIF offers a quick and cost-effective and minimum monitoring alternative.

An AIF Common Fund

The AIF common fund, similarly with the UCITS common fund, has no legal personality, while its unit holders are legally represented by its external manager with regard to the legal relationships arising from the management of the common fund and to their rights regarding its assets. The portfolio management of the common fund is exercised by an external manager. The external manager manages the common fund exclusively in the interest of its unit-holders and exercises all the rights that derive from the assets of the common fund. The assets of the common fund are divided in units or fractions of units in the name of the unit-holder, each of which represent the same percentage on its total assets. The rights derived from the units are exercised in relation with the percentage of total assets that they represent with the exception of the voting rights which are exercised in accordance with the whole unit.

The units of the common fund are recorded in a Unit-Holders' Register maintained by the external manager and monitored with recordings in it.

An AIF in the form of a common fund can either be structured as (i) an AIFLNP or (ii) as a RAIF.

An AIF Investment Company

An investment company, is registered subject to the Companies Law either as a company limited by shares or as a variable capital investment company. It can have either fixed or variable capital and it can be either an internally managed AIF or can have an appointed external manager to undertake the AIF management. It has the legal form of a limited liability company with shares incorporated under the Companies Law, whose sole purpose is the collective management of its portfolio, carrying out the relevant transactions to the benefit of its unitholders, either by itself where it shall be self-managed, or through the appointment of an external manager.

An AIF in the form of an investment company can either be structured as: (i) an AIF with unlimited number of persons, (ii) an AIFLNP or (ii) a RAIF.

An AIF Limited Liability Partnership

An AIF can operate in the form of a limited liability partnership which is subject to the provisions of the AIF Law as well as to the provisions of the General and Limited Partnerships and Business Names Law to the extent that they do not contradict the provisions of the AIF Law.

An AIF in the form of a limited liability partnership can either be structured as: (i) an AIF with unlimited number of persons, (ii) an AIFLNP or (iii) a RAIF.

AIF in the form of an Umbrella Fund

As with a UCITS, where an AIF, whether in the form of a common fund, an investment company or a limited liability partnership, is established and operates with more than one investment compartment it is known as an umbrella AIF. Such an umbrella AIF is a single legal entity and

no separate fund rules or instruments or incorporation are drawn up, nevertheless, the rights of unitholders and the claims of creditors or the liabilities arising in connection to the establishment, operation, liquidation and dissolution of the investment compartment are limited to the assets of that investment compartment.

External management of an AIF

Where the AIF is externally managed, such external manager must be authorised, inter alia, as an alternative investment funds manager pursuant to the provisions of the Alternative Investment Fund Managers Law of 2013 or may operate as either an alternative investment fund manager (**AIFM**), that is, any legal person whose regular business is managing one or more AIFs, or as a management company authorised in accordance with the UCI Law or as a Cyprus Investment Firm authorised in accordance with the Investment Services and Activities and Regulated Markets Law, as amended. Cyprus offers established Fund Managers who are capable of externally managing a UCITs or an AIF. On the 3rd of July, 2020 a new law was enacted, Law No. 81(I)/2020, in relation to the licensing of the so called Mini-Fund Managers, being fund managers managing lower threshold funds.

For further details on the operation of such Mini-Fund Managers, please be referred to the article by my colleague Angelos Onisiforou – [“Mini Fund Manager” – An Alternative Powerful and Cost-Efficient Vehicle](#)”.

Angeliki Epaminonda | Partner – Financial, Corporate, M&A