

UCITS and ICIS

1. **Open-Ended Undertaking for Collective Investments in Transferable Securities (UCITS)**

- 1.1. The UCITS law 200(I)/2004 which implements the European Union directives provides the legal framework for the registration, regulation and marketing of local and foreign funds in Cyprus.

Under this law UCITS is considered to be an undertaking having as sole object to collectively invest publicly collected capital in transferable securities and money market instruments via stock markets, banking deposits and any other investments and whose operation is based on the principle of risk-spreading and whose units can be redeemed directly or indirectly upon the unit holder's request using the undertaking's assets. To set-up a UCITS the permission of the Cyprus Exchange and Securities Commission (CySEC) is required.

- 1.2. **The Law clarifies that the following are not considered to be UCITS within the meaning of the Law:**

- a. UCITS which are closed-ended;
- b. UCITS that raise capital without promoting their units to the public in Cyprus or other EU member states;
- c. UCITS that based on their fund rules or Memorandum and Articles only sell their units to the public of third countries;
- d. UCITS which are in conflict with the investment and borrowing policy set out in the law 200(I)/2004; and

e. Investment companies the assets of which are invested through subsidiary companies otherwise than in transferable securities.

Under this law, local UCITS may take the form of either Mutual Funds managed by a Management company or the form of Variable Capital Investment companies.

1.3. Setting up and operating a Mutual Fund in Cyprus

To set up and operate a mutual fund in Cyprus the permission of the Cyprus Securities and Exchange Commission (CySEC) is required. Once the application is submitted CySEC will communicate its decision within 6 months. The management Company is entitled to issue or redeem fund units through representatives who may only be Banks, Investment Firms and co-operative credit institutions.

The application needs to meet certain criteria such as:

- a. Both the fund manager and the custodian (one must be independent of the other) of the mutual fund need to meet the criteria set out by the CySEC;
- b. Fund regulations need to be approved by the CySEC;
- c. The name and prospectuses of the fund needs to be approved by the CySEC;
- d. The minimum initial asset value of the fund must be at least EUR 1.700.000, which must be deposited within three months of the granting of the licence;
- e. The minimum share capital of the Management Company must be at least EUR 765.000 to be paid in full with the granting of the operation license;
- f. The Management Company must have shareholders with the know-how, must be duly organized and staffed and must have the technical infrastructure and financial means to operate.

1.4. Setting up and operating a Variable Capital Investment Company in Cyprus

To set up and operate a Variable Capital Investment Company the permission of the CySEC is required. A Variable Capital Investment Company can only manage its own assets and cannot undertake the management of third party assets.

The application needs to meet criteria similar to those required for a Mutual Fund and in addition:

- a. The Investment Company shall have a minimum fully paid share capital of EUR 1,700,000;
- b. The administration of the Investment Company shall be assigned to a Management Company unless the CySEC grants an exemption;
- c. There are special rules for the Memorandum and Articles of the Investment Company that the CySEC must approve;
- d. Custody of the assets is normally assigned to an approved custodian.

1.5. Taxation of Local UCITS in Cyprus

UCITS are subject to tax like any other entity.

Generally UCITS are exempt from taxation on dividend income and are also exempt from tax on the profit from the disposal of securities. In addition, there are no withholding taxes when dividends are paid by UCITS to non-Cypriot resident recipients.

2. International Collective Investment Schemes (ICISs)

Cyprus introduced, in May 1999, a legislation enabling the establishment and regulation of International Collective Investment Schemes ("ICISs"). Law 47(I)/1999, later amended by law

63(I)/2000, appoints the Central Bank of Cyprus as the regulatory authority for the ICISs which has the authority also to monitor and inspect every ICIS, its manager and trustee.

The Cyprus Companies Law and the Partnership and Business Names Law are applicable to ICISs, except for those sections which are specifically disapplied by the Law. The International Trusts Law is applicable to ICISs in its totality.

Under the legislation, an ICIS may take one of the following forms:

1. International Fixed Capital Company (IFCC)
2. International Variable Capital Company (IVCC)
3. International Unit Trust Scheme (IUTS)
4. International Investment Limited Partnership (IILP)

All four legal types of ICISs can either be of limited or unlimited duration.

An ICIS once recognised, may be designated by the Bank as:

1. An ICIS to be marketed to the general public; or
2. An ICIS to be marketed solely to experienced investors; or
3. A private ICIS.

The sole object of an ICIS is the collective investment of funds of the unit-holders.

2.1. International Fixed Capital Company (IFCC)

The initial minimum capital requirement (issued and fully paid-up) for an IFCC which will be marketed to the public at large or to experienced investors has been set at USD 200.000. IFCCs which are private ICISs are exempt from the requirement of having a minimum capital.

An IFCC must appoint a manager and a trustee and the procedures to be followed in appointing a manager shall be set out in the company's constitutional documentation. The Directors must also be competent and suitable.

The managers and trustees of an ICIS must act independently of one another and must be approved by the Central Bank.

A manager must satisfy the Central Bank that having regard to the investment policy and the particular investment objectives of the ICIS for which it acts as manager, the ICIS has sufficient financial and operational resources to meet its liabilities, as well as sufficient investment expertise to conduct its business effectively.

A trustee can only be either:

- a. A bank licensed to carry on business in or from within Cyprus or in a country which in the opinion of the Central Bank exercises adequate banking supervision in its jurisdiction and which has such minimum paid up share capital as the Central Bank may from time to time prescribe; or
- b. Any other person other than a bank referred to in paragraph (a) above, which provides trustee services to the public at large in or from Cyprus and which is adequately supervised or in a country which in the opinion of the Central Bank exercises adequate financial regulation and which has such minimum paid up share capital as the Central Bank may from time to time prescribe; or

c. A company incorporated in the Republic which is a subsidiary of a person referred to in paragraphs (a) or (b) above, provided that its liabilities are fully guaranteed by that person.

2.2. International Variable Capital Company (IVCC)

The provisions applicable to the IFCC in general apply to the IVCC, however the minimum share capital of the company must be equal to the net asset value of the shares of the company at any time in issuance.

2.3. International Unit Trust Scheme (IUTS)

The provisions applicable to the IFCC and IVCC in general apply to the IUTS. The assets of an international unit trust scheme are vested in and entrusted to a trustee to be held in accordance with the trusts created under the trust deed and are dealt with by the manager in accordance with and subject to the trusts contained in the trust deed.

The proceeds of sale of any units of an international unit trust scheme and any income in respect of the assets of an international unit trust scheme that are not distributed to the unit-holders are the assets of an IUTS and are subject to and dealt with by the manager in accordance with the trusts created under the trust deed.

2.4. International Investment Limited Partnership (IILP)

The provisions applicable to the IFCC and IVCC in general apply to the IILP taking into consideration however the Partnership and Business Names Law instead of the Company law. Also, instead of a manager we have the General Partner. A manager and a general partner must satisfy the same requirements. A limited partner is not entitled to and does not have the power to take part in the conduct of the business of the IILP.

2.5. ICIS Marketed to the General Public

ICISs marketed to the general public do not need to have a minimum subscription. However, IFCCs and IVCCs have minimum share capital requirements. The offering memorandum to be addressed to the public must be approved by the Bank.

2.6. ICIS Marketed Solely to Experienced Investors

The minimum subscription by investors in ICISs which are marketed solely to experienced investors has been set by the Central Bank at USD 50.000.

A person, legal or natural, may be regarded as an experienced investor in the following circumstances:

- a. A person who himself provides financial services to the public; or
- b. A person who frequently enters into investment transactions which, on average, are of substantial size and, having regard to all relevant facts, such person can reasonably be expected to appreciate the risks inherent in investment transactions.

2.7. Private ICIS

A private international collective investment scheme means a scheme which by its constitutional documentation restricts the right to transfer its units and limits the number of its unit-holders to one hundred. A private ICIS is prohibited from making any invitation in any part of the world to the public to purchase units in the scheme.

The Central Bank regards a private ICIS as a private arrangement, and therefore because it needs less regulation it is not obliged to appoint a manager or a trustee. Also, a private ICIS does not have a minimum subscription requirement.

2.8. Taxation of ICISs

ICISs are subject to tax like any other entity.

Generally ICISs are exempt from taxation on dividend income and are also exempt from tax on the profit from the disposal of securities. In addition, there are no withholding taxes when dividends are paid by ICISs to non-Cypriot resident recipients.

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