

Cyprus Private Investment Funds
September 2011

I. Introduction
<p>Funds in Cyprus can either be designated as Private¹ or Public². Unlike other jurisdictions, there is no express distinction under the Cyprus funds legislation between Open-ended and Closed-ended funds.</p> <p>The intent of this Information Sheet is to provide a brief overview of the legal, regulatory and operational framework in Cyprus relevant for Private Funds.</p>
II. Legal Framework
<p>Private Funds incorporated, formed or existing in Cyprus are licensed and regulated by the Central Bank of Cyprus (the “Central Bank”) pursuant to the International Collective Investment Schemes Law 47(I) 1999. It is noted that Public Funds are under the regulation and supervision of a different authority, namely the Cyprus Securities and Exchange Commission.</p>
III. Definition of Private Fund
<p>A Private Fund is an entity the purpose of which is the collective investment of funds of investors³ and whose constitutional documents:</p> <ul style="list-style-type: none"> ▪ Restrict the right of transfer of shares ▪ Limit the number of investors to 100 ▪ Prohibit the offering of its shares to the public ▪ Prohibit the issue of bearer shares
IV. Choice of Structure
<p>A Private Fund can be structured as a company (with fixed or variable capital), a unit trust or as a limited partnership. All structures can be either of limited or unlimited duration and may be structured in such a way as the promoters may determine, provided that adequate protection is afforded to the investors.</p> <p>Companies are subject to the provisions of the Company Law Cap 113 (the “Company Law”) whereas trusts and limited partnerships are formed under the International Trust Law 1992 and the Partnership and Business Names Law Cap 116 provisions respectively.</p>
V. Set-up and regulation
<p>Cyprus Private Funds are becoming increasingly popular amongst investment managers and investors alike. One of their most distinct advantages is the fact that the Central Bank recognizes that Private Funds are personal arrangements and therefore they attract less regulation.</p> <p>For instance, Private Funds are not obliged to appoint a manager or a trustee and they do not have investment restrictions.</p> <p>Private Funds must have at least two (2) executive directors, who are not corporations. No appointment shall be made to the office of the director without the prior approval of the Central Bank. All persons involved in the establishment, management or administration of a Private Fund</p>

¹ Also known as “non-UCITS” and/or “Private ICIS”

² Also known as “UCITS”

³ Also known as “unitholders”

must be “fit and proper persons”. In determining whether a person is fit and proper, the Central Bank takes into account the relevant educational and professional qualifications, experience, reputation and capital resources available to it.

Private Funds may obtain a license from the Central Bank within a short period of time (approximately 6 weeks) depending on the completeness of the application and the workload of the Central Bank at the time of submission of the application.

V. Functionaries and Service Providers

An important consideration for Private Funds is the selection of functionaries and professional service providers.

Private Funds are required to appoint a custodian (which can be a bank in Cyprus, the EU or other recognized jurisdiction), an administrator and an auditor. A fund manager is usually appointed but its appointment does not constitute a requirement. Of course the Central Bank may, in its sole discretion, require that a manager be appointed.

If applicable, the Central Bank may require the fund management entity (if one is appointed) to hold the relevant investment services license by the Cyprus Securities and Exchange Commission and be subject to the local Investment Services and Activities and Regulated Markets Law of 2007 which has been adopted in order to harmonize local legislation with a number of European legislative instruments including the Markets in Financial Instruments Directive 2004/39/EC known as “MiFID” and Commission’s Regulation No 1287/2006.

VI. Cyprus Benefits

Cyprus is an ideal location for fund domicile and in fact various factors constitute Cyprus to be a strong contender amongst other traditional fund jurisdictions.

- EU Member State and member of the Eurozone
- Adheres to the relevant wide EU regulation
- On the white list of the OECD
- FAFT approved country, which is relevant for investors and managers alike
- Favorable tax regime which is very efficient for funds and fund investors
- EU and OECD compliant tax system
- Attractive double tax treaty network
- Well-regulated jurisdiction
- Speedy time frame for set up and implementation of Private Funds by the Central Bank
- Easy and cost efficient to set up and maintain Cyprus companies
- Common law jurisdiction following UK law and therefore allowing funds to operate in a similar legal environment to that of the UK
- Lower cost propositions, without compromising quality and timeliness of service
- Highly skilled professional services
- Robust banking system
- Strategic geographical position: not far from the heart of Europe where investors and key service providers reside and close to Middle East and Asia where significant investor pools are located

Cyprus Private Funds enjoy the reputation and status of a regulated fund but with sufficient flexibility and minimum regulatory supervision. Their key benefits can therefore be summarized as follows:

- Flexibility
- Transparency
- Regulation
- Tax efficiency
- Low set-up and operational costs

VII. Cyprus Tax Benefits

Private Funds that operate through a Cyprus tax resident company are subject to tax like any other Cyprus resident company. A company is considered to be tax resident in Cyprus if its management and control is exercised in Cyprus. Cyprus resident companies are subject to a flat corporate income tax rate of 10% on their taxable profit. When combined with the various favourable tax provisions and related factors, Cyprus becomes one of the most attractive and competitive tax jurisdictions in Europe and the world. The main favourable provisions and factors are:

- No tax on gain from disposal of shares and other qualifying titles
- Dividend income is tax exempt subject to very easy to meet conditions
- No CFC rules
- No thin capitalization rules
- Unilateral tax credit relief mechanism
- No withholding taxes on any payments made from Cyprus to non-Cyprus resident persons (such payments include dividends, interest and royalties)
- Access to benefits of the good Cyprus double tax treaty network and relevant EU Directives. This helps to eliminate or significantly reduce foreign withholding tax on payments made to a Cyprus resident company

VIII. Conclusion

Cyprus is committed to promoting its financial services and funds industry and therefore its legal and tax framework ensures that financial services companies and funds can be structured as internationally recognized vehicles in a tax and practically efficient manner.

NOTES:

The above is intended to provide a brief guide only. It is essential that appropriate professional advice is obtained. Totalserve Management Ltd will be glad to assist you in this respect. Please do not hesitate to contact us.