

The Guideline below is being re issued as Circular C030 for correct filing purposes



Guidelines GD-IF-06

Guidelines on certain aspects of the compliance function requirements of the Law

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I. INTRODUCTION – Relevant Legislation

1. These guidelines refer to certain aspects of the requirements of the compliance function.
2. For ease of reference, all legislation relevant to these guidelines [the Investment Services and Activities and Regulated Markets Law ('the Law') and Directive DI144-2007-01 of 2012 of the Cyprus Securities and Exchange Commission for the authorisation and operating conditions of a CIF ('the Directive')] is included in Appendix 1.

II. DEFINITIONS

3. For the purpose of this paper, the following terms have the same meaning as the definition given below. Terms used in these guidelines that are not interpreted differently shall have the meaning given to them by the Law.

«*Investment Firm*» means a Cyprus Investment Firm (CIF), as defined in section 2(1) of the Investment Services and Activities and Regulated Markets and a Management Company¹, as defined in section 2(1) of the the Open-Ended Undertakings for Collective Investment Law.

«*Compliance function*» means the function within an Investment Firm responsible for identifying, assessing, advising, monitoring and reporting on the investment firm's compliance risk.

¹ Οι παρούσες κατευθυντήριες γραμμές εφαρμόζονται σε Εταιρείες Διαχείρισης μόνον όταν παρέχουν τις επενδυτικές υπηρεσίες διαχείρισης χαρτοφυλακίων ιδιωτών πελατών ή επενδυτικών συμβουλών (άρθρο 109(4)(α), (β) και (6) του περί Ανοικτού Τύπου Οργανισμών Συλλογικών Επενδύσεων Νόμου).

«*Compliance risk*» means the risk that an Investment Firm fails to comply with its obligations under the Law and the Directives issued pursuant to the Law.

4. Guidelines do not reflect absolute obligations. For this reason, the word ‘should’ is often used. However, the words ‘must’ or ‘are required’ are used when describing a requirement of the Law.

III. APPLICATION

5. These guidelines apply to Investment Firms.
6. These guidelines apply in relation to the provision of the investment services and activities and the ancillary services listed respectively in Part I and II of the Third Appendix of the Law.
7. These guidelines shall enter into force two (2) months after they are posted on the Commission’s website.

IV. PURPOSE

8. The purpose of these guidelines is to clarify the application of certain aspects of the Law’s compliance function requirements in order to ensure the common, uniform and consistent application of section 18 of the Law and of paragraph 5 of the Directive.

V. GUIDELINES ON CERTAIN ASPECTS OF THE COMPLIANCE FUNCTION REQUIREMENTS OF THE LAW

9. As part of its responsibility for ensuring that the Investment Firm complies with its obligations under the Law, the persons who effectively direct the business of a the Investment Firm must ensure that the compliance function fulfils the requirements set out in paragraph 5 of the Directive

10. These guidelines should be read together with the proportionality principle as set out in paragraph 5(1) of the Directive. The guidelines apply to Investment Firms taking into account the nature, scale and complexity of their respective businesses, and the nature and range of investment services and activities undertaken in the course of their business.

V.I Responsibilities of the compliance function

V.I.I Compliance risk assessment [relevant legislation: paragraph 5(1) of the Directive]

General Guideline 1

11. Investment Firms should ensure that the compliance function takes a risk-based approach in order to allocate the function's resources efficiently. A compliance risk assessment should be used to determine the focus of the monitoring and advisory activities of the compliance function. The compliance risk assessment should be performed regularly to ensure that the focus and the scope of compliance monitoring and advisory activities remain valid.

Supporting guidelines

12. The Law requires Investment Firms to establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the Investment Firm to comply with its obligations under the Law (it is noted that, in establishing these policies and procedures, the Investment Firms should at least take into account the requirements set out in Appendix 2, which are non-exhaustive). As part of this, the compliance function should identify the level of compliance risk the investment firm faces, taking into account the investment services, activities and ancillary services provided by the investment firm, as well as the types of financial instruments traded and distributed.
13. The compliance risk assessment should take into account the applicable obligations under the Law and the Directives issued pursuant to the Law, as well

as the policies, procedures, systems and controls implemented within the Investment Firm in the area of investment services and activities. The assessment should also take into account the results of any monitoring activities and of any relevant internal or external audit findings.

14. The compliance function's objectives and work programme should be developed and set up on the basis of this compliance risk assessment. The identified risks should be reviewed on a regular basis as well as ad-hoc when necessary to ensure that any emerging risks are taken into consideration (for example, resulting from new business fields or other changes in the Investment Firm's structure).

V.I.II Monitoring obligations of the compliance function [relevant legislation: paragraph 5(2)(a) of the Directive]

General guideline 2

15. Investment Firms should ensure that the compliance function establishes a monitoring programme that takes into consideration all areas of the investment services and activities and any ancillary services or other business provided/performed by the Investment Firm. The monitoring programme should establish priorities determined by the compliance risk assessment ensuring that compliance risk is comprehensively monitored.

Supporting guidelines

16. The aim of the monitoring programme should be to evaluate whether the Investment Firm's business is conducted in compliance with its obligations under the Law and whether its internal guidelines, organisation and control measures remain effective and appropriate.
17. Where an Investment Firm is part of a group, responsibility for the compliance function rests with the Investment Firm itself. Therefore, the Investment Firm should therefore ensure that its compliance function remains responsible for

monitoring its own compliance risk. This includes where an Investment Firm outsources compliance tasks to another firm within the group. The compliance function within the Investment Firm should, however, take into account the group of which it is a part - for example, by working closely with audit, legal, regulatory and compliance staff in other parts of the group.

- 18.** The risk-based approach to compliance should form the basis for determining the appropriate tools and methodologies used by the compliance function, as well as the extent of the monitoring programme and the frequency of monitoring activities performed by the compliance function (which may be recurring, ad-hoc and/or continuous). The compliance function should also ensure that its monitoring activities are not only desk-based, but that it also verifies how policies and procedures are implemented in practice, for example through on-site inspections at the operative business units. The compliance function should also consider the scope of reviews to be performed.
- 19.** Suitable tools and methodologies for monitoring activities that could be used by the compliance function include (but are not limited to):
 - (a) the use of aggregated risk measurements (for example, risk indicators);
 - (b) the use of reports warranting management attention, documenting material deviations between actual occurrences and expectations (an exceptions report) or situations requiring resolution (an issues log);
 - (c) the targeted trade surveillance, observation of procedures, desk reviews and/or interviewing relevant staff.
- 20.** The monitoring programme should reflect changes to the Investment Firm's risk profile, which may arise, for example, from significant events such as corporate acquisitions, IT system changes, or re-organisation. It should also extend to the implementation and effectiveness of any remedial measures taken by the Investment Firm in response to breaches of the Law.
- 21.** Monitoring activities performed by the compliance function should also take into account:

- (a) the business area's obligation to comply with regulatory requirements;
 - (b) the first level controls in the Investment Firm's business areas (i.e. controls by the operative units, as opposed to second level controls performed by compliance); and
 - (c) reviews by the risk management, internal control function, internal audit function or other control functions in the area of investment services and activities.
22. Reviews by other control functions should be coordinated with the monitoring activities performed by the compliance function while respecting the different functions' independence and mandate.
23. The compliance function should have a role in overseeing the operation of the complaints process and it should consider complaints as a source of relevant information in the context of its general monitoring responsibilities. This does not require compliance functions to have a role in determining the outcome of complaints. In this regard, Investment Firms should grant the compliance function access to all customer complaints received by the firm.

V.I.III Reporting obligations of the compliance function [relevant legislation: paragraphs 5(3)(b) and 9 of the Directive]

General Guideline 3

24. Investment Firms should ensure that the regular written compliance reports are sent to the persons who effectively direct the business of the Investment Firm. The reports should contain a description of the implementation and effectiveness of the overall control environment for investment services and activities, ancillary services and other business, and a summary of the risks that have been identified as well as remedies undertaken or to be undertaken. Reports must be prepared at appropriate intervals and at least annually. Where the compliance function makes significant findings, the compliance officer

should, in addition, report these promptly to the persons who effectively direct the business of the Investment Firm.

Supporting guidelines

25. The written compliance report to the persons who effectively direct the business of the Investment Firm should cover all business units involved in the provision of investment services and activities, ancillary services and other business. Where the report does not cover all of these activities of the Investment Firm, it should clearly state the reasons.
26. The following matters should be addressed in these written compliance reports, where relevant:
 - (a) a description of the implementation and effectiveness of the overall control environment for investment services and activities, ancillary services and other business, including a description of the monitoring programme established in accordance with a risk-based approach, as required by the General Guideline 1;
 - (b) a summary of major findings of the review of the policies and procedures (it is noted that, in establishing these policies and procedures, the Investment Firms should at least take into account the requirements set out in Appendix 2, which are non-exhaustive);
 - (c) a summary of on-site inspections or desk-based reviews performed by the compliance function including breaches and deficiencies in the Investment Firm's organisation and compliance processes that have been discovered and appropriate measures taken or to be taken as a result;
 - (d) risks identified in the scope of the compliance function's monitoring activities;
 - (e) relevant changes and developments in regulatory requirements over the period covered by the report and the measures taken and to be taken to ensure compliance with the changed requirements (where the persons who effectively direct the business of the Investment Firm have not previously been made aware of these through other channels);

- (f) other significant compliance issues that have occurred since the last report;
and
 - (g) material correspondence with competent authorities (where the persons who effectively direct the business of the Investment Firm have not previously been made aware of these through other channels).
27. Notwithstanding paragraph 27, the compliance function should report to the person who effectively direct the business of the Investment Firm, in a timely manner, on an ad-hoc basis when significant compliance matters have been discovered, such as material breaches of the Law and in general, the legislation governing its operation. The report should also contain advice on the necessary remedial steps.
28. In case that the Investment Firm belongs to a group, the compliance function should consider the need for additional reporting lines to any group compliance function.
29. An Investment Firm must ensure that the minutes of meetings of the board of directors which discussed the above reports are submitted to the Commission within the period prescribed under paragraph 9 (4) of the Directive.

V.I.IV Advisory obligations of the compliance function [relevant legislation: paragraph 5(2) of the Directive]

General guideline 4

30. Investment Firms should ensure that the compliance function fulfils its advisory responsibilities including: providing support for staff training; providing day-to-day assistance for staff and participating in the establishment of new policies and procedures within the Investment Firm.

Supporting guidelines

- 31.** Investment Firms should promote and enhance a ‘compliance culture’ throughout the Firm. The purpose of the compliance culture is not only to establish the overall environment in which compliance matters are treated, but also to engage staff with the principle of improving investor protection.
- 32.** The Investment Firm needs to ensure that its staff is adequately trained. The compliance function should support the business units in the area of investment services and activities (i.e. all staff involved directly or indirectly in the provision/performance of investment services and activities) in performing any training. Training and other support should focus particularly, but not exclusively, on:

 - (a) the internal policies and procedures of the Investment Firm and its organisational structure in the area of investment services and activities; and
 - (b) the Law and the Directives issued pursuant to the Law, and other supervisory and regulatory requirements that may be relevant, as well as any changes to these.
- 33.** Training should be performed on a regular basis, and needs-based training should be performed where necessary. Training should be delivered as appropriate – for example, to the Investment Firm’s entire staff as a whole, to specific business units, or to a particular individual.
- 34.** Training should be developed on an on-going basis so that it takes into account all relevant changes (for example, new legislation, standards or guidelines issued by the Commission, changes in the Investment Firm’s business model).
- 35.** The compliance function should periodically assess whether staff in the area of investment services and activities holds the necessary level of awareness and correctly apply the Investment Firm’s policies and procedures.

36. Compliance staff should also provide assistance to staff from the operative units in their day-to-day business and be available to answer questions arising out of daily business activity.
37. Investment Firms should ensure that the compliance function is involved in the development of the relevant policies and procedures within the Investment Firm in the area of investment services, activities and ancillary services. In this context, the compliance function should be enabled, for example, to provide compliance expertise and advice to business units about all strategic decisions or new business models, or about the launch of a new advertising strategy in the area of investment services and activities. If the compliance function's advice is not followed, the compliance function should document this accordingly and present it in its compliance reports.
38. Investment Firms should ensure that the compliance function is involved in all significant modifications of the organisation of the Investment Firm in the area of investment services, activities and ancillary services. This includes the decision-making process when new business lines or new financial products are being approved. In this context, the compliance function should be given the right to participate in the approval process for financial instruments to be taken up in the distribution process. The persons who direct the business of an Investment Firm should therefore encourage business units to consult with the compliance function regarding their operations.
39. Investment Firms should ensure that the compliance function is involved in all material non-routine correspondence with the Commission, in the area of investment services and activities.

V.II Organisational requirements of the compliance function

V.II.I Effectiveness of the compliance function [relevant legislation: paragraph 5(3)(a) and (d) of the Directive]

General guideline 5

40. When ensuring that appropriate human and other resources are allocated to the compliance function, Investment Firms should take into account the scale and types of investment services, activities and ancillary services undertaken by the Investment Firm. They should also provide compliance staff with the authority necessary to exercise their duties effectively, as well as access to all relevant information concerning the investment services and activities as well as ancillary services undertaken.
41. The compliance officer should have sufficiently broad knowledge and experience and a sufficiently high level of expertise so as to be able to assume responsibility for the compliance function as a whole and ensure that it is effective.

Supporting guidelines

42. The number of staff required for the tasks of the compliance function depends to a large extent on the nature of the investment services, activities and ancillary services and other business provided/performed by the Investment Firm. Where an Investment Firm's business unit activities are significantly extended, the Investment Firm should ensure that the compliance function is similarly extended as necessary in view of changes to the Firm's compliance risk. The persons who effectively direct the business of an Investment Firm should monitor regularly whether the number of staff is still adequate for the fulfilment of the duties of the compliance function.
43. In addition to human resources, sufficient IT resources should be allocated to the compliance function.
44. Where the Investment Firm establishes budgets for specific functions or units, the compliance function should be allocated a budget that is consistent with the level of compliance risk the firm is exposed to. The compliance officer should be consulted before the budget is determined. All decisions for significant cuts

in the budget should be documented in writing and contain detailed explanations.

- 45.** In ensuring compliance staff has access to the relevant information for their tasks at all times, Investment Firms should provide access to all relevant databases. In order to have a permanent overview of the areas of the Investment Firm where sensitive or relevant information might arise, the compliance officer should have access to all relevant information systems within the Investment Firm as well as to any internal or external audit reports or other reporting to the persons who effectively direct the business of the Investment Firm. Where relevant, the compliance officer should also be able to attend meetings of the board of directors. Where this right is not granted, this should be documented and explained in writing. The compliance officer should have in-depth knowledge of the Investment Firm's organisation, corporate culture and decision-making processes in order to be able to identify which meetings are important to attend.
- 46.** In order to ensure that compliance staff has the authority required for their duties, the persons who effectively direct the business of the Investment Firm should support them in the exercise of these duties. Authority implies possessing adequate expertise and relevant personal skills, and may be enhanced by the Investment Firm's compliance policy explicitly acknowledging the specific authority of the compliance staff.
- 47.** All compliance staff should have at least knowledge of the Law and of the respective legislation governing the operation of the Investment Firm, as far as these are relevant for the performance of their tasks. Compliance staff should be regularly trained in order to maintain their knowledge. A higher level of expertise is necessary for the designated compliance officer.
- 48.** The compliance officer should demonstrate sufficient professional experience as is necessary to be able to assess the compliance risks and conflicts of interest inherent in the Investment Firm's business activities. The required professional

experience may have, amongst others, been acquired in operational positions, in other control functions or in regulatory functions.

49. The compliance officer should have specific knowledge of the different business activities provided by the Investment Firm. The relevant expertise required may differ from one Investment Firm to another, as the nature of the main compliance risks that firms face will differ. In respect of paragraph 4(1)(d) of the Directive, a newly employed compliance officer may therefore need additional specialised knowledge focused on the specific business model of the Investment Firm even if the person has previously been the compliance officer for another Investment Firm.

V.II.II Permanence of the compliance function [relevant legislation: paragraph 5(2)(a) of the Directive]

General Guideline 6

50. The Law requires Investment Firms to ensure that the compliance function performs its tasks and responsibilities on a permanent basis. Investment Firms should therefore establish adequate arrangements for ensuring the responsibilities of the compliance officer are fulfilled when the compliance officer is absent, and adequate arrangements to ensure that the responsibilities of the compliance function are performed on an on-going basis. These arrangements should be in writing.

Supporting guidelines

51. The Investment Firm should ensure, e.g. through internal procedures and stand-in arrangements, that the responsibilities of the compliance function are fulfilled adequately during any absence of the compliance officer.
52. The responsibilities and competences as well as the authority of the compliance staff should be set out in a 'compliance policy' or other general policies or internal rules that take account of the scope and nature of the Investment Firm's

investment services and activities. This should include information on the monitoring programme and the reporting duties of the compliance function as well as information on the compliance function's risk-based approach to monitoring activities. Relevant amendments to regulatory provisions should be reflected promptly by adapting these policies/rules.

53. The compliance function should perform its activities on a permanent basis and not only in specific circumstances. This requires regular monitoring on the basis of a monitoring schedule. The monitoring activities should regularly cover all key areas of investment services and activities taking into account the compliance risk associated with the business areas. The compliance function should be able to respond rapidly to unforeseen events, thereby changing the focus of its activities within a short timeframe if necessary.

V.II.III Independence of the compliance function [relevant legislation: paragraph 5(3) of the Directive]

General guideline 7

54. Investment Firms should ensure that the compliance function holds a position in the organisational structure that ensures that the compliance officer and other compliance staff act independently when performing their tasks. The compliance officer should be appointed and replaced by the board of directors of the Investment Firm.

Supporting guidelines

55. While the persons who effectively direct the business of the Investment Firm are responsible for establishing an appropriate compliance organisation and for monitoring the effectiveness of the organisation that has been implemented, the tasks performed by the compliance function should be carried out independently from senior management and other units of the Investment Firm. In particular, the Investment Firm's organisation should ensure that other business units may

not issue instructions or otherwise influence compliance staff and their activities.

56. Where senior management deviates from important recommendations or assessments issued by the compliance function, the compliance officer should document this accordingly and present it in the compliance reports.

V.II.IV Exemptions [relevant legislation: paragraph 5(3) of the Directive]

General guideline 8

57. Where an Investment Firm considers that it may not be proportionate for it to comply with the requirements set out in paragraph 5(3)(c) or (d) of the Directive, it should assess whether the effectiveness of the compliance function is compromised by the proposed arrangements. This assessment should be reviewed regularly.

Supporting guidelines

58. Investment Firms should decide which measures, including organisational measures and the level of resources, are best suited to ensuring the effectiveness of the compliance function in the firm's particular circumstances. In deciding this, Investment Firms should take the following criteria (inter alia) into account:
 - (a) the types of investment services, activities and ancillary services and other business activities provided by the Investment Firm (including those not related to investment services, activities and ancillary services);
 - (b) the interaction between the investment services and activities and ancillary services and other business activities carried out by the Investment Firm;
 - (c) the scope and volume of the investment services, activities and ancillary services carried out (absolute and relative to other business activities), balance sheet total and income of the Investment Firm from commissions and fees and other income in the context of the provision of investment services, activities and ancillary services;

- (d) the types of financial instruments offered to clients;
 - (e) the types of clients targeted by the Investment Firm (professional, retail, eligible counterparties);
 - (f) staff headcount;
 - (g) whether the Investment Firm is part of an economic group within the meaning of section 148 the Companies Law;
 - (h) services provided through a commercial network, such as tied agents, or branches;
 - (i) cross-border activities provided by the Investment Firm;
 - (j) organisation and sophistication of the IT systems.
- 59.** An Investment Firm may fall, for example, under the proportionality exemption if the performance of the necessary compliance tasks does not require a full-time position due to the nature, scale and complexity of the firm's business, and the nature and range of the investment services, activities and ancillary services offered.
- 60.** While a compliance officer must always be appointed, it may be disproportionate for a smaller Investment Firm with a very narrow field of activities to appoint a separate compliance officer (i.e. one that does not perform any other function). Where an Investment Firm makes use of the exemption, conflicts of interest between the tasks performed by the relevant persons should be minimised as much as possible.
- 61.** An Investment Firm that does not need to comply with all the requirements set out in paragraph 5(3) of the Directive, under the proportionality principle, may combine the legal and compliance function (if any). However, an Investment Firm with more complex activities or greater size should generally avoid such combination, if it could undermine the compliance function's independence.
- 62.** Where an Investment Firm makes use of the proportionality exemption, it should record how this is justified, so that the competent authority is able to assess this.

V.II.V Combining the compliance function with other internal control functions

[relevant legislation: paragraph 5(3) of the Directive]

General guideline 9

- 63.** An Investment Firm should generally not combine the compliance function with the internal audit function. The combination of the compliance function with other control functions may be acceptable if this does not compromise the effectiveness and independence of the compliance function. Any such combination should be documented, including the reasons for the combination so that the Commission is able to assess whether the combination of functions is appropriate in the circumstances.

Supporting guidelines

- 64.** Compliance staff should generally not be involved in the activities they monitor. However, a combination of the compliance function with other control units at the same level (such as money laundering prevention) may be acceptable if this does not generate conflicts of interests or compromise the effectiveness of the compliance function.
- 65.** Combining the compliance function with the internal audit function should generally be avoided as this is likely to undermine the independence of the compliance function because the internal audit function is charged with the oversight of the compliance function. However, for practical reasons (for example, decision making), and in certain circumstances (for example, in firms of only two persons), it may be more appropriate to have one person responsible for both functions. In this regard, Investment Firms should consider discussing the combination with the Commission. In addition, where this combination occurs, the Investment Firm must, of course, ensure that the responsibilities of each function are discharged properly (i.e. soundly, honestly and professionally).

66. Whether staff from other control functions also perform compliance tasks, should also be a relevant consideration in the determination of the relevant number of staff necessary for the compliance function
67. Whether or not the compliance function is combined with other control functions, the compliance function should coordinate its activities with the second-level control activities performed by other units.

V.II.VI Outsourcing of the compliance function [relevant legislation paragraphs 5 and 16 of the Directive]

General guideline 10

68. Investment Firms should ensure that all applicable compliance function requirements are fulfilled where all or part of the compliance function is outsourced.

Supporting guidelines

69. The outsourcing requirements for critical or important functions of the Law and of the Directive apply in full to the outsourcing of the compliance function.
70. The requirements that apply to the compliance function are the same whether or not any or all of the compliance function is outsourced; the responsibility for the fulfilment of the existing requirements rests with the persons who effectively direct the business of an Investment Firm.
71. The Investment Firm should perform a due diligence assessment before choosing a service provider in order to ensure that the criteria set out in paragraphs 5 and 16 of the Directive are met. The Investment Firm should ensure that the service provider has the necessary authority, resources, expertise and access to all relevant information in order to perform the outsourced compliance function tasks effectively. The extent of the due diligence

assessment is dependent on the nature, scale, complexity and risk of the tasks and processes that are outsourced.

- 72.** Investment Firms should also ensure that when outsourced partially or fully, the compliance function remains permanent in nature, i.e. the service provider should be able to perform the function on an on-going basis and not only in specific circumstances.
- 73.** Investment Firms should monitor whether the service provider performs its duties adequately, which includes monitoring the quality and the quantity of the services provided. Persons who effectively direct the business of an Investment Firm are responsible for supervising and monitoring the outsourced function on an on-going basis, and should have the necessary resources and expertise to be able to fulfil this responsibility. Persons who effectively direct the business of an Investment Firm may appoint a specific person to supervise and monitor the outsourced function on their behalf.
- 74.** Outsourcing of the compliance function within a group does not lead to a lower level of responsibility for the senior management of the individual Investment Firms within the group. However, a centralised group compliance function may, in some cases, provide the compliance officer with better access to information, and lead to greater efficiency of the function, especially if the entities share the same premises.
- 75.** If an Investment Firm, due to the nature, size and scope of its business activities, is unable to employ compliance staff who are independent of the performance of services they monitor, then outsourcing of the compliance function is likely to be an appropriate approach to take.

APPENDIX 1

RELEVANT LEGISLATION

(in relation to these guidelines)

A. Law 144(I)/2007

1. Section 18(2): «A CIF must:

(a) Establish adequate policies and procedures sufficient to ensure its compliance, including its managers, employees, tied agents and other relevant persons, with its obligations pursuant to this Law and the directives issued pursuant to this Law, as well as appropriate rules governing personal transactions by such persons

(b) ...

(c) ...

(d) ensure, when relying on a third party for the performance of investment services or activities or operational functions which are critical for the provision of continuous and satisfactory service to clients and the performance of investment activities on a continuous and satisfactory basis, that it takes reasonable steps to avoid undue additional operational risk. Outsourcing of the above must not be undertaken in such a way as to materially impair the quality of its internal control and the ability of the Commission to monitor the CIF's compliance with all its obligations; ...».

B. Directive DI144-2007-01

2. Paragraph 4(1): «A CIF is required to comply with the following organisational requirements:

...

(d) to employ personnel with the skills, knowledge and expertise necessary for the discharge of the responsibilities allocated to them; »

3. Paragraph 5: «(1) A CIF is required to establish, implement and maintain adequate policies and procedures designed to detect any risk of failure by the

firm to comply with its obligations under the Law, as well as the associated risks, and put in place adequate measures and procedures designed to minimise such risk and to enable the Commission to exercise its powers effectively under the Law and the current Directive.

For these purposes, a CIF takes into account the nature, scale and complexity of the business of the firm, and the nature and range of investment services and activities undertaken in the course of that business.

(2) A CIF is required to establish and maintain a permanent and effective compliance function which operates independently and which has the following responsibilities:

(a) to monitor and to assess the adequacy and effectiveness of the measures and procedures put in place in accordance with the subparagraph (1), and the actions taken to address any deficiencies in the CIF's compliance with its obligations under the Law and the Directive;

(b) to advise and assist the relevant persons responsible for carrying out investment services and activities to comply with the CIF's obligations under the Law and the Directive.

(3) In order to enable the compliance function to discharge its responsibilities properly and independently, a CIF is required to ensure that the following conditions are satisfied:

(a) the compliance function must have the necessary authority, resources, expertise and access to all relevant information;

(b) a compliance officer must be appointed and must be responsible for the compliance function and for any reporting as to compliance required by paragraph 9(2);

(c) the relevant persons involved in the compliance function must not be involved in the performance of services or activities they monitor;

(d) the method of determining the remuneration of the relevant persons involved in the compliance function must not compromise their objectivity and must not be likely to do so.

However, a CIF is not required to comply with point (c) or point (d) if it is able to demonstrate that in view of the nature, scale and complexity of its business, and the nature and range of investment services and activities, the requirement under that point is not proportionate and that its compliance function continues to be effective.

4. Paragraph 9: *«(1) A CIF is required to, when allocating functions internally, to ensure that senior management, and its Board of Directors, are responsible for ensuring that the CIF complies with its obligations under the Law.*

In particular, senior management and its Board of Directors are required to assess and periodically review the effectiveness of the policies, arrangements and procedures put in place to comply with the obligations under the Law and the Directive and to take appropriate measures to address any deficiencies.

(2) A CIF is required to ensure that its senior management receive on a frequent basis, and at least annually, written reports on the matters covered by paragraphs 5, 6 and 8 indicating in particular whether the appropriate remedial measures have been taken in the event of any deficiencies.

(3) A CIF is required to ensure that its Board of Directors receives on a regular basis and at least on an annual basis, written reports on the same matters mentioned in subparagraph (2).

(4) A CIF is required to submit to the Commission the minutes of the meetings of the Board of Directors, during which the reports of subparagraph (2) have been discussed. These minutes are submitted to the Commission within twenty

days from the date of the relevant meeting and no later than four months after the end of the calendar year, attached to the written reports of subparagraph (2).»

5. Paragraph 16: *«A CIF that outsources critical or important operational functions or any investment services or activities, remains fully responsible for discharging all of its obligations under the Law and comply, in particular, with the following conditions:*

(a) the outsourcing must not result in the delegation by senior management of its responsibility;

(b) the relationship and obligations of the CIF towards its clients under the Law must not be altered;

(c) the conditions with which the CIF must comply in order to be authorised in accordance with section 6 of the Law, and to remain so, must not be undermined;

(d) none of the other conditions subject to which the CIF's authorisation was granted must be removed or modified.

(2) In the case that outsourcing would conclude to the transfer of functions of the CIF to such a degree which renders the CIF a letter box entity, this is considered to undermine the conditions for authorisation of a CIF, according to Part III of the Law.

(3) A CIF is required to exercise due skill, care and diligence when entering into, managing or terminating any arrangement for the outsourcing to a service provider of critical or important operational functions or of any investment services or activities.

In particular, a CIF should take the necessary steps to ensure that the following conditions are satisfied:

(a) the service provider must have the ability, capacity, and any authorisation required by law to perform the outsourced functions, services or activities reliably and professionally;

(b) the service provider must carry out the outsourced services effectively, and to this end the CIF must establish methods for assessing the standard of performance of the service provider;

(c) the service provider must properly supervise the carrying out of the outsourced functions, and adequately manage the risks associated with the outsourcing;

(d) appropriate action must be taken if it appears that the service provider may not be carrying out the functions effectively and in compliance with applicable laws and regulatory requirements;

(e) the CIF must retain the necessary expertise to supervise the outsourced functions effectively and manage the risks associated with the outsourcing and must supervise those functions and manage those risks;

(f) the service provider must disclose to the CIF any development that may have a material impact on its ability to carry out the outsourced functions effectively and in compliance with applicable laws and regulatory requirements;

(g) the CIF must be able to terminate the arrangement for outsourcing where necessary without detriment to the continuity and quality of its provision of services to clients;

(h) the service provider must cooperate with the Commission in connection with the outsourced activities;

(i) the CIF, its auditors and the relevant competent authorities must have effective access to data related to the outsourced activities, as well as to the business premises of the service provider;

(j) the service provider must protect any confidential information relating to the CIF and its clients;

(k) the CIF and the service provider must establish, implement and maintain a contingency plan for disaster recovery and periodic testing of backup facilities, where that is necessary having regard to the function, service or activity that has been outsourced.

(4) The respective rights and obligations of the CIF and of the service provider to be clearly allocated and set out in a written agreement.

(5) Where the CIF and the service provider are members of the same group, the CIF may, for the purposes of complying with this paragraph and paragraph 17, take into account the extent to which the CIF controls the service provider or has the ability to influence its actions.

(6) A CIF is required to make available on request to the Commission all information necessary to enable the Commission to supervise the compliance of the performance of the outsourced activities with the requirements of this Directive.

APPENDIX 2

INDICATIVE LIST WITH THE REQUIREMENTS ARISING FROM THE LAW AND THE GENERAL LEGISLATION GOVERNING THE OPERATION OF INVESTMENT FIRMS

(which are taken into consideration in setting the policies
and procedures of the compliance function)

1. CIF authorisation (Law: Sections 6, 8, 11, 23-26, 28, 34, DI144-2007-03 and DI144-2007-12).
2. CIF initial capital (Law: Sections 10 and 31).
3. Persons who effectively direct the business of the CIF (Law: Sections 12 and 32, DI144-2007-12).
4. CIF Shareholders (Law: Sections 13, 14, 31, 33, 33A and 33B, DI144-2007-10, DI144-2007-12).
5. Persons employed by a CIF (Law: Sections 15, 52 and 53, DI144-2007-12, GD-IF-01).
6. CIF head office (Law: Section 16).
7. ICG for Clients of IFs (Law: Sections 17, 58 and 65, ICF Regulation, and DI144-2007-09).
8. Organisational requirements of CIF [Law: Section 18, DI144-2007-01: Par. 4 -9, 11, 13, 14].
9. Conflicts of interest and personal transactions [Law: Sections. 18 and 29, DI144-2007-01: Par. 15, 22-27].
10. Outsourcing [Law: Section 18, DI144-2007-01: Par 16, 17, DI144-2007-12].

11. CIF's client assets [Law: Sections 18, 27 and 116, DI144-2007-01: Par. 18-21].
12. CIF operating an MTF [Law: Sections 19, 46, 49, 50 and 83, Regulation 1287/2006: Arts. 4, 17- 20, 27- 30, 32-34].
13. Inducements [Law: Section 36, DI144-2007-02: Par. 4 και 5].
14. Providing information to clients and potential clients [Law: Section 36, DI144-2007-02: Par. 4, 6-13].
15. Assessment of suitability and compatibility [Law: Section 36, DI144-2007-02: Pars. 4, 14-18].
16. Reporting to clients [Law: Section 36 and DI144-2007-02: Par. 4, 19-22].
17. Obligation to execute orders on terms most favorable to the client [Law: Section 36 and 38, DI144-2007-02: Par. 4, 23-25].
18. Client order handling rules [Law: Sections. 36 and 39, DI144-2007-02: Par. 4, 26-28, Regulation 1287/2006: Arts. 31 και 32].
19. Transactions executed with eligible counterparties [Law: Section 41 and DI144-2007-02: Par. 41].
20. Provision of services through the medium of another IF or credit institution authorised in the Republic or in another member state (Law: Section 37).
21. CIF obligations when appointing tied agents (Law: Section 40, DI144-2007-12).
22. CIF obligation to record transactions and Maintenance of records [(Law: Sections 18, 43 and 44, DI144-2007-01: Par. 10, Regulation 1287/2006: Art. 7 and 8)].

23. CIF Transactions [Law: Sections 45, 47, 48, 81 and 82, Regulation 1287/2006: Arts. 4, 9-14, 20-30 and 32-34, DI144-2007-07, DI144-2007-12].
24. Establishment of a CIF branch (Law: Sections 75-76, DI144-2007-12).
25. Freedom to provide investment and ancillary services or and perform investment activities by a CIF in another member state or and a third country (Law: Section 79, DI144-2007-12).
26. Accounting policies and procedures for timely submission of CIF Financial Statements Λογιστικές [(Law: Sections 18 and 114, DI144-2007-01: Par 12)].
27. Obligations of Persons professionally arranging transactions (L.116(I)/2005 – Market Abuse Law: Part VII)