
TO : Cyprus Investment Firms

FROM : Cyprus Securities and Exchange Commission

DATE : 02 August 2013

CIRCULAR No : CI144-2013-22A

FILE No. : E.K. 6.1.14

SUBJECT : Freedom to provide investment and ancillary services and or perform investment activities in a third country

The Cyprus Securities and Exchange Commission ('the Commission') refers to its Circular CI144-2013-22 (the 'Circular') regarding the above mentioned subject and would like to bring to your attention the following:

It came to the attention of the Commission from internal sources as well as from complaints received from Third Country Competent Authorities that Cyprus Investment Firms ('CIFs') provide investment services or perform investment activities in certain third country jurisdictions without seeking the necessary prior authorisation. In some instances Third Country Competent Authorities have taken measures against the CIFs involved ranging from the issuance of an investor warning to taking formal legal action against the relevant CIF in order to cease the unauthorized activity in their territory. It should be noted that the obligation to comply with the Third Country legal framework exists irrespective of the country of registration of the Firm providing the service.

The provision of investment services and performance of activities in third countries is regulated by the laws and regulations that apply in those countries. The Commission consents to the provision of investment services and activities by a CIF, if it complies with the provisions of section 79 of the Investment Services and Activities and Regulated Markets Law of 2007 (the 'Law') which transposes MiFID. In giving its consent the Commission clearly communicates to the CIF the fact that it is the responsibility of the CIF to be informed about the relevant legal provisions of the third country to the residents of which the CIF intends to provide services.

Therefore the purpose of the Circular was to ensure that the CIFs comply with their legal obligations pursuant to the Law as well as the legal framework of the Third Country jurisdictions in which they are active.

Having stressed the above, the Commission would like to also clarify the following:

1. The Circular refers to cases of activity performed/service provided to persons resident in the territory of a third country, either through local presence, or on a cross border basis that would be considered by the Competent Authority of that country as a regulated activity.

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2. The Commission requested CIFs *‘to inform the Commission about the third countries, where they actually provide/perform services/activities and submit evidence of the authorisation obtained to do so or of any other document evidencing that they legally provide/perform services/activities within the territories of those third countries’*.

If authorization is indeed required in the respective jurisdiction, the documents referred to above may include: any authorizations obtained from the Third Country Competent Authorities, any legal advice obtained regarding the provision of the specific services in the relevant third country jurisdiction or any correspondence that confirms that the CIF legally provides its services or performs activities within the territory of a third country. In general any documentation that the CIF relied upon in the process of ensuring its compliance with its obligation to perform activities and or provide services in a third country jurisdiction in compliance with that third country’s legal framework.

3. The list of the Third Country Authorities can be found at http://www.iosco.org/lists/display_members.cfm?memID=1&orderBy=none
4. It would be to the best interest of the CIFs to refrain from providing any unauthorized activity (such as having physical presence and/or active solicitation of clients) in third country jurisdictions, especially in jurisdictions where the regulator specifically requires prior approval for the provision of the CIF’s services, until such time as they obtain authorisation or legal advice that authorisation is not required, in order to be in compliance at all times.

Finally please note that the Commission has decided to extend the deadline for submitting the information requested in its Circular to the end of October 2013.

Yours sincerely

Demetra Kalogerou
Chairwoman of the Cyprus Securities and Exchange Commission