
TO : **Alternative Investment Fund Managers – ‘AIFMs’:**
i. Authorised Alternative Investment Fund Managers¹
ii. Sub-threshold Alternative Investment Fund Managers²

FROM : **Cyprus Securities and Exchange Commission**

DATE : **13 December 2022**

CIRCULAR No : **C538**

SUBJECT : **Guidance in relation to the requirement to raise capital from investors within a specified time period**

The Cyprus Securities and Exchange Commission (**‘the CySEC’**) wishes herein to remind AIFMs the [Circular 321](#), issued on June 2019, regarding the raising of capital from investors within a specified time period. In addition, as a result of some observations identified after relevant reviews performed by CySEC over the period 2019 to 2021 on Funds authorised/registered after the entry into force of the Law 124(I)/2018 (**‘the AIF Law’**), CySEC aims with this circular to give AIFMs an indication of compliant implementation of the articles 14(1)(a), 129(1)(a) and 136 of the Law.

According to articles 14(1)(a), 129(1)(a) and 136 of the AIF Law, an AIF, an AIFLNP and a RAIF (**‘the Funds’**), must, within twelve (12) months from the date of authorization/registration, raise the minimum amount of capital provided in these articles (the minimum amount depends on the type of fund³). The raising of capital should adhere with the provisions of article 14 (for AIFs and RAIFs) and article 129 (for AIFLNPs) and the different requirements set therein, depending on whether the amount raised is

¹ The term includes a) Cyprus based AIFMs and self-managed AIFs whose total asset under management (‘AuM’) exceed the thresholds of Articles 4(2)(a) or 4(2)(b) of the Alternative Investment Fund Managers Law (**‘AIFM Law’**) as the case may be, and b) Cyprus based AIFMs and self-managed AIFs whose Total AuM do not exceed the thresholds of Articles 4(2)(a) or 4(2)(b) of the AIFM Law, as the case may be, but have exercised the ‘opting-in’ possibility of Article 4(6) of the AIFM Law.

² The term includes Cyprus based AIFMs and self-managed AIFs whose Total AuM do not exceed the thresholds of article 4(2)(a) or 4(2)(b) of the AIFM Law, as the case may be, and have not exercised the ‘opting-in’ possibility of article 4(6) of the AIFM Law.

³ AIF = €500.000, AIFLNP = €250.000, RAIF = €500.000

in cash and/or in assets. It is hereby noted that, when a Fund is an Umbrella fund, the requirement applies separately to each investment compartment, so for the purposes of this circular the term Funds refers to investment compartments, if such is the case.

Part I: Demonstrating compliance with articles 14, 129 and 136 of the AIF Law

AIFMs should keep such records that can demonstrate to CySEC the compliance of the Funds under their management with the provisions of articles 14, 129 and 136 of the AIF Law, when required.

In the context of the above, AIFMs are expected to keep for each Fund under their management at least the following documents (not an exhaustive list):

1. A Shareholder/Unitholder/Limited Partners Registry of the Fund.
2. The audited financial statements of the Fund for the year ending when capital was raised, clearly showing the amount of minimum capital raised in exchange for issued and fully paid redeemable shares (if available).
3. In case the amount raised is in cash, a bank statement of the Subscriptions account in the name of the Fund, clearly showing the deposit(s)/transfer(s) made by the investors;
4. In case the amount raised is in assets:
 - i. A confirmation letter issued by a competent party (e.g. the depository) that the assets are owned by the Fund. It is noted that the directors of the Fund or of the AIFM, are not considered competent parties for this purpose.
 - ii. A valuation report of the assets contributed to the Fund prepared by an independent valuer who meets the requirements of Article 73 of Regulation (EU) No. 231/2013. The date of the valuation report should be prior to the date of, but reasonably close to, the contribution of the assets to the Fund.
 - iii. A confirmation letter issued by a relevant party (e.g. the Fund's Risk Manager) that the assets are in line with the investment policy of the Fund.

- iv. A confirmation letter issued by a competent party (e.g. the depository) that the assets are free of any liens at the time of the contribution to the fund. It is noted that the directors of the Fund or of the AIFM, are not considered competent parties for this purpose.

Part II: Reporting to CySEC

As elaborated under Section B of CySEC's Circular 321, AIFMs are expected to complete and submit to CySEC the [Form 124-00-02](#) ('the Form') for each fund under their management when the minimum amount of capital provided in articles 14(1)(a) and 129(1)(a) of the AIF Law is raised. The attention of AIFMs is drawn to the following:

1. For the Form to be considered as valid must be:
 - i. Completed in full and contain accurate information. For example, in case of an Umbrella Fund, field 'Name' corresponds to the name of the investment compartment, while the name of the Umbrella Fund should be entered in the field 'Name of Umbrella Fund'. In addition, in the field 'Code', in case of an Umbrella Fund, you are expected to enter the National Code of the investment compartment and not the National code of the Fund (e.g.LPAIFXX_X and not LPAIFXX).
 - ii. Duly signed by an executive director of the AIFM.
2. The Form must be accompanied by all the supporting documents laid down in Part I above, as the case may be – payments in cash or non-cash payments (in kind).
3. A separate Form, along with corresponding support documents must be submitted for each investment compartment. Therefore, in case of an Umbrella Fund, any documents submitted should be clearly marked as belonging to the said investment compartment, irrespective of whether there is, at the time, only one investment compartment under the Umbrella Fund.
4. Information contained in the various documents submitted must be consistent. For example, any information in the Form must be consistent with the information of the documents submitted. If an AIFM states in the Form that it has raised capital from investors in cash during the period 01/01/XX – 31/12/XX, then the

shareholder/unitholder/limited partners registry and bank statement submitted are expected to cover at least that period.

5. The subject matter of the email sent to CySEC should be clearly marked as such on the subject line of the email, as per the instructions provided in the Form. Any documents attached therein as supporting evidence should be clearly referenced on the designated space in the Form.

Part III: Final remarks

AIFMs must make every possible effort to raise the minimum amount of capital for each Fund under their management, within the timeframe and/or deadline provided in articles 14, 129 and 136 of the AIF Law.

In the event where a Fund does not raise the minimum amount of capital within the specified time period as provided in articles 14, 129 and 136 of the AIF Law, AIFMs should request a revocation of the Funds authorisation.

CySEC may decide to initiate a revocation process, involving a call for representations to the External Manager of the fund, in the case of externally managed funds, or to the Fund itself, in the case of Self-managed Funds, in case the minimum assets are not raised within the timeframe provided in the abovementioned articles and the External Manager or the Fund did not proceed with the submission of a request for the revocation of the Funds authorisation.

Sincerely,

George Karatzias
Vice Chairman
Cyprus Securities and Exchange Commission