

TO : Cypriot Investment Firms
FROM : Cyprus Securities and Exchange Commission
DATE : 6 November 2012
CIRCULAR No : CI144-2012-20
FILE No : E.K. 6.1.14
SUBJECT : Acquisition or increase of CIF qualifying holding

The Cyprus Securities and Exchange Commission (the 'Commission') wishes, with the present circular to inform Cypriot Investment Firms (the 'CIFs') about the following:

A) Acquisition or increase of qualifying holding¹ – section 33(1)(a) of the Investment Services and Activities and Regulated Markets Law of 2007, as amended ('the Law')

According to section 33(1)(a) of the Law: 'A person that, alone or in concert² with other persons, has taken a decision either to acquire, directly or indirectly, a qualifying holding in a CIF, or to further increase, directly or indirectly, such qualifying holding in a CIF, as a result of which the proportion of the voting rights or of the capital held would reach or exceed the minimum limits of twenty per cent (20%), thirty per cent (30%) or fifty per cent (50%) or so that the CIF would become its subsidiary, shall notify the Commission in writing.

Cascading holdings

In the case of indirect qualifying holders, such as cascading holdings that span different member states and on the chain of holdings there are institutions³, the immediate acquiring institution must notify each of the jurisdictions involved. In case where there is a proposed acquisition of direct holding over a CIF, the final decision regarding the assessment is taken by the Commission.

In the case of indirect qualifying holders, such as cascading holdings that span third countries, the final decision regarding the assessment is taken by the Commission, in case where there is a proposed acquisition of direct or indirect holding over a CIF.

¹ The term 'qualifying holding' has the meaning defined in section 2(1) of the Law.

² The term 'in concert' has the meaning defined in section 33(1)(b) of the Law.

³ The term 'institutions' has the meaning defined in paragraph 1, Chapter 1, Part A of Directive DI144-2007-05.

Subsidiaries

If the target institution, directly concerned by the proposed acquisition, directly or indirectly, controls subsidiaries that are institutions subject to the supervision of other member state competent authorities, each of these subsidiaries shall also be considered, indirectly, as 'target institution'. Consequently, the competent authorities responsible for the prudential supervision of those subsidiaries shall be identified as 'authorities that supervise the target institution' and the acquirer is required to provide notification of its proposed acquisition to each of these authorities. In such cases, the final decision regarding the assessment is taken by each of the competent authorities as regards the institution which it supervises.

B) Qualifying holding and significant influence – section 2(1) of the Law

According to section 2(1) of the Law: ‘*«Qualifying holding» means the direct or indirect holding in an Investment Firm ('IF'), which represents ten per cent (10%) or more of the capital or of the voting rights of an IF, as set out in Sections 28, 29 and 30 of the Transparency Requirements (Securities admitted to Trading on a Regulated Market) Law, taking into account the conditions regarding the aggregation thereof laid down in Sections 34 and 35 of the said Law, or which makes it possible to exercise a significant influence over the management of the IF in which that holding subsists*’.

The Commission interprets the term ‘significant influence’, mentioned above, to include, among others, the influence exercised by the proposed acquirer over the management of the CIF, in which the acquisition is proposed, as a result of his/her holding. Depending on the case, even though the proposed acquisition is below 10%, the ownership structure of the CIF, in which the acquisition is proposed and the specific involvement of the proposed acquirer over the management of the CIF, create significant influence even in this low level necessitating the written notification to the Commission in accordance with section 33(1)(a) of the Law (for example, the holding of the proposed acquirer allows him/ her to appoint a director at the board of directors of the CIF).

Sincerely,

Demetra Kalogerou
Chairman, Cyprus Securities and Exchange Commission