

**THE OPEN ENDED UNDERTAKINGS FOR COLLECTIVE INVESTMENT (UCI) LAW OF 2012**

Directive DI78-2012-31

of the Cyprus Securities and Exchange Commission on the transfer of the Variable Capital Investment Company's and the Management Company's registered office to and from the Republic

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The Cyprus Securities and Exchange Commission exercising the power vested in it by section 154(2) of the Open Ended Undertakings in Collective Investment Law of 2012, issues the following Directive:

## INTRODUCTORY PROVISIONS

- Short title 1. This Directive shall be referred to as the transfer of registered office in order to continue operation of a Variable Capital Investment Company and a management Company to and from the Republic Directive of 2012.
- Definition 2. For the application of this Directive, the following definitions apply:
- “Company” or “Companies” means, where applicable the Variable Capital Investment Companies and the management Companies incorporated and operating according to the Law or the Variable Capital Investment Companies and the management Companies incorporated and operating according to directive 2009/65/EC.
- 78(l) of 2012 “Law” means the Open Ended Undertakings in Collective Investment Law of 2012.
- “Directive” means this Directive.
- Terms used in this Directive and are not defined otherwise have the same meaning as the Law.
- Scope of Application 3. (1) This Directive applies:
- (a) to Variable Capital Investment Companies and Management Companies incorporated and operating in another member state pursuant to the provisions of directive 2009/65/EC which intend to transfer their registered office in the Republic, on condition that, according to the legislation of their home member state, it is possible to transfer their registered office and continue operating as a legal person under the legal framework of another member state.
  - (b) To Variable Capital Investment Companies and Management Companies incorporated and operating in the Republic pursuant to the provisions of the Law which intend to transfer their registered office in another member state and continue operating as a legal person, under the legal framework of another member state.
- (2) The provisions of this Directive apply for the transfer of a Variable Capital Investment Company or part of it, to and from the Republic.

General  
Provision

4. (1) The transfer of registered office and the continuation of operation of the Company in another member state from its home member state take place without their prior dissolution and winding-up.

(2) The transfer of the registered office and the continuation of operation of a Company in another member state in no case does it lead to a loss of the investors rights, where applicable, the shareholders of the Variable Capital Investment Company or unit holders of UCITS or other undertakings of collective investments managed by the Management Company and the rest of the latter's clients.

#### CHAPTER I

#### VARIABLE CAPITAL INVESTMENT COMPANIES AND MANAGEMENT COMPANIES OF THE REPUBLIC WHICH INTEND TO TRANSFER THEIR REGISTERD OFFICE AND CONTINUE THEIR OPERATION IN ANOTHER MEMBER STATE

Procedure for  
the license of a  
Company of  
another  
member state  
to continue  
operating in the  
Republic

5. (1) A Company of the Republic may, provided the laws and legal framework of the member state in which it intends to continue operating allow it, and provided it has secured the prior written approval of the Securities and Exchange Commission, submit a relevant application to the competent authorities of that member state according to the provisions in sections 354J up to 354Q of the Companies Law.

(2) The Company's application for the approval of the Securities and Exchange Commission, in order to continue its operations in another member state, is accompanied by a report for the continuance of operation in that member state.

(3) In the report for the continuance of operation of the Company, submitted according to the previous sub-paragraph:

(a) the legal and economic aspects and the consequences of the continuation of operation of the Company in the particular member state outside the Republic are explained and justified, without the prior legal procedure for its winding up and dissolution, for the investors, where applicable, the shareholders of the Variable Capital Investment Company or unit holders of UCITS or other undertakings of collective investments managed by the Management Company and the rest of the latter's clients.

(b) Details of the measures which the Company will take for the

notification of investors, where applicable, the shareholders of the Variable Capital Investment Company or unit holders of UCITS or other undertakings of collective investments managed by the Management Company and the rest of the latter's clients, regarding the continuation of its operation in another member state, as well as for the safeguarding of their rights because of that event and

- (c) In case there is a transfer of a Variable Capital Investment Company registered office, a credit institution in the Republic is appointed, with which the Company will continue to cooperate even after the completion of the procedure for the transfer of its registered office and continue to operate in the host member state, in order to safeguard to its shareholders situated in the Republic the payments and redemptions or ..... of their shares.

Conditions for  
the Securities  
and Exchange  
Commission  
approval

6. The approval of the Securities and Exchange Commission regarding the Company's continuance in another member state, is provided subject to the following conditions:

- (a) There is a Company decision to continue its operation in another member state,
- (b) In case there is a transfer of a Variable Capital Investment Company registered office, the right of redemption is provided to its shareholders and their rights are safeguarded,
- (c) There have not been any proceedings for its dissolution and winding up according to the Law,
- (d) All taxes, rights, fees or other monetary obligations have been paid, according to the legislation, as confirmed in a relevant document of the competent authorities and
- (e) Every necessary measure, according to the Securities and Exchange Commission, has been taken for the protection of the investors, where applicable, the shareholders of the Variable Capital Investment Company or unit holders of UCITS or other undertakings of collective investments managed by the Management Company and the rest of the latter's clients.

Deletion of  
the Company  
from the  
register

7. (1) Immediately after the Securities and Exchange Commission is notified by the relevant authorities of the host member state of the granting of a license to continue operation of the Company, it recalls the Company's operational license and deletes it from the respective register.

(2) From the date of the Company's suspension of license by the

Securities and Exchange Commission, according to the previous sub-paragraph, the Company is no longer subject to the provisions of the Law.

## CHAPTER II

### VARIABLE CAPITAL INVESTMENT COMPANIES AND MANAGEMENT COMPANIES OF OTHER MEMBER STATES WHICH INTEND TO TRANSFER THEIR REGISTERED OFFICE AND CONTINUE THEIR OPERATION IN THE REPUBLIC

Procedure for the license of a Company of another member state to continue operating in the Republic

8. (1) The Company which intends to transfer its registered office in the Republic and continue its operation as a legal person under the legal framework of the Republic, must, independently from applying sections 354A up to 354H of the Companies Law, obtain a license of the Securities and Exchange Commission.

(2) The application for the provision of the previous sub-paragraph's license, is accompanied by the following:

- (a) The official approval by the competent authorities of the home member state of the Company for the continuation of its operation in another member state.
- (b) The information provided for the respective operational license, according to the Law.
- (c) The decision of the Company for the transfer of its registered office and the continuation of its operation as a legal person under the legal framework of the Republic.
- (d) The certificate of good standing of the Company issued by the relevant competent authorities of the home member state, according to which the Company has received an operational license from the competent authorities, and is subject to the provisions of Directive 2009/65/EC and is fully compliant with the current legal framework of the home member state and there are no proceedings for its dissolution and winding up.
- (e) The certification of the relevant competent authorities that all taxes, fees, contributions or other rights, according to the legislation of the home member state have been paid.
- (f) Information that investors, where applicable, the shareholders of the Variable Capital Investment Company or unit holders of UCITS or other undertakings of collective investments managed by the Management Company and the rest of the latter's clients, have been fully notified with regards the submission of

an application for the transfer of the Company's registered office and continuance of operation and that their rights have been safeguarded.

- (g) When a Variable Capital Investment Company's registered office is to be transferred, information that shows:
  - (i) that, its shareholders have been informed about the possibility to submit an application for the redemption of their shares, because of the transfer of the Company's registered office and continuance of operation in the Republic and
  - (ii) a credit institution of the home member state of the Company has been appointed, with which it will continue to co-operate even after the completion of the procedure for the transfer of its registered office and continuing of its operation in the Republic, in order to safeguard to its shareholders situated in that other member state the payments and the redemption or the ..... of their shares.
- (h) Every other information the Securities and Exchange Commission may demand which is necessary for the protection of the rights of the investors, where applicable, the shareholders of the Variable Capital Investment Company or unit holders of UCITS or other undertakings of collective investments managed by the Management Company and the rest of the latter's clients.
- (i) The fee relevant with the application submitted to the Securities and Exchange Commission.

Provision of license to continue operations in the Republic

9. (1) The Securities and Exchange Commission, after consulting the relevant competent authorities of the home member state of the Company and verifying the fulfillment of important and typical requirements according to the Law for the continuation of its operation in the Republic, approves the application providing a license for the continuation of operation of the Company, approving its articles of association and, if it is a Variable Capital Investment Company with a Custodian, this choice.

(2) The Securities and Exchange Commission informs immediately the competent authorities of the Company's home member state about the provision of a license to continue its operation in the republic, in order for them to proceed with its deletion from the respective registers.

(3) The Securities and Exchange Commission maintains a register, separate for management Companies and for variable Capital

Investment Companies, in which it registers the foreign Companies it provides with a license to continue operation in the Republic. The Securities and Exchange Commission publishes immediately on its website the registration of Companies in the above mentioned register.

(4) From the date of the temporary certificate of continuation of section 354F of the Companies Law to a foreign Company and its registration to the register of sub-paragraph (3), the Company is considered to have obtained a license and, subject to the following sub-paragraph, operates according to the Law.

(5) Only after the issue of the certificate for continuation provided in section 354G of the Companies Law , may the Company:

- (a) if it is a Variable Capital Investment Company, may commence the offer of its shares in the Republic,
- (b) if it is a Management Company, may operate in the Republic.

#### FINAL PROVISION

Entry into force 10. The Directive enters into force from its publication in the Official Gazette of the Republic.