

## PRESS RELEASE

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### CySEC Consults on the Adoption of Legislation Regulating the Profession of Investment Fund Administrators

**NICOSIA** - The Cyprus Securities and Exchange Commission (**'CySEC'**) has today issued a Consultation Paper (CP-02-2021 is available [here](#)) on a proposed draft law regulating the profession of investment fund administrators (**the 'Proposed IFA Law'**) and the provision of the relevant services (**the 'Administration Services'**) in or from Cyprus.

Fund Administrators act, in essence, as back-office service providers to investment funds following a relevant appointment by means of a delegation (outsourcing) arrangement.

The Administration Services so provided relate mainly to the:

- Keeping of the investors' registry, which evidences ownership of the participation in an investment fund (**'Fund'**);
- Calculation of a Fund's net asset value (**'NAV'**), which is in most cases the basis for subscriptions and redemptions by investors;
- Processing of subscription, redemption and transfer orders from investors; and
- Other back-office services (e.g. dispatching notices of corporate actions, such as distribution of dividends or holding of general meetings, to investors).

Given the current framework in place, Administration Services can be provided by the manager of a Fund<sup>1</sup> (**'the Manager'**), as these form part of the said manager's authorisation. However, several Managers prefer to focus on the performance of purely investment management functions (i.e. risk management and portfolio management) and outsource the Administration Services to a specialized provider.

Furthermore, given that:

- i. The need for provision of Administration Services is common to all Funds irrespective of their regulatory branding (UCITS or AIFs), their investor base (retail or sophisticated) or their investable asset classes (e.g. both hedge funds and real estate funds can be open to subscriptions and redemptions on an NAV basis), whereas the authorisation and supervision of (local) Funds and Managers falls under CySEC's ambit;

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<sup>1</sup> In case of self-managed Funds, references to the Manager shall be understood as references to the Fund itself.

- ii. There are serious investor protection considerations associated with the provision of Administration Services, e.g. the need for an accurate calculation of a Fund's NAV, the need for uninterrupted and unaltered maintenance of the investors' registry and the processing of investor subscriptions and redemptions in accordance with a Fund's offering documents and the applicable regulatory framework (e.g. late trading and market timing prohibition), whereas investor protection is one of the key pillars of CySEC's supervisory mandate;
- iii. The Manager, which is a regulated entity, remains ultimately responsible for the proper provision of the delegated Administration Services and it may proceed with the relevant delegation only when the provisions governing such delegation are observed, so that a compliance culture needs to be ensured throughout the outsourcing chain, in order to ensure a smooth functioning of the market, which is another key pillar of CySEC's supervisory mandate;
- iv. A Manager authorized under EU rules may manage a (CY) Fund on a remote basis, so that there is a need for a regulated local professional to carry out the tasks associated with the proper pricing of the Fund and act as a reliable point of contact for investors; and
- v. The Administrator's profession is currently unregulated,

CySEC has published the Proposed IFA Law for consultation, in order to address the investor protection, market integrity and compliance issues associated with the provision of Administration Services.

The Proposed IFA Law is a nationally initiated piece of legislation aiming at extending regulation throughout the outsourcing chain, in alignment with the existing framework. At the same time, the Proposed IFA Law takes into account current market practice, which is the provision of Administration Services to Funds established in other jurisdictions by local Administrators.

Starting point of the Proposed IFA Law is that the provision of Administration Services is a delegated, i.e. secondary, activity, so that compliance with the provisions governing such delegation is required at all times. At the same time, the Proposed IFA Law recognizes that the provision of Administration Services varies depending on the investable assets, trading frequency and investor dealings of a Fund, so that a *'one-size fits all'* approach as to the applicable requirements could not apply, but rather a bespoke regime.

By means of a brief presentation, the key provisions of the Draft Law include:

- **Exemptions**, which take into account the fact that an EU Manager, whose authorisation also includes Administration Services as mentioned above, may prefer to perform Administration Services in-house without proceeding to a delegation or it may act as a delegate of another EU Manager in respect of Administration Services;
- **Bespoke licensing regime**, given the variety of a Fund's investable asset classes and their differing characteristics (liquid/illiquid, tradable or not etc.), its investor-dealing frequency (e.g. Funds raising capital during an one-off fundraising period up to Funds being open to subscriptions and redemptions daily) or the range of Administration Services offered (for certain Funds the mere incorporation of values is sufficient for the calculation of the NAV, whereas for other Funds a valuation process needs to take place). At the same time, an Administrator may obtain CySEC's ad hoc approval for the provision of other services under certain conditions;
- **Bespoke organizational requirements**, in order to ensure the prudent management of the Administrator.
- **Bespoke prudential requirements**, taking into consideration the fact that the two main entities involved in the Fund's operations, i.e. the Manager and the depositary, are already subject to sufficient capital requirements, whereas the risks relating to the provision of the Administration Service are operational in nature;
- **Conduct of business rules**, taking into consideration the fact the Administrator can provide simultaneously Administration Services to more than one (competing) Funds, so that conflicts of interest need to be addressed; or that an Administrator when performing its back-office tasks needs to perform relevant due diligence on investors, so that it has to be considered as an '*obliged entity*' for AML purposes; or that an Administrator needs to be familiar with the obligations and rules laid down in the offering documents of a Fund or the regulatory framework governing the Fund and/or the Manager, which may not be Cyprus-based, so that a compliance function needs to be established;
- **Requirements relating to the provision of the Administration Services**, e.g. as to the NAV calculation process, including cases of rectification of an error in the NAV calculation and the subsequent need to determine a materiality threshold; or the close links between the processing of investor subscription and/or redemption orders and the need to ensure that the Funds' registry is updated accordingly; and

- **Reporting obligations** related with the Administration Services provided and the type of Funds serviced.

CySEC expects its initiative to mitigate a substantial proportion of the risks involved in the provision of Administration Services, such as:

- Operational risks by ensuring that adequate business continuity and business recovery arrangements are in place and that the relevant provider has a business infrastructure in place, which is commensurate with the type of Fund to be serviced, subject to proportionality considerations;
- Mitigating compliance and investor protection risk respectively, by providing e.g. clear guidance as to the rectification of errors in the NAV calculation;
- Ensuring that investors' rights, in particular investors' ownership rights, are safeguarded by means of relevant requirements as to the keeping of the Fund's registry and that investor dealings (subscriptions/redemptions/transfers) are processed in accordance with the applicable rules.

**Consultation process:**

Interested parties may submit their comments to the CySEC Policy Department by email at [policy@cysec.gov.cy](mailto:policy@cysec.gov.cy).

The submission of comments should be made **no later than 5 July 2021**, as per the guidance provided in CP-02-2021.

**ENDS.**