



CYPRUS SECURITIES AND EXCHANGE COMMISSION

CONSULTATION PAPER CP2007-13

Consultation Paper regarding additional organisational requirements for CIFs and the definition of the term ‘material change’

The Cyprus Securities and Exchange Commission (‘the Commission’) exercising its efficient supervision and consultation procedures with the relevant parties at the market as far as the proposed amendments at the national legislation, circulates the present Consultation Paper for purposes of submitting comments/views regarding the additional organisational requirements that CIFs are required to fulfil and the definition of the term ‘material change’.

Therefore, the Commission invites you to submit your comments/views until **Tuesday 15 January 2008**, preferable at the email legal@cysec.gov.cy or, if this is not possible, at the address:

Stasikratous 32
4th floor
Nicosia
Fax. 22 754671

Attached as **Annex A** are the proposed amendments.

Copy of the present Consultation Paper can be found at the Commission’s Web Site at <http://cysec.gov.cy>

Published on 20 December 2007.

**Additional Organisational requirements for CIFs and definition of the term
'material change'**

1. Composition of the Board of Directors of CIFs

- 1.1 The board of directors of a CIF shall consist of at least:
- (a) two executive members and
 - (β) two independent non- executive members.
- 1.2 Executive member means the persons who are not non executive members of the board of directors.
- 1.3 Non executive member means the members of the board of directors who are not involved in the day to day management issues of the CIFs but are responsible with the supervision of all the corporate issues.
- 1.4 Independent member means the person who:
- (a) was never a member of the staff of the CIF or the group which the CIF belongs during the past five years.
 - (b) does not have a close relation, whether spouse or related up to first degree (including relations determined in section 2 of the Law 144(I)/2007 at the definition of the term 'person with whom a relevant person has a family relationship' and are not mentioned in the present paragraph), or relation between employer – employee, with other members of the board of directors or with senior management or with shareholder that controls directly or indirectly the majority of the share capital or CIF's voting rights.
 - (c) does not have any close relation or professional or any other relation with the CIF's external consultants or auditors.
 - (d) was not in a member of the board of directors of the CIF for the period of more than nine years from the first appointment date.
 - (e) does not or did not hold during the past three years, any professional relationship with the CIF whether directly, or as shareholder, member of the board of directors or member of senior management of an organisation which holds or was holding any kind of relation with the CIF.
 - (f) is not a member of the senior management or executive member of the board of directors of a directly or indirectly related or subsidiary business, nor has been one for the past twelve months.
 - (g) is not a member of other board of directors in which other members of the board of directors are participating or has material business relations with other members of the board of directors through other companies or organisations.
 - (h) does not have any other connections or circumstances that might affect or seem that might affect its independent and objective judgment.

2. Resident place of the members of the CIF's board of directors

2.1 The majority of the member of the board of directors of the CIF shall be residents of the Republic.

2.2 Resident of the Republic means the person who has a permanent residence in Cyprus and is available any time.

3. CIF's management

The persons determined in article 12(3) of the Law 144(I)/2007, who are responsible for the management of the CIF, can be the executive members of its board of directors.

4. CIF Staff

4.1 The members of the staff of the CIF should:

- (a) Render their services with a full and exclusive employment at the CIF.
- (β) Be determined and accessible any time.

4.2 The reporting lines of the members of the staff shall be within the CIF.

4.3 In cases where the CIF belongs to a group, is permitted:

- (a) to the members of its staff to parallel exercise the same duties in other CIFs that belong in the same group.
- (b) to the members of the staff, who do not offer investment or ancillary services or conduct investment activities, to offer services in other companies of the same group.
- (c) the reporting lines of its members of the staff may also be within the group.

4.4 The members of the staff of the CIF should know well the Greek or the English language.

5. CIF's Head Offices

5.1 The CIF's head offices in the Republic shall be fully staffed and specifically, all the CIF's members of the staff shall exercise their duties from the CIF's head offices, unless they are members of the staff of the CIF's branch that operates outside the Republic.

5.2 Complying with paragraph 5.3 below, the Commission can grant exceptions from the implementation of the provisions of paragraph 5.1 if the CIF satisfies the Commission that:

- (a) it is impossible to relocate certain of its staff members in the Republic.
- (b) this fact does not affect the smooth operation of the CIF as well as the exercise of the effective supervision by the Commission.

Applications for exceptions should be submitted at the Commission to the address:

Cyprus Securities and Exchange Commission
Investment Firm Department
Stasikratous 32, 4th Floor
P.O.Box 24996
1306, Nicosia
Fax : +357 22 754671
Email address: investmentfirms@cysec.gov.cy

5.3 The Commission does not grant exceptions, as specified in paragraph 5.1, for the following members of the staff of the CIF, who shall exercise their duties from the CIF's head offices:

- (a) At least one of the persons mentioned in article 12(3) of the Law 144(I)/2007 or other person which is determined as such and knows the CIF's activities in depth
- (b) Compliance Officer
- (c) Internal Auditor
- (d) Risk management officer
- (e) Financial Controller - accountant
- (f) Back office officer

6. Material change

6.1 According to section 34 of the Investment Services and Activities and Regulated Markets Law of 2007 (the 'Law') "*...any material change in the conditions for granting a CIF authorisation as laid down in Part III, shall immediately be notified to the Commission. The Commission may, by way of directives specify the meaning of the term "material change"*".

The Commission defines that the term 'material change' includes the following:

- (a) Change of the CIF's company details as these are determined on subparagraphs 1.1. – 1.13 of the Form 144-03-01 of the Commission
- (b) Increase of issued and paid capital
- (c) Acquisition or sale of subsidiary companies or of at least twenty percent (20%) of the voting rights or the capital of a company
- (d) Recruitments, resignations, dismissals of persons that are participating directly in the provision of investment and non core services or and in the exercise of investment activities, as well as persons that are heads of units that provide/exercise these services/activities
- (e) Outsourcing of critical or important operational functions or investment services or activities to providers that are established in a member state
- (f) Enrollment of the CIF as a member of a regulated market
- (g) Access to central counterparty, clearing and settlement systems
- (h) Arrangements with central counterparty, clearing and settlement systems when a CIF operates an MTF
- (i) Collaboration with undertakings/eligible counterparties
- (j) Operation of representative offices

- (k) Material changes in the policies, procedures, mechanisms and rules that have been established by virtue of section 18 (organisational requirements) and 19 (Trading process and finalisation of transactions in an MTF) of the Law
- (l) Any change on the information of paragraph 20.2 (Other information regarding the applicant) of the Form 144-03-01 of the Commission
- (m) Any change on the information of paragraph 21 (An applicant established in a third country) of the Form 144-03-01 of the Commission

6. 2.A CIF should notify immediately the Commission for every material change after its occurrence, by submitting all the relevant information that are mentioned in the Form 144-03-01 of the Commission and relate to the particular change.

It is noted that the above material changes are not subject to the Commission approval.