

**The Investment Services and Activities and Regulated Markets  
(Amending) Law of 2009 is enacted with its publication in the  
Official Gazette of the Republic of Cyprus in accordance with  
Section 52 of the Constitution**

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**No. 106(I) of 2009**

**LAW TO AMEND THE INVESTMENT SERVICES AND ACTIVITIES  
AND REGULATED MARKETS LAW**

Preamble.  
Official  
Journal of the  
EU: L.247,  
21.9.2007,  
p.1.

For the purposes of harmonization with paragraphs 1, 2 and 3 of Sections 3, 7 and 8 of the European Union act entitled 'Directive 2007/44/EC of the European Parliament and of the Council of 5 September 2007 amending Directive 92/49/EEC of the Council and Directives 2002/83/EC, 2004/39/EC, 2005/68/EC and 2006/48/EC as regards procedural rules and evaluation criteria for the prudential assessment of acquisitions and increase of holdings in the financial sector'

the House of Representatives enacts as follows:

Short Title.  
144(I) of  
2007.

**1.** This Law shall be cited as the Investment Services and Activities and Regulated Markets (Amending) Law of 2009 and shall be read as one with the Investment Services and Activities and Regulated Markets Law of 2007 (hereinafter called the 'principal law') and the principal law and this Law shall be jointly cited as the Investment Services and Activities and Regulated Markets Laws of 2007 and 2009.

Amendment  
of Section 2 of  
the principal  
law.

**2.** Section 2 of the principal law is amended by replacing the definition of the term 'qualifying holding' with the following new definition:

190(I) of 2007 'Qualifying holding' means the direct or indirect  
72(I) of 2009. holding in an Investment Firm, which represents ten

per cent (10%) or more of the capital or of the voting rights of an Investment Firm, 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’.

Amendment  
of Section 33  
of the  
principal law.

**3. Section 33 of the principal law is amended as follows:**

(a) by replacing subsection (1) thereof with the following new subsection:

‘(1) (a) A person (for the purposes of this Section and Sections 33A and 33B, ‘the proposed acquirer’) that, alone or in concert 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 (for the purposes of this Section and Sections 33A and 33B ‘the proposed acquisition of holding’), shall notify the Commission in writing, indicating the size of the intended holding and the relevant information as provided in subsection (4) of Section 33B.

(b) For the purposes of this Section, a person is deemed to act in concert with other persons, in respect of a proposed acquirer, when these persons cooperate between them and includes the following categories of persons:

(i) Persons having a family relationship as follows:

(A) spouses or persons living together for at least one year;

(B) dependent child or adopted child of the person;

(C) other relative being a member of the person's household for at least one year;

(ii) any company in which the person is a member of the board of directors;

(iii) any persons being partners;

(iv) any persons maintaining close bonds; and

(v) any other person whose interests, in the opinion of the Commission, are mutually dependent with the interests of the proposed acquirer or the shareholder.

(c) A person having decided to cease to hold, directly or indirectly, a qualifying holding in a CIF, shall notify the Commission in writing, indicating the size of its intended holding. Such person shall also notify the Commission of its decision to reduce its qualifying holding so that the proportion of the voting rights or of the capital held would fall below twenty per cent (20%), thirty per cent (30%) or fifty per cent (50%) or so that the CIF would cease to be its subsidiary.

(d) In determining compliance with the qualifying holding criteria, the voting rights or the shares with a voting right held by an IF or credit institutions as a result of providing the underwriting and/or placing of financial instruments on a firm commitment basis, in accordance with paragraph 6 of Part I of the Third Appendix, shall not be taken into account, provided these rights are, on the one hand, neither exercised nor otherwise used for the purpose of intervening in the management of the issuer and, on the other, transferred within one year of their acquisition.';

(b) by replacing subsection (2) thereof with the following new subsection:

'(2) In carrying out the assessment provided in subsection (1) of Section 33B (hereinafter called 'the assessment'), the Commission shall work in full consultation with the relevant competent authorities, in case the proposed acquirer is one of the following:

- (a) a credit institution, insurance undertaking, IF or UCITS Management Company, with an operation licence in another member state or in a sector other than that in which the acquisition is proposed;
- (b) the parent undertaking of a credit institution, insurance undertaking, IF or UCITS Management Company, with an operation licence in another member state or in a sector other than that in which the acquisition is proposed; or
- (c) a natural or legal person controlling a credit institution, insurance undertaking, IF or UCITS Management Company, with an operation licence in another member state or in a sector other than that in which the acquisition is proposed.

The competent authorities shall, without undue delay, provide each other with any information which is essential or relevant for assessing the acquisition of the holding. In this regard, the competent authorities shall transmit to each other, upon request, all relevant information and shall communicate between them on their own initiative all essential information. The decision of the competent authority which has issued the operation licence of the IF in which the acquisition is proposed must indicate any views or reservations expressed by the competent authority which is responsible for the supervision of the proposed acquirer.

(c) by replacing subsection (3) thereof with the following new subsection:

‘(3) In case a person, alone or in concert with another person, acquires or increases or ceases to hold or decreases its direct or indirect qualifying holding in a CIF without complying with the provisions of this Section and Sections 33A and 33B or despite the Commission’s opposition as laid out in Sections 33A and 33B, in addition to its power to impose an administrative fine under Section 35, the Commission may take against the said person one or more of the following measures:

- (a) suspension of the exercise of the voting rights deriving from shares held by the said person, alone or in concert with another person, for a period not exceeding five years;
- (b) nullity of the votes;
- (c) prohibition to dispose of or sign an agreement for the disposal or sale or exchange or lease or transfer or donation and generally the alienation of the shares held. In case any of the actions set forth in this paragraph are implemented, the Commission has the power to consider them as null and void;
- (d) prohibition of acquisition, by means of donation or exercise of options, of shares in the CIF;
- (e) prohibition of the CIF to make any payments deriving from the shares, save in the case of winding up of the CIF.'

(d) by replacing subsection (4) thereof with the following new subsection:

106(I) of 2009.

'(4) In the case of proposed holding acquisitions for which the notifications under subsection (1) had been submitted to the Commission prior to the entry into force of the Investment Services and Activities and Regulated Markets (Amending) Law of 2009, the assessment procedure is carried out in accordance with the legal provisions in force at the time of the notification.'

(e) by adding in subsection (5) thereof, immediately after the phrase 'holds the indirect holding', (fourth line) the phrase 'and its associates'

(f) by adding in subsection (7) thereof, immediately after the phrase 'previous calendar year' (third line) and before the comma, the phrase 'as well as its associates'; and

(g) by adding in subsection (8) thereof, immediately after the phrase 'as far as it is concerned' (third line) and before the comma, the phrase 'or its associates';

Amendment of the principal law with the addition of

**4.** The principal law is amended by adding, immediately after Section 33 thereof, the following new Sections:

new Sections

Assessment  
Period

33A.-(1)(a) The Commission shall, promptly and in any event within two (2) working days following receipt of the notification required under paragraph (a) of subsection (1) of Section 33, as well as following the possible subsequent receipt of the information required under subsection (2), acknowledge receipt thereof in writing to the proposed acquirer.

(b) The Commission must, within sixty (60) working days from the date of the written acknowledgement of receipt of the notification under paragraph (a) of subsection (1) of Section 33 and all the information required under subsection (4) of Section 33B (hereinafter called 'the assessment period'), carry out the assessment.

(c) The Commission shall inform the proposed acquirer of the date of expiry of the assessment period at the time of acknowledging receipt.

(2)(a) The Commission may, during the assessment period, if necessary, and no later than on the 50<sup>th</sup> working day of the assessment period, request any further information that is necessary to complete the assessment. Such request shall be made in writing and shall specify the additional information required.

(b) For the period between the date of request for information by the Commission and the receipt of a response thereto by the proposed acquirer, the assessment period shall be interrupted. The interruption shall not exceed twenty (20) working days. Any further requests by the Commission for completion or clarification of the information shall be at its discretion but may not result in an interruption of the assessment period.

(c) the Commission may extend the interruption referred to in paragraph (b) up to thirty (30) working days if the proposed acquirer is:

(i) situated or regulated outside the Community; or  
(ii) a person not subject to supervision under the national legal provisions transposing into the law of the member states:

Official Journal of the EU  
L. 375, 31.12.1985, p. 3  
L76, 19.3.2008, p. 42

(A) a European Community act entitled 'Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)', as last amended by Directive 2008/18/EC of the European Parliament and of the Council of 11 March 2008 and as may be further amended or replaced from time to time;

Official Journal of the EU:  
L. 228, 11.8.1992, p.1  
L. 81, 20.3.2008, p. 69

(B) a European Community act entitled 'Directive 92/49/EEC of the European Parliament and of the Council of 18 June 1992 on the coordination of laws, regulations and administrative provisions relating to direct insurance other than life insurance and amending Directives 73/239/EEC and 88/357/EEC (third non-life insurance directive)', as last amended by Directive 2008/36/EC of the European Parliament and of the Council of 11 March 2009 and as may be further amended or replaced from time to time;

Official Journal of the EU:  
L.345, 19.12.2002, p. 1  
L. 76, 19.3.2008, p. 44

(C) a European Community act entitled 'Directive 2002/83/EC of the European Parliament and of the Council of 5 November 2002 relating to life insurance', as last amended by Directive 2008/19/EC of the European Parliament and of the Council of 11 March 2008 and as may be further amended or replaced from time to time;

Official Journal of the EU:  
L. 323, 9.12.2005, p. 1  
L. 81, 20.3.2008, p. 71

(D) a European Community act entitled 'Directive 2005/68/EC of the European Parliament and of the Council of 16 November 2005 on reinsurance and amending Council Directives 73/239/EEC, 92/49/EEC of the Council, as well as Directives 98/78/EC and 2002/83/EC', as last amended by Directive 2008/73/EC of the European Parliament and of the Council of 11 March 2008 and as may be further amended or replaced from time to time; or

Official Journal of the EU:  
L.177, 30.6.2006, p. 1  
L. 81, 20.3.2008, p. 38.

(E) a European Community act entitled 'Directive 2006/48/EC of the European Parliament and of the Council of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions', as last amended by Directive 2008/24/EC of the European Parliament and of the Council of 20 March 2008 and as may be further amended or replaced from time to time.

(3) If the Commission, upon completion of the assessment, decides to oppose the proposed acquisition, it shall, within two (2) working days and, in any case not exceeding the assessment period, inform the proposed acquirer in writing and provide the reasons for that decision. An appropriate statement of the reasons for the decision may be made accessible to the public either at the request of the proposed acquirer or at the discretion of the Commission.

(4) If the Commission does not oppose the proposed acquisition within the assessment period in writing, it shall be deemed to be approved.

(5) The Commission may fix a maximum period for concluding the proposed acquisition and extend it where appropriate.

Assessment  
procedure

33B –(1) In assessing the notification provided for in paragraph (a) of subsection (1) of Section 33 and the

information referred to in paragraphs (a) and (b) of subsection (2) of Section 33A, the Commission shall, in order to ensure the sound and prudent management of the CIF in which an acquisition is proposed, and having regard to the likely influence of the proposed acquirer on the CIF, appraise the suitability of the proposed acquirer and the financial soundness of the proposed acquisition against all of the following criteria:

- (a) the reputation of the proposed acquirer;
- (b) the reputation and experience of any person who will direct the business of the CIF as a result of the proposed acquisition;
- (c) the financial soundness of the proposed acquirer, in particular in relation to the type of business pursued or envisaged in the CIF in which the acquisition is proposed;
- (d) whether the CIF shall be able to comply and continue to comply with the prudential requirements under this Law and, where applicable, other laws and notably IF Directive 1/2005 on the supplementary supervision of investment firms belonging to financial conglomerates (Regulatory Administrative Act 495/2005), of Directive OD144-2007-05 regarding the capital adequacy of IFs (Regulatory Administrative Act 556/2007) and Directive OD144-2007-06 on large exposures of IFS (Regulatory Administrative Act 142/2008), in particular whether the group of which it shall become a part has a structure that makes it possible to exercise effective supervision, effectively exchange information among the competent authorities and determine the allocation of responsibilities among the competent authorities;
- (e) whether there are reasonable grounds to suspect that, in connection with the proposed acquisition, money

Official Gazette,  
Appendix Three (I)  
27.10.2005.  
19.12.2007.  
18.4.2008.

laundering or terrorist financing within the meaning of Section 4 of the Law to prevent and combat the legalization of proceeds from illegal activities of 2007 is being or has been committed or attempted, or that the proposed acquisition could increase the risk thereof.

(2) The Commission may oppose the proposed acquisition only if there are reasonable grounds for doing so on the basis of the criteria set out in subsection (1) or if the information provided by the proposed acquirer is incomplete.

(3) The Commission shall neither impose any prior conditions in respect of the level of holding that must be acquired nor examine the proposed acquisition in terms of the economic needs of the market.

(4) The Commission shall, with the issue of directives, specify the information that is necessary to carry out the assessment under this Section and which must be submitted at the time of notification referred to in paragraph (a) of subsection (1) of Section 33. The information required shall be proportionate and adapted to the nature of the proposed acquirer and the proposed acquisition of the holding:

It is understood that the Commission shall not require information that is not relevant to the assessment of the proposed acquisition of the holding.

(5) Notwithstanding the provisions of subsections (1) and (2) of Section 33A, where two or more proposals to acquire or increase qualifying holdings in the same CIF have been notified to the Commission, the latter shall treat the proposed acquirers in a non-discriminatory manner.

Amendment of  
Section 35 of the  
principal law.

**5.** Section 35 of the principal law is amended as follows:

(a) by replacing in subsection (1) thereof the phrase 'of subsection (2) of Section 33' (second line) with the phrase 'of Sections 33A and 33B'; and

(b) by replacing in subsection (2) thereof the phrase 'in

subsection (2) of Section 33' (third line) with the phrase 'in Sections 33A and 33B'.

Amendment of the principal law by repealing the First Appendix thereof .

**6.** The principal law is amended by repealing the First Appendix thereof.

Amendment of the Third Appendix of the principal law.

**7.** The principal law is amended by amending the title of the Third Appendix and Part I thereof with the following new titles:

‘THIRD APPENDIX

(Sections 2, 3(2) and 33 (1))

PART I

Investment services and activities’