



Cyprus Private Funds:

International Collective Investment Schemes (ICIS)

October 2013

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Introduction

By International Collective Investment Scheme Company (ICIS), otherwise known as an investment company, we mean a corporation that enables a number of investors to add collectively their assets, have these professionally managed and invested by independent managers/entities and, in case of successful investment, extract their profits in a tax efficient manner.

Why Cyprus?

The main advantages of a Cyprus Private Fund are:

Low Set Up Cost and Fast (Compared to the set up cost in other jurisdictions an ICIS can be set up at comparatively low fee and be operational in a very short time - approx. 1-3 months).

Flexible Investment Strategy (The fund does not fall under the rigid regulations of UCITS and therefore can take any form the promoters decide to. For example it can be set up as Equity Fund, Bond Fund, Hedge Fund, Property Fund, Fund of Funds or a fund with general investment policy that can invest in several of the above).

Low Regulation (The Fund is private, and thus enjoys low regulation and supervision compared to a public fund, or any other similar entities in other jurisdictions).

Low operational cost (Compared to other jurisdictions, costs such as administration, custodian fees, audit, legal services, accounting and other, are considerably less in Cyprus. For example no fully fledged offices are required).

Low reporting (Only annual and semi annual reports have to be submitted and monthly asset holdings statements).

Low to Zero taxation (Since the ICIS is a Cyprus resident company, it will enjoy all the low tax benefits and double tax treaties of the Cyprus system).

Reputable European jurisdiction (Private ICIS adhere to the relevant wide EU regulation. In addition to being on the white list of the OECD, Cyprus is also a FATF approved country).

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Supervisory authority

Cyprus introduced in May 1999, a legislation enabling the establishment and regulation of International Collective Investment Schemes [ICIS Law No 47(I)/99].

Under the above legislation, the Central Bank of Cyprus is the regulatory and supervisory authority and may, upon a written application, recognize a company incorporated under the Cyprus Companies Law, a trust created under the International Trust Law or a partnership registered under the Partnership and Business Names Law, as an International Collective Investment Scheme.

It should be noted the regulation of all ICIS will soon be transferred from the Central Bank to the Cyprus Securities and Exchange Commission (CySEC).

Legal forms of International Collective Investment Schemes

An ICIS can be constructed to reflect one of the forms below:

- a) International Fixed Capital Company
- b) International Variable Capital Company

The two forms named above are known as International Investment Company.

- c) International Unit Trust Scheme
- d) International Investment Limited Partnership

All four legal types of schemes can either be of limited or unlimited duration and may be structured in such a way as the promoters may determine, provided however, that adequate protection is afforded to the unit holders.

For the purposes of the present guide we are going to refer to the main requirements of the Law and the Central Bank of Cyprus of establishing and obtaining recognition as a private international collective scheme in the form of an International Variable Capital Company. This type is by far the most common form of private ICIS recognized in the Republic.

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The share capital of a Variable Capital Company fund varies as the company may continuously create new shares to meet investors demand and has the power to purchase back its own shares directly or indirectly out of its assets at the request of any of the unit holders wishing to exit in accordance with the provisions of the Articles of Association of the company.

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Some provisions of the Articles of Association are:

- The amount of share capital of the company should be equal to the net asset value of the shares of the company in issuance at anytime.
- The share capital may be divided into specific number of shares without assigning any nominal value thereto (par value).
- The actual value of the paid up shares of the company shall be at all times equal to the value of the assets of the company after deducting its liabilities.

General Information

What makes a Scheme “Private”?

A private international collective scheme is the one which its establishing documents restricts the right to transfer its units and limits the number of its shareholders to one hundred. A private ICIS is prohibited from making any invitation in any part of the world to the public to purchase units in the scheme. The Central Bank may dissolve the fund in case of advertisement.

An additional important and compulsory inclusion in the constitutional documentation of a Private Fund (as well in the offering memorandum) is the methods and frequency of calculation of the net asset value of its units (“NAV”) and the manner in which units will be distributed to the unit holders.

Minimum subscription

There is no minimum subscription and no requirement for a minimum capital for private international collective schemes.

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Bearer units

Issuance of bearer units is prohibited.

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Taxation

The tax regime applicable to funds in Cyprus is one of the most favorable in the EU.

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An ICIS is being treated from the taxation point of view as a Limited Company by shares with an applicable tax rate of 12.5% on corporate profits. The Company is exempted from profits received from any sale of shares or any other financial instruments. There is no withholding tax on dividend payment from Cyprus as well as interest payments made abroad. The interest income of the ICIS is also taxed at 12.5%.

An ICIS may take advantage the plethora of Double Taxation Treaties of Cyprus with many countries around the world. However, it should be stressed that the fund should be “managed and controlled” in Cyprus for the DTT benefits to be enjoyed (same criteria as with any other company). More importantly, with respect to a non-Cyprus resident investor, such investor based in a country party to a double-taxation treaty with Cyprus, would be highly likely to the benefit from substantial tax relief over any profits received from redemption or income received on a dividend. The extent of the relief will in many cases, reduce the tax payable by the investor in his/her home jurisdiction to zero.

Any tax suffered abroad on income subject to income tax will be credited against any income tax payable on such income irrespective of the existence of a double tax treaty.

Elements of a private ICIS

Launching a regulated private International Collective Investment Scheme in Cyprus entails professional regulated services by qualified providers. It also involves other professionals, which must be approved by the Central Bank. ASG Premier undertakes the selection and appointment of all professionals required for a private International Collective Investment Scheme to be licensed, established and operated. Our clients always maintain the option to provide their own Investment Manager, Custodian or Auditor so long as such providers are approved by the Central Bank. In detail, the roles in a private fund are usually as follows:

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Investment Manager: Currently the appointment of an Investment Manager is not mandatory in the case of a private fund. This requirement however may change with new Alternative Investment Fund legislation expected to be introduced. If appointment is made though, he is not required to be based in Cyprus.

The scheme may be managed internally through the executive Director/s appointed at the formation of the ICIS (must be approved by the Central Bank by virtue of his exclusive management duties in the Scheme). Alternatively the private ICIS may be managed externally through a third party, an Investment Firm licensed by a regulating authority to act as Investment Manager of the particular Scheme.

Members of the Board: It is advisable that the majority of the members of the Board of the Company must be Cypriots in order to pass the test of the effective management and control in Cyprus for taxation purposes. Private funds must have at least (2) executive directors, who are not corporations. All appointments to the office of the director must be pre-approved by the Central Bank.

Administrator: Private Schemes which do not have a physical presence in Cyprus must appoint a company to carry out the administration work of the Scheme. The said company must be approved by the Central Bank. Administration work mainly includes book-keeping and accounting, net asset valuation, share issue, registrar, transfer and redemption services and other relevant services (see section below for specific reporting requirements).

Custodian: Private Schemes must appoint a Custodian which must be a bank domiciled in Cyprus or a foreign Bank with an active branch in Cyprus unless specifically exempt by the Central Bank. There is the possibility to subcontract the duty of custody of foreign securities to a foreign licensed custodian who shall be acting as sub-custodian. The custodian operates as the treasurer of the fund, performs compliance tests and guarantees the protection of the assets. In certain cases, the requirement to appoint a Custodian may be waived.

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External Auditor: A Private Fund must appoint an auditor (licensed to carry out audit in Cyprus) who must be approved by the Central Bank and audited half year and yearly reports prepared under the international financial reporting standards must be sent to the investors and the Central Bank. The reports must be sent within two months from the end of the six months period and within three months from the end of the year end.

The auditor is also required to issue special audit report whenever there is a contribution in kind of assets into the private fund exceeding 10% of the NAV of existing assets.

The “fit and proper” test

The applicant to Central Bank of Cyprus, whether natural or legal who is going to be involved in the management, administration and establishment of an ICIS must pass the test of a “fit and proper person”. The Bank in determining whether such a person is “fit and proper” may take into account any relevant educational and professional qualifications, reputation, experience and capital resources available to it. It is essential that the natural or legal persons who are going to be appointed must comply with the high standards of professionalism and personal integrity in order to be accepted by the Central Bank.

Investment Restrictions

There is no provision for investment restrictions in the Law. The funds, in their own, may indicate in their Memorandum a wide range of restrictions in their investments and risk factors that could lead to distressed results.

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Registration

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Initial Authorization

The Central Bank must be provided with such information so as to be satisfied as to the competence of the directors, managers, as the case may be, and their probity is such as to render them suitable to act in their respective capacities. In other words they must satisfy the “fit and proper” test.

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Required information & document requirements

- A Standard Application form, containing the name of the scheme, statement of the general nature of the investment objectives of the scheme, level of the main charges to be borne by the scheme etc.
- Personal Questionnaires to be completed by the physical persons acting as Directors of the Company.
- Legal Persons Questionnaires to be completed by the significant shareholders of the Company.
- Management Questionnaires to be completed by the Manager of the ICIS (if applicable) in the event that the latter differs from the controlling shareholder.
- Corporate Documents like the Memorandum and Articles of Association and relevant material agreements.
- The Application fees see below

Government fees

1. Application fee – the application fee has been set to US \$ 500 for private ICIS. If the application is successful and recognition is granted by the Central Bank, then the said application fee will be considered to be the first year’s annual inspection fee (see point 2 below). If the application is not successful the application fee will not be refunded to the applicant.
2. Annual inspection fee – the annual inspection fee for private ICIS has been set to US \$ 500.

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Reporting requirements

Half year report

This is a not audited report which should be prepared by the External Auditor & accountant/administrator within two (2) months after the end of the six month period and it should be submitted to the Central Bank and to the investors.

Annual Report

This should be prepared by the External Auditor & accountant/administrator within three (3) months after the end of the year and it should be submitted to the Central Bank and the investors.

Annual tax form (IR4)

IR4 should be prepared by the External Auditor within 12 months from the end of each year and it should be submitted to the Inland Revenue Authority.

Report on valuation of a contribution in kind

This should be prepared by the External Auditor and submitted to the management of the Fund. This report should also be available to the investors free of charge upon request.

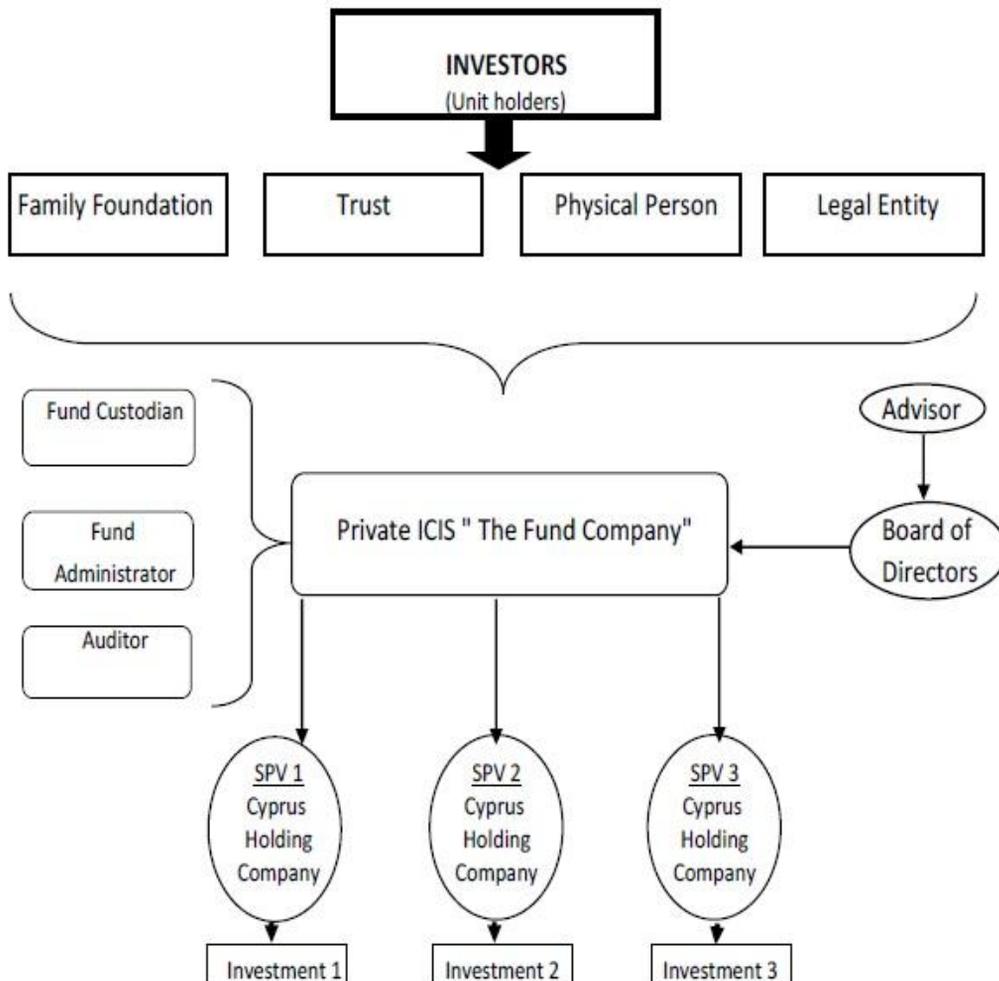
Our Services

Together with our extensive network of associates we can offer a total solution. Our services include:

- Licensing
- Tax planning
- Legal Support
- Administration Services
- Assurance Services

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A typical private Fund structure



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