



# ICIS BOOKLET

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## **Formation and requirements of a private international collective investment scheme**

### **Relevant legislation and other documents**

In connection with this guide, we have reviewed, the following applicable documents:

#### **Legislation :**

- a) *Cyprus Companies Law*
- b) *International Collective Investment Schemes Law (No 47(I) of 1999)*
- c) *The Trustees Law (CAP.193 1955)*
- d) *The International Trusts Law (No. 69/1992)*

#### **Guiding documents prepared by the Central Bank of Cyprus**

- a) *"Details of ICIS recognized by the the Central Bank of Cyprus"*
- b) *"Guide to Prospective Applicants on Obtaining Recognition as an International Collective Investment Scheme"*
- c) *"Guidance Note for the Prevention and Suppression of Money Laundering Activities"*

### **Main requirements of an International Variable Capital Company designated as a Private International Collective Investment Scheme incorporated in Cyprus**

The *International Collective Investment Schemes Law*(No 47(I)/99 came into force on May 1999 with the task to regulate all types of ICIS.

Under par. 3 (1) of the Law the Central Bank of Cyprus has been designated as the supervisory and regulatory body for the schemes, their trustees and their managers. It has the authority to grant recognition to the applicants as an ICIS and to issue directives, guidelines, investment restrictions and codes of conduct for the ICIS's managers and trustees.

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

According to the investment tasks and policy of each applicant an ICIS will be considered to be either

- I. An ICIS marketed to the public in general
- II. Marketed solely to experienced investors
- III. A private international collective scheme

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.

### **Main objective of an ICIS**

The main objective of an ICIS is the collective investment of funds of unitholders. At the option of unitholders, the units of an ICIS maybe redeemed or repurchased directly out of the assets of the ICIS unless the Law provides otherwise. A unitholder according to the Law is the owner of the units where a unit can be either a share or interest or participation to the scheme. A unitholder may be

- a) An ICIS
- b) An international business company (offshore enterprise)
- c) A person not being a permanent resident of Cyprus for the purposes of the Exchange Control Law

### **Variable Company or Fixed Capital Company**

The main difference of the two types of Companies is the ability of the unitholders to decide on the increase or decrease of the share capital of the Company. Therefore an International Variable Company enables the unitholders, the manager and the directors of the Fund to be more flexible and to adapt the Fund to the current micro and macroeconomic situations and data of the field that is going to be involved in.

### **Limited or Unlimited Duration**

Each type of ICIS may be of limited or unlimited duration with the structure to be decided by the applicants provided that adequate protection will be offered to the unitholders. In our case the scheme will have an unlimited duration.

### **Private character of the scheme**

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.

Being a private ICIS the Central Bank of Cyprus considers the scheme to be a private arrangement; therefore it needs less regulation without the obligation to appoint a manager or a trustee.

### **Minimum share capital**

There is no minimum subscription and no requirement for a minimum capital for private international collective schemes. Funds, are prohibited though to issue bearer units.

### **Taxation**

An ICIS is being treated from the taxation point of view as a Limited Company by shares with an applicable tax rate of 10% 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. 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).

### **The “fit and proper person”**

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.

### **Manager of the Fund**

A Manager of the Fund must be appointed who is going to be responsible for the managing of the Fund in whole. The natural or legal person who is going to be designated as Manager is the one who is going to implement the investment strategy of the Fund. It is not required to be based in Cyprus

## Members of the Board

It is advised 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.

## Administrator

It must also be noted that 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 based in Cyprus and be approved by the Central Bank of Cyprus.

An Administrator of the Fund must be appointed for the day to day management of the Company and to perform the internal auditing of the Fund, providing financial results of the Fund to the unitholders.

## Custodian

Private Schemes must appoint a Custodian which must be a Cyprus bank, unless specifically exempt by the Central Bank of Cyprus.

## External Auditor

An obligation of appointing an external auditor along with the requirement of keeping books and records exists for every form of ICIS. Obligatory is the publication of annual and half-yearly reports which must be sent to the Bank and the unitholders. It is a fundamental principle that the price of units of an ICIS be based on the net asset value of the ICIS which must be determined on a regular basis in accordance with international accounting practices.

## Procedure of Licensing the Fund

The first step for the applicant is to decide and designate the main officials as described above who are going to setup, manage, administrate and operate the Fund.

All the natural and legal persons mentioned above, who are going to be involved in the Fund in any way must complete certain questionnaires in relation to their professional, educational and personal background.

The second step is to incorporate the relevant Company which will be the International Variable Capital Company holder of the Fund.

The third step is to prepare a prospectus (*to be prepared by the client*) describing the main tasks of the Fund the way of operation and the individuals or the legal persons involved.

The final step is to submit all the above information to the Central Bank in order to obtain the relevant license.

There is an application fee of 500 USD followed by an inspection fee of 500 USD which is the lowest fee applied only to private international collective schemes. If the applicant is successful in passing the vetting procedure of the Bank and recognition is granted, then the application fee paid will be considered to be the first year's annual supervisory fee. If the application is not successful the application fee paid will not be refunded to the applicant.

In Appendix I please find the information which will be needed to file an application with the Central Bank of Cyprus for all kinds of funds. Once you decide to proceed with the registration of an ICIS with us we will explicitly list you the information/ documentation required.

**Please complete the requested information if applicable.**

<b><u>Requirement</u></b>	<b><u>Comment</u></b>
<b>Structure:</b>  (i.e. International variable capital company)	
<b>Open-Ended or Close-ended?</b>	
<b>Name:</b>	The name needs to be approved by the Registrar of Companies
<b>Proposed Launch Date</b>	
<b>Promoter:</b>	
<b>Share Capital:</b>	
<b>Redemption Dates:</b>	

<b>Subscription Dates:</b>	
<b>NAV:</b>	
<b>Minimum Initial:</b>  <b>Minimum Subsequent:</b>  <b>Minimum Total:</b>	
<b>Expected size of Fund:</b>  <b>Expected number of investors at launch:</b>  <b>Expected size of fund after 12 months:</b>  <b>Expected number of investors after 12 months:</b>	
<b>Investment Objective:</b>	
<b>Permitted Investments:</b>	
<b>Average number of trades:</b>	
<b>Average number of securities held:</b>	
<b>Dividends:</b>	

<b>Currency of Fund:</b>	
<b>Type of Investors:</b>	It must be decided the type of investors because it will determine the type of ICIS and several other structural issues such as minimum share capital of the company
<b>Countries where Fund will be sold:</b>	
<b>Method of Selling:</b>	
<b>Investment Manager:</b>	Must comply with the requirements of the Central Bank of the “fit and proper” test
<b>Investment Advisor:</b>	Must comply with the requirements of the Central Bank of the “fit and proper” test
<b>Administrator(corporate/registrar and transfer agency) and accounting, share subscriptions and redemptions, investor relations):</b>	
<b>Directors:</b>	The majority of the Board of directors must be Cypriots in order to pass the test of the effective management and control from Cyprus
<b>Auditors:</b>	Please note the local Monetary Authority’s new policy for sign off by local auditor. Local auditors must be designated
<b>Prime Broker/Custodian:</b>	Local Bank must be designated as Custodian or you must convince the Central Bank of Cyprus of the benefits for the Fund to appoint a foreign

	Custodian
<b>Overseas Counsel:</b>	The legal advisor must be local.
<b>Categorisation of Fund:</b>	
<b>Fiscal Year End:</b>	
<b>Leveraging?</b>  <b>Short-Selling?</b>  <b>Currency Hedging?</b>	
<b>Equalisation or Series Accounting?</b>	

As it was mentioned above, a private international collective scheme is the one less regulated by the Central Bank, which requires the minimum prerequisites by the supervisory and regulatory authority the Central Bank of Cyprus.

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Yours Sincerely,

Phani Schiza Antoniou  
 Globalserve Consultants Ltd

## Appendix I

### INFORMATION CONTAINED IN THE APPLICATION TO THE CENTRAL BANK OF CYPRUS

Below you may find the minimum information which must be included in the application:

1. **Name and type of applicant** (fixed or variable capital company, unit trust scheme, limited partnership).
2. Detailed information on the following matters:

**(i) Share Capital (in case of limited liability companies)**

The total number and par value of shares/units including voting, non-voting, management, redeemable and non-redeemable shares. The names of the holders of management shares and the number and proportion of shares to be held. Particular reference should be made to the holders of management shares who already participate in another international collective investment scheme (ICIS).

**(ii) Investment Manager (General Partner / Investment Partner / Investment and Advisory Committees for partnerships)**

Name of the investment manager, whether a shareholder and/or a director in the applicant company and whether regulated by a recognised supervisory body. Furthermore, the historical background of the investment manager should be stated, including the names of the directors (in case of a legal entity), date of commencement of business, licences obtained from recognised supervisory bodies, type of services offered, place(s) of business, associated/business parties and any other information which will, inter-alia, support the investment manager's experience, integrity, competence and compliance with laws and regulations. The report should also include as to whether the final responsibility on the investment policy of the applicant will be borne by the investment manager or the board of directors (the number of the paragraph in the Memorandum and Articles of Incorporation referring to the subject matter should be mentioned).

The same information is required for the general partner and/or the investment partner. Furthermore, the application summary should also include information on the role, composition, authority, responsibility and accountability of the investment and/or advisory committees.

**(iii) Directors (Limited Partners for partnerships including their minimum and target capital commitments)**

The names of the directors, their position, if any, in other ICIS and as to whether all the required reference letters from proposed referees have been obtained. The particular CVs for each of the directors, including replies by referees, should be appended in the report in the format described below.

**(iv) Investment objectives of the applicant**

The investment objectives should be fully explained, including extracts from the Offering Memorandum and/or the Memorandum and Articles of Incorporation (or partnership agreement), including any restrictions as well as imposed limits on the type and amount of investments, the body determining the investment strategy and the strategic asset allocation.

Furthermore, the investment risks should be analysed, including extracts from the Offering Memorandum and/or the Memorandum and Articles of Incorporation, which urge prospective investors to, inter-alia, consult advisers before deciding to invest.

**(v) Custodian**

The name of the local bank which will act as the custodian of the applicant.

**(vi) Administrator**

The name of the administrator of the applicant and additional duties that will be undertaken other than administration.

**(vii) External auditors and legal advisers**

**(viii) Legal form and the expected life of the applicant**

**(ix) The basic currency which will be used by the applicant**

**(x) The maximum number of the unit holders and the minimum initial subscription**

**(xi) Extracts from the Memorandum and Articles of Incorporation (or the partnership agreement):**

- (a) Regarding the net asset value of the applicant, the following information should be disclosed:

- definition of the net asset value
  - the valuation date
  - the basis of valuation of the applicant's assets
  - the basis of computation of the net asset value per share
  - the basis under which the applicant may suspend net asset value calculations, issues, redemptions and exchange of shares.
- (b) Regarding the redemption of shares, the following should be disclosed:
- the basis under which shares could be redeemed
  - redemption dates
  - redemption prices
  - basis under which shares could be compulsorily redeemed
- (c) In the case of partnerships, the basis under which distributions are to be made to the general partner and the limited partners and the frequency of such distributions. Furthermore, the restrictions imposed on the transfer of interests of the limited partners
- (d) Particular reference that "the company shall not have power to issue bearer shares"
- (e) The reporting date of the financial year of the applicant
- (f) Quotation of the particular paragraphs that:
- "The ICIS and the Fund Manager shall at all times abide by any Guidance Notes / Regulations issued under Section 59(4) of the Prevention and Suppression of Money Laundering Activities Law of 2007 (Law 188 (1)).
  - "The Central Bank of Cyprus shall not be liable by virtue of its recognition of the ICIS by reason of its exercise of the functions conferred on it by the Law. Recognition of the ICIS does not constitute a warranty by the Central Bank of Cyprus as to the credit worthiness or financial standing of the various parties to the ICIS".

**Name of Director / Investment Manager / General Partner / etc**

**CV and quotes from reference letters**

- (i) **Date and place of birth** (copy of passport and recent electricity bill and / or other evidence of his current residence)
- (ii) **Academic qualifications including dates obtained** (authenticated copies attached)
- (iii) **Education / training and experience in financial matters**
- (iv) **Membership in professional bodies and licences from supervisory authorities including dates obtained** (authenticated copies attached)
- (v) **Work experience in the last ten years (as a minimum period):**

<u>Period</u>	<u>Name of Employer</u>	<u>Position Held</u>
.....	.....	.....

- (vi) **Police clearance report** (original or authenticated copy)
- (vii) **References** (references from previous employment for the last ten years as a minimum period and from a minimum of three more referees)

Each referee should be separately identified by name, job title and relationship with the applicant. Furthermore, the reference given should be quoted, emphasizing on the **capacity** under which the referee knows the applicant and as to whether he considers the applicant to be a **fit and proper person** to provide financial services to the public.

Note: The authenticated reference letters should also be attached.

- (viii) **Any other information** that will assist the supervisory authority to conclude that the applicant is a **fit and proper person and of good financial standing** to offer financial services to the public.

## PRESENTATION

# International Investment Collective Schemes (ICIS) The New Trend

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1. Introduction
2. Uses of ICIS
3. Legal form of ICIS
4. Types of ICIS
5. Characteristics of ICIS and structure
4. Benefits of ICIS

### Introduction

In May 1999, Cyprus introduced legislation enabling the establishment and regulation of International Collective Investment Schemes ('ICIS').

Under the above legislation, the **Central Bank of Cyprus** is the **regulatory and supervisory authority for ICIS** 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**.

The sole objective of an ICIS is the collective investment of funds of unitholders.

#### Licensing Requirements

In order to establish an ICIS, the prior approval of the Central Bank of Cyprus has to be obtained. In order to obtain such approval, the Bank must be provided with such information so as to be satisfied as to the competence of the directors, promoters, managers or trustees, as the case may be, and that their probity is such as to render them suitable to act in their respective capacities.

## Common uses of a Cyprus fund

- Property investments, namely in countries having double tax treaties with Cyprus (i.e. India, Russia, Poland and others)
- Accumulation of funds of high net worth individuals in a private fund
- Investments in securities bonds and other financial instruments
- Collective fund of several sub-fund portfolios
- Fund of a number of other funds or sub-funds

## Legal form of ICIS

An ICIS can take the following legal forms:

- International Fixed Capital Company
- International Variable Capital company
- International Unit Trust Scheme, and
- International Investment Limited Partnership

All four types of ICIS may be established with limited or unlimited duration and may be structured in such a way as the promoters may determine, provided however, that adequate protection is in place for the unit holders

## Legal form of ICIS: International Capital Companies

### **International Fixed Capital Company**

This is an International Investment Company that is incorporated under the companies law and recognized to operate as an international fixed capital company by the ICIS Law. Its share capital cannot increase or decrease. Initial minimum capital has been set to US\$100,000 which will be marketed to the public or experienced investors. Fixed capital companies which are private international collective investment schemes (can have 100 or less investors) are exempted from this requirement.

### **International Variable Capital Company**

This is an International Investment Company that is incorporated under the companies law and recognized to operate as an international variable capital company by the ICIS Law. Its share capital may vary according to the investors participating in or exiting the company.

## Legal form of ICIS: Limited Partnerships

### **International Investment Limited Partnership Scheme**

This is a limited partnership that is registered under the Partnership and Business Names Law and which is recognized to operate as an international investment limited partnership by the ICIS law. The partnership must appoint a general partner who acts as the manager of the fund and who is responsible for any debts and obligations of the scheme that may arise. Limited partners are also members of the scheme and their liability is limited to the amount they have contributed to the scheme. The partners or unitholders of the fund that have limited liability should not take part in the conduct of the business of the scheme or have the power to contract on behalf of the international investment limited partnership. All contracts, deeds, instruments, letters and documents whatsoever shall be entered into, drafted, signed and executed by the general partner on behalf of the international investment limited partnership.

## Legal form of ICIS: Unit Trusts

### International Unit Trust Scheme

This is an International Trust created under the International Trusts Law recognized to operate as an international unit trust scheme by the ICIS Law.

A trust is legally defined as a relationship created – inter vivos or testamentary – by a person (the settlor) who places assets under the control of the trustee for the benefit of a third party (the beneficiary). These assets are like a separate “fund” and are not part of a trustee's own estate. The title of the trust assets stands in the name of the trustee and the trustee is empowered and duty bound to manage the assets held in trust in accordance with the terms of the trust agreement.

## Types of ICIS

Taking into account the investment policy and the particular investment objectives, an ICIS may be designated as:

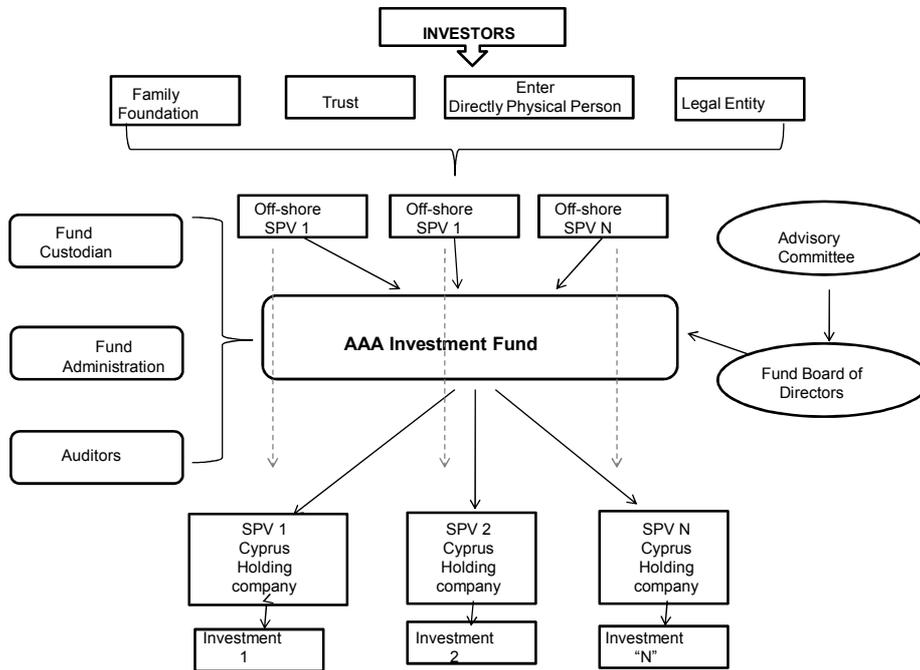
- An ICIS marketed to the general public
- An ICIS marketed solely to experienced investors; or
- A private international collective investment scheme (only 100 or less investors)

## Characteristics & Structure of Private ICIS in the form of International Variable Capital Company

- Maximum number of members upto 100 investors
- Share capital of the company may vary according to the investors participating/exiting the fund Thus when investors buy, the company issues more units and when investors exit, the company reduces the number of units.
- Board of Directors: the principal shareholder (s) may appoint themselves or their representatives to become members of the Board.
- A Cyprus Holding Company needs to be formed for the formation of the fund, followed by the application to the Central Bank of Cyprus. The approval of the license is a 3 month procedure
- Cannot be offered/ marketed to the general public and the right to transfer is restricted

## Characteristics & Structure of Private ICIS

- Custodian needs to be appointed with whom assets are placed. Cyprus Banks are very trust worthy & also banks in other countries are also accepted as custodians
- Administrator needs to be appointed in Cyprus whose task is to calculate the net assets value and other financial matters
- External auditor needs to be appointed
- A Fund Manager needs to be appointed
- Investors do not have to be experienced and there is no minimum subscription
- It is not required to apply investment restrictions



## Benefits of ICIS

**Flexibility:** Any asset can be included in the investment strategy of the ICIS.

**Transparency:** Annual and half-yearly reports must be prepared by the managers in relation to each ICIS.

**Tax Incentives:** Cyprus private ICIS benefit from significant tax incentives.

## Tax benefits of ICIS

### **Cyprus ICIS enjoy significant tax incentives:**

- An ICIS is treated identically as any other Cypriot entity, hence enjoys 10% flat corporation tax on annual net profits earned worldwide.
- Exemption from tax on profits from sale of shares and other instruments.
- Exemption from tax on foreign dividends received.
- No withholding tax on income repatriation (dividends paid to unitholders).
- No capital gains tax on disposal of shares/units by the holders.
- A wide network of Double Tax Treaties in place with more than 45 countries worldwide.

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