

## REGULATORY INTELLIGENCE

**COUNTRY UPDATE-Cyprus: Securities & Banking**

Published 28-Jun-2021 by  
Elias Neocleous & Co LLC



The relevant regulatory bodies established in Cyprus for the licensing, supervision and control of legal entities carrying on banking, investment and ancillary services and insurance business are the Central Bank of Cyprus, the Securities and Exchange Commission and the Insurance Companies Control Service of the Ministry of Finance (the Insurance Companies Control Service) respectively.

The Central Bank of Cyprus (CBC) was established in 1963 as an autonomous institution. Its main functions today include the implementation of the European Central Bank's (ECB) monetary policy decisions, holding and managing the official and international reserves, supervising financial institutions, safeguarding the stability of the financial system, promoting, regulating and overseeing the smooth operation of payment and settlement systems, acting as banker for the government, preparing statistical data for the ECB and participating in the international monetary and economic organisations.

The CBC has the sole responsibility for the regulation of financial institutions established or registered in Cyprus, for branches or representative offices of those financial institutions abroad and of representative offices in Cyprus of financial institutions established abroad carrying on banking activities and investment and ancillary services and activities.

The Authority for the Supervision and Development of Cooperative Societies (OCS) was established in 1985 as a public corporate body. Until 2014 it was responsible for the regulation and supervision of cooperative credit institutions but this responsibility has now been transferred from the OCS to the CBC. The OCS remains responsible for registration issues and matters relating to prudent management of cooperative companies operating outside the financial sector, as well as the general promotion of cooperative institutions in Cyprus.

The Cyprus Securities and Exchange Commission (CYSEC) was established in 2001 as a public corporate body.

CYSEC is responsible for supervision and control of:

- the operation of the stock exchange and other regulated markets that operate in the Republic of Cyprus and the transactions carried out on them;
- the issuers of securities listed on the stock exchange or other regulated markets of the Republic of Cyprus as well as any financial instruments traded therein;
- licensed investment services companies and administrative service providers; and
- collective investment schemes.

CYSEC has powers to grant operating licenses and to inspect companies that have securities listed on the stock exchange, brokers, brokerage firms, investment consultants, administrative service providers and mutual fund management companies, and to impose sanctions and disciplinary penalties.

CYSEC has the sole responsibility for the regulation of the provision of investment and ancillary services in Cyprus in accordance with MiFID I and MiFID II Directives for which a license is required to be granted under existing legislation and for the operation of regulated markets and other related matters.



## General capital reserve requirements

In order for a credit institution (bank or cooperative society) to be granted a licence to carry on business in Cyprus it must have its own funds of at least 5 million euros as calculated in accordance with EU Regulation 575/2013, as amended. Thereafter, the credit institution is subject to the CBC Directive on calculation of capital requirements as implemented in accordance with the Directives of the ECB.

A Cyprus Investment Firm (CIF) must have its own funds equivalent to the minimum requirements set out in EU Regulation 575/2013, as amended by EU Regulation 2019/2033 taking into account the nature of the specific investment services or activities being provided.

Public companies registered in Cyprus must have an authorised share capital of at least 25,629 euros and in the case of public companies listed in a regulated market the authorised share capital must be available when they commence of business.

## Legislation

In the field of securities and banking Cyprus has taken active measures and enacted numerous legislative instruments implementing and harmonising the domestic legal status with applicable European directives and regulations.

### Domestic laws and European legislation applicable to Cyprus

*In the field of incorporation in Cyprus as a legal person carrying on business*

The Companies Law, Cap. 113 of 1951 to 2019 (the Companies Law), sets out the provisions under which any legal entity may be registered in the register of companies in Cyprus either as a private company limited by shares, private company limited by guarantee, public company, public company listed in a regulated market, branch or SE.

The Companies Law has been harmonised with all relevant significant European directives, including:

- First Council Directive 68/151/EEC on coordination of safeguards which, for the protection of the interests of members and others, are required by member states of companies with a view to making such safeguards equivalent throughout the Community;
- Fourth Council Directive 78/660/EEC on the annual accounts of certain types of companies;
- Sixth Council Directive 82/891/EEC concerning the division of public limited liability companies;
- Seventh Council Directive 83/349/EEC on consolidated accounts;
- Eleventh Council Directive 89/666/EEC concerning disclosure requirements in respect of branches opened in a member state by certain types of companies governed by the laws of another state;
- Directive 1999/93/EC on a Community framework for electronic signatures;
- Directive 2003/6/EC on insider dealing and market manipulation (market abuse);
- Directive 2003/51/EC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings;
- Directive 2004/25/EC on takeover bids;
- Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market;
- Directive 2005/56/EC on cross-border mergers of limited liability companies;
- Council Directive 2006/99/EC;
- Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts as amended by Directive 2008/30/EC;
- Directive 2006/46/EC on the annual accounts of certain types of companies;
- Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies;
- Council Regulation (EC) No 2157/2001 on the statute for a European company (SE);
- Directive 2007/63/EC as regards the requirement of an independent expert's report on the occasion of merger or division of public limited liability companies;
- Directive 2009/49/EC as regards certain disclosure requirements for medium-sized companies and the obligation to draw up consolidated accounts;
- Directive 2009/101/EC on coordination of safeguards which, for the protection of the interests of members and third parties, are required by member states of companies with a view to making such safeguards equivalent;
- Directive 2009/102/EC in the area of company law on single-member private limited liability companies;
- Directive 2009/109/EC as regards reporting and documentation in the case of mergers and divisions;
- Directive 2011/35/EU concerning mergers of public limited liability companies;
- Directive 2012/30/EU on coordination of safeguards which, for the protection of the interests of members and others, are required by member states of companies, in respect of the formation of public limited liability companies and the maintenance and alteration of their capital, with a view to making such safeguards equivalent;
- Directive 2013/24/EU adapting certain directives in the field of company law, by reason of the accession of the Republic of Croatia;
- Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings;
- Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, as amended;



THOMSON REUTERS™

© 2021 Thomson Reuters. All rights reserved.

- Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups;
- Directive 2014/102/EU adapting Directive 2013/34/EU of the European Parliament and of the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, by reason of the accession of the Republic of Croatia;
- Directive (EU) 2017/1132 of the European Parliament and of the Council relating to certain aspects of company law, as amended.

*In the field of securities*

The Cyprus Securities and Exchange Commission Law, Law 73(I) of 2009 to 2019 regulates the structure, responsibilities, powers and organisation of CYSEC and other related issues. Relevant EU pieces of legislation have been Regulation (EC) No 1060/2009 on credit rating agencies, as amended, Regulation (EU) No 236/2012 on short selling and certain aspects of credit default swaps, as amended, Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories, as amended, Regulation (EU) No 345/2013 on European venture capital funds, as amended, Regulation (EU) No 346/2013 on European social entrepreneurship funds, as amended and Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms, as amended.

The Public Offer and Prospectus Law, Law 114(I) of 2005 to 2019 was enacted to harmonise domestic legislation with Directives 2003/71/EC, 2010/78/EU, 2010/73/EU, 2014/51/EU, and 2013/50/EU.

CYSEC applies:

- European Regulation 2019/979 supplementing Regulation 2017/1129 with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal.
- European Regulation 2019/980 supplementing Regulation 2017/1129 as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market.
- Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market.
- Regulation (EU) 2019/2115 of the European Parliament and of the Council of 27 November 2019 amending Directive 2014/65/EU and Regulations (EU) No 596/2014 and (EU) 2017/1129 as regards the promotion of the use of SME growth markets.

The Establishment and Operation of an Investor Compensation Fund of Clients (ICF) of CIFs Regulations of 2004 were enacted for the purposes of harmonisation with Directive 97/9/EC on investor compensation schemes. These regulations have now been replaced by the Directive DI87-07 of 2019, as amended for the operation and the functions of the ICF as regards its member investment firms and their clients.

The Takeover Bids Law, Law 41(I) of 2007 to 2015, transposes Directive 2004/25/EC on takeover bids and Directive 2014/59/EU into domestic law.

The Transparency Requirements (Securities Admitted to Trading on a Regulated Market) Law, Law 190(I) of 2007 to 2017, transposed into domestic legislation Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and Articles 2, 5, 9 and 11 of Commission Directive 2007/14/EC laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC.

The main legislation in the area of AML is the Prevention and Suppression of Money Laundering Activities Law of 2007-2018 (L188(I)/2007) (the 'AML Law'), which sets out comprehensive measures against money laundering. The AML Law established a Unit for Combating Money Laundering (in Greek, MOKAS) which is responsible for money laundering and terror financing investigations.

On February 23, 2021, published in the Official Newspaper of the Republic of Cyprus, the amendment in relation to The Prevention and Suppression of Money Laundering and Terrorist Financing Law 188 (I) 2017, which implements the EU Directive 2018/843 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing (known as the 5th AML EU Directive).

Over the ensuing years, the AML Law has undergone amendments to give effect to new international initiatives and standards in the anti-money laundering field. The AML Law is in full conformity with the EU Directives on the prevention of the use of the financial system for the purpose of money laundering, with the Council of Europe's 1990 Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime, and the 40 Recommendations and 9 Special Recommendations of the Financial Action Task Force.

Cyprus' anti-money laundering (AML) legislation criminalizes money laundering from all crimes punishable with imprisonment in excess of one year and requires 'obliged entities' (such as credit institutions, investment firms, and insurance companies as well as lawyers (in respect of financial business) and accountants, real estate agents, and dealers in precious metals and stones) to implement procedures for preventing the use of their services for money laundering.

Persons carrying out relevant business must put in place proper 'know your customer' (KYC) procedures and maintain appropriate records to identify, investigate, trace, and document suspect transactions. They must institute and maintain adequate systems to identify and report suspect transactions, ensure that their employees are aware of their obligations under the Law, and provide



THOMSON REUTERS™

© 2021 Thomson Reuters. All rights reserved.

adequate training in this regard. They must appoint an appropriately qualified Money Laundering Compliance Officer to co-ordinate activities in this field and act as liaison point with the authorities.

The CBC is the supervisory authority for banks and persons licenced to provide money transmission services. For accountants and lawyers, the relevant professional bodies are responsible for members' compliance with the AML Law. Investment firms, alternative investment funds and their managers, UCITS and other regulated entities in the securities and capital markets fall within the scope of competent of CYSEC as regards their AML obligations. Finally, professional providers of trust, fiduciary, and company management services are regulated by CySEC under the Law Regulating Companies providing Administrative Services and Related Matters, Law 196(I) of 2012 as amended.

The Cyprus Securities and Cyprus Stock Exchange Laws, Law 14(I) of 1993 to 2017 regulate the operation of the Cyprus Stock Exchange, the powers of the Council of the Cyprus Stock Exchange and trading in transferable securities in general.

The Council of the Cyprus Stock Exchange has issued a number of Regulatory Decisions regarding inter alia the Registration of Members — Organisation and Qualification of Employees of 2010 to 2012, Decisions on the Members' Code of Conduct of 2005, Regulatory Decisions regarding the Stock Exchange's Markets of 2014, a Regulation regarding the conditions, obligations and other related matters concerning market makers of financial instruments against own funds in the markets of the Stock Exchange of 2011.

The Securities and Cyprus Stock Exchange (Central Securities Depository and Central Registry) Laws, Law 27(I) of 1996 to 2019, the Regulatory Decisions of the Council of the Cyprus Stock Exchange on the Operation of a Central Securities Depository and Central Registry of 2006, as amended.

The Cyprus Stock Exchange has also created a Central Registry of Stock Exchange Securities — Investors' Manual by Regulatory Administrative Acts of 2006 to 2010.

Finally, the Cyprus Stock Exchange has created and maintains a register of non-listed securities by virtue of a Regulatory Administrative Act of 2012.

#### **Product specific legislation in the field of securities**

The Investment Services and Activities and Regulated Markets Law, Law 144(I) of 2007 to 2016 (the "IS Law") which implements Directive 2004/39/EC on markets in financial instruments (MiFID I) was repealed and replaced by Law 87(I)/2017 has harmonized Cyprus law with the provisions of the MiFID II Directive (Directive 2014/65/EU) and together with the rights and obligations set out in MiFIR as well as in the applicable EU and CYSEC secondary legislation constitute the framework for the provision in Cyprus of investment services and the carrying out of investment activities by regulated firms, namely Cyprus investment firms (CIFs) as well as investment firms otherized in another member state or third country.

The Open-Ended Undertakings for Collective Investment (UCI) Law, Law 78(I) of 2012 to 2016 was enacted to regulate the operation and supervision of Open-Ended UCITS and of management companies and to regulate the taxation regime of Open-Ended UCITS. It harmonises domestic legislation with Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), implemented Commission Regulation (EU) No 583/2010 implementing Directive 2009/65/EC as regards key investor information and conditions to be met when providing key investor information or the prospectus in a durable medium other than paper or by means of a website and Commission Regulation (EU) No 584/2010 implementing Directive 2009/65/EC as regards the form and content of the standard notification letter and UCITS attestation, the use of electronic communication between competent authorities for the purpose of notification, and procedures for on-the-spot verifications and investigations and the exchange of information between competent authorities and applies Commission Regulation (EU) No 1092/2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, Commission Regulation (EU) No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), Commission Regulation (EU) No 1094/2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), Commission Regulation (EU) No 1095/2010 establishing a European Supervisory Authority (European Securities and Markets Authority), Directive 78/660/EEC on the annual accounts of certain types of companies, Directive 83/349/EEC on consolidated accounts, Directive 2004/39/EC on markets in financial instruments and Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, as well as Directives 2013/14/EU and 2014/91/EU.

A new law on Alternative Investment Funds was enacted in 2018, namely the Alternative Investment Funds Law, 124(I)/2018, which updated and replaced the regime that was applicable since 2014 for Cyprus authorized alternative investment funds. The Alternative Investment Funds Law together with the he Alternative Investment Fund Managers Law, Law 56(I) of 2013, as amended (which transposes into Cyprus law the provisions of the EU Directive 2011/61/EU on Alternative Investment Fund Managers) is the main Cyprus legislation on the authorization, operating requirements, investor protection and other rights and obligations of alternative investment funds and their managers for their marketing of their units towards their retail, well-informed and/or professional clients-investors.

As regards 'sub-threshold AIFMs', namely alternative investment funds and/or their managers the portfolio of which do not exceed the amount of 100,000,000 euros (with leverage or 500,000,000 euros without leverage and subject to a five-year lock up period for investors), CYSEC applies Commission Implementing Regulation (EU) No 447/2013 establishing the procedure for AIFMs which



THOMSON REUTERS™

© 2021 Thomson Reuters. All rights reserved.

choose to opt in under Directive 2011/61/EU of the European Parliament and of the Council and Regulation (EU) No 448/2013 establishing a procedure for determining the Member State of reference of a non-EU AIFM pursuant to Directive 2011/61/EU.

The Regulations of the Cyprus Stock Exchange on depository receipts of 2012.

The Regulatory Decisions of the Cyprus Stock Exchange regarding Clearing and Settlement of Transferable Securities Transactions in Book Entry Form of 2011 to 2013.

#### **Other matters regulated by CYSEC**

The Law regulating companies providing administrative services and related matters, Law 196(I) of 2012 to 2015 regulates the professional activities provided in the context of administering private companies by other companies.

*In the field of banking as regards licensing and supervision of credit institutions (banks and cooperative societies)*

The Business of Credit Institutions Laws, Law 66(I) of 1997 to 2017, transpose into domestic law Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions (recast), Commission Directive 2007/18/EC as regards the exclusion or inclusion of certain institutions from its scope of application and the treatment of exposures to multilateral development banks, Commission Directive 2014/59/EE establishing a framework for the recovery and resolution of credit institutions and investment firms, as amended, Regulation (EU) No 1092/2010 on European Union macro-prudential oversight of the financial system and establishing a European Systemic Risk Board, Regulation (EU), as amended, No 1093/2010 establishing a European Supervisory Authority (European Banking Authority), as amended, and Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms, as amended.

The CBC Directive on Financial Leasing of 2017.

The CBC Directives on Credit Granting and Review Processes of 2016 to 2017.

The CBC Directive regarding the Notification of Borrowers and Guarantors of 2016.

The CBC Directive, Regulations and Guidelines which govern the operation of Credit Acquiring Companies.

The CBC Directive for the operation of a system or a mechanism for the exchange, collection, and provision of data of 2015.

The CBC Directive on Governance and Management Arrangements in Credit Institutions R.A.A. 375/2014.

The CBC Directive on the Preparation and Submission of Recovery Plans P.A.A. 154/2014.

The CBC Circular on the treatment of exposures to persons affected by the implementation of the Eurogroup decision of 25 March 2013.

The CBC Directives of 2005 on the Monitoring of the Foreign Currency Exposures of locally incorporated banks and branches of foreign banks.

The CBC Directive on the supplementary supervision of credit institutions which belong in a financial conglomerate of 2012 and 2016.

The CBC Directive of 2010 to 2011 on the computation of prudential liquidity in all currencies.

The CBC Directive on the Assessment of the Fitness and Probity of Members of the Management Body and Managers of Authorised Credit Institutions of 2014.

The CBC Directive of 2015, for the Operation of a System or a Mechanism for the Exchange, Collection and Provision of Data.

The CBC Guidelines of 2007 on the management of country risk.

The CBC Guidelines of 2008 on the management of market risk are mainly based on the Core Principle on Market Risk which is included in the Core Principles Methodology paper published by the Basel Committee on Banking Supervision of the Bank for International Settlements and on the Guideline on Technical aspects of stress testing under the supervisory review process — CP 122, published by the Committee of European Banking Supervisors and are to be read in conjunction with the relevant sections of the CBC Guidelines to banks on the Internal Capital Adequacy Assessment Process (ICAAP), regarding the identification, measurement, monitoring and control of market risk.

The CBC Guidelines of 2008 on the management of operational risk implement operational risk as recognised in the capital requirements framework (Basel II) by the Basel Committee on Banking Supervision and the European Union Directive on capital requirements.

The CBC Guidelines of 2008 on the management of credit risk.

The CBC Directive of 2004 concerning the freedom of establishment and the freedom to provide services of financial institutions and subsidiaries of EU credit institutions applies to financial institutions incorporated in other member states of the European Union and concerns the freedom of establishment and the freedom to provide services of these institutions.

The CBC Guidelines of 2010 for the establishment of cross border institutions and the acquisition of control in banks outside the Republic by banks incorporated in the Republic.



THOMSON REUTERS™

© 2021 Thomson Reuters. All rights reserved.

The Prevention and Suppression of Money Laundering and Terrorist Financing Law, Law 188(I) of 2007 to 2018.

The CBC Directive of 2013 to credit institutions for the prevention of money laundering and terrorist financing (Fifth issue).

The CBC Directive of 2009 to 2011 to Money Transfer Business regulates money transfer services.

The Investment Services and Activities and Regulated Markets Law, (analysed above) Law 87(I)/2017 which harmonized Cyprus law with the provisions of the MiFID II Directive (Directive 2014/65/EU). The Liberalisation of the Interest Rate and Related Matters Law of 1999 to 2015. The Transfer of Banking Business and Collateral Law, Law 64(I) of 1997 to 2011.

The Restructuring of Financial Institutions Laws, Law 200(I) of 2011 to 2015 regulates the delegation of powers to the Council of Ministers for the assumption of measures to support financial institutions upon the recommendation of the CBC, taken with the view to safeguard the long term viability of the financial institution, safeguard the public benefit and serve the public interest.

The Resolution of Credit and Other Institutions Law, Law 22(I) of 2016 transposes the provisions of the Bank Recovery and Resolution Directive (BRRD) 2014/59/EC establishing a framework for the recovery and resolution of credit institutions and investment firms.

Joint Rules of the CBC and the Authority for the OCS as regards the Operation of a Central Information Registry for issuers of dishonoured cheques and other related matters of 2007.

#### *Product specific legislation in the field of banking*

The Electronic Money Law, Law 81(I) of 2012 regulates the issue of electronic money, the activities of electronic money institutions, their supervision and related matters, implements Directive 2009/110/EC on the taking up, pursuit and prudential supervision of the business of electronic money institutions and applies Directive 2007/64/EC on payment services in the internal market. Similarly, the Authority for the Supervision of Cooperative Societies has issued the relevant Regulations regarding Electronic Money Institutions of 2012.

The Consumer Credit Law, Law 106(I) of 2010 to 2017 EU Directive 2016/2011.

The Consumer Credit Contracts in relation to Immovable Property destined for Housing, Law 41(I)/2017 to 2019 harmonizes Cyprus law with EU Directive 2014/17/EU and Regulation 2016/1011.

The Transfer and Mortgage of Immovable Property Law, Law 9 of 1965 to 2015.

The Covered Bonds Law, Law 130(I) of 2010, allows and regulates credit institutions, including cooperative credit institutions, to issue covered bonds. The CBC is the designated body for registration and supervision of eligible issuers and covered bonds.

#### **Enforcement and investigation**

The Companies Law empowers the Council of Ministers, on the application of the members of a company or following a court order, to appoint investigators to investigate the affairs of a company and any related company if there are circumstances suggesting that the company's formation or business is being conducted fraudulently or unlawfully or in a manner oppressive to any number of the members or that the persons concerned with the formation or management of the company are connected with fraud or misfeasance or other misconduct towards the company or its members or if the members have not been provided with all the information with respect to the affairs of the company which they might reasonably expect.

Alternatively, in special circumstances, an examiner may be appointed over a company by the court to examine and provide a report regarding the affairs of the company.

The Registrar of Companies has the discretion, upon becoming aware that a company is not complying with its statutory filing requirements and is not paying its annual fees to the Registrar of Companies, to either send a letter to the company requesting it to comply with its legal obligations, impose or request by court order the imposition of administrative fines on the company and its officers responsible for the non-compliance and in certain circumstances the Registrar may proceed with striking the name of the company off the register of companies.

The CBC, CYSEC and the OCS are designated as the supervisory authorities for the supervision and application of the laws, Regulations and Directives applicable to credit institutions, investment firms and cooperative credit institutions, respectively. These supervisory authorities cooperate closely to ensure effective supervision and also cooperate with every other competent authority in the Republic responsible for the supervision of pension funds, insurance and reinsurance intermediaries and insurance undertakings.

The CBC exercises the Supervisory Review and Evaluation Process (SREP) in respect of all Cyprus incorporated credit institutions licensed by the CBC which are subject to capital requirements. SREP is exercised on an individual basis, sub-consolidated basis and consolidated basis. In the context of the practical application of SREP, CBC has designed a Risk Assessment System (RAS) which evaluates the overall risk inherent in each credit institution by breaking down and assessing separately the various risks faced and controls applied. Also, in the course of SREP the CBC reviews and assesses the internal capital adequacy assessment process (ICAAP) to ascertain whether credit institutions have in place sound, effective and complete strategies and processes to assess and maintain on an on-going basis the amounts, types and distribution of internal capital considered adequate to cover the nature and level of the risks to which they are or might be exposed.



THOMSON REUTERS™

© 2021 Thomson Reuters. All rights reserved.

Based on the SREP conclusions, the CBC requires corrective measures to be taken in respect of any weaknesses identified or where capital requirements regarding large exposures are not met. These measures include the maintenance of own funds above the minimum regulatory own funds, where it is considered that the application of other measures is unlikely to rectify the weaknesses.

If the CBC ascertains in its examination and supervision of a credit institution that it is not in compliance with the laws, directives and regulations of the CBC, it may impose an administrative fine up to 1,000,000 euros per offence and in the event that the violation continues a further 100,000 euros per day and further may amend, vary or revoke any license of a credit institution. The CBC has the authority to enter and inspect a credit institution. The infringement by a credit institution of any of the laws and regulations of the CBC may constitute an offence punishable by imprisonment not exceeding five years, a fine up to 1,000,000 euros and in the event that the violation continues a further 5,000 euros per day, or both. In case of an offence, the CBC is required to refer the matter to the Attorney General.

CYSEC may carry out inspections and investigations of persons to ensure compliance with the law and for this purpose may request any information from any person who is in a position to provide the information required and may confiscate any item it deems necessary. CYSEC may impose an administrative fine on any person who does not cooperate with an inspection or investigation, and may request the aid of the police to exercise its powers. In the event of a violation of the law which CYSEC deems may prima facie constitute a criminal offence, CYSEC may refer the matter to the Attorney General or it may handle the case itself. CYSEC may impose an administrative fine for any violation, irrespective of criminal liability. Any administrative fine may be up to 350,000 euros (700,000 euros in the case of a repeated offence) or up to double any gain illicitly obtained.

The Superintendent of the Insurance Companies Control Service has the authority to collect information from any person who is in a position to provide such information and may contact the authorities of any other member state to conduct such investigation. The Superintendent may enter and inspect any premises. Any violation of the law which the Superintendent deems may prima facie constitute a criminal offence may be referred to the Attorney General or handled by the Insurance Companies Control Service, which has the power to impose an administrative fine. The Superintendent may also decide the extent to which it may be necessary to wind up the insurance company.

### **Financial crime agencies and practice**

Cyprus is a full member of many international organisations, including the United Nations, the Organisation for Security and Cooperation in Europe and the Council of Europe. Cyprus is also a member of the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (Moneyval).

The investigative authority for money laundering in Cyprus is MOKAS, the Unit for Combating Money Laundering. MOKAS cooperates with corresponding units abroad for the purpose of the investigation of laundering offences through the exchange of information. MOKAS may, upon a relevant application to the court, secure an order for the disclosure of information or for the entry and search of premises. The Advisory Authority for Combating Money Laundering of MOKAS is responsible for informing and advising the Council of Ministers in relation to AML measures, and for promoting Cyprus internationally with respect to its AML policies.

Any person who knows or reasonably suspects that another person is engaged in money laundering offences, and the information on which such knowledge or reasonable suspicion is based comes to their attention in the course of their trade, profession, business or employment, is required to disclose this information to a police officer or to MOKAS as soon as is reasonably practicable after it comes to their attention. Failure to do so constitutes a criminal offence.

All regulatory bodies, as can be seen above, have issued detailed guidelines for the implementation of measures for the prevention of money laundering and terrorist financing.

### **Creditor hierarchy**

In the event of insolvency, the creditors rank in the following priority:

- (1) The costs of the winding-up.
- (2) The preferential debts, being:
  - all government and local taxes and duties due at the date of liquidation and having become due and payable within 12 months before that date and, in the case of assessed taxes, not exceeding one year's assessment;
  - all sums due to employees, including wages, up to one year's accrued holiday pay, deductions from wages (such as provident fund contributions) and compensation for injury.

Claims of employees who are shareholders or directors may not rank as preferential depending on the nature of the shareholding or directorship.

A person who has advanced funds for the purpose of paying employees will have a subrogated preferential claim to the extent that the employees' direct preferential claims have been diminished because of the advances.

- (3) Any amount secured by a floating charge.
- (4) The unsecured ordinary creditors.



THOMSON REUTERS™

© 2021 Thomson Reuters. All rights reserved.

(5) Any deferred debts such as sums due to members in respect of dividends declared but not paid.

(6) Finally, any share capital of the company. Where there are different classes of share capital, such as preference shares, their respective rankings will be determined by the terms on which they were issued.

#### **Data protection**

As regards the protection of personal data, as with all EU Member States Cyprus law data protection law is fully aligned with follows Regulation (EU) 2016/679 on the Protection of Natural Persons with Regards to the Processing of Personal Data and on the free movement of such data, and repealing Directive 95/46/EC (the General Data Protection Regulation) ("GDPR"). In addition, to repeal the previous law (law 138(I)/2001 which implemented Directive 95/46/EC and to implement certain derogations under the GDPR, the Law on the Protection of Natural Persons Against the Processing of Personal Character Data and the Free Movement of Such Data Law of 2018 (Law 125(I)/ 2018), was enacted and came into force on 31/7/2018. The Cyprus Commissioner for Personal Data Protection, the regulatory authority responsible for the application of the law initially established in 2002 under the repealed law and now under the new law, has adopted certain guidelines issued by the Article 29 Working Party as well as a number of its own Guidelines and opinions for the better application of the GDPR. Such guidelines and opinions concern the processing of personal data in certain contexts, such as CCTV monitoring, employment relationships, direct marketing, access requests in the public sector, retention of health data, criminal convictions, etc.

#### **Financial promotion**

Only entities licensed by the CBC may use the word bank in connection with any trade or business they carry out, and no person may advertise, cause or allow any advertising which may induce the public to place any money on deposit with any person other than a bank or cooperative society.

A Cyprus Investment Firm, market operators operating an Multilateral Trading Facility (MTF), and regulated markets must comply with pre and post trade transparency requirements as regards current bid and offer prices, as well as the depth of trading interests in respect of shares admitted to trading on a regulated market. A Cyprus Investment Firm may appoint an established tied agent for the purposes of promoting its services, soliciting clients and potential clients. A Cyprus Investment Firm must state on its documents, as well as on any other publication or announcement, the number of its authorisation, as well as the fact that it is supervised by CYSEC. In addition, the Cyprus Investment Firm must have a website and must notify CYSEC of its address. It is noted that members of the investors' compensation fund, analysed below, are prohibited from advertising the fund.

The Superintendent of the Insurance Companies Control Service has issued detailed rules regulating the form and content of advertisements by insurance companies, including advertisements in written form and via other media. In general, advertisements must be clear, true and not misleading. There are specific rules in relation to parallel advertising, and there are also specific requirements on what should be included in advertisements for non-life and life insurance respectively. Cyprus law also governs advertisements made in Cyprus by insurance companies licensed by other EU member states which provide insurance services in Cyprus.

The Control of Misleading and Comparative Advertisement Law, Law 92(I) of 2000 to 2008 protects traders from misleading advertising and its unfair consequences and sets out the provisions under which comparative advertising is permissible.

#### **Market abuse**

The Regulation EU 596/2016 on market abuse (MAR), which is directly applicable in Cyprus and entered into full force and effect after July 3, 2016, has updated and replaced in its totality the Cyprus market abuse regime under the (now-abolished) Insider Dealing and Market Manipulation Law, Law 116(I)/2005.

The modern Cyprus market abuse framework comprises MAR together with the Cyprus national legislation on the administrative and criminal sanctions that can be imposed in Cyprus for breach of MAR, which are the Market Abuse Law (L. 102(I)/2016) and the Law on Criminal Sanctions for Market Abuse (L.136(#)/2016 Law), as well as the EU Level 2 and Level 3 legislation on market abuse.

MAR expands the scope of the market abuse regime further to that of regulated markets in Cyprus, to include issuers and financial instruments admitted to trading or traded in MTFs, or for which a request for admission to trading has been made, financial instruments traded on Organised Trading Facilities (OTF), emission allowances and auction products that are not financial instruments, spot commodity contracts, under conditions, and behaviours in relation to benchmarks. It further deals with the concepts of inside information, insider dealing and unlawful market disclosures, market soundings and market manipulation, as well as disclosure requirements for transactions of directors/managers of issuers, when these cross a certain threshold, and relevant other matters such as on cooperation between competent regulators in the EU and the relationship with third countries.

#### **Redress and compensation arrangements**

The Investment Firms Law is fully harmonised with Directive 97/9/EC on investor compensation schemes. In view of this, two separate compensation funds exist, one for clients of Investment Firms and one for clients of credit institutions which offer investment services.

The two competent supervisory authorities, namely the CBC and CYSEC, have each issued relevant Regulations and Directives for the operation of the two Funds.



THOMSON REUTERS™

© 2021 Thomson Reuters. All rights reserved.

According to the Regulations of the CBC for the establishment and operation of the Investor Compensation Fund (ICF) for clients of credit institutions, all Cyprus incorporated credit institutions which offer investment services are obliged to become members of the ICF. Branches of such credit institutions which operate in other countries outside Cyprus are also obliged to become members of the ICF.

Credit institutions having their registered office in a third country which maintain a branch in Cyprus or provide in Cyprus investment or non-core services on a cross-border basis, must also become members of the ICF unless its clients in Cyprus are covered by a similar fund of a third country offering at least equivalent benefits to the Cyprus scheme.

According to the Regulations issued by the CBC the object of the ICF is to secure the claims of the covered clients against credit institutions, members of the ICF, through the payment of compensation in cases where the credit institution concerned is unable, due to its financial circumstances and when no realistic prospect of improvement in the above circumstances in the near future seems possible to return to its covered clients funds owed to them or funds which belong to them but are, directly or indirectly, held by the credit institution in the context of providing investment services to the said clients or to hand over to covered clients financial instruments which belong to them and which the credit institution concerned holds, manages or keeps on their account.

The ICF does not cover institutional and professional investors. The total compensation payable to each covered client of an ICF member is limited to 20,000 euros, irrespective of the number of accounts held, the currency and place of offering the investment service.

CYSEC has issued a Directive for the Continuance of Operation and the Operation of the CIF Investor Compensation Fund to secure the claims of covered clients against the members of the Fund through the payment of compensation. All Cyprus Investment Firms and other investment firms which are not credit institutions subscribe to the Fund.

Investment firms registered in a third country which maintain a branch in Cyprus or provide investment or non-core services on a cross-border basis in Cyprus must subscribe to the Fund unless their clients in Cyprus are covered by a similar fund of a third country offering at least equivalent benefits to the Cyprus scheme. The Fund does not cover institutional and professional investors and the total compensation payable to each client is limited to 20,000 euros, irrespective of the number of accounts held, the currency and place of offering the investment service.

### **Corporate governance**

The Corporate Governance Code of 2014, as updated in 2019, issued by the Cyprus Stock Exchange aims to strengthen the monitoring role of the Board of Directors in listed companies, protect small shareholders, promote greater transparency and provide timely information as well as to sufficiently safeguard the independence of the Board of Directors in its decision-making, and conforms with internationally accepted principles of corporate governance.

As regards remuneration, the Code provides that companies should establish a formal and transparent procedure for developing a policy on executive directors' remuneration and for fixing the remuneration packages of individual directors. No director should be involved in deciding his or her own remuneration. The level of remuneration should be sufficient to attract and retain the directors needed to run the company successfully, but companies should avoid paying more than is necessary for this purpose. It recommends that a proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance.

The company's annual report on corporate governance should contain a statement of the remuneration policy and related criteria as well as details of the remuneration of the executive and non-executive directors.

As regards bonuses, the Code provides that the remuneration policy should include the main parameters and the reason behind every annual bonus scheme and the company has an obligation to disclose the remuneration paid in the form of profit or bonus distribution and the reasons why such remuneration was given.

The Code further proposes the establishment of three Committees of the Board of Directors, namely the Nomination Committee, the Remuneration Committee, the Audit Committee and the Risk Management Committee.

The board of directors of public companies following the Corporate Governance Code should maintain a sound system of internal control and establish specific and transparent arrangements for considering how they should apply corporate governance and internal control principles.

### **HR**

Investment firms licensed by CYSEC must ensure that appropriate human and other resources are allocated to the compliance function, i.e., the detection of any risk of failure by the firm to comply with its obligations under the law. In doing so investment firms should take into account the scale and types of investment services, activities and ancillary services they undertake. They should also provide compliance staff with the authority necessary to exercise their duties effectively, as well as access to all relevant information concerning the investment services and activities as well as ancillary services undertaken. Investment firms must ensure that the method of determining the remuneration of the relevant persons involved in the compliance function must not compromise their objectivity and must not be likely to do so.

The boards of directors of banks licensed by the CBC are obliged to have adequate involvement in human resources.



THOMSON REUTERS™

© 2021 Thomson Reuters. All rights reserved.

**Ioannis Sidiropoulos** is an associate at [Elias Neocleous & Co LLC](#)

Complaints Procedure

Produced by Thomson Reuters Accelus Regulatory Intelligence

28-Jun-2021



THOMSON REUTERS™

© 2021 Thomson Reuters. All rights reserved.