



**«CYSEC CONSULTATION PAPER CP-02-2021  
[CYPRUS FIDUCIARY ASSOCIATION]»**

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**To: Cyprus Securities and Exchange Commission (CySEC)**

*Cyprus Fiduciary Association*

*Nicosia, 20<sup>th</sup> July 2021*

## Introduction

The Cyprus Fiduciary Association (CYFA), established in 2011, is the representative body of regulated Administrative Service Providers (ASP's) in Cyprus. With a vision to assist in forming a solid international business sector in Cyprus operating on high professional standards, ethics and integrity, the Association aims to serve industry providers by promoting their interests, raising sector awareness, supporting their operations, contributing to new legislations, and delivering valuable training to professionals. The Association's commitment to its purpose has established it among the most reputable and recognized organizations within the country, before public and regulatory authorities, other associations, as well as the business community in Cyprus and overseas.

In relation to the **Consultation Paper (CP-02-2021)** on regulating the **Provision of Investment Fund Administration Services**, the Cyprus Fiduciary Association would like to provide the following comments:

## Comments on Questions

### Question 1: Do you agree with CySEC's proposal to render Fund Administration a licensable activity?

The Association is in agreement with the stated proposal given the vital importance of investor protection, and is of the opinion that services such as the accurate calculation of the NAV and the keeping of correct and up to date investors' register should be a licensable activity.

### Question 2: Do you agree with CySEC's proposal to fully exempt entities licensed for Fund Management in the EU from any requirements under the Proposed IFA Law, when also providing Fund Administration to a UCI under their management or when acting as Fund Administrators pursuant to a relevant delegation mandate from another Fund Manager?

The Association is in agreement with the stated proposal provided that Cyprus Fund Managers would also be exempted from providing fund administration services to UCIs in other EU member states and also subject to applying some of the requirements proposed in the draft IFA Law, i.e. appropriate systems and controls including relevant software. In addition, the above proposal is acceptable on the condition that such entities should at least fulfil the minimum criteria of Cypriot entities and that a notification and proof of licence is submitted to CySEC before appointment.

### Question 3: Do you agree that with CySEC's intention to fully exempt entities licensed in another EU Member State for the provision of Fund Administration Services?

The Association is of the opinion that central administration should be based in Cyprus for all Cyprus regulated and unregulated funds. The regulator may allow, on a case-by-case basis, the outsourcing of certain tasks linked to the function, i.e. Fund Accounting of the central administration located in Cyprus to an entity located abroad, subject to certain requirements and under the responsibility of the Cyprus administrator. Transfer Agency functions should remain with the central administrator as each country has its own AML directive when it comes to KYC requirements.

If CySEC decides to proceed as proposed, then the suggestion is for Cyprus licensed entities to have similar exemption when providing fund administration services elsewhere in the EU. In any case, the above proposal is acceptable on the condition that such entities should at least fulfil the minimum criteria of Cypriot entities and that a notification and proof of licence is submitted to CySEC before appointment.

Question 4: Given the overlap between certain Fund Administration Services with certain services regulated under the ASP Law and that these are both interrelated back-office functions, do you agree with CySEC's view that ASPs is one of the cases where a dual activity by Fund Administrators may be justified under the Proposed IFA Law and vice versa?

The Association does not agree with the above proposal. Corporate services to the underlying entities of the fund should be provided by the licensed ASP. Specialization and the avoidance of applying the rule of "one size fits all" are keys to our efforts in improving our local financial industry image. In addition, CySEC needs to consider the constant changing regulatory environment especially affecting the ASPs, i.e. DACS6 which is important to remain focussed of the changing process.

Question 5: Do you agree with CySEC's proposal for a bespoke regime as regards the Fund Administrator's scope of license, based on the criteria presented above and with the focus of the regulatory scrutiny being also placed on back-office and business continuity arrangements, including the production of a Master SLA?

The Association agrees with the above proposal.

Question 6: Do you agree that depending on the investment and/or marketing strategy of the UCIs to be administered (e.g. Hedge Funds, broadly marketed/investing UCITS), there should be in place appropriate systems and controls, including by means of a relevant software?

The Association agrees with the above proposal. Furthermore, it is proposed that the whole framework is enhanced by the imposition of a minimum share capital obligation and the requirement of a professional indemnity insurance in place.

Question 7: Do you agree with the introduction of a bespoke regime as regards the specific Fund Administration services to be offered (e.g. by splitting the Fund Administration Services into Registrar & Transfer Agent, Domiciliation Agent and Fund Accounting instead of a Licensed Fund Administrator offering the aggregate of Fund Administration services) or do you believe the scope of the Fund Administrator's licence, should include all services constituting Fund Administration by default?

The Association is of the opinion that one application should exist stating the list of services.

Question 8: Do you believe that the regulatory compliance should be established inhouse or outsourcing should be possible? In this context, should the said functions coincide within the same person, under the principle of proportionality? In the affirmative, should proportionality

considerations be extended to also encompass the person of the in-house lawyer, in case where the Licensed Fund Administrator also offers the service of legal and fund management inquiries and is obliged to employ an in-house lawyer, where no external retained is concluded?

In principle Fund Administration is not a function that is responsible for on-boarding an investor into the Fund unless it is made explicit during the licensing of the fund by the Regulator. Since the Fund Administrator does not promote the Fund or handle the inbound investment he/she should not be burdened with regulatory compliance and the Fund Administrator should have no obligation to conduct AML procedures. The regulatory compliance burden should lay with the Fund Manager or the Fund itself if it is self-managed or it could be outsourced to a 3<sup>rd</sup> party professional.

It is our opinion that the more professionals are engaged in the servicing of a Fund the more the checks and balances and the better the image of Cyprus as a reputable fund jurisdiction.

In any case, the framework should provide a clear identification of roles with regards to on-boarding and AML, eliminating any duplication of responsibility in order to avoid any unnecessary practical issues arising between the Fund Admin and the Manager in the case of a relevant disagreement, but also to strengthen accountability on the all-important AML procedures.

**Question 9: Do you agree with the proposal that Fund Administrators that are not members of a financial group or are not affiliated with the financial services companies described above, may use the designation 'Independent Fund Administrator'?**

The Association agrees with the above proposal.

**Question 10: Given the bespoke scope of a Fund Administrator's license, do you agree that authorised investment strategies could be included in the Fund Administrator's designation e.g. '[Independent] Hedge Fund Administrator' or 'Multi-asset Fund Administrator'?**

The Association agrees with the above proposal.

**Question 11: Do you agree with the proposed capital requirements, i.e. fixed capital and professional indemnity insurance together with a pre-calculated business continuity cost?**

The Association agrees with the above proposal.

**Question 12: Do you agree with CySEC's view that acting as a 'light depositary' for the purposes of section 23(5) of the AIFM Law (which also applies to AIFs subject to the provisions of the AIF Law only as per section 26(4) thereof) may be one the justifiable cases of dual activity under the IFA Law, subject to the observance of certain additional CySEC requirements aiming at ensuring the independence of the functions?**

The Association agrees with the above proposal.

**Question 13: Do you agree that where a Licensed Fund Administrator also provides the Service of valuation, may be considered an eligible valuer for the purposes of section 19 of the AIF Law,**

because such capacity, i.e. knowledge of the asset class(es) in question has been assessed in the context of the licensing process together with its financial and professional soundness?

The Association suggests that eligibility for a Fund Administrator to act as a valuer should only be granted only in the cases where the transactions and closing values can be clearly identified as in the cases of listed securities and where values can be incorporated from pricing data providers. Valuation of any other assets should be performed by external valuers.

**Question 14: Do you agree with the provisions regarding rectifications of errors in the NAV calculation process? If not, which additional/alternative criteria should be inserted?**

The Association agrees with the above proposal. Furthermore, it is important that correction procedures should be put in place introducing the materiality concept whilst determining acceptable tolerance thresholds at different levels depending on the type of UCI concerned by the NAV calculation error.

**Question 15: Do you believe that for those Licensed Fund Administrators that are authorised for the Service of legal and fund management accounting inquiries the requirement on them to verify compliance of the UCI's offering documentation with applicable law would enhance investor protection?**

In principle Fund Administration is not a function that is responsible for on-boarding an investor into the Fund unless it is made explicit during the licensing of the fund by the Regulator. Since the Fund Administrator does not promote the Fund or handle the inbound investment he/she should not be burdened with regulatory compliance and the Fund Administrator should have no obligation to conduct AML procedures. The regulatory compliance burden should lay with the Fund Manager or the Fund itself if it is self-managed or it could be outsourced to a 3<sup>rd</sup> party professional. It is our opinion that the more professionals are engaged in the servicing of a Fund the more the checks and balances and the better the image of Cyprus as a reputable fund jurisdiction.

**Question 16: Do you have any other comments?**

- a) With respect to the granting of fund administration licence a clarification is needed as to whether in the case the ultimate beneficial ownership of the fund administrator and the fund manager is the same but the two entities function completely independently, the said structure will be eligible for licensing. The Association is of the opinion that in the case that the entities function completely independently, the licensing should be allowed, regardless of ultimate control.
- b) In addition, a clarification is needed as to whether the scope of the proposed Law extends to offshore funds. The understanding is that the fund administration law is applicable only to Cyprus and EU funds and does not apply to offshore funds.

- c) A clarification is needed as to whether it would be feasible to outsource ancillary functions to a Fund Administrator outside the Republic of Cyprus.
- d) A clarification is required on the restrictions of the number of directorships held by the directors of the Fund Administrator. Since the duties of a licensed Fund Administrator resemble to the duties of a licensed ASP, then the Board of Directors of a Fund Administrator should have the same structure as an ASP, meaning at least 2 executive directors, considering the proposition of a dual licence.
- e) A clarification is needed as to whether an internal lawyer would be able to provide services to the ASP and the Fund.
- f) With regards to record keeping, it should be clarified as to whether this is 5 years from the end of the business relationship.

The Association would also like to state its willingness to participate in any other future discussions related to the above subject matter.

**On behalf of the Cyprus Fiduciary Association,**



**Christoforos Ioannou**  
**General Manager**