

**TORNARITIS LAW FIRM**  
ADVOCATES & LEGAL CONSULTANTS

# ALTERNATIVE INVESTMENT FUNDS

# CONTENTS

**1. General Overview - AIFs**

**2. Types of AIFs**

**3. Legal Forms**

**4. AIFs Benefits**

**5. AIFs with Several Investment Compartments**

**6. Key players and their role**

**Appendix I – AIFs Tax Considerations**

**Appendix II – AIFs Tax Considerations**

# 1 General Framework- AIFs

## Legal and Regulatory framework

Alternative Investments Funds Law 131(I)/ 2014: AIF Law came into force on the 27th of July 2014. The Cyprus Securities and Exchange Commission (CySEC) is the regulatory authority responsible for the overseeing of Alternative Investment Funds.

|                               |  |
|-------------------------------|--|
| <b>Investor Base</b>          | <ul style="list-style-type: none"><li>• Retail</li><li>• Well Informed</li><li>• Professional Investors</li></ul>  |
| <b>Types of AIFs</b>          | <ul style="list-style-type: none"><li>• AIF with Unlimited Number of Persons</li><li>• AIF with Limited Number of Persons</li></ul>  |
| <b>Legal Forms</b>            | <p><u>Corporate or contractual type</u></p> <ul style="list-style-type: none"><li>• Common Fund</li><li>• Fixed or Variable Capital Investment Company</li><li>• Limited Liability Partnership</li></ul> |
| <b>Umbrella Structures</b>    | <ul style="list-style-type: none"><li>• Multiple Investment Compartments</li><li>• Management of segregated portfolios of assets and liabilities such being ring fence</li></ul>                         |
| <b>Possibility of listing</b> | <ul style="list-style-type: none"><li>• Increases the potential investor base</li></ul>  |

(continued)

## Legal and Regulatory framework

### Alternative Investments Funds Law 131(I)/ 2014

#### Number of Investment Objectives

- Private Equity,
- Infrastructure,
- Real Estate,
- Venture Capital,
- Funds of Funds,
- Debt and/or Equity Securities,
- Loan Origination funds etc..

#### Confidentiality

- Investors details are not filed with the Registrar of Companies or other public authorities

#### Management & Performance Fees

- Flexible terms of calculation (based on NAV , committed capital ....)

#### Subscription and redemption terms

- Flexible
- Allows subscriptions in kind

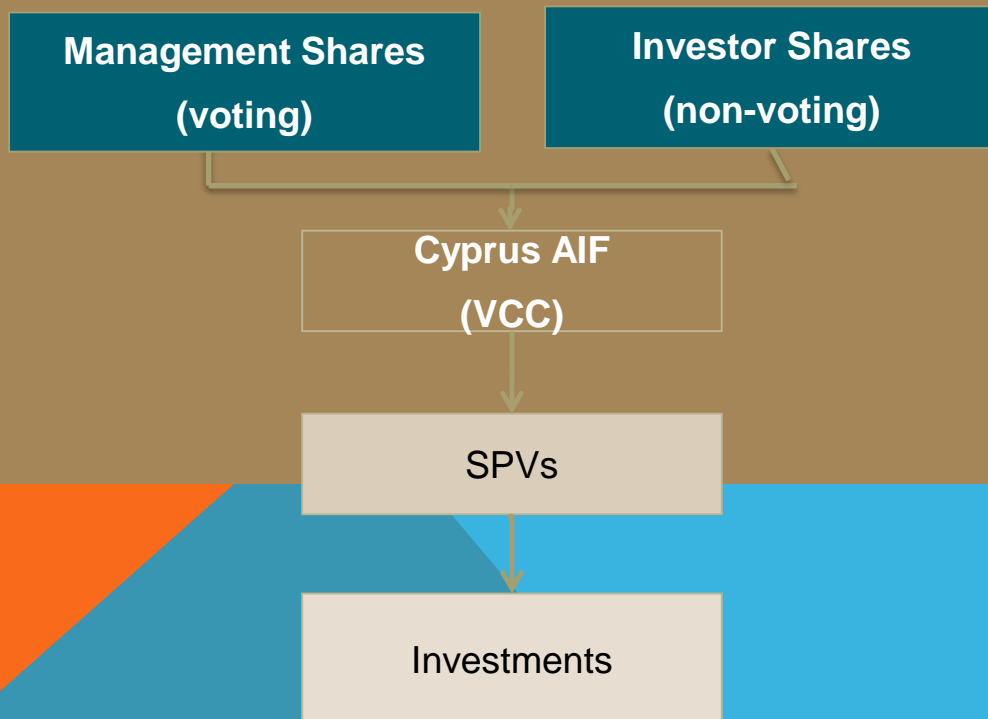
## AIF with Unlimited Number of Persons

- ❑ retail, or well-informed and/or professional investors
- ❑ freely transferable investor shares
- ❑ can be listed on a recognized stock exchange, and AIFs marketed to retail investors can be traded
- ❑ minimum capital requirements of:
  - €125,000 or
  - €300,000 if a self-managed fund
- ❑ subject to certain investment restrictions depending on investor type and investment policy

## AIF with Limited Number of Persons

- ❑ only to well-informed and/or professional investors
- ❑ may not exceed the total number of 75 investors
- ❑ freely transferable investor shares, with the condition that their transfer does not result in the AIF having more than 75 investors
- ❑ are not externally managed by an AIFM authorized manager and/ or their assets under management do not exceed the AIFMD thresholds of:
  - €100 million (including leverage) or
  - €500 million (5-year lock-up period without leverage)

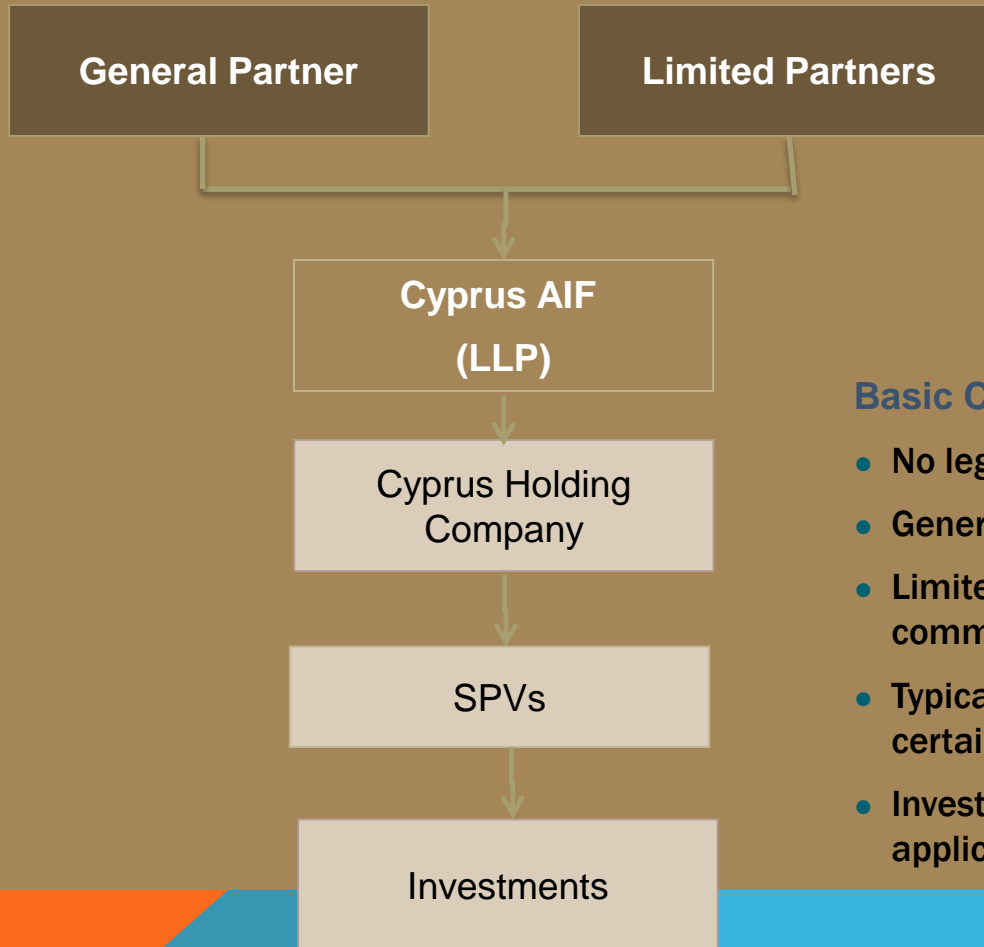
## Variable Capital Company (VCC) indicative structure



## Composition of the Board

- At least two executive directors (“four eye principle”)
- Non-Executives not required (in practice used to emphasize tax residency in Cyprus)

## Limited Liability Partnership (LLP) indicative structure



## Basic Characteristics

- No legal personality . Tax transparent structure
- General Partner represents the AIF towards third party
- Limited Partners' liability limited to their capital commitment
- Typically granted some veto powers e.g. give consent for certain actions to pass.
- Investments should be made via SPVs to secure applicable tax benefits

- **Flexibility:** Any asset can be included in the investment strategy of the AIF (under certain conditions)
- **Transparency:** Annual audited and half yearly reports to be sent to the CySEC and the investors (contain financial statements, information on borrowing, portfolio information, NAV)
- **Tax Incentives:** Cyprus AIF benefit from significant tax incentives (see Appendix I Tax considerations)
- **Regulation:** EU directives / business friendly jurisdiction (no onerous reporting requirements)
- **Low set-up and operational costs:** Easy and cost efficient to set up and maintain Cyprus funds.

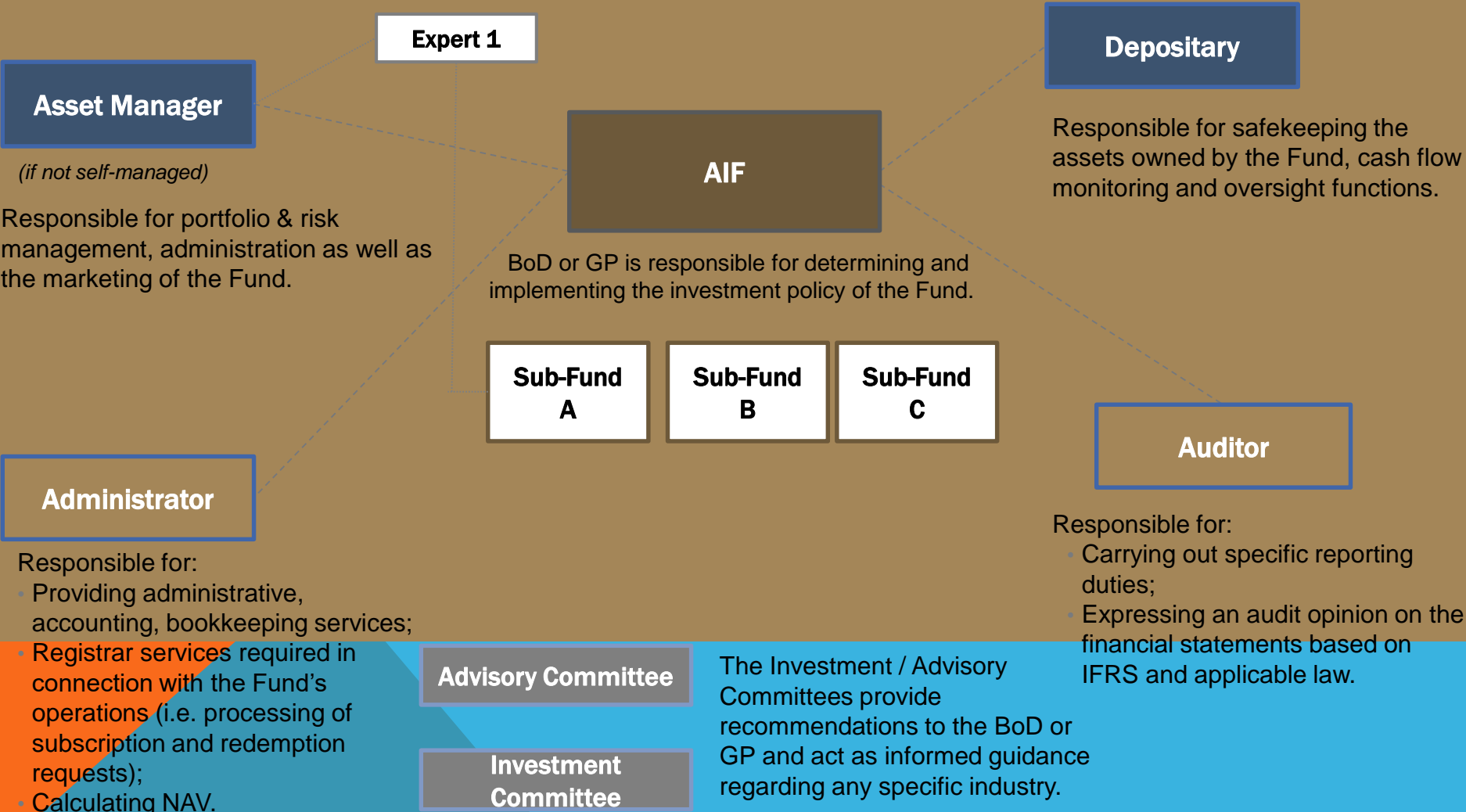




- A fund can be established as an AIF with several investment compartments (sub-funds), each constituting a separate pool of assets and liabilities (even though the AIF constitutes a single legal entity).
- Each investment compartment has its own investment objectives and policies. Can cater for different asset types (eg. Commercial, hotels, income generating...)
- Each compartment has its own separate NAV calculation and issues and redeems units corresponding to its assets.
- Each compartment may be dissolved or liquidated separately without affecting the operations of the other compartments.

# 6 Key players and their role

- Management of the umbrella fund will be held by the Asset Management Company (AMC)
- AMC may outsource the management of few sub-funds to other experts



### Taxation of the fund:

- Corporation tax at 12,5% on profits;
- **Notional interest deduction on qualifying equity allowing for tax to be reduced to as low as 2,5%**
- Excluded from tax:
  - Dividends received;
  - Profits on sale of securities;
  - Capital gains arising from sale of property abroad;
  - Capital gains from sale of shares of foreign property companies;
- No subscription tax on the net assets of the fund;
- Effectively only interest received is taxed at 12,5%;
- May be exempted from VAT;
- Access to extensive double tax treaty network for efficient tax structuring of investments.

### Taxation of the investors:

- **Foreign investors:**
    - No withholding tax on dividends;
    - No taxation on redemption of units;
    - No deemed distribution restrictions;
  - **Resident investors:**
    - A withholding tax of 17% if the investor is a physical person;
    - No taxation on redemption of units;
    - No withholding tax if investor is a company;
    - Deemed distribution of 3% instead of 17%.
- Tax incentives for expatriates Fund Managers :**
- 50% exemption of income earned for a five year period from the date of first employment in Cyprus, if salary is over EUR 100.000

### Notional Interest Deduction (NID)

- As per the provisions of the recently voted legislation a Cyprus company is entitled to a Notional Interest Deduction (“NID) on "new equity".
- New equity introduced to a company as from January 1, 2015 in the form of paid-up share capital or share premium.
- The new equity can be represented by assets other than cash.
- $\text{NID Deduction} = \text{New equity} \times \text{NID interest rate}$ .
- $\text{NID interest rate} = \text{Yield of 10-year government bonds} + 3\% \text{ premium}$
- The NID deduction cannot exceed 80% of the taxable profit as calculated before NID
- ***Therefore a Newly Established Fund (AIF), could potentially qualify for the Notional Interest Deduction resulting to tax optimization.***
- Nonetheless, the proposed structure should be carefully examined from a tax perspective in order to assess the availability of the NID regime in view of the anti-avoidance clauses introduced in the NID regime.

| Criteria   | Amount   |
|--|--|
| Investment in government bonds   | €5,0 million   |
| Investment in financial assets of Cypriot Companies                      | €5,0 million   |
| Investment in real estate, land development and infrastructure projects  | €5,0 million   |
| Purchase or creation or participation in Cypriot businesses or companies | €5,0 million   |
| Deposits in Cypriot Banks  | €5,0 million   |
| Major Collective Investments   | €2,5 million provided that the total value of investment is at least €12,5 million |

| Conditions   |   |
|--|---|
| 1  | Clean criminal record   |
| 2  | Residence in the Republic of Cyprus- permanent privately-owned residence of at least €500.000 |
| 3  | Retain the investments for a period of at least 3 years since the date of Naturalization      |
|  |   |
| Timeframe for examination of the application: 3 months |   |
|  |   |
| Applicant Fees: €7.000                                 |   |