



RETAIL INVESTMENT FUNDS: AMENDMENTS TO LAW 78 OF 2012 ON OPEN-ENDED UNDERTAKINGS FOR COLLECTIVE INVESTMENT BY LAW 88 OF 2015

1. The concept behind the amendments brought by Law 88 of 2015

Law 78 of 2012 on Open-Ended Undertakings for Collective Investment (**UCI Law**) transposed into Cypriot Law the European Union (**EU**) UCITS IV Directive (2009/65/EC) on undertakings for collective investment in transferable securities (**UCITS**). The competent authority for regulation and supervision of UCITS in Cyprus is the Cyprus Securities and Exchange Commission (**CySEC**).

The UCI Law can be considered as the piece of legislation marking Cyprus' efforts to emerge into an investment funds jurisdiction, having regard to the interest that the draft UCI Law had attracted during the consultation process.

The UCI Law has been amended for the first time earlier this year by Law 88 of 2015. The amendments so effected can be classified into following categories:

- Amendments for the purpose of enhancing the competitiveness of Cypriot UCITS, e.g. by no longer requiring that all Cypriot UCITS calculate and publish their net asset value (**NAV**) daily without taking any distinguishing factor into consideration; or by replacing the requirement for mandatory publications in two local newspapers with the requirement to provide relevant information to investors through a durable medium and through a relevant publication on the management company's/investment company's website (as applicable);
- Amendments with a view to initiating the upcoming transposition of the EU UCITS V Directive (2014/91/EU), which is due on March 2016, e.g. by aligning certain of the provisions on UCITS depositaries, within the meaning of section 10 of the UCI Law, with the provisions of the UCITS V Directive;
- Amendments for the purposes of relativising unconditional reliance on credit ratings issued by credit rating agencies by requiring enhancement of risk management policies and procedures; and
- Amendments for the purposes of alignment with the EU-wide distinction of investment funds into UCITS and non-UCITS, i.e. Alternative Investment Funds (**AIFs**), introduced pursuant to the EU AIFM Directive (2011/61/EU). In accordance with the aforesaid distinction any reference to non-UCITS investment funds has been removed from the UCI Law, given that there is in the meantime a dedicated legal framework for all types of non-UCITS. This way the UCI Law becomes a 100% UCITS dedicated piece of legislation.

The present note undertakes to briefly inform on the rationale motivating the amendments to the UCI Law provisions and on their current content following the amendment.

2. Provisions amended by Law 88 of 2015

- Section 8 of the UCI Law
 - Paragraph (1): Legal drafting amendment, by removing a mistaken reference to (non-existing) paragraph (8) of this section.
 - Paragraph (3): Legal drafting amendment, by replacing reference to 'the company' with reference to 'the UCITS', in order to align the wording of this paragraph with the title of the relevant section, which refers to the authorisation of a UCITS in general independently of its legal form.
- Section 10 of the UCI Law
 - Paragraph (2): The provisions of this paragraph have been amended, in order to broaden the scope of eligible UCITS depositaries, which initially comprised only Cypriot credit institutions and Cypriot branches of credit institutions authorised elsewhere in the EU. The amended provisions recipe the relevant wording of the UCITS V Directive on eligible UCITS depositaries other than credit institutions or central banks. Practically, Cypriot Investment Firms licensed (presumably also for safekeeping of financial instruments) under Law 144 of 2007 on Investment Services and Investment Activities and Regulated Markets as amended (**CIF Law**) or branches of other EU entities licensed under the EU MiFID Directive as amended (2004/39/EC) may also act as Cypriot UCITS depositaries¹.
 - Paragraph (3): In addition to a cosmetic change in lit. (d), lit. (e) of this paragraph has been deleted requiring no longer the depositary of a Cypriot UCITS under the legal form of a Common Fund (**CF**) to co-sign the statements and reports that were provided for therein.
 - Paragraph (4): In alignment with the amended lit. (e) of paragraph (3) of this section, the depositary of a Cypriot UCITS under the legal form of a variable capital investment company (**VCIC**) is no longer required to co-sign the aforesaid statements and reports either.
- Section 16

Paragraph (3): Pursuant to this amendment, it is firstly clarified with regard to subscriptions that units or shares (as applicable) in a UCITS (collectively referred to as **Units**), will only be issued at a valuation date, i.e. a date at which the NAV of the UCITS is calculated. Secondly, that the subscription price for Units will be determined on the basis of the NAV (plus a subscription fee, if any) as at the applicable valuation date, such NAV being always unknown, when the relevant subscription application is submitted. This amendment was necessary, since the previous formulation gave the impression that the applicable subscription price could be the NAV of the date at which the subscription application was submitted.

- Section 18
 - Paragraph (4): Following this amendment, it is clarified that redemption proceeds will be remitted to redeeming investors within four days from the applicable valuation date.

¹ Having regard to the relevant wording, other entities could potentially also qualify as UCITS eligible depositaries until 2018, subject to compliance with applicable conditions. However, this is something to be determined once the EU UCITS V Directive is transposed into Cypriot Law.

- Paragraph (5): Pursuant to this amendment, it is firstly clarified that Units will only be redeemed at a valuation date (as with subscriptions). Secondly, that the redemption price for Units will be determined on the basis of the NAV (minus a redemption fee, if any) as at the applicable valuation date, such NAV being always unknown, when the relevant redemption application is submitted. Likewise as with subscriptions, the objective of this amendment was to make clear that the date of the submission of the redemption request is not relevant for the calculation of the redemption price but the NAV as calculated on the applicable redemption date.

- Section 19

Paragraph (4): Following this amendment, it is no longer required to publish the suspension of redemptions in any local newspapers. A relevant publication on the management company's/investment company's (as applicable) website and the provision of the relevant information to investors by means of a durable medium is now sufficient.

- Section 27

Paragraph (1): Following this amendment, it is no longer required to proceed to a publication in any local newspapers or to send individual notices to investors, in case where the management company of a CF decides to convene a general meeting of unitholders. A relevant publication on the management company's website and the provision of the relevant information to investors by means of a durable medium is now sufficient.

- Section 29

Paragraph (6): Like previous amendments, it is no longer required to publish the dissolution of a CF in any local newspapers, since the provision of the relevant information to investors through a durable medium is now sufficient.

- Section 31

Paragraph (1): This amendment refers to the disapplication of further Companies Law (Chap. 113) provisions in the context of a VCIC. Accordingly, it is no longer required that the Memorandum of Association of a VCIC be signed by at least seven persons (which would have been the required number for a public company); furthermore, the Companies Law (Chap. 113) provision, according to which the reduction of the number of shareholders to less than seven (7) leads to the dissolution of the Company, is also disappplied.

- Section 32

- Paragraph (3): Pursuant to this amendment, the provision that fractions of shares cannot be issued by a VCIC has been removed.
- Paragraph (6): Pursuant to this amendment, the shares of a VCIC may now be admitted to trading on the stock exchange of a non-EU jurisdiction as well, subject to certain cooperation arrangement between competent authorities being in place.

- Section 41

- Paragraph (1): Pursuant to this amendment, Paragraph (1) is now divided into lit. (a), lit. (b) and lit. (c). In terms of content, (new) lit. (a) serves the purpose of compliance with EU

Law regulations on the gravity to be placed on ratings produced by credit rating agencies. Accordingly, a management company/investment company (as applicable) shall not rely mechanically and exclusively on credit ratings produced by credit rating agencies; instead of that, it shall calculate relevant risks in the context of calculating the risks associated with the positions of the UCITS based on its own risk management procedure. The rationale behind the introduced changes is that ratings by credit rating agencies used to operate as a 'license' for investments in securities of issuers without requiring any further assessment.

- Paragraph (4A): This new paragraph provides that CySEC shall, subject to the proportionality principle, monitor and assess the credit rating procedures of management companies/investment companies (as applicable) and the reliance placed by them on credit ratings produced by credit rating agencies.
- Paragraph (5): Lit. (a) of this paragraph has been amended, in order to provide for CySEC's powers to ensure that management companies/investment companies (as applicable) do not rely exclusively or mechanically on credit ratings produced by credit rating agencies.

- Section 43

Lit.(d): This amendment has been introduced, in order to clarify that a UCITS may potentially avail of the exemption provided for therein and not that actual use thereof is made by the UCITS.

- Section 45

- Section title: The title of this section has been amended, in order to reflect its broadened scope, which now provides not only for shares of VCICs admitted to trading but also for units of CFs, which may be listed on a stock exchange without being traded.
- Paragraph (1): The amended paragraph provides for admission to trading on a regulated market, without restricting this possibility to index replicating UCITS as it was the case prior to the amendment. Furthermore, under the amended provisions, the aforesaid Units may be admitted to trading not only on a stock exchange, as it was the case prior to the amendment but to a relevant regulated market or a multilateral trading facility as well. The amended provisions also refer the conditions subject to which such admission may take place.
- Paragraph (3): This new paragraph provides for the listing, without admission to trading, of units of a CF on a stock exchange market.

- Section 60

Paragraph (1): Pursuant to the amendment, UCITS are no longer obliged to calculate NAV, subscription price, redemption price and number of outstanding Units on a daily basis and to proceed to the relevant publications in local newspapers. The said calculations may now take place up to every fifteen calendar days, unless the UCITS in question is a money market or an exchange traded UCITS, in which case the requirement for daily calculation still applies. As to the publication of the said calculations these may now be published on the management company's/investment company's website.

- Section 95

Paragraph (2): This amendment refers to the publication of the date a UCITS merger becomes effective, requiring no longer such publication to take place in local newspapers, as it was the case prior to the amendment, but to be provided to investors and competent authorities by means of a durable medium.

- Section 99

Paragraph (3): This amendment refers to the split of a UCITS, requiring, as directly above, no longer that information on the split be published in local newspapers but on the management company's/investment company's (as applicable) website and that it be notified to investors by means of a durable medium.

- Section 101

Paragraph (4): Likewise as above, the completion of the split of a UCITS is no longer required to be published in local newspapers but on the relevant management company's/investment company's (as applicable) website and be notified to investors by means of a durable medium.

- Part III of the UCI Law

Part III of the UCI Law has been repealed, so that any provisions relating to non-UCITS, i.e. Alternative Investment Funds ('AIFs') are now removed from the scope of application of the UCI Law. This way the UCI Law becomes a piece of legislation exclusively UCITS dedicated.

- Section 110

Paragraph (4): Pursuant to the amendment, CySEC may grant an approval to UCITS management companies for a reduction of up to 50% on the additional own funds amount required, also in case where a guarantee is provided by a bank from an equivalent third, i.e. non-EU, country.

- Section 114

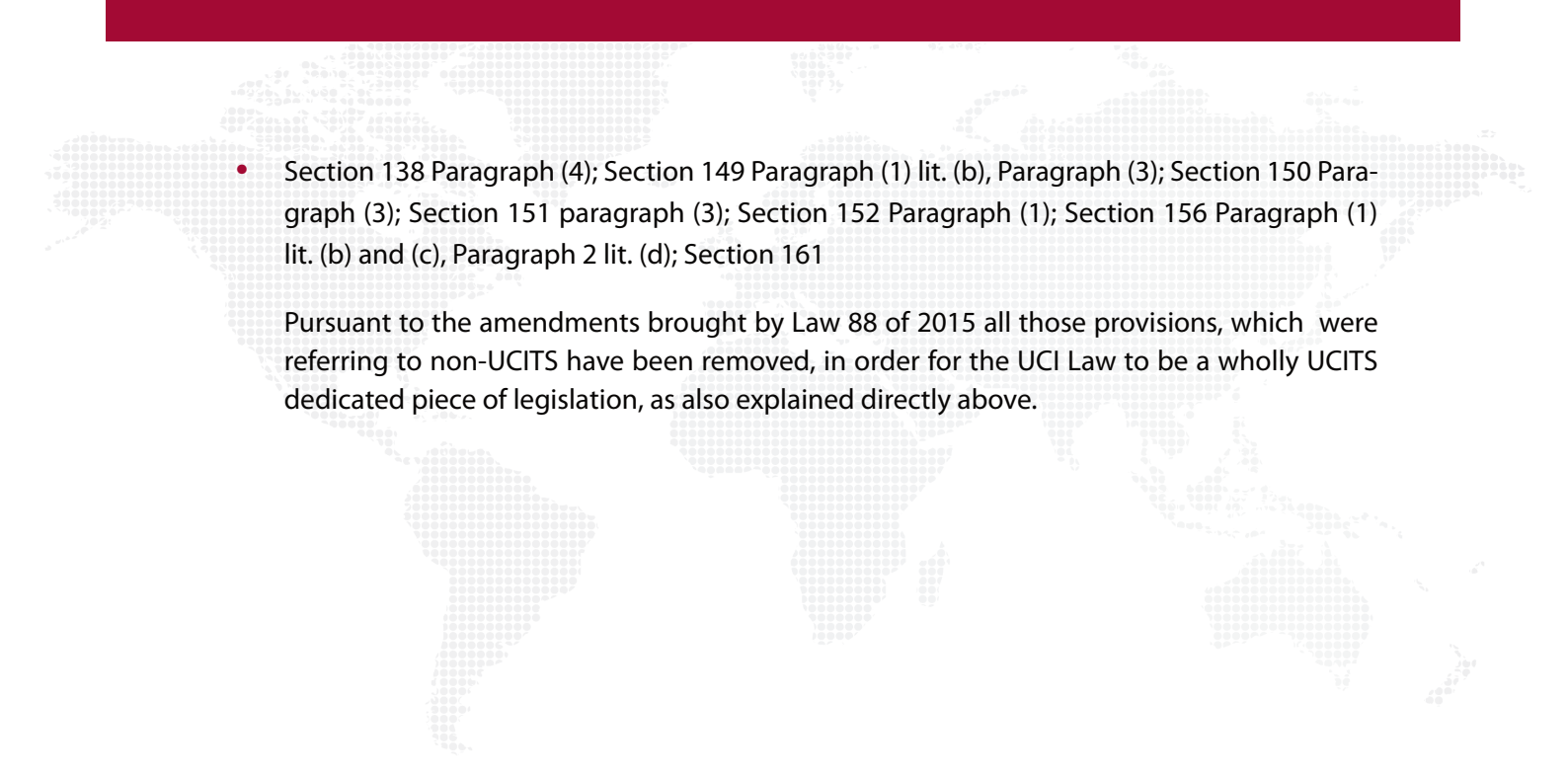
- Paragraph (1): Pursuant to the amendment, the submission of quarterly statements by a UCITS management company is no longer required.
- Paragraph (2): The amended paragraph has been renumbered and the reference to the quarterly statements has been removed.

- Section 121

Paragraph (5): Pursuant to the amendment, CySEC's decision for withdrawal of the operating license of a UCITS management company shall no longer have to be published in local newspapers but on the management company's website.

- Section 136

Paragraph (1): Pursuant to the amendment, the provisions referring to non-UCITS management companies have been removed, given that the UCI Law is now an exclusively UCITS dedicated piece of legislation.

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- Section 138 Paragraph (4); Section 149 Paragraph (1) lit. (b), Paragraph (3); Section 150 Paragraph (3); Section 151 paragraph (3); Section 152 Paragraph (1); Section 156 Paragraph (1) lit. (b) and (c), Paragraph 2 lit. (d); Section 161

Pursuant to the amendments brought by Law 88 of 2015 all those provisions, which were referring to non-UCITS have been removed, in order for the UCI Law to be a wholly UCITS dedicated piece of legislation, as also explained directly above.