



Conversion of a public listed company into a UCITS in the form of a Variable Capital Investment Company

By Ms. Katerina Hadjichristofi

Associate Director, Ioannides Demetriou LLC

General Introduction and background

Undertakings for collective investment in transferable securities (“UCITS”) were initially introduced in the Cyprus market under the harmonised EU framework which was transposed into national law by Law 78 (I)/2012 (the “UCI Law”). This type of funds, principally designed to operate as retail funds, admittedly bear a variety of advantages for their promoters as well as for investors. Such benefits were explained and illustrated in a number of papers issued by many esteemed colleagues immediately after the referred UCI Law came into play in 2012.

This note summarises and assesses the impact of the UCI Law, as amended, on existing closed-end funds established as public limited liability companies. In view of the first conversion of an existing company into a UCITS having been authorised and effected in Cyprus during February – March 2018, this note highlights some recommended steps relating to the conversion into a UCITS and adoption of the new regime.

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Conversion to a UCITS

On 22 April 2016, the UCI Law was amended by Law 52 (I) / 2016 to expressly permit a limited liability company registered under the Cyprus Companies Law, Cap. 113 (the “Companies Law”), and whose shares are listed in a regulated or not regulated market in the Republic in the form of an investment fund, to convert into a variable capital investment company (“VCIC”) and operate as a UCITS upon having submitted a relevant application and being granted license from the Cyprus Securities and Exchange Commission (“CySEC”) under certain conditions.

As a result of the above conversion provision, stakeholders of Cyprus closed-end investment companies may benefit from a conversion into an open-ended UCITS fund in terms of liquidity and transparency. A closed-end fund or an exchange traded fund issues a set number of shares and, although their value is also based on the Net Asset Value (“NAV”), the actual price of the fund is affected by demand and supply dynamics, allowing it to trade at prices above or below its real value. It is therefore considered that an open – ended UCITS fund may offer some of the following advantages:

- **Liquidity:** Being open-ended, the fund will be more liquid and open to subscriptions and redemptions.
- **NAV vs. Market Value:** The VCIC fund shares/units will be bought and sold at NAV which will equal Market Price; whereas in many instances, investors currently suffer a discount to NAV.
- **Improving Investor Protection:** The UCITS regulations minimize investment concentrations by placing limits on the investments made.
- **Passport ability:** As an EU product, there is scope to passport the product, through an application, to other European jurisdictions, expanding the possible market for the fund.

Conversion by Continuation

Although the said legislation authorises a conversion by way of continuation (so that the investment fund can retain its identity and track-record) yet no formal procedure has actually been put in place to facilitate

a complete conversion nor has the impact and legal effect of the conversion of such companies been addressed in the aforementioned amendment legislation nor any directives issued by the regulator in this respect. Following the express authority granted by the legislator, it is imperative that CySEC is called upon to examine and approve such conversion applications and grant a UCITS license to existing applicants albeit under conditions. It should be highlighted that no straightforward comprehensive procedure to effect a conversion of this kind has been established in this respect and instead prospective applicants may refer to the procedures prescribed for an application of a newly established VCIC. In a recent case, CySEC has required applicants to complete all required corporate actions to comply with the requirements on variable capital investment companies in order to adhere to Part II, Chapter II, subchapter II of the UCI Law. In doing so, the regulator has instructed that all such actions should be performed with a view to protect the interests of their current investors at all times. Another challenging aspect of the process relates to the conversion of an existing share capital expressed in nominal value into a variable capital with no nominal value, and whose value should be linked to and determined by the NAV.

Impact on existing funds

A company will, upon its conversion into a VCIC, be required to comply with the UCI Law and directives and regulations issued under and pursuant to it, as well as with the Companies Law, save for the sections which are specifically excluded from application to VCIC. The sections of the Companies Law excluded from application on VCIC companies, generally, relate to the increase and reduction of share capital, the registered capital and number of members of a company and the publication of a prospectus.

In addition, following delisting of a company's shares from the stock exchange, the obligations it bears under the Cyprus Stock Exchange laws, regulations and regulatory decisions issued pursuant to it from time to time, the Market Abuse Law L.102(I)/2016 and the Law on Transparency Requirements (in relation to information about issuers whose securities are admitted to trading on a regulated

market) L.190(I)/2007, shall no longer be applicable to it.

Comment

The UCI Law and related procedures have now made it possible for existing closed-end funds to convert into UCITS. While it remains to be seen whether such procedures will be better determined and defined in the future, it appears that the legislator's intention is to facilitate such processes. This provides promoters, companies and investors with an additional option to explore the form of investment vehicles available, which should in any case be examined under the particular facts applicable to the said interested parties. However, it is anticipated that the option of conversion, though not entirely uncomplicated, shall be of interest to existing investment funds who will seek to avail of the conversion process.

Katerina Hadjichristofi is an Associate Director and has been a member of the firm's practice since 2009. She is a part of the firm's corporate department and her main areas of focus are Banking Law, Commercial Law, Corporate Law, Mergers and Acquisitions, Stock Exchange Listings and Public Offerings and Restructuring / Insolvency Law.

Katerina is a qualified Insolvency Advisor in the Republic of Cyprus and a Nominated Advisor with the Cyprus Stock Exchange. She represents the firm in the MERITAS Young Lawyers Liaison Programme and is a member of the Cyprus Investment Funds Association.

Her focus is on corporate, banking and finance transactions, with experience in multi-million international transactions mainly relating to Russian, Ukrainian and Romanian clients. Her portfolio of clients includes major international banks and high-profile companies primarily active in the energy, trading, finance and real estate sectors of the international market.

Her experience includes both local and international projects and asset secured financing transactions. Having established a close working relationship with the Cypriot regulatory authorities she acts for issuers in the stock market.

She also advises clients in Corporate Law matters, re-organisations and corporate restructurings as well as mergers and acquisitions and her knowledge and expertise also extend to advice on regulatory matters including insurance company regulation, UCITS, AIFs and fund related matters.