

Newsflash

“The law regulating companies providing administrative services and related matters of 2012”

Summary of provisions, requirements, obligations and duties

1. Introduction

The Law Regulating Companies Providing Administrative and Related Matters of 2012 (no.L.196(I)/2012) (“the Law”) came into force on 21 December 2012.

The Law transposes the provisions of Directive 2005/60/EC into national law of the Republic of Cyprus (“the Republic”), and is intended to regulate the provision of administrative services.

Such services are defined as:

- The management or directing of trusts, including the provision of trustee and protector services, wherever these are created, as well as the management, investment or marketing of assets of a trust.
- The undertaking or provision of management services to companies, general or limited partnerships, or other organisations, whether with or without separate legal personality, anywhere these may be registered or established.
- Advising legal persons.
- Provision of company secretarial services.
- Provision of nominee shareholder services.
- Provision of registered office, as well as mail and electronic address for companies.
- Provision of general or limited partners in partnerships.
- Provision of similar services, in conjunction with the above for other legal persons or organisations, with or without separate legal personality.
- Opening and/or managing bank accounts.
- Acting as a custodian or depositary of financial instruments on behalf of clients, including escrow services.

The supervisory responsibility lies with the Cyprus Securities and Exchange Commission (CySEC) (“the Regulator”)

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Address:

Centaur House
2 Apostolos Varnavas
2571 Nisou, Nicosia,
Cyprus

Tel: +357 22 499 994
Fax: +357 22 499 984

Email:

info@centaurtrust.com

Website:

www.centaurtrust.com

Contributed by:

Haig Assadourian
Director

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2. General provisions of the Law

The Law codifies the conditions required for the licensing of service providers, as well as the processes relating to application for licensing, withdrawal/suspension of a license and general sanctions, and the ongoing requirements, obligations and duties placed upon licensed service providers.

The Law specifies stringent requirements for qualifying for a license, as well as strict requirements and obligations so that once licensed, a service provider is able to maintain its licensed status. This is not easy, and requires a significant commitment in terms of time and financial resources, dedicated to ensuring that the appropriate levels of service, staff training, due diligence and procedures are implemented.

It should be noted that lawyers and accountants providing the above listed services are exempted from the licensing requirement, where they are regulated by their respective professional bodies (the Cyprus Bar Association, and the Cyprus Institute of Certified Public Accountants respectively).

As such, they will be monitored according to the provisions laid out by their respective bodies, so will not be subject to the stringent regulation regime, as imposed by CySEC.

All requirements of the Law relating to the prevention and suppression of money laundering and terrorist financing are derived from the Prevention and Suppression of Money Laundering and Terrorist Financing Laws of 2007 and 2010 (“the AML Law”), and Directive DI144-2007-08 of 2012 of the Cyprus Securities and Exchange Commission for the Prevention of Money Laundering and Terrorist Financing (“the AML Directive”).

Address:

Centaur House
2 Apostolos Varnavas
2571 Nisou, Nicosia,
Cyprus

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3. Conditions for granting of a license

The Law requires that:

- The head offices of the applicant be located in the Republic.
- The persons who effectively direct the business of the applicant shall be of sufficiently good repute, sufficiently experienced, and hold sufficient academic or professional qualifications so as to ensure the sound and prudent management of the applicant.
- The management of the applicant must be undertaken by at least two persons meeting the requirements above (“four eyes principle”).

Under the provisions of the Law, the Regulator has the right to:

- Reject an application for licensing, if it is not satisfied that the principals of the applicant company meet the prescribed criteria.
- Oppose at any time following the granting of a license, the appointment, or change of appointment of any of the principal persons of the applicant company.
- Not approve an application until it has sufficient information about the identity of the shareholders of the applicant.
- Reject an application on the grounds of unsuitability of the direct or indirect shareholders, if it believes this will have an impact on the sound and prudent management of the applicant company.
- Oppose at any time following the granting of a license, the participation, or change of participation of a shareholder.

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Further requirements are:

- The licensed company must ensure that the persons it employs meet the criteria prescribed above, with regards to reputation, experience and qualifications, so as to perform their duties satisfactorily.
- The licensed company must employ an internal lawyer, or establish and maintain a regular business relation with an external lawyer on an annual basis.
- The licensed company must appoint a compliance officer, which is an employee of the company. The appointment must have prior approval of the Regulator, taking into account the person's experience, skills and good reputation.
- The licensed company must put in place comprehensive anti-money laundering procedures designed to meet the prescribed requirements.

4. Requirements, obligations and duties

Under the Law, a licensed company has the following organizational requirements:

- If the licensed company outsources the provision of administrative services to third parties, it must ensure the provision of a continuous and satisfactory service.
- Any sort of outsourcing may be assigned to persons/companies located in the Republic, provided it does not impede the Regulator's ability to regulate the direct compliance of the licensed company.
- If a licensed company outsources to third parties, it continues to bear full liability for the fulfillment of all its obligations under the Law.
- The liability of the compliance officer cannot be transferred.

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Where a licensed company is charged with the safekeeping of a client's financial instruments, or funds it must:

- Maintain the necessary accounts and records, so as to be in a position at all times, and without delay, to separate the assets held in a client's account from its own assets, as well as to be able to separate the assets of different clients, held within the same account.
- As soon as a licensed company receives client's funds for safekeeping, it must deposit them immediately in one or more accounts named "client's money", in a licensed credit institution either in the Republic, or abroad. Such accounts must be separate from the licensed company's own accounts.
- In case of bankruptcy, or otherwise, it is forbidden for the licensed company to use financial instruments or funds belonging to clients, for its own account.
- A licensed company must prepare within four months from the end of the financial year, financial accounts that provide its true and fair picture, and are in accordance with the applicable accounting standards and rules.

A licensed company has the following general and continuous obligations:

- It must at all times comply with the Law.
- All information, data, documents or forms supplied to the Regulator under the provisions of the Law must be correct, complete and accurate.
- The provision of false or misleading information, data, documents or forms to the Regulator constitutes not only a violation under the Law, which is subject to an administrative fine, but also a criminal offence.

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5. Application process

- The Regulator has the responsibility to consider all applications made for the provision of administrative services, and to approve or reject such applications on a case by case basis. The Regulator also has the responsibility for the ongoing monitoring of all licensed service providers, as well as to recommend changes and issue sanctions or withdraw licenses in the case of violations of the Law.
- Successful applicants will only be allowed to provide the services listed in their application, and subject to approval, as recorded in the Register of the Regulator. This Register will be available for public viewing.
- Any extension of a company's license to provide additional services, or amendments to its authorization regarding any details or information must be submitted in advance by relevant notification to the Regulator, along with any relevant information, details and forms, as provided by the Law. The Regulator does not approve such cases, but retains the right at any time to oppose any extension or amendment, or to request additional documents or information. The licensed company must comply with any demand and/or any indication made by the Regulator.

6. Withdrawal, suspension or lapse of license

The Regulator has the right to withdraw or suspend a license at any time, if it ascertains that:

- The licensed company does not comply/violates any provision of the Law.
- The license was obtained on the basis of false or misleading information.
- The interests of the licensed company's clients are not met, or are threatened in any way by the manner in which the licensed company provides its services.
- Where a license is withdrawn, the Regulator will permanently delete the licensed company from its Register. The company must then immediately cease the provision of its services. The company will remain under the supervision of the Regulator until the Regulator is satisfied that the company has completely complied with the provisions of the Law.

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The Regulator may suspend a license in cases where:

- A License withdrawal proceeding has been initiated, but where to allow the company to continue its operations pending a decision being reached may endanger the company's clients' interests.
- In cases where the charges and annual fees due to the Regulator are not paid. In such cases, the suspension is immediate, without prior notification.
- When there are suspicions of an alleged violation of the Anti-Money Laundering Laws and Directives in force in the Republic. In such cases, the Regulator may set a reasonable deadline, not in excess of three months from the date of notification of the suspension, during which the company must correct any violations.

During a suspension, the company may not provide any services.

7. Criminal & civil liability, and administrative sanctions

Under the Law, violations can result in terms of imprisonment and/or significant fines, in cases where there is a violation of Law, or the Anti-Money Laundering Laws and Directives in force in the Republic.

- The Regulator also has the power to impose significant administrative fines, depending on the gravity of the violation.
- Such violations also carry the obligation to compensate any persons who suffer damage and/or loss of profit which arise out of the violation. Criminal liability or liability of an administrative nature do not provide relief from any civil liability.
- Failure to provide access to the Regulator to any information, records, books, accounts, or other documents, including data stored in computers during an inspection or investigation may result in the Regulator confiscating such records. The Regulator has the right to submit to the appropriate anti-money laundering authorities any information or suspicions that may arise involving violations of the AML Law or the AML Directive.

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Contact us

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