

ANNOUNCEMENT

Further to its [Announcement](#) issued on 11 April 2017 in relation to the implementation of the Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU ([MiFID II](#)) and Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012 ([MiFIR](#)), the Cyprus Securities and Exchange Commission ('CySEC') hereby notifies in summary the changes introduced in relation to **Passporting Issues and the provision of investment services and activities by third country firms**. The above-mentioned new legislative framework has been transposed into Cyprus national law ([Law 87 \(I\)/2017](#)) and applies from **3 January 2018**.

This Announcement sets out the main changes introduced by MiFID II and MiFIR, as well as the relevant delegated and implementing Regulations, which relate to the passport notifications and tied agents process for investment firms in the European Union (EU), including Cyprus Investment Firms (CIFs). The main changes are summarized in the Appendix.

MIFID II passporting regime will apply to a broader range of activities, services and financial instruments than the current MIFID passporting regime because of the increases in scope in MIFID II of services/activities and financial instruments. This announcement is important to all investment firms that:

- Want to operate an Organised Trading Facility
- Perform services in relation to the new financial instrument emission allowances
- Fall within the revised exemptions under MiFID II and [Law 87 \(I\)/2017](#) (see part 5 of the Appendix of the [Announcement](#) issued on April 11, 2017),
- Will need to be authorized to deal on own account, as a result of the scope of that being extended to include matched principal trading
- Are currently passporting services in relation to derivatives of emission allowances and whose passport does not include C4 instruments,

and is also applicable to firms that seek authorization for the first time under [Law 87 \(I\)/2017](#) and who wish to passport investment services into other Member States.

CySEC draws special attention, also, to the following delegated and implementing acts in relation to the passport notification process:

- i. [Commission Delegated Regulation \(EU\) 2017/1018 of 29 June 2016 supplementing Directive 2014/65/EU of the European Parliament and of the Council on markets in financial instruments with regard to regulatory technical standards specifying information to be notified by investment firms, market operators and credit institutions](#)
- ii. Commission Implementing Regulation laying down implementing technical standards with regard to standard forms, templates and procedures for the transmission of information in accordance with Directive 2014/65/EU. This can be found in ESMA's [Final Report MiFID II/MiFIR draft Technical Standards on authorisation, passporting, registration of third country firms and cooperation between competent authorities](#) (see ITS 4).

CySEC notes that:

- (a) All CIFs should consider whether their existing Passport licenses/ authorisations required to be amended under the scope of the new [Law 87 \(I\)/2017](#) and submit the new Passport notifications **until 29 September 2017** using the new forms available on CySEC's website. The same applies to existing CIFs who wish to amend their existing passport, effective as of 3 January 2018. The relevant forms are:
 - i. [Notification of intention to freely provide/perform services/activities in another member state \(EEA\) \(Form 87-00-04\)](#),
 - ii. [Notification for the provision of arrangements to facilitate access to an MTF or OTF \(Form 87-00-05\)](#),
 - iii. [Notification of intention to establish a branch in another EEA state \(Form 87-00-06\)](#),
 - iv. [Notification of intention to use a tied agent established in another EEA state and change of tied agent particulars \(Form 87-00-07\)](#),
 - v. [Notification of the termination of the operation of a branch or cessation of the use of a tied agent established in another EEA state or in the Republic \(Form 87-00-08\)](#).
- (b) CIFs that intent to establish a branch or appoint a tied agent are urged to submit the relevant notifications (Forms 87-00-06 and 87-00-07) as of **3 November 2017**.
- (c) Please note that the requirement in point (a) above applies only to amended passports that will be applicable as of 3 January 2018. All other passporting notifications made until **8 December 2017** shall be submitted as usual using the existing Forms. From **11 December 2017** all notifications shall be submitted using the new forms listed above.

All Forms are subject to revision or changes. All Forms are on CySEC website (www.cysec.gov.cy).

Nicosia, 1 September 2017

Main changes relating to the passport notification process:

MiFID II changes the scope of the investment services, investment activities and financial instruments which fall within the MiFID passport regime. It will also standardise the information that firms must submit when they make a notification and the templates and procedures they use.

The new processes will apply equally to new investment firms who wish to passport and to existing investment firms who either want to passport for the first time or amend existing passports.

The main changes to the Passport Notification process following the implementation of MiFID II are noted herein below for information purposes.

1. Cross border services passports from 3 January 2018

Under MiFID, investment firms are allowed to submit one service passport notification for all EEA countries. This will no longer be possible under MiFID II. Instead, investment firms will be required to submit **one passport notification for each country in which they intend to provide cross-border services.**

Investment firms that want to include CY-established tied agents to one of their service passports will have to confirm, for each tied agent, the activities and financial instruments that the agent will passport cross border. Firms will have to submit one notification for each country in which the tied agents intend to provide cross border services (Form 87-00-04).

2. Cross border arrangements in relation to an MTF or an OTF

MiFID II introduces a new investment service, the Operation of an Organised Trading Facility (OTF) (A9) to the list of investment services and activities that can be passported. Investment firms that want to provide cross border access to the MTFs and/ or OTFs they operate will have to submit passport notifications separately from other activities (A1 to A7).

Firms will need to submit one passport notification for each country in which they wish to provide arrangements to facilitate remote access to their MTFs and/or OTFs (Form 87-00-05).

Investment firms operating MTFs and OTFs will have to submit one (1) notification for each trading platform they want to arrange cross-border access to. Investment firms will have to provide details for each trading platform, including:

- A short description of the appropriate arrangements to be in place and the date from which these arrangements will be provided in the host Member State,
- A short description of the business model of the MTF or the OTF, including the type of the financial instruments traded, the type of participants, and the marketing approach of the MTF or OTF to target remote users, members or participants in the host member state.

3. Establishment of a Branch

Investment firms that want to establish a branch in another EEA Member State will have to submit an establishment notification. The notification process remains generally unchanged. However, investment firms will also have to:

- set out the organisational structure of the branch, showing the functional, geographical and legal reporting lines,
- attach a forecast statement for profit and loss and cash flow, both over an initial period of thirty six months

It is likely that firms that want to use tied agents established in other EEA Member States will have to submit two notifications:

- one notification to be granted a right of establishment passport to this EEA country (Form 87-00-06), and
- one notification to be granted the right to appoint a tied agent established in this Member state (Form 87-00-07)

The investment firm will have to submit a complete Tied Agent notification for each tied agent established in this EEA country.

MiFID II will now require all Member States to register tied agents established in their country. Where an investment firm currently engages a tied agent established in one of the Member States that did not maintain a tied agent regime under MiFID (i.e. Bulgaria, Denmark, Finland, Iceland, Latvia, Lithuania), the investment firm is responsible for re-registering this tied agent with the relevant host competent authority.

If a firm decides to terminate the operation of its branch in another EEA Country or stop using a tied agent established in that country, it will have to provide the following information after 3 January 2018:

- Description of the schedule for the planned termination,

- information on the process of winding down the business operations, including details of how client interests will be protected, complaints resolved and any outstanding liabilities discharged.

The relevant notification is Form 87-00-08.

4. Provisions of investment services and activities by third country firms

In relation to third-country investment firms, the MIFID II establishes two different regimes. In particular:

- An investment firm having its head office in a third country may, at the discretion of national legislation in each Member State, be required to establish a branch in a Member State if it intends to provide investment services and/or perform investment activities in that Member State to retail or professional clients upon fulfilment of specific conditions.

Cyprus has exercised its discretion and allows a third country firm to provide services to retail clients and professional clients upon request in its territory, provided that it establishes a branch in Cyprus (See Article 40 of Law 87(I)/2017).

- If a retail or professional client established or situated in the EU initiates at its own exclusive initiative the provision of an investment service or the performance of an investment activity by a third-country firm, the above mentioned requirement for authorization by branching does not apply to the provision of that service or the performance of that activity by third-country firm to that person. An initiative by such clients shall not entitle the third- country firm to market otherwise than through the branch, where one is required accordance with national law, new categories of investment products or investment services to that client.

Where a Member State requires that a third-country firm intending to provide investment services or to perform investment activities with or without any ancillary services in its territory establish a branch, the branch shall acquire a prior authorisation by the competent authorities of that Member State in accordance with the following conditions:

- (a) the provision of services for which the third-country firm requests authorisation is subject to authorisation and supervision in the third country where the firm is established and the requesting firm is properly authorised, whereby the competent authority pays due regard to any FATF recommendations in the context of anti-money laundering and countering the financing of terrorism,

- (b) cooperation arrangements, that include provisions regulating the exchange of information for the purpose of preserving the integrity of the market and protecting investors, are in place between the competent authorities in the Member State where the branch is to be established and competent supervisory authorities of the third country where the firm is established,
- (c) sufficient initial capital is at free disposal of the branch,
- (d) one or more persons are appointed to be responsible for the management of the branch,
- (e) the third country where the third-country firm is established has signed an agreement with the Member State where the branch is to be established, which fully comply with the standards laid down in Article 26 of the OECD Model Tax Convention on Income and on Capital and ensures an effective exchange of information in tax matters, including, if any, multilateral tax agreements,
- (f) the firm belongs to an investor-compensation scheme authorised or recognised in accordance with Directive 97/9/EC.

An application form for the establishment of a branch by a third country investment firm is to be published in September 2017.