

**The present English text is for information purposes only and is not legally binding. The legally binding document is in the Greek language.**

**No. 4598, 15.10.2012**

**R.A.D. 372/2012**

THE OPEN ENDED UNDERTAKINGS FOR COLLECTIVE INVESTMENTS LAW OF 2012

Directive DI78-2012-05

Of the Cyprus Securities and Exchange Commission regarding the delegation of one or more activities or functions of the management company to a third person

CLASSIFICATION OF PARAGRAPHS

PART I	INTRODUCTORY PROVISIONS
Paragraph 1	Short title
Paragraph 2	Interpretation
Paragraph 3	Scope
PART II	GENERAL RULES FOR DELEGATION
Paragraph 4	Selection of delegate
Paragraph 5	Review of delegate
Paragraph 6	Sub-delegation
Paragraph 7	Amendment or termination of delegation agreement
PART III	SPECIAL RULES FOR THE DELEGATION OF INVESTMENT MANAGEMENT OF UCITS OR OTHER UCI
Paragraph 8	Granting of authorization for the delegation of investment management of UCITS or other UCI
Paragraph 9	Delegation of investment management of UCITS or other UCI to a third party from a third country
Paragraph 10	Specific measures for managing conflicts of interest
Paragraph 11	Termination of delegation upon the Commission's decision
PART IV	FINAL PROVISIONS
Paragraph 12	Entry into force
APPENDIX	FORM E78-2012-03 – APPLICATION FOR THE GRANTING OF AUTHORISATION FOR THE DELEGATION OF INVESTMENT MANAGEMENT OF UCITS OR UCI IN ACCORDANCE WITH ARTICLE 115(2)(A)(II) OF THE LAW

The Securities and Exchange Commission, exercising the powers vested in it by virtue of subparagraphs (2)(a)(ii) and (4) of Article 115 of the Open Ended Undertakings for Collective Investments (UCI) Law of 2012 hereby issues the following Directive:

PART I

INTRODUCTORY PROVISION

- |                |    |  |
|----------------|----|--|
| Short title    | 1. | The present directive will be cited as the delegation of one or more activities or functions of the management company to a delegate and relevant matters directive of 2012.   |
| Interpretation | 2. | For the interpretation of the present directive the following terms apply:<br><br>«delegation» means the delegation from the management company to a third person to perform, on its behalf, one or more functions or activities in accordance with article 115 including the functions referred to in article 109(3) of the Law.<br><br>«Law» means the Open-Ended Undertakings for Collective Investments Law of 2012. |

No. 4598, 15.10.2012

R.A.D. 372/2012

78(I) of 2012

«Directive» means the present directive.

«Delegate»: means the third person to which the management company intends to delegate activities or functions.

Definitions that are used in the present directive and are not interpreted differently have the meaning specified in the Law.

Scope of application

3. This directive specifies the conditions that must be fulfilled for the management company to delegate the exercise, on its behalf, of one or more functions or activities with the purpose of enhancing the efficiency of its services

## PART II

### GENERAL RULES FOR DELEGATION

Selection of delegate

4. (1) The management company before the delegation:

(a) Ensures that the delegate has the appropriate qualifications and adequate expertise and experience to efficiently perform the delegated task and

(b) Takes every measure to ensure that the delegate will be in a position to meet the responsibilities deriving from the delegation

(2) The management company must be able to justify the selection of the specific delegate between other potential delegates

Review of delegate

5. (1) The management company conducts the necessary reviews to ensure the delegate is performing in accordance with the applicable legislation, the relevant professional rules and the terms of the delegation agreement.

(2) The management company possess the appropriate organization, expertise and infrastructure, as well as the sufficient means to implement the necessary measure for the monitoring of the delegate

(3) The management company ensures in practice and through the delegation agreement, in writing, the following

(a) That it will maintain access to the relevant data and records and the possibility of on-site reviews.

(b) That it will possess, during the period of the outsourcing, the possibility to interfere with the activities of the delegate so as to enforce the compliance of its obligations, as they are specified in the current legislation, professional rules and the provision of the outsourcing agreement

(c) That the delegate will inform the management company of every fact that may materially influence the delegate's ability to adequately perform its duties as they are specified in the current legislation, professional rules and the provision of the outsourcing agreement

(d) That the delegate will report to the management company in regular intervals about the provision of its services.

(e) That the delegate will properly supervise the function or activity delegated to him and will adequately manage the risks associated with the delegation.

(f) That the delegate shall adopt and implement, in collaboration with the management company, an emergency plan for restoring the function of the systems after a disaster or interruption. The delegate in collaboration with the management company shall perform periodic testing of the reserve means of functioning when this is appropriate taking into consideration the delegated function.

(g) That it shall possess the right to cancel the delegation agreement at any time necessary for the protection of the interests of the UCITS or UCIs unit-holders without putting at risk the continuity of the functioning of the UCITS or other UCI.

(4) When the management company and the delegate belong to the same group, the management

**The present English text is for information purposes only and is not legally binding. The legally binding document is in the Greek language.**

**No. 4598, 15.10.2012**

**R.A.D. 372/2012**

company mat, for compliance with the present paragraph purposes, take into consideration the degree to which it controls the delegate or may influence the delegate's actions.

- Sub-delegation 6. (1) Further delegation from the delegate is allowed with the written consent of the management company and under the condition that the following are ensured:
- (a) The application of the provisions of article 115 and of the directive and
  - (b) The compliance with the specific conditions enforceable as per the original delegation agreement.
- (2) The sub-delegation in accordance with sub-paragraph 1 does not prevent the management company from reviewing the delegated activities.
- (3) The management company ensures that the sub-delegation will not hamper the Commission from exercising its supervisory duties.
- (4) The sub-delegation in accordance with sup-paragraph 1 does not influence the management company's responsibility as prescribed in the original delegation agreement.
- Amendment or termination of delegation agreement 7. The management company informs the Commission in case of any amendment of the information submitted to the Commission at the notification of the delegation agreement as well as in the case of termination of the agreement for any reason.

**PART III**

**SPECIAL RULES FOR THE DELEGATION OF INVESTMENT MANAGEMENT OF UCITS OR OTHER UCI**

- Granting of authorization for the delegation of investment management of UCITS or other UCI 8. (1) The Commission in granting the authorization of article 115(2)(a)(ii) of the Law examines:
- (a) The suitability, expertise and experience of the delegate in relation to the specific UCITS or the UCI.
  - (b) The adequacy of the organizational structure and of the means necessary for the efficient performance of the investment management duties to be delegated.
  - (c) The ensured separation of the investment management activity of the UCITS or UCI from the other asset management activities in a way to avoid conflicts of interest situations between the interests of the UCITS unit-holders and other clients of the delegate
- (2) In granting the authorization of article 115(2)(a)(ii) of the Law, the management company submits to the Commission:
- (a) Every information necessary for the evaluation of the conditions of article 115(2)(a)(ii) of the Law and as a minimum the information specified in Form E78-2012-04 in accordance with the Appendix of this Directive.
  - (b) Information on the persons responsible for the investment management of the UCITS or other collective investment undertaking to assess their suitability, expertise and experience in the investment management of the specific UCITS or other collective investment undertaking, in accordance with Form E78-2012-04 of the Appendix of this Directive and
  - (c) Any additional information requested by the Commission and is necessary or useful for the assessment of the granting of license to delegate.
- (3) The authorization of article 115(2) (a) (ii) of the Law is not granted if the Commission judges that the delegation will circumvent the exercise of its supervisory duties.
- (4) The management company provides to the Commission on time any information requested regarding the delegate of article 115(2) (a) (ii) of the Law for the exercise of its supervisory duties.

**The present English text is for information purposes only and is not legally binding. The legally binding document is in the Greek language.**

**No. 4598, 15.10.2012**

**R.A.D. 372/2012**

(5) The Commission must within reasonable time, that will not exceed (1) one month from the submission of all necessary information, decide on the application for the granting of authorization of article 115(2) (a) (ii) of the Law.

Delegation of investment management of UCITS or other UCI to a third party from a third country

9. (1) As long as the delegation of the investment management either in part or whole of a UCITS or UCI is to a delegate established in a third country the management company shall submit to the Commission a verification from the competent authority of the delegate that it:

- (a) Has been authorised for the function of collective investment management or the asset management in general or is registered in the relevant record of its home state for the provision of the service of collective investment management or portfolio management in general and
- (b) Is subject to prudential supervision in accordance with the legislation of its home state and that legislation is equivalent to Directive 2009/65 EC if authorised for collective investment management or directive 2004/39/EC if authorised for portfolio management in general.

(2) The delegation agreement must specify that the delegation will be subject to the Laws of the Republic.

(3) The management company provides the Commission on time any requested information regarding the delegate of article 115(2)(a)(ii) of the Law for the exercise of its supervisory duties.

Specific measures for managing conflicts of interests

10. If the delegation of the investment management either in part or whole of a UCITS or UCI is to a company part of the UCITS or UCI depositary's group, the management company shall adopt and implement measures for conflicts of interest that may arise as a result of the delegate being part of the depositary 'group to ensure the interest of the UCITS or UCI unit-holders.

Termination of delegation upon the Commission's decision

11. (1) The Commission may decide to request the management company to take any necessary steps for the immediate termination of the outsourcing agreement in regard to part or the total of the UCITS's or UCI's investments in case:

- (a) the conditions of article 115 of the Law for the outsourcing of investment management or the provisions of this directive are no longer met or
- (b) the termination of the outsourcing is required for the interest of the UCITS or UCIs unit-holders.

(2) As long as the investment management has been delegated to a delegate of article 115(2) (a)(ii) of the Law the Commission may withdraw the outsourcing authorisation, in the case of subparagraph 1, if the management company does not submit on time any requested information about the delegate.

#### PART IV

#### FINAL PROVISIONS

Entry into force

12. The directive enters into force from the date of its publication in the Official Journal of the Republic.

The present English text is for information purposes only and is not legally binding. The legally binding document is in the Greek language.

No. 4598, 15.10.2012

R.A.D. 372/2012

**APPENDIX**

**FORM E78-2012-03**

**APPLICATION FOR THE GRANTING OF AUTHORISATION FOR THE DELEGATION OF INVESTMENT  
MANAGEMENT OF UCITS OR UCI IN ACCORDANCE WITH ARTICLE 115(2)(A)(II) OF THE LAW**

**Applicant name:**

:

**Purpose of this form**

This form must be completed if you are a UCITS management company managing UCITS or other UCI and wish to delegate the investment management of the UCITS or other UCI in accordance with article 115(2)(a)(ii) of the Open-Ended Undertakings for Collective Investments Law of 2012 («The Law»).

**For official use only**

The applicant has paid the application fees. The fees have been verified and are accurate.

..... Signature

..... Name/Position

The present English text is for information purposes only and is not legally binding. The legally binding document is in the Greek language.

No. 4598, 15.10.2012

R.A.D. 372/2012

## CONTENT

PARAGRAPHS	
Introduction	Clarification about completing this form
Paragraph 1	Submitted information when the suggested delegate is a CIF or a bank of the Republic
Paragraph 2	Submitted information when the suggested delegate is an investment firm or bank of another Member State
Paragraph 3	Submitted information when the suggested delegate is an investment management company of a third country.
Paragraph 4	Statement of legal promoters of the applicant
Paragraph 5	Additional pages for completing data and information
Appendices	Checklist of accompanying documents of the application

**The present English text is for information purposes only and is not legally binding. The legally binding document is in the Greek language.**

**No. 4598, 15.10.2012**

**R.A.D. 372/2012**

**INTRODUCTION – Clarifications about completing this application**

1. The present application form must be completed electronically. This form is available in electronic medium at CySEC's website, [www.cysec.gov.cy](http://www.cysec.gov.cy).
2. The questions must remain unchanged and the answers must be provided under each question
3. All applicable questions must be answered and in the case a question is not applicable report it as N/A.
4. In the case data or forms are to be attached include a reference to the relevant paragraph and attach them in an Appendix following the **same numbering order of this form**. The numbering must not be amended in the case there are no attachments for a specific paragraph of this form.
5. In the case there are no competent authorities for the issue of certificates attach other equivalent documents from independent and trustworthy sources.
6. In the case where the use of additional pages is necessary insert them in Paragraph 5.
7. In completing this form it should not be assumed that public information or previously disclosed information are known to the Commission.

The Management Company.....

(the «applicant»), as legally represented, submits, in accordance with article 115(2)(a)(ii) of the Law and Directive D178-2012-05, application for the granting of license to delegate the investment management of UCITS or other UCI. The application is accompanied by all the required data and forms.

The present English text is for information purposes only and is not legally binding. The legally binding document is in the Greek language.

No. 4598, 15.10.2012

R.A.D. 372/2012

**PARAGRAPH 1:**

**SUBMITTED DETAILS WHEN THE SUGGESTED DELEGATE IS A CIF OR BANK OF THE REPUBLIC**

**1.1. Details of suggested delegate**

Full Name	:	
Registration Number/ Authorization Number	:	
Home member state	:	
Competent Supervisory Authority	:	
Contact Person	:	
Telephone number	:	
Fax number	:	
Email address	:	
Is the delegate part of the Depositary's group;		YES <input type="checkbox"/> NO <input type="checkbox"/>

**1.2. UCITS or other UCI the investment management of which will be delegated to the suggested delegate**

A/A	UCITS	UCI
1.		
2.		
3.		
4.		
5.		



The present English text is for information purposes only and is not legally binding. The legally binding document is in the Greek language.

No. 4598, 15.10.2012

R.A.D. 372/2012

1.3. Fill-in the details of the employees of the delegate responsible for the investment management of the UCITS or other UCI:

A/A	Full Name	Certificate as per article 52 of the Investment Services Law	Position in the Delegate
1.			
2.			
3.			

Attach updated resume of the above persons and completed signed questionnaire (Form E78-2012-02) if there are any amendments since the last submitted documents. Otherwise submit statement by the above persons that the information in the already submitted documents to the Commission has not amended (**Appendix 1**).

**PARAGRAPH 2**

**SUBMITTED DETAILS WHEN THE SUGGESTED DELEGATE IS AN INVESTMENT FIRM OR CREDIT INSTITUTION OF ANOTHER MEMBER STATE**

**2.1. Details of suggested delegate**

Full Name	:	
Registration Number/ Authorization Number	:	
Home member state	:	
Competent Supervisory Authority	:	
Contact Person	:	
Telephone number	:	
Fax number	:	
Email address	:	
Is the delegate part of the Depository's group;		YES <input type="checkbox"/> NO <input type="checkbox"/>

**2.2. Has the procedure as per article 77 or article 80 of the Investment Services Law or as per article 10A of the Banking Law of 1997 till 2011 been followed?**

YES  NO

In case the answer is negative, note that compliance with the above relevant articles is a condition for the granting of the authorization of article 115(2) (a) (ii) of the Law. Therefore the authorization cannot be granted before the above condition is fulfilled.

**2.3. UCITS or other UCI the investment management of which will be delegated to the suggested delegate:**

A/A	UCITS	UCI
1.		
2.		
3.		
4.		
5.		

The present English text is for information purposes only and is not legally binding. The legally binding document is in the Greek language.

No. 4598, 15.10.2012

R.A.D. 372/2012

2.4. Fill-in the details of the employees of the delegate responsible for the investment management of the UCITS or other UCI:

A/A	Full Name	Certificate for the exercising of the portfolio management function	Position in the Delegate
1.			
2.			
3.			

Attach copy of the certificate, resume and the completed signed questionnaire (Form E78-2012-02) (**Appendix 2**)

The present English text is for information purposes only and is not legally binding. The legally binding document is in the Greek language.

No. 4598, 15.10.2012

R.A.D. 372/2012

**PARAGRAPH 3**

**SUBMITTED DETAILS WHEN THE SUGGESTED DELEGATE IS AN ASSET MANAGEMENT FIRM, OTHER THAN COLLECTIVE MANAGEMENT AS DEFINED IN DIRECTIVE 2009/65/E, OF A THIRD COUNTRY**

**3.1. Details of suggested delegate**

Full Name	:	
Registration Number/ Authorization Number	:	
Firm type	:	
Name of Group if applicable	:	
Country of establishment	:	
Competent Supervisory Authority	:	
Contact Person	:	
Telephone number	:	
Email address	:	
Is the delegate part of the Depository's group;		YES <input type="checkbox"/> NO <input type="checkbox"/>

Attach copies of Articles and Memorandum of Association, Organizational structure and the Internal Operations Manual of the delegate (**Appendix 3**).

**3.2** State whether the delegate is subject to prudential supervision and investor protection legislation equivalent to Directive 2004/39/EC and attach certificate or other document from the competent authority confirming the equivalence (**Appendix 4**).

YES  NO

3.3 Shareholders with qualifying holdings

Please provide the information requested below for each one of the shareholders having qualifying holdings in the delegate			
<b>3.3.1.</b>	In case of shareholders –legal entities		
	Name and legal form	:	
	Registered Office	:	
	Registration number	:	
	Main activities	:	
	Percentage of voting rights, which the qualifying shareholder may exercise, directly or indirectly at the General meetings of the delegate	:	
	Members of the Board of Directors	Name and surname	1.
			2.
			3.
			4.
			5.
		Professional capacity	1.
			2.
			3.
			4.
			5.
<b>3.3.2.</b>	In case of shareholders-natural persons		
	Name and surname	:	

The present English text is for information purposes only and is not legally binding. The legally binding document is in the Greek language.

No. 4598, 15.10.2012

R.A.D. 372/2012

	Domicile address	:	
	Professional capacity	:	
	Percentage of voting rights, which the qualifying shareholder may exercise, directly or indirectly at the General meetings of the delegate	:	

Attach completed questionnaire (Form E78-2012-02) signed by the shareholders of sub-paragraphs 3.3.1 and 3.3.2. (**Appendix 5**). Regarding the direct shareholders of paragraph 3.3.1 attach a certificate of good standing or equivalent certificate from the competent authorities of the country of establishment. Regarding the direct shareholders of paragraph 3.3.2 attach a certified ID or passport copy, a certificate of non-bankruptcy and a criminal record extract issued by the competent authorities from their country of domicile (**Appendix 6**). Where the country of domicile of the shareholder does not issue a criminal record extract and/or non-bankruptcy certificate, then such documents have to be submitted which, in the judgment of the Commission, will certify that the shareholder has not been submitted to bankruptcy or to a similar situation.

**3.3.3.** Regarding the natural persons being the ultimate beneficial owners (UBOs) of the shares of the delegate, attach certified ID or passport copies, certificates of non-bankruptcy and criminal record extracts issued by the competent authorities of their country of domicile (**Appendix 7**). Where the country of domicile of the UBO does not issue criminal record extracts and/or non-bankruptcy certificates, then such documents have to be submitted which, in the judgment of the Commission, will certify that the UBO has not been submitted to bankruptcy or to a similar situation.

**3.4.** Financial information of the delegate:

**3.4.1.** State details in relation to any encumbrances (including the type of encumbrance), guarantees, indemnities or other forms of security or other commitments (including letters of comfort) given by the delegate to third parties, and which are valid at the date of this application form (also include with special reference those relating to other undertakings of the same Group or to persons related with those).

--

**3.4.2.** Attach the latest annual financial statements of the delegate with the relevant report of the independent approved auditors. In case the delegate is part of a group attach also the latest annual consolidated financial statements of the group to which the applicant belongs to, along with the relevant report of the independent approved auditors (**Appendix 8**).

The present English text is for information purposes only and is not legally binding. The legally binding document is in the Greek language.

No. 4598, 15.10.2012

R.A.D. 372/2012

3.5. Details of BOD members and Persons directing the business of the delegate:

3.5.1. Members of the Board of Directors				
A/A	Name and surname	Position in the Board of Directors/executive or non-executive director	Professional capacity	Address
1.				
2.				
3.				
4.				
5.				

3.5.2. Persons directing the business of the delegate				
A/A	Name and surname	Position in the company	Professional capacity	Address
1.				
2.				
3.				

Attach certified ID or passport copies, certificates of non-bankruptcy and criminal record extracts issued by the competent authorities of the country of domicile of persons of sub-paragraph 3.5.2. It is stressed that, if a person of sub-paragraph 3.5.2 was domiciled abroad during the last five years, then the certificates of non-bankruptcy and the criminal record extracts have to be issued by the competent authorities of the country of domicile. Where the country of domicile does not issue criminal record extracts and/or non-bankruptcy certificates, then such documents have to be submitted, which in the judgment of the Commission, will certify that the person has not been submitted to bankruptcy or to a similar situation. Attach also the completed questionnaire (Form E78-2012-02) signed by the persons of sub-paragraph 3.5.2 (**Appendix 10**).

3.5.3. UCITS or other UCI the investment management of which will be delegated to the suggested delegate:

A/A	UCITS	UCI
1.		
2.		
3.		
4.		
5.		

The present English text is for information purposes only and is not legally binding. The legally binding document is in the Greek language.

No. 4598, 15.10.2012

R.A.D. 372/2012

3.5.4. Fill-in the details of the employees of the delegate responsible for the investment management of the UCITS or other UCI:

A/A	Full Name	Certificate for the exercising of the portfolio management function	Position in the Delegate
1.			
2.			
3.			

Attach certified ID or passport copy, resume, certified copy of the certificate, copies of academic qualifications, certificates of non-bankruptcy and criminal record extracts issued by the competent authorities of their country of domicile and the completed signed questionnaire (Form E78-2012-02) (**Appendix 11**). Where the country of domicile does not issue criminal record extracts and/or non-bankruptcy certificates, then such documents have to be submitted, which in the judgment of the Commission, will certify that the person has not been submitted to bankruptcy or to a similar situation.



The present English text is for information purposes only and is not legally binding. The legally binding document is in the Greek language.

No. 4598, 15.10.2012

R.A.D. 372/2012

PARAGRAPH 4

**STATEMENT OF LEGAL REPRESENTATIVES OF THE APPLICANT**

We responsibly declare, having full knowledge of the consequences of the Law, as legal representatives of the management company that:

- a) We have applied all required diligence to ensure that all information contained in this application, as well as the details and Forms that accompany it are correct, complete and accurate.
- b) We will immediately notify the Commission, in writing, about any change that takes place in the information and/or details, documents and Forms submitted with the present application.

We confirm that the management company will comply with the requirements and/or obligations arising from the applicable legislation.

We acknowledge and accept that the Commission may reveal information in the discharge of its duties, as these duties are defined in the applicable Law.

*We acknowledge that the provision of false or misleading information or of documents or Forms, or the withholding of material information from the current application constitutes, apart from being a violation, subject to administrative fine of up to 350.000 EUR, which may increase up to 700.000 EUR in case of repeated or continued violation, a criminal offence being punishable with imprisonment of up to five (5) years.*

.....

Full name and capacity	Signature	Date
------------------------	-----------	------

.....

Full name and capacity	Signature	Date
------------------------	-----------	------

**The present English text is for information purposes only and is not legally binding. The legally binding document is in the Greek language.**

**No. 4598, 15.10.2012**

**R.A.D. 372/2012**

**PARAGRAPH 5**

**Additional pages for completing data/information**

**APPENDICES**

**A. . Checklist of documents accompanying the application**

Appendix	Details/Forms	Subparagraph of Form	Submitted (v) / Not applicable (N/A)	For official use only
1.	Updated resume and questionnaire or signed statement of no amendments	1.3.		
2.	Certificate copy, resume and questionnaire	2.4.		
3.	Memorandum, Organizational structure and Internal Operations Manual	3.1.		
4.	Confirmation from third country competent authority regarding prudential supervision and protection credentials	3.2.		
5.	Questionnaire	3.3.1. and 3.3.2.		
6.	Good standing certificate or certified copy of ID/passport, non-bankruptcy report and clear criminal record report	3.3.1. and 3.3.2.		
7.	Certified copy of ID/passport, non-bankruptcy report and clear criminal record report	3.3.3.		
8.	Latest annual financial statements including auditors report	3.4.2.		
9.	Certified copy of ID/passport, non-bankruptcy report and clear criminal record report	3.5.2.		
10.	Questionnaire	3.5.2.		
11.	Certified copy of ID/passport, questionnaire, updated resume, certificate for exercising the portfolio management function , non-bankruptcy report and clear criminal record report	3.5.4.		

**The present English text is for information purposes only and is not legally binding. The legally binding document is in the Greek language.**

**No. 4598, 15.10.2012**

**R.A.D. 372/2012**

**B. Accompanying documents**