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There's talk of an Alternative Universe

By Mr. Tony Trescothick

Business Development Director, Mellstock Limited

Earth scientists are learning more every day about the World we can see and increasingly, the World we can't see. Nano-technology and electron microscopes are helping them to discover new life forms and ecologies almost daily.

Meanwhile, astro-scientists are learning more each day about the Universe we can see – and apparently, the Universes we can't see!

In astronomy circles Alternative Universes are purely theoretical at the moment, but in investment circles, I am pleased to say that the "Universe of Alternatives" is vast and positively a reality.

"Alternative investments" is a wide-ranging term which includes many asset classes and strategies that, as readers will know, are essentially anything other than equities, bonds and cash. It's a "catch-all" term that has almost as many permutations as there are stars in the sky.

However, the problem is that many Alternatives have been crafted that are great in theory but often prove difficult in practice. The strategy, when being assessed, needs to include considerations that include suitability for the investor-types to whom they are being offered. For example, insufficient liquidity can rear its ugly head all too often, leading to gating and suspension. Never a nice experience for either manager or investor.

Recent multiple suspensions across a number of asset classes has led to a general avoidance of Alternatives by many investors and their advisers. This may be a good thing if their investment outlook is to be content with the returns and volatility provided with the mainstream investment classes that make up traditional investments.

However, as has been reported widely, many large investors including some of the World's SWFs, are increasing their allocation to Alternatives significantly. Clearly, their extensive resources permit the flexible attitude that Alternatives investing requires, and thus permits them to fund investments such as infrastructure, technology and life sciences.

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Generally, though, for the average private investor without substantial investable capital, Alternatives can be a step-too-far. Liquidity is possibly the key concern here as individuals may not have the flexibility to let a longer-term Alternative investment run its course. Many mega-investors will simply not want to see their money back quickly whilst some private savers have no choice should their health or personal circumstances take a turn for the worse.

So, for those who have the resources, the expertise and the investment horizon required for sensible Alternatives investing, what is available within this Universe of opportunity we mentioned earlier?

The obvious answer is "practically anything" but to be more specific, some Alternatives that may be worth considering could be Student Housing and its complementary bedfellow Co-living, Long Term Care Provision, Renewable Energy and Private Debt. These asset classes now include such a wide range of opportunities, this whole article wouldn't have the space to fit them all in.

But what we can highlight, are some pointers to what drivers you should look for in a worthy Alternative investment.

Does it make sense?

The theory sounds great, but what if the result/product of the investment has little market opportunity? What if the purpose to which the invested capital is put doesn't have an obvious end use? Do your clients understand how the investment works? Many investment vehicles these days are highly complex and how they create returns may only be fully understood by a small group of people. While it's not essential to know the minute complexities, maybe it makes sense for them to have a workable understanding of what's happening to their money.

Does it match their timeline?

Remember that few Alternatives, even within a fund structure, are listed assets and therefore will not usually have a ready market for disposal. Real Estate Alternatives especially, but many other types of investments, will take time to liquidate and for them to receive their cash back. Even a fund that has a stated redemption policy can find that is a tough discipline to maintain, so expect notice periods and liquidation schedules to lengthen unexpectedly. If that could be a problem for them, maybe they shouldn't invest.

Correspondingly, they may wish to allocate cash to an investment that has a targeted, distant time horizon so make sure they don't get "kicked out" ahead of their re-investment schedule.

Is the Alternative recession-proof?

Easy answer is – is anything recession proof? Well, some like Student Accommodation can claim this, but some will fare better than others and this is where your homework can come in and save your hide! Especially when long-term investing (pretty much a prerequisite for Alternatives), take account of likely economic changes as best you can. Do remember that some Alternatives can potentially guard against damaging recessionary pressures – certain Infrastructure assets perhaps. Others may suffer badly in a down-turn. Be ready for economic changes (good or bad), as they can have a marked impact upon your returns.

Taking advantage of the Alternatives Universe

By way of conclusion to this short journey into some of the concepts behind these opportunities, the key is, as usual, let the buyer beware. In other words, before venturing into any alternative investment strategy, think through how the time horizon needed for the strategy to work fits in with your clients' present and future plans.

Alternatives provide sometimes new and interesting ways to create income and growth, provide diversification and reduce a portfolio's correlation to mainstream traditional assets. Ensure the routes to accessing (and exiting) these esoteric asset classes is suitable – many Alternatives fund structures work very well. However, that needs planning and thought and the fund's constitutional document, irrespective of fund type, should be prepared carefully.

Tony has a background in the investment management industry that started in the early 1980s in the UK. His practical experience in both management and marketing provides a unique insight where both elements combine

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to create unique and attractive investment propositions.

He holds both industry and management qualifications from leading bodies such as the Chartered Insurance Institute, the Chartered Management Institute and the European Institute of Management and Finance. Mellstock is based in Limassol and provides specialist marketing services to the fund management industry with clients in London, Dubai and Cyprus. It also provides capital-raising and introduction services across a number of asset classes.

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.

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

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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 establish 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.

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Countdown to the New Data Protection Law – The impact of General Data Protection Regulation (GDPR) for Companies

By Ms. Xenia Kasapis, LL.B, LL.M, MCIArb

Leading lawyer of the Data Protection and Privacy Department, E & G Economides LLC

With its newly adopted General Data Protection Regulation (GDPR), the European Union is embarking into a new era of data handling framework. The new Regulation, which is designed to strengthen and unify data protection, replaces the Data Protection Directive 95/46/EC. The GDPR was adopted on 6 April 2016, and will be directly applicable across all Member States of the EU on 25 May 2018 and it will affect the way organizations treat, manage and maintain users data; as regards to both clients and employees.

The provisions of the GDPR do not apply for purely personal activities, as they only apply on physical persons and not legal entities Personal data is defined as any information relating to an identified or identifiable individual. Examples of personal data are names, photos, email addresses, bank details, IP addresses and more.

The new EU Data Protection Framework - Key changes

The GDPR introduces a number of novel elements strengthening the protection of individual rights:

Data governance and accountability

The concept of accountability is at the heart of the GDPR rules. Companies will need to be able to demonstrate that they have analysed the GDPR's requirements in relation to their processing of personal data and that they have implemented a system or program that should eventually enable them to be compliant. . Accountability measures are Privacy Impact Assessments, policy reviews audits, activity records and (potentially) appointing a Data Protection Officer (DPO).

Directors have a fiduciary duty to ensure that their organisations comply with the law and that personal data is managed in an appropriate manner.

Penalties

Under GDPR the maximum fines for non-compliance are the higher of €20m and 4% of the organizations' worldwide turnover. This is the maximum fine that can be imposed for serious infringements; i.e not having sufficient customer consent to process data or violating the core of Privacy by Design concepts. Additionally, a company can be fined 2% on the global turnover of €10m for "less serious" breaches such as not having their records in order, or not notifying the supervising authority and Data Subject about a breach nor conducting impact assessment etc.

Appointment of Data Protection Officer

Many companies might be required to appoint a Data Protection Officer (DPO). A DPO is required in: (a) public authorities, (b) organizations that require systematic and regular monitoring of data subjects on a large scale or (c) organizations that engage in large scale processing of special categories of personal data. The Data Protection Officer assumes the tasks of advising, monitoring internal compliance and cooperating with the supervisory authority and is bound by secrecy and confidentiality.

Territorial Scope

One of the most crucial changes of the regulatory landscape of data privacy comes with the extended jurisdiction of the GDPR. The GDPR applies to all EU and non-EU companies and organizations that either offer goods or services to EU clients or monitor the behavior of individuals within the EU. Consequently, a business based outside of the EU may be required to appoint a representative based in the EU who is accountable for data protection.

Data Controllers and Data Processors

Some tasks, such as payroll, generally deal with data collected by third parties. A "Data Subject" is a physical person whose personal data is processed by a controller or processor. The data controller

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determines the purposes, conditions and means of the processing of personal data while the data processor elaborates further said personal data on behalf of the controller and according to its instructions. GDPR requires a contract to be in place, in order to ensure that liabilities and responsibilities between the controller and processor are stipulated. Processors will also need to comply with GDPR and ensure that data subject's rights are protected.

Privacy by Design

Organisations shall implement all appropriate technical and organisational measures in an efficient way, in order to comply with the Regulation and to protect the rights of data subjects. More specifically, adopting appropriate staff policies as is the use of pseudonymisation (to ensure compliance with data minimisation obligations).

Consent

The new Regulation strengthens the level of consent that is required to justify the processing of personal data. Companies, when requesting consent from its clients for using their personal data, need to do so through a statement or a clear affirmative action. Consent is also required for the processing of personal data of children under the age of 16. It must be clear and distinguishable from other matters and provided in an comprehensible and easily accessible form, using clear and plain language.

Breach Notification

GDPR includes a personal data notification rule. That is when a data breach occurs, organisations shall notify the supervisory authority (SA) within 72 hours. Additionally, if this incident is likely to result in a high privacy risk for the rights and freedoms of individuals, such individuals need also to be informed of the breach.

Data Portability

GDPR also introduces data portability. Individuals have the right to receive the personal data concerning them and have the right to transmit that data to another controller in a structured, commonly used and machine-readable format.

The Right to be forgotten

The right to be forgotten, allows an individual to request that any online content to be deleted. The conditions for erasure are defined in Article 17 of GDPR.

Key Steps to comply with this Regulation:

1. Awareness to the top management of the requirements of the GDPR and the impact that this might have in the company.
2. Identification and documentation of the legal basis of the processing.
3. Creation of a document of all personal data that the business holds; its origin and with whomthey have been shared with.
4. Update and review privacy notices and procedures to ensure they cover all the rights to individuals.
5. Review the GDPR's provisions on consent.
6. Establishment of a Data Breach process and response.
7. Creation and implementation of a Data Protection Impact Assessment (DPIA) process in relation to already collected information.
8. Consider if there is a need to appoint a DPO.
9. Security measures, reviews and updates in light of the increased GDPR security obligations.
10. If the business operates in more than one EU member state, a determination of the lead data protection supervisory authority shall take place.

Concluding Remarks

Even though the new data protection framework has been built on the existing data protection legislation, it will have a wide-ranging impact and will require significant operational adjustments in many aspects. For this reason, the Regulation allows for a transition period of 2 years until 25 May 2018 in order to give Member States and stakeholder's time to be prepared for the newly imposed regulation. The reform, however, can only be considered as successful if all those involved embrace their

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obligations and their rights.

In her current position, Xenia is the leading lawyer of the Data Protection and Privacy Department of E & G Economides LLC. She has a broad commercial practice with particular focus in technology, employment, data protection law, intellectual property, company and e-commerce law. Xenia advises on privacy related issues across all industries in the likes of communication companies, shipping and health care organizations. Xenia is also assisting companies with establishing and maintaining data privacy and security compliance matters and is drafting and reviewing commercial transaction documents.

Cyprus Funds as a Solution for Maritime Finance Drainage

By Mr. George Karatzias, FCCA

Member of CIFA and Senior Manager in Alter Domus (Cyprus) Limited

By Mr. Andreas Panayiotou, ACA

Manager in Alter Domus (Cyprus) Limited

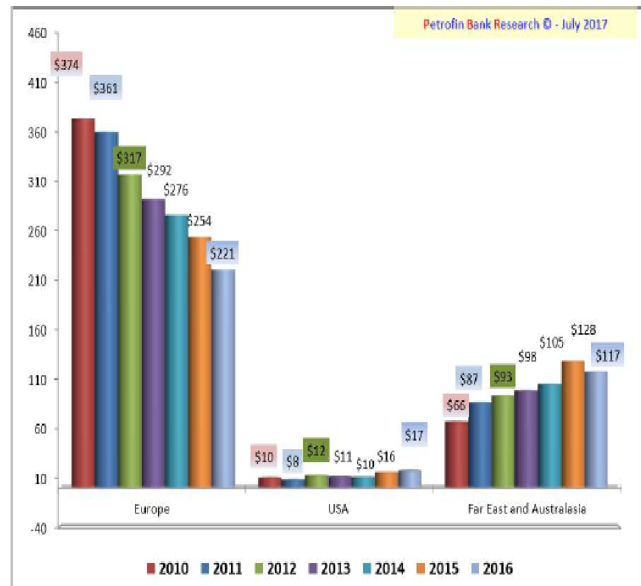
For the first time since the global financial crisis of 2008 and 2009, the global ship industry seems to be recovering its upward pace. There is one critical factor however, either being totally unavailable or very hard to obtain for shipping companies which would drive recovery, which is financing.

When the markets came crashing down, subsequently affecting demand around the world, many prominent banks found themselves with significant exposures in now devalued loans offered in the shipping industry. Mostly affected by the downturn were the European banks which as at the end of 2017 were estimated to have US$150 billion of loans at risk devalued. This resulted in banks previously playing a big role in shipping finance to either abandon the industry whatsoever or be left battling to recover the inherited situation of devalued and non-performing loans given to the industry.

Following the financial crisis and the bitter experience of the banks in the past, the more stringent stress tests are further hindering the barriers imposed to banks, resulting to them being driven away despite the signs of an inclining industry.

With GDP estimations for 2018 to be laying at an increased 4%, a push to the need of cargo

Global Shipfinance Portfolio Development



Source: Petrofin Bank Research

transportation is expected, which is currently estimated by Clarksons to be at an increasing rate of 3% to 3,5% per annum (sourced by Seven Capital). As 90% of international trade is performed through shipping and the fact that the volume of trade is directly affected by the increase on GDP, it is expected that a need for financing the industry growth and the search of alternate sources of finance is inevitable and is in fact already observed. One of these sources can very effectively be Alternative Investment Funds which have already attracted players of the shipping industry to turn to.

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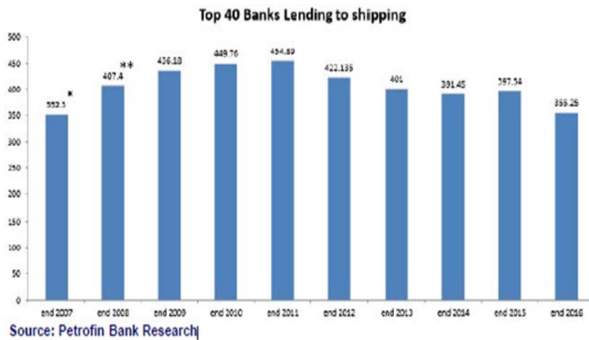
Top 40 Banks Lending to shipping
2007 – 2016 in $bn



Source: Petrofin Bank Research

Why Alternative Investment Funds?

As per EFAMA, Alternative Investment Funds net sales set a record in 2017 reaching Eur 200 million, while the net assets held by the European Fund Industry grew to an all-time high of Eur 15 trillion. This signifies that as a result of the extremely low and sometimes even negative yields of cash sitting in bank accounts or deposits, in the current world investors seek for other investment opportunities. Alternative Investment Funds offer the opportunity to the ship industry to gain access to the pool of investors seeking such alternative investment opportunities.

The flexibility offered by Alternative Investment Funds, resulted in several different products combining the two worlds of shipping and funds and attending to the needs of different parties. As examples, funds are currently used for facilitating either acquisition or direct management of ships of different classes, the forming of debt funds financing shipping operations through debt or even the acquisition and sub-lease of ships or even re-financing existing operations. The opportunities are actually endless.

Why Cyprus?

Cyprus has a long history in the shipping industry spanning back in the 1960's where it firstly introduced an attractive legislative and operational framework which continuously evolved during the decades. This has ultimately paved the way for the island to become a reputable maritime centre and to be proudly considered as a world class international hub for ship owning and ship management services. More than 1.000 ships are flying under the Cyprus flag, thus constituting the Cyprus Maritime Registry as one of the largest in the world.

The driving force behind the growth of the maritime sector has historically being its tax efficient tax legislation. The current the Tonnage Tax System (TTS), which was enacted back in 2010 provides a full exemption from all income taxes of all the profits and dividends which are ultimately derived from qualifying shipping operations.

Owners of Cyprus flagged ships automatically qualify as being eligible to be taxed under the TTS, whilst ship owners of foreign flagged ships as well as charterers and ship managers, subject to certain criteria, can opt to be taxed in accordance with the provisions of the TTS.

Under the TTS, eligible persons are subject to an annual tax which is calculated based the net tonnage of the qualifying ships they own, charter or manage.

	Ship Owners/Charterers	Ship Managers
Net Tonnage (NT)	TT per 100 NT	€TT per 400 NT
Up to 1.000	€36,50	€36,50
Between 1.001 to 10.000	€31,03	€31,03
Between 10. 001 to 25.000	€20,08	€20,08
Between 25. 001 to 40.000	€12,78	€12,78
More than 40.000	€7,30	€7,30

At the same time, the country is currently modernizing it's Fund legislation by the introduction of several features to facilitate the launch of funds on low AUMs as well as management options of such funds.

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Overall, Cyprus is ideally placed to combine the two worlds of shipping and the Alternative Investment Funds and offer to all stakeholders cost and tax efficient products to facilitate the need for investment with the need for finance, in a fruitful way to all parties. ***(graphs sourced by Seven Capital)***.

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