

# Cyprus

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## **Introduction**

Located in the north eastern corner of the Mediterranean Sea, Cyprus enjoys a strategic importance belying its small size. Geographically, it is ideally positioned as a commercial gateway between Europe, Asia, the Middle East, and Africa. This natural advantage was further strengthened when on 1 May 2004 Cyprus became a member of the European Union (EU) and then, on 1 January 2008, a member of the Eurozone.

Cyprus is a former British colony which in 1960 became an independent, democratic, sovereign republic with a presidential system of government and a written constitution. In 1974, Cyprus was invaded by Turkey and, although re-unification talks are ongoing, about 37 per cent of the island remains under Turkish occupation. Except where specified, this chapter refers to the areas controlled by the government of the Republic of Cyprus, not the occupied area.

The elected President is the Head of State and the legislative authority is the elected House of Representatives. There is a two-tier judicial system consisting of the Supreme Court and subsidiary district courts. The doctrine of the separation of powers between the legislature, the executive, and the judiciary is embodied in the Constitution. The Constitution prevails over domestic legislation but acknowledges the supremacy of European Community (EC) law via the Fifth Amendment to Cyprus Constitution Law 127(I) of 2006.

Cyprus benefits from its modern and well-educated workforce and from a declared policy, which has been shared by successive governments, of encouraging foreign investment. This forward-thinking attitude is reflected in various laws, regulations, and international agreements which have helped to create an extremely favorable environment for all forms of inward business activity and international foreign investment.

The entire island occupies an area of 9,251 square kilometers and its total population is estimated at 1.1 million. The population of the government-controlled area is about 800,000, of whom 80 per cent are Greek Cypriots, 18 per cent are Turkish Cypriots and Turks, and the remaining 2 per cent are foreign residents and workers. The official languages are Greek and Turkish but English is also used widely, especially in business.

## **Establishment of Enterprises**

### **In General**

The principal legislation governing the formation and activities of business entities is contained in the Cyprus Companies Law (Cap 113), as amended from time to time, and the Partnership and Business Names Law (Cap 116), as amended. These have their origins in English law and have been adapted over time to reflect the nature of the Cyprus economy and, in the period immediately preceding accession into the European Union (EU) in 2004, to harmonize domestic legislation with the *acquis communautaire*. Five principal forms of business entity are legally recognized in Cyprus. These are listed below.

### **Sole Proprietorship**

A person who carries on a trade, profession, or business on his own account, either in his own name or under a business name, is registered with the Cyprus Registrar of Companies (the Registrar) under Cap 116. The proprietor is personally responsible for all the assets, liabilities, profits, and losses of the business.

### **Partnerships**

Partnerships are registered under Cap 116. They must consist of between two and 20 partners unless the partnership is engaged in banking activities, in which case the upper limit is reduced to 10. A partnership may be formed between individuals or legal persons such as corporate entities. Non-residents of Cyprus may join a partnership registered in Cyprus. Non-EU nationals are required to obtain a work permit. Two types of partnership are recognized:

- General partnership — Each partner is liable jointly and severally for all debts and obligations of the partnership incurred during his or her time as a partner. This is a liability which is without limit.
- Limited partnership — The liability of some but not all partners is limited. The liability of the partnership to third parties remains unlimited. The partnership must include at least one general partner, but it is possible for the general partner to be a limited company and hence effectively enjoy the benefits of limited partner status.

### **European Public Limited Company**

The European Public Limited Company (SE) is a pan-European corporate form introduced to Cyprus in 2006. It allows companies to move from one jurisdiction to another without the need for a takeover or transfer of assets to a company already registered in the destination country.

Incorporation as an SE can significantly reduce the costs for businesses which operate in more than one Member State of the EU. It allows them to restructure

rapidly and hence to exploit the advantages of the internal market. Existing companies from other Member States may be merged into an SE in Cyprus without any tax cost since Cyprus has fully implemented the EU Mergers Directive.

### **Limited Liability Company**

Limited liability companies are governed by Cap 113. A company may be limited by shares or by guarantee. It has a legal persona which is separate from that of its members who may change or increase or decrease in number over time. Hence, it has perpetual succession. Where a company is limited by shares, the liability of the member is restricted to the greater of:

- The nominal value of the shares which he takes up; and
- The total amount agreed as the price of the shares.

Companies limited by guarantee are generally incorporated as non-profit-making organizations under Cap 113 and their importance as a class of business entity is minimal. The liability of the members of such a company is an agreed sum to be contributed in the event of the company going into liquidation.

### **Companies Limited by Shares**

#### *In General*

Companies which are limited by shares may be either “public” or “private”. Cap 113 provides a precise definition of private companies and in practice a public company is defined as a corporation which does not meet the definition of a private company. A public company is subject to stricter control by the Registrar.

Companies must file a copy of their constitution with the Registrar. This consists of the memorandum of association (memorandum) and the articles of association (articles). They are public documents which when registered bind the company and its members to the same extent as if they had been signed and sealed by each member. The memorandum details the activities which the company is authorized to carry on. The articles contain rules which govern the internal management procedures of the company. Under Cap 113, the articles of a private company should:

- Restrict the right of the members to transfer their shares;
- Prohibit public offerings of shares or debentures;
- Prohibit the issuing of bearer shares; and
- Limit the number of company members to a maximum of 50.

A public company does not restrict the transfer of its shares. Further specific differences are as follows:

- It has a minimum of seven members, whereby there is no upper limit;

- The minimum issued share capital is €25,630;
- It has a minimum of two directors;
- Where the directors are appointed in the articles, the consent of the directors to act must be filed on incorporation;
- No trading may take place until a trading certificate has been obtained from the Registrar;
- The company must hold a statutory meeting and the directors must make a statutory report to members;
- It may issue share warrants;
- It may not issue shares at a discount; and
- It is obliged to produce a prospectus or a statement in lieu of a prospectus before offering any of its shares or debentures to the public.

#### *Shareholder Meetings*

There are four types of members' meetings:

- Annual general meetings (AGM) — Every company must hold an AGM in each calendar year. The only exception to this is the first AGM, which must be held within 18 months of incorporation. The only statutory business to be conducted at the AGM is the appointment of auditors. It is usual for the articles to provide that certain other “ordinary” business such as the consideration and approval of accounts will also be transacted.
- Extraordinary general meetings (EGM) — An EGM may be called: (a) at any time by the directors when they think fit (provided power is given in the articles); (b) at the request of holders of 10 per cent of the paid-up capital of the company (5 per cent in the case of a listed company); or (c) by the court under Cap 113 if for any reason it is otherwise impracticable to do so. If the directors fail to convene an EGM within 21 days of a *bona fide* request from the holders of 10 per cent of the paid-up capital, then the holders may convene the meeting themselves.
- Statutory meetings — Every public company must hold a statutory meeting not less than one month and not more than three months from the date when it is entitled to commence business. It is common practice to circumvent the requirement to meet by forming the company as a private company and then converting it to a public company.
- Separate class meetings of shareholders — Such meetings are rare and will often be to discuss and vote on proposed variations of class rights.

Cap 113 lays down minimum periods of notice which must be given prior to any meeting. Accidental failure to serve notice on a member or its non-receipt by him does not invalidate the meeting. Unless the articles specify otherwise, initial voting is on a show of hands which excludes proxy votes and gives each member present only one vote irrespective of his shareholding. Controversial

issues will more normally be decided via a poll which includes proxy votes and takes account of the size of each member's shareholding.

#### *Board of Directors and Company Secretary*

A private company may have a sole director. It must also have a secretary who, except in the case of private companies with only one member, must be a separate person from the director. Public companies must have at least two directors and a secretary. The general principles of the law of principal and agent regulate in most respects the relationship between the company and its directors. The powers of the directors to act on behalf of the company may be restricted via the memorandum and the articles, but, notwithstanding any deficiency in the directors' capacity to act, the company will still be bound by the contract in relation to an innocent third party. Cap 113 restricts the exercise of certain powers (for example, the alteration of share capital) to the members.

Appointment of directors is governed by the articles. All directors may be removed from office via an ordinary resolution of the company. The secretary of the company will normally be appointed by the board.

Directors owe fiduciary duties to the company. The duties and powers of the secretary usually emanate from the members and the board rather than the articles. Cap 113 also imposes some specific duties, which include:

- Making the statutory declaration required before the commencement of business by a public company;
- Signing the annual return and documents of the company; and
- In the event of a winding up of the company, verifying the statement to be submitted to the Official Receiver.

Additionally, since the secretary is an officer of the company, many of the duties stipulated by Cap 113 imposing liability on officers in default apply to the secretary.

#### *Supervisory Board*

There is no requirement for a supervisory board in Cyprus and few companies have a separate supervisory board.

#### *Share Capital*

There is no minimum share capital for a private company. The minimum issued share capital for a public company is €25,630. Shares may be allotted for cash or non-cash consideration or a combination of the two. Where shares are not fully paid up, the shareholder retains a liability to pay up the balance of the nominal amount in the event of a further call on capital or the winding up of the company.

The company is entitled to exercise a lien on unpaid shares and forfeit them with the result that any unsatisfied call may result in the shares being sold to a third party.

#### *Share Classes*

A company's share capital may be divided into several classes of share. The rights attaching to each class are found in the articles and in the terms of their issue. Shares may be transferred to another natural or legal person in the manner detailed in the articles.

In the case of public company shareholders, the right to transfer is unrestricted. Private companies must restrict the transferability of their shares and, subject to the articles of association, the directors of a private company may in their absolute discretion decline to register any transfer of any share.

## **Acquisition of Enterprises**

### **In General**

Cyprus has a fully liberalized investment policy. In all but a very few strategic sectors of the economy, foreign investors may now participate on the same terms as Cyprus nationals. In general, there are no limits on equity holdings and no minimum level of capital investment.

For both EU and third-country investors, restrictions remain only on acquisitions in the regulated areas such as banking and financial services (see Banking Law), real estate (see Acquisition of Realty), tertiary education, public utilities, radio and television stations, newspapers and magazines, and airlines. Each application is considered on its merits.

### **Legislation**

#### *In General*

A person seeking to acquire an enterprise must have regard to:

- Competition regulation — for details, see the Competition section; and
- Law 41(I) of 2007 on takeover bids, as amended (the Takeover Bid Law), which is summarized below.

#### *Takeover Bid Law*

**In General.** Following its accession to the EU, Cyprus aligned its takeover legislation with Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (the Takeover Directive), which was transposed into the Cyprus legal order by the Takeover Bid Law.

This was complemented by four directives issued by the Cyprus Securities and Exchange Commission (CySEC). CySEC is designated as the competent

authority to supervise the application of the Takeover Bid Law and the related directives. The law simplifies the takeover process and provides the necessary framework to encourage foreign investment in Cyprus.

**Scope.** CySEC is empowered to oversee any takeover bids in which the target company has its registered office and its shares admitted to trading on a regulated market in Cyprus. Additionally, CySEC is competent to oversee the bid if any of the following circumstances apply:

- The shares of the target company are admitted to trading only on a regulated market in Cyprus;
- The shares of the target company were initially admitted to trading on a regulated market in Cyprus and subsequently on a regulated market in a different Member State from that in which the registered office of the target company is situated; or
- The shares of the target company have been admitted to trading simultaneously on a regulated market in Cyprus and another Member State, which is different from that in which the registered office of the target company is situated and (a) the target company designated CySEC as the competent authority for the supervision of the bid; (b) it announced it to CySEC on the first transaction day; and (c) it had its decision immediately published in accordance with the rules set out in article 7 of the Takeover Bid Law.

Issues relating to the information to be provided to the target company's employees and company law matters are regulated by the law and the competent authority of the Member State in which the registered office of the target company is situated.

**Key Concepts.** The Takeover Directive introduces the following concepts, of which the first two are optional:

- Board neutrality — While the bid period is running, the board of the target company may not take any action potentially or actually resulting in the frustration of the bid without the prior authorization of a general meeting of shareholders;
- Breakthrough rule — This neutralizes a number of pre-bid defenses, such as share transfer and voting restrictions, and makes it easier for a successful bidder to replace board members of the target company and amend its articles of association;
- Squeeze-out right — This enables a bidder that has obtained a specified level of acceptances to compulsorily acquire the outstanding securities at a fair price; and
- Sell-out right — This is an additional method of protecting minority shareholders' interests. It enables minority shareholders to compel the majority shareholder to buy their securities at a fair price.

Cyprus has adopted the concept of board neutrality. This restriction applies from the time the board becomes aware of a possible takeover bid until the bid is withdrawn or annulled. Cyprus has not adopted the breakthrough rules as mandatory. Hence, a target company with a registered office in Cyprus has the reversible option of dismantling any obstacles to being taken over, by decision of a general meeting of shareholders. The relevant decision of the general meeting must be immediately notified to CySEC and to the regulated markets in which the target company's securities have been or are intended to be traded.

**Squeeze-Out Right.** A bidder who has made an offer to all holders of the target company's securities for all of their securities has the right to require all the holders of any outstanding securities to sell him those securities if:

- He holds securities representing at least 90 per cent of the capital carrying voting rights and at least 90 per cent of the voting rights in the target company; or
- Following acceptance of the bid, he has acquired or has firmly contracted to acquire securities representing at least 90 per cent of the target company's capital carrying voting rights and at least 90 per cent of the voting rights comprised in the bid.

The application to trigger the squeeze-out under the new law is made by the offeror to CySEC. If, *inter alia*, the CySEC is satisfied that the relevant conditions are met, it will authorize the offeror to proceed with the squeeze-out procedure to acquire the balance of the company's shares. Dissenting shareholders do not have the right to dispute the acquisition of their shares. They do have the right to take legal action to dispute the level of the consideration paid to them.

**Sell-Out Right.** This is exercisable under the same conditions as the squeeze-out right. If either of the conditions detailed above is met, the minority shareholders may require the bidder to buy their securities at a fair price.

"Fair price" is set by CySEC, and it must be not less than the highest price paid for the same securities by the bidder or by persons acting in concert with him during the 12 months before the announcement of the decision to launch the bid. CySEC may at its full discretion permit the payment of a lower price in case of voluntary takeover bids.

**Reciprocity.** The Takeover Bid Law allows reciprocity only for the breakthrough principle. A company which respects the breakthrough rule may disregard that rule if it becomes the subject of an offer launched by another company which employs anti-takeover defenses.

This is subject to the authorization of the general meeting of shareholders and applies only in relation to bids made in the 18 months after the relevant decision was made. The reciprocity rule is not applicable to cooperatives or to cases in

which the Republic of Cyprus holds securities in the target company which confers special rights.

**Mandatory Bids.** Any person who, as a result of his own acquisition or the acquisition by persons acting in concert with him, holds securities of a company which, added to his existing holdings and those of persons acting in concert with him, directly or indirectly give him 30 per cent or more of voting rights in that company, may make a bid for the outstanding securities. Such a bid must be addressed immediately to all of the remaining shareholders for all their securities at fair price.

**Funding of Bids.** Any public offer document must be accompanied by a “certain funds declaration” made by one or more Cyprus or other recognized European banking institutions.

## **Acquisition of Realty**

### **In General**

Realty development in Cyprus is generally carried out by construction companies and, to a lesser extent, by private individuals and partnerships. Speculative development is common in the residential field, but much less so for commercial and industrial properties, most of which are occupier-developed.

Cyprus law provides for real estate investment trusts, but as yet, they have been rarely used. Most commercial property is occupier-developed and hence institutional investors are rarely involved in Cyprus property development. Private investment is the main market-driver.

### **Legislation**

In Cyprus, the term “immovable property” is synonymous with “realty”. The main legislation governing its acquisition and use is as follows:

- Acquisition of Immovable Property (Aliens) Law, Cap 109;
- Immovable Property (Tenure, Registration & Valuation) Law, Cap 224;
- Immovable Property Tax Law, Cap 322;
- Immovable Property (Towns) Tax Law of 1962;
- Immovable Property (Transfer and Mortgage) Law of 1965;
- Town and Country Planning Law of 1972;
- Capital Gains Tax Law of 1980;
- Rent Control Law of 1983; and
- Sale of Immovable Property (Specific Performance) Law of 2011.

Additionally, many other laws and the Constitution contain provisions applicable to rights in immovable property.

**Definition**

Under the Immovable Property (Tenure, Registration & Valuation) Law, "immovable property" means:

- Land;
- Buildings and other erections, structures, or fixtures affixed to any land or to any building or other erection or structure;
- Trees, vines, and any other thing whatsoever planted or growing on any land and any of its produce;
- Springs, wells, water, and water rights whether held with, or independently of, any land;
- Privileges, liberties, easements, and any other rights and advantages whatsoever relating, or reputed to relate, to any land or to any building or other erection or structure; and
- An undivided share in any of the above.

Land and the buildings on it are registered together and are inseparable for title purposes. The owner of the land owns the buildings on it. Three types of registered tenure exist. They are:

- Freehold is land held in perpetuity;
- Leasehold is an interest in land held for a limited time and with a minimum unexpired term of at least 15 years of a lease for it to be registered; and
- Shared ownership is property held in undivided shares by two or more persons, who can be physical or legal.

The concept of joint ownership of property does not exist in Cyprus law.

**Title**

Land registration is the responsibility of the Department of Lands and Surveys (Land Department). The system of land registration is a system of registration of title as distinct from registration of title deeds. The legal value of registration lies between an indefeasible title and a defeasible title. A registered person is considered to be the undisputed owner of the land and has absolute title, subject to the power of the Director of the Land Department (the Registrar), to correct errors or omissions under certain circumstances, and the inherent power of the courts to order amendment or cancellation of a registration.

Registration of rights acquired in land (for example, by purchase or mortgage) is not compulsory, but these rights have no legal status unless they are registered. There is no state guarantee of title and no government indemnity. Any person who disputes the facts recorded on the land register can seek rectification by application to the Registrar or to the court. Title insurance is not available in Cyprus.

## **Acquisition Process**

### *In General*

Realty is marketed by licensed estate agents, developers, and individuals. The terms of the sale and purchase are negotiated between the parties, assisted by their advisers. Pre-contractual arrangements are rare and, in most cases, the sale contract is the only agreement.

### *When Legally Binding*

Contracts are binding on signature. The Specific Performance Law stipulates that the buyer can secure transfer of the property by depositing a signed and stamped copy of the sale contract at the Land Department within two months of the contract having been signed. This provides an effective means of enforcing the contract.

### *Registration*

Change of title is registered at the time specified in the contract. This is usually when the full purchase price has been paid and, in the case of foreign persons needing a license to hold immovable property in Cyprus, when the license has been issued.

### *Title Transfers*

The transfer of title is effected by application to the Land Department in the prescribed form signed by the seller and buyer, accompanied by the prescribed transfer fee. Notarization is not required.

### *Disclosure, Warranties, and Due Diligence*

There is no statutory obligation for the seller to disclose information about the property, or in relation to title. There may be a contractual obligation if warranties are included in the sale contract. Warranties usually cover the following matters:

- Legal ownership of the property;
- Absence of mortgages, charges, or other encumbrances;
- Timely completion of the property, if under construction; and
- Ability to deliver clear title deeds.

Warranties can sometimes be supported by personal guarantees from directors of the company and (rarely) by bank guarantees. Due diligence is typically carried out before acquisition comprises a search with the Land Registry to confirm the validity of the title and the absence of mortgages, charges, and other encumbrances. Buyers can also search the Register of Companies for information on a corporate seller. For second-hand property, it is usual to obtain a report by a qualified surveyor on the condition of the property.

A number of well-publicized problems have arisen in relation to foreign buyers of domestic property, particularly relating to inability to obtain title deeds. Most of these problems could have been avoided by taking thorough, independent legal and other professional advice at the time of purchase. The enactment of the Sale of Immovable Property (Specific Performance) Law of 2011 and a number of other laws to streamline the process of issuing title deeds should help eliminate the difficulties, but nevertheless, as in every country, thorough, independent professional advice is essential.

### *Costs*

In addition to its own professional fees, the buyer is usually responsible for payment of value-added tax (VAT) if applicable, stamp duty, and transfer fees. The seller is responsible for payment of any capital gains tax and its professional fees. For further details, see the Taxation section, below.

### **Foreign Ownership**

The Immovable Property Acquisition (Aliens) Law, Cap 219, restricted the rights of non-Cypriots to acquire immovable property in Cyprus. In particular, acquisition of property required a license from the Council of Ministers, which was granted to *bona fide* purchasers for one house or flat or for a plot of land of up to 4,000 square meters.

When Cyprus joined the EU in 2004, this law was amended to allow EU citizens and legal entities established, based, and operating in Europe to acquire land in Cyprus without restrictions. EU citizens permanently residing in Cyprus were allowed to acquire other immovable property, but the restrictions remained in place for other EU citizens and companies incorporated in other EU countries for a transitional period of five years. This transitional period expired on 30 April 2009 and all restrictions on property acquisition by EU citizens or companies incorporated in other EU member states have now been removed.

Consequently, as from 1 May 2009, any citizen of an EU Member State or any legal entity established, based in, or administered from a Member State may freely acquire immovable property in Cyprus on the same terms as Cyprus nationals. Restrictions on ownership now apply only to third-country (non-EU) nationals or companies, but they can be relatively easily circumvented by having the property held by a company incorporated in Cyprus or any other EU Member State.

### **Compulsory Purchase**

The right of ownership of immovable property is considered a fundamental human right under the Constitution. Properties can be compulsorily acquired by the government or local authorities for specified purposes only, and the acquisition must be in the public interest.

Immediate compensation at the current market value must be paid to the owner, who has recourse to the courts in the event of disagreement. The compulsorily

acquired property can be used only for the specific purpose it was acquired for. If this purpose has not materialized within three years of the date of acquisition, the property must be offered back to its former owner for the price paid to him.

## **Taxation**

### **In General**

Cyprus benefits from a simple, modern tax system that is fully compliant with OECD and EU requirements. It is regarded as one of the most attractive tax regimes in Europe on account of its combination of consistency in interpreting tax legislation, stability in resisting frequent changes to tax laws, and low tax rate.

### **Basis of Taxation**

The tax year for individuals and companies is the calendar year. Liability to Cyprus tax in any year of assessment is based on residence.

### **Corporate Income Tax**

#### *In General*

The Income Tax Law of 2002 underpins the system of company taxation in Cyprus. Its key features are:

- A single corporation tax rate of 10 per cent for all companies registered in Cyprus;
- No geographical limitation on the exercise of a company's activities; and
- No restriction on the ownership of a company's shares.

#### *Liability*

Cyprus-resident companies are liable to tax on worldwide income and non-resident companies are liable to tax on any Cyprus-source income. The test for residence is the locus of management and control. A company is regarded as resident in Cyprus if it is managed and controlled in Cyprus. The following are generally accepted as the key factors suggesting that the management and control of a company are in fact exercised in Cyprus:

- The majority of the directors are resident in Cyprus;
- All the strategic decisions affecting the company are demonstrably made in Cyprus by the board of directors;
- The company maintains its headquarters in Cyprus; and
- The company operates an account with a bank in Cyprus.

Additionally, the company should have economic substance in terms of staff, premises, and equipment and sufficient competence in Cyprus to make

necessary business decisions. Finally, it should provide a service that is genuinely required by the group and not “devoid of an economic purpose”.

Cyprus branches of foreign companies are subject to tax on worldwide income if the locus of management and control of the branch is in Cyprus. If the locus of management and control is overseas, the branch is liable to corporation tax on profits accruing or arising in Cyprus.

#### *Taxable Income*

A company resident in Cyprus is taxable on its worldwide income derived or accruing from:

- Gains or profits from any trade or business;
- Interest or discount (subject to exemptions — see below);
- Rents, royalties, premiums, or other profits arising from property; and
- Any other income, such as gains on sale of goodwill.

All expenses wholly and exclusively incurred for the production of the relevant income are deductible, with the following exceptions:

- Contributions to the Social Cohesion Fund (see below, under Social Insurance);
- Private motor vehicle expenses;
- Professional tax;
- Immovable property tax;
- Interest paid in respect of the acquisition of non-business assets or of private motor vehicles (even if used for business purposes); and
- Business entertainment costs in excess of the lower of €17,086 or 1 per cent of gross income.

Where the income consists of both taxable and non-taxable income, expenses directly incurred in earning the non-taxable income are not allowed and indirect expenses are apportioned on the basis of the income earned.

#### *Rate of Tax*

Following an increase in the rate in 2013 tax is charged at 12½ per cent on the profits of a company’s business and gains on trading in immovable property in Cyprus.

#### *Loss Relief*

Trading losses incurred by one group company may be set off against trading profits of another group company to give group relief, provided that the losses and profits accrued in the same year of assessment and both companies were

resident in Cyprus and members of the same group for the whole of the tax year concerned.

Two companies are deemed to be members of a group if one is the 75 per cent subsidiary of the other or both are 75 per cent subsidiaries of a third company. A "75 per cent subsidiary" holds at least 75 per cent of the voting shares with beneficial entitlement to at least 75 per cent of the income and 75 per cent of the assets on liquidation. Trading losses may also be carried forward for a maximum of five years for relief against future profits.

#### *Exemptions and Special Cases*

The following exemptions are available:

- Profit from the sale of securities;
- Interest, other than that arising from the ordinary activities of the company or closely related to the ordinary activities of the company;
- Dividends;
- Income of any company formed exclusively for the purpose of promoting art, science, or sport, and of certain educational and charitable companies;
- Profits earned or dividends paid by a Cyprus shipping company which owns ships under the Cyprus flag and operates in international waters;
- Income of any approved pension or provident fund; and
- Profits from a permanent establishment situated entirely outside Cyprus, unless the permanent establishment directly or indirectly engages more than 50 per cent in activities which lead to investment income and the foreign tax burden is substantially lower than the tax burden in Cyprus.

Royalties or any other payments to a non-resident for intellectual or industrial property rights are liable to a 10 per cent withholding tax, subject to relief under any applicable double taxation treaty. No tax need be withheld if the rights are used exclusively outside Cyprus. Rental payments made to a person not resident in Cyprus in respect of films shown in Cyprus are subject to withholding tax at five per cent of the gross amount.

International maritime transport activities, including ship management services, are subject to a separate, very favorable, tonnage tax regime under the Merchant Shipping (Fees and Taxing Provisions) Law of 2010. In 2012 Cyprus introduced an "intellectual property box" regime which exempts four-fifths of income from intellectual property assets from tax and results in an effective tax rate of less than 2½ per cent on such income. Gains on disposal are effectively tax-exempt.

#### *Reorganizations*

Transfers of assets and liabilities can be made without giving rise to a tax liability within the framework of a reorganization (including mergers, de-

mergers, partial divisions, share exchanges, and transfers of seat) and any tax losses can be carried forward by the receiving entity.

#### *Payment of Tax*

No later than 31 July each year, companies must submit a provisional tax return for the year, accompanied by a payment for half the estimated tax liability. The remaining balance must be paid by 31 December. The final tax liability must be paid not later than 1 August following the end of the tax year and a final tax return must be submitted no later than the following 31 December.

#### *Social Insurance*

Under the Social Insurance Scheme, the employer and employee each contribute 6.8 per cent of the employee's earnings up to a current maximum of €4,533 per month, a total of 13.6 per cent, and the government pays a further 4.3 per cent making an aggregate of 17.9 per cent.

With effect from 1 January 2014, the employer and employee contributions will increase to 7.8 per cent of the employee's earnings. A self-employed person contributes 12.6 per cent and the government pays 4.3 per cent on income within a lower and upper earnings threshold that varies according to the nature of the trade. The maximum chargeable earnings figure is revised annually.

Voluntary contributions may be paid at 14.8 per cent on insurable income; the contributor pays 11 per cent and the government pays 3.8 per cent. An individual who is ordinarily resident in Cyprus but who is working abroad for a Cyprus-resident employer may pay voluntary contributions of 13.6 per cent. In this case the government contributes 4.3 per cent.

Employers also must pay 1.7 per cent of their employees' earnings up to a maximum of €4,004 per month to the Industrial Training Fund and Redundancy Fund and 2 per cent (with no upper earnings limit) to the Social Cohesion Fund, which is used to make social grants.

#### *Special Defence Contribution*

Special contribution for defense (SDC) is payable by Cyprus resident individuals and companies on:

- Interest at 30 per cent with the proviso that interest received in or closely related to the normal course of business is exempt (but subject to corporate income tax at 12½ per cent);
- Dividends at 20 per cent, but see below; and
- Rents at 3 per cent on 75 per cent of the gross rent, giving an effective rate of 2¼ per cent. No deduction for expenses is allowed.

*Dividends*

Dividends received by a resident company or a permanent establishment of a non-resident company from a non-resident company are exempt from SDC. Dividends received by one resident company from another are generally exempt from SDC. However, dividends paid more than four years after the underlying profit was earned are subject to SDC tax if the recipient is a tax resident (whether corporate or individual) of Cyprus.

Dividends received by a foreign shareholder (individual or company) from a resident company are also exempt. This gives Cyprus a real advantage over other European holding company regimes which generally impose a withholding tax of at least 5 per cent.

*Deemed Dividend Distribution*

If a Cyprus resident company does not distribute a dividend within two years after the end of a tax year, a “deemed dividend distribution” is calculated, being 70 per cent of post-tax profits for that tax year, reduced by any dividends that have been paid out of those profits. SDC is charged on the proportion of the deemed dividend distribution that is applicable to Cyprus-resident shareholders.

When an actual dividend is paid after the deemed dividend distribution, then SDC is payable only on any dividend paid over and above the deemed dividend distribution.

Companies which are entirely owned by non-residents can obtain exemption from the requirement to submit returns for deemed distribution purposes.

*Capital Gains Tax*

Net gains from the disposal of immovable property in Cyprus and of shares of unlisted companies owning immovable property in Cyprus are taxable at 20 per cent. All other gains are exempt.

Many of Cyprus’s double taxation treaties tax capital gains only in the country of residence of the company or of the individual disposing of the asset. The exemption from capital gains tax in Cyprus could therefore lead to complete elimination of any tax liability. As the gain from a sale of goodwill is subject to corporation tax at 10 per cent, it is usually beneficial to transfer goodwill to a newly formed company and sell the shares of that company. Any capital gain on the sale will be exempt from tax.

**Double Taxation Agreements**

Cyprus has a comprehensive network of more than 40 double taxation agreements. Treaties have been concluded with most European countries and also with the major economic powers outside of mainland Europe, including the United States, Canada, the United Kingdom, Russia, China, and India.

All the agreements are drafted on the basis of the Organization for Economic Cooperation and Development (OECD) Model Treaty and so provide relief from double taxation by applying the credit method to the taxation of dividends and interest. Where there is no double tax treaty in place, the Cyprus tax authorities will allow unilateral relief in the form of a tax credit against Cyprus tax in respect of foreign tax on the same income charged in the country of origin.

### **Succession Taxes**

The Estate Duty (Amending) Law of 2000 abolished any form of succession tax in respect of deaths taking place on or after 1 January 2000.

### **Advance Rulings**

The Commissioner of Income Tax provides written replies on interpretation of the Cyprus tax law provisions. This practice is not incorporated in the Cyprus tax legislation and it is not an official ruling regime as used in other EU member states.

### **Capital Duty**

On incorporation of a Cyprus registered company, capital duty of €103 plus 0.6 per cent of the authorized capital is payable to the Registrar of Companies. Any subsequent increase in share capital is liable to capital duty at 0.6 per cent.

### **Annual Levy on Companies**

An annual levy of €350 is payable to the Registrar of Companies before 30 June by all companies incorporated in Cyprus.

Penalties will be imposed in the event of late payment. If the levy is paid no later than two months after the due date, a penalty of 10% will be charged. If the levy is paid between two and five months after the due date, a penalty of 30% will be charged. Companies which have not paid after five months from the due date may be struck off the register. They can be restored to the register only by paying an increased levy of €500 per year if they are restored within two years or €750 per year if they are restored to the register after more than two years.

### **Stamp Duty**

Stamp duty is payable on contracts relating to property or business in Cyprus according to the total consideration, as follows:

- Up to €5,000 no stamp duty is payable;
- Above €5,000 but not exceeding €170,000 — €1.50 for every €1,000 or part thereof is payable;
- Above €170,000 — €2 for every €1,000 or part thereof is payable;

- Where no amount of consideration is specified in the contract the stamp duty is €34;
- Stamp duty on the establishment of a Cyprus International Trust is €430;
- For a transaction which is evidenced by several documents, stamp duty is payable on the main contract and ancillary documents are charged at a flat rate of €2 each; and
- The maximum stamp duty payable on a contract is capped at €20,000.

The wording of the latest law amending the Stamp Duty Law indicates that the rate of stamp duty is determined by the aggregate value of the contract and applies to the entire consideration, whereas previously the appropriate rate was applied to each tranche of the consideration. Discussions with the relevant authorities indicate that they intend to continue to apply the old method of calculation in practice. In any event, the difference is less than €300.

A number of categories of documents are exempt from stamp duty, including documents relating to corporate reorganizations (which are exempt from all forms of taxation) and ship mortgage deeds or other security documents. Stamp duty must be paid within 30 days from the date of execution of the relevant documents or, if they are executed abroad, within 30 days after they are received in Cyprus. If stamp duty is paid late, a surcharge of approximately 10 percent of the unpaid amount is payable if payment is made within six months after the due date; otherwise the surcharge is twice the unpaid amount.

### **Value-Added Tax**

The standard rate of VAT rate is 18 per cent. Reduced rates of five per cent and eight per cent apply to certain goods and services. With effect from 13 January 2014, the standard VAT rate will increase to 19 per cent and the reduced VAT rate of eight per cent for services under Schedule 12 of the Cyprus VAT law will increase to nine per cent.

The VAT registration threshold is €15,600 per annum. VAT returns must be submitted quarterly and any tax due paid by the tenth day of the second month following the quarter-end date. Companies that do not have trading activities within the EU need not register for VAT.

### **Immovable Property Tax**

#### *In General*

Immovable property tax is payable each year on the market value as at 1 January 1980 of all immovable property registered in the name of the taxpayer at the start of the year. Progressive rates of taxation are charged on each tranche of the total value, at the rates set out below.

Reform of the tax base and rates is imminent and they are likely to change in the very near future.

From	To	Rate
0	€120,000	0
€120,000	€170,000	0.4%
€170,000	€300,000	0.5%
€300,000	€500,000	0.6%
€500,000	€800,000	0.7%
€800,000	and above	0.8%

#### *Fees on Transfer of Immovable Property*

The Department of Land and Surveys charges a fee for the transfer of immovable property. The fee is calculated at progressive rates on each tranche of the purchase price or market value, as follows:

- First €85,430 — three per cent;
- Between €85,430 and €170,860 — five per cent; and
- Above €170,860 — eight per cent.

No transfer fees are payable in respect of company reorganizations. Exemptions and reductions are available in respect of transfers between family members, and between family members and family companies.

### **Customs Regulation**

As an EU member, Cyprus is part of the Customs Union. There is no duty on imports from or exports to EU Member States. In some instances, preferential tariff measures for non-EU Member States are provided for either in bilateral preferential agreements or in autonomous preferential regimes of the EU. Where no such preferential status is in place, the Customs Tariff of the EU is applied.

### **Currency Regulation, Capital and Profit Transfer, Investment Incentives**

#### **Regulation**

Cyprus is a member of the eurozone, and residents and non-residents, whether individuals or corporate bodies, may hold and manage assets and liabilities in any currency and in any country. There is no distinction between nationals of Cyprus, nationals of other EU member states, or third-country nationals.

As a condition of a financial support package for Cyprus agreed in March 2013, the operations of Cyprus's two largest banks were scaled down and temporary controls over transfers of funds via banks in Cyprus were put in place. It is important to note that these controls affect only banks in Cyprus. They do not directly affect any Cyprus corporate and trust structures, nor do they detract from the favorable Cyprus holding company regime and the advantages offered by other Cyprus structures, since there is no requirement for Cyprus companies, entities, or trusts to open or maintain bank accounts in Cyprus.

### **Money Laundering**

The principal anti-money laundering legislation in Cyprus is the Prevention and Suppression of Legalizing Proceeds from Illicit Actions Law of 2007, Law 188(I) of 2007 ("the Law"). The Law fully implements Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 ("the Third Anti-Money Laundering Directive") and the Financial Action Task Force's revised 40 Recommendations against money laundering and its nine Special Recommendations against terrorist financing.

The Law criminalizes money laundering from all crimes punishable with imprisonment in excess of one year as well as terrorist financing activities. All persons carrying on "relevant financial business" (including credit institutions, investment firms, insurance companies, lawyers, accountants, real estate agents, and dealers in precious metals and stones) are obliged to implement strict procedures to prevent the abuse of their services for money laundering. Persons subject to the Law are required to implement procedures for customer identification, record keeping, and internal reporting. They must ensure that their employees are aware of their obligations under the Law and provide adequate training to assist them in recognizing money laundering transactions. Organizations must appoint properly qualified persons as "Money Laundering Compliance Officers".

The Law designates the Central Bank of Cyprus (CBC) as the competent supervisory authority for all banks operating in Cyprus and assigns to it the responsibility of ensuring banks' due compliance with the provisions of the Law. The CBC has also been appointed by the Council of Ministers as the supervisory authority for all persons licensed to provide money transmission services. The relevant professional bodies are responsible for their members' activities. The CBC has issued useful guidance on customer identification, record keeping, and other procedures for the prevention of money laundering, including the identification of beneficial owners of accounts and transactions and checks on the source and legitimacy of funds flowing through the banking system in Cyprus.

The Law established a special Unit for Combating Money Laundering ("MOKAS") to take responsibility for the receipt and analysis of suspicious transaction reports and money laundering and terrorist financing investigations. MOKAS may apply to the court for orders for the disclosure of relevant

information related to the investigation as well as orders for the freezing and confiscation of funds and property suspected to be derived from money laundering.

## **Competition Law**

### **In General**

Cyprus has implemented the *acquis communautaire* in the field of competition, focusing on the smooth and free functioning of the market with a view to consolidating “a regime that would ensure competitiveness in the internal market”. The main legislation is:

- The Protection of Competition Law, 2008 (the Competition Law); and
- The Control of Concentrations between Enterprises Law 22(I) of 1999 (“the Concentrations Law”).

In addition, there is a leniency program under which the CPC may waive or reduce fines imposed on participants in anti-competitive practices in exchange for their cooperation in providing evidence which assists the CPC to prove the violation.

### **Competition Law**

#### *Commission for Protection of Competition*

The Commission for Protection of Competition (CPC) was established in 1990 under the Protection of Competition of Law of 1989. The 1989 law was repealed by the Competition Law, which designates the CPC as the competition authority of the Cyprus Republic, responsible for the application of Regulation 1/2003, and of articles 81 and 82 EC (now redesignated as articles 101 and 102 TFEU), where necessary. Under the Competition Law, the CPC has the exclusive competence to:

- Investigate and take decisions on the infringement of sections 3 and 6 of the Competition Law and of Articles 101 and 102 TFEU;
- Determine whether agreements, decisions, or concerted practices which fall within the scope of section 3(1) of the Competition Law or article 101 TFEU meet the conditions for validity set out in section 4 of the Competition Law or article 101(3) TFEU, respectively;
- Determine whether a concerted practice for which an order has been requested under section 5(1) of the Competition Law falls within the scope of permitted concerted practices to which section 3 of the Competition Law does not apply;
- Determine whether a concerted practice to which the provisions of the Community Regulations made pursuant to paragraph 3 of article 81 EC (now article 101 TFEU) apply falls within the scope of permitted concerted practices provided for in the Community Regulations;

- Impose administrative fines and other sanctions; and
- Decide on interim measures.

The CPC may order interim positive or injunctive measures in the furtherance of its duties, and may act as a result of receiving a complaint or on its own initiative. The CPC has extensive powers to gather information, not only by making written requests but also by inspecting and making copies of the books and records of an enterprise or trade association and requiring oral explanations from its staff. For this purpose, the CPC is empowered to enter all premises and means of transport used by an enterprise.

### *Section 3*

Section 3 of the Competition Law and article 101 TFEU prohibit any agreement having as its object or effect the elimination, restriction, or distortion of competition, and in particular agreements aiming to:

- Fix prices;
- Restrict or control production;
- Geographically distribute markets or other resources of supply;
- Unfairly discriminate between customers; or
- Impose additional obligations on contracting parties which by their nature or according to commercial usage have no connection with the subject matter of the contract.

### *Section 4*

Section 4 provides that an agreement, decision, or concerted practice falling within the scope of subsection (1) of section 3 is nevertheless permissible and valid if it satisfies all the following conditions:

- It contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit;
- It does not impose on the undertakings concerned restrictions which are not indispensable to the attainment of these objectives; and
- It does not afford such undertakings the possibility of eliminating competition in respect of a substantial part of the product in question.

Article 101(3) TFEU contains the corresponding provisions to section 4.

### *Section 5*

Section 5 provides that the Council of Ministers may, on the advice of the CPC, issue orders declaring certain anticompetitive practices to be exempt from section 3.

*Section 6*

This prohibits abuse of a dominant market position, defined as any act of one or more enterprises which possess a dominant position in the aggregate or part of the domestic market of a product, having as its object or effect or a likely effect:

- Direct or indirect fixing of unfair purchase or selling prices or other unfair terms of business;
- Restriction of production, supply, or technological development, to the detriment of consumers;
- Unfair discrimination between customers or suppliers; or
- Imposition on contracting parties of additional obligations which by their nature or according to commercial usage have no connection with the subject matter of the contract.

The following have exemption from section 6:

- Agreements or acts of state;
- Agreements or practices of enterprises whose activities are specially regulated by law to the extent that they are specifically provided for in the relevant legislation;
- Agreements relating to wages and terms of employment and working conditions; and
- Enterprise agreements exclusively aimed at export promotion.

Mergers between enterprises are also exempted from the provisions of section 6, since these are subject to the Concentrations Law, section 13(1) of which requires notification of mergers between enterprises to be filed with the CPC within one week from the date of signing the agreement which brought about the merger or from the date of announcement of the public tender, or acquisition of the controlling interest.

*Leniency Program*

In 2011, Cyprus introduced a leniency program which allows the CPC to waive or reduce fines imposed on participants in anti-competitive practices in exchange for their cooperation in providing evidence which assists the CPC to prove the violation.

The program is governed by the Immunity and Leniency of Administrative Fines in the event of cartels in violation of section 3 of the Protection of Competition Law 13(I) of 2008 and/or section 101 of the Treaty on the Functioning of the European Union (TFEU) (Leniency Programme) Regulations of 2011.

## **Concentrations Law**

### *In General*

The Concentrations Law provides for the control of concentrations between enterprises for the purposes of protection of effective competition and applies to all concentrations of major importance, as defined below.

The bodies involved in the notification and evaluation procedure are the CPC, the Competition and Consumer Protection Service of the Ministry of Commerce, Industry and Tourism (the Service), and the Minister of Commerce, Industry and Tourism. However, the CPC may act whenever it receives information that it considers relevant. A concentration of enterprises takes place:

- If two or more previously independent enterprises merge; or
- If one or more persons already controlling at least one enterprise or one or more enterprises acquire, directly or indirectly, whether by purchase of securities or assets, by agreement or otherwise, control of the whole or parts of one or more other enterprises; or
- If a joint venture is established which permanently carries out all the functions of an autonomous economic entity.

For a concentration of undertakings to be considered to be of major importance either:

- All of the following tests must be met: (a) at least two of the undertakings involved have an annual turnover in excess of €3,417,202 each; and (b) at least one of the undertakings involved is commercially active in the Republic of Cyprus; and (c) at least €3,417,202 of the aggregate turnover of all the undertakings involved arises from the sale of goods or services in the Republic of Cyprus; or
- The concentration is declared to be of major importance by an order of the Minister of Commerce, Industry and Tourism because it is of major public interest.

### *Notification*

The Service must be informed in writing of proposed concentrations within one week of publication of the relevant offer of purchase or conclusion of the relevant agreement. Within one month of receiving a notification complying with the requirements, the Service must inform the notifying party in writing whether the proposed concentration:

- May proceed, in which case the procedure ends; or
- Will be examined in detail; or
- Has been referred to the Minister of Commerce, Industry and Tourism for further consideration.

If the Service fails to respond within the one-month time limit, it is assumed that there is no objection to the proposal and that it may proceed. The Service may obtain one 14-day extension by notifying the relevant parties seven days before the expiry of the initial deadline.

If the Service determines that the proposal should be examined in detail, it must submit its report and recommendations on the proposal to the CPC within three months from the date of receiving the notification. The factors to be considered by the CPC in making its decision on the proposal include:

- Structure of the markets affected;
- Market position and economic power of the participating undertakings;
- Supply and demand for the relevant products or services;
- Availability of alternative sources of supply;
- Barriers to entry into the affected markets; and
- Interests of the intermediate and final consumers of the goods or services.

The CPC must inform the notifying party of its decision within four months from the date on which the Competition Service received the prescribed information regarding the notification. It may temporarily approve a proposed concentration if it is satisfied that continued delay would cause serious harm to the parties. The CPC may impose conditions at its discretion. Decisions made under the Concentrations Law are subject to judicial review.

#### *Administrative Penalties*

These are as follows:

- Failure to notify — a fine of up to €85,430 plus €8,543 for each day that the infringement continues;
- Provision of false or misleading information — a fine of up to €85,430;
- Failure to provide the information required by the law — a fine of up to €51,258; and
- Putting a concentration into effect ahead of the decision of the Competition Service or the CPC — a fine of up to 10 per cent of the combined national turnover, plus a fine of €8,543 for each day of non-compliance.

If approval of a proposed merger is given on the basis of information which is subsequently found to have been false or misleading, the approval may be revoked and an order made for the dissolution of the combined enterprise.

## **Intellectual Property**

### **In General**

There has been a significant overhaul of intellectual property legislation (IP) resulting in numerous amendments and new laws to harmonize Cyprus legislation with both EU rules and international standards on IP. Additionally, Cyprus has ratified more than 20 international conventions aimed at protecting IP rights.

### **Trade Marks**

#### *In General*

The registration and protection of marks in relation to goods and services is governed by the Trade Marks Law, Cap 268, as amended, and by the Regulations issued by the Council of Ministers of 1951 to 2003, as amended. The Nice classification applies whereby goods and services are categorized into 34 classes and 11 classes, respectively.

#### *Protection against Infringement*

A registered trade mark may be infringed in the following ways:

- If a mark for goods or services is identical with a registered trade mark;
- Where there is identity or similarity between goods or services or similarity between the defendant's sign and the plaintiff's mark, and the plaintiff proves that there exists a likelihood of confusion on the part of the public, which includes a likelihood of association with the trade mark; and
- Where a mark has a reputation in Cyprus and an identical or similar sign is used for dissimilar goods or services, where such usage takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the mark.

#### *Relief*

The relief that may be granted by the court in relation to an infringement includes an injunction restraining the future use of the mark by the wrongdoer, and damages. If the infringement is on a large scale, the court may order the delivery up of the products bearing the marks for destruction or order the defendant to tender an account of the profits made through the sale of goods or the provision of services in relation to which the proprietor's trade mark was infringed. The proprietor of a registered trade mark may also apply to the Customs Department requesting the Department to suspend the potential import of goods that violate the proprietor's intellectual property rights.

In the case of a registered mark, the only onus of proof on the applicant is to prove the registration. Trademarks are registered for an initial period of seven years and may be renewed on application for further periods of 14 years from the date of expiry of either the initial registration or the last renewal.

### *Community Trade Marks*

Cyprus is a full member of the Office of Harmonization in the Internal Market (Trade Marks and Industrial Designs). Applications for the registration of Community Trade Marks (CTMs) may be filed directly with the Registrar of Trade Marks in Cyprus. All CTMs registered or applied for before 1 May 2004 are automatically extended to Cyprus.

### **Patents**

#### *In General*

The registration and protection of patents is regulated by the Patents Law 16(I) of 1998, as amended. It is extended by the relevant patent regulations of 1999 and 2000 (the Regulations).

#### *Protection against Infringement*

Where a patent concerns a product, the owner of it has the right to prevent any third party from:

- Producing the product incorporating the protected invention;
- Offering or supplying the product on the market, using the product, or importing or stocking the product for the purposes of its distribution in the market or similar use; or
- Inducing a third party to carry out these acts.

Where a patent concerns a process, the owner of it may prevent any third party from:

- Using a process which is the subject-matter of the patent;
- If a product is a direct result of this process, performing the acts described in relation to products; or
- Inducing a third party to carry out these acts.

#### *Remedy*

In the event of infringement, the patentee may bring an action in court seeking an injunction and/or damages. A patent lasts for a period of 20 years from the date of the filing of the application. It is possible for a patent regarding pharmaceutical products to receive a supplementary protection certificate upon relevant application, which extends the duration of protection for a further five years. In both cases the maintenance of a patent is subject to the payment of annual renewal fees.

The Law is in line with EU case law, setting limits on the rights granted to patent owners. Once a product has been put on the market by the patent owner or with his express consent, he can neither restrict the use or resale of the

product nor prevent private acts that do not substantially affect the financial benefit of the right holder

#### *Priority Rights*

The Law contains provisions for priority rights, in accordance with the Paris Convention for the Protection of Industrial Property, for patent applications already filed with other signatory states.

### **Trade Names**

#### *In General*

Trade names may be registered in Cyprus under the provisions of the Partnerships and Business Names Law, Cap 116.

#### *Protection against Infringement*

In the event of infringement of the business name by a third party, the only remedy is an action for passing off under section 35 of the Civil Wrongs Law, Cap 148, claiming damages, an injunction, or both.

Once registered, a trade name remains on the register until an application for removal is filed by the trader. The Partnership and Business Names Law provides that where a firm, individual, or corporation has registered a trade name and ceases to carry on business, the Registrar must be informed within one month after the business has ceased. The Registrar will then remove the trade name from the register.

### **Copyright**

#### *In General*

Copyrights in Cyprus are regulated by the Right of Intellectual Property Law 59 of 1976, as amended (the Law). There is no system of copyright registration in Cyprus. Copyright attaches to works automatically. The Law protects the works of Cypriot nationals which are published anywhere in the world and the works of nationals of foreign countries which are published in Cyprus.

In a copyright dispute, it is for the court to determine, on the basis of the evidence before it, whether the work can be classified as copyright in accordance with the legislation and on what date this right was attached.

#### *Protection against Infringement*

The Law provides remedies for copyright infringement. For the criminal offences listed in the Law, penalties include a fine of up to €80,000 or imprisonment for up to three years or both. In addition, the court may order copies of the work in the possession of the alleged offender to be destroyed or delivered to the owner of the copyright.

On a second or subsequent conviction, the penalties are increased to a fine not exceeding €100,000 and a term of imprisonment not exceeding four years. Civil remedies include damages, destruction, or delivery of infringing copies and the equipment by which copies are produced, an account of profits, and an injunction. The duration of copyright varies from 25 to 70 years according to the type of work to which it attaches.

## **Industrial Designs**

### *In General*

Protection of industrial designs is provided by the Legal Protection of Industrial Designs and Models Law, 4(I) of 2002, as amended. For a design to be eligible for protection, it generally needs to be "new" and to have an "individual character". Eligibility for applications for industrial design protection is available to:

- Individuals who are residents of, or have their usual residence in, Cyprus or another EU Member State; and
- Companies or other legal entities that have their actual industrial or commercial establishment in Cyprus or another EU Member State.

### *Protection against Infringement*

The proprietor has the exclusive right to use the design or sample and prohibit others from using it without his consent. The term "use" includes the manufacture, offer, marketing, import and export, and use or possession for these purposes of a product incorporating or applying that design or sample. These rights are not infringed by:

- Private acts done for non-commercial purposes;
- Acts done for experimental purposes; or
- Acts done to reproduce the design or sample for educational reasons.

The maximum length of protection of a design is 25 years from the filing date of the application, divided into five periods of five years. The proprietor is entitled to renew the protection for one or more periods of up to 25 years by paying the relevant fees.

Applications for the registration of Community Designs may be filed directly with the Registrar of Industrial Designs in Cyprus, while all Community Designs registered, protected, or applied for before the date of accession will be automatically extended to Cyprus.

## **Employment Law**

### **In General**

Cyprus employment law is a mixture of statute and case law. Statutory provisions govern certain aspects of an employment relationship such as

termination, working hours, annual leave, and social insurance contributions. Cyprus has also incorporated EU legislative instruments governing employment law into Cyprus national law.

## **Industrial Relations**

### *In General*

Cyprus has a strong and effective industrial relations system. The right to organize and the right to collective bargaining are explicitly recognized and safeguarded as fundamental rights under the Constitution. Cyprus also ratified the ILO Convention 87 on the Freedom of Association and the Right to Organize, and Convention 98 on the Right to Organize and Collective Bargaining.

### *Industrial Relations Code*

The industrial relations system is characterized by a successful tripartite cooperation between employers, employees, and government representatives. Central to this is a gentlemen's agreement called the Industrial Relations Code, which is not legally enforceable but is highly respected and responsibly followed by all sides. It lays out the procedures to be followed for the settlement of employment disputes, arbitration, mediation, and public inquiry in disagreements over interests and rights.

Collective agreements determine terms and conditions of employment in many sectors, and are generally in line with applicable legislative provisions in a given area. They may provide for more favorable terms than those provided by employment laws but not for less. Disputes under collective agreements must be dealt with according to the provisions of the Industrial Relations Code.

## **Employment Contracts**

### *Contract of Employment versus Contract for Services*

The distinction between a contract of service (employment) from a contract for services (independent contractor/consultant) is important to:

- Determine payment of taxes and social insurance; and
- Apply statutory employment and other rights, such as the right to statutory compensation for unlawful dismissal.

In determining whether a person is an employee or an independent contractor, all the particular circumstances of the relationship must be taken into account, with particular emphasis on the overall relationship.

### *Fixed-Term Employment*

Employment contracts may be for a fixed term or of unlimited duration. Employment under a fixed-term contract is considered as automatically

terminated on the expiration of the specified term. The employee may have recourse to the Industrial Disputes Court (IDC) if there is evidence that such contracts are actually intended to last for an indefinite period and are being used to avoid statutory obligations and protections.<sup>1</sup>

### *Terms of Employment*

It is obligatory for employers to provide employees with specific information in writing about their terms of employment within one month from the start of the employment. The minimum information which must be given is:<sup>2</sup>

- Identity of the parties;
- Place of work and the registered address of the business or the home address of the employer;
- Position or specialization of the employee, his rank, the type of his duties as well as the object of his employment;
- Date of commencement of the contract or the employment relationship and its anticipated duration if this is for a fixed time;
- Duration of any annual leave to which the employee is entitled, and the manner and time in which it may be taken;
- Time limits which must be observed by the employer and the employee in the event of a termination of the employment, either by consent or unilaterally;
- All types of emoluments to which the employee may be entitled and the time schedule for their payment;
- Usual duration of his daily or weekly employment; and
- Mention of any collective agreements which govern the terms and/or the conditions of the employment.

No term of employment can be less favorable for the employee than the corresponding statutory provision. There is an implied duty of fidelity in every employment contract which requires the employee not to act in a manner directly and substantially prejudicial to his employer's interests.

### *Hours of Work*

Generally, the number of working hours should not exceed 48 hours per week, including overtime.<sup>3</sup> In certain areas such as the hotel industry, seafaring, and civil aviation, different statutory provisions may apply. Every employee is generally entitled to 11 continuous hours of rest per day and a minimum rest period of 24 continuous hours per week. Where the daily hours of work exceed six, the employee is entitled to a break interval of at least 15 continuous minutes.<sup>4</sup>

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1 Law Number 24/67, s 5(d).

2 Law Number 100(I) of 2000, s 4(2).

3 Organization of Working Time Law, 131(I) of 2003, s 7.

4 Law Number 131(I) of 2003, ss 4–6.

These rules can be bypassed where permitted under specific legal exemptions. Working hours for night workers must not exceed an average of eight hours per night calculated over a period of one month or some other period stipulated in the contract. Night workers whose work involves hazards or physical or mental tension should not exceed eight hours of night work.<sup>5</sup>

#### *Minimum Salary*

The government sets minimum pay rates for certain categories of employees. These include shop sales persons, office workers, medical assistants, child carers, security guards, and caretakers in clinics, hospitals, and nursing homes. The minimum salary is subject to review by Ministerial Order, usually on an annual basis.

For any such person who has completed a continuous period of employment of six months with the same employer, the current minimum, set in April 2012, is €924 per month or €5.20 per hour for hourly paid employees.

#### *Termination of Employment*

**Unfair Dismissal Statutory Provisions.** An employee has the right not to be unlawfully dismissed. Termination of employment is governed by the Termination of Employment Law, Law 24 of 1967, as amended (TEL).

Section 5 of TEL lists the permissible reasons for dismissal which do not give rise to a right for compensation. Termination for any other reason is considered unlawful by a Cyprus court. The burden of proving that a dismissal is lawful and justifiable is on the employer to discharge on the balance of probabilities.<sup>6</sup>

**Notice.** The statutory minimum notice to be given by the employer varies according to the employee's period of continuous employment. The notice period can be effectively extended by agreement. The employer has the right to require the employee to accept payment instead of notice.<sup>7</sup> Minimum notice to be given by the employee to the employer also varies according to the employee's period of continuous employment.

#### *Redundancy*

**Definition.** Section 18 of TEL provides a definition of redundancy. In the event of redundancy, the employee who has been employed for a continuous period of at least 104 weeks by the same employer is entitled to receive a payment from the Redundancy Fund of the Ministry of Labor and Social Insurance.<sup>8</sup>

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5 Law Number 131(I) of 2003, s 9.

6 *Andri Demosthenous v Andreas Ouris*, EDC Case 1075/97.

7 Law Number 24 of 1967, s 11.

8 Law Number 24 of 1967, s 6(1) and Table 4.

**Notification to Ministry of Labor and Social Insurance.** It is the employer's statutory obligation to give notice to the Minister of Labor and Social Insurance of any proposed redundancy dismissal at least one month before the intended date of termination.<sup>9</sup> Notice of termination of employment must also be given to the employee.

**Collective Dismissals or Redundancies.** Depending on the number of employees affected, consultation can be a statutory obligation in relation to collective redundancies in Cyprus. Collective dismissals are defined as dismissals by the employer for one or more reasons which are not related to the employees, provided that the number of the dismissed employees within a 30-day period is as follows:<sup>10</sup>

- At least 10, in businesses where usually between 20 and 100 employees are employed;
- At least 10 per cent of the number of the employees, in businesses where usually between 100 and 300 employees are employed; or
- At least 30, in businesses where usually more than 300 employees are employed.

**Employment Disputes Court.** The Employment Disputes Court has jurisdiction to hear and decide any disputes arising in the application of TEL. A person has the right to apply to a District Court in relation to a dispute concerning employment where his claim is greater than the maximum amount which may be ordered by the Employment Disputes Court. Recourse to one court excludes the jurisdiction of the other.

**Compensation for Unlawful Dismissal.** The following must be taken into account by the court in calculating total compensation for unlawful dismissal:<sup>11</sup>

- The wages and all emoluments of the employee;
- The duration of his employment;
- Loss of prospective career;
- Actual circumstances under which the termination took place; and
- The age of the employee.

**Information and Consultation.** Businesses that employ at least 80 employees must inform and consult with representatives of employees regarding any decisions that the management may take and which may affect employees' rights and working conditions.

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9 Law Number 24 of 1967, s 21(a).

10 Collective Dismissals Law, 28(I) of 2001, s 2.

11 Law Number 24 of 1967, Table 1.

*Leave from Work*

**Annual Leave.** The minimum annual holiday entitlement is 20 working days for employees with a five-day working week and 24 days for employees with a six-day working week.<sup>12</sup> There is no statutory maximum annual holiday entitlement. Public holidays established by statute, custom, or contract are additional entitlements.

Holiday entitlement is paid either by the Annual Leave Fund or by the employer's own annual leave scheme. The terms of the latter must be more beneficial to the employees than those stipulated by statute.

**Maternity Leave.** Maternity leave entitlement for a female employee is for a total of 18 continuous weeks. If the newborn child is hospitalized due to premature birth or any other health problem maternity leave is extended by an additional week for every 21 days of hospitalization up to a maximum of six additional weeks upon production of a medical certificate.

In the event of adoption of a child under the age of 12 years, the employee has the right to maternity leave for a total of 14 continuous weeks. During maternity leave, the employee receives maternity entitlement pursuant to the provisions of the Social Insurance Law.

For six months after childbirth, a female employee is entitled each day to one hour for the purposes of breastfeeding and/or for the increased needs of child raising. Such time is considered and paid as normal working time.<sup>13</sup>

**Parental Leave and Leave for Reasons of Force Majeure.** Employees of both sexes who have completed six months or more of continuous employment with the same employer can claim unpaid parental leave for up to a total of 13 weeks on grounds of childbirth or adoption for the purposes of caring for and raising the child.<sup>14</sup>

The employee is entitled to unpaid leave of seven days per year for reasons of *force majeure* connected with illness of or accident to his dependants and necessitating the immediate presence of the employee.

**Army Reserve Duty.** An employer has an obligation to pay an employee in relation to any period of absence from work due to military service.<sup>15</sup>

**Sick Pay.** An employee is entitled to receive sick pay for any period of more than three days in which he is unable to work. Unless an employer enters into a specific arrangement with his employees about sick pay, it is payable by the Social Insurance Department.

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12 Law Number 8 of 1996, s 5.

13 Law Number 100(I) of 1997, s 5.

14 Law Number 69(I) of 2002, s 4.

15 National Guard Law 20 of 1964, as amended, s 24.

## **Discrimination**

### *In General*

The Constitution prohibits all forms of discrimination.<sup>16</sup> It has been supplemented by international conventions and legislative instruments which aim to eliminate discrimination, providing a comprehensive legal framework in which fundamental human rights and freedoms enjoy a substantial degree of protection.

### *Equal Pay for Same or Equal Work*

The Equal Pay between Men and Women for the Same or Equal Work Law<sup>17</sup> imposes an obligation on an employer to provide his employees with equal payment for equal work regardless of sex.

### *Equal Treatment for Part-Time Employees*

The Equal Treatment at Work and Employment Law, 58(I) of 2004, applies to full-time as well as part-time employees. Additionally, according to the Part Time Employees (Prohibition of Discrimination) Law, 76(I) of 2002, where employees are part-time employees, the aim of the law is to ensure that they enjoy rights proportionately equal to full-time employees.

### *Equal Treatment for Disabled Persons*

The Law on Disabled Persons, 127(I) of 2000, prohibits any form of discrimination against persons with any kind of physical or mental disability unless the nature and requirements of the role justify it and measures (in accordance with the law) cannot reasonably be taken to accommodate the needs of a disabled person.

### *Health and Safety at Work*

The main statute is the Health and Safety at Work Law, 89(I) of 1996, as amended, which implements the principles and provisions of EU Directive 89/391/EC. There is a statutory obligation on every employer to ensure the safety, health, and prosperity at work of all his employees.<sup>18</sup> The obligation extends to a number of specific, wide-ranging obligations, including the provision of directions and supervision to ensure the safety and health of his employees.<sup>19</sup>

There is also a general obligation under Regulation 173/2002 (Management of Safety and Health at Work Issues) on employers to ensure that every employee is provided with the necessary and sufficient training on the matter of safety and

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<sup>16</sup> Constitution of the Republic of 1960, art 28.

<sup>17</sup> Law Number 177(I) of 2002.

<sup>18</sup> Law Number 89(I) of 1996, s 13(1).

<sup>19</sup> Law Number 89(I) of 1996, s 13(2)(c).

health, especially in the form of information and instructions relating to his specific work position or duties.

#### *Social Insurance*

There is a legal obligation on employers to register with the Registry of Employees of the Social Insurance Department. Residents of Cyprus or EU nationals who reside and work in Cyprus have a general obligation to register with Social Insurance.

Where an EU national is temporarily employed in Cyprus for a period of up to six months, he can apply to the Ministry for an exemption so that he can continue making social insurance payments in his home country.

### **Banking Law**

#### **In General**

Banking activities are regulated by the Central Bank of Cyprus (CBC). The CBC has the sole authority to grant a banking license and to regulate the activities of license holders, including their compliance with the Money Laundering Act of 2007. The CBC also has responsibility for regulating certain investment business under legacy arrangements, and it is the regulatory and supervisory body for International Collective Investment Schemes established under the International Collective Investment Schemes Law of 1999.

Additionally, it retains responsibility for the supervision of fiduciary service companies which are already in possession of a CBC permit issued under the provisions of the Exchange Control Law or the Capital Movement Law.

Since Cyprus joined the EMU on 1 January 2008, the determination and implementation of monetary policy have been delegated to the European Central Bank (ECB). The Governor of the CBC participates in the General Council and the Governing Council of the ECB as a permanent and *ex officio* member with the governors of all the other EU national central banks that are also part of the Eurosystem.<sup>20</sup>

#### **Legislative Framework**

##### *Central Bank of Cyprus Law 2002*

The law governs the activities of the CBC. It guarantees the independence of the CBC and ensures compatibility with the relevant provisions of the Treaty establishing the European Community and the Statute of the European System of Central Banks and the ECB.

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<sup>20</sup> Central Bank Law, s 20(3)(a).

*Banking Laws of 1997 to 2009*

The Banking Laws set out the regulatory framework for the conduct of banking business in Cyprus and empower the CBC to set prudential rules administratively with respect to banks' capital base, capital adequacy ratio, and liquidity. The Laws allow the CBC to issue general or specific directives on regulatory matters, which are mandatory for all banks. In exercising its discretionary power, the CBC is required to take into consideration international practice, and the Directives and regulations of the EU. The most recent amendments made related to the implementation of the *acquis communautaire* in the banking sector and the Basel II originating rules, the entry to the EMU, and the transposition of the recommendations of the Basel Committee on Banking Supervision.<sup>21</sup>

*Prevention and Suppression of Money Laundering Activities Law*

The Prevention and Suppression of Money Laundering Activities Law, 188 (1) of 2007 (the AML Law), which consolidates, revises, and repeals all former laws on this subject, came into force on 1 January 2008. It transposes into Cyprus legislation the provisions of the relevant EU Directives, including those of the Third EU Directive on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (Directive 2005/60/EC).

The CBC, in exercise of the powers conferred on it by the AML Law,<sup>22</sup> has issued a comprehensive directive laying down the specific policy, procedures, and internal controls that all banks should implement for the effective prevention of money laundering and terrorist financing and for achieving full compliance with the requirements of the AML Law (the AML Directive).<sup>23</sup>

**Authorization and Registration**

Applications for a banking license under the Banking Law of 1997 must be presented by or on behalf of the applicant to the CBC. The application must include the memorandum and the articles of association or other instrument constituting or defining the constitution of the body corporate and any other documents and information which the CBC may require. The CBC will then do one of the following;

- Grant a license without any condition;
- Grant a license subject to such conditions as the CBC may consider it proper to impose; or

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21 Core Principles for Effective Banking Supervision, *Basel Committee on Banking Supervision*, September 1997.

22 AML Law, s 59(4).

23 Available at [http://www.centralbank.gov.cy/media/pdf/BCMLDRE\\_MONEY\\_LAUNDERING\\_3RD\\_EDITION.pdf](http://www.centralbank.gov.cy/media/pdf/BCMLDRE_MONEY_LAUNDERING_3RD_EDITION.pdf).

- Refuse to grant a license.

The CBC must give the applicant its reasoning for the decision taken. The CBC may amend or cancel, either permanently or temporarily, any condition imposed on a license, or impose any new conditions thereto. The policy with respect of the granting of licenses to carry on banking business is determined by the CBC after consultation with the Minister of Finance.

The owners and the controlling shareholders (shareholders owing alone or together with connected entities or persons 10 per cent or more of the share capital) of banks are subject to monitoring and prior approval by the Central Bank both at the stage of the bank's licensing and throughout the bank's life. Shareholdings equal to or more than 10 per cent of the bank's share capital should be also continuously reported to the Central Bank.

### **European Union Institutions**

A credit institution authorized and supervised by the competent authorities of another Member State of the EU may provide banking services in Cyprus and offer investment services as well as non-core investment services, without requiring a license to be granted by the CBC. Such a credit institution may operate in Cyprus either by establishing a branch or by offering services on a crossborder basis, for which it has received an authorization by the competent authorities of its home Member State.

Institutions which are entitled under the laws of another non-EU country to carry on business which substantially corresponds to banking business may open a Bank Representative Office (BRO). A bank wishing to open a BRO must obtain prior approval from the CBC. BROs must be used exclusively to facilitate liaison activities between the head office or other branches abroad and non-resident customers; they may not carry out any banking business.

### **Non-European Union Institutions**

Institutions from non-EU countries must obtain an operating license from the CBC in order to conduct banking business. International financial services companies wishing to carry on business in Cyprus may do so either through a branch or by offering crossborder services. Such companies must obtain a license from the Cyprus Securities and Exchange Commission.

### **Electronic Service Providers**

Cyprus legislation recognizes the significant role of technology in the banking industry and has facilitated this by incorporating all the e-directives into its domestic legislation. The Banking Law recognizes electronic money as an electronic surrogate for coins and banknotes, which is stored on an electronic device such as a chip card or computer memory and which is generally intended for the purpose of effecting payments of limited amounts. The Electronic Money

Institutions Law, 86(I) of 2004, regulates electronic banking institutions in detail, including the:

- Conditions under which a license for the incorporation of an electronic credit institution in Cyprus is granted, surrogated, or revoked;
- Business and transactions that may be undertaken;
- Minimum capital requirements; and
- Minimum number of people who are responsible for its administration (currently two).

### **Enforcement Powers**

The CBC has significant enforcement powers. It is guided in its supervisory role by the recommendations of the Basle Committee on banking supervision and the EU Directives on banking regulation and closely follows any new developments. It exercises supervision of license holders via off-site monitoring and on-site examination which aim, *inter alia*, to ensure compliance with the Banking Law, as amended, and any regulations issued thereunder. Off-site monitoring entails the submission by banks of an extensive range of periodic returns which cover numerous aspects of banking operations.

On-site examinations are carried out with a view to assessing the current financial position and soundness of a bank and its future prospects at a given time. The Banking Law empowers the CBC to take measures against any institutions that are in breach of the regulations or fail to meet prudential requirements.

Specifically, the Governor has the power to impose an administrative fine in the case of a bank knowingly or negligently providing inaccurate or incomplete data, as well as in the case of contravention or failure to comply with the directives and circulars of the CBC, or any other requirement within the specified time limit. Other infringements of specific provisions of the Law, or any regulations and directives issued under the Law, can give rise to offence penalties and prosecutions. Moreover, the Law empowers the CBC with extensive remedial powers ranging from representations to more severe measures, culminating in the revocation of a license.