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Conyers Dill & Pearman

in co-operation with

Antis Triantafyllides & Sons LLC

Cyprus Companies

Foreword

This memorandum has been prepared for the assistance of those who are considering the formation of companies in Cyprus. It deals in broad terms with the requirements of Cyprus law for the establishment and operation of such entities. It is not intended to be exhaustive but merely to provide brief details and information which we hope will be of use to our clients. We recommend that our clients and prospective clients seek legal advice on Cyprus law on their specific proposals before taking steps to implement them.

Before proceeding with the incorporation of a company in Cyprus, persons are advised to consult their tax, legal and other professional advisers in their respective jurisdictions.

This memorandum has been prepared on the basis of the law and practice as at the date referred to below.

Conyers Dill & Pearman
in co-operation with
Antis Triantafyllides & Sons LLC
Moscow

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1. INTRODUCTION

The principal statute governing the formation and operation of companies in Cyprus is the Companies Law, Chapter 113 of the Laws of Cyprus as from time to time amended (the “**Companies Law**”), which is virtually identical to the UK’s former Companies Act 1948. The Companies Law broadly provides for 2 forms of companies: companies limited by shares and companies limited by guarantee.

Companies which are limited by shares may be sub-divided into public companies and private companies. A public company is a corporation which does not constitute a private company. A private company is one which by its articles of association specifically (i) restricts the right to transfer its shares, (ii) limits the number of its members to 50 (exclusive of persons who are in the employment of the company and of persons who, having been formerly in the employment of the company, were, while in such employment, and have continued after the termination of such employment, to be members of the company), (iii) prohibits any public subscription to shares or debentures, and (iv) prohibits the issue of bearer shares.

The main provisions applicable to public companies under the Companies Law are that (i) the minimum number of members must be 7 with no maximum applicable, (ii) a public company must have at least two directors, (iii) if directors are appointed by the company’s articles, the consent of these directors must be filed on incorporation, (iv) a public company must obtain a trading certificate from the Registrar of Companies (the “**Registrar**”) before it can commence business, (v) a public company must have a statutory meeting and its directors must make a statutory report to its members, (vi) only public companies may issue share warrants, (vii) a public company must issue a prospectus or a statement in lieu of prospectus before issuing any of its shares or debentures to the public and (viii) a minimum share capital of EURO €25,629.02 which is the equivalent of the now defunct currency of Cyprus pounds £15,000.

This memorandum is concerned only with the formation and operation of private limited liability companies.

2. PRE-INCORPORATION MATTERS

2.1 Incorporation

A private company is incorporated by one or more persons subscribing and signing their name(s) to the memorandum and articles of association. The memorandum and articles

of association must be delivered to the Registrar who will register the company and certify that the company is incorporated as a company limited by shares.

2.2 Company Name

The proposed name of the company must be approved by the Registrar before the incorporation / registration process commences and must include the word "Limited" or its abbreviation "Ltd" as the last word of the name. The name reservation can usually be confirmed within 10 working days. The reservation lasts for a period of 6 months and may be renewed.

It is noted that no company shall be registered by a name which in the opinion of the Registrar is undesirable or which resembles another registered name.

2.3 Pre-Incorporation Contracts

Any contract which is entered into before the incorporation of a company by the persons who have signed the memorandum of association, or by persons authorized by them, in the name of or on behalf of the company under incorporation, is temporary and does not bind the company until the date of incorporation. After that date, the agreement constitutes a binding contract for the company.

However, in case the company is not incorporated in the end, the obligations undertaken by any person in its name are only valid as obligations of the said persons. In other words, the contract will take effect as a contract entered into by the person who entered into the contract and he will be personally liable under the contract, unless the agreement expressly provides that the obligations of such person were conditional on the incorporation of the company.

2.4 Capital Structure

There is no minimum share capital requirement for a Cyprus private company. However, the share capital which a Cyprus company proposes to issue must be divided into shares of a fixed amount. Such shares must be issued with a par value, and in registered form. Shares without par value and shares in bearer form are not permitted under Cyprus law. The capital may be paid in cash or in kind. Shares in a Cyprus company are personal property.

3. REQUIREMENTS OF CYPRUS LAW



3.1 Forms of Cyprus Company

The Companies Law broadly provides for two forms of company, each having different constitutional characteristics, as follows:

(a) Company Limited by Shares

The liability of the company's members will be limited by the memorandum to the amount, if any, that remains unpaid on the shares respectively held by them. This is, of course, the most common form of company.

(b) Company Limited by Guarantee

The liability of the company's members will be limited by the memorandum to such amount as the members may respectively undertake to contribute to the company's assets in the event of it being wound-up. These companies are used invariably for charitable, non-profit or "social" purposes.

3.2 Memorandum and Articles of Association

The memorandum of association and the articles of association together form the constitution of a Cyprus company. They are a matter of public record and available for inspection by the public at the offices of the Registrar. The memorandum and articles of association, when registered, bind the company and its members to the same extent as if they had respectively been signed and sealed by each member and contains covenants on the part of each member to observe all their provisions.

The memorandum and articles of association and any changes thereto need to be filed with the Registrar in the Greek language.

(a) Memorandum of Association

A Cyprus private company may amend its memorandum of association by special resolution and with the approval of the Registrar.

The memorandum of association must be signed by each subscriber in the presence of at least one witness. It is permissible to provide for nominee subscribers to the memorandum of association.

The memorandum of association must include the company's name and provide the main objects / purpose of the company. A Cyprus company can only carry out transactions permitted by the objects clause in its Memorandum of Association, otherwise the transaction will be considered *ultra vires* and void. The current professional practice in Cyprus is, therefore, to draft the objects clause as wide as possible.

In addition to the name clause and objects clause, the memorandum must also contain a limited liability clause, stating that the liability of its members is limited, and a capital clause setting out the authorised or nominal capital of the company and its division into shares of a fixed amount. The authorised share capital may subsequently be increased by the company in general meeting.

No minimum share capital is provided by the Companies Law for private companies, although each subscriber to the memorandum must subscribe for at least one share. Although usually denominated in Euros, the nominal share capital of a company may, be denominated in any other currency.

The share capital of a Cyprus company may be divided into different classes of shares. Although the share capital must be stated in the memorandum, the types of shares and their respective rights need not be set out in it, and the power may be reserved in the articles to issue different classes of shares.

(b) Articles of Association

The articles of association must be signed by each subscriber of the memorandum of association in the presence of at least one witness.

The articles of association of a Cyprus company will set out the rights and duties as between the company, the shareholders and the directors.

A company may by special resolution amend its articles of association.

3.3 Registered Office

A Cyprus company must have a registered office in Cyprus, the address of which is filed with the Registrar.

3.4 Directors

Who manages the business of the company is determined by its articles of association and the Companies Law. Assuming however, that a private company adopts the model Table A, Part II of the First Schedule to the Companies Law articles of association (“**Table A**”), then the business of the company shall be managed by the board of directors, who may exercise all such powers of the company as are not, by the Companies Law or by its articles of association, required to be exercised by the company in general meeting.

A private company may have one or more directors and a secretary, but the same person may not be a sole director and the secretary. However, this restriction does not apply in the case of a private company with a sole shareholder.

The directors can be either individuals or companies. The number of directors may be determined by the articles of association; directors need not be residents of Cyprus. However, in order for a Cyprus company to be in a position to take advantage of the double tax treaties in relation to Cyprus, it must be a tax resident of Cyprus. In order for a Company to be a tax resident of Cyprus it must have its management and control in Cyprus. What management and control is has not been judicially defined but, as a minimum, the following must be complied with:-

- (a) Board meetings should take place in Cyprus, and
- (b) The majority of the board of directors must be Cyprus residents.

The first directors are appointed by the subscribers to the memorandum of association and thereafter are elected either by the members or, if the articles of association permit, by the other directors. A director may be removed by ordinary resolution of the members of which special notice must be given. A company must maintain a register of its directors and secretaries. In the case of an individual director, the said register must contain the names, residential address, nationality, business occupation and particulars of any other directorships held by the director, other than directorships held by a director in companies of which the company is a wholly-owned subsidiary; in the case of a corporate director, the register must set forth its corporate name and registered or principal office. The register is available for inspection by any member of the company without charge and by any other member of the public on payment of a fee.

Directors need not hold any shares in the company in order to act as such, unless required by the articles.

Auditors may not be directors of companies which they audit.

3.5 Secretary

A Cyprus company must appoint a secretary – an individual or a secretarial company may be appointed. It is noted however, that except in the case of a limited liability private company with one and only member, the sole director of the said company cannot be its secretary as well.

The register of directors and secretaries must set forth the names and addresses of each individual secretary; in the case of a corporation, its corporate name and registered office must be set forth. Assistant, deputy and/or acting secretaries may also be appointed.

3.6 Bankers

A Cyprus company may open and maintain bank accounts in or out of Cyprus.

3.7 Books of Account

A Cyprus company must keep proper accounting books which are considered necessary for the preparation of financial statements. These books must be sufficient for the presentation of an accurate and fair picture of the affairs of the company as well as an explanation as to its transactions and must be kept at the registered office or at such other place as the directors think fit. The records are required to be available for inspection by the directors at any time. However, if books of account are kept at a place outside Cyprus, copies should be kept in Cyprus and be made available for inspection by the directors at any time.

3.8 Seal

Cyprus companies must have a common seal that is in the custody of the secretary at the registered office of the company. However, it is not unusual for Cyprus companies to have a seal which is kept or used outside Cyprus and/or on any documents. Such seal is not the common seal of the company and may have a double ring in it in order to be distinguished from the common seal kept by the secretary at the registered office of the company.

The need of affixing the common seal on documents which under English law would require the common seal to be affixed (i.e. deeds) has been recently abolished. It is stressed, however, that in case a company opts to affix its common seal on any document, the affixing of such seal should be done in accordance with the relevant procedure set out in its articles of association. For example, assuming that Table A has been adopted as the company's articles of association, if the seal is to be affixed, the affixing of the seal should have been authorized by a resolution of the board of directors and it should have been affixed by a director and a second director or the secretary of the company or a person expressly authorized to sign.

3.9 Financial Year End

A Cyprus company must set a date as its financial year end.

3.10 Annual Return

Every Cyprus company is required at least once in every calendar year to make an annual return to the Registrar setting out particulars relating to the company as specified in the Act. The annual return must be completed within 42 days of the annual general meeting for the year. However, a company does not need to file an annual return either in the year of its incorporation or the following year, provided that no more than 18 months elapse from the date of incorporation to the filing of the return.

3.11 Auditors

The shareholders of a Cyprus company must, at each annual general meeting, appoint auditors of the company to hold office from the conclusion of that, or until the conclusion of the next, annual general meeting. Prior to the first annual general meeting, an auditor may be appointed by the directors until the first annual general meeting. The directors may also fill any casual vacancy in the office of auditor.

The auditors may be removed by the shareholders who may appoint a replacement auditor nominated for appointment by any member of the company and of whose nomination notice is given to the other members not less than 28 days before the date of the meeting.

3.12 Shareholders

A Cyprus private company must have at least one registered shareholder. A shareholder may, however, hold its shares as nominee for another person. Shareholders can either be individuals or legal corporate entities. The names and addresses of the shareholders must be entered on a register of members kept by the company, along with the number of shares held by each member, distinguishing each share by its number so long as the share has a number and, in respect of any share that is not fully paid, the amount paid or agreed to be paid on the shares. In addition, the register must set out the date at which each person was entered in the register as a member and the date at which any person ceased to be a member. The register of members must be kept at the registered office (or, if the making up of the register is undertaken by another office, at such other office in Cyprus) and must during business hours (but subject to reasonable restrictions) be open to the inspection of any member without charge and of any other person on payment of a fee.

Bearer shares are not permitted under Cyprus law, but shares may be registered in the name of a nominee. However, it is noted that no notice of any trust, expressed, implied or constructive, shall be entered on the register of members of the company, or be receivable by the Registrar, in the case of companies registered in Cyprus.

4. INCORPORATION

4.1 Application

Once approval for the company name has been obtained, the memorandum and articles of association are prepared and submitted for registration to the Registrar with the information and the relevant application forms regarding the directors, secretaries and registered address of the company. The Registrar gives a registration number and the certificate of incorporation is issued in Greek with an English translation if so desirable.

The time needed to register a company in Cyprus is usually no less than three (3) weeks. However, shelf companies are available for clients who want to avoid the registration period.

4.2 Instrument of Appointment of First Directors

The first directors of a Cyprus company are appointed by the subscribers to the memorandum of association. An instrument of appointment of first directors signed by the subscribers to the memorandum is prepared for this purpose and maintained in the company's minute book.

4.3 First Meeting of Directors

The newly elected directors will, amongst other things, usually deal with the following:-

- (a) approve appointment of a secretary of the company;
- (b) note the filing with the secretary of the instrument of appointment of the first directors, the memorandum and articles of association of the company and the certificate of incorporation;
- (c) confirmation of the quorum for board meetings;
- (d) confirmation of appointment of legal advisors and their remuneration for their services as advocates and for supplying the secretary, nominee shareholders, directors and registered office of the company (if applicable);
- (e) adoption of the common seal of the company;
- (f) confirmation of the registered office;
- (g) instruct the secretary to obtain all necessary books and records;
- (h) issue of the subscription shares and registration of members;
- (i) appoint accountants to maintain books of account with the company and prepare financial statements;
- (j) appointment of auditors.

The company is thereafter in a position to commence its business activities.

5. OPERATION OF A CYPRUS COMPANY

5.1 General

Who manages the business of the company is determined by its articles of association and the Companies Law. Assuming however, that a private company adopts Table A, then the business of the company shall be managed by the board of directors, who may

exercise all such powers of the company as are not, by the Companies Law or by its articles of association, required to be exercised by the company in general meeting.

A company has the capacity to effect any transaction which falls within its objects and powers, subject only to any express limitation in the objects or powers and provided that the transaction is not itself illegal.

5.2 Directors' Meetings

At meetings of directors the proceedings are governed by the company's articles of association and by any rules made by the directors themselves by virtue of powers given to them by the articles. Assuming that Table A has been adopted as the articles of association of the company, then it will be generally provided that the directors may meet for the transaction of business and regulate their affairs as they see fit. Directors must be given reasonable notice of directors' meetings. Such notice must be given in accordance with the provisions of the articles of association and if the articles of association so provide may be given by telephone, electronic record or otherwise. Under Table A, a quorum for a meeting of directors, is two directors present in person or by alternate, at the commencement of the meeting. In order validly to transact business, a quorum must exist throughout the meeting of the directors. Further, Table A provides for the transaction of business by a written resolution signed by all of the directors in lieu of a meeting.

A director may appoint another director or individual to act as his alternate. The power to appoint alternate directors- which is not conferred by Table A- must be contained in the articles of association, which need to be carefully worded so as to make it clear, amongst other things and non-exhaustively, in what circumstances the alternate director has power to act, which director is entitled to notices of board meetings, how the alternate director is to be remunerated.

A director must disclose at the first opportunity at a meeting of the directors any direct or indirect interest in any contract or proposed contract with the company.

5.3 Authority to Bind the Company

In relation to the position concerning the ability of a person to bind a company with regard to a particular transaction, the following principles apply under Cyprus law:-

Even if a particular person does not have actual authority to bind the company with respect to a particular transaction, if he/she had apparent authority to do so, the company is still bound. However, in this case, the specific person will most probably be liable to the company for acting in excess of his/her actual authority.

Apparent authority exists when a third party can reasonably assume that the specific person had actual authority by the Company. This may be established in a number of ways, including the following:-

- (a) According to section 33A of the Companies Law, any officer (director or secretary) of the company is deemed to have apparent authority to bind the company notwithstanding any limitation to his/her authority in the articles of association of the company or otherwise, unless the specific action of the person is beyond his/her capacity as provided by Companies Law.
- (b) If in a normal business environment the specific person in the specific position in a company would reasonably be expected to have authority to carry out the particular act.
- (c) If the Company in the specific circumstances held out the specific person as having authority to carry out the particular transaction.

5.4 Shareholders' Meetings

There are two types of meetings of members of a private company, namely (i) annual general meetings (the "AGM"), and (ii) extraordinary general meetings (the "EGM").

Every company shall in each year hold a general meeting as its AGM in addition to any other meetings in that year, and shall specify the meeting as such in the notices calling it; and not more than 15 months shall elapse between the date of one AGM of a company and that of the next. However, if a company holds its first AGM within 18 months of its incorporation, it need not hold it in the year of its incorporation or in the following year.

Every company shall at each AGM appoint an auditor or auditors to hold office from the conclusion of that, until the conclusion of the next, annual general meeting. It is common at an AGM to deal with, amongst other matters, the appointment of directors in place of those retiring, if any, the declaration of dividends, the consideration of accounts and the determination of the auditors' remuneration.

The minimum notice with respect to the calling of the AGM or any meeting for the passing of a special resolution is twenty one (21) days, or fourteen (14) in the majority of cases with the notable exception where the Companies Law requires special notice.

However, an AGM may be convened at a shorter notice provided that all the members entitled to attend and vote thereat agree. In the case of any other meeting, other than the AGM, it may be convened on a shorter notice provided that a majority of the shareholders holding not less than 95% of members entitled to attend and vote thereat agree.

As noted earlier, the Companies Law provides that in certain circumstances special notice is required for the passing of a resolution. It applies for a resolution proposing the removal of a director and/or the company's auditor. The resolution shall be inoperative unless the notice to be served on the company has been dispatched 28 days before the meeting.

The necessary quorum for holding a general meeting is set out in the articles of association of the company. Assuming that the company adopts Table A, then two members, present personally or by proxy, will be a quorum.

6. TRANSACTIONS INVOLVING SHARES OF A CYPRUS COMPANY

6.1 Issue of Shares

The subscribers of a memorandum, on registration of a company, will be entered as members in its register of members.

Subject to any restrictions contained in the articles of association of the company, shares may be allotted to persons after the incorporation of the company for cash or non-cash consideration (or a combination of both) and may be issued as fully or partly paid.

Shares may be issued at a premium. Premium arising on the issue of shares must generally be credited to a statutory account known as the "share premium account", and the provisions of the Companies Law relating to the reduction of share capital will, subject to certain exceptions, apply as if the share premium account were paid up share capital of the company. The share premium account may be applied by the company in paying up unissued shares of the company to be issued to members of the company as fully paid bonus shares, in writing off certain expenses and transactions.

6.2 Transfer of Shares

Subject to any restrictions contained in the articles of association of the company, the shares of a private limited liability company are transferrable in the manner provided by the articles of association of the company. Typically, in order to transfer shares in a private limited liability company, the following procedure is required:-

- (a) An instrument of transfer is signed by the transferor and transferee. It is noted that this is a legal requirement and prerequisite for a transfer;
- (b) Other existing shareholders should waive any preemption rights that they may have;
- (c) The transferor returns to the company his existing share certificate for cancellation;
- (d) The board of directors of the company approves the transfer;
- (e) The secretary of the company enters the transferee as a shareholder in the Register of Members of the company;
- (f) The company issues a share certificate in the name of the transferee;
- (g) The company notifies the Registrar of the transfer; and
- (h) The Registrar issues a new certificate of shareholders.

It is noted that the transfer is completed on the completion of item (e) above.

6.3 Redemption, Acquisition of Own Shares and Financial Assistance

The Companies Law contains provisions which enable a company to issue redeemable preference shares. Although following a recent amendment to the Companies Law, redeemable preference shares may now be issued on terms that allow their redemption both at the option of the company and at the option of the holder thereof, nevertheless, the Companies Law imposes strict conditions on the funds which can be used to redeem such shares. In effect, these are profits that would otherwise have been available for distribution as dividend or out of the proceeds of a fresh issue of shares made for the purposes of the redemption. The Companies Law clarifies that no such shares shall be

redeemed unless they are fully paid. Furthermore, it is noted that it is possible to redeem the premium on any such shares out of the share premium account.

It is noted that the Companies Law has specific provisions relating to the ability of a company to buy back its own shares. Even though these sections do not specifically state that they apply only to public companies, the effect of the wording thereof results in this being available only to public companies which are listed on the stock exchange.

It was until recently unlawful for a company to give, whether directly or indirectly, by means of a loan, guarantee, the provision of security or otherwise, any financial assistance to purchase its own shares or those of its holding company and, if it did so, the transaction was void. The only exceptions were where the ordinary business of the company was the lending of money and where a loan was made in the ordinary course of business or to enable employees to acquire shares.

However, whitewash provisions regarding unlawful financial assistance have now been introduced in cases of private companies. Specifically, the provision of direct or indirect financial assistance by a private company for acquisition of its own shares or of the shares of its holding company is no longer unlawful in cases where:-

- (a) such private company is not a subsidiary of any public company; and
- (b) the relevant transaction is approved by the general meeting of the company by a resolution passed by a majority of 90% of all the issued shares of the company.

It is important to highlight that the general prohibition for the provision of financial assistance by a public company for acquisition of its own shares still exists. Further, it is noted that the whitewash provisions do not affect the obligation to comply with any other legal obligations.

6.4 Dividends and Profits

The general rule is that dividends must not be paid out of capital and they can only be paid out of profits. A company may declare either a final dividend or an interim dividend. This is stated in most articles of association including Table A.

With respect to final dividends the following apply:-

- (a) the final dividend can be declared with respect to any financial year after the audited financial statements for that particular year have been completed;
- (b) the audited financial statements must show profit available for distribution for that particular period;
- (c) the board of directors recommends to the AGM the declaration of dividend. Invariably, the articles of association provide that the dividend to be distributed by the AGM cannot exceed the amount recommended by the board of directors; and
- (d) thereafter, the AGM declares a dividend.

With respect to interim dividends the following may be said:-

- (a) At any given time and assuming that the articles of association of the company permit, the directors have the power to declare a dividend for a year for which no audited financial statements have yet been prepared;
- (b) They do so on the assumption that, when the audited financial statements for the particular year are prepared, they will show that the whole year had sufficient profits to justify the declaration of the said dividend;
- (c) However, if at the end of the year and by the relevant audit it is shown that for the whole of the relevant year there were no profits available for distribution with which to justify the relevant interim dividend, then the directors are personally liable to pay the amount of any such deficit to the company; and
- (d) A company may declare an interim dividend more than once a year.

7. REGISTRATION OF CHARGES

The relevant provisions concerning registrability of charges appear in sections 90(1) and 90(2) of the Companies Law.

Section 90(1) provides that charges need to be registered with the Registrar of Companies and that if they are not registered they are void as against the liquidator. Section 90(2) sets out the charges to which section 90(1) applies.

If the charge is executed in Cyprus, the period of registration is 21 days from the date of its creation. In the case of a charge created out of Cyprus comprising property situated outside of Cyprus, the period of registration is 21 days after the date on which the instrument or copy could, in due course of post, and if dispatched with due diligence, have been received in Cyprus. In other words, for a charge executed outside Cyprus and comprising property situated outside of Cyprus, the period of registration will be 42 days.

It is noted that in case of an amendment, assignment or other change to a charge which has been filed with the Registrar, it is now possible to also register such change without the need to register such change as a new charge which applied, rather illogically, under the legislation prior to the amendments introduced to the Companies Law in July 2009 (the “**Amendments**”).

The need to register with the Registrar of certain charges has been abolished. More specifically:-

- (a) there is no need to register with the Registrar pledges over shares in Cypriot companies created by chargors which are Cypriot companies noting that:-
 - (i) this does not dispense with the other perfection requirements for a pledge over shares in a Cypriot company and it is highlighted that very often share pledges over shares in Cypriot companies are still registered with the Registrar notwithstanding the Amendments the reason being that the document creating the pledge and/or charge usually provides for the assignment of dividends, rights etc which are not covered by the Amendments.
 - (ii) in any event, where the chargor is not a Cypriot company there is no need of registration of a charge with the Registrar.
- (b) There is no need to register with the Registrar charges which come within the Cyprus legislation adopting the EU Financial Collateral Directive.

8. PUBLIC RECORDS OF A CYPRUS COMPANY

The following records, amongst others, of a Cyprus company are available for public inspection at the office of the Registrar:-

- (a) its memorandum and articles of association and any amendments thereto;
- (b) its authorised and issued capital;
- (c) its registered shareholders;
- (d) its members of the board of directors and the secretary;
- (e) the address of its registered office;
- (f) any charges over any of its assets; and
- (g) a copy of its audited financial statements.

In this regard, a Cyprus company must file an annual return with the Registrar with respect to the above, and further, it is under an obligation to notify the Registrar whenever there is a change to any of the above particulars during the course of the year.

While the memorandum of association will state on its face the name of the initial subscribers, it is not unusual to provide for nominee subscribers to the memorandum of association. In this respect, it should be noted that the supporting information on the beneficial owners is not a matter of public record.

Furthermore, it is noted that shares of a Cyprus company may be held in the name of a nominee. The nominee's name will appear on the company's register of members and in the file of the company kept by the Registrar. However, it is noted that no notice of any trust, expressed, implied or constructive, shall be entered on the register of members of the company, or be receivable by the Registrar, in the case of companies registered in Cyprus.

9. CHANGES TO A COMPANY'S MEMORANDUM AND ARTICLES OF ASSOCIATION

9.1 Name of the Company and Memorandum of Association

A Cyprus company may change its name by special resolution and with the approval of the Registrar. Where a company changes its name under this section, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case.

The objects clause of the memorandum of association may be amended in order to enable the company to do one of the seven things mentioned in the Companies Law, including amongst others, to carry on its business more economically or efficiently, to restrict or abandon any of the objects specified in the memorandum, to sell or dispose of the whole or any part of the undertaking of the company or to amalgamate with any other company or body of persons.

The alteration requires a special resolution of the company and to be valid must be sanctioned by the court. Before confirming the alteration the court must be satisfied that sufficient notice of the application for confirmation has been given to all creditors or persons whose interests will, in the opinion of the Court, be affected by the alteration. An office copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within 15 days from the date of the order, be delivered by the company to the Registrar to be registered, upon which the Registrar will issue a certificate confirming the alteration. Thenceforth the memorandum as so altered shall be the memorandum of the company.

9.2 Alteration of Capital

A company limited by shares and having a share capital, acting in a general meeting and if so authorized by its articles, may alter the conditions of its memorandum as follows, that is to say, it may:-

- (a) increase its share capital by new shares;
- (b) consolidate and divide all or any of its share capital into shares of a larger amount,
- (c) convert any paid-up shares into stock and reconvert the stock into paid-up shares of any denomination,
- (d) sub-divide any of its shares into shares of a smaller amount, and
- (e) cancel shares which have not been taken up.

9.3 Reduction of Capital

Subject to confirmation by the court, a company with a share capital may, if so authorized by its articles, by special resolution which is notified to the Registrar reduce its share capital.

Before confirming the reduction may require the company to publish its intention to reduce its share capital. This is to ensure that sufficient notice of the application for reduction has been given to all creditors whose interests will be affected by the reduction and in this respect enable them to object to it. Where the court confirms such reduction, it may if for any special reason it thinks proper so to do, make an order directing that the company shall, during such period as the court determines, add to its name as the last words thereof the words "and reduced".

A copy of the court order, together with a minute approved by the court showing the amount of the reduced share capital, must be filed with the Registrar. On the registration of the order and minute, and not before, the resolution for reducing share capital as confirmed by the order so registered shall take effect. The Registrar then issues a certificate confirming the reduction.

9.4 Articles of Association

Subject to the provisions of the Companies Law and to the conditions contained in its memorandum, a company may, by special resolution, alter or add to its articles. It is noted that no court sanction is required on this occasion.

10. REORGANISATION

The Companies Law provides two distinct means by which the capital structure of a company may be reorganised, one in section 198 and the other in section 270.

10.1 Compromise and Arrangement Under Section 198 Companies Law

A proposed compromise or arrangement between a company and its creditors or any class of them or between the company and its members or any class of them, must follow the elaborate procedure set out in section 198 of the Companies Law and is subject to court approval.

10.2 Sale or Arrangement Under Section 270 Companies Law

A sale or arrangement under section 270 of the Companies Law applies only to voluntary liquidation and only when the whole or part of a company's business or property (the "**transferor company**") is proposed to be transferred or sold to another company (the "**transferee company**"). In that regard, section 270 envisages the following:-

The liquidator of the transferor company may receive, in compensation or part compensation for the transfer or sale of the transferor company's business or property shares, policies or other like interests in the transferee company for distribution amongst the members of the transferor company, or may enter into any other arrangement whereby the members of the transferor company may, in lieu of receiving cash, shares, policies or other like interests, or in addition thereto, participate in the profits of or receive any other benefit from the transferee company.

Such an action requires the prior approval of the members of the transferor company by means of a special resolution. Although such a sale or arrangement will bind all members of the transferor company, nonetheless section 270 of the Companies Law provides for a complex procedure whereby the shares of the dissenting shareholders may be purchased.

10.3 Squeeze Out

Section 201 entitles a predator company that has launched a take-over bid for all the shares of a target company and which has been approved by holders of not less than 9/10^{ths} in value of the shares whose transfer is involved, to acquire the shares of the dissenting shareholders on the terms on which, under the scheme or contract, the shares of the approving shareholders are to be transferred to the predator company. It is noted, that the aggrieved shareholders may petition the court to disallow such transfer.

11. CONTINUANCE AND DISCONTINUANCE

11.1 Continuance into Cyprus

A company already incorporated in a foreign jurisdiction, if authorized pursuant to its memorandum, may continue into Cyprus as a company incorporated under the Companies Law. The application to the Registrar for continuance must be accompanied by the various documents specified in the Companies Law and such other documents as

the Registrar may determine in order to be satisfied that, amongst others and non-exhaustively, the application for continuance is permissible under the laws of the jurisdiction in which the foreign company has been registered and that consent has been received by the required number or proportion of shareholders, employees, bondholders and/or creditors of the foreign company. When the Registrar is satisfied that the documents submitted are in accordance with the provisions of the Companies Law, he certifies that the company is temporarily registered as continuing in Cyprus.

Within 6 months from the date of the issuance by the Registrar of the temporary certificate of continuance, the foreign company must submit evidence to the Registrar that it has ceased to be a company registered in the country that it was originally incorporated, upon which the Registrar will issue a certificate of continuance confirming that the company is registered as continuing in Cyprus. In case the foreign company does not submit such evidence, the Registrar may delete the name of the foreign company from the record and to inform the relevant body of the country or jurisdiction in which that the company is not registered in Cyprus.

11.2 Discontinuance from Cyprus

A Cyprus company may apply for the consent of the Registrar to discontinue from Cyprus and continue into, and be subject to the laws of, a foreign jurisdiction. The Companies Law sets out a detailed procedure and requirements that need to be discharged prior to the Registrar allowing the discontinuance from Cyprus. By way of a non-exhaustive summary these include, amongst others, the following:-

- (a) The company must publish notice of intention to discontinue in two daily Cyprus newspapers and the Registrar cannot give its consent for the continuance of the company in another authorized country or jurisdiction until 3 months have passed from the date of publication. During this 3 month period, any creditor of the company may object to the discontinuance of the company in front of a court.
- (b) The application for discontinuance is made by at least two directors of the company which must be accompanied by a special resolution of the shareholders authorizing the said application.

- (c) The directors must also present interim statements to the shareholders meeting and such statements together with the special resolution must be delivered to the Registrar.
- (d) The application for discontinuance must also be accompanied by a statement which confirms the solvency of the company and that the directors are not aware of any circumstances which affect negatively the solvency of the company within a period of 3 years.
- (e) Additionally, if the company carries on any licensed activity in Cyprus, the company must submit to the Registrar evidence of the consent by the relevant body to the discontinuance.
- (f) The Cyprus company must also not have started any proceedings for the liquidation of the company or any other equivalent procedures nor to have breached its duties or obligations under the Companies Law.
- (g) All required fees must also have been paid.

The Registrar may then consent to the continuance of the company into a foreign jurisdiction. Upon receipt by the Registrar of a copy of the document of continuance in the foreign jurisdiction, the Registrar will strike the name of the company from the record and will issue a certificate of strike-off at which time the company ceases to be a registered company in Cyprus.

12 Overseas Companies

A company incorporated outside Cyprus may establish a place of business in Cyprus. Such a company is defined by the Companies Law as an “overseas company.”

Overseas companies must within one month of establishing a place of business in Cyprus, deliver to the Registrar for registration the requisite supporting documents and information.

The overseas company has an obligation to submit to the Registrar, in each financial year, copies of its financial statements, the directors’ report and the auditor’s report, which the overseas company presented in its last annual general meeting and published in accordance with the laws of its country of incorporation. An overseas company

exempted from such an obligation under the laws of the country of its incorporation, is exempted from the obligation to submit same to the Registrar.

13. TAXATION AND EXCHANGE CONTROL

13.1 Taxation

Cyprus law provides for a uniform corporate tax rate of 10%. Such tax is imposed on the world-wide income of all residents of Cyprus and on the income generated in Cyprus of any non-residents of Cyprus. In the case of companies, the test of residency is whether the relevant company has its management and control in Cyprus. It would appear, therefore, that any company that carries out operations outside Cyprus and belongs to non-residents of Cyprus and has the majority of its board of directors outside Cyprus is not liable to taxation in Cyprus. However, such companies would not be able to take the benefit of any double tax treaties involving Cyprus. On the other hand, if a company wishes to take advantage of the double tax treaty network of Cyprus and in light of the fact that what “management and control” is has not been judicially defined then as a minimum the majority of its directors should be in Cyprus and all board meetings should take place in Cyprus.

Profits from the disposal of any securities are exempt from income tax, as are profits generated by a company resident of Cyprus from a permanent establishment outside Cyprus. Dividends are also exempt from income tax.

13.2 Stamp Duty

Stamp duty of 0.6% is payable on the amount of a Cyprus company’s authorised share capital.

13.3 Exchange Control

The Cyprus monetary unit is the Euro (€) and since the accession of Cyprus to the EU on 01 May 2004, there are no exchange control restrictions.

This publication is not a substitute for legal advice nor is it a legal opinion. It deals in broad terms only and is intended to merely provide a brief overview and give general information.

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