

Establishing a business in Cyprus

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LEGAL SYSTEM

1. What is the legal system in your jurisdiction based on (for example, civil law, common law or a mixture of both)?

Cyprus law is based on a mixture of common law and civil law. However, the common law has precedence as Cyprus was a British colony and has adopted the Anglo-Saxon legal system, which allows most English cases to be cited in Cypriot courts. Following Cyprus' accession to the EU in 2004, EU directives and legislation now form part of Cyprus legislation.

BUSINESS VEHICLES

2. What are the main forms of business vehicle used in your jurisdiction? What are the advantages and disadvantages of each vehicle?

Private limited company. This is the most common form of company. It is limited to 50 members. In a liquidation, there is a separate legal personality principle in which the shareholders' liability is limited to the unpaid portion of their shares. There is no minimum share capital for a private limited company. A private limited company must have at least one director. However, there are restrictions on the right to transfer the company's shares, which prevent subscriptions to the shares by the public.

Public limited company. There is no limitation as to the maximum amount of members in this type of company, although there is a minimum requirement of seven members. In addition, there is a minimum share capital requirement of EUR25,629. A public company can issue shares to the public and these are freely transferable. A public company must have at least two directors.

Companies limited by guarantee. This form of company is mostly used for charitable institutions and can choose whether to issue share capital. Unlike private companies limited by shares, if the company is wound up, the liability of members is limited to the amount that they undertake to contribute to the assets of the company.

European public limited company (Societas Europaea) (SE). Cyprus has implemented Regulation (EC) 2157/2001 on the statute for a European company. The SE must have a minimum capital of EUR120,000. The registered office of the SE must be the place where it has its current administration.

Cyprus is an attractive jurisdiction for SEs because of its low tax rates and its extensive network of double taxation agreements.

ESTABLISHING A PRESENCE FROM ABROAD

3. What are the most common options for foreign companies establishing a business presence in your jurisdiction?

The private limited company is the most common option for company formation for foreign companies establishing a business presence in Cyprus. Forming a private limited company as a holding company has many advantages in terms of taxation, flexibility and confidentiality. Registration with the Registrar of Companies generally takes four to seven days.

4. How can an overseas company trade directly in your jurisdiction?

Foreign companies can trade in Cyprus in different forms. In most cases, this takes place through the creation of a subsidiary company in Cyprus, or through the creation of a branch.

A subsidiary formed in Cyprus has a separate legal personality from its parent company, while a branch does not have separate legal personality.

5. What are the formalities for setting up a partnership?

Partnerships in Cyprus are regulated by Chapter 116 of the Partnerships and Business Names Law. Partnerships are formed by two or more people with a common aim to obtain profit from their activities.

General partnership. A partnership can have between two and 20 partners. However, if the partnership intends to conduct banking business, it can only have up to ten partners, unless it is registered as a company under the Companies Law.

Each partner in a general partnership is jointly and severally liable with other partners for the debts and obligations of the partnership. Partnerships have no separate existence from their partners and do not enjoy any limitation of liability.

Limited partnership. This partnership is similar to the general partnership, except that there are two groups of partners, general partners and limited partners. General partners are liable for all debts and obligations of the partnership. Limited partners have their liability limited to the amount of capital that they have agreed to contribute to the partnership and do not have management authority.

6. What are the formalities for setting up a joint venture?

Joint ventures are commonly formed in Cyprus. The creation of a joint venture can take the form of a contractual agreement

between the parties. However, it can also be done through a partnership agreement and in certain circumstances through a limited liability company.

7. Are trusts available in your jurisdiction?

Trusts are available in Cyprus, and the law is similar to the English law on trusts, with the principles of equity forming part of Cyprus law. Trusts are mainly divided into:

- Private trusts, for the benefit of individuals.
- Charitable trusts, for the benefit of (a section of) the public.

Recent amendments to the Cyprus International Trust Law have made Cyprus a favourable jurisdiction for the creation of a trust. There are many reasons for the creation of a trust, including:

- Asset protection, as creditors cannot claim trust property after two years elapse from the date of the formation of the trust.
- Tax planning.
- Inheritance planning, as trusts allow settlors to allocate their wealth as they choose to without the limitations that exist under inheritance law.

The answers to the following questions relate to private limited liability companies (or their equivalent).

FORMING A PRIVATE COMPANY

8. How is a private limited liability company or equivalent corporate vehicle most commonly used by foreign companies to establish a business in your jurisdiction formed?

Regulatory framework

A private limited company is the most commonly used form of holding company because of its benefits in terms of taxation, its flexibility and time efficiency. The private limited company is subject to the Cyprus Companies Law Cap. 113, under which there are certain registration requirements to be met. These requirements are submitted to the Registrar of Companies, which is the filing office and the main regulatory body.

Tailor-made or shelf company

Ready-made companies in the form of a shelf company can also be provided immediately on request.

Formation process

The Registrar of Companies is the regulatory body and the place where registration documents are filed and checked. It has the power to impose penalties and to strike off companies from its register if the registration requirements are not complied with. The registration process involves the following steps:

- The choice of company name, which must be approved by the registrar. The name must end with the word "Limited" and must not be similar to other existing company names.
- Once the name has been approved, the memorandum and articles of association of the company are prepared according to the company's proposed main activity (such as, development, holding, construction or investment) and then filed with the Registrar of Companies together with information regarding the company's first officers and shareholders.
- A registered office in the Republic of Cyprus is also required for the registration of a company.

- A form stating who the directors and the secretary of the company are also has to be sent to the Registrar.
- When all the documents required by the registrar are completed and the requirements for the registration of the company are met, the Certificate of Incorporation of the company is issued, meaning that the company comes into existence as a separate legal entity. This takes four to seven days.

It is also possible to register a company online.

Notifications of any changes to the company's shareholders, directors, share capital, registered address and pledges or charges to the assets of the company must also be submitted to the registrar.

There are also regulatory requirements that must be complied with, such as those for annual returns, the payment of the annual Government Levy (EUR350), accounts and audits. Every company must keep accounts that give a real picture of the status of the company and comply with international accounting standards.

Annual general meetings are also required.

A special resolution is required for a change of company name and must first be sent to the registrar for approval. The registrar enters the new name on the register in place of the former name, and issues a certificate of change of name with the certificate of incorporation with the new name.

Company constitution

The company constitution must be submitted to the Registrar of Companies for registration.

This consists of the memorandum of association and the articles of association.

The memorandum of association sets out the purpose of the company, and its function. This document sets out the company's:

- Name.
- Objects.
- Limited liability.
- Capital.
- Association.

The articles of association establish the way in which the company would be run.

These documents are available to the public.

Separate shareholder agreements may also be used in addition to constitutional documents.

Articles of association of a private limited company would have the following restrictions:

- Restrictions on the right to transfer the companies' shares.
- Restrictions on the number of shareholders (up to 50).
- Restrictions preventing invitations to the public for the subscription of shares.

FINANCIAL REPORTING

9. What financial reports must the company submit each year?

There are a number of financial reporting requirements:

- Audited financial statements must be produced annually.
- A company that has subsidiary companies must present consolidated financial accounts at its annual general meeting.

- The first financial statements must be presented at the latest 18 months after the incorporation of the company, and subsequently once every calendar year.
- The directors of the company must ensure that the annual financial statements and the annual consolidated financial statements (in the case of subsidiaries) are prepared and published in accordance with international accounting standards.
- The accounts must give a true and fair picture of the company's financial status, under the obligatory application of international accounting standards.
- An overseas company with a branch in Cyprus must deliver, each financial year, to the registrar of companies, a copy of the financial statements, the directors' report and the auditors' report that it presented at its last general meeting, published in accordance with the provisions of the state where it is incorporated. This does not apply in the case of companies in EU member states under the:
 - Fourth Company Law Directive (78/660/EEC);
 - Seventh Company Law Directive (83/349/EEC);
 - Eighth Company Law Directive (84/253/EEC).

TRADING DISCLOSURE

10. What are the statutory trading disclosure and publication requirements for private companies?

Every company must keep its name in a conspicuous position, in easily legible letters, painted or affixed outside every office or place in which its business is carried on. The company must have its name engraved in legible characters on its seal. In addition, the company's name, registration number, private or public status and registered office must be mentioned in every business letter and official document of the company. If company documents mention the capital of the company, they must make clear how much capital is allotted and paid; and, if relevant, the stage of liquidation in which the company finds itself. If a company has a website, it must also include these items. In addition, the Registrar of Companies website provides publicly available information concerning the company's name, registration number, date of incorporation and status. More detailed information on the company file can be obtained by payment of a fee.

11. How do companies execute contracts or deeds?

Contracts must be in writing and signed on behalf of the company by any person acting under its authority, express or implied.

MEMBERSHIP

12. Are there any restrictions on the minimum and maximum number of members?

Private limited companies must have between one and 50 members.

Public limited companies must have at least seven members, with no restriction on the maximum amount of members.

MINIMUM CAPITAL REQUIREMENTS

13. Is there a minimum investment amount or minimum share capital requirement for company formation?

No minimum share capital is required for incorporation of a private limited company but each subscriber to the memorandum must subscribe for at least one share.

For a public limited company, the minimum share capital is EUR25,629.

14. Are there restrictions on the transfer of shares in private companies?

Company shares can be transferred according to the manner described under the company's articles. Any member can transfer all or any of his shares by a written legal instrument in any usual or common form, or any other form that the directors may approve.

Any transfer of shares of a private company with share capital must be notified to the Registrar of Companies within 14 days from the registration of the transfer in the register of members.

In a winding up by the court, any disposition of the property of the company, including things in action, and any transfer of shares or alteration in the status of the members of the company made after the commencement of the winding up will be void, unless the court orders otherwise.

SHAREHOLDERS AND VOTING RIGHTS

15. What protections are there for minority shareholders under local law? Can additional protections be given?

Shareholders are protected against oppressive treatment by the company (*Companies Law, Cap 113*). There are four common grounds by which the minority shareholders may be protected from the oppressive majority:

- When an act is illegal or *ultra vires*.
- Where there is a requirement for a special resolution for a decision to be taken.
- Where the member's personal rights have been infringed.
- In the case of fraud against the company, where the wrongdoer is in control.

If it is proven that the company's affairs were conducted in a manner oppressive of the minority, and a winding up of the company would unfairly prejudice the minority, the court can make an order as it thinks fit under section 202 of the Companies Law, Cap.113, including:

- Regulating the conduct of the company's future affairs.
- Ordering the purchase of the shares of any members of the company by other members of the company or by the company.
- Reducing the company's capital, in the case of a purchase by the company.

16. Are there any statutory restrictions on quorum or voting requirements at shareholder meetings? Do quorum or voting rights need to be proportionate to shareholdings?

There are no statutory restrictions on quorum or voting requirements at shareholder meetings. Unless the articles of

association state otherwise, under the Companies Law Cap.113, in private companies with more than one member, and in any other company, three personally present members represent a quorum.

In a private company with only one member, the member can exercise all the powers of the general meeting, as long as the decisions taken by the member in general meeting are minuted or made in writing.

Quorum or voting rights do not need to be proportionate as there may be different classes of shares, each having different voting rights. In addition, the company articles may also provide for different voting rights between shareholders.

17. Are specific voting majorities required by law for any corporate actions (for example, increasing share capital, changing the company's constitution, appointing and removing directors, and so on)?

There are a number of specific majorities required by law for corporate actions, including:

- The change of name of the company, needing a special majority of 75%.
- The alteration of the memorandum of association (75%).
- Alteration of the articles of association (75%).
- Variation of class rights (75%).
- Reduction of share capital (75%).
- Winding-up of the company (75%).
- Conversion of shares into stock (50%+1).
- Increase of the authorised share capital (50%+1).
- Removal of directors (50%+1).
- Appointment and removal of auditors (50%+1).

18. Can voting majorities required by law be disapplied to protect a minority shareholder (for example, through class rights or weighted voting)?

There are occasions where the court may intervene in order to prevent the oppression of minority shareholders. This can be done if:

- The actions taken by the voting majority are *ultra vires*.
- The decisions reached by the voting majorities infringe the personal rights of the minority.
- The voting majority has fraudulently exercised its voting powers.

Under Article 202 of the Companies Law, Cap.113, the voting majorities required by law may be disapplied to protect a minority shareholder if the majority acted in an oppressive manner against the minority shareholders.

SECTORAL RESTRICTIONS

19. What are the conditions or restrictions on establishing a business in specific industry sectors? Are there industry sectors in which it is not permitted to establish a business?

There are restrictions on establishing a business in certain industry sectors and compliance with the requirements of the relevant industry authority is required. For example, banking activities and collective investment schemes come under the authority of the

Central Bank of Cyprus and must comply with specific licence conditions.

In addition, the Cyprus Securities and Exchange Commission (CYSEC) supervises and controls:

- Issuers listed on the stock exchange.
- Investment firms.
- Undertakings for collective investment in transferable securities (UCITS).
- Administrative service providers (ASPs).
- Alternative investment fund managers (AIFMs).

The establishment of a law firm is subject to specific requirements set by the Cyprus Bar Association.

The Cyprus Energy Regulatory Authority (CERA) is responsible for businesses in the energy industry field.

The telecommunications and media industries are also subject to specific requirements.

FOREIGN INVESTMENT RESTRICTIONS

20. Are there any restrictions on foreign shareholders?

There are no restrictions on foreign shareholders except for certain specific industries such as mass media, local construction and banking.

21. Are there any exchange control or currency regulations?

All travellers leaving the Republic of Cyprus are prohibited from exporting euro notes and/or foreign currency notes in excess of EUR3,000, or the equivalent in foreign currency, per natural person per journey abroad (pursuant to the Enforcement of Restrictive Measures on Transactions in case of Emergency Law of 2013).

22. Are there restrictions on foreign ownership or occupation of real estate, or on foreign guarantees or security for ownership or occupation?

EU nationals are not subject to specific restrictions on the ownership of real estate in Cyprus. However, non-EU nationals or non-EU companies must obtain the permission of the Council of Ministers for the purchase of real estate in Cyprus (pursuant to the Acquisition of Immovable Property (Aliens) Law Cap 109).

DIRECTORS

23. Are there any general restrictions or requirements on the appointment of directors?

There are no specific nationality requirements for directors. Directors must be over 18 years old, should be of sound mind and able to contract under law. A director can be disqualified from acting as a director if he becomes bankrupt or becomes of unsound mind. In addition, in cases of fraud in relation to the company or of any breach of a director's duty to the company, the courts can make an order that that person shall not be a director of the company without the leave of the court.

BOARD COMPOSITION

24. What are the legal requirements for the composition of a company's board of directors?

Structure

The board structure is a single tier structure.

Number of directors or members

Private limited companies can have one or more directors.

Public limited companies must have at least two directors.

Employees' representation

Employees do not have a statutory right to board representation.

REREGISTERING AS A PUBLIC COMPANY

25. What are the requirements for a business to reregister as a public company?

For a private company to become a public company it must apply to the registrar for the change of name of the company to a PLC. It must also issue new articles of association allowing the public to subscribe for shares in the company and not restricting the number of shareholders. There must be at least two directors. The company ceases to be a private company on the date of the change and must deliver to the registrar of companies for registration a statement in lieu of prospectus within 14 days.

Membership

A Cyprus public company has a minimum of seven shareholders.

Share capital

The minimum capital of a public company offered for subscription is EUR25,629.

TAX

26. What main taxes are businesses subject to in your jurisdiction?

Corporation tax. A Cyprus company is liable for a 12.5% tax on the company's worldwide income. Dividend distributions are exempt from taxation in Cyprus.

Profits from the disposal of securities (shares, debentures, bonds and son on) are exempt from taxation, other than the sale of shares in companies owning immovable property in Cyprus, which is subject to capital gains tax.

Special defence contribution tax. This tax is imposed on certain sources of income received within Cyprus by a Cyprus tax resident.

Special defence contribution is applied on but not limited to:

- Dividends received. In certain cases, dividends received from abroad may be subject to defence contribution at the rate of 20%.
- Dividends received by a Cyprus tax resident company, or a non-Cyprus tax resident company that maintains a permanent establishment in Cyprus, from a non-Cyprus tax resident company. These are subject to special defence contribution tax if both of the following apply:
 - more than 50% of the dividend paying company's activities lead to investment income;

- the foreign tax burden on the income of the dividend paying company is substantially lower than the tax burden of the Cyprus tax-resident company or the non-resident company that has a permanent establishment in Cyprus.

Value Added Tax (VAT). VAT is an indirect tax, which is applied on the supply of goods and services within Cyprus. Additionally, VAT is charged on the importation of goods into Cyprus and on the acquisition of goods from other EU member states. VAT is charged on the supply of goods and services at a standard rate of 19%, as from 13 January 2014 (previously 18%). There are also two reduced VAT rates which apply on certain goods and services; 9% as from 13 January 2014 (previously 8%) and 5%. In addition, certain goods and services are zero rated.

Stamp duty. Stamp duty is payable on documents or contracts that are related to property in Cyprus or on matters performed in Cyprus, including:

- Debentures.
- Share purchase agreements.
- Joint venture agreements.
- Mortgages.
- Asset purchase agreements.
- Subscription and shareholder agreements.

Stamp duty is capped at a maximum of EUR20,000 per document.

Capital gains tax. Capital gains tax is charged at a fixed rate of 20% on both legal and natural persons on the net profits arising from:

- The sale of immovable property.
- The disposal of shares in a company not listed in a recognised stock exchange that owns immovable property in Cyprus.

The tax is calculated based on the reduction of the true value of the property and any additional costs, taking into account inflation.

However, there are certain exemptions which apply for natural persons, given once in the lifetime of the individual, such as for:

- Agricultural land.
- Transfers arising on death.
- Gifts to up to third-degree relatives.
- Disposals of private property.

27. What are the circumstances under which a business becomes liable to pay tax in your jurisdiction?

Tax liability depends on residence. A business is considered tax resident if the effective management and control of that company takes place in Cyprus.

Tax resident

A tax resident pays tax on his worldwide income.

Non-tax resident

A non-tax resident is liable to pay tax on Cyprus-source income. This includes:

- Rents from immovable property in Cyprus.
- Business profits or other benefits from a permanent establishment in Cyprus.
- Consideration for sales of goodwill, reduced by the cost of that goodwill.

A non-tax resident company is also liable to pay capital gains tax on disposals of immovable property in Cyprus.

28. What is the tax position when profits are remitted abroad?

There is no withholding tax on profits remitted abroad, if their tax liabilities have been fulfilled in Cyprus. Double tax treaties also determine the ways in which profits are remitted abroad.

29. What thin-capitalisation rules and transfer pricing rules apply?

There are no thin capitalisation rules.

GRANTS AND TAX INCENTIVES

30. Are grants or tax incentives available for companies establishing a business in your jurisdiction?

The Cyprus Government, along with the EU, provide a number of incentives for the establishment of a business in Cyprus. These grants and incentives cover a wide range of sectors including health, research and development, technology, information and communication technologies, the development of tourism, food agriculture and biotechnologies, and so on.

Some of the main authorities that offer these incentives include the:

- Human Resource Development Authority of Cyprus (HRDAC) (www.hrdauth.org.cy).
- Research Promotion Foundation (www.research.org.cy).
- Office of the Commissioner for State Aid Control (de minimis state aid funding opportunities) (www.publicaid.gov.cy).
- The Ministry of Commerce, Industry and Tourism (www.mcit.gov.cy/mcit).
- Cyprus Tourism Organisation (CTO) (www.visitcyprus.com).
- Cyprus Institute of Energy (www.cie.org.cy).

EMPLOYMENT

31. What are the main laws regulating employment relationships?

There are a number of laws regulating the employment relationships both of Cypriot and foreign employees. These regulations set out minimum standards for employment relationships; less favourable treatment for employees is prohibited. These regulations apply to all employers with a presence in Cyprus, irrespective of the choice of law. There are also European laws to guarantee the equal treatment of employees' work and safety standards.

Some of the main laws are:

- Social Insurance Law, 41/1980.
- Protection of Worker's Rights in Case of Employer Insolvency Law, No.25/2001.

- Protection of Young Persons at Work Law, No. 48(I)/2001.
- The Protection of Maternity Law, No. 100(I)/97.
- The Equal Treatment of Men and Women in Employment and Vocational Training Law, No. 205(I)/2002.
- Port Workers (Regulation of Employment) Law, Chapter 184.
- The Control of Major Accidents Hazards Related to Dangerous Substances Regulations P.I. 507/2001.
- Termination of Employment Law, 24/1967.
- The Organisation of Working Time Law, 63/2002.
- The Safeguarding of Employees' Rights in the Event of Transfers of Undertakings, Businesses or Parts of Undertakings or Businesses Law of 2000.

32. What prior approvals (for example, work permits, visas, and/or residency permits) do foreign nationals require to work in your jurisdiction?

EU nationals

Cyprus' integration into the EU has resulted in the adoption of the free movement of workers within Europe. The employment of EU citizens is regulated by the Right of Union Citizens and their Family Members to Move and Reside Freely within the Territory of the Republic of Cyprus Law of 2007, which guarantees the free movement of workers within Europe.

The procedure is simple; there is a requirement for a valid passport or ID card and social insurance, to be submitted to the Civil Registry and Migration Department.

Non-EU citizens

For Non-EU citizens, work permits can be obtained for a limited period of time, provided that there are no claims for the specific jobs by the local labour force (Cypriot or EU citizens), which will be ascertained following an investigation by the Department of Labour.

Applications for entry, temporary residence and employment permits are submitted by the employer to the Civil Registry and Migration Department through the appropriate District Office of the Aliens and Immigration Unit of the Police or the Central Offices of the Civil Registry and Migrations Department in Nicosia.

PROPOSALS FOR REFORM

33. Are there any impending developments or proposals for reform?

There are a number of proposals for reform in many sectors of the economy in order to improve the country's position in both internal and external affairs, and to meet the requirements set by the European Commission, European Central Bank and International Monetary Fund.

The Double Tax Treaty with Ukraine awaits ratification by the Cyprus Parliament.

Reforms are also taking place for the Cyprus investment fund industry with the introduction of the Alternative Investment Funds Law.

ONLINE RESOURCES

The Cyprus Source of Legal Information

W www.cylaw.org

Description. This website provides a list of Cyprus legislation and court decisions.

Department of the Registrar of Companies and Official Receiver

W www.mcit.gov.cy/mcit/drcor/drcor.nsf/index_en/index_en#

Description. This website provides information regarding company formation.

Ministry of Finance

W www02.gov.cy/mof/mof.nsf/index_en/index_en?OpenDocument

Description. This website contains information regarding taxation and amendments in legislation.

Office of the Law Commissioner

W www.olc.gov.cy/olc/olc.nsf/dmlindexa_en/dmlindexa_en?opendocument#

Description. This website provides legislation translated in English.

Civil Registry and Immigration Department

W www.moi.gov.cy/MOI/CRMD/CRMD.nsf/DMLIndex_en/DMLIndex_en?OpenDocument

Description. This website provides relevant legislation and regulations applied by the Civil Registry and Migration Department, in Greek.

Practical Law Contributor profiles



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