

Cyprus

Company Formation

Frequently Asked Questions

Andreas Sofocleous & Co.

Proteas House
155 Makariou III Avenue, 3026
P.O.Box 58159, 3731, Limassol - Cyprus
Tel: +357 2584900 Fax: +35725849100
Email: info@sofocleous.co.cy
www.sofocleous.com.cy

[1] What law governs the formation of companies in Cyprus?

The formation of a company in Cyprus is governed by the Cyprus Companies Law, Cap.113 of the Laws of Cyprus, as amended from time to time ('the Companies Law'), which is almost identical to the United Kingdom's Companies Act, 1948.

[2] What, in outline, are the principal advantages of companies formed in Cyprus?

- Cyprus has a tax system that complies with EU legislation and OECD (Organisation for Economic Co-operation and Development) requirements;
- Cyprus has concluded a significant number of double tax treaties worldwide which offer important international tax planning opportunities and advantages
- Cyprus has concluded a significant number of double tax treaties worldwide which offer important international tax planning opportunities and advantages
- A uniform corporation income tax rate of 10% is applicable for all companies;
- There is no withholding tax on dividends payable to non residents (legal or natural persons) and no withholding tax on dividends payable from one resident subsidiary company to its Cyprus resident parent company. Further, dividends received by a company resident in the Republic of Cyprus or a company not resident in the Republic of Cyprus which maintains a permanent establishment in the Republic from a non resident company, are exempt from special defence contribution tax if the recipient

company owns at least 1% of the company paying the dividends, with the following exceptions: (1) If more than 50% of the paying company's activities lead to investment income and (2) the foreign tax is substantially lower than the tax rate payable in Cyprus

- Profits from the disposal of securities (shares, debentures, bonds e.t.c) are exempt from taxation apart from the sale of shares in companies owing immovable property in Cyprus, which will be subject to capital gains tax;
- If interest is earned in, or closely related to the ordinary activities of the company (e.g. finance companies), a 10% corporate income tax rate applies on the whole amount of interest. Where the interest is incidental to the main activity of the company, a 10% corporation tax rate applies on 50% of the total interest earned and special defence contribution tax at a rate of 10% applies on the whole of the interest. There is no withholding tax on interest payments made to non-residents

Royalties generated in Cyprus by non-residents in respect of rights granted for use outside Cyprus, are exempt from tax.

[3] What procedure is followed to form and register a company? What regulatory requirements must be complied with? (eg documentation, share capital, share register, locally registered agent)

The first step in the registration procedure of a company is the choice of the name of the company followed by an application at the Registrar of Companies for approval of the proposed name. The approval is usually obtained within 4

to 7 business days. The Companies Law gives the power to the Registrar of Companies to refuse the registration of an undesirable name if, for example, the chosen name is too similar to the name of an existing company or may be misleading in any way.

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 (i.e. development, holding, construction, investment) and is then filed with the Registrar of Companies together with the information regarding the first officers and shareholders of the Company.

Of the documents that have to be submitted to the registrar of Companies for incorporation of a company, the most important are the company's memorandum and articles.

Memorandum of Association: Every Cyprus Company is obliged to have a memorandum of association. Its principal function is to set out the 'raison d'être' (the purpose of which the company is in existence) of the company and to regulate its dealings with outsiders.

The memorandum must contain the following clauses:

1. The name clause: In this clause the full name of the company is shown and the last word of the name of the company must be "Limited" (This warns outsiders dealing with the company that the liability of the shareholders is limited and that they can look only to company funds for payment of company debts);
2. The registered office clause stating the country in which the registered office of the company is situated;
3. The objects clause setting out the purpose for which the company is in business and what it is empowered to do;

4. The limited liability clause stating that the liability of its members is limited;
5. The capital clause setting out the authorized share capital of the company and its division into shares of a certain nominal value;
6. The association clause: The founding members declare that they would like a company to be formed and agree to take the shares indicated next to each shareholder's name in the memorandum.

Articles of Association: Every Cyprus company must have a set of articles of association. The articles of association contain the rules for the company's internal regulation and management and contain regulations dealing with such matters as directors' powers, proceedings at members' meetings, conduct at board meetings and so on.

Other requirements include the following:

Share Capital: No minimum share capital is required by law for incorporation of a private company but each subscriber to the memorandum must subscribe for at least one share (s. 4 (c) of the Companies Law).

The minimum registered share capital of a public company must be CYP15.000 (€25.650).

Registered Office: The Cyprus Company Law requires the presence of the registered office of the company in the territory of the Republic of Cyprus. The registered office is the place where writs, summonses, notices, orders and other official documents can be served upon the company.

Certificate of Incorporation: If all the documents required are correctly prepared and delivered to the Registrar of Companies, and the Registrar is satisfied that all statutory requirements in respect of the registration of the company have been met, then a Certificate of Incorporation will be issued. This generally takes from 4 to 7 days.

Once the certificate of incorporation has been issued, the Company comes into existence as a legal entity distinct from its members and officers.

As a result of a company having separate legal status, a company is able, amongst other things, to do as follows:

- i. Own property
- ii. Be liable for its own debts
- iii. Sue its debtors

Have 'perpetual succession' meaning that the Company does not cease to exist just because a member dies or otherwise ceases to be a member.

[4] Is it possible to form and register a company on-line?

No, because the registration of a company in Cyprus requires an affidavit by a practicing advocate sworn in the presence of a Registrar. Further, the Registrar of Companies' Office does not yet possess the necessary resources to enable company formation online.

[5] Are there any restrictions on the persons who may be shareholders or directors of companies?

The shareholders of a Cyprus company may be legal or natural persons and may be residents and/or nationals of any country. They have to be the legal age of 18 and over, and in order to be a director, they should also be of sane mind and be able to contract under law.

[6] Are there any requirements as to the number of shareholders or directors? Is it necessary to appoint a secretary? What is the most common management structure?

The minimum number of shareholders for incorporation of a public company is 7 (seven) and for

a private company is 1 (one).

A private company may have only one director and a secretary but the sole director of the company cannot also be the corporate secretary. Nevertheless, where a single-member private limited-liability company is concerned, the sole director may also be the secretary of the company.

A public company is required to have at least two directors and a secretary.

The most common structure is 2 (two) Shareholders, 1(one) Director and 1 (one) Secretary.

[7] Are nominee services provided?

If you are seeking anonymity and privacy, our firm can provide you with nominee directors, secretary or nominee shareholders for your company.

The beneficiary's ownership of the company is secured by the execution of a Deed of Trust, between the beneficiary and each nominee shareholder appointed, giving the beneficiary full access to any future transfer of benefits derived from the shares in question. An indemnity letter, addressed to the nominee director and secretary must also be signed by the beneficial owners.

[8] What ongoing regulatory requirements must a company comply with? (eg maintaining share register, filing accounts, AGMs, shareholder meetings etc)

Accounts and audit: Every company must keep at its registered office proper books of account, which should give a true and fair view of the state of the company's affairs and explain its transactions. There is an obligation on all companies to apply the International Accounting standards (IAS) in presenting such financial accounts.

Every company which has subsidiary companies must present consolidated financial accounts at its AGM.

Every company must have duly appointed independent auditors responsible for the audit of the company's financial statements and tax compliance. The auditors appointed must be qualified in accordance with section 155(1) of the Companies Law.

Annual General Meeting: Every company is required by law to hold an AGM in each calendar year specified as such in the notices convening it, and no more than 15 months must elapse between one general meeting and the next. It is however possible to hold the first annual general meeting of a company within 18 months of the company's formation.

Annual return: All companies are required at least once in every calendar year to make an annual return to the Registrar of Companies, setting out particulars relating to the company. Unless the company is an exempt private company, there must be annexed to the return certified copies of the balance sheet, profit and loss accounts and directors and auditors report. Failure to file the annual return may result in a default fine on the company and any responsible officer. Furthermore, the Registrar of Companies can strike from the register the name of the company in default in relation to delivering information but only if the Registrar has reasonable cause to believe that the Company is not carrying on business or is not in operation.

[9] Are there any regulatory requirements which apply to company formation agents?

A local registered advocate member of the Cyprus Bar must sign the Memorandum and Articles of Association of the company.

[10] What is the relevant regulatory body, and what powers of enforcement does it possess? What remedies apply in the event of a failure to comply with the regulatory rules?

The Registrar of Companies is the regulatory body and it has the power to impose penalties and to strike off the Company from its Register. The only remedy is to comply with the Registrar's requirements.

[11] What categories of companies are recognised in Cyprus and what are their principal characteristics? (eg exempt co, ordinary co, foreign co)

I. A Private Company Limited by shares.

Most registered companies are limited by shares. The effect of a company being limited by shares is that, on liquidation, the liability of a member is limited to the amount, if any, which remains unpaid on his shares. A private company is a company which, by its articles of association:

- a. restricts the right to transfer the company's shares;
- b. limits the number of its members to 50 (fifty), excluding persons who are in the employment of the company and persons who, having been formerly in the employment of the company were, while in that employment and have continued after the termination of that employment, to be members of the company;
- c. prohibits an invitation to the public to subscribe to any shares or debentures of the company;
- d. prohibits the issuance of bearer shares;

II. A Private Company Limited by Guarantee.

This type of company is used primarily for charitable and non-profit purposes. Unlike private companies limited by shares, the liability of members in a Private company limited by guarantee is limited to the amount that the members promise to contribute to satisfy creditors when and if the company is wound up.

III. A Public company limited by shares.

Where a company is registered as a public company this must be stated in the memorandum and the words Public Company Limited (or Public Co. Ltd or P.L.C e.t.c) must come at the end of its name. The principal differences with private companies are as follows:

- The shares of a public company are freely transferable;
- A public company can issue shares or debentures to the public.
- Before issuing any of its shares or debentures to the public, a public company must issue a prospectus or statement in lieu of prospectus;
- The company is not entitled to commence business until a trading certificate is obtained from the Registrar of Companies;
- There is no restriction as to the maximum number of members such a company may have but there must be a minimum of seven members;
- The minimum share capital of a public limited company must be CYP15,000 (approx. €25,650);
- A public company must have a minimum of two directors but a private company need only have one;
- A public company must hold a statutory meeting
- A public company can issue share warrants;
- A public company may not issue shares at a discount;

[12] What is a European Public Limited Company (Societas Europaea)?

The Council Regulation (EC) No 2157/2001 on the Statute for a European Company was adopted on 8th October, 2001 containing rules for European Public Companies known as Societas Europaea (SE) (Latin for "European Com-

pany"). The new legislation entered into force in October 2004. Cyprus has amended the Companies Law in 2006 (Law 98(I) of 2006) in order to implement the Council Regulation (EC) No 2157/2001.

An SE can be formed in four ways:

- by 'merger' of two or more public limited-liability companies provided that at least two of them are governed by the law of different Member-States;
- by the creation of a holding SE by public or private limited-liability companies provided that each of at least two of them: 1) is governed by the law of a different Member-State, or 2) has for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another Member State;
- by formation of a subsidiary SE by private or public companies provided that each of at least two of them: 1) is governed by the law of a different Member-State or 2) has for at least two years had a subsidiary company governed by the law of another Member State or a branch situated in another member state;
- by the transformation of an existing public limited-liability company into an SE if for at least two years it has had a subsidiary company governed by the law of another Member-State.

The SE must have a minimum capital of EUR 120,000.

The registered office of the SE must be the place where it has its central administration, that is to say its true centre of operations. The SE can easily transfer its registered office within the Community without dissolving the company in one Member State in order to form a new one in another Member State.

The Regulation provides that the provisions of Member States' laws which would apply to a public limited-liability company in that state, apply to an SE with a registered office in that state in relation to matters not regulated by the Regulation.

Paragraph 20 of the Preamble to the Regulation provides that the Regulation does not cover, inter alia, taxation matters. The provisions of the Member – States' law and of Community law are therefore applicable in relation to taxation matters.

Cyprus is a most attractive jurisdiction for SE's considering its low tax rates and its extensive network of double taxation agreements.

[13] Can existing companies be re-domiciled within Cyprus? If so, what procedure must be followed?

The Company may change its registered office address by submitting an application to the Registrar of Companies.

[14] What is an international business company? Are such companies recognised in Cyprus and, if so, how can one be formed and registered?

There is no longer distinction between IBC's and local companies. A uniform corporation tax rate of 10% is applicable to all companies. IBC's are subject to the same registration procedures as local companies.

[15] Please give an overview of the statutory rights of shareholders. How can such rights be enforced?

To a great extent, the rights of the shareholders in any company are regulated by the articles of association of that company, but a shareholder in any company may expect to have the following rights:

a The right to an Annual General Meeting (Companies Law, s.125)

According to section 125(2), if default is made in holding the AGM, the Council of Ministers may, on application of any member of the company, direct the calling of a general meeting and give such ancillary or consequential directions it may think expedient.

b. The right to convene an Extraordinary General Meeting (Companies Law, s.126).

Members holding at least 10% of the company's shares have the right to requisition a meeting by depositing a written request at the company's registered office.

If the directors do not duly convene the meeting within the time provided by s. 126(3) of the Companies Law, then the members themselves may call the meeting.

c. The right to requisition the Court to call a meeting (Companies Law, s.129).

If for any reason it is impracticable to call a meeting of a company in any manner in which meetings of that company may be called, or to conduct the meeting of the company in the manner prescribed by the articles of that company or the Companies Law, any member of the company who would be entitled to vote at that meeting (or any director) may requisition the court to call such meeting.

d. The right to receive notices of general meetings (Companies Law, s. 127 and s.128 1(a))

All members must be given proper notice for the calling of a meeting of the company. Any provision within the company's articles shall be void in so far as it provides for the calling of a meeting (other than an adjourned meeting) by shorter notice than the length of notice for calling meetings provided in s.127, unless otherwise agreed by all the members in the case of an annual general

meeting and in the case of any other meeting by a majority of them entitled to attend and vote at the meeting (s.127 (3)).

e. The right to vote at general meetings either personally or through a proxy (Companies Law, s.128 1(e) and s.130 .)

In so far as the articles of the company do not make other provision in that behalf every member of a company shall have one vote in respect of each share held by him.

Further, any member of a company entitled to attend and vote at a meeting of the company, shall be entitled to appoint another person as his proxy to attend and vote at his place.

f. The right to inspect minutes of general meetings (Companies Law, s.140)

Any member is entitled to inspect the minutes of general meetings which are kept at the registered office of the company without charge and to receive a copy of the minutes within a period of seven days after such request has been made to the company.

In the case of refusal or default by the company, the Court may by order compel an immediate inspection of the books of all proceedings of general meetings or direct that the copies required shall be sent to the persons requiring them.

g. The right to have their name entered in the register of members (Companies Law, s.105 and s.111)

Every company is required by law to keep a register of members at its registered office and to enter therein the particulars enumerated in s. 105 (1) of the Companies Law.

Companies Law, s.111 (a) gives the right to any member of the company or other person aggrieved by the omission or entry of his name in such register without sufficient cause to apply to

the Court for rectification of the register.

h. The right to a Share Certificate (Companies Law, s.78)

Every shareholder has the right receive from the company a share certificate within 2 months of either an allotment or the depositing of a transfer with the company.

If a company on which a notice has been served requiring to make good any default in delivering such share certificates, fails to make good the default within 10 days after the service of the notice, any member entitled to have the certificates may apply to the Court for an order directing the company to deliver the same.

i. The right to a dividend, if one is declared (Table A, Article 114)

The directors decide whether it is justified by the profits of the company to pay a dividend to the members. If so, they will recommend the amount of the dividend.

The members in general meeting will approve the dividends but the amount of the dividends cannot exceed the amount recommended by the directors.

j. The right not to be unfairly prejudiced (Companies Law, s.202)

Any member of the company who complains that the affairs of the company are conducted in a manner oppressive to some of the members or, in a case falling within subsection (3) of section 163, the Council of Ministers may cause an application to be made to the Court for an order under section 202.

k. The right to have the company wound-up (Companies Law, s. 261)

Section 261 of the Companies Law contains provisions with regards to the procedure of a voluntary winding-up by the members.

[16] Please give an overview of the duties of directors. How can such duties be enforced?

Duties imposed upon directors are fiduciary duties, similar in nature to those that the law imposes on those in similar positions of trust: agents and trustees.

Directors are agents of the Company, in that they act on behalf of the company and not their own, and are trustees of the company, in that they control assets and exercise powers for the company's benefit and not their own benefit.

Fiduciary duties of directors can be divided in two categories: I. Statutory duties and II. Common law duties.

Statutory duties include:

Administrative and compliance requirements: These include maintenance of proper books and records and lodging of documents and returns with the Registrar of Companies. Generally, the sanction in case of failure to comply with such requirements will be a default fine applicable to the company and every responsible officer but, in some cases (e.g failure by a director to take all reasonable steps to secure compliance with the requirements of the Companies Law as regards the financial accounts and audit) the penalty can be imprisonment.

General disclosure duties imposed by section 190 of the Companies Law for the purposes of sections 187, 188 and 189 which refer to keeping a register of directors' interests, inclusion in the financial statements of the company of directors' salaries, pensions, e.t.c and loans made to directors. Any director who does not comply with such provisions shall be liable to a default fine according to s.190(4).

Disclosure of personal interests in contracts. Section 191 of the Companies Law imposes on directors the duty to declare any direct or indirect interest

in a contract or proposed contract with the company at a meeting of directors. Any director who fails to comply with this requirement will be liable to a fine according to subsection 4 of s.191.

Other provisions of the Companies Law refer to:

Responsibility for fraudulent trading: A director (or any other person knowingly party to fraudulent trading) may be declared personally liable for all or any of the debts or liabilities of the company, if in the course of a winding up of the company the Court finds out that any of the business of the company has been carried on with intent to defraud creditors or fraudulent trading, creditors of any other person or for any fraudulent purpose. (Section 311 of the Companies Law).

Delinquent directors. Section 312 of the Companies Law gives the power to the Court to assess damages against directors (and other responsible officers, managers or liquidators) if, in the course of a winding up of the company, it appears that they have misapplied or retained or became liable for any money or property of the company, or have been guilty of any misfeasance or breach of trust in relation to the company.

Common law duties include:

Duty to act in good faith: A director has a duty to act in what he considers-not what the Court may consider -to be in the best interests of the company.

A duty not to fetter their discretion: A director cannot fetter his discretion in relation to the exercise of his powers, and cannot bind himself to vote in a particular way at future board meetings.

A duty to avoid conflict of interests: As fiduciaries, the directors may not put themselves in a position where their personal interests conflict with the duties that they owe to the company.

[17] What business entities other than companies are recognised in Cyprus? What are their main advantages and disadvantages? (eg society with restricted liability, limited partnership)

A. General Partnership

Partnerships in Cyprus are governed by the Partnerships and Business Names Law Chapter 116, as may be amended from time to time, which is based on the equivalent English legislation.

Any partnership may have between 2 and 20 partners but up to ten only, if the partnership intends to conduct banking business.

All partnerships are required to file a return with the Registrar of Companies within one month of the date of their establishment, providing information about the name of the partnership, the purpose of the partnership, the place of business, full details of all partners and other information listed in s.51 of the Partnerships and Business Names Law.

Every Partnership is required to keep proper books of account but does not need to file accounts or to be audited. Audited financial statements must be produced if the annual turnover per partner exceeds CYP40,000 (69,000EUR).

Each partner in a general partnership is liable jointly and severally with other partners for all debts and obligations of the partnership incurred whilst he is a partner and after his death, and his estate is also severally liable for the debts and obligations of the partnership during his time as a partner, subject to the prior payment of his personal debts.

Every partner is an agent of the firm and his other partners for the purpose of the business of the partnership; and the acts of every partner who does any act for carrying on in the usual way business of the kind carried on by the firm of which he is a member, binds the firm and his

partners, unless the partner so acting has in fact no authority to act for the firm in the particular matter, and the person with whom he is dealing either knows that he has no authority, or does not know or believe him to be a partner.

Partnerships have legally no separate existence from their partners and therefore do not enjoy the limitations of liability enjoyed by incorporated companies.

B Limited Partnership

Limited partnerships are similar to general partnerships except that in addition to one or more general partners who are liable for all debts and obligations of the partnership, there are one or more limited partners whose liability is limited to the amount of capital they agreed to contribute when they joined the partnership and have no management authority, as they are not regarded as agents of the partnership.

C. Sole proprietorship

A sole proprietorship refers to a natural person (individual) who carries on a business in his own name or under a business name registered with the Registrar of Companies.

This form of business will have unlimited liability, so that if the business is sued, the proprietor is personally liable.

D. Cyprus branch of an overseas company

A foreign company wishing to establish a place of business within the Republic of Cyprus, is required under the Companies Law to deliver for registration to the Registrar of Companies in Cyprus, within one month of its establishment, the following documents:

- a. A written report including the information enumerated in section 347(1)(a) of the Companies Law.

- b. A certified copy of the charter, statutes or memorandum and articles of the company or other instrument constituting or defining the constitution of the company, as well as all amendments to such documents.
- c. A list of the directors and secretary of the company, containing the particulars mentioned in subsection 2 of s. 347.
- d. Names and addresses of one or more persons resident in the Republic and authorised to accept on behalf of the company service of any notices to be served upon the company