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Doing business in Cyprus

Legal system

Cyprus has a mixed common law and civil law system, with common law being prominent in most areas. Since Cyprus joined the European Union ("EU") on 1st May, 2004, a number of statutes have been amended or introduced in order to comply with the relevant EU Directives, while the EU Regulations are generally directly effective in Cyprus.

Foreign investment

Foreign investment is generally free from restrictions and the discriminatory treatment of EU citizens or companies is prohibited. Sector-specific policies apply and authorisations are required for foreign investment in certain regulated sectors, such as:

- Banking;
- Insurance;
- Financial Services;
- Investment Services;
- Telecommunications;
- Media.

There are also restrictions on the purchase of land by non-EU citizens, which are based on public policy grounds. In addition, prior permission is required for other (non-Cypriot) EU citizens to register a secondary residence (holiday house) in their name (Acquisition of Immovable Property by Aliens Law Cap. 109, as amended).

Exchange control and currency regulations

Residents and non-residents can hold and manage assets and liabilities in any foreign currency and in any foreign country, including freely convertible and transferable balances, with banks in Cyprus. A person departing from Cyprus must declare any amount in bank notes or gold value carried by him that is above C£7,300 (about US\$16,790) or EUR12,500 (about US\$16,750), or any other amount which the Central Bank may specify.

Grants and incentives available to investors

Various government departments and EU institutions offer grants and subsidies for investment in, among others, the following areas:

- Technology incubation programmes, through which support is given to scientists and researchers.
- Research and development.
- Testing and laboratories for quality assurance.
- Quality control standards.
- Market research studies on foreign markets.
- Encouraging, strengthening and reinforcing entrepreneurship.

Most of these grants and subsidies are available to, but not specifically aimed at, foreign investors.

Business vehicles

The most common form of business vehicle used by foreign companies is a subsidiary of the foreign company in the form of a limited liability company.

- **Registration formalities.** The company must file with the Registrar of Companies (the "Registrar"):
 - a copy of the memorandum and articles of association (constitutional documents);
 - forms concerning the company's registered address, directors and secretary and shareholders.
- Registration is completed within three to five working days and the Registrar issues a certificate of incorporation.
- **Share capital.** There is no maximum or minimum share capital and no thin capitalisation rules.
- **Non-cash consideration.** Shares can be issued for non-cash consideration, the value of which must be agreed to by the directors.
- **Rights attaching to shares.** There are restrictions on the rights that can attach to shares imposed by:
 - the Companies law, Cap. 113;
 - the company's constitutional documents;
 - shareholders' resolutions and agreements.
- **Foreign shareholders.** There are no restrictions on foreign shareholders, except in certain regulated industries such as banking and media.
- **Management structure.** Private companies have a single-tiered board structure with at least one director. There are no restrictions on the participation of foreign directors.
- **Directors' liability.** Directors can be personally liable under:
 - common law for breach of their duties to the company;

- the Companies Law or other statutes, for example, for fraudulent or wrongful trading if the company becomes insolvent.
- **Parent company liability.** Parent companies are not liable for the acts of their subsidiaries.
- **Reporting requirements.** A company must submit to the Registrar:
 - an annual return;
 - annual accounts;
 - details of changes to, among other things, the company's:
 - registered address;
 - directors;
 - secretary;
 - shareholders;
 - constitutional documents;
 - name;
 - share capital.
- The cost of compliance depends on the document filed. Companies must also produce annual audited accounts and file them with the Inland Revenue authorities.

Employees: the main laws regulating employment relationships

Of the several new laws or amending legislation enacted in line with EU directives, the most important are the following:

- Informing the Employee of the Terms governing the Work Contract or Relationship Law 100(I)/2000;
- Maintaining and Securing the Rights of Workers during the Transfer of Businesses, Installations or Parts of Businesses or Installations Law 104(I)/2000;
- Protection of the Rights of Workers in the case of Employer Insolvency Law 25(I)/2001;
- Prohibition of Discrimination against Part-Time Workers Law 76(I)/2002;
- Prohibition of Discrimination against Workers on Fixed-Term Work Law 93(I)/2003;
- Mass Redundancies Law 28(I)/2001;
- Organisation of Working Time Law 63(I)/2002;
- Hours of Work Law 62(I)/2002
- Amendments to the Termination of Employment Law 24/1967;
- Amendments to the Social Insurance Law 41/1980;
- Amendments to the Annual Leave with Pay Law 8/1967.
- Various laws and regulations regarding equality between men and women and health and safety.

The laws apply equally to foreign employees working in Cyprus and Cyprus nationals. Law 137(I)/2002 ("Posted Workers") covers EU employees who are temporarily working in Cyprus.

The laws set out the minimum requirements and the parties cannot agree to lesser terms and conditions.

Employment contracts and other terms governing an employment relationship

An employer must inform an employee of the main employment terms within one month from engagement, through any of the following:

- A written contract.
- A letter of engagement.
- Any other signed document.

This rule does not apply to:

- Work periods that are for less than:
 - one month; or
 - eight hours a week.
- Incidental or special work.

Common law principles apply where there are no express provisions or guidance for interpreting the law. Many sectors have collective bargaining agreements in place.

Employee management representation

Employees are not entitled to management representation. If at least ten employees are dismissed within a 30-day period from a business employing at least 20 employees, work representatives must be consulted to reach an agreement.

Termination of individual employment contracts

The Termination of Employment Law 24/1967, as amended (Law):

- Requires employers to give employees with at least 26 weeks' continuous service notice for dismissal, which varies from one to eight weeks.
- Provides for severance pay in the case of unfair dismissal.
- Provides for, in exceptional cases, reinstatement with up to one year's pay in businesses employing more than 19 persons.

Dismissal for reasons other than those expressly provided by the Law (*see below*) constitutes unfair or unlawful dismissal.

Dismissal is possible during an employee's probation period (ranging from six to 24 months) without notice and compensation, unless otherwise agreed.

Dismissal without compensation but with due notice is possible:

- When the employee fails to perform his work in a reasonable satisfactory manner (unless it is due to temporary health reasons).
- When the employee is rendered redundant according to the Law.
- By reason of *force majeure*.
- On termination of a fixed term contract.

Dismissal without notice and with compensation is possible:

- If, due to the employee's conduct, the employment relationship cannot be reasonably expected to continue.
- In the case of serious misconduct or indecent conduct during the performance of the employee's duties.
- If the employee commits a criminal offence during the performance of his duties without the employer's consent.
- In the case of serious or repetitive violation of work regulations.

Redundancies/mass layoffs

The Termination of Employment Law 24/1967 sets out the grounds for redundancy and payment from the state administered redundancy fund. Employees must have completed 104 weeks of continuous service to be entitled to payment. The minimum redundancy payment is 2 weeks' salary for each continuous 52-week period for employees who have completed up to 4 years of employment. The maximum is 4 weeks' salary for each 52-week period for employees who have completed between 21 and 25 years of continuous

service. No additional payment is made for any employment period of more than 25 years.

The following are considered as mass redundancies under Law 28(I)/2001:

- There are at least 10 redundancies in businesses normally employing more than 20 and less than 100 persons.
- At least 10% of the workforce is made redundant in businesses normally employing at least 100 and less than 300 persons.
- At least 30 redundancies in businesses normally employing at least 300 persons.

In the case of mass redundancies, an employer must consult, within a reasonable period of time, with the employees' representatives and provide them with all necessary information and notify them in writing of:

- The reasons for the redundancies.
- The number and categories of employees to be made redundant.
- The number and category of employees normally employed by the employer.
- The period over which the redundancies will be made.
- The criteria it intends to use for selecting any employees to be made redundant.
- The method for calculating any possible payment as a result of redundancies, other than those payable under the Termination of Employment Law.

Any employer in breach of the above requirements is guilty of an offence and liable to a fine not exceeding C£1,000 (about US\$2,300).

An employer must give 30 days' notice to the competent authorities before starting any mass redundancies, subject to the individual rights of employees as to the length of notice. Breach of the above, on conviction, renders the employer liable to a fine not exceeding C£2,000 (about US\$4,600).

Foreign employee work permits and/or residency permits

All non-Cypriot employees must apply for work and residency permits. For EU citizens this is simply a registration procedure.

Companies wishing to employ third country nationals must obtain permission from the Labour Office before an application is filed with the Migration Authorities. The main criterion for the grant of a permit is the non-availability of local or EU labour.

Up to a maximum of 5 executive staff and 10 key personnel from third countries (i.e. persons earning at least C£24,000 and C£12,000 respectively, (about US\$55,200 and US\$27,600)) employed in international business companies (i.e. with the majority shareholding in the hands of non-Cypriots), can be issued a work permit without Labour Ministry involvement (*Aliens and Immigration Law (Cap. 105)*).

Employee tax residency

Employees who have stayed in Cyprus for more than 183 days in the year of assessment are considered to be tax resident and must pay tax on their worldwide income. Non-residents are taxed only on their Cyprus-sourced income.

Tax resident employees

Tax resident employees must make the following contributions:

- Social security: 6.3%.
- Income tax at progressive rates of up to 30%.

Non-tax resident employees

Non-tax resident employees are liable to income tax on any earnings in Cyprus at progressive rates of up to 30%.

Employers

Employers must make the following contributions (as a percentage of the employee's salary):

- Social security: 6.3%.
- Redundancy fund: 1.2%.
- Human resource development fund: 0.5%.
- Social cohesion fund: 2%.
- Annual holiday pay: 8%. These contributions must be paid to the Central Holiday Fund, unless the employer provides holiday pay directly to its employees under more favourable terms than those provided by the legislation relating to the fund. Employees for whom contributions are paid receive their annual leave payment from the fund.
- Employer insolvency fund, financed each month with a transfer of 16.6% of the contributions paid to the redundancy fund. An employee is entitled to payment out of the fund:
 - if his employment was terminated because the employer became insolvent; and
 - depending on his length of service.

Tax residency, in relation to business vehicles

A business vehicle is tax resident if its management and control are located in Cyprus.

Corporation tax

Corporation tax is payable on companies' worldwide income at the rate of 10%. There is an exemption of 50% on income from interest, where that interest does not accrue from, and is not closely connected with, the ordinary carrying on of any business. Income from dividends and the sale of securities is 100% exempt from corporation tax but dividends may be subject to special 15% defence contribution.

Value added tax (VAT)

VAT is charged on all supplies of goods or the provision of services in Cyprus. The rates are as follows:

- Standard rate: 15%.
- Low rate: 8%. This is applicable to, for example, the supply of food in the course of catering.
- Low rate: 5%. This applies to, for example, animal feeding and fertilizers.
- Zero rate. This applies to, for example, medicines and vaccines.

Some supplies are exempt from tax, for example, insurance and financial services.

Stamp duty

Stamp duty is payable on certain transactions, including any document relating to any property situated in Cyprus, or any matter or thing to be performed or done in Cyprus, irrespective of the place of execution.

The rates are:

- 0.15% for contracts having a consideration of up to C£100,000 (about US\$230,000).
- 0.2% for any amount over C£100,000.

Capital gains tax (CGT)

CGT is imposed on profits from the disposal of:

- Immovable property situated in Cyprus.
- Shares in companies that own immovable property in Cyprus, if the shares are not listed in any stock market.

The tax is imposed on the net profit from disposal at the rate of 20%.

Immovable property tax

Tax is imposed on companies that own immovable property in Cyprus as at 1 January of every year. It is calculated on the market value of immovable property on 1 January 1980 and is payable by 30 September in the year. The rates are progressive up to 4%.

Professional tax

Companies operating from premises within municipal boundaries are subject to an annual professional tax, ranging from £C450 (about US\$1,047) to £C3,000 (about US\$6,900), depending on various factors such as:

- Turnover.
- Share capital.
- Number of employees.

Taxation of non-tax resident business vehicles

Tax is levied on the Cyprus-sourced income of non-tax resident business vehicles, in respect of:

- Profits or other benefits from a permanent establishment in Cyprus.
- Rent from property situated in Cyprus.
- Any amount or consideration in relation to any sale of goodwill, reduced by any amount incurred for the purchase of the goodwill.

Taxation of:

Dividends paid: There are no withholding taxes on the dividends paid to foreign corporate shareholders.

Dividends received: A Cypriot resident company must pay a special defence contribution on dividends received from a foreign subsidiary, at the rate of 15%. If the Cypriot company's shareholding in the foreign subsidiary exceeds 1%, the dividend is exempt from this tax under certain conditions.

Interest paid: A non-resident company does not pay any income tax or special defence contribution on any interest it receives from Cyprus.

IP royalties paid: Net profits from royalties are taxed at the rate of 10%. Where an IP right is granted for use outside Cyprus, the royalty is not deemed to be income derived from Cyprus and is therefore exempt from withholding tax. Double tax treaty provisions must also be considered.

Transfer pricing rules

Transfer pricing rules apply where the terms of a transaction are different from the ones which would apply between independent undertakings if:

- An undertaking participates in the management, control or capital of another undertaking.
- The same persons participate in the management, control or capital of two or more undertakings.

- The transaction is between connected persons, such as spouses, relatives and companies controlled by the same group of people.

Import and Export taxation

Outside the EU

Exports of goods outside the EU are subject to VAT, but are generally zero rated. Imports from outside the EU are subject to VAT, which is payable by the importer at the same rate as if the goods were supplied within Cyprus. Customs duty and excise duty may also be payable on imports.

Within the EU

The supply of goods between VAT-registered traders is generally zero rated. Where VAT is payable, the customer receiving supplies must pay VAT at his country's rate. VAT is charged in the normal way on sales to non-VAT registered customers.

Double Tax Treaties

Cyprus has double tax treaties with 43 countries, including the US, the Russian Federation and most EU member states.

Competition Law

Restrictive agreements and practices are regulated by the Protection of Competition Law 207/1989, as amended. The Law prohibits any enterprise agreement having as its object or effect the elimination, restriction or distortion of competition.

Intellectual property

Patents

- **Nature of right.** To be protected, a patent must:
 - be novel;
 - involve an inventive step; and
 - be industrially applicable.
- The right holder is entitled to exclusive rights of use (*Patent Law No. 16(I)/1998, as amended*).
- **How protected.** Patents must be registered with the Patent Register to be protected.
- **How enforced.** A patent owner can enforce his rights through court proceedings. The remedies available include:
 - injunctive relief;
 - damages;
 - account for profits made by the infringer.
- **Length of protection.** Protection lasts for 20 years from the date of filing the application for registration.

Trade marks

- **Nature of right.** A trade mark must be sufficiently distinctive and must not conflict with previous rights. The right holder is entitled to exclusive rights of use.

- **How protected.** A mark must be registered with the Trade Marks Register (including registration as a Community or an international trade mark) to be protected. Unregistered rights are protected by common law principles.
- **How enforced.** A trade mark owner can enforce his rights through an action for infringement (for registered trade marks) and an action for passing off (for unregistered marks). The remedies available are the same as for patents (see above, *Patents*).
- **Length of protection.** Protection of a registered mark lasts for seven years from filing but can be renewed indefinitely every 14 years.

Registered designs

- **Nature of right.** Designs must be novel and have individual character to be protected.
- The right holder has exclusive rights to use the design and prohibit its use by third parties without consent.
- **How protected.** A design must be registered with the Designs Registry to be protected.
- **How enforced.** Design rights are enforced by an action for design infringement. The remedies available include:
 - injunctive relief;
 - damages.
- **Length of protection.** Protection lasts for 25 years from the date of application.

Unregistered designs

- **Nature of right.** To be protected, unregistered designs must be novel and have an individual character. A design right confers on its holder a right to prevent copying.
- **How protected.** Protection is automatic on creation of the design.
- **How enforced.** Unregistered designs are enforced in the same way as registered designs (see above, *Registered designs*).
- **Length of protection.** Protection lasts for three years from the date on which the design was made available to the public.

Copyright

- **Nature of right.** To be protected, the work must be original and presented in some material form. The owner has exclusive statutory rights over the protected work. Copyright is governed by the Copyright Law 59/1976 (as amended).
- **How protected.** Protection arises automatically on creation of the work.
- **How enforced.** Copyright rights are enforced in the same way as patent rights (see above, *Patents*).
- **Length of protection.** The length of protection varies between 15 and 70 years, depending on the nature of the work.

Confidential information

- **Nature of right.** The information itself must be confidential in nature and be communicated in circumstances importing an obligation of confidence.
- **How protected.** Protection is ensured by a contractual agreement between the parties.
- **How enforced.** The rights are enforced by an action for breach of contract.
- **Length of protection.** Protection lasts for as long as the information remains confidential.

Marketing agreements

- **Agency.** Commercial agency agreements are governed by the Regulation of the Relationship Between Commercial Agent and Principal Law 51(1)/92, as amended by Law 149(I)/2000. The Regulation governs, among other things:
 - an agent's duties towards his principal;
 - remuneration;
 - commission;
 - termination of the contract;
 - rights to compensation.
- **Distribution.** There is no statutory regulation governing distribution agreements.
- **Franchising.** There is no statutory regulation governing franchising agreements.

E-commerce

Electronic signatures are regulated by the Legal Framework for Electronic Signatures and Related Matters Law 188(I)/2004, (which adopts Directive 99/93/EC on electronic signatures).

Distance selling is regulated by the Law for the Conclusion of Consumer Distance Contracts Law 14(I)/2000.

E-commerce is regulated by the Certain Legal Aspects of Information Society Services, Particularly Electronic Commerce and Related Matters Law 156(I)/2004 (which adopts Directive 2000/31/EC on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market).

Data protection

Legal framework

The laws applicable to data protection are:

- The Processing of Personal Data (Protection of Individual) Law 138(I)/2001, as amended.
- Part 14 of the Regulation of Electronic Communications and Postal Services Law 112(I)/2004, which regulates safety, privilege and protection of data.
- Law 28(III)/2001, which ratifies the European Convention for the Protection of the Individuals with regard to Automatic Processing of Personal Data (European Convention).
- Law 30(III)/2003, which ratifies the Additional Protocol to the European Convention.
- The Processing of Personal Data (Licences and Fees) Regulations 2002 (K.D.P. 538/2002).
- Guidelines of the Commissioner for the Protection of Personal Data (the "Commissioner"), (that is, internet and video surveillance).

Controller's obligations

The data protection laws require a data controller to:

- Collect and process data fairly and lawfully for specified, explicit and legitimate purposes.
- Ensure that the data is:
 - adequate;
 - relevant and not excessive for the purposes collected or processed;
 - kept accurate and up to date;

- not kept longer than is necessary for the purposes it is collected or processed;
- protected.
- Obtain the Commissioner's permission for the transfer of data to third countries.
- Not collect or process sensitive data unless an exception provided by the law applies.

Collection/processing

A data controller must do all of the following:

- Notify and provide information to the Commissioner.
- Obtain the data subject's consent, unless an exception applies.
- Inform the data subject of his (and any representative's) identity and the purposes for the processing. He may also have to provide the data subject with further information, such as the recipients of the data.

Combination of data

If a data controller combines the data of a personal filing system with the data of one or more personal filing systems maintained by another controller, or maintained by the same controller but for different purposes, the controller(s) must (unless an exception applies) notify the Commissioner and obtain the prior consent of the data subject(s). The Commissioner's permission is required for sensitive data.

Transfer of data

The data controller must obtain the Commissioner's permission for transferring personal data to a third country and, unless an exception applies, the data subject's consent. Transfer of data to EU member states is unrestricted.

Other obligations

A data controller must ensure that data is not processed for the purposes of promotion, sale of goods or provision of distance services without the data subject's consent.

The use of automated calling systems without human intervention, facsimile machines or e-mail for the purposes of direct marketing can only be allowed with the subscribers' consent. In other cases, unsolicited communications for purposes of direct marketing are not allowed without consent.

Product liability

- **The common law of tort.** The purchaser must prove that:
 - the seller or manufacturer fell below the standards of the reasonable man;
 - this caused loss to the buyer; and
 - the seller or manufacturer knew that inspection of the goods before reaching the purchaser would not be likely.
- The purchaser must be put in the same position as he would have been in had the damage never occurred.
- **Contract.** Compensation can be awarded to put the purchaser in the same position as he would have been in if the contract had been properly performed.
- **The Sale of Goods Law 1994.** This Law imposes liability on the seller or manufacturer and implies terms into contracts for the sale of goods in the course of business (relating to, for example, satisfactory quality, fitness for purpose and correspondence to description).