

# “Setting up and maintaining a Cyprus company”

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### 1. The Cyprus limited liability company

The law relating to registered companies is the Cypriot Companies Law, Chapter 113 of the laws of Cyprus, as amended (The Companies Law), which is almost identical to the United Kingdom’s former Companies Act 1948.

The word Company has no strictly legal meaning. It is clear however that in legal theory the term implies an association of a number of people for some common object or objects. In common business language the word Company is normally reserved for those associated for economic purposes, i.e. to carry on a business for gain. The Companies Law generally allows one or more persons to form a company for any lawful purpose by subscribing to its memorandum of association.

The fundamental attribute of corporate personality – from which all the other consequences flow – is that the corporation is a legal entity distinct from its members. Hence it is capable of enjoying rights and of being subject to duties which are not the same as those enjoyed or borne by its members. In other words it has legal personality and is often described as an artificial person in contrast with a human being, a natural person.

In the case of companies limited by shares, the liability of each member is limited to the nominal value of the shares that he has agreed to take up or, if he has agreed to take up such shares at a premium, ie, at more than their nominal value, to the total amount agreed to be paid for such shares. Once the member has paid for his shares, his liability towards the debts or liabilities of the company is fully discharged, although fraud may render a member liable for the debts of the company.

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Section 29 of the Companies Law defines a private company as:

“A private company means a company which by its articles of association specifically:

- Restricts the right to transfer its shares.
- Limits the number of its members to 50.
- Prohibits any invitation to the public to subscribe for its shares or debentures.

### 2. Incorporation and capacity to contract

A company comes into existence as a legal entity as soon as it is incorporated by the Registrar of Companies. This is evidenced by the Registrar issuing a Certificate of Incorporation that is conclusive evidence that the company has satisfied all legal requirements in respect of incorporation and that the company is duly registered under the Companies Law.

The Companies Law generally allows one or more persons to form a company for any lawful purpose by subscribing to its memorandum of association.

In order to register a company in Cyprus it is necessary to file with the Registrar of Companies prescribed documents in accordance with the provisions of the Companies Law.

The following documents must be filed:

- Memorandum of association
- Articles of association
- Form HE1 – A statutory declaration by the Lawyer of the company as to the compliance with the requirements of the Companies Law.
- Form HE2 – A statement of the registered office address of the company.
- Form HE3 – A statement of the first Directors and Secretary.

A company cannot contract or enter any other obligation under the law until it has been incorporated. It cannot be held liable on, or entitled under contracts purporting to be made on its behalf, prior to incorporation.

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### 2.1 Memorandum of Association

As per Companies Law section 4 this document must contain four clauses, these being;

- The Company's name clause
- The Objects clause
- The Limited Liability clause
- The Capital clause

#### The Company's name clause

Section 4(a) states that the memorandum of association should state the name of the company together with the word Limited or Ltd as the last word of the name when it is for a private company, and the words Public Company Ltd or Plc or Public Ltd when it is for a public company.

The name of the company has to be approved by the Registrar of Companies. This procedure usually takes 2-4 days.

The Registrar of Companies will reject names that are:

- Identical or similar to existing registered names.
- General names (without any distinctive characteristic).
- Names that offend the country, religion.
- Generally, any word that the Registrar considers undesirable.
- Names which imply a royal connection or any link to a currency, such as sterling etc.

The name of the company may be expressed in any language using the Latin alphabet provided that the Registrar is provided with a Greek or English translation and the name is not considered undesirable.

Approval for certain names is given only either by consent or by having a Licence, such as names that have the words "Bank", "Trust", "Insurance", etc as part of their name.

#### The Objects clause

The objects clause of a company's memorandum of association records the sphere of its permitted operations.

Any act beyond a company's legitimate powers as defined in its memorandum is *ultra vires*<sup>1</sup> and void.

It is for this reason that memoranda of association are drawn as widely as possible to enable a company to engage in any type of business or activity, without this being *ultra vires*.

<sup>1</sup> *Ultra vires* is a Latin phrase that literally means "beyond the power."

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### The Limited Liability Clause

The memorandum in the case of a private limited company must state that the liability of members is limited.

### The Capital clause

The memorandum must state the authorised share capital of the company and how this share capital will be divided into shares of a predetermined amount.

Every person that has signed the memorandum of association must take at least one share .

Every person that has signed the memorandum of association must write next to his name the number of shares that he is taking.

The memorandum of association must be prepared in the Greek language in duplicate, be properly stamped, and the signature of all subscribers must be witnessed by at least one person.

## 2.2 Articles of Association

This document sets out the rules for the running of the company's internal affairs. The Articles define how meetings of shareholders and directors are held, the powers bestowed on directors, the method of appointing and removing directors, determine the minimum number of persons that must be present for a quorum, set out the procedures for issuing new shares, transferring shares, and so on.

Although the articles of association can often be in standard form, they are also drafted to take into account the specific needs and requirements of the shareholders where necessary.

As per Companies Law, Section 11, the articles of association must be;

- printed
- subdivided into numbered paragraphs
- is signed by all the persons that have signed the memorandum of association in the presence of at least one witness who must verify the signature.

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### 3. Share Capital

#### Meaning of share capital

When a person decides that he wants to start a business he will put certain property into it. This property may be in the form of tangible assets such as money, computers, land and buildings – or in the form of intangible assets such as business know-how, patents, copyrights.

Whatever form this property will take, a monetary value should be placed upon it, if for no other reason than because this will facilitate the preparation of accounts and enable the proprietor to see what return he is getting for the property contributed into the business.

Hence the owners of a business start with a fund of capital and their aim is to use this fund so that it increases and provides profits.

With an incorporated company limited by shares it is essential that capital should be more clearly defined. Hence the law has worked out certain principles relating to the raising and maintaining of capital.

When a company is formed, the memorandum of association will state:

- the amount of share capital the company will have; and
- the division of the share capital into shares of a fixed amount.

The members must agree to take some, or all, of the shares when the company is registered. The memorandum of association must show the names of the people who have agreed to take shares and the number of shares each will take. These people are called the subscribers.

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### 3.1 Authorised Share Capital

#### Meaning of share capital

As stated in the previous section the memorandum must state the amount of the share capital with which a private company is to be registered and the division of that share capital into shares of a fixed amount.

The amount of share capital stated in the memorandum of association is the company's 'authorised' capital. The amount of the authorised capital in itself is of no importance as an indication of creditworthiness. All that is shown is the maximum number of shares that the company can issue.

There is no maximum to any company's authorised share capital and no minimum share capital for private limited companies. The authorised share capital can be denominated in any of the main currencies, though the default currency we use is the Euro. There is no requirement that the fixed amount of each share should be as a minimum of Euro1, consequently any subdivisions of the Euro are possible for the minimum fixed value of a share.

### 3.2 Issued share capital

The number of shares from the authorised share capital that have been issued to shareholders is the issued share capital. The amount of issued capital cannot exceed the amount of the authorised capital and there is no requirement on companies to issue all their authorised share capital.

A company may increase its issued capital by allotting more shares but only up to the maximum allowed by its authorised capital. Allotments must only be done under proper authority. A private company cannot offer shares to the general public as it is normally restricted to issuing shares to its members, to staff and their families and to debenture holders. However, by private arrangement, a private company may issue shares to anyone it chooses. Cyprus law restricts this to a maximum number of members of 50 (fifty), and members can be individuals or legally incorporated entities (companies).

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### 3.3 Share premium

A company's authorised share capital is divided into shares of a nominal value. While the real value of the shares of a company may change over time, reflecting the company's current market value, their nominal value will always remain the same.

When a company sells shares for more than their nominal value, then a sum equal to the aggregate amount of the premium over the nominal value should be transferred to a “share premium” account which in general should be treated as if it was part of the paid-up share capital.

According to the Cyprus Companies Act Law, every Cyprus incorporated company must pay capital duty on incorporation at a flat rate of Euro103 plus 0,6% on the nominal value of the authorised share capital.

As there is no capital duty payable on share premium, a company can arrange its capital structure in such a way as to have small authorised capital and issue the shares above their nominal value, at a premium.

The main advantage of this is clearly that the Cyprus company can be financed as much as possible in the form of issuance of shares at a premium and still pay the minimum amount of capital duty.

### 3.4 Payment for shares

The law does not require that full payment should be made on the allotment of shares.

It does not also require that payment should be made wholly in cash.

As a result payment for shares can take the form of goods, services, property, good will, know-how, or even shares in another company. The latter is often used when one company takes over another.

In summary shares may be allotted for payment in any of the following ways:

- 100% for cash;
- partly for cash and partly for a non-cash payment; or
- 100% for a non-cash payment.

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### 4. Directors

A company being an abstraction cannot itself perform any real acts at all. The abstraction can act only through the agency of other people. In practice the constitution of the company, its Articles that is, will provide that the power of management lies with the board of directors; the power of management is delegated to the directors as a board.

In accordance with section 170 of the Companies Act every company shall have a director and a director in a private company can be an individual or a legally incorporated entity.

Section 172 prohibits the sole director of the company to be also the secretary of the company. However, this section does not apply to single member private limited liability companies having a single member. Thus the sole member can also act and as the sole director as well as the secretary of the company.

#### 4.1 Residency status of a director

The law does not require that directors of Cyprus private limited companies should be Cyprus nationals. On the contrary irrespective of the country of residency and on whether it is an individual or a legally incorporated entity anyone can be appointed as a director of a Cyprus company.

Even though for legal purposes the residency status of a director is not important, for tax purposes it is quite important.

Cyprus companies are not automatically deemed to be tax resident in Cyprus by virtue of incorporation alone. Rather, in determining the tax residence status of a Cyprus company, the tax authorities will consider such criteria as the location of the central management & control of the company. Therefore, for a Cyprus company to be considered as tax resident in Cyprus, the majority of the board of directors should be resident in Cyprus.



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### 5. Secretary

In accordance with section 171 of the Companies Act every company shall have a secretary and a secretary in a private company can be an individual or a legally incorporated entity.

Section 172 prohibits the sole secretary of the company to be also the sole director of the company. However, this section does not apply to single member private limited liability companies having a single member. Thus the sole member can also act and as the sole director as well as the secretary of the company.

### 6. Registered office

In accordance with section 102 of the Companies Act every company shall, as from the day on which it begins to carry on business or as from the fourteenth day after the date of its incorporation, whichever is the earlier, have a registered office in the Republic of Cyprus to which all communications and notices may be addressed.

### 7. New and shelf companies

As was explained in section 2 in order to register a new company in Cyprus it is necessary to file with the Registrar of Companies prescribed documents in accordance with the provisions of the Companies Laws. Furthermore you must also have approval of the company's name. It is safe for someone to assume that from the time the required documents are submitted to the Registrar of Companies the company should be incorporated within one working week.

In cases where the name of a company is not of importance, or where a company is required urgently, we keep a number of ready-made shelf companies. These are new companies which have been pre-incorporated by Centaur Trust and are completely dormant. They have not been used for any previous transactions and do not have any liabilities, or contractual obligations. Centaur Trust can provide a written declaration to this effect.

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### Ongoing obligations

#### 8. Accounting records

Under the Cyprus Companies Law, (Section 141), the directors of every company are responsible for keeping proper books of account defined as those books deemed necessary for the preparation of financial statements and which are adequate for the presentation of a true and fair view of the company's affairs and an explanation of its transactions.

In accordance with the Cyprus Companies Law, the presentation of the true and fair view is achieved through the application of the International Financial Reporting Standards, which is compulsory for all companies (section 142-143). The directors of every company are therefore responsible for preparing a full set of financial statements (or where applicable, consolidated financial statements) in accordance with International Financial Reporting Standards.

This starts on the day after the previous financial year ended or, in the case of a new company, on the day of incorporation.

#### 8.1 What is a Financial Year?

Every company has a duty to keep accounting records and must prepare annual accounts that report on the performance and activities of the company during the year. The period reported on in the accounts is called the financial year.

#### 8.2 What period must a company's first accounts cover?

The directors of every company have an obligation under the Law, at some date not later than 18 months after the incorporation of the company and subsequently at least once in every calendar year, to lay before the company in a general meeting a full set of financial statements showing a true and fair view of the financial position, financial performance and cash flows of the company in accordance with International Financial Reporting Standards (IRFS) and the requirements of the Cyprus Companies Law and accompanied by the directors' report and the auditors' report (where an audit is required).

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Thus, the law does not specify a specific date as to when the financial statements should end. However, for tax purposes it is always the calendar year that is used as a basis for calculation of the tax payable the following should be considered as standard practice.

- If a company is incorporated after the 30th day of June in a calendar year, then the first accounts should be prepared for an 18 month period, or less, ending on the following calendar year end. For example if a company is incorporated on the 1st day of July 2009, the first financial statements should cover the period ending on the 31st day of December 2010. In following years the financial statements should always end at the end of the calendar year.
- On the other hand if a company is incorporated before the 30th of June in a calendar year, then the first accounts should be prepared for the period ending on the end of the calendar year. For example if a company is incorporated on the 1st day of March 2010, the first financial statements should cover the period ending on the 31st day of December 2010. In following years the financial statements should always end at the end of the calendar year.

### 8.3 Preparing and Filing Accounts

Do all companies have to keep accounting records?

Yes. All limited companies, whether or not they are trading, must keep accounting records.

### 8.4 What does a set of accounts include?

Generally, accounts must include:

- a profit and loss account (or income and expenditure account if the company is not trading for profit);
- a balance sheet;
- an auditor's report signed by the auditor (if appropriate);
- a directors' report signed by a director or the secretary of the company;
- notes to the accounts; and
- group accounts (if appropriate).

### 8.5 Where must a company keep its accounting records?

A company must keep its accounting records at its registered office address or at a place that the directors think suitable. The records must be open to inspection by the company's officers at all times.

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## Ongoing obligations

### 8.6 Who can approve and sign the accounts?

The company's board of directors must approve the accounts of a Cyprus limited company.

Two directors as a minimum should sign the balance sheet on behalf of the board (unless there is only one director) and state his/her name, above the director's signature;

A director or the company secretary must sign the directors' report on behalf of the board and state his/her name.

### 8.7 Group accounts

Section 142 of the Cyprus Companies Act as revised states that:

- The directors of the company shall cause to be drawn up for every company a full set of financial accounts as this set is prescribed on the basis of International Accounting Standards.
- Each company which has subsidiary companies, shall consolidate its financial accounts with those of its subsidiary companies as prescribed by International Accounting Standards; in any event, the said consolidated financial accounts shall be presented to the parent company in a general meeting.

#### **Exclusion from the preparation of Consolidated Financial Statements (Group Accounts)**

Section 142, para (c) of the Cyprus Companies Act as revised states that, a Cyprus holding company is excluded from the preparation of consolidated financial statements showing the results of its subsidiary companies if the group as a whole is considered to be "small".

The definition of a small group is considered to be the group of which the total of the results of all the companies of the group satisfy at least two of the three below mentioned criteria at the date of closure of the balance sheet of the holding company:

- The total assets (and without extracting liabilities) do not exceed the amount of Euro17.500.000
- The total turnover does not exceed the amount of Euro35.000.000
- The average number of employees during the financial year does not exceed 250.

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## Ongoing obligations

### 9. Annual return

In accordance with section 118 every company shall once at least in every year, file an annual return with the Registrar of companies in a form as is required by the Registrar. This return should include details and particulars of registered shareholders, directors and secretary as well as up-to-date information about the capital structure of the company.

In accordance with section 121 the accounts of the company (in the Greek language) as have been approved in the annual general meeting of the members should be annexed to the annual return. The annual return must be completed within forty-two days after the annual general meeting for the year, and the company must forthwith forward to the registrar of companies a copy signed both by a director and by the secretary of the company.

### 10. Annual Duty

All companies (except for dormant and those not owning any assets) are required to pay an annual fixed duty of €350 to the Registrar of Companies. This duty is not applicable during the year of incorporation of a Cyprus company.

The duty for 2011 is due by 31 December 2011 and for subsequent years by 30 June.

Late payment of the fee will give rise to the following penalties:

- in case of up to a 2-month delay – a 10% penalty;
- in case of a delay between 2 and 5 months – a 30% penalty.

The Registrar of Companies may deregister the company in case of further delay.

If a company is re-instated within a 2-year period from its strike-off a fixed penalty of €500 (in addition to the outstanding amount of the fee) is imposed. The fixed fee will be increased up to €750 where a company is re-instated after the 2 year period.

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### 11. Annual tax return

In accordance with the Assessment and Collections of Taxes Law every company shall submit an income tax return (Form IR-4), by the end of the calendar year, following the year of assessment.

For example the tax return for the calendar year ending on the 31st of December 2010 should be submitted by the 31st of December 2011.

### 12. Audit requirement

The Companies Act excludes most of the companies from the requirement of an audit. However, Cyprus tax laws specifically mention that in order for the tax office to allow any tax expenses the accounts submitted should be audited. As a result, there is an indirect requirement to have an audit for a Cyprus company.

#### 12.1 Who appoints the first auditor of the company?

The members of the company at their annual general meeting appoint the auditor. The directors can appoint the first auditor, but this appointment requires the approval of the members. There are special provisions in the Companies Law that deal with the appointment, removal, disqualification and resignation of auditors.

#### 12.2 Who can act as an auditor of a company?

Qualified persons for auditing purposes according to the law are members of a body of accountants established in Cyprus. All of the big international accounting firms are represented on the island with member or correspondent firms.

Auditors are required to report on the financial statements audited by them and their report must contain statements regarding the true and fair view of the financial statements, whether they have obtained all the information and explanations necessary for the purpose of their audit, whether proper books of account have been kept and the financial statements are in agreement with them and whether the financial statements comply with the relevant legislation. They are also required to report on the consistency of the directors' report with the financial statements.

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