



Issues Relating To Organizational Forms And Taxation

CYPRUS

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- 1. Identify the forms of organization available in your jurisdiction and discuss the advantages and disadvantages of each (eg., corporation, limited liability company, partnership, limited partnership, co-operative, etc.), describing which type of legal entity is mostly used or is of special interest, namely by foreign investors.**

There are various forms of organisation that can be formed under Cyprus legislation and these include the private limited company and the public limited company formed pursuant to the Cyprus Companies Law Cap. 113 (as amended); and the general and limited partnerships which can be formed pursuant to the Partnerships and Business Names Law Cap. 116 (as amended).

Private Limited Company

The two major advantages of private companies are their distinct legal personalities and the limitation of their members' liability to the amount of their contribution to the share capital of the private company. The Cypriot legislation is less restrictive in relation to director dealings with a private company as opposed to a public company. A private company is prohibited from issuing any invitation to the public to subscribe for any shares or debentures of the company.

There are two types of private companies: (i) private companies limited by shares subscribed by the members; and (ii) private companies limited by a guarantee to a specific amount by each member.

The private companies limited by guarantee are most commonly used for non profit making or for charitable purposes rather than for commercial purposes and they are therefore rarely used. The private company limited by shares is the vehicle most preferred by foreign investors, especially where a group holding company or joint venture structure is required.

Public Limited Company

A public limited company may offer its shares and debentures to the public. The liability of the members is limited to the share capital subscribed. Compared to the private limited company, a public limited company has increased formality requirements. This type of company is not commonly used by foreign investors unless the intention is to list the securities of the company on a stock exchange or attract a large number of members (more than 50).

Partnerships

The main difference between partnerships and limited liability companies is that in the case of partnerships the liability of the partners is unlimited. In addition partnerships require less formalities (and therefore expenses) compared to limited liability companies. This form of organization is not preferred by foreign investors, because partners have unlimited liability and because it is considered by the Cypriot Inland Revenue as a transparent tax structure. Cypriot legislation recognizes the following two types of partnerships:

General Partnership

Under general partnerships, every partner is liable severally and jointly with the other partners, without limit on its liability, for all debts and obligations of the partnership incurred while he is a partner. All the partners are entitled to participate in the management of the partnership equally and each partner is entitled to represent and bind the partnership.

Limited Partnership

A limited partnership consists of at least one general partner liable for all the debts and obligations of the partnership and one or more limited partners who contribute a fixed amount to the partnership's capital. The liability of the limited partners is limited to the fixed amount of their contribution. The limited partners are not entitled to participate in the management of the partnership and they are not allowed to represent and bind the partnership by their signature.

2. Are there attributes of the form that you consider unique to your jurisdiction?

No.

3. Describe the management and governance structure for each organizational form.

Private and Public Companies

The business of a private or a public company is generally managed by its directors with the exception of certain matters, which the Cyprus Companies Law Cap.113 expressly reserves for the competence of the members of the company. For example, decisions relating to the day-to-day management of a company, such as approval of agreements, disposition of assets and recommendation of dividends are taken by the directors of the company. On the other hand, decisions relating to the amendment of the Memorandum and Articles of Association of the company, liquidating the company or reducing its share capital, are matters reserved for the general meeting of the members of the company. The Articles of Association may limit the powers of the directors of a company further.

Private limited companies must have at least one director, whereas public limited companies must have at least two directors. The Board of directors of a company may pass resolutions during meetings or by way of a written resolution. Similarly the members of a company may pass resolutions at general meetings or by way of written resolutions passed in lieu of a general meeting.

Partnerships

Partnerships are managed by their partners as they do not have directors or members. The Partnerships and Business Names Law Cap. 116 does not impose any requirements as regards the form of management of a general partnership, therefore the partners are free to arrange the management structure of the partnership in their preferred manner. As regards limited partnerships, the general partner is empowered to manage and bind the limited partnership.

4. Is there a residency requirement for management or owners? In particular, are there restrictions or prohibitions on foreign investors to perform, or have interests in, specific activities?

Subject to the issues discussed in the next paragraphs, there is no requirement for the directors or shareholders of a company (whether private or public) or the partners of a partnership to be Cypriot residents. Consequently, there are no restrictions on foreign investors managing or having interests in such Cypriot forms of organization.

A. Taxation Requirements for residency

In order for a limited liability company to be considered a tax resident of Cyprus, and thus be in a position to benefit from the favourable Cyprus tax regime, its "management and control" must be exercised within Cyprus. There is no precise definition for the term "management and control", and all relevant facts and circumstances will be considered. In practice, the OECD model convention definition of "management and control" is followed by the Cyprus tax authorities and the following are indicative situations when the "management and control" test would be satisfied:

- (i) the directors or their majority are Cypriot residents; and
- (ii) the Board Meetings should be held in Cyprus; and
- (iii) the key management and commercial decisions are made within the Republic of Cyprus.



B. Limitations and requirements in relation to regulated activities

There are a number of activities which are regulated and would require a specific administrative licence prior to commencing operations, such as banking, insurance, educational and financial services.

For example, limited liability companies which propose to provide financial services regulated under the Investments Firms Law (N.144/2007) as amended, must first obtain a licence from the Cyprus Securities and Exchange Commission. One of the prerequisites for obtaining such a licence is the disclosure of the identity, professional qualifications and relevant experience of the directors and shareholders (including ultimate beneficial owners) of the company to the Cyprus Securities and Exchange Commission.

The Cyprus Securities and Exchange Commission may refuse to grant the relevant licence if they are not satisfied as to the suitability and fitness of the shareholders and/or they deem the professional experience of the persons that will be appointed as directors inadequate or unsatisfactory or if they think there is any risk for the correct and prudent management of the company. Furthermore, at least one of the directors and specifically, the person who will be employed on a full time basis and be responsible for the day to day management of the company, must be a Cypriot resident.

C. Requirements in relation to the ownership of real estate property situated in Cyprus.

There are restrictions on the ownership of immovable property in Cyprus by third country nationals (i.e. non-EU citizens and corporate entities owned by third country nationals, including corporate entities registered in the Republic of Cyprus).

According to the Acquisition of Immovable Property by Aliens Law, Cap. 109, as amended, the acquisition of a secondary residence (i.e. holiday home or office premises for foreign entities) in Cyprus by third country nationals, is subject to limitations as regards the maximum size of the land (approx. 4000m²) and the number of properties that can be purchased (only 1). Moreover, family members cannot own more than one property unless they are financially independent adults and/or comprise separate family units.

In order to register such property in their name, third country nationals are required to apply for and obtain permission from the local District Administration Office where the property is situated. With the exception of the type and size of the land mentioned above, third country nationals are not entitled to own any other immovable property.

The above restrictions apply equally to non-EU corporate entities and Cyprus companies owned or run by third country nationals. Foreign entities that have bearer shares cannot own immovable property.

A Cyprus company may invest in land (as opposed to a secondary residence or office premises), for as long as no third country national has a controlling majority on its board or has a shareholding or voting majority of more than 49%, in all cases.

For immovable property acquisition other than for a secondary residence, investors from third countries must have a local or EU partner who will hold not less than 51% of the shares and/or the votes and/or the seats on the board of a corporate entity..

5. Describe the extent to which management and owners are exposed to liability.

Public and Private Companies

The liability of the members of a private and/or a public company is limited to their contribution to the share capital of the company.

In general, the directors of a Cyprus company owe a duty to manage the company in accordance with the provisions of Cyprus Law and within the regulations of the Memorandum and Articles of Association of the company and failure to do so will lead to the directors being liable for breach of their fiduciary duty. The directors may face liability if their actions fail to meet the following standards:

- Directors must act in accordance with their duty of good faith and in the best interests of the company;
- Directors must exercise their powers for the particular purpose for which they were conferred and not for some extraneous purpose;
- Directors must not fetter their discretion to exercise their powers from time to time;
- Directors must not, without the consent of the company, place themselves in a position in which there is a conflict between their duties and their personal interests;
- Directors must display a reasonable degree of skill that may be expected from a person of his knowledge and experience.

Partnerships

Under general partnerships, every partner is liable severally and jointly with the other partners, without limit on its liability, for all debts and obligations of the partnership incurred while he is a partner.

In limited partnerships the general partner(s) is liable for all the debts and obligations of the partnership and the limited partner(s) is liable only to the extent of their contribution of the fixed amount to the partnership's capital.

6. Ownership interest: (i) how is it represented? (ii) is it transferable?; and (iii) is there a minimum number of owners?

(i)

Private and Public Companies

The ownership interest in a company limited by shares (whether public or private) is reflected by the shares which the company allotted to its members. Members are usually given a share certificate stating the number of shares which they own. Shares of Cypriot public companies listed in the Cyprus Stock Exchange may be held in uncertificated form through the electronic settlement system of the Central Depository of the Cyprus Stock Exchange.

Companies limited by guarantee do not have a share capital and therefore do not issue any share certificates. Their members guarantee a sum of money which represents their interest in the company.

Partnerships

The partnership interest is usually stipulated in the partnership agreement as a percentage since partnerships do not have share capital.

(ii)

Private and Public Companies

Subject to any restrictions contained in the Articles of Association of a company, the members may freely transfer their shares to another person. In order to transfer the shares, an instrument of transfer must be executed by the transferor and the transferee and be delivered to the company for registration. The company will need to record the transfer in its register of members or give notice to the transferee of its refusal to transfer the shares explaining why. Uncertificated shares can be transferred through the procedures of the Central Depository of the Cyprus Stock Exchange.

The transfer of the membership in a company limited by guarantee is subject to the company's articles of association.

Partnership

The transfer of an interest in a partnership is subject to the provisions of the partnership agreement. A partnership will be dissolved if one of the partners gave notice of his intention to leave the partnership, unless the partnership agreement provides that this would not result in the dissolution of the partnership and specifies the procedure for transferring the interest of the departing partner.

(iii)

Private companies must have at least one member whereas public companies must have at least 7 members. A partnership must have at least two partners.

7. Is there a minimum capitalization?

A public company must have a minimum share capital of approximately Euro 26,000 whereas there is no minimum amount of share capital requirement for private companies. Partnerships have no minimum capitalization requirements.

8. Is there a security that can be issued to the public?

Public companies may offer their securities to the public. Private companies are not allowed to offer securities to the public. Partnerships do not issue securities to the public.

9. Can the form incur debt, or grant security for debt?

Companies and partnerships may incur debts as well as grant security over their assets in order to secure the debt. The members of a company are not liable for the debts of the company, whereas the partners of a general partnership are liable for the debts of the partnership.

10. What is the duration of the form? Can it be renewed?

Private and Public Companies

Subject to any contrary provisions in the Articles of Association, a company does not have a fixed term. A company will continue its existence unless struck off the companies register or wound up. Once a company has been dissolved and/or struck off the register of companies, it may only be restored by order of the Court or in limited circumstances, on application by a former director or member.

Partnership

The duration of a partnership will depend on the terms of the partnership agreement. Partnerships are set up for a fixed term and will be dissolved once the term expires, or for an indefinite term and will dissolve by notice given by one of the partners (unless the partnership agreement specifies otherwise – see question 6(ii) above). The term of the partnership may be fixed for a specific activity or business and will come to an end when that activity or business will cease or it may come to an end by the bankruptcy or death of one of the partners (again subject to the provisions of the partnership agreement).

11. Describe the process, customary time period and approximate cost of establishing the form.

Private and Public companies

The formation of a new company requires the filing with the Cyprus Registrar of Companies of forms HE1, HE2 and HE3 together with the Memorandum and Articles of Association of the company. If the company is a public company it will also need to file form HE5. The average time required for the incorporation is 8 to 10 business days although the Cyprus Registrar of Companies has in the past few years launched a service whereby the company may be incorporated within the same date.

The cost will depend on the amount of the share capital of the company (as there is a capital duty of 0.6% payable on the amount of the authorized share capital of the company). For example, a company with a share capital of Euro 2,000 would incur approximately Euro 800 as incorporation expenses. This does not include fees of local professionals undertaking the service of incorporation. Such fees vary.

Alternative to incorporating a new company, there are opportunities to acquire an existing dormant company (shelf company) with standard articles of association. In such a case, it will be necessary to complete the transfer of the shares from the nominee members/subscribers to the new members of the company and if required, to change the composition of the Board of Directors. The changes can be completed within a day or two and the cost will be similar to the one for the incorporation of a new company.

Partnerships

A partnership can be incorporated by filing with the Cyprus Registrar of Companies the relevant form O.E. 1 and paying the relevant fee. The time taken to incorporate a partnership is similar as that for a company. The incorporation expenses will be approximately Euro 160. This does not include fees of local professionals undertaking the service of incorporation and/or drafting a partnership agreement (if requested). Such fees vary.

12. Are there requirements for the government (central or local) to be part of a project or investment vehicle or receive part of the profits arising therefrom (apart from taxes)?

There is no such requirement under Cypriot legislation.

13. For what taxes is the form liable?

Private and Public companies

Companies are subject to:

- (a) 10% corporate tax on their worldwide profits;
- (b) 15% special defense contribution on interest received from activities which are not from the ordinary business of the company;
- (c) 3% special defense contribution on rents received;
- (d) 20% special defense contribution on dividends received from subsidiaries which are incorporated outside Cyprus, provided that more than 50% of the activities of the subsidiary relate to investment activities and the tax rate of the country where the subsidiary if incorporated is less than 5%.

If the company is not a Cyprus tax resident but operates in Cyprus through a permanent establishment, the company will have to pay Cyprus corporate tax only on the profits attributable to the Cyprus permanent establishment.

Corporate tax is payable in three installments during the tax year (1st August, 30th September and 31st December) and a final balance payment is payable by 31 December of the year following the tax year.

A company which makes chargeable supplies in excess of Euro 15.600 per year in any 12 months period will be required to register with VAT and must charge VAT on provision of goods and services. Currently the standard VAT rate is 15%.

If a company has employees, it will be obliged to deduct income tax and social security contributions from the employees' gross salary under the Pay-As-You-Earn system. In addition, the company will have to pay social security contributions for the employee.

Partnerships

For tax purposes a partnership is treated as “transparent” so that any tax liability arising from the partnership’s business is assessed not against the partnership as a body, but against each of the members of the partnership.

VAT, PAYE and employer’s social security contributions apply to the partnerships in the same way as they apply to companies.

14. What is the tax treatment of payments to foreign owners?

Pursuant to Cyprus legislation, there is no withholding tax on payment of dividends, interest or royalties. This applies for payments from companies and partnerships to non-Cyprus tax resident individuals and companies.

15. Is there a tax treatment which would impact foreign owners differently than owners resident in the jurisdiction?

There is no special or adverse tax treatment for foreign owners which is different from that of Cyprus tax resident shareholders.