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**ANTIS TRIANTAFYLIDIS & SONS LLC
ESTABLISHING A BUSINESS ENTITY IN CYPRUS**



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ESTABLISHING A BUSINESS ENTITY IN CYPRUS



“Establishing a Business Entity in Cyprus”

Mr. Stelios Triantafyllides
Partner
Antis Triantafyllides & Sons LLC –
Nicosia

1. INTRODUCTION

Having been a former British colony for several years of its history (from 1878 until its independence in 1960), the legal system of the Republic of Cyprus (hereinafter “**Cyprus**”) follows, to a great extent, an Anglo-Saxon approach and thus contains many elements of common law principles even to this day. One such example is the practice of company law. The formation of a company and the overall procedure for establishing a business in Cyprus is governed by the Cyprus Companies Law (Cap.113) (the “**Companies Law**”), the drafting of which has its basis in the English Companies Act of 1948. In addition, as Cyprus has also been a member of the European Union (the “**EU**”) since 2004, any legal procedures and legislation have been drafted to comply with EU laws and regulations.

2. TYPES OF BUSINESS ENTITIES

(a) Description of the types of entities available in each jurisdiction through which to conduct business

(i) Limited Liability Company

In Cyprus company law, the most common type of entity is the limited liability company, which may be divided into two forms: companies limited by shares and companies limited by guarantee:

(A) Company Limited by Guarantee

This type of company has the liability of its members limited by the

memorandum of association to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event that it is wound up. It is worth noting that this form of company is usually used for charities and non-profit organisations.

(B) Company Limited by Shares

This type of company has the liability of its members limited by the memorandum of association to the amount, if any, unpaid on the shares respectively held by them.

Companies limited by shares may be further separated into two types: private limited companies and public limited companies. Between the two types, private limited companies tend to be the most popular company model of choice.

(i) Private Limited Company

This is defined to mean a company which:

- Restricts the right to transfer its shares;
- Limits the number of members to 50, not including 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 determination of that employment to be, members of the company; and



- Prohibits any invitation to the public to subscribe for any shares or debentures of the company.

(II) **Public Limited Company**

On the other hand, a public limited company is a company which does not constitute a private one. Some of the main requirements for a public limited company are set out below:

- Its shares are easily transferable.
- In order for such a company to commence business, it must firstly obtain a trading certificate from the Department of the Registrar of Companies and Official Receiver (or the “**Registrar of Companies**” or “**RoC**”).
- The company must also obtain a certificate from the RoC confirming that the nominal value of the issued share capital of the said company is at least equal to the minimum required share capital.
- If directors are appointed by the company’s articles of association, the consent of these directors must be filed on incorporation.
- It must hold a statutory meeting and its directors must make a statutory report to its members.

- Only public limited companies may issue share warrants.
- Before issuing any shares or debentures to the public, it must issue a prospectus or a statement in lieu of prospectus.

(ii) **Partnership**

The current law pertaining to partnerships in Cyprus is set out in the General and Limited Partnership and Business Names Law (Cap. 116) (the “**Partnership Law**”), which defines ‘partnership’ as a relationship between persons carrying out business together with a view of making a profit. However, contrary to limited liability companies, partnerships are *not* regarded as legal entities separate from their partners.

The maximum number of partners engaging in any type of activities is one hundred (100) partners; if however it is conducting banking activities, the maximum number is ten (10) partners.

The Partnership Law provides for two types of partnerships:

(A) **General Partnership**

This is a partnership where every general partner may be jointly and severally liable with all the other partners for all the debts and obligations incurred by the partnership.

(B) **Limited Partnership**

Such partnership must consist of one (1) or more general partners, who shall be liable for all the debts and obligations of the partnership and the rest of the partners have limited liability, meaning that they shall only be liable for debts



and obligations up to the amount they have contributed to the partnership.

As of 2015, the Partnership Law was amended to also allow the formation of partnerships limited by shares, also known as LLPs (i.e. limited liability partnerships). An LLP must have at least one (1) general partner and at least one (1) limited partner, the liability of which is limited to the amount which remains unpaid (if any) in relation to the shares that they hold.

(b) Matters to be Considered when Choosing a Particular Business Entity Type

When selecting which business entity type is most suitable, it is important that the clients carefully consider their requirements and commercial needs fully, noting that our team would be happy to assist and advise in this regard.

3. STEPS AND TIMING TO ESTABLISH

(a) Brief Overview of Steps to Incorporate/Constitute a Cyprus Entity

The regulatory body in Cyprus responsible for the incorporation of companies and for keeping the register of companies is the RoC, which comes under the Ministry of Energy, Commerce, Industry and Tourism.

(i) Limited Liability Company

In a nutshell, the main requirements needed for the incorporation of a new limited company in Cyprus are the following, noting that once all the below information is received, the actual registration procedure takes approximately one (1) week:

(A) Company Name

The proposed name of a company to be incorporated must firstly be approved by the RoC. The name must not be similar to

that of an existing company, or to be in any way misleading, confusing or overly descriptive.

Furthermore, the name of a private limited company must include the words 'Limited' or the abbreviation 'Ltd' (or the Greek respective 'Λίμιτεδ' or 'Λτδ') and the name of a public limited company should include the words 'Public Company Limited' or the abbreviation 'Plc' (or the Greek respective 'Δημόσια Εταιρεία Λίμιτεδ' or 'Δ. Ε. Λτδ').

(B) Memorandum and Articles of Association

Every Cyprus company must have a Memorandum of Association which will specify the main objects for which the company is formed, in order to also be able to prepare the Articles of Association. An important clause that must be included in the Memorandum is the 'limited liability' clause, i.e. stating clearly that the liability of its members is limited.

The Articles of Association are essentially the 'constitution' of the company. They set out the rights and duties of the company, its shareholders and its directors, and collectively these form a set of regulations that defines how the company will be managed.

Both of these, which also contain the information of and are signed by the subscribers (i.e. the first shareholders) and directors of the company, are generally filed with the RoC in Greek. The said documents must also be signed by a lawyer practising in Cyprus.

(C) Share Capital

A limited liability company in Cyprus must have an authorised and an issued share capital. When incorporating such company, it is necessary to specify the amount of the



nominal capital of the company and how it is going to be divided, noting that a stamp duty on the authorised share capital is due to the RoC of 0.6%. Also, it is noted that the share capital may be denominated in any currency.

For private limited companies, there is no minimum or maximum share capital requirement, yet public limited companies must have a minimum share capital of EUR 25,629. However, it is noted that every subscriber that signs the Memorandum of Association may not subscribe to less than one share.

(D) Shareholders / Ultimate Beneficial Owners

The shareholders of a Cyprus company may be either natural or legal persons and may be residents and/or nationals of any country. Moreover, they can be either registered as direct shareholders, or they may hold the shares on trust as nominees for another person known as the ultimate beneficial owner of the company.

Private limited companies must have a minimum number of members of one (1) and a maximum of fifty (50). For public limited companies, the minimum number of members is seven (7) and there is no maximum number. However, it is important to remember that, if at any point the number of members of a public limited company falls below seven (7) and the company nonetheless carries on its business for more than six (6) months with this reduced number of members, the members will be severally liable for paying any debts of the company during that period of time and may therefore be severally sued.

Furthermore, when incorporating a new company or whenever there is a change in shareholders or ultimate beneficial owners,

it is important to register their details (i.e. their names, addresses, occupations, passport details and nationalities) with the RoC, as well as the proportion of shares that they intend to hold in the company. It is important to remember that, due to the fact that the company is considered a separate legal person from its members, any liability that they might owe is limited to the amount that they have paid to the company.

(E) Directors and Secretary

A Cyprus company needs to have a board of directors which has the authority to act on behalf of the company. The very first directors of a company are appointed by the first subscribers. The minimum number of directors for private and public limited companies is one (1) and two (2) respectively. It must be noted that directors can be either natural or legal persons.

A company must also have a secretary in Cyprus, who administers the company and keeps its corporate records. As is the case with the directors, the secretary may be either a natural or a legal person. In cases where a company has a sole director, this director cannot also be the company's secretary. However, there is an exception in the case of a private limited company which has one only shareholder; if its director is also the only shareholder, they may also be the secretary.

Upon the appointment of any new directors and/or secretary, their names, addresses, occupations, passport details and nationalities must be registered with the RoC.

(F) Registered Office

The company must have its registered office in the territory of Cyprus to which all



communications, notices and any official documents of the company may be addressed.

(ii) Partnership

The partners in a partnership usually regulate their affairs by a private partnership agreement. In order to register a partnership in Cyprus, a written statement signed by all the partners needs to be submitted with the RoC one month after the incorporation of the partnership. This written statement must include the following information:

- (A) The name of the partnership;
- (B) The nature of business activities;
- (C) The place of business;
- (D) Information about the partners including *inter alia* their names, nationalities, usual residency and business occupation;
- (E) The date of commencement of the partnership;
- (F) A statement indicating whether the partnership is a limited partnership;
- (G) The shares and capital contribution that has been allotted to each limited partner and/or the sum which each limited partner will contribute; and
- (H) The names of the general partners who are authorised to administer the affairs of the partnership, to manage it and sign for it.

4. GOVERNANCE, REGULATION AND ONGOING MAINTENANCE

(a) Brief Summary of Regulation of Each Type and Ongoing Maintenance, Reporting Requirements

(i) Auditors

The shareholders of a Cyprus company must, at every annual general meeting, appoint the auditors of the company, to hold office from the conclusion of that, or until the conclusion of the next, annual general meeting.

(ii) Book-keeping of Accounts

The directors of a Cyprus company have a legal requirement to ensure that proper books of accounts and records are kept, which shall in turn be used for the preparation of the financial statements (as indicated below). These records should accurately portray the financial position of a company at any given time and should include information on, *inter alia*, sums received and spent by the company, transactions, assets and liabilities of the relevant company.

(iii) Annual General Meetings & Audited Financial Statements

All companies registered in Cyprus are required hold an annual general meeting (the “AGM”) every year. The first AGM must take place within eighteen (18) months of the date of incorporation and after that, every calendar year, without exceeding fifteen (15) months from the date of the previous AGM.

Furthermore, Cyprus companies must prepare audited financial statements (on the basis of the International



Financial Reporting Standards), which are filed with the RoC in order to then file their annual returns. This must be done even if a company has been relatively dormant during a particular year. Failure of a company to comply with any filing obligations potentially renders its directors personally criminally liable for non-compliance.

(iv) Annual Returns

A Cyprus company is required to prepare an annual return (the HE32 form) every calendar year within fourteen (14) days from the date of the AGM and submit same to the RoC within twenty-eight (28) days from its preparation (i.e. a total of forty-two (42) days from the date of the AGM). The annual return must include information on the registered office of the company, its register of members, its shares, its directors, its secretary and its indebtedness.

(v) Tax

All companies registered in Cyprus have an obligation to submit annual tax returns (the IR4 form) to the local tax authorities, which are prepared based on the company's audited financial statements. Such submission must be conducted electronically within fifteen (15) months from the end of the tax year, namely the 31st December.

It is also useful to note that a uniform corporate income tax rate of 12.5% is imposed on companies which are tax residents in Cyprus and profits from the disposal of any securities are exempt from income tax.

In addition, it is important to note that dividends are exempt from income tax.

Dividends received or deemed to be received by a resident of Cyprus are subject to a "special contribution for defence" tax at a rate of 17%, except in the following cases:

- (A)** A company that is a resident of Cyprus is exempt from the special contribution tax on dividends if it receives the dividend from another company, which is a resident of Cyprus.
- (B)** A company that is a resident of Cyprus is exempt from the special contribution tax on dividends if it receives the dividend from another company which is not a resident of Cyprus. This exemption will not apply if: (a) the payer engages directly or indirectly more than 50% in activities which lead to investment income and (b) the foreign tax burden of the payer is substantially lower than the tax burden of the recipient.

With respect to interest, if the interest is received in the recipient's ordinary course of business or in close relation to it, it will be taxable as trading income at the corporate tax rate of 12.5%.

If the interest is received not in the recipient's ordinary course of business or in close relation to it, it will not be subject to income tax but to "special contribution for defence" tax at a rate of 30% which is levied on the gross interest received and, therefore, if substantial interest is expected, it is better to create a dedicated finance company so that it would come under the sphere of corporate income tax.

**(vi) Annual Levy**

All companies registered in Cyprus (whether active or dormant) have a legal obligation to pay an annual charge of EUR 350 to the RoC by the 30th June of each year, in order to remain on the register of companies held by the RoC.

Late payments are subject to penalties (a 10% penalty for a 2-month delay and a 30% penalty for up to a 5-month delay). Non-compliance with this obligation allows the RoC to proceed with striking off any such non-compliant company from the register of companies held by the RoC.

(vii) Registers

It is the responsibility of the secretary of a Cyprus company to ensure that all the registers of the company (such as the register of members) are kept up-to-date.

(viii) Due Diligence / Know-Your-Client

Pursuant to the Prevention and Suppression of Money Laundering Activities Law of 2007, law firms, financial institutions, accountant firms and, in general, the service providers of a Cyprus company, have an ongoing obligation to verify the identity of their clients, and are subject to periodic inspections to ensure that this obligation is met. It is therefore essential that up-to-date records are maintained, which clearly evidence the chain of ownership of a company, starting from its registered shareholder(s) and leading up to its ultimate beneficial owner(s).

(b) Requirements for Local Shareholding / Directors**(i) Administrative Service Providers**

In order for a person (legal or natural) to be able to provide administrative services to a Cyprus company (i.e. provide directors, secretary etc.), such person must comply with the Law on Regulating Companies Providing Administrative Services and Related Matters of 2012.

(ii) Management and Control of a Cyprus Company

While there is no legal requirement that the directors of a Cyprus company are residents of Cyprus, under domestic tax laws, the test for tax residency is where 'management and control' of the company lie. Having the management and control of a Cyprus company *in Cyprus* allows the company to take advantage of the double tax treaties in relation to Cyprus and thus be considered a tax resident of Cyprus.

It is important to stress that the phrase 'management and control' has not been defined, neither statutorily nor judicially. However, circulars issued by the Cyprus tax authorities on this issue have suggested that the conventional position is that the minimum requirement is for the main management body of the company to be located in Cyprus and for their meetings to be held in Cyprus. In simple terms, this means that a company is considered as having its management and control in Cyprus if the following two requirements are complied with:



- (A) The majority of the board of directors must comprise of Cyprus tax residents; and
- (B) The board meetings of the company should take place in Cyprus.

Furthermore, circulars issued by the Cyprus tax authorities have also indicated that there are some additional requirements that may strengthen the Cyprus tax residency of a company. These additional requirements are listed below:

- (A) To maintain the statutory books and records of the company in Cyprus;
- (B) For the company not to issue any general powers of attorney to persons who are not tax residents of Cyprus;
- (C) To maintain the corporate seal of the company in Cyprus;
- (D) For directors or other tax residents of Cyprus to have control over the bank account of the company;
- (E) To maintain the bank accounts of the company in Cyprus; and
- (F) To hold the shareholders' meetings of the company in Cyprus.

Moreover, it is important note that, given that, if a company is a tax resident of Cyprus, this can only result in possible taxation being paid in Cyprus, the Cyprus tax authorities are not likely to challenge aggressively an argument of residency in Cyprus.

Therefore, the question of what steps should be taken to ensure tax residency

in Cyprus is, to a large extent, an issue under the laws of the country where the company will seek tax treaty protection, and it is advisable to seek guidance on the matter in that country as well.

(c) Minority Shareholders' Rights and Protection

Minority protection under Cyprus company law arises both from common law and from legislation.

(i) Common Law

The judicial principle on the protection of minority shareholders derives from the English case *Foss v Harbottle* (1843), which held that in the case where a claim is brought against the company, it is the company – and not its shareholders – that is the claimant.

However, exceptions have developed in order to protect the minority shareholders of the company from litigation claims where it is the majority shareholders that are acting illegally towards the minority, allowing thus the minority shareholders to bring a claim themselves. Such exceptions are:

- (A) Acts that are *ultra vires* (i.e. exceed the company's powers) or illegal;
- (B) Acts that require a special majority in a general meeting of the company;
- (C) Acts that violate the shareholders' personal rights; and
- (D) Where an act constitutes fraud against the minority and the wrongdoers are the persons controlling the company.

**(ii) Legislation**

Pursuant to Section 202 of the Companies Law, this provision may be invoked where the following conditions apply:

- (A)** The company's affairs are carried out in a manner that is oppressive to members of the company who constitute the minority shareholders;
- (B)** The court would be legally justified in issuing a winding-up order on the grounds that it is just and equitable to dissolve the company; and
- (C)** The winding-up of the company would unfairly prejudice the minority shareholders.

In addition, Section 202 of the Companies Law also sets out the possible remedies that the court may order following a minority shareholder claim on the ground of the same provision. In this respect, the court may issue one of the following orders:

- (A)** An order to regulate the future conduct of the company's affairs;
- (B)** An order for the purchase of the shares of any members of the company by other members of the company; or
- (C)** An order for the purchase of the shares of any members of the company by the company itself and a corresponding reduction of the company's capital.

5. FOREIGN INVESTMENT, THIN CAPITALISATION, RESIDENCY AND MATERIAL VISA RESTRICTIONS**(a) Any Special Business or Investment Visa Issues****(i) EU Citizens**

As a general rule, nationals who are citizens of an EU member state, of a state which is part of the European Economic Area (i.e. the EU plus Iceland, Liechtenstein and Norway), and Switzerland, have the right to live and work in Cyprus for up to three (3) months by showing a valid EU passport or identity card, due to the right to free movement of persons that exists between EU member states, European Economic Area member states and Switzerland.

If the aforementioned nationals intend to stay and/or work in Cyprus for longer than three (3) months, they must register with the Civil Registry and Migration Department (the "CRMD") within four (4) months of their arrival in Cyprus in order to obtain the necessary residence permit.

(ii) Third-Country Nationals**(A) Visas**

Third-country nationals are permitted to enter Cyprus (via its legal ports of entry) with either a business or a tourist visa. This may be a 'short-stay visa', i.e. for a maximum of ninety (90) days within six (6) months; or a 'multiple entry visa' for up to five (5) years, where the duration of the stay does not exceed ninety (90) days in any 180-day period, starting from the date of first entry.



Applicants wishing to apply for a visa to enter Cyprus may lodge their visa application, along with the requested supporting documentation, at the Consular offices at the Diplomatic Mission (or Consulate) of Cyprus in their country of habitual residence, or in the country which they intend to use as transit when travelling to Cyprus.

It is important to note that one of the requested supporting documents is an invitation letter from the host in Cyprus, containing the host's contact information. An Assumption of Responsibility form may also be required.

More information on the procedure for applying for a visa to enter Cyprus, as well as which countries' nationals require visas can be found on the official website of the Ministry of Foreign Affairs, at the following link: http://www.mfa.gov.cy/mfa/mfa2016.nsf/mfa81_en/mfa81_en?OpenDocument.

(B) Temporary Work / Residence Permits

In order for third-country nationals to be permitted to live and work in Cyprus, they must apply and obtain a work permit suitable for their needs from the CRMD. There are several types of work permits and the relevant application form for most of these permits allows the potential applicant to apply simultaneously for an entry permit, a residence permit (either temporary and permanent, depending on the permit being

applied for) and, of course, the work permit itself.

One of the most popular temporary residence and work permits for third-country nationals is the one relating to third-country nationals who are employed by Cyprus companies of foreign interests. In a nutshell, the main points regarding this type of permit are indicated below:

- (I) Over 50% of the employer's shareholding must consist of foreign participation, and where the foreign participation is equal or less than 50% of the company's total share capital, the participation percentage should represent an amount of at least EUR 171,000.
- (II) The company must operate from self-contained offices in Cyprus, located in suitable distinct premises, which are not part of a private residence or another office.
- (III) The potential applicant must fall under one of three categories (i.e. director; middle-management executive and other key personnel; or supporting staff) and receive the respective monthly salary.
- (IV) The permit is valid for up to two (2) years with a right of renewal.



- (v) The potential applicant has the right to also bring their family members along for the duration of their employment in Cyprus.

About our firm

The law firm of Antis Triantafyllides & Sons LLC (www.triantafyllides.com) was founded in 1955. It is one of the oldest and best-established law firms in Cyprus, providing high quality legal services in all areas of law to corporations, institutions, government entities and high net worth individuals.

The firm's main practice focuses on domestic and international corporate law and banking and finance law. The firm also boasts one of the strongest litigation teams in the country and a premier tax department. All of the firm's teams consist of both local and overseas qualified lawyers and legal consultants, who bring the value of their international experience to the firm and ultimately to our clients.

Mr. Antis Triantafyllides, the founder of the firm, was the Cyprus member of the Court of Arbitration of the International Chamber of Commerce throughout the greater part of his legal career.

Antis Triantafyllides & Sons LLC offers:

- An optimum service to clients in terms of high-quality transactional work combined with practical advice.
- Depth of knowledge and technical expertise in a number of fields including financial services and regulation, structured finance and debt capital markets, and public and administrative law.
- Local expertise with an international outlook to provide advice to both our domestic and international clients.

Should you require any further assistance and/or information in relation to any of the matters above, do not hesitate to contact Mr. Stelios Triantafyllides by email at trianta@triantafyllides.com or by telephone at +357 22 360 000.