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ESTABLISHING A BUSINESS ENTITY IN CYPRUS

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ESTABLISHING A BUSINESS ENTITY IN CYPRUS

Introduction

Cyprus is an EU member state and a common law jurisdiction with a legal system similar to that of the UK. It is located at the eastern end of Europe linking 3 continents, Europe, Africa and Asia and it has a long and strong reputation as an international business center.

1. Types of Business Entities

The most common forms of business entities established in Cyprus are (a) limited companies; (b) partnerships; and (c) alternative investment funds. Further, Cyprus international trusts are also commonly formed by non-Cypriot investors and high net worth individuals.

1.A Companies

Cyprus companies are registered under the Companies Law, Cap.113 as amended.

Private Company Limited by Shares

The private company limited by shares is the most common form of entity established in Cyprus. It has legal personality separate and distinct from its shareholders with the liability of shareholders limited to the unpaid amount of their subscribed shares. There is no requirement for a minimum share capital and generally there is no restriction as to its ability to carry on business activities even where its share capital is small.

The company's governance is regulated by the Companies' Law and the provisions in its memorandum and articles of association which may be adjusted as wished by the shareholders to reflect their arrangements.

Key features

- Separate legal personality.
- Full and unlimited capacity.

- Possibility to adjust articles as per shareholders' agreement.
- Limited liability of shareholders.
- No minimum capital requirement.
- Between 1 and 50 shareholders.
- Can have a sole director or more directors.
- No restriction as to nationality or residence of shareholders or directors.

Tax

- Exemption from tax on profits from the disposal of securities (wide definition of what constitutes eligible securities).
- Exemption from tax on dividend income (subject to certain conditions).
- No withholding taxes on repatriation of dividends, interest, and royalties to non-residents.
- 12.5% corporate tax rate.
- Notional Interest Deduction (annual tax expense calculated as a percentage of equity).
- Extensive and continuously growing network of double tax treaties.

Private Company Limited by Shares registered also as Foreign Interest Company

A Cyprus company can employ third country (non-EU) nationals if it meets certain basic requirements under a scheme adopted by the Cyprus Council of Ministers. These employees can be issued employment and residence permits to work and live in Cyprus. The main requirements are the following:



- The majority of the company's share capital must be held by third country national(s).
- Investment of €200.000 should be made in the company.
- The company should operate in independent offices in Cyprus.

After 5 years of residence and work in Cyprus (or after 4 years if they hold a certificate of knowledge of the Greek language) third country nationals can apply for Cyprus citizenship.

Foreign highly skilled employees in Cyprus can enjoy tax exemptions for up to 17 years which can include 50% income tax exemption where salary is at least EUR 55.000 per year.

Public Company Limited by Shares

A public limited liability company is similar to a private company in terms of its features. It must have at least seven shareholders and a minimum share capital of EUR 25.629.

Unlike a private company, a public company is permitted make offerings to the public and can be listed on the stock exchange upon satisfying certain criteria.

1.B Partnership

Partnerships are regulated by the Partnerships and Business Names Law Cap. 116, as amended, and they may be formed either as general partnerships or limited partnerships.

In a general partnership all partners have unrestricted liability for all obligations of the partnership. In a limited partnership at least one partner is treated as a general partner and has unrestricted liability for the partnership's obligations, with the other partners having limited liability up to the amount contributed (or remaining unpaid) by them to the partnership.

Since 2015, a limited liability partnership (LLP) can also be established.

Partnerships are not considered to be separate legal entities and therefore, profits generated by a partnership are taxed as income received by the partners.

1.C Fund

With the enactment of the Alternative Investment Funds Law of 2018, Cyprus has modernized its legal framework regulating the registration and operation of alternative investment funds ("AIFs").

The law permits the registration of AIFs which are self-managed (by their board of directors) or externally managed by a fund manager and may be registered with Unlimited Number of Persons or with Limited Number of Persons, or as "Registered" AIFs.

An AIF may be formed as a company with a fixed capital, a company with variable capital, a common fund, or as a limited liability partnership with or without legal personality.

Key features

- Various legal forms available, including tax transparent ones, to meet investor wishes.
- Cost-efficient and simple to set-up, manage and operate.
- Modern regulatory framework fully in line with relevant EU directives.
- Full transparency through annual audited and half yearly reports to CySEC and investors.
- Reduced reporting requirements.
- Generally, no restrictions imposed by the Regulator on type of investments.



- May be self-managed (subject to the approval of the Regulator).
- May be set-up as umbrella funds with multiple compartments.
- May be listed on Cyprus Stock Exchange and other recognised EU stock exchanges.

Tax

- Most income of a Cyprus tax resident fund is tax free (most dividend income, capital gains).
- Interest income is taxable, but effective tax can be significantly reduced (considering the NID on new equity).
- Services provided by the investment manager of the fund are not subject to VAT.
- No withholding tax on payments to non-residents.
- No subscription tax on net assets of a fund.
- No capital gains tax on disposal of shares/units by the holders.
- No tax on capital gains from the sale of immovable property located outside Cyprus.
- Extensive network of Double Tax Treaties in place with more than 60 countries.

1.D Cyprus International Trust

The legal framework governing trusts in Cyprus is a combination of English Law i.e., the Principles of Equity and local legislation i.e. The Trustees Law (Cap 193) and the International Trusts Law of 1992 as amended.

The International Trusts Law has created one of the most attractive trust legal frameworks in the

world. It offers the opportunity to create trusts to suit complex circumstances and provides also other important advantages.

The settlor of a Cyprus International Trust (CIT) and the beneficiaries must not be tax residents in Cyprus during the year preceding the year of creating the CIT (they may become tax residents subsequently). At least one of the trustees must be Cyprus resident.

Key features

- CITs may be challenged only on defraud of creditor grounds with a 2-year limitation period.
- CIT matters are determined under Cyprus Law and Cyprus Courts have jurisdiction.
- The Settlor can reserve powers including powers to revoke or amend the trust, to appoint and remove trustees, to change the law regulating the CIT and others.
- A CIT may last for an indefinite period.
- The income of a CIT may be accumulated without limitations.
- The law regulating a CIT may be changed to another foreign law.
- The trustees of a CIT are bound by confidentiality.
- CITs are generally transparent for tax purposes.
- Capital gains tax applies only regarding gains from the disposal of real estate situated in Cyprus or shares of a company holding property situated in Cyprus.



2. Steps and Timing to Establish

2.A Company

The incorporation of a Cyprus company is straight forward and comparatively easy. It can usually be completed in approximately one week to ten days. The company's name must be first approved by the Registrar of Companies and thereafter, the memorandum and articles of association of the company signed by the shareholders together with statements signed by the directors are submitted for registration.

2.B Partnership

A partnership exists as from the day on which it commences business. It must inform the Registrar of Companies within 30 days of commencement so that its existence be registered.

2.C Fund

Except where a fund is established as a "Registered Fund" where no licensing is required, in all other cases funds must obtain approval from the Cyprus Stock Exchange Committee. The application process is fairly simple and quick and can be completed within a couple or few months.

2.D Trust

The trust is effective as from the time it is declared and signed by the settlor. The trust instrument must be stamped, and the trustee must notify the relevant competent authority (being either of the Cyprus Securities and Exchange Commission, the Cyprus Bar Association, or the Cyprus Association of Certified Accountants) within fifteen days from the creation of the trust, to lodge it in the Cyprus Trust Registry.

3. Governance, Regulation and Ongoing Maintenance

3.A Company

Governance

Companies operate in accordance with the provisions of the Companies' Law and those in their memorandum and articles of association.

The Companies' Law provides for certain matters which are to be decided by the shareholders. Such matters include the change of the company's memorandum or articles of association, the change of its name, the reduction of its share capital and its liquidation.

It is possible by addition of provisions in the articles to require that further matters are to be decided by the shareholders, and/or to require higher majorities than those provided by the statute for the decisions of the shareholders to be passed.

The way proceedings of the directors are to be conducted and the quorum and majorities required for their decisions are regulated by the provisions in the articles of association.

The articles of association of a company may be amended by shareholders' resolution passed with at least 75% majority of the persons entitled to vote and present at the meeting (subject to anything further that may be provided by the company's articles of association).

Minority protection

Protection to minority shareholders is afforded by mandatory provisions in the Companies' Law which cannot be bypassed by contract or provisions in the articles. Such provisions include the right to call meetings, to obtain certain information and to block the passing of decisions unless the majorities provided by the law are satisfied.



Since the articles of association can be adjusted to reflect the shareholders' arrangement, it is possible to include in them provisions which provide to the minority further protection (for example veto rights, requirement for increased majorities, tag-along and drag-along provisions and other mechanisms to deal with possible deadlocks).

In addition, protection to the minority is afforded by the Companies' Law which permits oppressed or unfairly treated shareholders to apply to the Court for an order to remedy the situation.

Foreign shareholders and directors

The shareholders and directors of a Cyprus company may be non-Cypriots. The secretary of the company must be in Cyprus.

Compliance obligations

Cyprus companies must in each year hold annual general meetings, prepare audited financial statements, submit an annual return, and pay an annual levy of EUR 350.

3.B Partnership

Partnerships operate by decisions of their partners passed in accordance with the partnership agreement. They must keep books of accounts and for this purpose partners (except for LLP partners) must keep proper accounts in a manner necessary to present or explain their transactions. When the taxable income of a partner exceeds €70,000 then audited accounts must be prepared.

3.C Fund

Funds operate in accordance with the provisions in their articles of association, their investment policy and prospectus, and the law. The governing body of an AIF or its external manager must consist of a certain minimum number of natural persons who must have executive

function (depending on the type of AIF, this minimum number varies from two to four).

The registered office and business offices of all types of AIFs must be in Cyprus. In certain cases, AIFs must appoint a local depositary and appoint a compliance officer. Filing and reporting obligations that an AIF must comply with on a monthly, quarterly or an annual basis, vary depending on its type.

3.D Trust

The settlor of a Cyprus International Trust and the beneficiaries must not be tax residents in Cyprus during the year preceding the year of creating a CIT. At least one of the trustees must be Cyprus resident.

Trusts are managed by their trustee in accordance with the mandatory provisions of the law and the provisions in the trust instrument which can regulate what powers the trustee has and to what restrictions his powers are subject. It is possible in the trust instrument, the settlor to reserve powers, or to otherwise restrict the ability of the trustee to take certain actions with the trust fund. Where a protector is appointed and the trust instrument requires his consent for certain type of decisions, the consent of the protector must be obtained.

There is no statutory obligation to prepare or file audited accounts for the trust. The trustee in the exercise of its duties must keep proper books of accounts.

4. Foreign Investment, Thin Capitalisation, Residency and Material Visa Restrictions

4.A Foreign Investment & Thin Capitalisation

There are generally no restrictions on investment in Cyprus by foreign investors. Foreign persons can be both shareholders or directors in Cyprus companies/entities without being needed to obtain approval or license.



Under the Cyprus tax regime thin capitalization rules do not apply. There is no withholding tax on payments to non-residents and generally, exemption applies from tax on profits from the disposal of securities (with a wide definition of what constitutes eligible securities) and from tax on dividend income (subject to certain conditions).

Where a third-country national wishes to acquire directly in his/her own name real estate property in Cyprus an approval must be obtained from the district office. This is mostly an administrative process and does not apply where the investor purchases the property through a Cyprus company in which he/she is the shareholder.

The anti-money laundering laws and regulations (harmonized with EU relevant laws) must in any case be satisfied for a person to conclude transactions in Cyprus.

4.B Residency

Where a person is not an EU citizen, there are two main schemes which may be pursued for obtaining residence permit in or through Cyprus.

Fast Track Permanent Residency Scheme

Fast track scheme, under which an applicant by investing €300.000 (plus VAT) or more in a residential property in Cyprus (or other eligible investments such as units in Cyprus registered investment funds) can, within a period of about two (2) months, obtain a permanent Cyprus residence permit. The permit can be granted to the applicant and his/her spouse, to their “dependents” and parents, valid for their entire lifetime.

Cyprus Foreign Interest Company

A Cyprus company (which may be an ordinary private limited company by shares) can employ third country (non-EU) nationals if it meets

certain basic requirements. These employees can be issued employment and residence permits to work and live in Cyprus.

To utilize the scheme, the majority of the company’s share capital must be held by third country national(s), an investment of at least EUR 200.000 should be made in the company and the company should operate in independent offices in Cyprus as per the relevant regulations.

Visa Entry

The following categories of nationals can travel to Cyprus freely and do not require an entry visa:

- EU nationals (including Liechtenstein, Switzerland, Iceland, and Norway).
- Holders of certain diplomatic passports.
- Ship crews.
- Holders of Schengen multiple entry visas and/or residence permits issued by a Schengen member state (including Romanian or Bulgarian authorities).

All other foreign nationals must apply for one of the following visa types:

- Short-Stay Visa allowing foreign nationals to enter Cyprus for a maximum of 90 days within a six-month period (for travel or business, excluding immigration).
- Multiple Entry Visa allowing foreign nationals to enter Cyprus on multiple occasions for up to a maximum of 90 days in any given six-month period. Usually, this type of visa is valid for a maximum of five years.
- Border Issued Visa (granted in exceptional circumstances).



- Long-Stay Visa allowing nationals to remain in Cyprus for a period of up to one year.