

LEGALINK

INVESTMENT AND BUSINESS START UP IN CYPRUS

(A) Legal system

1. What is the legal system (i.e. common law system, civil law system or both) in your country?

The legal system in the Republic of Cyprus contains elements of both common law and civil law as a result of its Constitution and historical ties with the United Kingdom. Following the accession of Cyprus to the European Union on 1 May 2004, the Constitution was amended, resulting in the updating of the Cypriot legislation to the *acquis communautaire* of the EU.

2. What are the major law courts in your country?

The major law courts in Cyprus are the Supreme Court, the District Courts (Nicosia & Kyrenia, Larnaca & Famagusta, Limassol and Paphos), the Assize Courts, the Family Courts, the Rent Control Tribunals, the Industrial Dispute Tribunals and the Military Court.

3. What are the sources of laws (such as constitution, statute law and common law) in your country?

Following the declaration of independence of the Republic of Cyprus in 1960, the English common law system has to a great extent been preserved. The sources of laws in Cyprus are the Constitution of the Republic of Cyprus; the laws retained in force by virtue of Article 188 of the Constitution; the principles of common law and equity; and the Laws and secondary administrative rules enacted by the House of Representatives.

4. What is/are the official language(s) in your country?

The official languages of the Republic of Cyprus are Greek and Turkish. English is also widely used and understood, in both business and everyday contexts.

(B) Foreign investment

5. Are there any restrictions faced by a foreign individual or company when they want to invest in your country? Is an approval or permit required if a foreign individual or company wants to enter a certain industry?

As Cyprus is a full member of the EU, foreign investment is, for the most part, free from restrictions and discrimination of EU citizens or companies is prohibited. There are, however, various sector-specific policies which are applicable, as well as authorizations which are required in Cyprus' banking, insurance, financial services, telecommunications and media sectors, all of which are regulated by the respective legislation.

In addition, there are restrictions on the purchase of immovable property by non-EU citizens, which are based on public policy grounds and governed by the *Acquisition of Immovable Property by Aliens Law Cap. 109, as amended*.

6. Are there any exchange control or currency regulations in your country?

As a result of the recent economic crisis in Cyprus and the procedure for the implementation of the Eurogroup decision of 15th March 2013 the Central Bank of Cyprus in order to safeguard the stability of the Cypriot banking system, it was deemed necessary to implement interim restrictive measures, which will gradually be lifted upon assessment of the situation. However, these measures do not affect any foreign investments to be made in Cyprus and merely are to control internal payments.

7. What grants or incentives are available to a foreign individual or company to encourage investment in your country?

In order to promote investment in Cyprus, various government have initiated schemes, such as the fast-track citizenship scheme for high net worth individuals of wishing to invest in Cyprus, and offer grants and subsidies for investment in several sectors including technology incubation programmes, through which support is given to scientists and researchers, research and development, testing and laboratories for quality assurance, quality control standards, market research studies on foreign markets and the general encouraging, strengthening and reinforcing of entrepreneurship.

Most of these schemes, grants and subsidies are available to, but not specifically aimed at, nor limited to, foreign investors from within the EU, as well as third-country nationals from countries such as Russia and China.

(C) Business vehicles

8. What is the most common form of business vehicle used by foreign investors in your country?

In Cyprus, most of the foreign investors set up a company in the form of a limited liability company as a business vehicle.

Please provide details on:

i. Registration formalities;

For a company to be registered, the following documents and information must be filed with the Registrar of Companies:

(a) The Memorandum and Articles of Association. The Memorandum must state, among other things, the following: The name of the company, the objects of the

company, a statement that the liability of the members is limited by shares or by guarantee, (if applicable), the amount of the share capital and details of the shares authorized to be issued, and the subscribers to the memorandum together with the number of shares for which they have subscribed.

(b) The Articles of Association which generally govern the company's internal procedures and functions. The articles contain rules governing the internal management of the company and regulating the rights of its members among themselves and deal with matters such as: General meetings, voting rights of members, transfer of shares, board of directors meetings, dividend distributions etc.

(c) A list of the directors and the secretary's name and details (address, profession).

(d) The address of the company's registered office, which will be the place where all official notices will be served.

(e) A declaration or affidavit from a lawyer confirming that all formalities provided by the Companies Law Cap. 113 have been complied with in relation to the incorporation of the company.

ii. Minimum (and maximum) share capital;

There is no maximum or minimum share capital requirement for a private limited company. For a public limited company the minimum capital is approx. 25,630 euro.

iii. Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities);

Shares can be issued for non-cash consideration. A valuation of the non-cash consideration is not compulsory but strongly recommended in the case of private companies, and compulsory in the case of public companies.

iv. Any restrictions on foreign shareholders;

No restrictions on foreign shareholders apply, except in certain regulated industries such as banking, financial services and media.

v. Management structure and any restrictions on foreign managers;

A public limited company (non-listed) must have at least two (2) Directors except if it is listed to the Cyprus Stock Exchange which specific rules apply subject to the market to which the company is to be listed (regulated or semi-regulated); a private limited company can have a sole Director. The maximum number of Directors is not fixed by law but can be imposed through the company's Articles of Association. A company must also have a Secretary. No restrictions apply to the participation of foreign directors but for a company to qualify as a Cypriot tax resident company the management and control of a company should be in Cyprus.

vi. Directors' liability;

The main duties of the Directors arise out of Companies Law Cap. 113 and common law which are in general the duty to exercise care and skill, and a fiduciary duty towards the best interests of the company's business implementing its objects and operations as laid down in its Memorandum and Articles of Association and in accordance with any applicable law. Directors can also be personally liable under the Companies Law Cap. 113 or other statutes, for fraudulent or wrongful trading if the company becomes insolvent.

There is no difference in principle between «executive» and «non executive directors». The duties are owed to the company and not to individual shareholders.

vii. Parent company liability; and

Parent companies are not liable for the acts of their subsidiaries under statute unless there have undertaken any contractual guarantee to secure the obligation of their subsidiaries.

viii. Reporting requirements (including filing of accounts).

Main reporting requirements include:

- Audited financial statements to be produced annually;
- Tax self-assessment forms to be submitted to the Commissioner of Inland Tax Revenue on 31 July and 31 December each year.
- Forms to be submitted to the Registrar of Companies , including:
 - an annual return accompanied by audited financial statements; and
 - notifications of any changes to the registered office address, directors, secretary, shareholders, constitutional documents, name and share capital.

(D) Employment

9. What are the main laws regulating employment relationships in your country?

Cyprus employment law is a mixture of statute and case law. Certain fundamental rights relating to employment are guaranteed by the Constitution such as the rights to work and to equal treatment. The main statutes (as further amended or repealed) which relate to employment are:

- Termination of Employment Law of 1967;
- Social Insurance Law of 1980;
- Annual Paid Leave Law of 1967;
- Protection of Maternity Law of 1997;
- Minimum Salaries Law Cap 183;
- Equal Treatment at Work and Employment Law of 2004;

- Health and Safety at Work Law of 1996;
- Maintaining and Securing the Rights of Workers during Transfers of Undertakings, Businesses or Parts thereof 104/2000;
- Protection of Workers' Rights in case of Employer Insolvency 25/2001; and
- Organisation of Working Time 63/2002

Relevant EU legislation has been transposed into the above legislation for the protection of EU citizens temporarily working in Cyprus following Cyprus accession in EU in 2004.

Each Law is supplemented by relevant Regulations and Decrees. There is also a considerable amount of case law on all employment related laws. Once a foreigner is authorized to be employed in Cyprus the law applies equally and it sets out the minimum requirements for the protection of employees.

10. Is a written contract of employment required in your country, and if so, must it contain any particular language? Are any agreements and/or implied terms likely to govern the employment relationship?

A written contract or letter of engagement or other document signed by the employer containing the main terms must be given to the employee within one (1) month from the start of employment, unless the employment is incidental or special (or shorter than a month or eight hours a week).

Common law principles may be implied where there are no express provisions or guidance. Many industries (e.g. tourism, construction) have implemented collective agreements which are negotiated from time to time between the employees' representatives and the employers' representatives.

11. Do foreign employees require work permits and/or residency permits if they work in your country? If so, how long does it take to obtain them and how much do they cost?

EU Citizens

EU citizens who wish to be employed in Cyprus do not need a work permit, but a residence permit is necessary if their stay will exceed three (3) months. In that case within the first three (3) months of their arrival in Cyprus, they have to apply for a residence permit (for 6 months stay, temporary residence permit is needed) at the Migration Officer of the District they will be residing.

The following documents/ information must be submitted: a) 2 photos, b) a valid passport or ID card, c) a health certificate, obtained either from the Cyprus hospitals or from their home country (in this case the documents must be certified by relevant consulate) and d) an employment certificate, issued by their employer, stating the nature of the job and the employment period.

There is a fee for the issue of a residence permit which currently is nominal.

Non- EU Citizens

Nationals of third countries (non-EU countries) may be employed in Cyprus provided they have secured a position with a local employer.

The Cyprus employer must then submit an application for the issue of a work permit, on behalf of the foreign national, to the competent authority (i.e. the Immigration Office at the Ministry of Interior). If the application is approved the foreign national will hold a work permit for the specific job and for limited period of time (please note that work permits are not general and are not valid indefinitely).

However, there is a distinction between foreign-owned companies and domestic employers. In the case of a foreign-owned companies (i.e. major shareholder is not of EU origin), they can only employ up to five (5) non-EU executive employees and ten (10) non-EU managerial employees. Such employees can obtain the permit in a matter of days and their permits are valid for up to two (2) years. On the other hand, Cypriot or EU employers, as described above must obtain permission from the District Labour Office and the Department of Labour of the Ministry of Labour and Social Insurance to allow the employment of non-EU national and their entry in Cyprus. These permits are valid for one (1) year at a time and the maximum period of stay is four (4) years unless it is extended for very special circumstances.

12. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals) in your country?

Employees are not entitled by law to be represented on the board of directors of the company. Employees can be represented by trade unions in matters that affect them directly. The right of association, including the right to form and to join trade unions in workplaces, is safeguarded under Article 21 of the Constitution. It includes the right for the workforce to decide who represents them in the workplace, without any kind of input, interference or compulsion from or by the owners or employers.

Employees consent is not required for corporate transactions provided that these do not affect their terms of employment (such as a change of duties and salary). Usually,

trade unions represent employees during the negotiation of a major/corporate transaction in order to safeguard the employees' rights. Following the European Works Councils Law of 2002 which applies to Community scale undertakings and Community-scale groups of undertakings, a European Works Council or a procedure for the purposes of consultation and information must be established in all groups of Community-scale undertakings.

13. Are there any employment protection laws (such as minimum wage law and/or maximum working hour's law) in your country?

Yes. Please refer to question 9 above.

14. Is there any pension system in your country? Is it on a mandatory or voluntary basis? If so, please give details.

The Cyprus Social Insurance Scheme covers compulsorily every gainfully occupied person working in Cyprus, either as an employed or a self-employed person. In addition to the compulsory insurance, the legislation provides for voluntary participation in insurance scheme in the case where:

(a) a person has paid basic insurance equal to at least 1 insurance point or,

(b) his/her permanent residence in Cyprus and works abroad in the service of a Cypriot employer, even if he/she had no previous insurance in Cyprus.

The Scheme is financed by contributions payable by the insured persons, the employers and the State. In the case of employees, the contribution is 17,9%, 6,8% is payable by the employee, 6,8% by his employer and 4,3% out of the State budget. The rate of contribution in the case of employees is calculated on their salaries or wages (except ex gratia payments) and in the case of self-employed person on amount of income defined by the legislation for each occupational category. There is a wide range of benefits including old age pension, invalidity pension, widow-hood pension, social pension, marriage allowance, labour allowance, funeral allowance, sickness benefit, unemployment benefit, maternity, benefit, orphan's benefit, missing persons benefit, labour work related accident and sickness benefit and other specific benefits such as housing benefits and benefits in relation to certain disabilities.

15. How is the termination of individual employment contracts regulated in your country? Under what circumstances is the dismissal of an employee unlawful?

The main legislation which governs the termination of individuals' employment is the Termination of Employment Law 24/1967 (as amended). The statutory minimum notice to be given by the employer to the employee and vice versa depends on the employee's period of continuous employment. In any case such notice period can be effectively extended by agreement provided that it is not less than the statutory minimum. The employer has the right to require the employee to accept payment

instead of notice which should cover his salary entitlement, pro rata, for the period of the notice.

Dismissals which cannot be justified under any one or more of the grounds below are considered unlawful and give rise to a right for compensation:

- unsatisfactory performance (excluding temporary incapacitation due to illness, injury and childbirth);
- redundancy;
- force majeure, act of war, civil commotion or act of God;
- termination at the end of a fixed period;
- conduct rendering the employee subject to summary dismissal; and
- conduct making it clear that the relationship between employer and employee cannot reasonably be expected to continue, commission of a serious disciplinary or criminal offence, indecent behaviour or repeated violation or ignorance of employment rules.

Dismissal without notice or payment may be justified only on the basis that the employee has displayed conduct making it clear that the relationship between employer and employee cannot reasonably be expected to continue under the circumstances, committed a serious disciplinary or criminal offence, displayed indecent behaviour or repeatedly violated or ignored employment rules. Examples may include outbursts of violence, use of vulgar language, theft or disregard of safety rules.

16. Are redundancies and mass layoffs regulated in your country? If so, please give details.

The Termination of Employment Law 1967, as amended regulates issues of redundancy. According to article 18 of the Law an employee is redundant when his/her employment has been terminated for one of the following reasons:

- the employer has ceased trading;
- the employer ceased trading in the geographic location where the employee is working;
- due to operational reasons causing a reduction in the number of employees either:
 - due to a reduction of turnover/production materials;
 - due to the adoption of modern more efficient production methods.

There is an obligation of each employer to inform the Ministry of Labour and Social Insurance about any redundancies. In addition, such employer is under obligation to re-hire redundant employees if a position becomes available up to eight (8) months following the redundancy.

Group/Collective dismissals are regulated under the Collective Redundancies Law 2001 and are defined as dismissals for one or more reasons not related to the employees, and where the number of employees dismissed within a 30-day period is either:

- At least ten employees, if the establishment employs more than 20 but fewer than 100 employees;
- At least 10% of the workforce, in cases where the establishment employs at least 100, but fewer than 300, employees;
- At least 30 employees, in cases where the establishment usually employs at least 300 employees.

In all cases the employer must notify the employees' representatives in writing of the reasons for the redundancies, the number and categories of employees affected, the number and category of employees normally employed, the period over which the redundancies will be made, the criteria for classifying such employees as redundant and the method of calculating possible payment due to redundancy.

The redundancy payments are calculated according to years of employment as follows: (a) two weeks' wages for each year of service up to four years (b) two and half weeks' wages for each year of service from five to ten years (c) three weeks' wages for each year of service from 11 to 15 years (d) three and a half weeks' wages for each year of service from 16 to 20 years and (e) four weeks' wages for each year for service beyond 20 years. Redundancy payments are made by the government redundancy fund which is a national fund to which employers pay contributions so that compensation payments can then be made in the case of redundancy.

(E) Tax

17. In relation to employees, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?

The basic rule is that all Cyprus tax residents are taxed on all chargeable income accrued or derived from all sources in Cyprus and abroad. Individuals who are not tax residents of Cyprus are taxed on certain income accrued or derived from sources in Cyprus.

18. Under what circumstances are employees subject to taxation in your country?

An individual is tax resident in Cyprus if he/she is physically present in Cyprus for an aggregate period exceeding 183 days in the tax year.

19. What income tax or social security contributions must be paid by:

- i. Employees?
- ii. Employers, in relation to their employees?

20. In relation to corporations, what is the basis of taxation (i.e. whether territorial source principle, tax residency principle or other principle is adopted) in your country?

The Cyprus tax legislation distinguishes between tax resident and non-tax-resident companies. Cyprus tax resident persons (including companies and individuals) are subject to tax in Cyprus on their worldwide income, whilst non tax resident persons are subject to tax only on their income derived in Cyprus.

21. Under what circumstances are incorporations subject to taxation in your country?

A company resident in Cyprus is considered a Cypriot company for tax purposes if its management and control is in Cyprus. Therefore incorporation in Cyprus is of itself not sufficient to establish corporate residence in Cyprus.

Although no definition of management and control is provided in the law, it is generally accepted as being the place at which major decisions are taken and where the directors meet and most of the times reside.

A company which is non-resident will only be taxed on its profits arising from a permanent establishment in Cyprus. The term “permanent establishment” includes an office, a branch, a factory or laboratory, a mine, an oilfield or a construction site for a project exceeding three months. Rental from immovable property located in Cyprus and profit from sale of goodwill in Cyprus is also taxable irrespective of the existence of a permanent establishment.

22. What are the main taxes that potentially applicable to a corporation and what are their tax rates?

The corporate tax rate as of 1 January 2013 is set at 12, 5%. It is noted that shipping activity companies may qualify for different tax regime based on tonnage tax. The Merchant Shipping Legislation fully approved by the EU provides for exemption from all direct taxes and taxation under tonnage tax of qualifying shipowners, charterers and shipmanagers, from the operation of qualifying EU/EEA (European Economic Area) ships (and foreign ships under conditions) in qualifying activities

From the above there are several tax exemptions that can apply subject also to any double tax treaty provisions (please refer to question 28 below).

The main income exemptions are as follows:

- Dividends income (may be subject to defence tax – see below).
- Profits of a permanent establishment situated outside Cyprus. This exemption does not apply if the permanent establishment engages more than 50% in

activities which lead to investment income and the foreign tax burden on the income of the permanent establishment is substantially lower than the tax burden of the Cypriot resident company.

- Profits from the disposing of securities of both capital and revenue nature. Securities include shares, government stocks, debentures, bonds, founder's shares and rights thereof as well as several other financial instruments.
- Interest income unless it is received in the ordinary course of business, or is closely connected to the ordinary course of business in which case it is taxed as ordinary trading income (could also be subject to defence tax).

23. Please explain how each of the following is taxed in your country:

i. Dividends paid to foreign corporate shareholders?

Dividends declared by a Cyprus tax resident company to another Cyprus tax resident company after the lapse of four years from the end of the year in which the profits were generated are subject to 20 % defence contribution. Dividends which emanate directly or indirectly out of such dividends on which special contribution for defence was previously suffered are exempt.

ii. Dividends received from foreign companies?

Dividend income from abroad is exempt from defence fund contribution. This exemption does not apply if:

- more than 50% of the paying company's activities result directly or indirectly in investment income and
- the foreign tax is significantly lower than the tax burden in Cyprus.

The tax authorities have clarified through a circular that "significantly lower" means a tax burden rate below 5% .When the exemption does not apply, the dividend income is subject to special contribution for defence at the rate of 20%.

iii. Interest paid to foreign corporate shareholders?

Every resident taxpayer who receives or is credited with interest is subject to special defence contribution at 10%. Interest that is received as a result of the carrying on of a business activity, including interest closely connected to the ordinary activities of the business, is not considered interest for the purposes of special defence contribution. Interest from Government Savings Certificates, Government Bonds and deposits with the Housing Finance Corporation, as well as interest earned by approved provident funds, is subject to defence contribution at 3%.

iv. Intellectual property (IP) royalties paid to foreign corporate shareholders?

Since 1 January 2012 a new IP Tax regime has been implemented. The new tax regime provides for favourable tax treatment in relation to income generated from any type of intellectual property rights, patents and trademarks as well as

providing for generous capital allowances for acquisition and development of such rights. According to the new regime, 80% of “Royalty Profit” generated from such IP Rights will be exempt from corporation tax. The remaining 20% will be subject to the normal corporation tax rate. For the purpose of determining the “Royalty Profit” the law allows the deduction from the resulting royalty income of all expenses incurred wholly and exclusively for the production of royalty income. It is important to stress that the favourable tax treatment also covers the profit from any future sale of the IP Right. This will allow the owners of the IP Rights not only to enjoy tax benefits on the income generated from the use of such right but also provides for a tax efficient exit route in the future. In addition to the above, the Cyprus Company holding the IP Rights will be able to write off the capital expenditure made on the acquisition or development of such rights in the first five years of use. The company will be able to receive capital allowances of 20% straight line starting from the first year of the use of the asset as well as the subsequent four years of usage. These capital allowances are considered of course tax deductible, which makes the tax benefits of the first five years for the Cyprus Royalty Company even more attractive.

The effective tax rate applicable on the Cyprus Royalty Company will not be higher than a maximum of 2% on its Royalty Profits. The effective rate can be further reduced by the deduction of the above capital allowances.

24. Are there any thin capitalization rules (i.e. restrictions on loans from foreign affiliates) in your country? If so, please give details.

There are no thin capitalization rules in the Cyprus tax legislation. However, interest suffered on loans used for the acquisition of assets not used in the business is not tax deductible.

25. Are there any controlled foreign company rules (i.e. the profits of a foreign subsidiary must be imputed to a local parent company) in your country? If so, please give details.

In general there are no Controlled Foreign Companies rules in Cyprus tax legislation and Cyprus companies are not subject such Rules except if there are operating in regulated industries (e.g. banking, financial services) that there may be general restrictions under EU legislation.

26. Are there any transfer pricing rules (i.e. restrictions on the pricing of transaction between a local entity and a foreign entity) in your country? If so, please give details.

There is no transfer pricing legislation in Cyprus, other than a provision in the Income Tax Law which requires transactions between ‘related parties’ to be in accordance with the ‘arm’s length principle’. The Cyprus tax legislation adopted the OECD model and guidelines to determine whether a transaction is at arm’s length.

27. How are imports and exports taxed in your country?

Special rules apply for several product categories and also will depend if the goods are imported / exported to / from EU Member states or from/ to third countries.

28. Is there a wide network of double tax treaties in your country? If so, please give details.

Cyprus has become a very popular jurisdiction for establishing a base for international business and currently has in place of a large number of double tax treaties, which number 43 in total.

Many of the well-known offshore tax jurisdictions impose a low or nil income tax on the company profits. However the problem with those jurisdictions is that they do not have double tax treaties. Cyprus offers a full basket of incentives including the low tax on the net profits and the double tax treaties.

Other than the Double Tax Treaties which are presently in force, the conclusion of various other Treaties is pending. These Treaties are currently under negotiation. Moreover, certain Treaties have already been concluded, however they are pending enforcement.

All Cyprus' double tax treaties have been drafted so as to accord very closely to the Organisation in Economic Cooperation and Development (OECD) model Tax treaty. The treaties aim to avoid double taxation of income earned in these countries. This is achieved usually by either exempting the income from tax, by providing a tax credit for the amount of tax paid in other contracting country or by a reduced withholding tax.

(F) Competition

29. Is there any competition law in your country? If so, please give details.

Yes, competition is regulated through the following main primary laws (as further amended):

1. The Protection of Competition Law 13(I)/2008; and
2. The Control of Concentrations between undertakings Law 22 (I) /1999.

30. Are restrictive agreements and practices regulated by competition law in your country?

Restrictive agreements and practices are regulated by the Protection of Competition Law 13(I)/2008. The Law provides that all agreements between undertakings or associations of undertakings, all decisions by associations of undertakings and any concerted practices having as their object or effect the elimination, restriction or

distortion of competition within the Republic, shall be prohibited, and in particular those which:

- (i) directly or indirectly fix purchase or selling prices or any other trading conditions;
- (ii) limit or control production, markets, technical development or investments;
- (iii) divide markets or sources of supply into geographical or other sectors;
- (iv) apply dissimilar conditions to equivalent transactions with other trading parties thereby placing them at a competitive disadvantage;
- (v) make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations which, by their nature or according to commercial usage, have no connection with the subject of such contracts.

The above provisions are subject to certain exceptions provided by the Law. If any of the above actions is undertaken by any natural or legal persons then such agreements, decisions etc shall be void.

31. Is unilateral (or single-firm) conduct regulated by competition law in your country?

Yes, under the Protection of Competition law No. 13 (I) / 2008 any abuse by one or more undertakings of a dominant position within the internal market or in a substantial part of it in respect of a product is prohibited as well as any abuse by one or more undertakings, of a relationship of economic dependence is prohibited unless special exceptions are granted by the relevant authority.

32. Are mergers and acquisitions subject to merger control in your country?

Mergers and acquisitions are regulated by the Control Concentrations Between the Undertakings Laws No. 22(I)/1999 (as amended). Pursuant to this Law any concentration is subject to merger control if falls under all of the following categories:

- (i) Aggregate turnover (worldwide) of at least two of the participating enterprises exceeds, in relation to each one of them, EUR3,417,203.
- (ii) At least EUR3,417,203 of the aggregate turnover of all the participating enterprises relates to the disposal of goods or the supply of services within Cyprus.
- (iii) At least one of the participating enterprises must be commercially active in Cyprus and generate turnover in relation to the disposal of goods or the supply of services within Cyprus (although none of the enterprises need to be registered in Cyprus).

The Commission of Protection of Competition has the power to control concentrations, mergers and acquisitions in order to ensure that none of the above that have an economic strength in the Republic of Cyprus creates or strengthens a dominant position in the affected market.

(G) Intellectual property

33. Please outline the main intellectual property rights that are capable of protection in your country. In each case, please state:

- i. What is the nature of the right?
- ii. How is it protected?
- iii. How is it enforced?
- iv. How long is it protected?

Under Cyprus legislation as harmonized due to the accession of Cyprus to the European Union as a full member on May 1st 2004. Cyprus also became a member to The Office for Harmonization in the Internal Market (OHIM) for the registration and protection of Trade Marks and Industrial Designs within the European Community. This means that an Individual or legal entity can apply for the registration of a Community Trade Mark or a Community Industrial Design at OHIM and finally acquire with such single application a Registration Certificate that provides for the protection of such IP right (Trade Mark or Industrial Design) in all member states of the European Union.

The following IP right categories qualify for statutory or common law protection.

(i) Patents

In order to protected a patent, it must: (i) Be novel, (ii) Involve an inventive step (iii) Be industrially applicable and (iv) The right holder has exclusive rights of use of the patent (*Patent Law 16(I)/1998, as amended*).

Patents must be registered with the Patent Register in order to be protected.

A patent owner can enforce his rights through court proceedings. The remedies available include: (i) Injunctive relief, (ii) Damages or (iii) claim account of profits made by the infringer.

Protection lasts for 20 years from the date of filing the application for registration.

(ii) Trade marks

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

A mark must be registered with the Trade Marks Register (including registration as a Community or an international trade mark) to be protected. Unregistered rights are protected by common law principles.

A trade mark owner can enforce his rights through an action for infringement (for registered trademarks) and/or an action for passing off (for both registered and unregistered marks). The remedies available are the same as for patents (*see above, Patents*).

Protection of a registered mark it is for an initial period of seven (7) years from filing but can be renewed thereafter every fourteen (14) years. It is noted that any interested party may submit an objection for the registration of a trademark / logo if it considers it to be similar with any of its own registered trademarks and then Objection Hearing proceedings are initiated by the Registrar of Trademarks.

(iii) Registered designs

Designs must be novel and have individual character to be protected. The right holder has exclusive rights to use the design and prohibit its use by unauthorized third parties. A design must be registered with the Designs Registry in order to be protected.

Design rights are enforced by an action for design infringement. The remedies available include injunctive relief and damages. Protection lasts for twenty five (25) years from the date of application.

(iv) Unregistered designs

Such design may be protected, if it is novel and have an individual character. A design right confers on its holder a right to prevent copying. Protection is automatic on creation of the design and it lasts for three years from the date on which the design was made available to the public. Unregistered designs are enforced in the same manner as described above for registered designs

(v) Copyright

To seek protection as copyright, the work must be original and presented in some material form. The owner has exclusive statutory rights over the protected work. Copyright is governed by the Copyright Law 59/1976 (as amended).

Protection arises automatically on creation of the work and its length of protection varies between 15 and 70 years, depending on the nature of the work.

Copyright rights are **enforced** in the same way described above for patent rights.

(vi) Confidential information

The information itself must be confidential in nature and be communicated in circumstances importing an obligation of confidence. **Protection** is ensured by a

contractual agreement between the parties and it lasts for as long as the information remains confidential and as stipulated in the agreement.

The rights can be enforced by an action for breach of contract.

(H) Marketing agreements

1. Are marketing agreements regulated in your country? If so, please give brief details in respect of the following arrangements:

- i. Agency;

Commercial agency agreements are governed by the Regulation of the Relationship Between Commercial Agent and Principal Law 51(I)/1992, as amended by Law 149(I)/2000. The law governs, inter alia (i) an agent's duties towards his principal (ii) remuneration (iii) termination of the contract (iv) rights to compensation.

- ii. Distribution; and

There are no statutory provisions in relation to distribution agreement and any such agreement is regulated under the general contract rules and Contracts Law Cap. 149.

- iii. Franchising

As per note (ii) above.

(I) E-commerce

2. Are there any laws regulating e-commerce (such as electronic signatures and distance selling) in your country? If so, please give brief details.

Yes. The laws governing e-commerce in Cyprus are as follows:

- Electronic signatures are regulated by the Legal Framework for Electronic Signatures and Related Matters Law 188(I)/2004.
- Distance selling is regulated by the Conclusion of Consumer Distance Contracts Law 14 (I)/2000.
- The provision of e-consumer financial services is regulated by the Distance Marketing of Consumer Financial Services Law 242(I)/2004 (as amended).
- E-commerce is regulated by the Certain Legal Aspects of Information Society Services, Particularly Electronic Commerce and Related Matters Law 156(I)/2004.
- Electronic money institutions are regulated by the Electronic Money Institutions Law of 2004 (Law 86(I)/2004).

(J) Data protection

3. Are there any data protection laws in your country? If so, please give brief details.

Yes. The laws regulating data protection are:

- The Processing of Personal Data (Protection of the Person) Law 138(I)/2001 (incorporating the Amending Legislation 37(1) 2003) (Personal Data Law).
- Part 14 of the Regulation of Electronic Communications and Postal Services Law 112(I)/2004, regulates safety, privilege and protection of data.
- Law 28(III)/2001, which ratifies the European Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (European Convention).
- Law 30(III)/2003, which ratifies the Additional Protocol to the European Convention.
- The Processing of Personal Data (Permits and Fees) Regulations 2002 (R.A.A 538/2002).

The Laws in relation to data protection apply to both automated and non-automated processing of personal data, which is included or will be included in a record. The processing of personal data must be undertaken by a data controller resident in the Cyprus or in a location where Cypriot law is applied by virtue of public international law or by a data controller who is a non-resident in Cyprus, who, for the purposes of processing personal data, has access to automated or other means existing in Cyprus, unless they were utilized solely in order to transmit data via Cyprus. The Law does not apply to the processing of personal data carried out by a natural person for the exclusive purpose of his or her own personal or domestic activities.

The Law puts forward the conditions which data controllers have to ensure for the legal processing of personal data and determines what type of personal data processing is permitted. Generally, the collection and processing of sensitive data is not permitted, although there are various exceptions to this rule. In relation to notification requirements regarding the operation of a record or the commencement of processing under the provisions of the Law, there are exact details which must be notified to the Commissioner by the data controller.

The Law also provides for the right of confidentiality and security of processing. Moreover, it defines the rights of data subjects such as the right of information, the right of access to personal data which concern them personally, the right to temporary judicial protection and the right to damages. In addition, the Law provides for the appointment and the rights and obligations of the Commissioner for the Protection of Personal Data, while also setting out his or her competence, operation and decision-making authorities.

(K) Product liability

4. Are there any laws regulating product liability and product safety in your country? If so, please give brief details.

Yes. Product liability and product safety are mainly regulated by:

- **The common law of tort.** The purchaser must prove the following: that the seller or manufacturer fell below the standards of a reasonable man; that this caused loss to the purchaser; and that the seller or manufacturer was aware of the fact that the inspection of the goods prior to reaching the buyer would not be likely. The purchaser must be placed in the same position as he or she would have been in had the damage never occurred, i.e. restituted.
- **Contract.** Where there is a breach of contract, compensation may be awarded to retribute the purchaser.
- **The Sale of Goods Law 10(I)/1994.** This law imposes liability on the seller or manufacturer and places implies terms into contracts for the sale of goods in the course of business (with regards to, among others, satisfactory quality, fitness for purpose and correspondence to description).

There are also in place various consumer protection laws, such as:

- General Safety of Products Law No. 41(I)/2004, which imposes obligations regarding the safety of consumer products, including labeling requirements on producers;
- Basic Requirements (Toys) Regulations of 2002, relating to the safety of toys;
- Defective Products (Civil Liability) Law No. 105(I)/95, which imposes strict liability of producers, importers and suppliers of defective products, in cases where those particular products cause damage.

Disclaimer: The above information is provided ONLY for information purposes and does not constitute legal or other advice. Specialised legal and tax advice should be sought on the merits and characteristics of each case.

Our Office

Our firm's qualified and experienced staff will be pleased to provide any legal advice and assistance for the establishment of business through Cyprus.

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