

WHICH TYPE OF LEGAL ENTITY TO CHOOSE IN CYPRUS?

Introduction

Over the last years Cyprus has introduced considerably changes in its Company Law (Cap 113) and its relevant regulations rendering the island an attractive jurisdiction for many international businesses to conduct their activities via various types of Cyprus legal entities.

At present business in Cyprus may be conducted through the following legal corporate forms:

- Cyprus Company (private limited company, public company, company limited by guarantee);
- Branch of a foreign company;
- Re-domiciliation of a foreign company (where this is permitted);
- Societa Europea

Business can also be conducted through other legal forms such as partnerships, trusts, business names and sole proprietors business.

Cyprus Companies

A Cyprus Company can be a:

- Private Limited Company

The minimum number of members is one and the maximum is limited to fifty. And there can be no invitation to the public to subscribe for any shares or debentures.

This is the most popular type of companies in the business world and their general characteristics are the following:

- The minimum number of members is one and the maximum is fifty;
- The liability of every member is limited to the amount of their subscribed shares;
- No bearer shares can be issued (however nominee services can be offered);
- Preferential shares or different classes of shares can be issued;
- The right to transfer shares is restricted;
- The word “limited” must appear at the end of the name of the company
- There can be only one Director who can be either Cypriot or foreigner and the Board Meetings can be held anywhere in the world;
- The company must have a registered address in Cyprus and a company secretary;

- The Secretary maintains the Register of Members, the Minute Book recording all the Board Meetings and Resolutions, the Register of Charges, the Register of Directors and Secretary and the Company seal (under its custody);
- Any charges against the company must be registered with the Company Registrar in order to ensure priority and protection against other creditors of the Company.

What is important to note is that the identity of beneficial owners in a Cyprus private limited company may remain confidential through nominee holding. This confidentiality is maintained as long as the company and its ultimate beneficial owners are not involved in any criminal activity.

- Public Limited Company

Public companies need seven or more founder members, they can invite the public to subscribe for their shares or debentures and do not restrict share transfers.

- Company Limited by Guarantee

The liability of each member is limited to the amount agreed on the Memorandum of Association to be contributed in the event the company goes into liquidation. In the majority of cases these companies are incorporated as non-profit making organisations under section 20 of Cap 113.

Branches of foreign legal entities

Any company incorporated outside of Cyprus may establish a legal presence in Cyprus through the legal form of a branch in Cyprus – the so-called overseas companies.

To register a branch the following documents must be filed translated into Greek:

- A certified copy of the constitutional documents of the company (Memorandum and Articles of Association, its charter etc)
- Information regarding the Directors and Secretary of the Company;
- Name and address of at least one person who is a resident of Cyprus duly authorised to receive on behalf of the company any notices.

If the foreign legal entity is a bank, an insurance or an investment company then special licences must also be obtained from the relevant regulatory authorities.

The Cyprus Company Law changes implemented in 2003 as part of the EU accession process have also affected the rules covering branches. Every foreign corporation that maintains a branch in Cyprus must submit, for every financial year, copies of its financial statements as presented in its last AGM and published in accordance with its country of incorporation. For EU corporations though the law provides some exemptions; they are

exempted from submitting separate branch financial statements if they publish their financial statements in their countries of registration and they submit them to the Registrar of Companies.

Societa Europea (SE)

Cyprus has amended its Company Law in order to implement the provisions of the Council Regulation No. 2157/2001. The changes have been implemented by the Amendment Law No. 98(I) of 2006 and was enacted on the 7th July 2006. Thus an SE can now transfer its office from another Member State to Cyprus (and vice versa) without dissolving the company in the other Member State.

There are four possible ways for incorporating an SE:

- (a) Merger, i.e. a public limited company from two member states can form an SE by merger;
- (b) Holding, i.e. a public and private limited companies from two Member states can form a holding company;
- (c) Subsidiary; any legal entities governed by public or private law from two Member States (or an SE itself) can form a subsidiary SE;
- (d) Conversion; a public limited liability company can convert into an SE if it had a subsidiary in another Member State for two years.

Furthermore a EC can be established by an already existing European company.

Re-domiciliation of foreign companies to Cyprus

As we had already informed the readers it was last year, on the 28th of July 2006, that the Cyprus Company Law, Cap 113 has been amended to introduce the concept of re-domiciliation of companies. However it is only recently and more specifically on the 6th of July 2007 that the amendment in the law can finally be implemented through the regulations that have been issued by the Council of Ministers. The regulations lay down the procedure to be followed, the forms to be filed and the fees payable for proceeding with the re-domiciliation.

Thus it is only now that it has become possible for foreign companies to be re-domiciled in Cyprus and proceed with the relevant applications.

In order to proceed with an application for re-domiciliation the foreign company must be registered in a country which allows re-domiciliation and its Memorandum and Articles of Association permit it to do so.