

# Company Formations In Cyprus

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*Cyprus has traditionally been a significant destination for the setting up of international business companies (IBCs) (that is to say companies with foreign interests). Factors which are taken into account in choosing Cyprus include the following:*

- 1. Safe jurisdiction** of keeping of assets through Cyprus IBCs triggers the provisions of international and bilateral treaties protecting investment (BITs).
- 2. Double Taxation Treaties** providing comfort to foreign governments, such as Russia, on issues of exchange of information while at the same time maximising tax efficiency and provide ample opportunities for international tax planning.
- 3. Tax incentives** created to attract new foreign investment through IBCs. The corporate tax rate is the lowest in the EU.
- 4. No exchange** control regulations or currency restrictions.
- 5. Strategic location** of Cyprus and excellent infrastructure.
- 6. Highly skilled human resources** and strong pro-business attitude of the Cyprus people.
- 7. Cyprus** is a jurisdiction which offers stability and security. The country has recently been ranked as the 5<sup>th</sup> best relocation destination in the world by the Global Lifestyle Review.
- 8. Cyprus** abides by the Transparency Initiatives such as the US Foreign Account Tax Compliance Act (FACTA) and the OECD requirements (common reporting standard, which will come into effect in September 2017)

**9. Regulatory regime** for fiduciaries and service providers, licensed under the Cyprus Securities and Exchange Commission, in relation to the due diligence procedures, documentation, compliance and anti-money laundering procedures.

**10. Companies** of substance as opposed to mere shells.

## Legal System

The legal system of the Republic of Cyprus is a blend of common law and civil law systems, with prominent features of common law in areas such as corporate law and commercial law, stemming from the historical fact that Cyprus was controlled and administered by the British between the years of 1878 and 1960, before it gained its independence as a state.

The Republic of Cyprus acceded to the European Union (hereinafter the “**EU**”) in May 2004; these factors contributed to the formation of the current legislative framework. Since 2004, EU law is given supremacy over conflicting legislation of the member states of the EU.

The law of the Republic of Cyprus is also premised on (i) a large body of statutory legislation, (ii) a number of laws enacted by the British administration during the colonial period which, though amended in some cases extensively to meet the requirements and needs of the modern business world, have not been superseded, (iv) common law and (v) the principles of the doctrine of equity.

## Companies’ Law

The Companies Law, Cap. 113, as amended (the “**Law**”) is the legislation which governs and regulates all Cyprus companies. The Law is

mostly a reproduction of the 1948 Companies Act of the UK, though extensively amended to comply with the requirements of the EU and the changing market. The Law applies to public (listed and non-listed) and private companies. It also contains a set of model articles of association, the so called “**Table A**” Regulations, which can be fully or partially adopted by public or private companies. It should be borne in mind that other laws are also relevant in the incorporation and workings of a Cyprus company.

For instance, the Assessment and Collection of Taxes Law of 1978 (L4/1978), as amended, provides that all newly incorporated companies are required to register with the Cypriot Tax Authorities immediately after their incorporation or the latest within 60 days from their incorporation. Additionally, the Prevention and Suppression of Money Laundering Activities Law of 2007 (L188(I)/2007) as amended, imposes Know Your Client (KYC) requirements in relation to the incorporation of a new corporate entity in the Republic of Cyprus.

## Incorporation of a Cyprus Company

### Form

Any one or more persons in the case of a private company (or seven or more in the case of a public company) may establish a limited liability company.

A company (with Cyprus interests) or an IBC may either be:

- a. (a) a company whose member’s liability is limited to the nominal value of the shares subscribed by that member and its articles restrict the right to transfer shares (a “**limited liability company by shares**”), or

- b. a company whose member's liability is limited to the amount that such member has undertaken to contribute to the assets of the company in case of its winding up (a **"limited liability company by guarantee"**).

A limited liability company by shares is the most common form of a Cyprus company, whether of local or foreign interests (IBC); there is no distinction between them as there used to be at a time when the companies were called 'offshore' and 'local'.

### **Name**

When incorporating a new company, its proposed name must be approved by the Registrar of Companies (hereinafter the **"Registrar"**); the examination and approval or rejection of the name takes approximately three to six business days from the day of filing of the relevant electronic application.

## **Objects and Articles of the Company**

Each company must have a Memorandum of Association setting out the objects for which the company is formed and Articles of Association, that is to say, the regulations for the company's internal mechanisms of decision making, administration, transfers of shares, and so on.

A company may operate and be active in any legitimate form of trade or business provided that it does not act outside the scope of its objects; Once the name is approved by the Registrar, a hard copy of the Memorandum and Articles of Association, satisfying the relevant law provisions, signed by the first shareholders of the company along with forms indicating the company's registered office address, directors and secretary, is filed with the Registrar.

## **Share Capital**

There are no minimum or maximum share capital requirements for a Cyprus private company. On the other hand, a public company must have a minimum share capital of €25,630. The share capital may be denominated in any currency.

### **Shareholders**

A private limited liability company must have at least one and a maximum of fifty shareholders. A public company must have at least seven shareholders. Shares can be held by trustees/nominees in trust for the beneficial owners, thus safeguarding anonymity. However, the identity of the owners is made known to the lawyers or service providers administering the company for the purposes of the anti-money laundering legislation.

### **Directors**

The directors are responsible for the day to day running of the business and operations of the company. The minimum requirement for private companies is one director, whereas for public companies it is two. There is no restriction as to the nationality of the directors and both physical and legal persons can be directors of a Cyprus company.

It should be noted that the residency of the directors is one of the key factors determining the residency of the Cyprus company. For this reason, it is recommended that the majority of the directors of the company are Cyprus residents. .

### **Accounts**

Directors are obliged to ensure the proper keeping of books of account necessary for the preparation of financial statements according to the Law. The accounts must be audited

by qualified auditors and submitted to the Income Tax Authorities attaching a copy thereof to the Annual Return filed with the Registrar. Consolidated financial statements on the basis of the International Accounting Standards must be presented in the case of a group of companies with subsidiary companies.

**Public record**

The Cyprus corporate regime allows transparency for all company members, entitling them to inspect the corporate registers of the company. Any interested party may also inspect the company public records kept by the Registrar, upon payment of a prescribed fee.

**Registrar of Companies**

The completion of the registration procedure normally takes up to ten business days from the day of submission of the aforementioned documentation. Following that, the procedure of incorporation of a Cyprus company is considered to be concluded and the Registrar issues the relevant corporate certificates, i.e. of incorporation, registered office, directors and secretary, share capital, certificate of shareholders and a certified original copy of the company's Memorandum and Articles of Association.

The Department of the Registrar of Companies has recently launched an electronic system through which any filings or registrations may be made electronically in order to avoid unauthorised changes in the structure of companies. Further, the filing of Annual Returns can only be done electronically from now on.

Companies which have already been incorporated in Cyprus but have not yet been "activated", also known as shelf companies,

may be used in instances where clients are within tight timeframes and urgently need the utilisation of a Cyprus company for a forthcoming transaction. Any necessary changes in relation to such companies may be effected within a day, with the relevant certificates being issued by the Registrar shortly after.

**Fees**

Stamp duty is payable on the registration of a company and its level depends on the authorized share capital of the company.

**Stamp duty payable is as follows:**

Authorized capital €	Stamp duty €
Fixed sum	105,00
Plus stamp duty of	0.6% on the authorized amount

Registration fees of 0.6% of the aforementioned amount are also payable on any share capital increase as opposed to the allotment and issue of new shares where no stamp duty is payable. For the minimization of such fees, it is possible to issue shares as a premium, paying fees only on the basis of the nominal amount of the authorised capital and not on any premium paid.

**Corporate Tax**

A Cyprus tax resident company is taxed on its worldwide income and although net profits are taxed at company level with a 12.5% corporate tax rate, as mentioned above, dividends, interest income, royalty income and profits, from a permanent establishment abroad, are taxed under special rules.

A company may take advantage of the corporate tax regime of Cyprus, if it is a Cyprus tax resident; a company is considered as such when its "management and control" is exercised in Cyprus. This is a concept that

developed through court decisions and the practice of the Department of Income Tax.

According to current criteria, the effective management and control of a company is exercised in Cyprus when the majority of the directors are Cypriot residents, when the meetings of the board of directors of the company are held in Cyprus, all issues pertaining to the strategic and operational management of the company are resolved here and in general all vital decisions concerning the company are made in Cyprus.

Moreover, additional requirements may include the place of execution of documents, the keeping of copies of documentation and the place of real substance of a company (rather than merely having a postal address), all of which should be in Cyprus. Nonetheless, real economic activity is required to take place in Cyprus for the company to be considered a Cyprus tax resident.

## **Exempt income**

The profits, which the tax resident Cyprus Company may have from a permanent establishment outside Cyprus, are fully exempt from any taxation, subject to some wide anti-abuse rules.

In addition, any profits from the disposal of titles such as shares, GDRs, ADRs, units in funds and repos on titles of companies and rights thereon, are fully exempt from any corporate tax.

The definition of titles under the relevant provisions of the relevant Cyprus tax legislation is interpreted broadly to include, inter alia, Profits realised from the disposal of titles are also exempt from any capital gains tax except when the profits relate to the disposal of shares of companies owning immovable property in Cyprus.

Dividends received from Cyprus companies (either resident or non-resident) or dividends received from overseas companies are not subject to any corporate tax. Furthermore, there is no special defence contribution tax in the case of dividends received from another Cyprus resident company, especially for companies whose beneficial owner is either directly or indirectly not a Cyprus resident.

Dividends received from a non-resident company are exempt from special defence contribution tax.

However, this exception is not granted where (a) the company paying the dividend is engaged directly or indirectly by more than 50% in activities resulting in investment income and (b) the rate of the foreign taxation on the income of the company paying the dividend is substantially lower than the 12.5% payable by the recipient Cyprus resident company. When the exception does not apply, the dividend income received from the non-resident company is taxed at the rate of 17% (20% in 2013).

An 80% of royalty profit generated from any type of intellectual property right, patents and trademarks is exempt from income tax. The remaining 20% is subject to the normal corporate tax rate.

Any profits or gains made by reason of re-organisations, or the transfer of property and the transfer of shares in exchange for shares in another company are exempt from income tax.

There are no withholding taxes on payments to non-residents in respect of dividends and interest. There are also no withholding taxes on royalties arising from sources outside Cyprus. Royalties arising from the use of an asset in Cyprus are subject to 10% withholding tax.

## Conclusion

**Cyprus' status** as an international business centre is regaining its reputation and trust after having been severely wounded by the banking crisis of 2013.

The country is recovering at a surprisingly fast pace following major restructuring in the banking sector, the creation of new tax

incentives attracting foreign investment and other reform which is underway.

**The Cyprus** companies are gaining greater popularity over other jurisdictions and will be preferred by international serious organisations and foreign investors.



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