

# Doing business in: Cyprus

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**IP COMPLETION DAY:** 11pm (GMT) on 31 December 2020 marks the end of the Brexit transition/implementation period entered into following the UK's withdrawal from the EU. At this point in time (referred to in UK law as 'IP completion day'), key transitional arrangements come to an end and significant changes begin to take effect across the UK's legal regime. This document contains guidance on subjects impacted by these changes. Before continuing your research, see Practice Note: [What does IP completion day mean for Commercial?](#)

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## Introduction

Cyprus is strategically located in the Eastern Mediterranean at the crossroads of Europe, Asia and Africa. It is an independent, sovereign republic with a presidential system of government and a written constitution which safeguards the rule of law, political stability, human rights and the ownership of private property. Cyprus has been a member of the EU since 1 May 2004 and of the Eurozone since 1 January 2008. In preparation for EU membership, Cyprus made significant structural and economic reforms that transformed its economic landscape and created a modern, open and dynamic business environment. Since joining the EU, it has established itself as the natural portal for inward and outward investment between the EU and the rest of the world, particularly the rapidly-growing economies of Russia, Eastern Europe, India and China.

Cyprus is very well-placed as an international business and financial centre. Apart from its strategic geographical location, cosmopolitan environment and attractive climate, it offers an excellent commercial infrastructure, a highly educated English-speaking labour force, a business-friendly environment, particularly in the area of taxation, a high quality of life and a low rate of crime. The official languages are Greek and Turkish, but English is the *lingua franca* of business.

The island was invaded in 1974 by the Turkish army and about one-third of its territory remains under Turkish occupation. The so-called Turkish Republic of North Cyprus is recognised only by Turkey, and this chapter relates only to the area controlled by the Republic of Cyprus. While political uncertainty continues to surround the 'Cyprus problem' and it is hoped that there will be a satisfactory resolution in the near future, day-to-day life and business are unaffected by the issue.

## The business environment

When Cyprus gained independence from the UK in 1960, it was left in a poor economic state by the former colonial power. Its economy was based largely on agriculture and tourism and its only resources were its people and its location. Cyprus sought to take advantage of its location and the talents of its people by becoming a maritime and trading post. It achieved its breakthrough in the 1990s, following the dissolution of the Soviet Union, when it established itself as the main portal for investment from the developed western economies into the newly liberalised economies of Russia and Eastern Europe.

Since joining the EU, Cyprus has consolidated its position as an international financial centre and a portal for cross-border investment between all the main economies of the world. It is a low-tax jurisdiction with fiscal and regulatory regimes fully aligned with EU norms, particularly the Code of Conduct for Business Taxation. It has a simple, modern tax system offering predictability in planning and a network of more than 60 agreements for the avoidance of double taxation.

Cyprus has a highly-educated workforce, with more than 40% of the workforce having completed tertiary education, and world-class communications and professional services.

## Forming a company

The Cyprus Companies Law is based on the English Companies Act 1948. While many new provisions have been added to comply with EU legislation, the basic corporate structures remain intact and most provisions regarding companies remain the same. Most companies, including trading, holding or finance companies, take the form of private companies limited by shares.

A company has a legal *persona*, which is separate from that of its owners or members and its management. Regardless of changes in their identity or number, the company has perpetual succession. The company's constitutional documents comprise its memorandum and articles of association, which set out the objectives of the company and regulate its operations and relations between the company, its members, officers (directors and secretary) and other stakeholders. Table A, Pt 1 of the First Schedule to the Companies Law (commonly known as 'Table A') contains model articles of association, which apply unless the company has adopted different regulations, and most companies adopt Table A with specific additions or exclusions.

It is important to note that the principle of limited liability refers to the members and not the company. The company must meet all its debts for so long as it has sufficient assets to do so. If the company cannot pay its debts, the liability of the shareholders is limited to the amount unpaid on their shares. Companies may have a sole member. They must have one or more directors and a secretary, and a sole director may not also act as secretary. The officers of the company may be natural or legal persons. A private company may have only one director and a secretary, but the same person may not be a sole director and the secretary unless the company is a single member private limited liability company.

Part of the *quid pro quo* for limited liability is disclosure: companies are required to make certain records available for inspection by the public, and to file returns, including details of officers and shareholders, financial statements and charges granted over the company's assets, with the Registrar of Companies, for access by the public.

The first official step in the registration process is to send an application to the Registrar of Companies for approval of the company name. Once the name has been approved, the promoters must approach a registered lawyer to prepare and submit the relevant documents on their behalf to the Registrar. Once the Registrar of Companies is satisfied that all statutory requirements in respect of registration have been met, a certificate of incorporation is issued, which is conclusive evidence that all requirements of the Companies Law in respect of registration have been satisfied and that the company is duly registered under its provisions.

Many law firms hold a stock of 'off the shelf' companies, that they guarantee have never traded and have no assets or liabilities, for clients to purchase. The main advantages of acquiring an 'off the shelf' company are convenience and speed, as the formation process has already been completed and all that must be done is to notify the Registrar of Companies of the changes in shareholders and officers.

## Financing a company

A company may be financed by share capital, loans or a combination of the two. A notional interest deduction against profits for corporate income tax purposes is available for new capital introduced into Cyprus companies and permanent establishments which can reduce the tax liability of the Cyprus company by up to 80%. This was introduced as a result of the 2015 amendment of the Income Tax Law.

Share capital is normally denominated in euro, but may be denominated in any recognised currency. Savings can be achieved by issuing shares at a premium. Public companies are required to have a minimum issued capital of €25,630 or its equivalent, but there is no minimum capital requirement for a private company.

The Companies Law contains a number of provisions regarding the maintenance of share capital, including restrictions on companies redeeming shares or acquiring their own shares (section 57), a prohibition on paying dividends otherwise than out of profits (section 169A–E) and a requirement for the directors of public (but not private) companies to convene a general meeting to consider the company's future in the event of a loss of half its subscribed capital (section 169F).

Loans and loan capital may be provided by third parties, such as banks, or by investors.

Other than in sectors subject to statutory regulation, such as financial services, there are no restrictions on overseas investment into Cyprus. However, there are rigorous anti-money laundering requirements, which oblige banks, lawyers and other professional advisers to verify the identity of their clients and their sources of funds and to report suspicious transactions.

## Opening a branch office

Overseas companies may establish one or more places of business in Cyprus without forming a separate company. The branch is not a separate legal entity and any legal commitments will be entered into by the foreign company operating through its Cyprus branch. The overseas company is directly responsible for all liabilities of the Cyprus branch. The profits and losses of the Cyprus establishment will be subject to tax in Cyprus.

Sections 347 to 353 inclusive of the Companies Law set out the requirements regarding registration and periodic reporting of branches of overseas companies. Within one month of their establishment they must inform the Registrar of Companies of the name and address of the branch and provide the following:

- written details of the name and registration number of the company, its address, objects, capital and, if it is a non-EU company, its governing law
- a certified copy of its memorandum and articles of association or equivalent constitutional document, together with a translation if the original document is not in English
- details of the officers of the company
- details of the local representatives

Any subsequent changes in this information must be notified to the Registrar of Companies and any stationery used by the branch must give details of its registration.

Except in the case of branches of companies incorporated in an EU Member State qualifying for exemption, according to section 350(1)(b) (under the [Directive 2013/34/EU](#) of the European Parliament and of the Council of 26 June 2013 on the annual financial

statements, consolidated financial statements and related reports of certain types of undertakings, amending [Directive 2006/43/EC](#) and repealing [Council Directive 78/660/EEC](#) and [Council Directive 83/349/EEC](#)), the audited annual financial statements of the company must be filed with the Registrar of Companies, together with audited financial statements for the branch.

## Opening a bank account

While maintaining a local bank account can demonstrate added substance for the purposes of establishing tax residence, there is no rigid requirement for Cyprus companies or other structures to maintain bank accounts in Cyprus. However, if a local bank account is required there are several domestic banks and numerous branches of overseas banks.

By the amending Law No 13(I) of 2018, enacted on 3rd April 2018, the provisions of the [Directive \(EU\) 2015/849](#) of the European Parliament and of the Council of 20 May 2015 in relation to the prevention of the use of the financial system for the purposes of money laundering and the financing of terrorism (the so-called '4th EU AML Directive') have been transposed in domestic legislation. The Central Bank of Cyprus (CBC) has issued the 5th edition of the Directive on the Prevention of Money Laundering and Terrorist Financing ('the CBC AML/CFT Directive') which replaced the previous 4th edition of December 2013 as well as the amendments to the fourth edition of April 2016 and July 2017. The new CBC AML/CFT Directive makes analytical reference to ways of applying various provisions of the AML/CFT Law. The CBC has also issued guidelines to credit institutions on key thematic areas, such as customer identification procedures and due diligence measures, ongoing monitoring of accounts and transactions, politically exposed persons, fraudulent tax crimes as predicate offenses and risk management systems for the prevention and suppression of money laundering and terrorism financing.

Under the anti-money laundering regulations issued by the CBC, banks are required to undertake rigorous 'know your client' checks before opening accounts. For individuals, these will include obtaining certified copies of the individual's passport and proof of residential address. For companies, copies of the company's constitutional documents and details of its directors, shareholders and beneficial owners will be required. Details of the sources of funds and projected activity levels on the account will also be required for individual and corporate accounts.

On 19 June 2018, the [Directive \(EU\) 2018/843](#) was published in the official journal of the EU. The said Directive has not been transposed into Cypriot legislation yet.

Registered lawyers and accountants, who have been assessed and accredited by banks as eligible third-party introducers applying equivalent AML due diligence measures to the ones that the banks follow, can frequently introduce clients to banks and assist with the opening of bank accounts. In such case, the banks rely on the due diligence exercise on the introducers and accepts certification of documents by such introducers.

## Utilising office space

Property may either be owned outright (freehold) or rented on a short-term or long-term basis.

Property leases are governed by the provisions of the Contract Law, Cap 149. Provided the lease agreement's provisions specifically allow such registration, leases exceeding 15 years may be registered with the Department of Lands and Surveys under the Immovable Property (Tenure, Registration, and Valuation) Law, Cap 224. Registration should be effected within three months of the signing of the lease. Registered leases afford the lessee advantages including the right to trade the lease.

Leases will typically deal with the following issues:

- rent and periodic review arrangements
- early termination and break clauses in favour of the landlord or tenant are a matter of negotiation
- assignment of the lease normally requires the landlord's consent
- total or partial underletting of the premises normally requires the landlord's consent
- where the tenant leases the entire building, repairs and decoration are usually the tenant's responsibility. Where the lease is of only part of the building, the tenant is usually responsible for the internal repairs and decoration of the part they occupy, with the landlord being responsible for external and structural repairs of the whole building and repair and decoration of the common parts
- if the landlord is responsible for maintenance of the structure and common parts, the lease will usually include a service charge arrangement through which costs are recovered from the tenants. The proportion of service charge payable by each tenant is usually calculated by reference to the area occupied by the tenant as a proportion of the building or estate as a whole
- alterations are usually permitted with the landlord's consent
- dilapidations must normally be made good by the tenant at the end of the lease term and the premises must be restored to their state and condition at the time the lease commenced, unless the landlord accepts any conversions or improvements. Tenants do not generally receive any compensation for these

## Immigration controls

Cyprus's immigration law and regulations are aligned with the EU's *acquis communautaire*. Nationals of EU or EEA Member States do not need permission to enter or work in Cyprus, but must make an application to obtain a Registration certificate for EU citizens (commonly known as the 'yellow slip'). Third country nationals require visas to work or live in Cyprus and, in some cases, to enter Cyprus. Visa requirements are in line with EU obligations. Nationals of EU and non-EU countries who have been residing in Cyprus for at least five years are entitled to long-term residence permits with an indefinite limit.

## Economic citizenship programme

Cyprus has an economic citizenship programme, granting accelerated (within six months) citizenship to applicants of good character who can demonstrate a clean criminal and financial record and who invest at least €2.5m in Cyprus in any of the following investment categories, or a combination of them:

- real estate, land development and infrastructure projects—bare land does not qualify, unless a masterplan for the development of the land is submitted with the application
- purchase, establishment or participation in businesses or companies in Cyprus employing at least five Cypriot or EU citizens
- investment in alternative investment funds, securities of businesses based in Cyprus or entities licensed by the Cyprus Securities and Exchange Commission

The applicant must also complete the following mandatory donations:

- a mandatory donation of €75,000 to the Foundation for Research and Innovation to promote the creation of an entrepreneurial innovation ecosystem, an obligation that can be waived under certain conditions, ie in cases where the applicant invests a minimum amount of €75,000 to a certified innovation company (which will be licensed by the Ministry of Finance). Additionally, this is also waived in the event that the applicant invests a minimum amount of €400,000 in a company the main activity of which falls under the primary or secondary sector (excluding the construction industry) of the Economy or in the fields of R&D, education, health and renewable energy sources
- a mandatory donation of €75,000 to the Cyprus Land Development Corporation, aiming at the contribution to the integrated housing policy, specifically for the purpose of implementing affordable housing projects and the implementation of other housing plans/measures

The investments should be concluded before the date of application and must be retained for at least five years after the citizenship is granted. Investments may be held directly by the applicant, or through corporate or other structures provided that the applicant can demonstrate that he or she is the 100% beneficial owner.

In addition to the investment the applicant must purchase residential accommodation costing at least €500,000 plus VAT and have a Schengen visa in order to be able to apply for naturalization.

### **Fast track permanent residence programme**

It is also possible for third country nationals who have purchased qualifying property (ie new property and not re-sale) in Cyprus with a value of €300,000 (not including VAT) or more, who have deposited more than a specified amount (currently €30,000) in a Cypriot Bank as a guarantee and who can demonstrate an annual income from abroad of more than €30,000 to obtain immigration permits giving a right of permanent residence in Cyprus. The applicant must have a clean criminal record. Applications will be dealt with within three months.

### **Work permits**

Citizens of EU Member States may work in Cyprus. If they are employed, they must obtain a Certificate of Registration for EU citizens, which they are entitled to, as of right. Nationals of other countries wishing to work in Cyprus require employment permits. These are granted for employment for a specific employer and are normally valid for either one or two years, based on the duration of the employment agreement signed by both parties. They can be renewed one month prior to the expiry of the employment permit granted by the relevant authorities.

As part of its drive to attract foreign investment, the government has put in place a fast-track scheme for dealing with applications by foreign companies to employ workers from third countries, offering:

- simplified procedures and conditions for granting work and temporary residence permits for third country employees of companies of foreign investments (third country origin)
- reduction of the time spent to examine applications
- indefinite work and temporary residence permits for senior management and other key employees

- streamlined procedures for domestic staff employed by senior management personnel
- clear instructions as to the documentation required to support applications to the essentials
- relaxation of re-entry visa requirements for third country workers who frequently travel outside Cyprus

## Key employment laws

### Equal treatment

In 2000, Cyprus signed and ratified the revised European Social Charter, which safeguards rights such as the right to enter into an occupation freely, to just conditions of work, to health and safety at work, to protection of economic and social interests, to social security, and dignity at work. In October 2011, Cyprus accepted to be bound by additional provisions providing for the importance of social integration and participation in community life.

The Equal Treatment of Men and Women at Work and Vocational Training Law of 2002 (205(I)/2002) and the Equal Treatment at Work and Employment Law, 58(I) of 2004, as amended, protect all part-time and full-time employees, with the intention of eliminating discrimination by obliging employers to treat all employees equally. They prohibit any direct or indirect discrimination, harassment, or order that aims to discriminate on the grounds of religion or beliefs, age, sexual orientation, racial or ethnic origin in relation to the terms of entry into employment, self-employment, and work and terms and conditions of employment. Law 127(I) of 2000, as amended, makes it illegal to discriminate against disabled persons for reasons related to their disability.

Law 177(I) of 2002, as amended, obliges employers to provide employees with equal pay for equal work regardless of their sex and the Part Time Employees (Prohibition of Discrimination) Law (Law 76(I) of 2002, as amended) requires that part-time employees, whether permanent or temporary, should enjoy proportionately equal rights to those of equivalent full-time employees.

According to The Fixed-Term Employees (Prohibition of Discrimination) Law (Law 98(I)/2003), a part-time employee should not be treated less favourably than a relevant full-time employee just because they are under a fixed term contract unless this is justified on objective grounds.

The Law on Disabled Persons, Law 127(I)/2000, prohibits any form of discrimination against persons with any kind of physical or mental disability unless the nature and requirements of the job justify it and 'reasonable measures' (in accordance with the law) cannot be taken to provide for the needs of such disabled persons.

Harassment at work is considered as discriminatory behavior and is specifically prohibited by section 5 of the Equal Treatment of Persons regardless of Racial or Ethnic Origins Law of 2004, Law 59(I)/2004 as amended.

### Trade Union memberships

The right to union membership is guaranteed by the constitution. Under the Trade Unions Law, 71 of 1965 as amended, discrimination on grounds of union membership in respect of hiring, termination or other matters is prohibited.

## Transfers of undertakings

In the event of a business transfer or transfer of undertaking, there is an automatic assignment from the transferor of the business to the transferee of all rights and obligations of the transferor deriving from contracts of employment or from employment relationships existing at the date the business was transferred. The transfer of a business, an installation or part of business, cannot be a valid reason for dismissal for the transferor or the transferee. Dismissals due to economic, technical or organisational reasons are permitted, subject to consultation. This applies to public and private businesses carrying out economic activities. A mere transfer of shares does not constitute a business transfer for the purposes of the law since the identity of the employer remains the same.

## Termination of employment

Cyprus applies a just cause standard regarding termination of employment: regardless of what has been agreed in a contract of employment, or what the employer considers just cause, the employer may validly terminate an employee's employment only on the basis of one or more of the statutory grounds for termination set out in article 5 of the Termination of Employment Law, Law 24 of 1967 as amended. Dismissal for any other reason will be regarded as unlawful, and may give rise to a claim for unlawful dismissal.

The reasons set out in article 5 are:

- the employee's failure to perform their duties in a reasonably satisfactory manner (excluding temporary disability to work due to illness, injury, and childbirth)
- redundancy in compliance with the provisions of the law
- force majeure, act of war, civil commotion, act of God, destruction and the like
- expiry of a fixed period of employment
- misconduct on the part of the employee that justifies summary dismissal, such as conduct demonstrating that the relationship between employer and employee cannot reasonably be expected to continue, commission of a serious disciplinary or criminal offence or indecent behaviour in performing employment duties or repeated violation or disregard of employment regulations

Without prejudice to the illegality of any other reason for dismissal, article 6(2) specifies that the following are not valid reasons for dismissal:

- trade union membership or participation in related activities outside working hours
- pursuing office as a representative of employees or having done so in the past
- complaining in good faith, or participating in a procedure against the employer on the basis of a civil or criminal action or recourse to an administrative body
- race, colour, sex, marital status, religion, political views, ethnic origin or social background, pregnancy, or motherhood
- taking parental leave or leave for reasons of force majeure

Given that the purpose of the Termination of Employment Law is to protect employees from being dismissed without just cause, the courts generally adopt a sceptical approach to claims by employers that a dismissed employee's behaviour justifies their dismissal. In contrast to other civil cases where the burden of proof is on the claimant, by default, article 6 places the burden on the employer to prove that a dismissal is lawful and

justifiable under article 5 of the Law. However, if the employer alleges in defence to a claim for unlawful dismissal that the employee voluntarily terminated the employment the burden of proof shifts to the employee to show that the employment was in fact terminated by the employer. If the employee succeeds in doing so, the burden of proof shifts back to the employer to show that the termination was in fact justifiable under the law.

There have been cases in which the courts have recognised that, in accordance with general Contract Law, an employment contract may be terminated by mutual agreement between both parties, and that the Law on Termination of Employment and the statutory compensation provisions will not apply, provided there is accord and satisfaction between the parties.

## **Pay**

There is a prescribed minimum hourly or monthly rate for certain non-unionised occupations such as security guards, office and industrial cleaners, care assistants, clerical workers and shop assistants. The minimum rate was reviewed annually but due to the economic recession has remained unchanged since 2012.

The minimum monthly salary for certain categories of employees, such as salespersons engaged in selling goods in shops, office workers, medical assistants, assistant baby and child carers is €870. For any such person who has completed a continuous period of employment of six months with the same employer the minimum salary is €924 (gross).

The categories of workers entitled to receive the statutory minimum salary include security guards and caretakers in clinics, hospitals and nursing homes.

The minimum hourly salary for security guards has been fixed at €4.90 as of 1 April 2012 and for any such person who has completed a continuous period of employment of six months with the same employer the minimum salary is €5.20 (gross).

The minimum hourly salary for cleaners of business and corporate premises has been fixed at €4.55 as of 1 April 2012 and at €4.84 after six months.

## **Contracting with third parties**

The Contracts Law, Cap 149, which dates back to when Cyprus was a British colony, regulates contracts generally. Cyprus contract law is based on the same principles as English contract law, including freedom of contract, with terms implied into contracts only in exceptional cases, and the requirement for certainty of the terms, and the parties' authority and capacity to contract in order to conclude a binding contract. Certain contracts must comply with specified requirements regarding form.

One form of contract, the 'bond in customary form' is unique to Cyprus. It is defined by section 78 of the Contract Law as a 'promise in writing made by one person to another signed by the maker in the presence of at least two witnesses themselves competent to contract, engaging to pay on demand or at a fixed or determinable future time a sum of money, to a person specified therein together with interest and in the event of legal proceedings thereon the costs thereof'. The only possible defences to a bond in customary form are coercion or forgery, making it a highly effective security instrument.

## **Implied terms**

As in England, the courts may imply terms into a contract, but they are generally reluctant to do so. In certain contracts, terms may be implied by statute. The Contracts Law implies

terms into indemnity contracts and commercial agency contracts. The Sale of Goods Law, 10(I) of 1994, provides that, unless the circumstances demonstrate a different intention, there is an implied condition that the seller has the right to sell the goods and that the goods are as described, whether or not these provisions are included in the agreement.

### **Penalty clauses**

The Cyprus courts follow English law as regards liquidated damages and penalty clauses. A clause providing for the payment of liquidated damages in specified circumstances will be upheld if it appears to be based on a genuine, good-faith attempt to estimate, in advance, the loss the wronged party was likely to suffer from the breach of obligation in question, and the liquidated damages will be payable irrespective of the loss actually suffered.

A sum that is excessive and disproportionate to the greatest loss that could be expected to result from the breach concerned is likely to be deemed to be a penalty and unenforceable.

### **Exclusion or limitation of liability**

The Cyprus courts are generally reluctant to uphold exclusion or limitation clauses imposed on a weaker party by a stronger party. Such a clause cannot be effective and exclude the liability of any party unless the court is satisfied that the other party agreed to it at or before the time when the contract was made.

### **Unfair contract terms**

The Abusive Terms in Consumer Contracts Law, Law 93(I) of 1996 as amended, protects consumers against abusive terms in business to consumer contracts. It introduces the concept of an abusive term in a contract as any term which, despite the obligation of good faith, markedly weakens the consumer in terms of the rights and obligations of the parties. Irrespective of contract law principles, an abusive term in a contract does not bind the consumer. The rest of the contract is valid, unless the contract cannot be fulfilled without the abusive term.

## **Taxation overview**

### **Corporate income tax**

Cyprus-resident companies are subject to corporate income tax at 12.5% on worldwide taxable income. Group relief is available, and losses may be carried forward for up to five years for offset against future profits.

An important feature of Cyprus' tax framework is the 'intellectual property box' (IP Box) regime. The Cyprus IP Box basically provides a tax exemption of up to 80% for expenditure concerning research and development from qualifying intangible assets. Qualifying intangible assets include, amongst other, 'software programs' and 'patents' under the Cyprus IP Box regime. The legal entity that claims tax relief under the Cyprus IP Box regime must keep accounting books and records of income and expenses of each qualifying intangible asset. The Cyprus IP Box regime is applicable to qualifying persons and includes Cyprus tax resident taxpayers, tax resident permanent establishments of non-tax resident persons as well as foreign permanent establishments that are subject to tax in Cyprus. It is noted that the level of the qualifying profits is related to the extent the claimant performs Research and Development activities in order to develop the qualifying

intangible asset within the same company. The Research and Development need not be carried out within Cyprus but can even be outsourced so long as the Research and Development is attached to a Cyprus company that is a tax resident in Cyprus.

If a Cyprus IP company is incorporated, a tax exemption can be claimed under the Cyprus IP Box regime, assuming the sum of total research and development costs ('qualified expenditure') incurred in any tax year, are wholly and exclusively for the development, improvement or creation of qualifying intangible assets and which costs are directly related to the qualifying intangible assets. The qualification process for tax exemption over 'qualifying intangible assets' may take some time depending on the complexity of each case and the volume of the work of the competent authority who shall review such a request. The level of tax exemption that is finally granted is subject to the discretion of the Tax Commissioner.

In addition, the following types of income are fully exempt from corporate income tax:

- profit from the sale of securities
- dividends
- passive interest earned
- income of any approved pension or provident fund (a company is not likely to have such income)
- profits from a permanent establishment situated entirely outside Cyprus, unless the permanent establishment directly or indirectly engages more than 50% in activities, which lead to investment income and the foreign tax burden is substantially lower than the tax burden in Cyprus
- income of any company formed exclusively for the purpose of promoting art, science or sport, and of certain educational and charitable companies
- profits earned or dividends paid by a Cyprus shipping company, which owns ships under the Cyprus flag and operates in international waters, for which the tonnage tax scheme is mandatory

Cyprus provides an ideal environment for group holding and finance companies, offering tax free flow of dividends through Cyprus and beneficial exit opportunities. There is a full participation exemption and no tax on capital gains apart from gains derived from real estate in Cyprus. Cyprus' network of more than 60 double tax agreements provides excellent planning opportunities and unilateral relief is available for taxes paid overseas if no double tax agreement applies. Mergers and reconstructions can be carried out with full exemption from any form of taxation in Cyprus.

## **Personal income tax**

Cyprus resident individuals are taxed on the basis of worldwide income. Husband and wife are taxed separately. Each individual's first €19,500 of taxable income is tax free. Income above that amount is taxed at rates increasing from 20% to a top rate of 35% on taxable income above €60,000.

There are two ways in which individuals may qualify as tax-resident in Cyprus. The standard test is physical presence for at least 183 days in the tax year. However, Law 119(I) of 2017 provides an alternative route to residence. With effect from 1 January 2017, individuals who meet all the following conditions in respect of a given tax year will be deemed to be tax-resident in Cyprus if:

- they are physically present in Cyprus for one or more periods amounting to at least 60 days

- they do not remain in another country for one or more periods exceeding 183 days in total
- they are not tax resident in another country
- they undertake business in Cyprus, have employment in Cyprus or hold a post in a Cyprus-resident company which continues to the end of the tax year
- they maintain a permanent residence at their disposal for their use in Cyprus

Individuals becoming tax-resident and taking up employment in Cyprus are entitled to an annual exemption of €8,500 or 20% of their income from employment in Cyprus commencing from 1 January following the year of employment, whichever is less, for up to the first five years of residence. The exemption will not be available for tax years after 2020.

There is an alternative exemption introduced for high-paid individuals, exempting 50% of the first ten years' income from employment in Cyprus of a person who was not previously resident in Cyprus, provided the income from employment in Cyprus exceeds €100,000 per annum. The exemption is not available to anyone who was resident in Cyprus in any three of the five tax years preceding the year in which the employment in Cyprus began, or to anyone who was resident in Cyprus in the year preceding the year in which the employment began.

The exemption is available in respect of any tax year in which income from employment exceeds €100,000, irrespective of whether the income falls below that amount in any year, provided that when the employment started the income exceeded €100,000 and the tax authorities are satisfied that the variations in the annual income are not made for the purpose of obtaining this tax benefit.

The two exemptions are mutually exclusive, and only one of them can be claimed by a particular taxpayer.

### **Value added tax**

The VAT registration threshold is €15,600 per annum. Businesses trading in goods with other EU Member States in excess of €130,000 for exports and €55,000 for imports during any calendar year are also obliged to register for VAT and Intrastat. Cyprus's standard rate of 19% is among the lowest in the EU and reduced rates of 5% and 9% apply to certain goods and services. Companies that do not have trading activities within the EU need not register for VAT but of course they will be unable to recover input tax.

Companies receiving taxable services from out of Cyprus are obliged to register for VAT when such services exceed the registration threshold. Pure holding companies cannot register for VAT as they are not deemed to carry out a business.

### **Special defence contribution**

Special contribution for defence (SDC tax) is payable by Cyprus resident companies and by individuals who are resident and domiciled in Cyprus on the following categories of income:

- on rentals received at 2.25%, (formally, at 3% on 75% of the rental)
- dividends at 17%, and
- interest received other than in the course of business at 30%

Individuals who are resident but not domiciled in Cyprus are exempt from all forms of Cyprus tax on the above categories of income.

Relief or credit for tax paid abroad is available either under the terms of a double tax treaty or by way of unilateral relief.

Dividends received by one resident company from another resident company are exempt from SDC tax. Dividends received by a foreign shareholder (individual or company) from a resident company are also exempt, and this gives Cyprus a real advantage over other European holding company regimes, which generally impose a withholding tax, even when reduced by a double taxation treaty, of at least 5%.

Companies which do not distribute 70% of their accounting profits after tax, as defined by the relevant tax law, within two years after the end of the relevant tax year, will be deemed to have distributed as dividends 70% of these profits. Special contribution for defence at 17% will be payable on such deemed dividends to the extent that the ultimate shareholders are both Cyprus tax resident and Cyprus domiciled. The amount of deemed distribution is reduced by any actual dividends paid out of the profits of the relevant year at any time. This special contribution for defence is payable by the Company for the account of the shareholders.

### **Capital gains tax**

Cyprus does not impose any tax on capital gains except on gains from the sale of immovable property in Cyprus and of shares of unlisted companies directly or indirectly owning immovable property in Cyprus. These are taxable at 20%. All other gains are exempt. In order to stimulate the real estate market, a temporary exemption was introduced in July 2015 in respect of property acquired between 16 July 2015 and 31 December 2016. Provided that the property was acquired on an arm's length basis and not under the foreclosure provisions of the Transfer and Mortgage of Immovable Properties Law, any gain on the disposal of the property will be exempt from capital gains tax, irrespective of the date of disposal.

### **Stamp duty**

Stamp duty is payable on contracts relating to property or business in Cyprus:

- for transactions with a consideration up to €5,000, no stamp duty is payable
- for transactions with a consideration in excess of €5,000 but not exceeding €170,000, stamp duty of €1.50 for every €1,000 or part thereof is payable
- for transactions with a consideration in excess of €170,000, stamp duty of €2.00 for every €1,000 or part thereof is payable
- for the maximum stamp duty payable on a contract is capped at €20,000
- where no amount of consideration is specified in the contract, the stamp duty is €34
- for a transaction, evidenced by several documents, stamp duty is payable on the main contract and ancillary documents are charged at a flat rate of €2

A number of categories of documents are exempt from stamp duty, including documents relating to corporate reorganisations (which are exempt from all forms of taxation) and ship mortgage deeds or other security documents.

## Social insurance

Under the Social Insurance Scheme, the employer and employee each contribute 8.3% of the employee's earnings, a total of 16.6%. The employer also has to make a further 3.7% contribution to other Social Insurance funds. There is an upper earnings ceiling for calculating contributions that is usually increased annually. A self-employed person contributes 14.6% on income within a lower and upper earnings threshold that varies according to the nature of the trade.

## GeSY/GHS contributions for employers and employees

Commencing from 1 March 2019 all employers' and employees' in Cyprus will be required to make contributions to the General Healthcare System (GHS.), as follows:

† Period:	Employer Contribution: †	Employee Contribution:
1 March 2019–28 February 2020 †	1.85%	1.70%
From 3 January 2019 †	2.90%	2.65%

Employers' contributions and employees' deductions are calculated on the gross salary (up to €180,000) and will be paid through Social Insurances. The amount of the GHS deduction is tax deductible up to the total of 1/6<sup>th</sup> of the individual's total income. The amount of the employers' contribution is tax deductible for corporate tax purposes.

## Regulatory compliance

### Registrar of Companies

Companies are required to notify the Registrar of Companies of changes in their details and to submit annual returns including audited financial statements.

### Bribery and corruption

Cyprus is a signatory to numerous international anti-corruption conventions, including the United Nations Convention against Corruption of 2003 and the Strasbourg Criminal Law Convention on Corruption of 1999. The Law Sanctioning the Criminal Law Convention on Corruption, Law 23(III) of 2000 and Law 22(III) of 2006 transpose the provisions of the Strasbourg Convention into domestic law, aligning Cyprus law with best practice in the field of legislation combating bribery of foreign public officials, bribery in the private sector, trading in influence and laundering of proceeds from corruption offences, account offences and participatory acts. In addition, the Prevention of Corruption Law, Cap 161, which prohibits bribery of public officials, continues in force.

The Criminal Code, Cap 154, is a compilation of criminal law provisions. It provides for criminal sanctions for bribery of public officials in sections 100 to 103 and of witnesses in section 118.

### Merger control and protection of competition

Mergers are regulated by the Control of Concentrations between Undertakings Laws

83(I) 2014 (Merger Law). The Merger Law is implemented alongside the Protection of Competition Law 2008-2014 (Law 13(I) of 2008 as amended by Law 41(I) of 2014) (Competition Law). Together, these laws harmonise Cyprus merger and Competition Law with the *acquis communautaire*.

The Merger Law and the Competition Law are implemented by the Commission for the Protection of Competition (CPC), an independent body established under the earlier Competition Law. The CPC is responsible for examining and ruling upon conduct that is deemed anti-competitive and in violation of the Competition Law. In addition, by virtue of merger legislation, the CPC is provided with a regulatory framework by which it can control mergers and takeovers that are classified as being 'of major importance', thereby ensuring that no concentration between parties that have economic strength in Cyprus will create or reinforce a dominant position in the affected market.

### **Banking and Prudential Regulation**

The Capital Reserves [Regulation \(EU\) No 575/2013](#) is directly applicable in Cyprus. Also, the provisions of the Capital Requirements Directive IV have been fully transposed into the Cyprus Business of Credit Institutions Law. These constitute the basis for the provision of banking services by authorised Cyprus, EU and third-country credit institutions.

### **Banking services and financing tools**

The laws and regulations governing the provision of banking and ancillary services by authorised credit institutions are designed to provide the fullest range of financial products for savers and borrowers while promoting responsible lending and striking an appropriate balance between the interests of banks and their customers and are constantly updated to ensure they are fit for purpose. Significantly in 2018, amendments were made to the Transfer and Mortgage Law with particular focus on updating of foreclosure procedures in an effort to remove ambiguities and reduce delays, and thus strengthen certainty and credit, the primary element underpinning the smooth operation of money markets in the contemporary global environment.

### **Investment funds**

The Cyprus fund sector is one of the most dynamically developing areas of the Cypriot economy. Cyprus is fast becoming a preferred location for the establishment of investment funds by promoters and fund managers. Industry and government bodies are exercising considerable efforts to promote the advantages of the country in terms of hosting and supporting the operations of the international fund and asset management industry. These efforts, combined with the existing activities of internationally recognized fund service providers and respected local independent operators, has seen a rapid expansion in the industry over the past five years.

Cyprus is an EU Member State and as such is subject to the full spectrum of EU financial services regulation. In addition, an investor considering doing business in Cyprus can expect advantages such as access to the European market, the strategic geographical location between Europe, Middle East and Africa and the fact the country can provide a business environment with highly qualified professionals and sophisticated infrastructure. Moreover, the set-up costs and costs of ongoing operations in Cyprus are considered relatively low by international standards and the tax regime is favourable and both EU and OECD compliant. In addition, there is access to an extensive network of double tax treaties allowing for tax-efficient structuring of investments.

The Cyprus Securities and Exchange Commission (CySEC) is responsible for the supervision of regulated financial markets in Cyprus and of businesses involved in them, including issuers of securities, brokers and brokerage firms, licensed investment services companies, collective investment schemes, fund managers and investment consultants. It is responsible for the licensing and oversight of investment firms, and has extensive powers to obtain information necessary for the exercise of its responsibilities. It may suspend or revoke licences and may impose administrative sanctions and disciplinary penalties.

The CySEC is also responsible for the licensing and control of fiduciary and corporate service providers under the law on the Regulation of Fiduciaries, Administration Businesses and Company Directors.

Cyprus's national regime for investment funds fully implements the EU framework established under the Undertaking for the Collective Investment in Transferable Securities (UCITS) [Directive 2009/65/EC](#), the Alternative Investment Fund Managers (AIFM) [Directive 2011/61/EU](#) and the Markets in Financial Instruments [Directive 2014/65/EU](#), MiFID II. Moreover, the legal and regulatory framework has been enriched with the introduction in July 2018 of an updated and amended Alternative Investment Funds Law (124(I)/2018) which introduced the ability for fund managers to establish Registered Alternative Investment Funds (RAIF) in Cyprus without the need for additional authorisation by CySEC.

The new Alternative Investments Funds Law was enacted in July 2018 to replace earlier legislation. It provides all the benefits of the EU legislative framework and introduces innovative vehicles for collective investments. The advantages of this modern regime for portfolio and asset management are greatly enhanced by Cyprus' well-understood common law system and its unique tax benefits. It offers investment funds a highly attractive environment for the distribution of funds on a cross-border and global basis and direct access to the EU investment market, given that AIFs that are established and regulated in Cyprus are allowed to be marketed to professional investors across the EU.

The RAIF regime introduced by this new law provides a flexible regulatory framework for establishing a regulated fund. RAIFs do not require a licence from CySEC since they are required to be externally managed by a regulated entity, such as an AIF manager, UCITS or a Cypriot investment firm, and thus supervision is done through that asset manager. Additionally, the establishment of the limited partnership form of a fund offers greater flexibility and effectiveness in the hands of asset managers and international investors.

RAIFs shall also provide flexibility in terms of structure as it can be set up in any legal form that is available under Cyprus Law (investment company with fixed or variable capital, limited partnership, or common fund). It can also be open or closed-ended, and it can follow any strategy and invest in any assets. However, it cannot be established as a Money Market, Loan Origination Fund, and Fund of Funds.

## UCITS

Concerning the UCITS, the transposition of the UCITS IV Directive, [Directive 2009/65/EC](#) in 2012, through the enactment of the Open-Ended Undertakings for Collective Investment Law of 2012 (UCI Law), (further amended in April 2016 with the transposition of UCITS V), are very important points for the relevant industry in Cyprus. The eligible assets are transferable securities, money market instruments, open-ended collective investment schemes, deposits with eligible credit institutions and financial derivative instruments. UCITS operations must be based on the principle of risk spreading. Thus, the structure of UCITS must demonstrate proper diversification. If not self-managed, the

UCITS must appoint a UCITS Management Company which should be authorized. Fund administration services may be performed either by the UCITS Management Company or there may be outsourced to an external fund administrator, Finally, UCITS must appoint a Cyprus-qualified audit firm and, also, a single and independent Depository, according to regulatory requirements.

## Securitisation

The covered bond regime, which was previously the only framework under which securitisations could take place, was widely regarded as inadequate since it was open to only the largest credit institutions. In July 2018, a new law governing securitisations was enacted to fill the gap. It establishes a straightforward, modern framework for debt securitisation based on accepted market practices and supervised by the Central Bank of Cyprus. It is expected to result in a substantial increase in the use of securitisation options and structures.

## Payment services and accounts

The Cyprus regime on payment services follows the corresponding EU legislation, notably the Payment Services [Directive \(EU\) 2015/2366](#) and the Regulations governing the Single euro Payment Area ([Regulation \(EU\) 260/2012](#) and [Regulation \(EC\) No 924/2009](#)). There is a sound and reliable legal and regulatory infrastructure that provides for the freedom of services and promotes cross-border trade for all users of payment services in or from Cyprus. Moreover, its implementation of the regulatory regime on E-money and E-money institutions under EU [Directive 2009/110/EC](#) has made Cyprus an attractive jurisdiction in which to establish E-money businesses.

## Investment services and capital markets regulation

The provision of investment services is governed by the Investment Services Law of 2018, which implements the changes resulting from the MIFIR [Regulation \(EU\) 600/2014](#) and the MiFID II [Directive 2014/65/EU](#). The Investment Services Law is supplemented by detailed secondary legislation and directives issued by CySEC. Post-trade services and respective rights and obligations for market players and participants are regulated and detailed in the provisions of the EMIR [Regulation \(EU\) No 648/2012](#) and the Central Securities Depositories [Regulation \(EU\) No 909/2014](#). Key capital markets legislation includes the Prospectus Law (transposing the EU Prospectus [Directive 2003/71/EC](#)) and the Prospectus [Regulation \(EU\) 2017/1129](#), the Market Abuse Law 102(I) 2016 transposing the Market Abuse [Regulation \(EU\) 596/2014](#), the Transparency Law (transposing the Transparency [Directive 2004/109/EC](#)) and the Takeover law 41(I)2007, as amended.

## European passport for funds

The facility of the 'single EU passport' has created good prospects for Cyprus to be considered as a hotspot for setting up funds, or for fund management companies which seek to utilize the country's beneficial framework to manage or market funds across Europe from Cyprus.

This passporting ability was originally introduced under the UCITS IV Directive, [Directive 2009/65/EC](#). Under this regime, UCITS are allowed to be freely marketed on a public basis across all EU Member States, without any additional authorisation from the competent regulatory authority of each host Member State after successful completion of a streamlined notification process.

In a similar way, a 'passport' has been introduced by the Alternative Investment Funds Directive (AIFMD), [Directive 2011/61/EU](#) for the distribution of units of AIFs to professional investors in the EU. Upon authorization of Cyprus AIFMs by CySEC, the AIFM can market their EU AIFs to professional investors in all Member States, taking advantage of the simplified regulator-to-regulator notification system. There is no need to seek permission or authorisation from each Member State individually nor to address individual member state specific legislation.

## Data protection

Data protection in Cyprus is principally regulated by the General Data Protection Regulation (the GDPR), [Regulation \(EU\) 2016/679](#) and the Law on the Protection of Natural Persons Against the Processing of Personal Character Data and the Free Movement of Such Data Law of 2018 (Law 125(I)/2018), which implemented certain national derogations under the GDPR. The GDPR and the derogations Law have repealed the previous law (Law 138(I)/2001) which implemented [Directive 95/46/EC](#).

For the better application of the GDPR, the Cyprus Commissioner for Personal Data Protection has adopted certain guidelines issued by the Article 29 Working Party and also issued its own announcements, guidelines and opinions which now apply together with the Guidelines already issued under the repealed law, until their replacement, as necessary.

These Guidelines cover in particular:

- video-surveillance
- employment relations
- use of the internet and mobile phones
- direct marketing of goods and services
- directions to banking institutions about retention periods for personal data
- directions for political communications through phone calls
- directions for the exercise of the right to access by public employees
- directions about retention periods for medical data
- opinion 1/2018 addressed to Trade Unions in relation to the notification by the employers of lists with names of employees, their salaries and contributions
- directive on the service of natural persons (data subjects) by telephone, email and telefax from public authorities and private organizations

Derogations under the national law (N. 125(I)/2018) include:

### *Notification & Consultation requirements*

- notification of the appointment of a DPO to the Commissioner of Personal Data Protection
- prior notification to the Commissioner, where a transfer to a third country involves special category personal data
- impact assessment and prior consultation with the Commissioner in the event of a transfer of special category personal data to a third country or to an international

### *References:*

[Article 49 of Regulation \(EU\) 2016/679, General Data Protection Regulation \(GDPR\)](#)

organization on the basis of the derogations provided for in Article 49 of the GDPR

- consultation with the Commissioner when the rights of data subjects are restricted by the Controller as well as in the event of a decision not to notify a data subject about a data breach

#### *Data Subject Rights*

Where the controller may apply measures to limit, in whole or in part, the rights referred to in Articles 12, 18, 19 and 20 of the GDPR (information, restriction of processing, data portability):

- an impact assessment and prior consultation with the Commissioner is required for the implementation of such limiting measures
- the controller shall inform the data subject about the application of such limiting measures
- the Commissioner may impose conditions on the controller for the implementation of the limiting measures and for the data subject's information

#### *Children's data and age of consent*

- in relation to the offer of information society services directly to a child, the processing of the personal data of a child shall be lawful where the child is at least 16 years old
- where the child is below the age of 16 years, such processing shall be lawful only if and to the extent that consent is given or authorised by the holder of parental responsibility over the child

#### *Processing of special categories data and criminal conviction data*

The processing of personal data or special categories of personal data or personal data relating to criminal convictions and offenses carried out for journalistic or academic purposes or for purposes of artistic or literary expression is lawful, provided that those purposes are analogous to the intended objective and respect the essence of the rights as defined in the Charter of Fundamental Rights of the European Union, the European Convention of Human Rights and Fundamental Freedoms (ECHR), which has been ratified by the European Convention for the Protection of Human Rights (Ratification) Law, and in Part II of the Constitution.

The provisions of Articles 14 and 15 of the GDPR shall apply to the extent that they do not affect the right to freedom of expression and information and the press confidentiality.

#### *Processing for scientific or historical research purposes*

Processing carried out by a controller or processor for archiving purposes in the public interest or for scientific purposes or historical research or for statistical purposes excludes the use of personal data with the purpose of taking a decision, which produces legal effects vis-à-vis the data subject or significantly affects it in a similar way.

#### *Sanctions*

An administrative fine imposed on a public authority or public body in respect of non-profit-making activities, may not exceed €200,000.

In addition to administrative fines, the law creates a number of criminal offences for the violation of certain articles of the Law and of the GDPR (ie Articles 30, 31, 33(1)&(2), 34, 35(1), 42, Chapter V, etc), punishable upon first conviction with imprisonment of one to five years and/ or a fine of €10,000 to€50,000, depending on the offence.

#### *Privacy and Electronic Communications*

#### *References:*

**Articles 12–20 of Regulation (EU) 2016/679, the GDPR**

#### *References:*

**Articles 14–15 of Regulation (EU) 2016/679, the GDPR**

#### *References:*

**Articles 30–31, 33(1)–(2), 34, 35(1), 42 of Regulation (EU) 2016/679, the GDPR**

In Cyprus, the European [Directive 2002/58/EC](#) on Privacy and Electronic Communications has been implemented by The Electronic Communications and Postal Services Law 112(I)/2004. Under the latter, the use of electronic mail (email) for the purposes of direct marketing is permissible only in the case of addressees who have given their prior consent.

The only exception in Cyprus where the principle of 'opt-out' applies is where a sender has been provided by a customer with an email address in the course of a sale of goods or services. Under Law 112(I)/2004 individuals or legal entities that obtain their customers' personal data (eg their email addresses) in the course of the sale of a product or service, may use these data for direct promotion of their own similar products or services so long as customers are aware of this practice and given the opportunity to decline from receiving communications in the future.

## Protecting key assets and employees

### Intellectual property

In addition to the tax benefits described earlier, Cyprus offers comprehensive protection of intellectual property rights. Some rights apply automatically; others require registration. A summary of each is given below:

Right	Relevant legislation	Registration required?	Duration of protection
Trade mark	Trade Marks Law	Yes	Ten years, renewable every ten years
Trade name	Partnerships and Business Names Law, Cap 116	Yes	Once registered, a trade name remains on the register until an application for removal is filed by the trader
Patent	Patents Law 16(I) of 1998 as amended	Yes	20 years from the date of the filing of the application. The maintenance of a patent is subject to annual renewal and to the payment of a modest renewal fee
Copyright	Right of Intellectual Property Law 59 of 1976 as amended	No	70 years after the death of the creator of the work. For films, the protected period is 70 years from the death of the last co-creator (producer, director, screenplay writer, etc)
Designs	Legal Protection of Industrial Designs and Samples Law, 4(I) of 2002	Yes	25 years from the filing of the application, divided into five periods of five years. The proprietor is entitled to renew the protection for one or more periods up to a total of 25 years by paying the relevant fees. As in the case of patents, the renewal fees are modest

In many cases, there are similar EU frameworks (eg as regards European Union trade marks or designs) that protect intellectual property alongside the domestic regime.

## Restrictive covenants

In recent years, there has been a trend for employment contracts to include provisions seeking to limit employees' ability to engage in activities that may be competitive with the employers' business after the cessation of the employment. Such provisions also discourage poaching of employees by competitors. A new owner of a business may similarly seek to impose restrictions on the future activities of the seller.

Under Cyprus law, covenants not to compete are classified as restraint of trade clauses and may be void. Section 27(1) of the Contract Law, Cap 149 provides explicitly that: 'any agreement by which any person is restrained from exercising a lawful profession, trade, or business of any kind, is to that extent void'.

Section 27(2) provides three exemptions:

- the buyer and seller of the goodwill of a business may validly agree that the seller may not carry on a similar business in competition to the buyer, within local limits and subject to the court regarding the arrangement as reasonable
- one or more partners may validly agree to similar local restrictions in advance of the dissolution of a partnership
- one or more partners in a continuing partnership may validly agree not to carry on any other business

There is, however, no express mention in the Contract Law or any other law regarding employment relationships.

Case law of the Supreme Court of Cyprus dating back to 1937 indicates that the Court regards the list of exemptions contained in s 27(2) as exhaustive, and that any provision that seeks to restrain trade that is not included in s 27(2) is void.

EU law on this subject is also applicable in Cyprus. There is EU case law with regard to [article 101](#) of the TFEU and competition restrictions in the case of vertical agreements, where the European Court of Justice admitted that where a franchiser for example must be in a position to protect certain interests vital to the business and to the identity of the network (eg the know-how), as long as the provisions made were essential for this purpose.

For this reason, the ECJ accepted that the use of non-competition clauses during the term of a franchise agreement and for 12 months after the termination of the agreement in the same area as the franchisor was appropriate to protecting the franchiser's know-how and trade secrets.

Under the EU [Regulation No.330/2010](#) non-competition obligations in a vertical agreement may not be permitted under certain conditions:

- where any direct or indirect non-compete obligation exceeds five years or have an indefinite duration
- where there is any direct or indirect obligation causing the buyer, after termination of the agreement, not to manufacture, purchase, sell or resell goods or services
- where there is any direct or indirect obligation causing the members of a selective distribution system not to sell the brands of particular competing suppliers

The Regulation also provides that the non-compete obligation will be permitted after the termination of a vertical agreement, not to manufacture purchase, sell or resell goods or services, if the following conditions are met:

- the obligation relates to goods or services which compete with the contract goods or services

- the obligation is limited to the premises and land from which the buyer has operated during the contract period
- the obligation is indispensable to protect know-how transferred by the supplier to the buyer
- the duration of the obligation is limited to a period of one year after termination of the agreement

The common law approach also is relevant. It has been held that there is a sufficient justification for a restraint of trade clause if the restriction is considered reasonable. The onus of establishing that a restraint of trade clause is reasonable rests with the person relying on the clause, whereas the person who asserts that the clause is contrary to the public interest is responsible for proving that assertion.

Even though the courts may be more hesitant to enforce restrictive clauses, it is possible that, in the light of the EU guidance set out above, clauses that serve to protect the franchiser's system and know-how may be accepted and enforced. Non-competition clauses in other agreements have been upheld, and it would be advisable in any event to include a severability clause in the agreement to protect the franchiser if any non-competition clauses are considered void.

### Useful links

- [Central Bank of Cyprus](#)
- [Civil Registry and Migration Department](#)
- [Office of the Commissioner for Personal Data Protection](#)
- [Commission for the Protection of Competition](#)
- [Cyprus Bar Association](#)
- [Cyprus Investment Promotion Agency](#)
- [Cyprus Securities and Exchange Commission](#)
- [Cyprus Stock Exchange](#)
- [Tax Department](#)
- [Department of Registrar of Companies and Official Receiver](#)
- [Doing Business: Economy Rankings](#)