

Memorandum on Cyprus Societas Europaea

The ability to set up the new legal vehicle of the European Company or “Societas Europaea” as it is called is a reality in Cyprus. Cyprus has successfully implemented a number of Statutes and amendment legislation giving effect to the EC Regulation No. 2157/2001 on the European Company Statute (“SE”) (the “EC Regulation”) and the Council Directive 2001/86/EC supplementing the European Company Statute with regard to the involvement of employees.

Implementing Legislation

Law 98(I)/2006 is the legislation which amended the Cyprus Company Law, Cap 113, (the “Law”), by granting the option for the formation of a European Company and the addition of the words SE at the end of its name.

This was supplemented by detailed secondary legislation in the form of the European Public Liability Company Regulation 2006 [Κ.Δ.Π. 290/2006], which closely reflects the provisions of the EC Regulation. The legislation implementing the EC Regulation in Cyprus had controversially preceded the implementation of Directive 2005/56/EC on cross border mergers of limited liability companies, which constitutes a vital constituent of the formation of an SE by merger. Law N.186(I)/2007 has inserted new provisions in the Law bringing the same in line with the provisions of the Directive and facilitating cross border mergers with Cyprus companies.

Advantages of the European Company

Businesses with operations throughout the EU may now combine or reorganise their business structure so as to take full advantage of the single market thereby reducing administrative costs and avoiding the need of setting up complex networks of subsidiaries. Moving across borders will also be possible without having to endure the process of dissolution and winding-up in one member state and re-registering in another. The companies that come under the umbrella of the European Company may maximise the freedom of movement for such companies and take full advantage of the trading possibilities within the Internal Market.

Regulation in Cyprus

The EC Regulation provides guidance on the procedures to be followed in the set up of the SE and the structure of management and corporate governance reflected in the SE Statutes.

The most basic but important domestic provisions that relate to the incorporation of a Cyprus based European Company are the following:

- Share Capital: an SE with a registered office in Cyprus must have a minimum amount of subscribed share capital of the equivalent of at least EUR 120.000;
- Registered Office and Head Office: the commercial bodies that form an SE must have their registered offices in the EU. Despite this, Cyprus has implemented an option so that the head office of such companies need not be in the EU provided that there exists a 'real and continuous link' with the economy of a member state. Importantly, if an SE is registered in Cyprus, legislation provides that both the registered office and head office must be situated in Cyprus although they need not be at the same address.

The EC Regulation does not exhaustively regulate all operations of the SE so that matters of taxation, competition, intellectual property or insolvency remain the domain of individual member state provisions. This fact is beneficial to a jurisdiction such as Cyprus which already attracts foreign investment through its attractive tax regimes. Briefly, the tax position of a holding company incorporated in Cyprus and its advantages may be outlined as follows:

- Dividends: a Cyprus holding company will be subject to low or zero withholding tax rates when extracting dividends from underlying subsidiaries by relying either on its double tax treaty network, or on the Parent / Subsidiary Directive;
- Capital Gains Tax: there is no capital gains tax in Cyprus except on gains accruing from the disposal of immovable property held in Cyprus or shares in companies, whose property consists of immovable property held in Cyprus;
- No tax on profits from the disposal of shares, bonds, stocks or securities;
- Corporate tax: 10% tax on corporate profits;
- No withholding tax on royalties for use outside Cyprus;
- No withholding tax on interest;
- Credit relief available for foreign withholding tax unilaterally;
- Ability to carry forward losses indefinitely;
- Group relief rules available;
- Flexible and tax efficient reorganisation provisions;
- Wide network of double tax treaties.

Formation in Cyprus

There are various ways in which an SE may be formed.

- a) By Merger: two or more public limited companies, including SEs, may form an SE by merger provided that at least two of them are governed by the laws of different member states;
- b) Holding SE: two or more private or public limited companies, including SEs, may form a Holding SE by becoming majority owned by the Holding SE;

- c) **Subsidiary SE:** two or more companies, including SEs, firms or other legal bodies (governed by public or private law) formed under the law of a member state with registered offices and head offices in the Community may form a subsidiary SE by subscribing for its shares. An existing SE may form another SE as a subsidiary company, in which it may be the sole shareholder (wholly owned Subsidiary SE);

For an SE formed as envisaged under points (b) and (c), at least two of the companies involved in its formation must be governed by the law of a different member state (other than Cyprus), or must have had for at least two years, a subsidiary company governed by the law of another member state or a branch situated in another member state;

- d) **By Transformation:** An existing public limited company registered in Cyprus may transform into a SE registered in Cyprus provided that the public limited company had for at least two years a subsidiary company governed by the law of another member state.

Conclusions

A company based in Cyprus and obtaining a European identity through the legal vehicle of the SE could more easily attract investors and private venture capital than a series of national companies all working under different national rules. With its attractive tax advantages and the introduction of the EURO as of the 1st January 2008, Cyprus is ultimately an ideal location for the set up of a European Company.

FURTHER INFORMATION

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