

Cyprus companies: an overview

Cyprus is one of the most attractive tax planning jurisdictions. Its favourable taxation system together with its excellent infrastructure facilities and high quality of services have led Cyprus to be considered as one of the most reputable international financial centres.

Tax benefits of choosing Cyprus include:

- 12.5% corporate tax rate
- Broad network of double tax treaties
- Unilateral tax credit on any tax paid abroad on the same income, irrespective of the existence of a double tax treaty
- Profit from sale of shares and titles are exempt from taxation
- No capital gains tax other than on the disposal of immovable property situated in Cyprus or shares representing immovable property based in Cyprus
- Payment of dividends and interest to non-Cyprus tax residents are exempted from withholding tax
- Notional interest deduction on new capital in the form of paid up share capital or share premium of a Cyprus company
- Transfers of assets and liabilities between companies can be effected without tax consequences within the framework of a reorganisation (mergers and demergers, divisions, exchange of shares)

A business presence in Cyprus, the combination of the country's sophisticated regulatory framework, double taxation treaties and the fact that Cyprus is an acknowledged centre of financial excellence, make Cyprus a preferred destination for corporate set ups.

A Cyprus company may take the form of either a private company or a public company.

Private limited liability company

General provisions relating to private companies:

- **Share Capital:** there is no minimum issued share capital required for a private company, although there should be at least one share in issue and the share capital can be expressed in any currency
- **Shareholders:** a private company must have at least one registered shareholder. The full name, nationality,

address, profession, passport copy, and number of shares to be acquired are required for each shareholder. The shareholder can be a corporate entity. The nationality of the shareholders is not taken into consideration in respect of tax residency of the Cyprus company

- There can be no invitation to the public to subscribe for any shares or debentures
- 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
- **Directors:** the minimum number of directors is one. A director can be either an individual or a corporate entity. Directors need not be Cypriot nationals or resident in Cyprus, although this is an important factor in determining whether the company is tax resident in Cyprus. The company needs to be managed and controlled in Cyprus in order to be considered Cyprus tax resident. There are no hard and fast rules to prove tax residence but generally the tax authorities will look to the country where the majority of the physical directors reside, where the meetings are held and strategy is carved out, where offices are located, where the accounting, banking and administrative functions are carried out etc
- The private company must have a registered address in Cyprus and a Cyprus company secretary

Formation of a private limited liability company

A name approval must be obtained by filing an application to the Registrar of Companies in Cyprus (the **Registrar**) regarding the proposed name of the new entity.

The Memorandum and Articles of Association (**M&AA**) must be drafted according to the new entity's proposed

activities and needs. The subscribers to the M&AA must sign the Greek version of the same for purposes of submitting the same to the Registrar for the incorporation procedure.

In addition to the above, Registrar's standard forms (HE1, HE2 and HE3) must be prepared containing the proposed registered office and officers of the new entity.

Once the above are obtained/prepared and signed, they must be filed at the Registrar and upon satisfaction of the Registrar that all requirements have been complied with, the Registrar will proceed with the incorporation of the new entity and the issuance of its corporate certificates. It will take approximately three to four working days, from the date of submission of the relevant documents, for the new entity to be incorporated.

In the meantime, a subscriber(s)' resolution must be prepared in order to appoint the first director(s) and the first director(s)' resolution must then be prepared to approve initial corporate matters such as registered office, secretary, the seal and the allotment and issue of the subscription shares to the subscribers. Furthermore, the common seal must be obtained and the corporate register (eg registers of members, directors and secretary etc) and share certificates must be drafted and executed.

Public limited liability company (Plc)

General provisions relating to Plcs:

- **Share Capital:** it must have a share capital of at least €25,629
- **Shareholders:** the minimum number of shareholders must be seven (there is no maximum)
- **Directors:** the minimum number of directors is two
- **Commencement of business:** on being granted the Certificate of Incorporation and accordingly having become a legal person, it is not entitled to commence business immediately, but may do so after it has been granted a second certificate, the Trading Certificate
- In order to obtain the Trading Certificate, it must either issue a Prospectus or file a statement in lieu of prospectus
- **Statutory meeting/statutory report:** it must hold a general meeting of its shareholders, called a statutory meeting not less than one month and not more than three months from the date on which it is entitled to commence business and the directors have to make a statutory report to the shareholders
- Share warrants may be issued, however shares at a discount may not

Formation of a Plc

Initial steps

A name approval must be obtained by filing an application to the Registrar regarding the proposed name of the new entity.

The M&AA must be drafted according the new entity's proposed activities and needs and the subscribers to the

M&AA must sign the Greek version of the same for purposes of submitting the same to the Registrar for the incorporation procedure.

In addition to the above, the following additional documents must be prepared and filed to the Registrar together with the signed M&AA the Registrar's standard forms must be prepared containing a list of persons who have consented to act as directors. Where any director is appointed by the Articles of Association (**AA**), his/her duly signed consent to act as director must also be filed.

The Registrar will proceed to the examination of the above documents and upon satisfaction with legal requirements will proceed to the incorporation of the new entity, within one to two weeks, and will issue the new entity's corporate certificates, including the Certificate of Incorporation. Thereafter, the Trading Certificate will be issued in order for the new public entity to commence its business.

In the meantime, a subscriber(s)' resolution must be prepared in order to appoint the first director(s) and the first director(s)' resolution must then be prepared to approve initial corporate matters such as registered office, secretary, the seal and the allotment and issue of the subscription shares to the subscribers. Furthermore, the common seal must be ordered and obtained and the corporate register (eg registers of members, directors and secretary etc) and share certificates must be drafted and executed.

Statement in lieu of prospectus or Prospectus

Before issuing any of its shares or debentures to the public in order to raise capital, a Plc must either issue a statement in lieu of prospectus in the form of the Third Schedule of the Law or issue a prospectus in the form of the Fourth Schedule of the Law.

A prospectus is a legal document published by the company inviting the general public to subscribe to its shares. It contains all the relevant details about the company which can affect an investor's decision.

Statement in lieu of prospectus is a document issued by the company and filed with the Registrar. It is used when the company does not wish to offer its shares for public subscription and the capital will be raised from known sources.

Trading Certificate

A Plc is not entitled to commence business until a Trading Certificate is obtained from the Registrar. A statutory declaration must be prepared and lodged at the Registrar by the secretary or a director of the Plc, in the prescribed form, to lead to the issue of the Trading Certificate. The statutory declaration will include, inter alia, the following:

- The nominal value of the share capital
- The amount of the share capital which has been paid up
- A budget of the Plc's initial expenses
- A budget of the expenses for services of registration advisers

Bank confirmation

The Plc must deliver to the Registrar a confirmation by a bank, registered in Cyprus, stating that an amount equal to at least the minimum share capital has been paid into a bank account kept by the Plc with the bank in question.

Statutory meeting

The Plc must, within a period of not less than one month and not more than three months from the date at which the Plc is entitled to commence business, hold a general meeting of its shareholders. The directors shall prepare a statutory report and forward the same to all the shareholders at least 14 days before the statutory meeting. The statutory report shall state, inter alia, the following:

- The total number of shares allotted
- The total amount of cash received by the Plc in respect of the shares allotted
- The names, addresses and descriptions of the directors, auditors and secretary of the Plc

Conversion of a private company to a Plc

An application must be submitted to the Registrar to obtain clearance for the change of name of the company. The word "Ltd" must be deleted and replaced with the word "Plc". Furthermore, the M&AA will need to be amended to reflect the provisions/requirements of the Law in relation to a Plc. The amendments like every amendment of the AA is carried out by special resolution of the general meeting.

Once the amendments are approved and effective the company will cease to be a private and it must, within 14 days after the said date, deliver to the Registrar a statement in lieu of prospectus in the form and containing the particulars set out in the Third Schedule of the Law.

This must be accompanied by the amended M&AA, a copy of the special resolution approving such amendment, the provisional approval regarding the change of name, the standard Registrar forms for notification of the new director(s), shareholders and increase of share capital and proof that the issued share capital has been fully paid. A statement in lieu of prospectus need not be delivered if within the said period of 14 days a prospectus relating to the company which complies with the Fourth Schedule is issued and is delivered to the Registrar for registration.

Failure to comply with these provisions or provision of untrue statements in the statement in lieu of prospectus, render the company and the persons concerned liable to criminal prosecution.

Conversion of a Plc into a private company

A company which has been incorporated as a Plc and which does not increase its offer for subscription share capital to €25.629 (as provided for public companies), may be converted into a private company provided the AA of the company in question are amended in order to reflect the provisions/requirements of the Law in relation to a private company, such as:

- To restrict the right to transfer its shares
- To limit the number of its shareholders to fifty, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment and have continued after the determination of that employment to be, shareholders of the company
- To prohibit any invitation to the public to subscribe for any shares or debentures of the company, provided that the shares in a private company may be held by one and only person, either upon the formation of the company or by their subsequent acquisition by one and only person

In addition to the above, an application to the Registrar to change the name must be filed in order to delete the word "public" or "Plc" from its name and replace it with "limited" or "Ltd" and once approved, the new name for the private company can be used.

The company will cease to be a Plc as soon as the alteration of the AA is approved by the shareholders and board of directors and the necessary filings are made to the Registrar.



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