

The Legal Framework for Cypriot Companies and how these Companies are used in Corporate Finance Transactions

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Protecting your interests in Cyprus

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FIRM PROFILE

L.G. Zambartas LLC is a niche practice specialising in the areas of:

- Corporate Law
- Commercial Law
- Shipping Law
- Private Client
- Real Estate
- Litigation

Our philosophy is to offer the above legal services upon a platform of the highest professional ethical standards at all times focusing fully on the client's needs and objectives.

GEORGE ZAMBARTAS

- BA in Law and Politics from the University of London's Queen Mary College.
- Extensive experience in Commercial Law and Cypriot Corporate Law as well as shipping, ship financing, maritime claims, ship management and purchase/sales of ships, including new builds.
- After heading up the Commercial Litigation Department of a Law Firm in the UK, I moved to Cyprus in 1999 to take up the position as in house Legal Advisor of a leading global shipping company.
- In August 2008 I left the niche corporate law/shipping law practice of Economides Dionysiou & Co to form Zambartas Law Offices which incorporates the Law Offices of Louise Zambartas which is now registered and known as L.G. Zambartas LLC.
- Some of my key areas of expertise are ship finance, corporate finance and acquisitions and mergers.

Topics of this presentation are as follows:

- Cyprus Companies Law and types of Cypriot companies
- Incorporation and registration of Cypriot companies
- Influence of the EU laws on the Cyprus Company Law:
Recent amendments to the Companies Law, Cap 113
- Re-domiciliation of companies to and from Cyprus
- Securities typically provided by Cypriot companies in corporate finance transactions
- Cypriot share pledge agreements
- Conclusion- benefits provided by the legal framework of Cypriot companies

1. CYPRUS COMPANIES LAW AND TYPES OF CYPRIOT COMPANIES

- Cypriot companies are governed mainly by the Companies Law, Cap 113, as amended (the “**Companies Law**”) which is predominantly based on the English Companies Act 1948.
- Cap 113 is constituted of 392 detailed sections/schedules which are/create, *inter alia*, the Companies Law.
- Under the Companies Law, companies may be divided into companies limited by shares and companies limited by guarantee (principle of limitation of liability of the company’s members to their share participation applies)
- Companies limited by shares may be subdivided into:
 - **Private** companies and
 - **Public** companies

2. INCORPORATION AND REGISTRATION OF CYPRIOT COMPANIES

2.1 Documents for Incorporation

For the incorporation of a Cypriot company the submission of the printed Memorandum and Articles of Association duly signed by the subscribers and certified by a lawyer and other various declarations and forms required by the Registrar of Companies.

The **Memorandum of Association** contains the powers and activities of the company.

The **Articles of Association** control the relationship between the respective members of the company and between the members and the company itself. It constitutes the internal management procedures and it controls the rights and duties between the members and the company.

2.2 Necessary information for the purposes of incorporation

- Name of the company (which needs to be approved by the Registrar of Companies) and must end with “Limited” or “Ltd”
- Description and nature of the objects / purpose of the company and its intended activities
- Amount and currency of the proposed registered share capital of the company, e.g. euros or dollars or any other currency and may be subdivided into denominations with the creation of different classes of shares with preferential rights
- Amount of issued share capital and number of shares
- Details regarding the Shareholder(s), Director(s) and the company’s Secretary

Shareholders:

The minimum number of “registered shareholders” should be one. The minimum “beneficial shareholders” could also be one. Shareholders can either be individuals or legal corporate entities. Trusts may also be shareholders in a Cyprus company, through the trustees of the trusts.

Shares may be held by nominee companies for the benefit of beneficial shareholders to preserve their anonymity. Trust Deeds are signed by the nominee shareholder in order to completely safeguard the interests of the beneficial shareholders.

The identity of the beneficial shareholder is kept absolutely confidential if a nominee trustee is used.

Directors:

The minimum number of directors is one and there is no maximum number.

Directors may be local or foreign, physical or legal persons. Alternate directors may be appointed. It is generally advisable to appoint local directors if one wishes to have effective management and control in Cyprus rendering the company the resident status in Cyprus for tax purposes.

Secretary:

The Company must appoint one Secretary, who may be local or foreign, physical or legal person.

Information regarding the registered address of the company

The registered office of the company must be in Cyprus. The registered office address is the official address of the company where the statutory books, registers, and the seal of the company should be kept. Summons and writs are also served at the registered office address.

3. Influence of the EU laws on the Cyprus Company Law: Recent amendments to the Companies Law, Cap 113

Ultra Vires: Amendment Law 151(1)/2000 and introduction of new Section 33A:

- The company is bound vis-à-vis third party by any actions or transactions of its directors even though these may not fall within the objectives of the company except if such actions or transactions are conducted in excess of the powers granted or permitted to these officials by the Law.
- The company is not bound towards third parties in case that the company proves that the third party knew that those actions or transaction do not fall within the objectives of the company or it was impossible to ignore this taking into consideration all the relevant circumstances.
- The publication of the Memorandum and Articles of Association of the company does not constitute by itself sufficient proof of their knowledge by a third party.

Law No. 99 (I)/2009 amended the Companies Law in the following aspects:

- **Use of corporate seal**
The execution of documents and agreements on behalf of companies simplified (any document or agreement signed in Cyprus or abroad), by any person having the proper authority of the company, express or implied, will have the same validity and effect as if signed under the common seal of the company; powers of attorney and company resolution need not bear the common seal of the company.

■ **Prohibition of financial assistance** (section 53 of the Companies Law)

This amendment introduced an exception, under certain conditions, from the general rule of prohibition of financial assistance and it is now possible for a company to give, directly or indirectly, whether by means of a loan, guarantee, the provision of security or otherwise, any financial assistance for the purpose of or in connection with the purchase of or subscription made or to be made by any person for any shares in the company, or where the company is a subsidiary company, in its holding company in cases where the company is a private company and:

- such company is not a subsidiary company of any company which is a public company; and
- the relevant action has been approved at any time by a resolution of the general meeting of the company passed by a majority of more than 90% of the votes of all the issued shares of the company.

- **Transfer of shares of Cyprus companies traded in a foreign market**

The new amendment abolished the requirement for the production of a duly executed instrument of transfer to be delivered to the company for a valid transfer of shares or debentures of a Cyprus company provided that the transfer is effected in compliance with the law and regulation governing the operation of the foreign market in which the shares or other securities in the Cyprus company are traded.

- **Power of the company to keep register abroad**

Under specific conditions, a company may maintain a foreign register of members to be situated outside the Republic in the place where it transacts business, or where its members reside, or where the market in which its shares are being negotiated is located.

26th August 2011: a new levy, *inter alia*, was implemented into the Companies Law

As from 2011 an annual levy of EUR 350 for all companies incorporated in Cyprus payable to the Registrar of Companies. For groups of companies the maximum levy is fixed at EUR 20,000.

Dormant companies, companies which do not own any assets, as well as companies owning property located in the non Government controlled areas of the Republic of Cyprus are exempted from the payment of the levy. If the levy is not paid within the prescribed period, fines will be imposed. If the levy is not paid within 5 months, the Registrar of Companies will remove the company from the registry.

4. Re-domiciliation of companies to and from Cyprus: Amendment Law 124(I) 2006

It permits a foreign company to be re-domiciled to Cyprus and Cypriot companies out of Cyprus:

- Provided the laws of the foreign jurisdiction where the foreign company is registered permits so;
- A foreign company can apply to the Registrar of Companies to continue its existence under the jurisdiction of Cyprus only if its Memorandum specifically provides for this; and
- Provided other various requirements of the Companies Law are satisfied.

5. Securities typically provided by Cypriot companies in corporate finance transactions

- Share Pledges (this topic will be discussed separately)
- Guarantees
- Bank Account Pledges

6. Cypriot share pledge agreements and other charges

Registration with the Registrar of Companies:

- Amendment to the Companies Law 99(I) / 2009 introduced registration of any amendments, assignments or other changes to the main charge over any assets of a Cypriot company, otherwise, these amendments or assignments will be void towards the liquidator and the creditors of the company. The said Amendment also clarified that the provisions for the registration of charges also apply to the charges and pledges created over assets situated within Cyprus by a company incorporated outside the Republic but which have been registered in Cyprus as a foreign company.
- It is clear now that a company which pledges shares it holds in another Cyprus company or other rights deriving therefrom no longer need to be registered with the Registrar of Companies. However, the new regulation does not cover the shares or other assets that Cypriot company maintains abroad in foreign companies in which case any pledge on those shares should be registered in Cyprus.
- In our opinion the said amendment to the Companies Law, so far as it refers to a pledge of shares, is ambiguous in its interpretation, particularly with regard to shares pledged in foreign companies. The Registrar has not altered its practice and continues to accept application for registration of charges even for Cypriot companies in relation to shares, notwithstanding the above.

General overview on Cypriot share pledge agreements:

- The original Pledge Agreement will be a valid and enforceable agreement if it is expressed in writing, signed by a director or the attorney of the Cypriot pledgor and made in the presence of at least two witnesses competent to contract, according to section 138 of Cyprus Law, Cap 149.
- As stated above, depending whether or not the Pledge Agreement can be registered with the Registrar of Companies, normally a Cypriot company's secretary (or anyone interested in the Share Pledge) will file with the Registrar a form HE 24E together with the agreement or its extract together with a fee payable to the Registrar of Companies for registering the Pledge Agreement is no more than 580 Euros. If the Pledge Agreement is executed in Cyprus, the period for registration is 21 days from the date of its creation. In the case the Pledge Agreement is created out of Cyprus and comprising property situated outside Cyprus, the period for registration will be 42 days. If registration is made later than stipulated above then an application will need to be made to the Cyprus Court to register the Pledge Agreement out of time.
- When the Pledge Agreement is registered, the Registrar of Companies will issue a Certificate of Registration (in Greek or English) confirming the Registration with effect from the date that is received by the Registrar of Companies although the Registrar may take up to two months to issue this Certificate.
- The Company's secretary will also need to make an entry in the Company's Register of Charges and Mortgages as well as the Register of Members in favour of the Pledge; consequently the Secretary will issue a certificate of incumbency confirming the particulars of the Pledgor and charge of the shares registered in favour of the Pledgee.

7. Conclusion – benefits provided by the legal framework of Cypriot companies

- User friendly: based on English practice
- EU Compliant and OECD approved tax legislation
- Low corporate tax in Europe of 10% on net profits arrived at after deducting all business expenditure incurred
- Network of Double Tax Treaties with 45 countries
- No withholding tax on dividends or interest paid to non residents
- No estate duty is payable when shares of the company pass on death
- No stamp duty is payable on documents referring to daily ordinary activities
- Anonymity of shareholders
- Nominee / trustee services available
- Company documents readily available in English
- Access to efficient legal, accounting and banking services
- Offers a number of significant commercial and financial benefits

Any Questions?