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商法词汇：
条款并入合同

Lexicon: The incorporation of
terms into a contract

塞浦路斯私人公司入门简介

Touching on the basics of Cyprus private companies



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塞浦路斯私人股份有限公司在公司架构中常常被设计为最终或中间的控股公司。其原理是为了最小化(或在情形所需时消除)股息、利息或版权收入,以及股份处置收益产生的税务义务。

塞浦路斯是欧盟中实行并受益于最低税收机制的国家之一,对所有塞浦路斯公司就利润统一征收 12.5% 的公司税。由于有广泛的双重征税协议网络,塞浦路斯是往来亚洲及中东欧进行投资的理想中转站。双重征税协议的主要目的是避免对在这些国家获得的收入进行双重征税。根据双重征税协议,对纳税人住所地国家所征税款,其他协议国家通常予以税收减免。

起始

空壳公司是不从事任何公司活动的公司,由执业律师注册,但在“壳”层面却没有任何活动,可随时被卖给不希望塞浦路斯公司办理新公司成立手续却对使用塞浦路斯公司有兴趣的交易方。购买现成空壳公司的主要原因是节省从无到有的成立新塞浦路斯公司的时间。如果成立新的塞浦路斯公司,完成所有程序可能会需要近两周时间;相比之下,现成空壳公司已注册成立,几乎可立即使用。全新成立的塞浦路斯公司和现成空壳公司在所有实质方面都是一样的。

塞浦路斯公司的简章是界定塞浦路斯公司权力的文件,即公司可以做什么的文件。塞浦路斯公司作为法人,仅可以在简章宗旨所界定的权力范围之内活动。因此,其法律人格只为其注册的特定目的而存在,该特定目的在简章宗旨中界定。鉴于简章限制塞浦路斯公司被许可行为的范围,所以标准的作法是:悉心起草简章,采用宽泛

的措辞,包含的宗旨在必要时可以使公司可以从事几乎一切行为,除非是被管制或必须许可的行为。

公司股本用来描述构成公司股份结构的股份数量和类型。大多数塞浦路斯公司以 1000 欧元(约 1360 美元)的股本注册,该股本进而被分为 1000 股,每股的面值为 1 欧元。当然,公司股东可在任何时候通过特别决议对此进行调整。值得注意的一个重要特点是,塞浦路斯公司股本可以调整为潜在买家国家的货币形式。因此塞浦路斯公司发行股本和股份可以是人民币、美元、英镑,或是所选择的任何其他主要币种而非欧元形式。

章程是塞浦路斯公司内部的规则制度。塞浦路斯公司法和公司章程共同界定如何进行塞浦路斯公司业务和事项的管理,以及如何行使塞浦路斯公司股东和董事的权利、义务或权力。章程可以经股东特别决议进行全部或部分的修改。简章和章程共同构成塞浦路斯公司的“宪法”。

塞浦路斯公司股东可以是一个或多个。每位股东可以认购的股份数量没有限制。塞浦路斯公司的股东不需要有塞浦路斯的居民身份,他们可以持有任何国籍。塞浦路斯法律不允许发行不记名股票。这意味着,塞浦路斯公司向任何人发行的每一股份,都需要登记在一位指名个人的名下,通常称作登记股东。每位登记股东的全名、住址、职业和护照号必须通知到公司登记机关。

“ **章程是塞浦路斯公司内部的规则制度** ”

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董事

塞浦路斯公司的董事会,由选举或任命对公司的日常管理活动共同承担责任的个人组成。塞浦路斯公司的董事会成员由公司股东选举或任命。根据法律规定,塞浦路斯公司应该至少有一个董事。公司每位董事的全名、住址、职业和护照号必须上报公司登记机关。

塞浦路斯公司的董事不需要具有塞浦路斯国籍。但是,为了使塞浦路斯公司符合以塞浦路斯作为税收居所的资格,公司的有效管理和控制必须在塞浦路斯进行。目前,根据所得税征税机关的实践,如果董事会大多数成员为塞浦路斯居民(例如一年中在塞浦路斯共和国至少居住 184 天的个人),就可以符合上述要求。

秘书

塞浦路斯公司按要求应该设置公司秘书职位。依据法律规定,公司秘书是公司的管理人员,但和董事不同,该职位不具有任何决策职能。

公司秘书的职位,如该名称所示,纯粹是秘书性质,限于保存法定的记录和公司的内部帐簿,以及必要时向塞浦路斯共和国公司登记机构提交法定的通知。

公司秘书没有必要塞浦路斯居民或居住在塞浦路斯共和国。但是,由于公司秘书是塞浦路斯公司向公司登记机关提交信息的信差,因此,强烈建议由居住在塞浦路斯的个人/公司担任公司秘书,这是一种务实考虑,以便公司能够及时提交公司登记机关不时要求的所有必要的公司登记信息。■

A Cypriot private company limited by shares is frequently used in corporate structures as an ultimate or intermediary holding company. The rationale behind its use is to minimise, or eliminate as the case may be, tax liabilities arising from dividend, interest or royalty income, as well as gains from the disposal of shares.

Cyprus benefits from one of the lowest tax regimes in the EU, as a uniform corporation tax rate of 12.5% on profits is applicable for all Cyprus companies. Due to its extensive double tax agreement (DTA) network, Cyprus is an ideal jurisdiction for investments to and from Asia and Central/Eastern Europe. The main purpose of a DTA is the avoidance of double taxation of income earned in any of these countries. Under a DTA, a credit is usually allowed against the tax levied by the country in which the taxpayer resides for taxes levied in the other treaty country.

Getting started

A shelf company is a company that has had no corporate activity. It was registered by a practising solicitor and was left with no activity at all on an office “shelf”, ready to be sold on to any interested person who desires the use of a Cyprus company without going through all the procedures of creating a new Cyprus company. The prime reason for buying a shelf company is to save on the time involved in creating a new Cyprus company from scratch. Where the incorporation of a Cyprus company starts anew, the completion of the procedure may take up to two weeks, in contrast to shelf companies that are readily available for near immediate use. A Cyprus company incorporated afresh and a shelf company are the same in all material respects.

The memorandum of association of the Cyprus company is the document that defines the powers of the Cyprus company, namely what the company can do. The Cyprus company cannot act as a legal person outside the powers defined in the objects of its memorandum. Therefore its legal personality exists only for the particular purposes of its incorporation, which are defined in the objects of the memorandum. As the memorandum restricts what a Cyprus company is permitted to do, it is standard market practice for the memorandum to be carefully drafted in such

“ The articles of association are the internal rules and regulations of the Cyprus company ”

wide terms and contain such objects as may be necessary to enable the company to do pretty much everything, save for regulated or licensed activities.

The share capital of the company is a term used to describe the number and type of shares that make up the share structure of the company. The plethora of Cyprus companies are incorporated with a share capital of €1,000 (US\$1,360), which is in turn divided into 1,000 shares of nominal value of €1 per share, though this may be altered by special resolution of the shareholders at any time. One important feature to note is that the share capital of the Cyprus company may be personalised to the national currency of the prospective buyer. Therefore the Cyprus company may have share capital and shares issued in renminbi, US dollars, British pounds or any other major denomination of choice instead of the euro.

The articles of association are the internal rules and regulations of the Cyprus company. Along with the Cyprus Companies Law, the articles of association define how the management of the business of the Cyprus company and its affairs will be carried out, as well as the rights/duties/powers of the shareholders and directors of the Cyprus company. The articles of association may be amended in whole or in part by special resolution of the shareholders. The memorandum and the articles of association of the company together form the constitution of the Cyprus company.

The number of shareholders of a Cyprus company may be one or more. There are no limitations as to the amount of shares that each shareholder may subscribe to. The shareholders of a Cyprus company do not need to be Cypriot residents; they may be of any nationality. Cyprus law does not permit the issuance of bearer shares. This means that every share issued by a Cyprus company to any person will need to be registered in the name of a named person, frequently called the registered shareholder. The full name, address, occupation and passport number of each registered shareholder must be notified to the Registrar of Companies.

The directors

The board of directors of a Cyprus company is a body of elected or appointed persons who are jointly responsible for the day-to-day management and activities of the company. The members of the board of directors of the company are elected or appointed by the shareholders of the Cyprus company. A Cyprus company must have, by law, at least one director. The full name, address, occupation and passport number of each director of the company must be notified to the Registrar of Companies.

A director of a Cyprus company doesn't need to be of Cypriot nationality. However, in order for the Cyprus company to qualify and be considered as having Cyprus as its tax residence, the effective management and control of the company must take place in Cyprus. The current practice of the income tax authorities is to deem this requirement satisfied where, among other points, the majority of the members of the board of directors are Cypriot residents (i.e., persons that reside for at least 184 days a year in the Republic of Cyprus).

The secretary

A Cyprus company is also required to have a company secretary. The company secretary is considered by law as an official of the company, however, unlike the directors this role doesn't have any decision making abilities. The role of the company secretary is, as the name implies, purely of a secretarial nature confined to the keeping of the statutory records and internal books of the company, and the filing of the statutory notifications to the Registrar of Companies of the Republic of Cyprus when necessary.

It is not necessary for the company secretary to be a Cypriot or even be resident in the Republic of Cyprus. However, as the company secretary is the messenger of the Cyprus company to the Registrar of Companies, it is highly advisable that it is a person/firm based in Cyprus for practical reasons, namely to be able to make in time all the necessary company filings required from time to time to the Registrar of Companies. ■

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