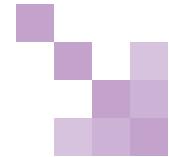


Cyprus

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CORPORATE ENTITIES

Private company limited by shares

The most commonly used corporate entity is a private company limited by shares. A private company can have a maximum of 50 members, whose liability is limited by the memorandum to the amount of shares they hold. The right of members to transfer their shares is restricted by the company's articles of association (articles) and the company cannot invite the public to subscribe for shares in the company. A private company can have a single shareholder who can act jointly as the sole director and secretary of the company.

Public company

A public company is used where the company intends to apply to the public to raise capital. It must have:

- At least seven members (there are no restriction on the maximum number).
- At least two directors.
- A minimum share capital of EUR25,650 (about US\$32,876).

Only public companies may be listed to the Cyprus Stock Exchange (CSE). To do so they must first obtain permission from the Cyprus Securities Exchange Commission (CYSEC).

LEGAL FRAMEWORK

1. What is the regulatory framework for corporate governance and directors' duties?

There are no mandatory corporate governance rules for private companies.

A public company's articles must include rules setting out the number of directors and their manner of appointment, and may include rules setting out the manner in which functions are distributed between the directors (*section 4(5), Company Law (Cap 113)*).

Directors of both private and public companies owe a duty to the company to act in good faith for the benefit of the company (*Company Law and common law*).

Listed companies

For listed companies, the CSE issued the voluntary Code of Corporate Governance for the Cyprus Stock Exchange (Code). The aim of the Code is to:

- Strengthen the monitoring role of the board of directors (board).
- Protect minority shareholders.
- Adopt greater transparency and provide timely information.
- Sufficiently safeguard the independence of the board in its decision making.

Listed companies must include in their board's annual report to shareholders, a corporate governance report in which:

- The company must state in the first part of the report whether the principles of the Code are being implemented.
- The company must confirm in the second part of the report that it complies with the principles of the code and, in the event that it does not, must give explanations as to why not.

BOARD COMPOSITION AND REMUNERATION OF DIRECTORS

2. What is the management/board structure of a company? In particular:

- Is there a unitary or two-tiered board structure?
- Who manages a company and what name is given to these managers?
- Who sits on the board(s)?
- Do employees have a right to board representation?
- Is there a minimum or maximum number of directors or members of the managerial and supervisory bodies?

- **Structure.** Only the one-tier board structure is available.
- **Management.** The general rule is that companies are managed by the board. However, the directors usually assign

and/or delegate their powers to the chief executive officer (CEO) who is accountable to the board and must implement its policies and decisions. Most single shareholder companies are managed directly by the board.

- **Board members.** The directors and the company secretary sit on the board.
- **Employees' representation.** The Companies Law does not contain any provision for the representation of employees on the board. However, Cyprus has implemented Directive 94/45/EC on the establishment of a European works council, which establishes notification and consultation rights for employees of community scale undertakings and/or groups.
- **Number of directors or members.** The only statutory requirement is that a public company must have seven members. For requirements for independent non-executive directors see *Question 4, Board composition*.

3. Are there any age or nationality restrictions on the identity of directors?

Age restrictions

There are no age restrictions.

Nationality restrictions

There are no nationality restrictions. However, for a company to be considered as Cyprus tax resident the control and management of the company must be effected in Cyprus.

4. In relation to non-executive, supervisory or independent directors:

- **Are they recognised?**
 - **Does a part of the board have to consist of them? If so, what proportion?**
 - **Do non-executive or supervisory directors have to be independent of the company? If so, what is the test for independence or what makes a director not independent?**
 - **What is the scope of their duties and potential liability to the company, shareholders and third parties?**
-
- **Recognition.** There is no statutory provision recognising non-executive, supervisory or independent directors. However, for listed companies, the Code recognises independent non-executive directors.
 - **Board composition.** Listed companies should include on their board, a sufficient number of non-executive directors with sufficient abilities, knowledge and experience, so that their opinions carry significant weight in the board's decision making (*Code*).

For listed companies not listed on the CSE's Main Market, the Major Projects Market or on the Shipping Companies Market, independent non-executive directors should comprise at least one third of the board.

For larger companies, listed either on the CSE's Main Market, the Major Projects Market or the Shipping Companies Market, at least 50% of board, excluding the chairman, should be independent non-executive directors. If the 50% criterion is not met, companies should give an explanation in the second part of the corporate governance report. The CSE Council may give a reasonable time period for their compliance.

For smaller companies listed on the other CSE Markets, the majority of non-executive directors or at least two persons should be independent.

- **Independence.** Every independent non-executive director should meet the following minimum requirements (*Code*):
 - he should not have any business or close family ties (up to first degree), or an employment relationship, with another executive members of the board or a shareholder who controls, directly or indirectly, the majority of the company's share capital or voting rights, if it could significantly affect their independent and unbiased judgement;
 - he should not have any other material relationship with the company which could significantly affect his independent and unbiased judgement (in particular through supplying goods or services);
 - he should not be a member of a company that is an advisor to the company;
 - he should not be an executive managing director or executive member of the board of a directly or indirectly associated or subsidiary company, or have been one in the past 12 months;
 - he should not have been an employee of the company or of the group within the last five years;
 - he should not have had, nor had within the last three years, any material business relationship with the company, either directly, or as a partner, shareholder, director or senior employee of an organisation which has a business relationship with the company that could affect his independent and unbiased judgement;
 - he should not have any business relationship or close family ties with any of the company's advisers;
 - he should not hold cross-directorships or have significant links with other directors through involvement in other companies or bodies;
 - he should not serve on the board for more than nine years from his first election;

- for companies where the government is the main shareholder, the following persons cannot be independent non-executive directors:

- ministers;
- members of the House of Representatives;
- members of municipal councils or other local authorities;
- religious officers;
- civil servants; and
- members of the armed forces or of the security forces.

- **Duties and liabilities.** Independent non-executive directors have the same duties and obligations as any other director of the company.

5. Are the roles of individual board members restricted? For example, can one person be the chairman and chief executive?

The only recommendations regarding the roles of the board apply to listed companies under the Code. The roles of chairman and CEO should not be exercised by the same individual. The division of responsibilities between the chairman and CEO should be clearly established, set out in writing and agreed by the board. If these positions are not separated, there should be an explanation in the second part of the corporate governance report.

6. How are directors appointed and removed? Is shareholder approval required?

Appointment of directors

The first directors of a company are appointed by either:

- Being named in the articles.
- A clause giving the subscribers the power to appoint them.

The subsequent directors are elected by the shareholders in the manner set out in the articles.

However, in the case of a public company, a general meeting cannot consent to a motion for the appointment of two or more persons as directors in a single resolution, unless it is unanimously agreed to in the meeting (*section 177, Company Law*).

Removal of directors

A company can remove a director by ordinary resolution before the expiration of his period of office, unless otherwise provided for in its articles or any agreement between the company and the director (such resolution would require a special notice).

The director concerned has the right to submit written representations to the company and for them to be notified to the shareholders.

A vacancy created by the removal of a director may be filled at the same general meeting or may be filled by the board as a casual vacancy.

7. Are there any restrictions on a director's term of appointment?

There are no restrictions on a director's term of appointment, although the company must follow the procedure in *Question 6*.

8. Do directors have to be employees of the company? Can shareholders inspect directors' service contracts?

Directors employed by the company

Directors do not have to be employees of the company, unless this is required by the articles.

Shareholders' inspection

The shareholders do not have the right to inspect directors' service contracts.

9. Are directors allowed or required to own shares in the company?

Directors can own shares in the company, but do not have to unless required by the articles.

10. How is directors' remuneration determined? Is its disclosure necessary? Is shareholder approval required?

Determination of directors' remuneration

The articles usually provide that the directors are entitled to remuneration as approved by the general meeting.

Disclosure

The company's accounts must disclose the total amount of:

- Directors' emoluments.
- Past directors' pensions.
- Any compensation to directors or past directors for loss of office.

Shareholder approval

Shareholder approval is not required but is commonly established in the articles.

MANAGEMENT RULES AND AUTHORITY

11. How is a company's internal management regulated? For example, what is the length of notice and quorum for board meetings, and the voting requirements to pass resolutions at them?

The internal management of the company is regulated by its articles. The articles commonly govern the length of notice, the quorum and the voting requirements to pass resolutions. Sometimes the articles empower the directors to determine the rules of their meetings

12. Can directors exercise all the powers of the company or are some powers reserved to the supervisory board (if any) or a general meeting? Can the powers of directors be restricted and are such restrictions enforceable against third parties?

Directors' powers

The directors can exercise all the powers of the company unless otherwise provided in the articles or the Company Law.

The general meeting has the power to (*Company Law*):

- Increase, reduce and alter the share capital.
- Change the memorandum and articles
- Change of the company's name.
- Appoint and remove auditors.
- Remove the directors.
- Approve the accounts.

Restrictions

The directors' powers may be restricted by the company's memorandum and articles. However, this is not enforceable against third parties unless the company proves that those third parties were aware of the restrictions.

13. Can the board delegate responsibility for specific issues to individual directors or a committee of directors? Is the board required to delegate some responsibilities, for example for audit, appointment or directors' remuneration?

The board can delegate responsibility for specific issues to individual directors or a committee of directors, if allowed by the articles.

In addition, in listed companies the board should establish (*Code*):

- A remuneration and appointment committee, consisting exclusively of non-executive directors to make recommendations to the board.

- An audit committee with a minimum of two non-executive directors and a majority of independent non-executive directors overall. The committee's powers should be set out in writing and the members of the committee should be named in the annual report.

DUTIES AND LIABILITIES OF DIRECTORS

14. What is the scope of a director's duties and personal liability to the company, shareholders and third parties? Please distinguish between civil and criminal liability under each of the following (if relevant):

- General duties.
- Theft and fraud.
- Securities law.
- Insolvency law.
- Health and safety.
- Environment.
- Anti-trust.
- Other.

- **General duties.** The general duties of the directors are well established by common law. In particular, a director must act honestly and exercise a reasonable degree of skill and diligence. The level of skill and diligence that is required has not been clearly defined, but it has been established that if a director acts honestly he cannot be held responsible in damages, unless guilty of gross of culpable negligence in a business sense.
- **Theft and fraud.** A director is personally liable to any injured parties if he is responsible for:
 - fraud;
 - fraudulent misrepresentation or deceit; or
 - theft.

The other directors can be liable if they expressly or impliedly authorised such acts.

- **Securities law.** Directors face strict reporting and notification requirements with regard to securities. Cyprus has implemented most of the relevant EC Directives. The law imposes strict criminal and administrative penalties for violating the relevant statutory provisions.
- **Insolvency law.** The directors are liable for any money spent by the company after a winding up petition has been filed. The directors must protect the interests of the creditors and can enter into contracts for the provision of goods or services only when they honestly and reasonably believe that the company will be able to pay.

In addition, if a company's accrued damages exceed one half of the paid share capital of the company, the directors must convene a general meeting within 28 days from the time they become aware of the loss. If they fail to do so they are personally liable.

- **Health and safety.** The company must follow strict procedures and standards to ensure that its employees work in healthy and safe conditions (*Health and Safety Law*). If the company violates or does not comply with any of its obligations then the CEO and any other director may be held criminally liable.
- **Environment.** The principle established in UK common law by *Rylands v Fletcher [1861-1873] All ER 1*, regarding civil liability for environmental law, is applicable. In addition, legislation for the protection of the environment imposes obligations and criminal liability where statutory requirements have been infringed. Directors may be held liable for offences committed by the company if it is proved that they consented to a criminal act or omission or it was the result of them being negligent.
- **Anti-trust.** The Commission for the Protection of Competition, which is the national anti-trust authority, can impose administrative fines on enterprises that:
 - violate anti-trust law;
 - fail to comply with any measure ordered by the Commission;
 - fail to submit information requested by the Commission;
 - wilfully or negligently fail to present a full account of books and documents during a Commission investigation;
 - destroys or defaces information or documents;
 - provide inaccurate, false or misleading information.

In addition, a legal or natural person may be held criminally liable. Where a company is liable to an administrative fine, its directors and general manager can also be liable to the fine.

- **Other.** There are several statutory instruments imposing personal liability on directors, especially in the financial services and credit institutions sectors. Directors can have civil and/or criminal liability under these enactments or be subject to administrative fines imposed by the CYSEC or the Central Bank of Cyprus and the Superintendent of Insurance.

15. Can a director's liability be restricted or limited? Is it possible for the company to indemnify a director against liabilities?

A director's liability cannot be restricted or limited unless there is a specific contractual provision between the company and the

injured party to this effect. The company's articles commonly provide indemnification to its directors for all liabilities properly incurred by them in the management of the company's business. However, this does not extend to illegal or unauthorised acts or omissions.

16. Can a director obtain insurance against personal liability? If so, can the company pay the insurance premium?

A director can obtain insurance against personal liability and the company can pay the insurance premium.

17. Can a third party (such as a parent company or controlling shareholder) be liable as a de facto director (even though such person has not been formally appointed as a director)?

The actions of any of its directors or managers bind the company, notwithstanding any defect in their appointment or qualification (*section 174, Company Law*). This section has been interpreted to mean that a third party or a member can assume that a person who appears to be a duly appointed and qualified director is a de facto director. This is also the case for a director appointed at a meeting of which insufficient notice had been given.

TRANSACTIONS WITH DIRECTORS AND CONFLICTS

18. Are there general rules relating to conflicts of interest between a director and the company?

Directors have a general duty to avoid a conflict of interest.

Directors occupy a fiduciary position and they must exercise their powers in this capacity. The fiduciary relationship is with the company and not with the shareholders. Directors cannot personally benefit from a company transaction unless there is full disclosure of their interest in the transaction to the board.

19. Are there restrictions on particular transactions between a company and its directors?

A company cannot make a loan to a director or a director of its holding company and enter into any guarantee or provide any security in connection with a loan to a director or a director of its holding company. The only exceptions are where:

- The company is a private company.
- The company is a subsidiary and the director is a holding company.
- The loan or guarantee is to provide the director with funds to meet expenditure incurred or to be incurred by him:
 - for the company's purposes; or

- to allow him to properly fulfil his duties as an officer of the company.

Where the approval of the company is not given as required, the directors who authorised the loan or guarantee are jointly and severally liable to indemnify the company against any loss that arises from it.

- A company's business includes the lending of money or the giving of guarantees, and the loan or guarantee is made in the ordinary course of that business.

20. Are there restrictions on the purchase or sale by a director of the shares and other securities of the company he is a director of?

The following restrictions apply to a director buying or selling shares of the company he is a director of:

- A director cannot buy or sell any shares if he holds any confidential information about the company (*Confidential Information and Market Manipulation Law*). If a director violates this provision he may be held criminally liable and the CYSEC may impose an administrative fine.
- A director cannot buy or sell any shares during the closed periods (that is, for a month before the end of the financial year and a month before the announcement of the interim management statement).
- A director of a listed company can buy or sell shares only when he informs the board of his intention in writing and obtains their permission to proceed with the transaction.

DISCLOSURE OF INFORMATION

21. Do directors have to disclose information about the company to shareholders, the public or regulatory bodies?

A listed company must disclose to its shareholders any information that is likely to have a significant effect on its share price.

Cyprus has fully implemented Directive 2004/109/EC on transparency requirements for securities admitted to trading on a regulated market and amending Directive 2001/34/EC (Transparency Directive) which provides a very extensive list of disclosure obligations. For example, a company must disclose, among other things:

- The percentage of its own shares that it holds when this percentage exceeds 5% or 10%.
- The granting of any new loan.
- Any substantial shareholders.

COMPANY MEETINGS

22. Does a company have to hold an annual shareholders' meeting? If so, when? What issues must be discussed and approved?

The company must hold an annual general meeting (AGM) each year, no later than 15 months from the date of the previous annual meeting. The issues to be discussed and approved are set by the articles, which commonly require the ordinary business of the meeting to be:

- The approval of the accounts.
- The consideration of the auditors and directors reports.
- The election of directors.
- The appointment and remuneration of the auditors.

23. Can shareholders call a meeting or propose a specific resolution for a meeting? If so, what level of shareholding is required to do this?

A company's directors must convene an extraordinary general meeting of the company:

- On the requisition of company members holding at least 10% of the company's paid-up capital.
- In the case of a company not having a share capital, on the requisition of company members representing at least 10% of the total voting rights of all members with a right to vote at the company's general meeting.

The above requirements can be altered by the company's bye-laws.

If the directors fail to convene a meeting in the 21 days following the requisition, the requisitionists, or any number representing over 50% of their total voting rights, may themselves convene a meeting. This meeting must be held within three months of the original requisition.

MINORITY SHAREHOLDER ACTION

24. What action, if any, can a minority shareholder take if it believes the company is being mismanaged and what level of shareholding is required to do this?

When the majority of shareholders oppress the minority, the latter may petition the court to wind up the company on the ground that it is just and equitable to do so.

Any member of a company, who complains that the company's affairs are being conducted in a manner oppressive to some part of the members (including himself), can apply to the court for an order to either (*section 202, Company Law*):

- Regulate the conduct of the company's affairs in the future.
- Require the company to purchase the complainer's shares.

INTERNAL CONTROLS, ACCOUNTS AND AUDIT

25. Are there any formal requirements or guidelines relating to the internal control of business risks?

There are generally no formal requirements or guidelines relating to the internal control of business risks except for:

- Listed companies, which should have a sound system of internal control, maintained by the board, to safeguard shareholders' investments and the company's assets (*Code*).
- Companies providing financial services.

26. What are the responsibilities and potential liabilities of directors in relation to the company's accounts?

The company's directors must:

- Ensure that proper books of account are kept, that allow for the preparation of financial accounts which give a true and fair view of the state of the company's affairs and explain its transactions.
- Ensure that a full set of financial accounts are created under International Accounting Standards.
- Present all financial accounts to the company in a general meeting.

If the directors violate any of these obligations they may be held criminally liable.

27. Do a company's accounts have to be audited?

The company's accounts must be audited.

28. How are the company's auditors appointed? Is there a limit on the length of their appointment?

Every company must, at each AGM, appoint an auditor or auditors to hold office from its conclusion to the conclusion of the next general meeting.

29. Are there restrictions on who can be the company's auditors?

A company's auditor must:

- Be a member of a body of auditors established and operating in Cyprus.

- Hold a valid certificate issued by that body of auditors allowing the holder to carry out audits of annual accounts of companies or consolidated accounts of groups of companies.

None of the following can be appointed as a company's auditor:

- An officer or servant of the company.
- A person who was an officer or servant of the company during the period in relation to which the accounts are being prepared.
- A parent, spouse, brother, sister or child of an officer or servant of the company.
- A person who is a partner or in the employment of an officer or servant of the company.
- A person who may not, for any of the above reasons, be appointed as:
 - auditor of a subsidiary or holding company of the company; or
 - auditor of a subsidiary of the company's holding company.

30. Are there restrictions on non-audit work that auditors can do for the company that they audit accounts for?

There are no specific restrictions on non-audit work that auditors can do for the company that they audit accounts for.

31. What is the potential liability of auditors to the company, its shareholders and third parties if the audited accounts are inaccurate? Can their liability be limited or excluded?

Auditors that produce inaccurate accounts may be held liable if they were negligent and the company suffered loss through the failure of the auditors to perform their duties with reasonable care and skill. The auditors are liable towards the company and its shareholders. Under certain circumstances the auditors may be held liable for falsification of accounts or manipulation of the stock market.

CORPORATE SOCIAL RESPONSIBILITY

32. Is it common for companies to report on social, environmental and ethical issues? Please highlight, where relevant, any legal requirements or non-binding guidance/best practice on corporate social responsibility.

It is not usual for companies to report on social, environmental and ethical issues.

ROLE OF COMPANY SECRETARY

33. What is the role of the company secretary in corporate governance?

The secretary has administrative powers but does not have any managerial powers. He is responsible for the administration of the company and, in particular, for:

- Summoning general meetings of the company (on the instructions of the directors).
- Keeping the shareholders' register.

ROLE OF INSTITUTIONAL INVESTORS AND SHAREHOLDER GROUPS

34. How influential are institutional investors and other shareholder groups in monitoring and enforcing good corporate governance? Please list any such groups with significant influence in this area.

Institutional investors may be influential, depending on the strength of their holding in a company.

There are no independent shareholder groups with significant influence in this area.

WHISTLEBLOWING

35. Is there statutory protection for whistleblowers (persons who disclose criminal activity or other serious malpractice within a company)?

There is no statutory protection for whistleblowers.

REFORM

36. Please summarise any impending developments or proposals for reform.

There are no impending developments or proposal for reform

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