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Modernisation of the Cyprus Companies Law

Introduction

The Cyprus Parliament on the 9th July, 2009 has enacted a law (the “**Amending Law**”) amending certain anachronistic provisions of the Cyprus Companies Law, Cap. 113 (the “**Companies Law**”) which will make the life of the companies and their professional advisors easier.

This briefing will outline the most important amendments and their effect.

Use of corporate seal

While the English Companies Acts have long since abolished the obligatory use of a common seal by a company for the execution of deeds, the Cyprus Companies Law has until now maintained an obligation that documents which would be by law required to be in writing, and if made according to English Law (i.e. the law that was in force in 1960) to be under seal, must be made on behalf of the company in writing under the common seal of the company. Moreover, powers of attorney issued by a company authorising a person to execute deeds abroad on behalf of the company, had to be made under the company’s common seal.

Under the Amending Law any document signed on behalf of a company in Cyprus or abroad by any person acting under its authority, expressed or implied, shall have the same effect as if it was executed under the company’s common seal. It must be said here that the definition of “common seal” has been amended so as to also include a rubber stamp which does not give an embossed print.

Issue of Prospectuses

The Amending Law has added a new sub-section 5 to the relevant section of the Companies Law enabling a company which issues a Prospectus for the purpose of listing its shares or other securities in a foreign market (but is not exempted from the obligation to file a Prospectus under further amendments to which reference is made in paragraph 8 below), to file such Prospectus and other documents accompanying the same in a language widely accepted in the International Financial Sector, at the company’s option.

Further to the above, the new amendments have dis-applied provisions of the Companies Law relating to Prospectuses with respect to shares or debentures to which the Public Offers and Prospectus Law and/or the Open Ended Undertakings for Collective Investment in Transferable Securities (UCITS) and Related Matters Law applies. The said laws have been enacted in order to transpose into Cyprus law the EU Prospectus Directive and the EU UCITS Directories, respectively.

Prohibition of Financial Assistance

One very important amendment that has been made is the one relating to section 53 of the Companies Law dealing with the prohibition of financial assistance as it is well known in common law countries.

The amendment has 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, whether directly or indirectly, and 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 carried by all the shares of the company in issue.

It is important to note that the approval may be given at any time before or after the implementation of any action which would have otherwise led to a breach of the financial assistance restriction.

Clarification of the provisions relating to issue of redeemable shares

Section 57(1) of the law is amended by the addition of the words “to the effect that a company, if so authorised by its Articles, may issue preference shares which are, or at the option of the company or of the member are to be liable to be redeemed”. The words that have been added are “or of the member”.

Transfer of shares of Cyprus companies traded in a foreign market

A new provision has been introduced abolishing 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.

Registration of amendments, assignments or other changes with respect to registered charges

It has now become obligatory, but at the same time possible, to record any amendments of any kind which may be effected to a registered charge, whether with respect to addition of property to which it applies or release therefrom of any part of such property, increase of the amount secured or reduction thereof etc as well as any assignments of any registered charges to third parties.

Prior to this amendment there was confusion as to what should have been done with situations as those described above and in many cases it was necessary to re-register the charge which has undergone certain amendments thus creating a problem as to priorities, to say the least.

Furthermore, it has now become clear with the addition of a proviso to the relevant section of the law that a company which pledges shares it holds in another Cyprus company or other rights deriving therefrom need not register such pledge at the Registry of Companies. It has also been provided that financial collateral arrangements within the meaning of the Financial Collateral Arrangements Law as amended from time to time and applied do not have to be registered at the Registry of Companies.

This last amendment aims at harmonising the provisions of the Companies Law with the EU Financial Collateral Directive.

Power of the company to keep register abroad

Although following independence in 1960 reference in the Laws of Cyprus to the crown, colony and generally expressions denoting colonial status of the island of Cyprus prior to 1960 were replaced by references to the Republic of Cyprus the relevant sections of the Companies Law dealing with registers to be kept by companies outside Cyprus were maintained as references to “Her Majesty’s dominions”, for what this expressions means these days.

The new amendments have replaced references to “Her Majesty’s dominions” to mean any country where a Cyprus company carries on business or, where its shares are traded in any foreign markets the place of such market and/or where members of the company reside and it is now possible to have a register abroad in one or more countries. A register held by a Cyprus company abroad shall be considered to constitute a part of the basic register which still has to be kept in Cyprus. The Cyprus company will be obliged to receive and place where its basic register is kept in Cyprus information of any entry made in its branch register abroad.

A transfer of a share in the capital of the Cyprus company which stands registered in a register of the company kept outside Cyprus shall be deemed a transfer of asset situated outside Cyprus and this, in my opinion, creates a strong argument that agreements for the sale

thereof are exempt from stamp duty.

If a Cyprus public company has its shares or other securities listed and traded in a foreign market, the company shall be deemed to have complied with the requirements to keep registers of members if it complies with the requirements and the regulations of the relevant market in which such shares or other securities are traded. If such shares or securities are pledged, the relevant provisions of the Cyprus Contract Law dealing with pledges of shares shall not apply with respect to shares or other securities of Cyprus companies, but the regulations of the relevant foreign market in which such shares or securities are listed and traded shall apply with respect to such pledges.

Dissapplication of certain provisions of the Companies Law with respect to Prospectuses issued by companies incorporated abroad for shares or other securities to be offered in the Republic

Relevant provisions of the Companies Law which required companies incorporated outside Cyprus to file

Prospectuses are no longer applicable in cases where the Public Offers and Prospectus Law and/or the Open Ended Undertakings for Collective Investment in Transferable Securities (UCITS) and Related Matters Law are applicable and, where such laws are not applicable and a Prospectus has to be filed by a company incorporated abroad as aforesaid, such Prospectus and any other documents accompanying the same may be filed in a language widely accepted in the International Financial Sector, at the company's option.

During the debate for the amendments referred to above at the Parliamentary Committee of Commerce and Industry some other amendments in the direction of further updating the Companies Law and facilitating the operation of Companies where proposed by MPs but as they were aiming at passing the basic amendments prior to summer vacations further amendments proposed were left to be considered next Autumn. It should therefore be expected that prior to the end of 2009 some additional amendments will be made to the Cyprus Companies Law.

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