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## **Pledge of Shares under Cyprus Law**

### **Introduction**

The purpose of this memo is to answer general queries relating to the execution of pledge of shares under Cyprus Law.

### **Effectiveness and Validity**

In order to be valid and enforceable a Cyprus shares pledge must:

- be made in writing;
- be signed by the pledgor and the pledgee; and
- be signed in the presence of two witnesses each having contractual capacity.

In addition, to be enforceable the perfection requirements set forth in s.138 of the Contract Law, Cap.149, need to be satisfied, namely:

- notice of pledge together with a certified copy of the deed of pledge needs to be given by the pledgee to the company whose shares are being pledged;
- a memorandum of pledge is entered in the register of members of the company whose shares are being pledged in respect of the shares pledged; and
- a secretarial certificate is issued confirming that a memorandum of pledge has been entered in the register of members of the company whose shares are being pledged.

A pledge is in its nature a possessory security and thus

involves the delivery of possession, actual or constructive. In the case of a pledge of shares, this will involve the delivery to the pledgee of :

- share certificates in respect of the shares pledged; and
- blank undated executed instruments of transfer.

In addition, the following should also be delivered:

- letters of resignation from the directors and secretary;
- irrevocable proxy and power of attorney; and
- letter of undertaking signed by the directors and secretary.

### **Date of effectiveness of pledge of Cyprus shares**

A security interest is valid and enforceable once it has attached to the asset and is perfected.

A security interest that has attached is enforceable as between the pledgor and pledgee. The effect of attachment is that the security interest fastens on the asset so as to give the creditor rights in rem against the debtor himself, though not necessarily as against third parties. In the case of pledge of shares this involves delivery of possession, actual or constructive as mentioned above.

However, in order to be enforceable as against creditors or a liquidator a pledge must be perfected. The perfection requirement is such as to give notice to the

public of the existence of the charge and is distinct concept from attachment.

Therefore, a pledge, as a legal interest, will take priority over an earlier charge unless the charge has been refused.

### Registration of pledge of Cyprus shares

Pursuant to Section 90 of the Cyprus Companies Law, Cap 113, if the pledgor is a Cypriot company share pledge agreements are registrable charges.

Charges must be registered with the Registrar of Companies (a) within 21 days, if executed in Cyprus, or (b) within 21 days after the date on which a copy of the charge could in due course of post and if dispatched with due diligence have been received in Cyprus, if executed outside Cyprus.

The effect of the registration is to perfect the charge, i.e. to ensure that the charge is not rendered void against the liquidator or any creditor of the Company.

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