



CYPRUS

CONTRIBUTORS

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LEGAL FOUNDATIONS

Cyprus was a British colony until 1960, when the Republic of Cyprus was established as an independent state.

Cyprus is a common law jurisdiction. The Constitution of the Republic of Cyprus preserved the British laws applicable before independence (formally referred to as 'CAP's') in force until their amendment or repeal by the House of Representatives. As a result, many Cyprus laws applicable today are remnants of British colonial laws, as amended by the House of Representatives after 1960 (including the Companies Law, CAP 113 as amended).

The laws applied by the Cyprus Courts today are the following:

- The Constitution of the Republic of Cyprus
- The Colonial laws retained in force by virtue of Article 188 of the Constitution, to the extent these have not been amended and/ or repealed,
- The principles of Common Law and Equity, as long as they are not incompatible with any law or the Constitution, and
- The Laws enacted by the House of Representatives.

In 2004 the Republic of Cyprus became a full member of the European Union and as a result European law has supremacy over the Constitution and national legislation.

There are three levels of courts in the Republic of Cyprus. The Supreme Court and the Supreme Constitutional Court, which hear, inter alia, cases at third instance, based on the authority conferred on them by the Constitution and relevant legislation, the Court of Appeal, which hears cases at second instance in which appeals are lodged against a decision of a court of first instance, and the following courts of first instance:

- Administrative Court
- District Courts (Nicosia, Limassol, Larnaca, Paphos, Famagusta, Kyrenia)
- Assize Courts
- Family Court
- Rent Control Tribunal
- Industrial Disputes Tribunal
- International Protection Administrative Court
- Military Court
- Commercial Court and
- Admiralty Court

CORPORATE STRUCTURES

The main types of corporate structures a start-up might consider in Cyprus are the following:

The limited liability Company

This is the most common form of corporate structure used for carrying out business in Cyprus due to the many advantages offered, such as the limited liability, the separate legal personality and the significant tax benefits associated with this type of corporate structure.

There are 2 main types of limited liability companies which can be incorporated in Cyprus, as follows:

Companies limited by shares (Private/ Public)

This is the most common type of company. A private company limited by shares has a share capital, and the liability of its members is limited by its memorandum of association to any unpaid amount, for the shares they hold. A private limited liability company by shares must have at least one shareholder but no more than fifty, a secretary and at least one director. A public company limited by shares must have at least seven shareholders and a minimum authorised and issued capital, which is offered for subscription, must be €25.629.

Companies limited by guarantee

This type of company does not have a share capital and its members act as guarantors rather than shareholders. The liability of its members is limited by its memorandum of association, up to the amount that the members have undertaken to contribute respectively to the assets of the company in case of dissolution. This type of company is most commonly formed as a charitable or a non-profit company.

It is also possible to register a branch of a foreign company to carry on business directly in Cyprus. The following must be filed with the Registrar of Companies within one month from establishing a place of business or branch:

- a certified copy of the Memorandum and articles of association,
- a list with all directors and secretary,
- the name and address of its Cypriot representatives.

It should be mentioned that overseas companies that establish a place of business in Cyprus have an obligation under the Companies Law to register with the Registrar of Companies within one month of establishment.

Partnership

In a partnership, individuals jointly and severally share profits, responsibility, debts, and liability of the partnership as partners. There is no share capital, but the partners must contribute an amount into the partnership as capital. There is no minimum requirement of capital for registering a limited liability partnership in Cyprus.

There are two types of partnerships which can be registered in Cyprus, the general partnership and the limited partnership.

A general partnership can have between 2 and 20 partners, with the exception of banking partnerships, where the maximum number of partners is 10.

In a limited partnership one or more of the general partners have unlimited liability and the rest of the partners have limited liability.

Sole Proprietor/ Business Name

Individuals who own a business on their own account can trade under a registered business name but will remain personally responsible for all the liabilities and debts of the business. No limited liability and no separate legal personality are established with the registration of a Business Name in Cyprus.

ENTERING THE COUNTRY

As regards corporate structures, there are no nationality or residence requirements or restrictions relating to the shareholders and directors of a Cyprus company. Any individual or corporate entity can hold shares in a Company registered in Cyprus, however, for tax purposes the tax residence of the company is identified by determining where the management and control is exercised. There are several factors which are used to identify a company's location of management and control, however, as a general rule the board of directors is responsible for exercising the central management and control of a company's business.

To take advantage of the favourable corporate tax regime in Cyprus it is therefore recommended that the majority of the directors of a Cyprus registered company should be residents of Cyprus and the meetings of the board of directors should also take place in Cyprus.

As regards investment in real estate, non-EU nationals (including corporate entities or entities controlled by non-EU nationals) who wish to purchase real estate property in Cyprus must obtain a special permit from the Council of Ministers before the property can be transferred in their name.

A non-EU national or a couple of non-EU nationals may be granted a permit to acquire:

1. A Plot or land that has not been divided into plots with an area of up to 4000 sq.m., for the construction of a house for owner occupancy.
2. In the case of a couple, only one permit is granted as above.

OR

1. Up to two units which may be in a different development. These units can be either two residential units or one residential unit and a shop up to 100 sq.m. or a residential and office unit with an area of up to 250 sq.m.
2. In the case of a couple, the above limitation applies to the couple as a whole.

A citizen or legal person of an EU member state does not need a permit to acquire immovable property and no restrictions apply to any such person.

INTELLECTUAL PROPERTY

Cyprus law recognises the following IP rights which may be registered.

Trademarks

What is protectable? A trademark to be registrable must be distinctive, capable of distinguishing the products or services of an enterprise from those of other enterprises and determine the object of the protection provided to its beneficiary with clarity and accuracy. Both individuals and businesses may submit an application for trademark registration in Cyprus.

There are various types of marks which may be registered in Cyprus, depending on their characteristics, including Word marks, Figurative marks, Colour marks, Sound marks, Motion marks, Multimedia marks, Hologram marks, Certification marks and Collective mark.

Where to apply? Trademarks can be filed either with (i) the Intellectual Property Section of the Department of Registrar of Companies and Intellectual Property, (ii) the European Union Intellectual Property Office (EUIPO) or (iii) the World Intellectual Property Organization (WIPO) under the Madrid System, depending on the territories in which trademark protection is sought. Before submitting the application, the applicant may apply to the Intellectual Property Section for a preliminary opinion regarding the possibility of safeguarding the trademark, by submitting, either through the trademark's trademark's e-filing system or by hand / post, a form E.Σ. 01 accompanied by the relevant fee of ninety nine euro (€99) and an additional fee of seventy seven euro (€77) for every class beyond the first one. Provided the mark meets all the prerequisites for protection and provided an availability check has been made among the registered trademarks and the applications for trademark registration, the application for its registration can be submitted either through the trademark's e-filing system or by hand / post, accompanied by the relevant documentation.

Duration of protection? Once registered, the trademark remains protected for an indefinite period, subject, however, to renewal every 10 years.

Costs? The application costs for registering a trademark in Cyprus are €100,00 euro and additionally €150 per class (including the certificate's issuance cost). Additional fees may apply, if applying for registration through a legal or other representative.

INTELLECTUAL PROPERTY

Patents

What is protectable? A Patent is an intellectual property right over an invention, which may concern a product, method, process, material etc. For a patent to be granted, the relevant invention must be new, involve an inventive step and be susceptible of industrial application.

Where to apply? Patent protection will be granted only per country, meaning that an applicant must register the patent in each country where protection is sought. Patent applications can be filed with either the Intellectual Property Section of the Department of Registrar of Companies and Intellectual Property, European Patent Office (EPO) or WIPO. The registration procedures before these offices slightly differ from each other, particularly as to costs. The application for granting a national patent (form Π.9) is submitted, by hand/ post, to the Department of the Registrar of Companies and Intellectual Property, accompanied by the relevant documentation.

Duration of protection? The term of protection of a patent in Cyprus is 20 years, while in the case of pharmaceutical or plant-protection products, protection can be extended up to 25 years and in case of paediatric pharmaceutical products, up to 25 years and 6 months.

Costs? Application costs are €230 for registering a national patent (including certificate's issuance cost and excluding international search fee), and €100 euro for European Patent validation in the Republic of Cyprus. International patent registration cost varies per year. Additional fees may apply, if applying for registration through a legal or other representative.

Copyright

What is protectable? Copyright constitutes an intellectual property right that grants exclusive protection to the creator of a work (scientific or literary work). Copyright is acquired automatically, without the need to file the work or submit an application and the exploitation right can be exercised automatically.

Duration of protection? Protection of copyright under Cyprus law varies depending on the nature of the work up to 70 years from the creator's date of death.

Exploitation of copyright protected work: the copyright owner has the exclusive right to exploit the work, including reproduction, advertising, sale, lease, distribution, etc. In addition, copyright over scientific, literary, musical or artistic work (including photographs) and films, provides to the creator the so-called "moral right". This right includes the creator's right, for his/her's entire lifetime, to claim the authorship of the work and to object to any distortion, mutilation or other modification of the work, that would detract the honour or reputation of the author.

Industrial Designs

What is protectable? An Industrial design or a model is the external design or the appearance of the whole or part of a product, which arises from its particular characteristics, such as, its outline, shape, form, colours, line, texture, materials, decoration, etc. Natural products, ideas, sounds, music and scents do not constitute designs or models.

Where to apply? National designs may be registered with the Intellectual Property Section of the Department of Registrar of Companies and Intellectual Property. To make sure that a design or model is "new" and "unique", it is advisable to search among the registered industrial designs or models filed both in the Republic of Cyprus and abroad. You may submit the application for filing an industrial design or model (form BZY1) by hand/post accompanied by the relevant documentation. To obtain protection throughout the EU, a Community Design may be registered with the EUIPO. Furthermore, a design may be registered as a national Industrial Design or sample in any other country or territory which enables such registration. In such case, it is advisable firstly to obtain information regarding the national law and the conditions for registration and protection applicable in the said countries.

Duration of protection? The maximum period of protection of a design under Cyprus law is 25 years, subject, however, to renewal every 5 years.

Costs? The application costs for the registration of a design in Cyprus are €85.43. Additional fees may apply, if applying for registration through a legal or other representative.

INTELLECTUAL PROPERTY, CONT'D

Trade Secrets

What is protectable? Trade secrets as such are not recognized as an intellectual property asset under Cyprus law. The Law on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure of 2020 (Law No. 164(I)/2020) allows individuals and companies to protect secret information which has a commercial value from unlawful acquisition, use or disclosure. According to this law, to ensure protection of a trade secret the relevant holder should undertake all reasonable steps to protect its secrecy, including the use of non-disclosure agreements (NDAs) and the implementation of internal policies and procedures.

Duration of protection? As long as appropriate measures are in place and information has a commercial value, trade secret protection applies.

DATA PROTECTION/PRIVACY

Data protection in Cyprus is primarily governed by the General Data Protection Regulation (Regulation (EU) 2016/679) ('GDPR') which has been implemented into Cypriot law by Law 125(I) of 2018 Providing For The Protection of Natural Persons with regard to the Processing of Personal Data and for the Free Movement of Such Data. This law is supplemented by the The Law Regulating Electronic Communications and Postal Services 112(I)/2004, as amended (the "Telecoms Law"). There are a few national particularities (derogations) under Cyprus law, the most notable of which include the following:

- The age for minor's consent in relation to information society services is 14 years
- The Controller can be exempt, wholly or partly, from the responsibility of communicating the personal data breach to the data subject, for one or more of the reasons stated in Article 23(1) of the Regulation provided that a prior impact assessment and prior consultation with the Commissioner have taken place. The Commissioner can also impose terms and conditions to the Controller, in respect of any such exemption.
- Processing of genetic and biometric data for health insurance purposes is prohibited.
- The processing which is carried out by a controller or a processor for archiving purposes in the public interest, scientific, or historical research purposes or statistical purposes shall not be used for taking a decision which produces legal effects concerning the data subject or similarly significantly affects them.
- Under the Electronic Communications Law, the use of electronic mail for the purposes of direct marketing is permissible only in the case of addressees who have given their prior consent. The only exception in Cyprus where the principle of 'opt-out' applies is where a sender has been provided by a customer with an email address in the course of a sale of goods or services. Individuals or legal entities that obtain their customers' personal data (e.g. e-mail addresses) in the course of the sale of a product or service may use these data for direct promotion of their own similar products or services so long as customers are aware of this practice and given the opportunity to decline receipt of communications in the future.
- When the controller or the processor intends to transfer special categories of personal data to a recipient in a third country or to an international organisation and the intended transfer is based on appropriate safeguards provided for in Article 46 of the GDPR or on binding corporate rules ('BCRs') provided for in Article 47 of the GDPR, the controller or processor must inform the Commissioner of the intended transfer before the data is transferred.
- The processing of special categories of data laid down in Article 9 of the GDPR is permitted and is lawful when it is carried out for the purpose of publishing or issuing a decision of any court or when it is necessary for the purpose of delivering justice.
- The right to be informed and the right of access under Articles 14 and 15 of the GDPR shall apply to the extent that they do not affect the right to freedom of expression and information and the press confidentiality.

The regulatory authority for data protection in Cyprus is the Commissioner for Personal Data Protection, established in 2002. The office of the Commissioner is currently staffed by nine officers and five administrative members of staff.

EMPLOYEES/CONTRACTORS

General

Employment contracts are not required under Cypriot law, although they are considered advisable. Employers are required to provide employees with specific information in writing, within one month of the commencement of employment, including the identity of the parties, the place of work and registered address, the position or specialisation of the employee and the nature of his duties, the date of commencement and duration of employment, annual leave entitlement, termination notice periods, salary and benefits, working hours, and details of any collective agreements that may apply to the employee.

Employment contracts can be for a fixed term or an indefinite term, provided that employment that exceeds 30 months will be automatically considered to be of indefinite term unless the employer can show that the fixed term is justified by objective reasons (such as the temporary nature of the requirements of the position, the temporary replacement of another employee, special characteristics of the position, etc). Furthermore, the termination of employment at the end of a fixed term may be considered unlawful if the Industrial Disputes Court considers that, as a matter of fact, the employment relationship was for an indefinite term.

Work for hire

There is no statutory work for hire regime under Cyprus law. Unlike employment agreements, which although contractual in nature are regulated by a wide range of employment laws and regulations, agreements for services are exclusively governed by contract law.

To determine whether a person is an employee or an independent contractor, the entire arrangement between the parties should be considered, particularly the parties' rights and obligations.

Under Cyprus law, rights to intellectual property which are recognised by law initially belong to the creator. However, when the creation of a work is performed during the employment of the creator, as part of the terms and conditions of his employment contract, the intellectual property right is deemed to be transferred to the creator's employer, subject to any agreement between the parties to exclude or limit such transfer.

Registration with Social Insurance

Every employer has a legal obligation to register its employees with Social Insurance and make contributions based on their salary to the Social Insurance Fund. In addition to Social Insurance contributions, employers in Cyprus are required to make certain other contributions for the employee to the General Health System, the Redundancy Fund, the Social Cohesion Fund and the Industrial Training Fund.

Termination

Employment law in Cyprus is a form of social legislation, a term commonly used to describe statutory provisions which protect weaker members of the society.

Under Cyprus law termination of employment is lawful only if it can be justified based on one of the below grounds:

- where the employee does not perform his or her duties in a reasonably satisfactory manner (excluding temporary incapacity for work due to illness, injury or childbirth),
- where the employee has been made redundant in accordance with statute,
- where the termination is due to force majeure, act of war, civil commotion, act of God, destruction or similar event,
- where the employment is terminated at the end of a fixed period of employment,
- where the employee displays conduct such as to render him- or herself subject to summary dismissal, or
- where the employee has displayed such conduct as to make it clear that the relationship between employer and employee cannot reasonably be expected to continue, committed a serious disciplinary or criminal offence, behaved indecently during the performance of his or her duties or repeatedly violated or ignored the rules of his or her employment.

In addition, certain groups of employees (e.g. pregnant employees, employees on maternal or paternal leave and employees on sick leave) enjoy special termination protection.

Statutory compensation for unlawful dismissal is payable by the employer depending on the period of the employee's continuous employment. Depending on the circumstances an unlawfully dismissed employee may also claim damages for breach of contract or loss of career prospects.

CONSUMER PROTECTION

Cyprus consumer protection law is a consumer-friendly statutory regime which harmonizes the national law E.U. law and the requirements of Regulation (EU) 2017/2394. It also consolidates various other relevant consumer protection laws (such as the unfair terms to consumers law) into a single statutory instrument.

Under Cyprus law, consumers have certain rights, depend on whether they are buying goods or services in commercial stores or entering into distance selling contracts, as the case may be.

Such rights include the disclosure of certain information by the seller, including the main characteristics of the goods or services, the identity of the trader and its geographic address, the total price of the goods or services, including taxes, or if, due to the nature of the goods or services, the price cannot reasonably be determined in advance, the manner in which the price is to be calculated and, where appropriate, all additional shipping, delivery or postal charges or, where such charges cannot reasonably be calculated in advance, the fact that such additional charges may be required, etc. where applicable, the possibility of recourse to an out-of-Court grievance mechanism and redress to which the trader is subject, as well as the ways to access it, etc.

In the case of distance selling contracts the consumer may, within a period of 14 days, withdraw from the distance contract without stating the reasons and without any charge other than any charges relating to a delivery method other than the cheapest standard delivery method offered by the trader, if the consumer expressly chose such delivery method. If consumers are not sufficiently informed about the right of withdrawal, this right is automatically extended for up to one year.

The Consumer Protection Service of the Ministry of Energy, Trade and Industry has as its mission the assurance of a high level of consumer protection in the liberalized and competitive market. This is achieved through a network of actions that ensure the empowerment of consumers and concern the effective compliance control of the market based on the legislative framework, the strengthening of consumer safety and the improvement of information and education of consumers and businesses.

The main responsibilities of the Service, as derived from its mission, include, inter alia, modernization and effective implementation of the legislative framework for consumer protection and the operation of the market surveillance system for effective enforcement.

TERMS OF SERVICE

Yes, the trader must provide the information required by law to the consumer on paper or, if the consumer agrees, on another durable medium and this information must be legible and worded in simple and understandable language for the terms to be enforceable.

Furthermore, the trader should provide the consumer with a copy of the signed contract or confirmation of the contract on paper or, if the consumer agrees, on another durable medium.

Abusive clauses in a contract between a trader and a consumer do not bind the consumer, however, the contract continues to bind the parties, unless it cannot continue to exist without the abusive clause.

Appendix IV of the of the Consumer Protection Law of 2021 includes an indicative list of clauses which may be considered abusive. This list includes clauses which have the following purpose or result:

• Exclude or limit the trader's statutory liability in the event of death or personal injury to a consumer resulting from the trader's own act or omission;

- exclude or improperly limit the consumer's statutory rights against the trader or other contracting party in the event of non-full or partial performance or defective performance of any of the contractual obligations on the part of the trader;
- exclude the consumer's right of withdrawal, while the fulfilment of the trader's obligations is subject to a condition, the fulfilment of which depends on his will alone;
- allow the trader to withhold the sums paid by the consumer when the consumer withdraws and does not accept to conclude or perform the contract, without providing for the right of the consumer to receive equivalent compensation from the trader when the latter withdraws;
- impose disproportionately high compensation on the defaulting consumer;
- allow the trader to terminate the contract at his discretion, while the same option is not granted to the consumer;
- allow the trader to terminate without reasonable notice an open-ended contract, unless there is good cause;
- irrevocably infer the consumer's acceptance of clauses of which he had no real possibility of knowing before entering into the contract;
- allow the trader to unilaterally modify the terms of the contract without a serious reason which is provided for in the contract;
- allow the merchant to unilaterally and without serious reason modify the characteristics of the product to be delivered or the service to be provided;
- provide that the price of the goods is fixed at the time of delivery or give the trader the right to increase his prices, without the consumer having, in either case, a corresponding right to terminate the contract in the event that the final price is too high in relation to the price agreed at the conclusion of the contract;

WHAT ELSE?

Engagement of foreign workers: In order for a third-country national to be employed as a worker in the Republic of Cyprus, they must hold a temporary residence and work permit. The employment of a third-country national in Cyprus depends on the specific employment category. For certain categories (agriculture and animal husbandry, seasonal workers, etc.), the employer must hold a permit to employ third-country nationals from the Department of Labor. Where the third-country national has free access to the labor market (i.e. third-country nationals who are family members of a Cypriot citizen or an EU citizen and long-term residents), the employer is not required to hold an employment permit for third-country nationals from the Labor Department.

The Ministry of Labour and Social Insurance is responsible for establishing policies for the employment of third-country nationals and for granting approvals to employers. The most basic criterion for granting approval to employers for the employment of foreigners is the impossibility of satisfying the employer's specific needs with labour either from the local labour market or from Member States of the European Union.

Foreign interest companies: For companies of foreign interest to employ third country nationals an approval from the Business Facilitation Unit (BFU) operated by the Ministry of Energy, Commerce and Industry is required.

A company of foreign interests who wishes to employ foreign nationals in the Republic of Cyprus must ensure that the foreign nationals obtain a temporary residence and employment permit from the Civil Registry and Migration Department of the Ministry of Interior, which entitles the foreign national to work in a specific occupation and for a period of time that is specified in the permit. If the holder of the permit begins another job, the employment permit ceases to be valid and is considered cancelled.

Strategy for attracting companies to operate and/or expand their activities in Cyprus: The Council of Ministers, with its Decision dated 15.10.2021, approved the New Strategy for attracting companies to operate and/ or expand their activities in Cyprus. The new Strategy is in force since 2.1.2022. According to the provisions of the New Strategy:

- Companies can freely employ any number of highly paid third-country nationals without going through a labour market check.

The existing categories of Directors, Key Personnel and Specialists are maintained for reasons of administrative structure/ statistics.

Specialists are not limited to specific professions or skills.

However, all companies commit to invest 30% of their total staff in Cypriots/EU citizens over a period of five years. In five years, that is after 2.1.2027, the ratio for new hires will be checked. If a company does not adhere to the 70:30 ratio, the case will be evaluated on its own merits and put before the management for an administrative decision.

- The examination time of applications for residence and employment is set at one month.

Non-compete provisions: Under Cyprus Contract law, 'any agreement by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, is to that extent void'.

This provision is subject to three specific exceptions concerning restrictions imposed on the sale of the goodwill of a business and between partners in a partnership and the Supreme Court of Cyprus has acknowledged that only agreements in restraint of trade that fall within one of the specific statutory exceptions can be valid and that Cypriot law is thus a substantial departure from English common law, under which an agreement in restraint of trade is valid if it is reasonable and not injurious to the public.

However, courts in Cyprus have held that during employment, employees owe a duty of loyalty to their employers, which includes the duty not to compete with their employer thus providing an alternative means to the enforcement of non-compete provisions to obtain compensation or interim relief in the Cyprus courts, where, for example there is evidence that an employee made preparations to set up a competing business while still employed.