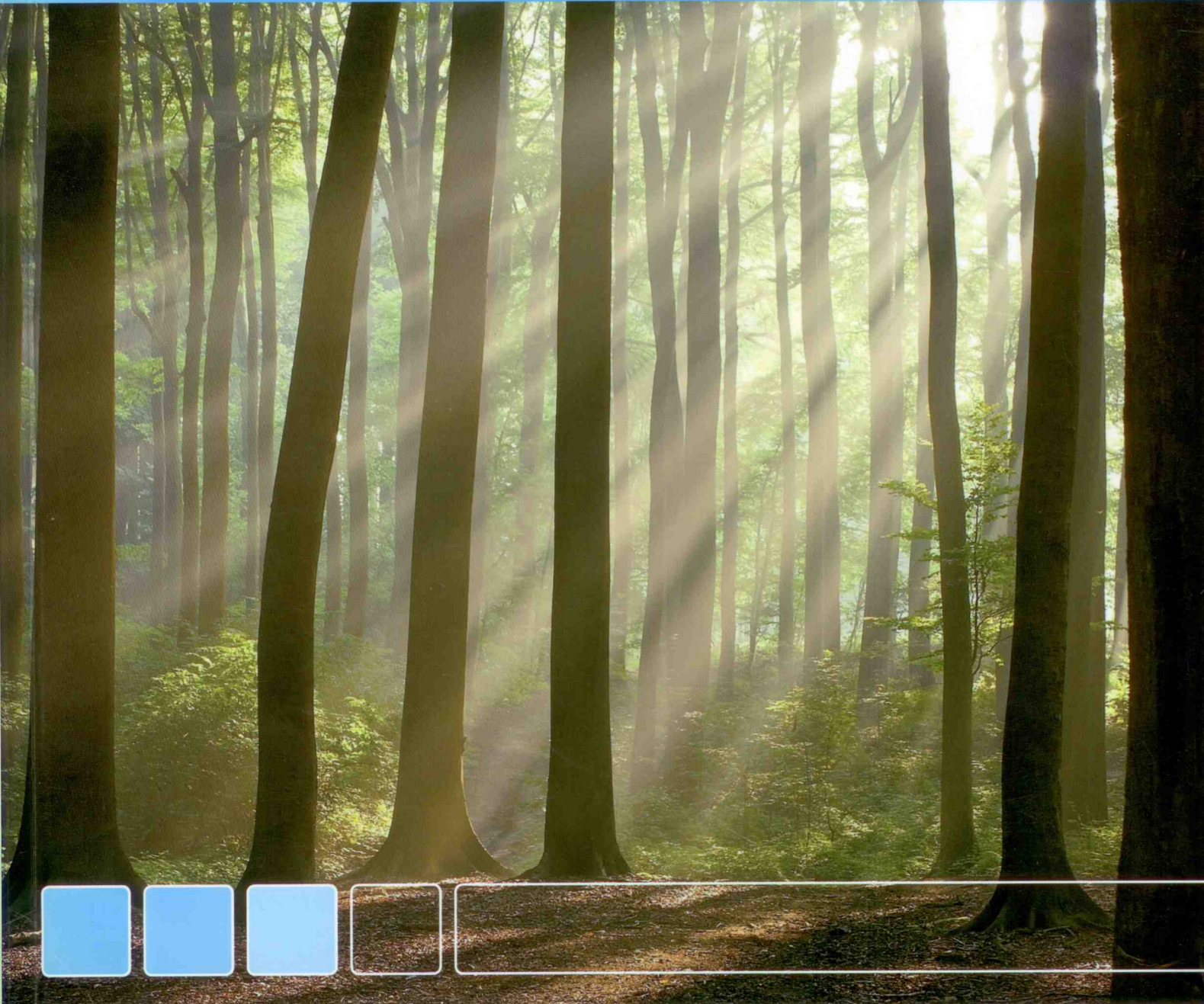


STEP Directory and Yearbook 2009





Cyprus

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1. INTRODUCTION

a. History and background

An independent and sovereign Republic of Cyprus (Cyprus) came into being in 1960, following several decades as a British colony. Early and persistent tension between the Greek Cypriot majority and Turkish Cypriot minority culminated in violence, leading to deployment of UN troops in 1963 and the establishment of enclaves of Turkish Cypriots. In 1974, a coup attempt, sponsored by the Greek government, led to Turkish military action. Turkey's intervention gave rise to occupation and control of a third of the island in the north. A prolonged and extant stalemate between the two sides continues, even though the UN has repeatedly tried to bring about *rapprochement*.

Cyprus, comprising the entire island, entered the European Union (EU) on 1 May 2004. However, the application of EU law does not apply to the areas that are not controlled by the Cypriot government.

Cyprus is the third largest island in the Mediterranean, and is located in the Levant, about 40 miles south of Turkey's southern coastline. Its population is estimated to be just fewer than 800,000 people and its total area is approximately 900,000 square kilometres. Its security is complemented by the presence of the British sovereign bases on the island, possessing 99 square miles of British territory.

Tourism and financial services dominate Cyprus' economy. Recent rates of growth of GDP have been above the EU average. The government is promoting Cyprus as an international financial centre through the negotiation of bilateral tax agreements and membership of the EU.

The currency is the euro (EUR).

b. Legal system

Cyprus has a written constitution incorporating separation of powers as well as fundamental and embedded articles that neither the president nor the unicameral legislature, nor any other Cypriot office may change. One such embedded article deals with fundamental rights and liberties (and obligations), which are afforded to all persons and not just Cypriots.

The constitution is the highest legal authority and no other law may contradict it. The next level below the constitution comprises international agreements, conventions and treaties, including the EU's *Treaty of Accession* and numerous double tax treaties. These override national statute law in the event of conflict.

The flavour of statutory law is a combination of the legislature's laws, British colonial regulations and EU directives. In addition, statute law directs the

NEW DEVELOPMENTS

- The Cyprus pound was replaced by the euro (EUR) on 1 January 2008.
- Professional trustees and corporate service providers expect the new licensing law before the end of 2008 under the title: *Regulation of Fiduciaries, Company Directors and Corporate Services Consultants Bill of 2008*.
- Cyprus' 43rd double tax convention with San Marino was concluded.

PRACTICE TRENDS

The new licensing law is an increase in statutory regulation with an attendant increase in cost. There may follow some consolidation among practitioners given that each licence requires two qualifying individuals. It could enhance Cyprus' reputation as an international financial centre.

courts to follow English civil and criminal jurisprudence prior to independence, including the rules of equity, wherever practicable.

Cyprus has an independent judiciary comprising a supreme court and several kinds of subordinate courts.

Owing to the withdrawal of the Turkish Cypriots from the political process, and the Turkish occupation of the northern part of the island, there are some exceptional constitutional cases where the doctrine of necessity has been applied.

2. SOURCES OF LAW

a. Trust creation and administration

The primary source of trust law is English common law and the colonial regulation *CAP193 Trustees*, which is based upon the English *Trustees Act 1925*. Express trusts are private, public or international. In 1992, the *International Trusts Law 1992* (ITL) introduced the Cyprus International Trust (CIT). The ITL builds on existing law, modifying it in certain instances.

b. Property, estate and probate

Property ownership is one of the fundamental rights and freedoms of the constitution. The law of immovable property is contained in *CAP224 Immovable Property (Tenure, Registration and Valuation)* as amended, and has its genesis in Ottoman land law.

The law of succession is contained in *CAP195 Wills and Succession*. The provisions regarding wills are based upon the *English Wills Act 1837*, whereas the rules governing intestacy are based upon the *Italian Civil Code*.

A valid will is signed before two witnesses, both of whom must be

present simultaneously. Unlike Cypriots, commonwealth nationals do have testamentary freedom.

3. TRUSTS

a. Introduction

Cyprus law expressly adopts common law and equitable principles of English law but within the constitutional architecture.

b. Most frequently used trusts

The CIT is the most common arrangement for international structures. It may not own directly any estate in land situated in Cyprus, be settled by a permanent resident, or be applied for the benefit of resident beneficiaries other than qualifying charities.

c. Proper law of a trust

Cyprus is a signatory of the *Hague Convention on Private International Law*. Although a signatory of the *Hague Convention on the Law Applicable to Trusts and on their Recognition*, 1 July 1985, Cyprus has not yet ratified the treaty. Cypriot courts would take the *Convention* into account when considering trust matters of private international law.

In reaching a decision about jurisdiction, the court takes into account the place of administration, *situs* of the trust's property and objects of the trust.

The courts would accept jurisdiction over a CIT where it is compliant with the ITL.

d. Creation of a trust

i. *Validly constituted trusts*

The creation of a valid trust follows equitable principles, save that there is a presumption of validity on the part of persons of majority and sound mind that settle a CIT.

There is no requirement for the registration of a trust other than where the trust's property in some part is comprised of immovable property situated in Cyprus.

ii. *Duration and termination of a trust*

Both CIT Purpose Trusts and public trusts may endure in perpetuity. The CIT private trust may endure for up to 100 years while the private trust follows the rule of 'life in being plus 21 years'.

iii. *Beneficiaries*

The CIT Purpose Trust may have objects rather than beneficiaries, as long as there is an appointed enforcer of the trusts, and the distribution of trust property upon cessation is clearly defined.

iv. *Trustees*

The powers granted to a trustee are primarily found in the trust instrument, although other powers may be granted by statute or court order.

The number of trustees shall not exceed four in number. Trustees must act unanimously, unless the trust instrument provides otherwise.

A single trustee may give a valid receipt for capital monies, except that a trust for the sale of immovable property requires two trustees.

v. *Protectors*

Although the law is silent in this regard, protectors of trusts are being appointed.

vi. *Role of courts*

The court may enforce trusts on behalf of beneficiaries. Furthermore, the court may appoint and replace trustees, as well as provide authorisation, indemnification and directions in certain circumstances.

e. Trust administration

i. *Investment*

There are special provisions for CITs allowing investments subject to the terms of the trust and the satisfaction of the 'prudent person' test. Private and public trusts must invest in statutorily authorised investments.

ii. *Maintenance and advancement*

Trustees are authorised under *CAP193 Trustees* to advance up to half of a presumptive share of capital to a beneficiary, subject to any beneficiary's prior interest. In addition, trustees may accumulate income during a

beneficiary's minority or apply it for the minor's maintenance, advancement or general benefit.

iii. *Variation of a trust*

The court may authorise the variation of the trust deed of a CIT provided that no material adversity accrues to interested parties.

f. Confidentiality and disclosure

The disclosure of confidential information follows equitable principles.

g. Rights of creditors

i. *Transfers into trust*

Under the basic law contained in *CAP 5 Bankruptcy*, trust settlements (other than marriage settlements and settlements made more than ten years before becoming bankrupt) are set aside and returned to the bankrupt's creditors. Fraudulent transfers are also set aside. However, an untainted settlement made more than two years before bankruptcy is not returned to the bankrupt's creditors where it is shown that the bankrupt was solvent following the settlement. In these cases, the burden of proof rests on the bankrupt.

CIT rules, however, require a creditor of a CIT to prove on the balance of probabilities that at the time of settlement the settlor was trying to defraud him. Such proceedings are out of time if brought more than two years after the date of transfer of the relevant property.

ii. *Limitation period*

Actions against trustees must be commenced within six years of the cause of action. Where the cause of action has been concealed by fraud, the period of limitation begins to run from the time of discovery. For minors, incapacitated persons, the unborn, and beneficiaries with a future interest, the limitation period does not begin until discovery of the cause of action.

iii. *Rights of trustees and beneficiaries*

Trustees may be indemnified from and have lien over trust property. Beneficiaries possess the rights and remedies ordinarily found in a common law jurisdiction.

4. LEGAL ENTITIES

a. Introduction

The private limited company is the pre-eminent legal entity in Cyprus. In addition, branches of foreign companies and international partnerships are in regular use. Companies may be limited by shares or by guarantee or a combination of both.

The law governing companies is contained in *CAP113 – Companies Law* (as amended). Amendments since independence have tended to be made so as to bring Cypriot law into harmony with EU law.

Public or private collective investment schemes taking the form of companies, unit trusts or international partnerships have grown in popularity since the introduction of legislation in 1999. Such schemes are known for their tax-efficient qualities. The Central Bank of Cyprus regulates the probity of this sector.

b. Incorporation

It takes about seven days for the registrar to approve a company's name, and a further 25 days to incorporate it. The time can be reduced through the purchase of a pre-incorporated company, the use of a pre-approved company name or the payment of an acceleration fee.

Incorporation is never earlier than the date given on the company's certificate of incorporation and is preceded by the completion of the company's memorandum and articles of association duly confirmed by a Cypriot lawyer and filed with the Registrar of Companies. The documents to be filed must be written in Greek (or Turkish); however, copies in any European language may also be filed as long as they are accompanied by an affidavit confirming that they are a true translation of the Greek copy.

It is legally permissible to transfer a company's registered office in and out of Cyprus.

c. Capitalisation

There is no minimum share capital of private companies. Stamp duty is payable at 0.6 per cent of authorised share capital, along with a fixed amount of EUR102.52.

Shares in a company may be either ordinary, preference or redeemable. The rights of a particular class are set out in the company's articles of association.

d. Director requirements

Any person wishing to act as a director is required to file with the registrar details of name, address, nationality, number of ID or passport and occupation. A company having two or more members may have a single director that is a corporate body, provided the company's secretary is a different person. There is no such restriction for a single-member company.

e. Disclosure and other requirements

It is compulsory for all Cypriot companies, other than those that qualify as a small-sized company, to file audited financial statements at the company registry. In addition, the Commissioner of Income Taxes requires all resident companies and branches to file audited financial statements with their tax declarations.

5. TAXATION

a. Introduction and developments

Direct taxation is principally based upon residency and charged on a resident's worldwide income. Individuals are resident if they spend more than 183 days in Cyprus in a calendar year. Any company is resident if it is managed and controlled in Cyprus. A Cypriot company is not subject to Cypriot income tax on its worldwide income if it is managed and controlled outside Cyprus. These residency rules are superannuated and replaced where there is a governing tax treaty. Trustees must account for tax if a beneficiary of a trust is resident in Cyprus. All legal persons are liable for tax on income arising in Cyprus, subject to relief provided through tax treaties or law.

Since 1 January 2000, the estate of a deceased person is not subjected to tax; within six months of death, however, the executor must file a statement of assets and liabilities with the commissioner of income taxes.

As a full member of the EU, Cyprus has implemented laws relaxing bank confidentiality in order to facilitate the automatic exchange of information about bank interest paid to individuals who are resident in other member states of the EU.

b. Tax system

i. General concepts of tax liability

There are no estate, inheritance or gift taxes in Cyprus. Capital gains tax applies only to immovable property that is situated in Cyprus. Stamp duty on transactions is generally applicable. There is an annual immovable property tax based on property values of 1980, along with a similar tax, in certain circumstances, upon any conveyance. Cyprus law provides for a value added tax (VAT). Also, a 'defence tax', similar to a second income tax, is payable by residents.

ii. Rates and exemptions

Income tax is calculated after the deduction of expenses incurred wholly and exclusively for the purposes of a trade, occupation or profession.

Capital gains tax, at a rate of 20 per cent, is limited to chargeable gains in connection with immovable property situated in Cyprus. The property is taxable irrespective of whether it is owned directly or indirectly. Exemptions apply to transfers on death and transactions between relatives up to the third degree.

VAT has cash flow implications for commercial enterprises, and is levied at 15 per cent of an invoice's value. With some exceptions, this tax is usually fully offset or reclaimed by registered enterprises so as to have no effect on profits.

Income tax on companies is levied at ten per cent of taxable profits. If foreign income tax has already been paid, it may be offset against Cypriot income tax. In many cases, there will be no further income tax to pay.

For individuals who are resident in Cyprus, taxable income is taxed at incremental rates that reach 30 per cent when taxable income moves above EUR36,300. Although dividends and interest are exempt from income tax, Cypriot residents must pay defence tax on this income at a rate of 15 per cent (see (d) below).

Companies managing ships may opt for a special tonnage tax if it is more beneficial than income tax.

iii. Taxable period and filing requirements

The fiscal year is the calendar year. Individuals must file tax returns by the

following 30 April. Companies are required to pay in the year of assessment itself (1 August, 30 September and 31 December) based on estimates. When liability is finalised, penalties and interest may be payable.

c. International

i. Non-residents shareholders and trusts for non-residents

Shareholders (including persons owning shares through nominees) and trust beneficiaries who are not resident in Cyprus are not liable for Cypriot taxes.

ii. Non-resident withholding taxes

Withholding taxes of between five per cent and ten per cent are payable by non-residents on Cypriot income derived from intellectual property rights, film royalties or entertainment and sporting activities.

iii. Tax treaties

Cyprus has 43 tax treaty partners.

d. Other taxes

The defence tax applies only to residents on certain kinds of passive income. Cypriot companies that are resident in Cyprus are liable at rates of 15 per cent and ten per cent on dividends and interest respectively. Where a Cypriot company qualifies for an 'international participation exemption', the defence tax on dividends is eliminated. Moreover, if the taxpayer can show that foreign income taxes have already been paid on the foreign income, a foreign tax credit would apply.

e. Other relevant matters

Reorganisation of corporate structures may be structured to utilise exemptions from capital gains tax and stamp duty. Unutilised losses may be transferred advantageously into the surviving company.

Pensions that are pursuant to contracts of service performed abroad and are payable to individuals who are residents of Cyprus are taxed at five per cent for amounts exceeding EUR3,417.

6. OTHER RELEVANT MATTERS

Anti-money laundering rules

The implementation of the *Third Money Laundering Directive* is due to be finalised in 2008. The new law introduces:

- registration or licensing of corporate and trust service providers;
- identification and verification of trust beneficiaries who are or could be entitled to 25 per cent or more of capital; and
- regular training of persons working for licensed practitioners.

EU Directives

Cyprus is fully in compliance with the 'Parent/Subsidiary', 'Mergers', 'Mutual Assistance and Cooperation' and 'Royalty and Interest' Directives.

7. RESOURCES

Websites

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|----------------------------|--|
| STEP's resources | www.step.org |
| The Central Bank of Cyprus | www.centralbank.gov.cy |
| Registrar of Companies | www.mcit.gov.cy |
| Ministry of Finance | www.mof.gov.cy |
| Double Tax Conventions | www.londontrust.net/DTT_Cyprus.html |
| CIA – The World Factbook | www.cia.gov/cia/publications/factbook/geos/cy.html |
| Hague Conference | www.hcch.net |