

Corporate Law

This month we take a look at corporate law by speaking to Christodoulos G. Vassiliades, the Founder and Managing Director of the Law Firm Christodoulos G. Vassiliades & Co. LLC. He specialises in Corporate Law, Trust Law, Commercial Law, International Tax Planning, Shipping and Banking Law.

What are the key legal, regulatory and business challenges companies and individuals face operating in your country and cross its borders?

The year 2013 has certainly left its mark on Cyprus. Predominantly, due to the banking crisis which has kept the entire Island and the international community on edge for nearly two weeks, while the Cyprus Government was negotiating vital terms for the Islands survival. Additionally, there have been other legal and regulatory developments in the corporate field, which ought to be observed in the coming year. We shall briefly address just some of them:

BANKING CRISIS - SAILING AHEAD

a) Recent economic developments which unraveled in March 2013 have certainly put Cyprus on the world map. The country's status as a financial center seemed to have been wounded due to the losses suffered by uninsured depositors, which were held with the Cyprus Popular Bank (ex Laiki Bank) and The Bank of Cyprus. On 22 March 2013 two laws were passed: The Resolution of Credit and Other Institutions Law of 2013 (Law 17(I)/2013) and The Enforcement of Restrictive Measures on Transactions in Case of Emergency Law of 2013 (Law 12(I)/2013). These laws in summary provided that a) The Central Bank of Cyprus, Minister of Finance and the President of the Cyprus Securities and Exchange Commission were appointed to be in charge of the downsizing and recovery process of the Cyprus Banking Sector (Law 17(I)/2013) and b) a ban was imposed on cashless payments or transfer of deposits/funds from Cyprus to accounts held outside of Cyprus and a ban on the termination of fixed term deposits before the maturity, unless the purpose of doing so was to repay a pre-existing loan. Furthermore, capital controls were imposed on individuals limiting cash withdrawals (Law 12(I)/2013). Justifiably, we in the legal sector were very anxious as we were preparing ourselves to deal with the legal consequences in relation to our domestic and international clients. It is not a secret that the economy of Cyprus is mainly driven by the service sector which is internationally orientated, resulting in relatively high foreign direct investment flows. As a result, a part of the burden is also upon us in the legal profession, to re-build the trust by providing the general public and our clients with the necessary legal information in order to instill investor confidence.

AUTOMATIC EXCHANGE OF INFORMATION- FEAR OF A FISHING EXPEDITION?

b) The G20 has agreed on the global automatic exchange of tax information. Cyprus has exchange of information relationships with 53 jurisdictions through a network of Double Tax Treaties (DTT's) and Council Directive 2012/16/EU. These mechanisms generally contain sufficient provisions to enable Cyprus to exchange all relevant information. Effective exchange of information requires the availability of reliable information in relation to the identity of owners and other stakeholders as well as information on the transactions carried out by entities and organizational structures. While any developments are welcome in relation to combating and eliminating tax evaders, the worry that is present is that

unnecessary information will be disclosed, i.e. information which has nothing to do with any investigation of a particular country's tax authorities. In simple term, there is a fear of fishing expeditions.

How can these challenges be navigated?

a) In relation to the banking crisis it is vital to be noted that only two local banks out of the 40 banks operating in Cyprus have been forced to undergo restructuring, leaving the majority of the banks on the island unaffected. Since the introduction of the capital controls a significant amount has already been eased, while a definite date is yet to be set to completely lift these measures. Amongst many decrees, on 30th January 2014 the six-month time deposits that were blocked as per the decrees have been released. This move clearly indicates that the Cyprus banking system is on its way to stabilisation, which will help reinforce the confidence of the public and investors in our banking system. Funds that have reached bank accounts post March 2013 are not subject to any form of capital control. Furthermore, reflecting now nearly one year after the crisis, it is evident that Cyprus still remains a financial center and an attractive jurisdiction for many reasons. Our solid experience in corporate structuring continues to provide international businesses with an attractive base for their operations. We still have a fully EU-harmonized tax and legal framework, one of the lowest and most competitive corporate tax rates in Europe at 12.5%, 50 Double Tax Treaties, and no withholding taxes on dividends, interests and royalties outside Cyprus. Moreover, we still have a preferential access to high-growth markets like Europe, Russia, China and India.

b) In 2012 and 2013, Cyprus made a number of changes to its legal, regulatory framework and practice to increase transparency and further comply with the international standard on transparency and exchange of information for tax purpose. Subsequently, all trustees are now under an obligation to have information available on the other trustees, settlors and beneficiaries. Accounting record keeping obligations were amended to cover all relevant entities and arrangements. Finally, bilateral agreement have been signed or updated to allow for exchange of tax information in accordance with the international standards. However, while promoting transparency and welcoming a framework which combats tax evaders, it has to be noted that a need for confidentiality is a vital and integral part of any jurisdiction and its legal dealings. Subsequently, a delicate balancing act between the two is absolutely vital, in order to prevent 'fishing expeditions'. Any information required to be disclosed must be foreseeably relevant to the purpose and predominant reasons of the original request.

How does the corporate law regulatory framework in your country differ to the rest of the world?

Cyprus's corporate regulatory framework is not very different from other common law jurisdictions. The main Corporate Law legislation, which is Companies Law Cap 113, is based on the English Companies Act 1948, with subsequent amendments that followed.

Subsequently, we are offering foreign businesses and individuals a familiar and reliable framework within which to operate and to secure the ownership of their assets. Being a member of the EU, Cyprus is fully compliant with the EU regulatory framework, the Financial Action Task Force on Money Laundering (FATF), the Organization for Economic Co-operation and Development (OECD) and the Financial Stability Forum.

Subsequently, from a practical point of view the following is entailed, while operating a business in Cyprus:

- A Cyprus private company is obliged to file audited financial statement once a year;
- A Cyprus private company is obliged to file its tax returns;
- Provided that it engages in actives subject to VAT it must be registered with the VAT authorities should the threshold of a gross overturn of €15.600 be met;
- An Annual General Meeting (AGM) of shareholders must be held once a year and no later than within 15 months from the previous one;
- There is also a levy imposed of €350 on all companies registered in Cyprus;
- Every transaction/document entered into requires the approval of the Board of Directors, unless, in a particular circumstances the approval of the shareholders are required;
- As a general rule the business of the company is managed by the Directors of the company;
- Shareholders deal with such matters as reduction increase of share capital, alteration of the Article of Association, the appointment and removal of Directors at the AGM etc.
- The Registrar of Companies is the governmental body that is responsible for overseeing the companies registered in Cyprus and keeping its records. As a general rule any changes/transactions that affect the company or its assets (sale of shares, change of Directors, pledge of shares, increase/decrease of share capital, appointment of liquidator etc.) must be registered with The Registrar of Companies;
- Issues such as the alteration of the Memorandum of Association, the decrease of share capital, the decrease of the share premium account, the registration of a pledge after a relevant dead line has passed, requires court approval.

Is there anything else that you would like to add?

What ought to be mentioned is that the Cyprus corporate regulatory framework is business friendly aimed at allowing companies to conduct their business smoothly and effectively.

We have certainly not sailed smoothly through 2013 however, as the saying goes 'after a storm comes a calm'. Our expectations for 2014 are certainly more optimistic. **LM**



CHRISTODOULOS G. VASSILIADES & Co. LLC
Advocates - Legal Consultants