

Antonis Paschalides & Co LLC

CORPORATE LAW

How is Cyprus Making Developments in Corporate Legislation?

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With Turkish and Greek Cypriot leaders undergoing peace settlements, Cyprus is currently undergoing a lot of change, economically and legislatively. Here Lawyer Monthly speaks to the Senior Partner, Antonis Paschalides, and the Head of Corporate Department, Melita Theodorides Georgiou, at Antonis Paschalides & Co LLC, both of whom give wonderful insight into Cyprus' economic market and shifting legal landscape.

Antonis picks up on how Cyprus has developed economically, the relations the country has made, and what their firm currently does and aims to do in order to keep innovation at its heart.

Melita's provides an outlook on the changes in the Cypriot M&A sphere, the challenges the country faces, and the legislative prohibitions in acquisition financing.



By Antonis Paschalides, Senior Partner

Antonis Paschalides – Former Minister of Energy, Commerce, Industry and Tourism to Cyprus, served from the 28th February 2008 until his resignation on the 4th August 2011, represents domestic and international clients in attaining their business objectives. Antonis Paschalides has practiced law since 1980 representing a number of banking institutions and being involved in significant cross-border acquisitions.

What considerations would you say companies need to be aware of in regards to regulation when looking to Cyprus as a place to invest? How can you assist in this regard?

Cyprus has seemed to overcome the negative consequences of the economic crisis. We expect serious improvement of foreign investments in Cyprus

and more registrations of international companies. Fields such as oil and gas, shipping and construction, are indicative of high expectations. Hence, I envision this evolving more optimising and encouraging, as many critical issues in European Union have been cleared and the regulatory authorities have now given us strong directions on the steps needed to be carried out. Moreover, recent

developments, such as Brexit, may encourage some financial institutions and/or supporting companies in this field to move their headquarters in Cyprus.

Having considered the economic situation in Greece and in particular, the very high taxation on businesses, as well as complicated and lengthy procedures for the establishment and operation of businesses there, Greek institutions and businesses are seriously considering the transfer of their headquarters and some of their operations in Cyprus.

Developments in the Middle East region and the improvement of the relationship of Cyprus and Israel make Cyprus a very popular destination for new businesses. This is particularly due to recent positive gas drillings in the region and the expected developments in the energy field in general.

On a regular basis, lawyers of our office attend international conferences and co-organise such conferences, where they share views with other experts in the realm of corporate law.

Additionally, we attend specialised seminars and of

course, we are all learning from existing clients by applying theory to real action at specific projects.

Do you have a mantra or motto you live by when it comes to helping your clients?

Efficiency in our services to clients in a practical and result oriented approach; this is our motto we live by, when it comes to helping our clients. In our firm, we try to give quick straight answers in a tailor made – if possible – manner, as the cornerstone of our philosophy lies in taking into account and understanding each client's legal and business goals. In order to achieve them as efficiently, skilfully and effectively as possible, with the highest degree of professionalism and ethics, we concentrate on the substance, taking in mind the needs and circumstances of each client. Maybe we should change our motto to: "Deeper understanding leads to better solutions."

What top 3 qualities make a thought leader?

The term 'thought leader' at its core refers to people who turn ideas into reality and are, therefore, respected in a particular field. It also implies the capacity of thinking ahead of the market or industry and is strongly connected to innovation and change. I always thought that such leaders are driven from the passion about their work and the purpose to succeed, regardless what the market suggests. Such leaders have the ability to easily convey their ideas to others and, thus, are great team players. They

are committed to their goals and are determined to pursue and achieve them. They possess in depth knowledge of their field of expertise, whilst they remain curious and strive to find solutions to problems. All the aforesaid describe the qualities that make a thought leader but as I conclude, I would like to rephrase a quote by Arthur Schopenhauer and say: "A good leader hits a target no one else can hit. A thought leader hits a target no one else can see."

What do you want to achieve in 2017?

1. Continue serving in a satisfactory way of the existing clients and opening new horizons for them and our office. Under this context, we will continue to work hard to improve efficiency.
2. Attract new clients with innovative ideas and projects and build from the beginning to the very end of each project as a team.
3. In 2017, we want to strengthen and improve our services to existing and new clients, as well as provide a spherical quality service to clients.
4. Help and/or assist Cyprus to upgrade as a regional business centre.

In today's rapidly changing era, we need to spend time working out how to mitigate the risks and the impact the new technologies might have to our clients, in order to support the growth and development of technology that will benefit all the participants.



By Melita Theodorides Georgiou, Head of Corporate Department

Melita has an LL.B (Hons) (University Of Leicester, UK) and is a Barrister of Lincoln's Inn (London UK) and a member of the Cyprus Bar Association since 1996. Her practice areas include Corporate, Commercial and Finance Law.

An Impacting Legislative Change in The Mergers and Acquisitions Regime in Cyprus

Following the country's accession to the European Market, the Cyprus Mergers and Acquisitions regime has been primarily broadened by the implementation in 2007 into the Cyprus Companies Law, Cap.113 of the EU Cross-Border Mergers Directive (2005/56/EEC).

Up to such implementation, the Cyprus Companies Law only included provisions in respect of mergers of two or more companies incorporated in Cyprus. The implementation of the

provisions of the EU Directive in the Cyprus legislative regime facilitates the merger of one (or more) Cypriot companies with respective entities incorporated in any other EU member state.

The straightforward and effective features of the cross-border merger procedure, especially where the simplified formalities statutorily set are applicable*, coupled with the country's favourable tax regime**, has led to its wide use over the past decade by group companies seeking a unified/ more beneficial tax regime and a reduction of their administrative expenses.

*Simplified formalities are provided in cases where the absorbed company is wholly owned by the absorbing company.

** Exemptions under a reorganisation have been incorporated in the country's legislative tax regime, by the incorporation of the respective provisions of EU Merger Directive (90/434/EEC)).

Legal Challenges and Important Considerations in Mergers & Acquisitions Merger Control Issue – Legal Challenge

A legal challenge - though not common - in respect of companies merging with another in Cyprus, would be merger control issues regulated by the Control of Concentrations between Undertakings Law of 2014.

Concentrations for the purposes of the relevant law include mergers of previously independent undertakings, as well as acquisitions of one or more other undertakings by persons currently controlling one or more other undertakings.

The ambit of the relevant legal concentrations of major importance are deemed as such, if all of the following apply:

- at least two of the participating undertakings generate turnover within Cyprus;
- at least two of the participating undertakings achieve an aggregate annual turnover exceeding €3.5 million;
- at least one of the participating businesses undertakes commercial activities within Cyprus, and;
- at least €3.5 million of the combined annual turnover of the participating undertakings is generated in Cyprus.

Concentrations that fall within the scope of the law are subject to investigation and hence to pre-merger notifications to the Commission for the Protection of Competition, which is the authority in Cyprus with the overall responsibility for its implementation.

Following the pre-merger notification, the Commission should inform the notifying undertakings of its decision, either to grant a clearance

or, in case there are doubts as to the concentration's compatibility to conduct a full investigation.

When a full investigation is required, participating undertakings will be given the opportunity to make changes to the proposed concentration, or commitments to alleviate doubts regarding the compatibility of the proposed concentration with the demands of the competitive market.

Further, before the Commission makes its final decision, it may carry out negotiations, hearings or discussions with any interested or other parties, with an aim to reach negotiation remedies.

It should be noted that the implementation (either in full or in part) of a concentration prior to clearance, or prior to the implementation of negotiated remedies, entails the risk of strict administrative sanctions, including administrative fines of up to 10% of the aggregate turnover achieved by the notifying undertaking during the immediate preceding financial year.

Moreover, the Commission may order the dissolution (either in full or in part) of the concentration that has been implemented prior to clearance.

Financial Assistance - A Legislative Prohibition to be Considered in Acquisition Financing

A more common legal challenge in reorganisations

and acquisition transactions, and which may stand as an obstacle from a financing perspective, is the statutory prohibition contained in the Cyprus Companies Law, Cap.113 in respect of a company providing financial assistance for a purchase or subscription made, or to be made, by a person of or for any of its shares, or those of its holding company.

Though the provision of the law is significantly wide, making unlawful any financial assistance given, "whether directly or indirectly, and whether by means of loan, guarantee, the provision of security, or otherwise for the purpose of or in connection with the purchase of or subscription to its shares", (or those of its holding company), there are certain statutory exceptions. In the case where lending is part of the ordinary course of business of the relevant company, or it is provided in accordance with an employee benefit scheme, or by means of a loan to employees for purchase of company shares, the statutory prohibition is disapplied.

More importantly, in 2009 the relevant provision was significantly relaxed by an amendment providing a 'whitewash' procedure in respect of private companies, where such a company is not a subsidiary of a public company, by the approval of the relevant action at any time with a resolution of its members (shareholders) passed by a majority at general meeting exceeding ninety per cent of all issued shares of the company.

Finally, with respect to public companies, financial assistance is permissible in the ambit of buy backs, which are only permissible subject to statutory limitations.

Buyback and Cross Holdings-Legislative Prohibitions to be Considered in Corporate (Re) structuring

Other important considerations in the field of Reorganisations and Acquisitions are the long-standing prohibitions contained in the Cyprus Companies Law, Cap. 113 regarding a buyback of own shares and holding of shares in holding companies. Though buybacks and cross holdings have been relaxed to a certain extent with harmonising amendments to Cyprus legislation, mostly in respect of public companies, the relevant provisions in respect of private companies remain largely unaltered.

The Cyprus Companies Law, Cap.113 provides that a body corporate may not - subject to certain legislative exceptions - be a member of a company which is its holding company and that any transfer or issue of such thereto shall be void.

Private companies may "buyback" their shares in the context of redeeming issued redeemable preference shares (which by recent amendments to the Cyprus Companies Law, Cap.113 may be issued on terms that allow their redemption both at the option of the company and at the option of their holder), or a reduction of share capital. **LM**

FIRM PROFILE

Antonis Paschalides & Co LLC is a boutique Cyprus law firm based in Nicosia with an associate office in London. The firm was initially founded by Mr Antonis Paschalides under a different setup back in 1980 as a general practice firm and through its various stages of evolution over the years, has emerged with its current structure as of October 2007.

Antonis Paschalides & Co LLC is well respected amongst Cyprus law firms, better known in the local market for its integrity and high efficiency. It has traditionally maintained a very strong and knowledgeable litigation team and represented top Cypriot clients including all the major banking institutions of the island. The reputation of the firm has allowed it to work in cross-border transactions alongside some of the biggest international law firms exposing it to transactions of an impressive magnitude.

NOTABLE CASES

Termination of Joint Venture with worldwide presence and activities in the production and export industry: negotiation, drafting and implementation of agreement and ancillary documents, including the allocation of assets and liabilities.

Investment by multinational entities in foreign underlying asset through acquisition of shareholding interest in Cyprus parent company: negotiation, drafting and implementation of acquisition and financing security agreements and agreements/arrangements in respect of shareholders' respective rights.

MINI QUESTIONNAIRE

Do you have a mantra or motto you live by when it comes to helping your clients?

Before advising a client on available legal mechanisms, it is of paramount importance, apart from understanding what exactly is desired to be achieved, to also identify all the important facts.

This presupposes repeated communications led by the correct questions. Important facts may consist issues that are not deemed so by the client himself.

When considering options, legislation and precedent (even well practiced upon) should always be revisited, as applicable provisions differ from case to case.

Finally, when advising, any alternatives should be clearly stated for advantages and disadvantages (even those not directly pointed out) to be easily identifiable by the client. It is often the client who is in a better position to estimate the impact in his particular case, as well as practical difficulties.

One should always be open to hear, even identify concerns, which very often can be resolved and dealt with by a side additional arrangement. Sometimes one has to deviate from a preliminary agreed procedure to achieve the most beneficial arrangement, which commonly is determined along with negotiations - even at a very advanced stage. Accordingly, when it comes to helping clients, our motto is listen-ask-understand-clarify and always be open to last minute rearrangements.

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