

## Chapter 11

# The Commercial Laws of Cyprus

*Achilleas C. Malliotis\**

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\*B.Sc., M.A., Pg.D.L., Barrister-at-law, Licensed Insolvency Practitioner  
ELIAS NEOCLEOUS & CO LLC  
Advocates & Legal Consultants  
5 Lemesou Avenue, 2nd floor  
P.O. Box 26821, Nicosia, CY-1648, Cyprus.  
Tel: +357-22110300  
Fax: +357-22110001  
E-mail: [achilleas.malliotis@neo.law](mailto:achilleas.malliotis@neo.law)  
Web site: [www.neo.law](http://www.neo.law)

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## I. GENERAL SYSTEM OF LAW

### § 11:1 Description of system of law

The modern law of the Republic of Cyprus has its origins in a wide variety of different legal systems reflecting the island's turbulent historical past prior to its gaining independence in 1960.

When the Franks conquered Cyprus in 1192, they brought with them a feudal system of law which was not codified but based on custom. The Franks discovered that a system of law already existed on the island and this was based on Greco-Roman customary law which had been developed by the Byzantine Emperor Justinian. The Franks adopted the existing law into their own feudal laws and developed a system of laws called *Assizes*.

The Ottoman Turks, who conquered the island in the late 16th century, brought with them the Ottoman Laws and, in particular, the Ottoman Penal Code, Civil Code and Land Code which covered most of the land and penal laws. Family matters were dealt with by Islamic law with respect to the Muslim population of the island while the ecclesiastical courts of the Greek Orthodox Church had supreme authority over the Christian Greek population of the island.

The British, who effectively controlled Cyprus from the late 19th century, introduced English law to the island and, in particular, common law rules and principles and rules of equity, as well as a number of statutes which were in force in England at the time.

When Cyprus became independent in 1960, the Constitution of the new Republic provided that the laws previously applicable should remain in force until repealed or amended by new laws of the Republic. Since independence, myriad laws have been enacted, but the common law still plays an important part in the administration of justice on the island, in particular in relation to commercial matters.

Under Article 1 of the Constitution of Cyprus, the new state is an

independent and sovereign republic, with a presidential system of government. Although not explicitly stated, the Constitution adheres to a relatively rigorous separation of powers with respect to the authority of the executive, legislative, and judicial branches of government.

### § 11:2 Constitutional law

The Constitution of the Republic of Cyprus is the product of the London and Zurich Agreements. In order to grant independence to Cyprus from British colonial rule, on 11 February 1959, representatives from Greece and Turkey met in Zurich and reached an agreement for the granting of independence and self-determination to the people of Cyprus. On 19 February 1959, the Prime Ministers of the Hellenic Republic, the Turkish Republic, the United Kingdom of Great Britain and Northern Ireland and the leaders of the Greek-Cypriot and Turkish-Cypriot communities initialed the documents comprising the Zurich agreement.

On the basis of the above Agreements, a constitutional commission was appointed to draft the Constitution of Cyprus, composed of representatives of the two communities and of the Greek and Turkish governments. The outcome was the declaration of an independent Cyprus Republic on 16 August 1960 and the creation of a constitution which embodied the various provisions of the Zurich Agreement, certain aspects of the 1950 Greek Constitution and most of the provisions of the European Convention on Human Rights with respect to fundamental rights and civil liberties.

The Constitution of Cyprus cannot be said to be a true reflection of the sovereign will of the people of Cyprus. It is rather a “granted” constitution and the product of negotiation and compromise between the previous colonial ruler and the governments of the two “motherlands” of the two resident ethnic communities.

The Constitution of Cyprus is also a “rigid” constitution because a number of basic articles are considered to be of fundamental importance and cannot be deleted or amended under any circumstances by the unicameral legislature. Amendments to the remaining articles require a two-thirds majority from representatives of both communities in the House of Representatives.

The Constitution does not fully respect the democratic principle of majority rule since it effectively gives the minority Turkish-Cypriot community and the majority Greek-Cypriot community equal rights, despite the disparity in their numbers. The Turkish-Cypriot community is overrepresented in all the organs of central government with respect to its demographic weight. In a number of matters, such as defense and the budget, it has an effective veto which may be exercised by the Vice-President of the Republic, who must be a member of the Turkish-Cypriot community.

Following the invasion of Cyprus by the armed forces of Turkey in 1974 and the occupation of the northern part of the island by the Turks, which continues to the present day, the Constitution of the Republic of Cyprus is only enforced “*de facto*” in the southern free part of the Republic. The partition of the island led to the forced separation of the two communities into two ethnically cleansed regions, a “Turkish” north and a “Greek” south. The partition of the island has meant that many provisions of the Constitution which require the participation of members of the Turkish Cypriot community cannot be enforced in the free territory of the Republic.

The ongoing accession negotiations between Turkey and the European Union may assist in the discovery of a lasting and peaceful settlement of the political problem on the island and in the eventual re-unification of Cyprus. A settlement will almost certainly necessitate the adoption of a new Constitution to replace the 1960 constitution.

### § 11:3 Statutory law

Under the Constitution, the legislative power of the Republic is exercised by the House of Representatives. All laws must be passed in the House of Representatives by a simple majority vote of all the members present. Laws passed by the legislature come into force on the date they are published in the *Official Gazette of the Republic*, unless other provision is made in the law itself.

Not all statutes are of equal force to each other. Statutes that are passed by the legislature in order to ratify an international treaty, convention or agreement concluded under a decision of the Council of Ministers (the organ vested by the Constitution with the exercise of executive power) have superior force over any other domestic law. However, the supreme law is the Constitution and all statutes and laws passed by the House of Representatives must be consistent with its provisions.

## II. TRADERS AND NON-TRADERS

### § 11:4 Definition of trader

The term “trader” can generally be understood to indicate a person or entity that carries on some type of commercial business or enterprise. The nature of the business typically involves the sale of goods, the provision of services, or both. The term “trader” is not, however, commonly used or defined under Cyprus commercial law. By way of example, the *Sale of Goods Laws 1994–1999* use the terms “buyer” and “seller” respectively to refer to a person who purchases or who agrees to purchase goods and a person who sells or who agrees to sell goods.

**§ 11:5 Registration of traders**

The type of business a trader carries out in the territory of the Republic of Cyprus determines the nature of the legal and regulatory framework under which the business will be conducted. As in the rest of the EU, certain areas of business, such as banking and telecommunications, are extensively regulated. For example, any trader that wishes to conduct banking activities in Cyprus must first apply for authorisation from the Central Bank of Cyprus and meet the requirements of the Business of Credit Institutions Law of 1997 as amended, following which if the Central Bank is satisfied with the application, it shall make relevant recommendation to the European Central Bank which has ultimate decision-making responsibility with respect to the authorisation of credit institutions in Cyprus. Similarly, a trader who wishes to conduct activities in the telecommunications market should first consult the Office of the Commissioner of Electronic Communications and Postal Regulator to ascertain whether a license is required from the Regulator before commencing his business. Regulated sectors are the same as in the EU generally.

There are a number of registration requirements for different forms of business organization. The Registrar of Companies and Official Receiver is the government authority entrusted with the registration of all business entities (either foreign or domestic) that carry on business in the territory of Cyprus. For example, partnerships and corporations must register by filing certain documents with the Registrar, which are accessible to the public, pertaining to, among other things, the entity's name, place of business, ownership and management. This information needs to be updated whenever changes occur. Sole traders or sole proprietors must have their business name approved and registered by the Registrar.

Traders may also be required to register with the local authority or municipality in which their place of business is situated.

Traders also must be registered with the Tax Department of the Ministry of Finance for income tax and VAT. VAT, being a form of retail or sales tax, is charged by all traders with annual turnover in excess of €15,600 and included in the prices of the taxable goods and services provided by them. Traders must collect the VAT on the products or services they sell and then remit the money collected to the VAT Department. Furthermore, traders must pay social insurance for themselves and for their employees through payroll deductions to the Department of Social Insurance of the Ministry of Labor and Social Insurance.

**§ 11:6 Other requirements of traders**

There are a number of statutes and regulations that exist for the purpose of consumer protection. For example, the Sale of Goods Law of 1994–1999 implies a number of conditions in contracts for sale of



goods, including conditions that the goods in question should be of an acceptable quality, should be fit for the purpose for which they are being purchased, should correspond to their sale description and that the buyer shall enjoy the goods free of any encumbrances with respect to title. Other important consumer protection laws include laws that deal with issues such as onerous terms in consumer contracts, timeshare leasing contracts, distance selling contracts and consumer credit contracts.

There are a number of laws and regulations of an industry specific nature designed to protect consumers from loss or unfair treatment (e.g. concerning the travel industry, the insurance industry, *et cetera*). There are also myriad other laws and regulations which impose certain minimum standards or requirements, in particular relating to foodstuffs and pharmaceutical products, as well as product labeling requirements. These laws and regulations are all in line with European norms and it is advisable to carefully research them before undertaking the sale or distribution of products in Cyprus.

### III. FOREIGN TRADE

#### § 11:7 In general

Foreign trade and access to international markets are of the utmost importance to Cyprus due to the small size of its domestic market and the open nature of its economy. As a result, foreign trade has contributed significantly to the economic growth of the island. In 2017, the value of Cyprus's foreign trade was approximately EUR 8,228 million.

Cyprus's main imports are raw materials, consumer goods, transport equipment, capital goods, fuels and lubricants. More than 59% of these imports originate from the EU. Other significant trading partners include the Russian Federation, the United States, China, Japan, Taiwan, South Korea, Israel, and the neighboring Arab countries.

Cyprus's principal exports are manufactured goods and (processed or raw) agricultural products. Exports of manufactured goods include pharmaceuticals, clothing, cement, tobacco products, paper products, plastics, and furniture. Exports of agricultural products include cheese, wines, fruit and vegetable juices, citrus fruit and potatoes. The EU is the most important market for Cyprus's exports, accounting for 37% of total exports in 2017. Other important import markets are the Arab countries, countries of Eastern Europe, the Russian Federation, Israel, and the United States.

#### § 11:8 Regulations and restrictions

The main body of legislation that currently deals with aspects of foreign trade is the Customs Code Law of 2004. Under the Law, the

importation and exportation of certain goods is prohibited or restricted.

Restrictions usually refer to the need for securing permits or licenses or inspections from relevant government authorities. The aim of these restrictions and prohibitions is to safeguard social ethics, public order and security, public health, the health of animals and plant life and the island's cultural heritage. The following is a non-exhaustive list of items or goods whose importation is prohibited:

1. Goods not bearing the mark "CE," where this is required;
2. Narcotic drugs and other controlled substances;
3. Obscene matters and objects (*e.g.* contained in DVDs, CDs, cassettes, films, publications, etc.);
4. Flick-knives and double-edged knives;
5. Counterfeit or pirated goods which infringe copyright and intellectual property rights;
6. Nuclear, chemical, toxic and biological weapons and related substances;
7. Counterfeit currency;
8. Handguns and rifles, apart from those used for recreational purposes, explosive military devices and launchers, automatic guns, ammunition and other items described in Appendix 1 of the Firearms Law (Law 113(I) of 2004);
9. Items used for illegal hunting and trapping of wild birds and prey; and
10. Goods originating from countries under an embargo imposed by the United Nations Security Council or by the European Union.

The following is a non-exhaustive list of items or goods whose importation is restricted and requires a permit prior to their importation into Cyprus:

1. Hunting rifles, air-rifles, sporting pistols, and archery accessories;
2. Cinematograph films;
3. Communications transceivers (other than walkie-talkies, mobile phones and pagers);
4. Explosives and similar substances;
5. Flowers and plants;
6. Biocides;
7. Gold bullion, gold and silver coins, uncut diamonds and precious metals;
8. Handcuffs;
9. Meat, fish, cheese and honey products; and/or
10. Wild fauna and flora.

The following is a non-exhaustive list of items whose exportation is prohibited:

1. All items whose importation is prohibited; and/or
2. Items of military use mentioned in Defence (Exportation of Goods) Order of 1999.

The following items require an export license and therefore their exportation is restricted:

1. Antiquities;
2. Materials that may be used for the production of weapons of mass destruction; and
3. Wild fauna or flora threatened with extinction.

### § 11:9 Taxation of foreign trade

As of 1 May 2004, the date on which the island joined the EU, Cyprus applies the EU's Common Customs Tariff on agricultural and industrial products originating from non-EU countries. Due to its accession to the EU, Cyprus has eliminated any remaining tariffs or quotas which may have applied to EU imports prior to accession.

The application of favorable preferential tariff measures on goods imported from third countries provided for in bilateral trade agreements between the EU and these countries depends on whether the prerequisites of the rules of origin that are provided for in these agreements or in the corresponding implementing provisions of the European Union's Customs Code are met. The non-preferential origin of goods is related to the application of the Common Customs Tariff and the application of EU trade policy measures.

## IV. FOREIGN DIRECT INVESTMENT

### § 11:10 In general

Cyprus has a declared policy of encouraging foreign investment which is reflected in various laws, regulations, international conventions and treaties concluded by the Republic. A number of substantial concessions and incentives coupled with Cyprus's strategic geographical location, excellent commercial infrastructure, political stability and high standard of living are among the factors which have contributed towards the development of Cyprus as a notable international business center.

The commercial infrastructure of Cyprus is well developed. It offers a good environment with respectable and pleasant working conditions combined with low operating costs and living expenses. Not only are there many well-qualified lawyers who are experienced in company law and tax planning but also all the major international accounting firms are represented in Cyprus, as well as many engineering, insurance and trust companies. Furthermore, there is an ample supply of university graduates who are available to work in all sectors of the economy.

**§ 11:11 Regulations and restrictions**

Foreign investment in Cyprus has been fully liberalized since accession to the EU in 2004, and there are no restrictions other than in regulated sectors such as banking and financial services, tertiary education, public utilities, media, and airlines.

**§ 11:12 Taxation of foreign direct investment**

As this is a large and complex field, a detailed analysis of taxation of foreign direct investment is not feasible in a publication of this nature, and potential investors are strongly advised to obtain detailed, specific advice before making any commitments. The following brief analysis of existing tax rules concerning Cypriot holding companies should provide a satisfactory initial understanding of the general principles of taxation relating to foreign direct investment in Cyprus.

The model of the Cypriot holding company is that of an ordinary company which, besides having shares in Cypriot or foreign companies, may also be engaged in other commercial activities such as trading, manufacturing or financing.

The taxation regime which applies to these companies is three-fold. It consists of the Income Tax Law, the Special Contribution for the Defence of the Republic Law, and any applicable double taxation treaties.

The business profits of a Cypriot holding company are subject to a corporation tax of 12.5%. Dividends are exempt from income tax; instead, a 17% special defense contribution tax is payable on the dividend income of companies resident in Cyprus with a participation exemption being available for domestic and foreign dividends. These exemptions are subject to anti-abuse rules regarding hybrid instruments.

The international participation exemption is provided by domestic law and grants relief from international double taxation by exempting foreign dividends received by Cypriot companies from any taxation, with no minimum holding requirement. The legislation also exempts from taxation any dividends that the Cypriot holding company may pay to its parent company. It should be noted that tax law does not distinguish between company shareholdings in EU and non-EU countries.

Individuals are liable to special defense contribution only if they are both resident and domiciled in Cyprus. It should be noted that the above tax regime only applies to holding companies that can be defined as resident in Cyprus. Under the residence rules for companies, management and control is the key test and not the mere fact of incorporation in Cyprus.

Shareholders of Cypriot companies who are not residents of Cyprus are not subject to the special defense contribution tax and therefore

dividends payable by a Cypriot-resident company to its foreign shareholders (whether a company or individual) will not be subject to withholding taxes in Cyprus. This is in marked contrast to other tax regimes in other EU countries in respect of dividends paid within the EU where withholding taxes are normally levied unless the EU parent/subsidiary directive requirements are fulfilled or a double tax treaty applies to dividends paid to a non-EU shareholder.

In relation to the issue of double taxation, the Income Tax Law provides relief from double taxation in relation to income tax and any tax of a similar character imposed by laws of a foreign country. The Law distinguishes between situations where there is a double tax treaty in place between Cyprus and another country and where no such treaty exists. All the double-taxation treaties which apply to Cyprus provide relief from double-taxation by applying the credit method regarding the taxation of dividends and interest. It should of course be noted that EU law prevails over the provisions of bilateral tax treaties, which cannot be used to justify its violation. Where no treaty exists, relief against double taxation may be granted unilaterally at the discretion of the Commissioner for Taxes.

## V. CONTRACTS

### § 11:13 Formation of contracts, offer and acceptance

The principles of contract law follow English common law. In order to form a contract, it is necessary to establish that there has been an agreement between the parties. It must be shown that an offer was made by one party and that the offer was accepted by another party and, therefore, that legal relations were intended.

An offer is an undertaking by the offeror that he will be bound in contract by the offer if there is a proper acceptance of it, provided that the offeree is aware of the offer. An offer may be made to a specific person or to any member of a group of persons or, in the case of a unilateral contract, to the world at large. However, a mere invitation to treat or a declaration of intent are not considered to be an offer.

An offer does not continue indefinitely and may come to an end in one of the following ways:

1. by acceptance of the offer;
2. by revocation or withdrawal of the offer prior to acceptance;
3. by the expiration of a time limit set by the offeror for acceptance of the offer;
4. if the offeror dies prior to acceptance;
5. if a counter-offer is made; and
6. if there is a failure to meet the conditions of an offer.

The acceptance takes place while the offer is still open and must be unqualified and absolute. Acceptance completes the contract and the

place where the acceptance is made is considered to be the place of the contract. Acceptance may be made orally or in writing or may be implied by conduct. The offeror may stipulate a method of acceptance and, if so, a contract will only arise if the prescribed method is followed. However, the offeror may waive his rights to have the acceptance communicated by him in the specified way and agree to an alternative method. The rule is that acceptance is only effective if communicated but there are a few exceptions, such as in the case of unilateral contracts or where the “postal rule” applies.

#### **§ 11:14 Capacity to contract**

To create a valid, binding and enforceable contract, the contracting parties must have capacity in law to contract. There exists a general presumption that everyone is capable of entering into contracts and that these contracts are enforceable against them. However, some groups of persons have certain disabilities in this regard.

According to Cypriot contract law, persons who have not reached the age of 18 years are considered to be minors with limited capacity to enter into contracts and therefore such contracts are deemed to be void in most cases. This disability exists to protect minors from the consequences of their actions. Consequently, the law will sometimes penalize those who enter into contracts with minors.

The law provides for two exceptions to the above rule, namely contracts for necessities and contracts for the minor’s benefit. Necessities may be defined as goods suitable to the condition in life of the minor and to his actual requirements at the time of sale and delivery. Food, clothing, lodging, educational books, medical attention and legal advice are some examples of necessities. Contracts for the minor’s benefit include contracts of employment, of apprenticeship, of service and for education. However, if a contract’s terms are unduly onerous on the minor, despite being for the minor’s benefit, it may not be enforced.

Contracts made by persons of unsound mind are valid but if the other party is aware of the person’s disability then the contract is voidable at the option of the insane person. However, an insane person can make a valid contract during a period of lucidity even if the other party is aware of his disability.

#### **§ 11:15 Formal requirements of a contract**

The Contracts Law states that a commercial contract may be made orally or be partly written and partly oral or be entirely in writing or even be implied by the conduct of the contracting parties. As a matter of good commercial practice, most contracts tend to be in writing. Furthermore, the courts will not order specific performance of a contract that is not in writing. In some instances, the Law requires that certain contracts must be in writing in order to be valid and

enforceable. The following contracts are examples of the above requirement and must be in writing:

1. An agreement made without consideration on account of natural love and affection between parties standing in near relation to each other;
2. A promise to pay a debt that is statute-barred at the time is enforceable only if expressed in writing and signed by the party to be charged with it;
3. A contract relating to the lease of immovable property for a term exceeding one year;
4. A contract relating to obligations incurred in consideration to a promise of marriage;
5. A bond in customary form must be in writing and be signed by the promisor in the presence of two witnesses;
6. A pledge of securities as security for payment of a debt or performance of a promise must be in writing and signed by the pawnor in the presence of two witnesses; and
7. Commercial agency agreements.

#### **§ 11:16 Formal requirements of a contract— Acknowledgments**

Generally speaking, most commercial contracts do not require any acknowledgments or witnessing in any form. However, contracting parties may provide for acknowledgments in the commercial agreement subject to prior agreement.

#### **§ 11:17 Formal requirements of a contract—Notaries**

There is no general requirement for commercial agreements to have a notary sign and/or seal them. However, in some cases the Law or good commercial practice requires that certain documents have a notary sign and seal them. Good examples of this are powers of attorney and certain documents that have to be deposited with any public authority.

#### **§ 11:18 Performance of contracts**

It may be stated that a contract may be discharged by performance when the contracting parties have fulfilled their obligations under the contract.

The mode or method of performance is a question of the proper construction of the contract. If the contract does not specify the means by which it may be performed, the appropriate means will depend on the implied intentions of the parties which will be concluded from the nature and all the surrounding circumstances of the contract.

As a general rule, it is the case that a party to a contract is not required to request or demand performance and the promisor must

fulfill his obligations without being asked to do so. Such a request is required only where there is an express stipulation in the contract to such effect or the nature of the contract suggests an implied condition requiring a request.

As regards the issue of the date or time of performance, it is the case in common law that in the absence of a contrary term in the contract, performance of the contract is required at the exact date stipulated in the parties' agreement. Failure to perform on a specified date gives the aggrieved party the right to claim for breach of contract. If no precise date is stipulated, the law implies an undertaking that the contract shall be performed within a reasonable time taking into account all the circumstances of the case.

### § 11:19 Remedies for failure to perform

A failure to perform a contract may constitute a breach of contract and may provide the aggrieved party with one or more of the following remedies:

1. A right of action for damages;
2. A right of action for a *quantum meruit*;
3. A right to sue for specific performance or an injunction;
4. A right to claim rescission of the contract; and/or
5. A refusal of further performance of the contract by the aggrieved party.

### § 11:20 Distinction between civil and commercial contracts

Cyprus law does not create distinctions between civil and commercial contracts.

### § 11:21 Special requirements of sales contracts

A contract for the sale of goods concerns the transfer of the ownership of the goods sold from the seller to the buyer and is governed by the Sale of Goods Law. The formation of the contract of sale is like that of any other contract and adopts the same principles. The Sale of Goods Law is important in that it implies certain requirements in the form of implied conditions in the sales contract. Specifically, the law implies the following conditions in a contract of sale:

1. The seller has the right to sell the goods in question;
2. If the contract is for the sale of goods by description, the goods conform with the description stated;
3. Where the seller is made aware by the buyer, expressly or impliedly, of the particular purpose for which the goods are being bought, there is an implied condition that the goods supplied under the contract shall be fit for that purpose except under the circumstances that it is unreasonable for the buyer to rely on the seller's skill and judgment;



4. The goods sold are of merchantable quality;
5. Where goods are sold by sample, that the bulk corresponds with the sample in quality, that the buyer will be able to compare the bulk with the sample, and that the goods are free of defects that would render them unmerchantable; and/or
6. The goods are free from any encumbrances in favor of any third party unknown to the buyer prior to the making of the contract.

The Sale of Goods Law provides certain remedies to an unpaid seller of goods. These remedies include the following:

1. A lien on the goods for their price while they are in the seller's possession;
2. A right of stoppage of the goods while they are in transit in case of insolvency of the buyer;
3. A right to re-sell the goods to minimize his loss; and
4. A general right to sue for damages for non-acceptance of the goods.

In the event that the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may bring an action for damages for non-delivery or for delay in delivery.

The buyer may also seek a court order for specific performance.

## **VI. AGENCY AND COMMERCIAL REPRESENTATION**

### **§ 11:22 Formation of agency contract**

An agency agreement may be created in any of the following three ways:

1. Express appointment;
2. Implication of law from the conduct or situation of the parties or from the necessity of the case; and/or
3. Subsequent ratification by the principal.

The actual relationship of the parties is determined by all the circumstances of each case and not merely from the use of the word “agent” or “agency” in an agreement. The relationship of agent and principal can only be established through the consent of the contracting parties. It should be noted that the Regulation of Relations between Commercial Agents and Principals Law of 1992 (“the 1992 Law”) requires that all commercial agency agreements must be made in writing.

### **§ 11:23 Rights and duties of principal and agent**

During the course of the agency agreement a commercial agent must act in accordance with the law and with good faith with respect to the principal and must generally have regard for the principal's best interests. According to the 1992 Law, among other things, a commercial agent has the following duties:

1. To exert his best endeavors while negotiating or concluding commercial transactions that are assigned to him;
2. To communicate to the principal any relevant information that he may acquire; and
3. To conform or comply with all reasonable instructions issued by the principal.

A principal is obliged to act lawfully and in good faith as regards his relations with a commercial agent. According to the 1992 Law, among other things, every principal has the following duties:

1. To provide the commercial agent with all the required documentation with respect to the goods in question;
2. To provide the commercial agent with all the necessary information required for the execution of the agency agreement and, in particular, to inform the agent promptly of any expected reduction in the volume of commercial transactions below the level that the agent would have expected; and
3. To inform the agent within a reasonable timeframe of any concluded or rejected commercial transaction as well as the non-execution of a commercial transaction in which the agent had an active involvement.

#### **§ 11:24 Liability of principal for acts of agent**

An agent appointed under a contract must act in accordance with the terms of that contract and not exceed his authority. The authority of an agent may be actual or apparent. Actual authority is the authority which the principal has given the agent wholly or in part by means of words or writing or is regarded by the law as having been given to him because of the dealings of the two parties and their relationship. Apparent authority involves the assumption that there is no authority at all. Under this doctrine, where a principal represents that another person has authority, the principal may be bound as against a third party by the acts of that person within the authority which that person appears to have despite the fact that he has given that person no such authority to so act.

Contracts entered into through an agent and obligations arising from acts done by an agent may be enforced in the same manner and have the same legal consequences as if the contracts had been entered into and the acts done by the principal in person. If an agent exceeds his authority, the principal will then have the option of affirming or rejecting the unauthorized act. However, if a principal acts or conducts his business so as to lead third parties to believe the agent possesses the authority to act, then the principal will be bound by the agent's acts within the scope of this apparent authority.

**§ 11:25 Types of agency permitted in commercial relationships**

The 1992 Law does not stipulate different categories of agencies. The 1992 Law simply states that commercial agency agreements must be made in writing and may be of fixed or indefinite duration. Therefore, it may be presumed that any written commercial agency agreement is valid as long as it is made for lawful purpose and the contracting parties actually intend such an agency relationship to exist.

**§ 11:26 Termination of agency**

An agency agreement may be terminated in any of the following ways:

1. Revocation of the agent's authority by the principal;
2. Renunciation of the business of the agency by the agent;
3. Completion of the business of the agency (fixed duration);
4. Death or unsoundness of mind of either principal or agent;
5. Adjudication of the principal as bankrupt or insolvent; and/or
6. Provision of written notice of termination by either the principal or agent pursuant to the Law where the duration of the agency agreement is not fixed.

**VII. ASSIGNMENTS****§ 11:27 Assignments of contracts and rights thereunder**

The Contracts Law is silent on the issue of whether a contract or contractual rights may be assigned. Therefore, the matter is regulated only by Common Law and equitable principles.

Assignment of a contract takes place when the liabilities imposed or the rights acquired thereunder are transferred to a person who was not a party to the original contract. It is a general rule that a party to a contract cannot transfer his liability thereunder without the consent of the other party. There is, however, no objection to the substituted performance by a third person of the duties of a party to the contract where the duties are disconnected from the skill, character, or other personal qualifications of the party to the contract. However, in such circumstances the liability of the original contracting party is not discharged. Liability under a contract may be transferred so as to discharge the original contract subject to the consent of the contracting parties. Such a transfer is not an assignment of liability but a novation of the contract.

The common law has leaned against assignments of contractual rights. However, in equity both legal and equitable choses in action have always been subject to assignment. Thus contractual rights, being legal choses in action, may in general be assigned.

**§ 11:28 Assignment of debts**

Assignment of debt does not exist as an express provision in the Contracts Law. The application of common law by the Cypriot courts suggests that this issue is regulated under applicable equitable principles.

In equity, a debt owed by one party to another party who assigns the debt to a third party is a legal chose in action. Therefore, there can be an equitable assignment of such a legal chose in action. Such an assignment of the debt need not be in any particular form due to the fact that equity will look to the intention of the parties and not the form used. An equitable assignment of a debt is considered to be complete, irrespective of whether notice has been given to the debtor.

**VIII. BILLS OF EXCHANGE, PROMISSORY NOTES AND CHECKS****§ 11:29 Bills of exchange: formal requirements**

A bill of exchange is defined in the Bills of Exchange Law as an unconditional written order addressed by one person to another person, signed by the person issuing said order and which requires the addressee of the order to pay on its presentation or at a fixed or determined future date a certain amount of money to a specified person or to the order of a specified person or to the bearer. The Law states that a document that does not comply with the above terms or conditions or which orders that an additional action be performed along with the payment of money does not constitute a bill of exchange.

It should be noted that a bill of exchange will not be rendered invalid because of the fact that it is not dated or no mention of any consideration for its issue is made on the face of the bill or if it does not specify the place of issue or the place it may be made payable.

**§ 11:30 Promissory notes: formal requirements**

A promissory note is defined in the Bills of Exchange Law as an unconditional written promise provided by one person to another person and signed by the person making the promise who promises pay on demand or at a fixed or determined date a certain amount of money to a specified person or to the order of such a person or to the bearer of the note. A promissory note made payable to the order of the issuer is not a valid promissory note unless or until it is endorsed by the issuer of the note.

**§ 11:31 Checks: formal requirements**

A check is defined in the Bills of Exchange Law as a bill of exchange drawn on a bank and which is payable on demand. Generally speak-

ing, the requirements applicable to a bill of exchange also apply to checks.

### § 11:32 Presentation and protest

When the bearer of a bill of exchange wishes to present the bill for payment, the bearer must present the bill to the person from whom payment is demanded and once the bill is paid, the bearer must immediately surrender the bill to the person making the payment.

As regards the presentation of checks for payment, due to the adoption of new technologies, a banker need not physically present a check to another banker for payment. Rather, he can electronically transmit certain vital details concerning the check in question instead of the original check and this shall constitute valid presentation for payment. The vital details of the check which are required for valid presentation are: the check number, the bank sort code of the check, the account number of the issuer of the check and the amount stated on the check.

A promissory note which stipulates that it is payable at a specified place must be presented at the said place for payment in order to render the issuer liable for payment. In any other case, presentation of the promissory note shall not be required to render the issuer of the note liable to make payment. However, presentation of the note is required in order to render the endorser of a note liable for payment.

As regards the issue of protest concerning bills of exchange, checks and promissory notes, the Bills of Exchange Law states that the provisions that apply to bills of exchange shall also apply to checks or promissory notes.

When a bill of exchange has not been honored, the bearer may protest if he deems it expedient for non-acceptance or non-payment depending on which applies. However, it is not necessary for the bearer or the beneficiary to make any protest since his rights against the issuer or the endorser are safeguarded as a matter of law. If the bearer wishes to protest, he must do so either on the day that the bill of exchange was not honored or the following working day at the latest. It should be noted that the bill of exchange must be protested at the District Court in whose jurisdiction the bill was not honored.

### § 11:33 Endorsements

The endorser of a bill of exchange, by endorsing it, is burdened with the obligation of compensating the bearer in the event that the said bill is not honored when presented for payment. The endorser of the bill is also prohibited from questioning or denying the authenticity of the signature of the issuer and the signatures of any prior endorsements, as well the validity of the bill or the good title of the bearer of the said bill. The above provisions which apply to a bill also apply to checks and promissory notes.

**§ 11:34 Recourse and non-recourse**

As described in § 11:32 above, when a bill is dishonored by non-payment or non-acceptance, the bearer of the bill has an immediate right to recourse against the drawer, acceptor and all prior endorsers.

An endorser who endorses a bill with the words “without recourse” is not liable for the payment of the bill as an ordinary endorser.

Such an endorser transfers his rights in a way that denies liability as an endorser, putting anyone giving value for the bill on notice that there is no remedy available against him should there be a default in the payment of the bill. The above provisions which apply to a bill also apply to checks and promissory notes.

**§ 11:35 Fraud and forgery**

A forged or unauthorized signature is generally invalid in the case of bills, checks and promissory notes. The same rules apply to both forged and unauthorized signatures except that an unauthorized signature can later be ratified.

In general, payment cannot be obtained from a bill, check or promissory note bearing a forged signature. However, in the case of an endorser faced with a claim by a subsequent holder of a bill or note, the endorser cannot contest the authenticity of the drawer’s signature or of the signature of any prior endorsers.

In the case of a check, the drawer must notify his bank and order the bank to make “stop payment” of the forged check before payment is made and his account debited. If the bank makes payment, the drawer has no recourse against the bank if it has acted in good faith and must therefore attempt to recover from the person who received the payment.

**§ 11:36 Legal interest rates**

Interest is payable on a promissory note or a bill only if such provision is made in the bill or note. Where a bill is to be payable with interest, unless otherwise provided, interest runs from the date of its issue.

Generally speaking, there is no maximum or minimum interest rate which applies to most commercial transactions. It should be noted following Cyprus’s adoption of the euro as its official currency and its membership of the Eurozone in effect from 1 January 2008, the interest rates set by the Central Bank’s monetary policy committee have to be in line with and at the same level as the corresponding interest rates set by the European Central Bank.

Law Number 72(I) of 2011 was introduced in 2011, regulating personal loans and limiting the maximum rate of interest which may be charged on them. The new law amended the Criminal Code, and inserted a new provision, section 314A, which effectively criminalizes

usury under certain circumstances. Specifically, where a person, in relation to the payment or repayment of a loan, receives, charges or collects, for himself or for a third party, an economic advantage (e.g. interest) that exceeds the reference interest rate, such person is guilty of a criminal offence. The law defines the “reference interest rate” as being the average of the annual interest rates charged by credit institutions for consumer loans increased by half, with a maximum increase of ten percentage points. This interest rate is calculated on a quarterly basis by the Central Bank of Cyprus and is published in the Official Gazette of the Republic.

## **IX. REAL ESTATE**

### **§ 11:37 Forms of ownership**

The Immovable Property (Tenure, Registration and Valuation) Law is the foundation of modern Cypriot land law. Immovable property (real estate) is defined in the Law to include:

1. Land;
2. Buildings or other erections, structures, or permanent fixtures to land;
3. Trees, vines, and any other thing whatsoever planted or growing on any land and any produce thereof;
4. Springs, wells, water and water rights;
5. Privileges, liberties, easements, and any other rights whatsoever appertaining to land; and/or
6. Any undivided share in property as stated above.

According to section 4 of the Law, no estate in land or other interest, right or privilege may be created, transferred, or acquired except under the provisions of the Law. In this context, the term “estate in land” denotes any right directly connected with the ownership and tenure of any immovable property and capable of being registered at the Land Registry. The term “owner” as it pertains to land is defined by the Law as the person entitled to be registered as the owner of any immovable property whether he is so registered or not.

### **§ 11:38 Land registration and transfer of title**

The Land Registry Department has the exclusive responsibility and provides the means and instruments for the establishment of rights of ownership in immovable property, the survey and cartography of Cyprus, the registration, transfer, mortgage of immovable property, the valuation of properties and the administration of government of land.

The Land Registry Department is divided into six District Lands Offices, each having jurisdiction to deal with the registration and transfer of land located in its geographic area.

The Law requires that transfers of land must be in writing and have the following documentation attached with the application for transfer of title:

1. A written contract of sale, duly signed by the seller and the buyer, stating the consideration provided as well as a description of the land and where it is situated;
2. A completed and signed official transfer form;
3. A certificate from the Inland Revenue that all property taxes owed have been settled;
4. A certificate from the local authority in whose jurisdiction the property is situated that all local taxes pertaining to the property have been paid;
5. An indication on the contract of sale that the relevant stamp duty has been paid; and
6. A copy of the title deed or land registry search report indicating the owner of the property as well as providing a general description of the property.

#### § 11:39 Leases

A lease agreement for a term of more than twelve months must be in writing and be duly signed by the contracting parties in the presence of two witnesses. Long leases may be registered at the Land Registry. As provided for in the Law, the prerequisites for the valid registration of a lease agreement are the following:

1. The lessor is to be the registered owner of the leased property;
2. The lease agreement expressly provides for its registration;
3. The duration of the lease shall exceed 15 years;
4. The contract is to be registered within three months from the day of its execution;
5. The consent of the mortgagor or creditor is obtained if the property is so burdened;
6. A copy of the title deed is provided; and
7. All relevant stamp duties and other fees are paid.

#### § 11:40 Zoning and land use planning

There are extensive zoning and land use planning laws and regulations which regulate the level and intensity of economic development in different geographical areas of the country, either rural or inner-city areas. Zoning laws are quite strict and rigid and generally relevant permits or licenses must be first obtained from the appropriate authorities prior to the commencement of any work of construction or development.

Within city-limits, the relevant authority is the local municipal council, and in rural areas the local district officer of the Department of Town Planning and Housing is the relevant authority. It should be



noted that most towns or cities on the island have prepared or are in the process of preparing “Town Master Plans” to assist them in regulating commercial development of their local districts in a consistent, economically viable and environmentally sound manner. In relation to light or heavy industry, zoning laws have effectively kept such industry at the outskirts of towns or cities and in designated industrial zones.

### § 11:41 Oil, gas, and mineral law

Generally speaking, activities involving mining, quarrying, or prospecting for minerals, precious metals or natural resources located under the earth are regulated by the Regulation of Mines and Quarries Law. This provides that any form of mining, prospecting, or quarrying on the territory of the Republic of Cyprus is unlawful unless a valid license or permit is issued by the Council of Ministers or the local district officer in some instances. It should be noted that the Law provides a presumption that any minerals that are found beneath the earth are the property of the state.

Although Cyprus was known in ancient times for its rich copper mines, these mines were depleted long ago and only quarrying for the provision of raw materials for the construction industry takes place now.

As a member of the European Union, Cyprus has aligned its energy policy with the *acquis communautaire* and transposed all relevant Directives into national law. Hydrocarbon exploration and exploitation activities in Cyprus and its Exclusive Economic Zone are governed by the Hydrocarbon (Prospection, Exploration, and Production) Law (Law Number 4(I) of 2007), which transposed into national law Directive 94/22/EC on the conditions for using authorizations for the prospection, exploration and production of hydrocarbons.

The Hydrocarbon Law and the Hydrocarbon (Prospection, Exploration and Production) Regulations (Regulation Number 51 of 2007 and Regulation Number 113 of 2009) together set out the licensing framework. Successful applicants for a license are required to enter into an Exploration and Production Sharing Contract (EPSC), in the form published by the Ministry of Energy, Commerce, Industry, and Tourism, which is the regulatory authority. The Aphrodite gas field, an offshore gas field off the southern coast of Cyprus located at the exploratory drilling block 12 in the maritime Exclusive Economic Zone, is estimated to hold commercially viable quantities of natural gas, and exploration is taking place in several other blocks.

## X. LIENS ON REAL PROPERTY

### § 11:42 Property subject to liens

Mortgages or liens may be registered against any real property, as

defined by the Immovable Property (Tenure, Registration and Valuation) Law, as security for the payment of a debt owed by the owner of the property in question or for the performance of an obligation by the same owner.

### § 11:43 Creation of liens

Liens or legal mortgages over any immovable property may be created by or with the written consent of the registered owner of the immovable property concerned as provided in the Immovable Property (Transfer and Mortgage Law) of 1965, as amended. On a proper construction of the provisions of this Law it is not possible to create a valid equitable mortgage, and a legal mortgage is the only form of mortgage possible.

### § 11:44 Perfection of liens

A legal mortgage is perfected through its registration in the local District Land Registry Office which has jurisdiction over the property in question.

According to section 21 of the 1965 Law, in order to properly register a mortgage, the following documentation needs to be submitted to the District Land Registry Office with the appropriate forms:

1. A description of the property which shall be encumbered by the mortgage, including date and reference number of registration;
2. Declaration concerning any changes (if any) to the status of the property in question and a description of the changes which include any lease over the property;
3. Properly stamped mortgage contract indicating the amount secured by the mortgage, applicable interest rate and date of redemption;
4. Declaration by the mortgagor that he or she is the registered owner of the said property and that he or she consents to mortgage it for the benefit of the mortgagor;
5. Declaration by the mortgagee that he or she agrees to accept the said mortgage under the terms of the mortgage contract; and
6. Original or certified copy of the title deed(s).

It should be noted that where the same property is burdened by two or more mortgages, their priority is determined by the date they were registered with the Land Registry Office.

Furthermore, where a property that has been mortgaged is sold, the transfer cannot be completed unless the debt is settled and the mortgage released, or unless the mortgagee gives its written consent to the transfer of the property and the purchaser signs a declaration acknowledging his liability under the mortgage.

**§ 11:45 Judicial liens**

Judicial liens, including as they relate to real property, are discussed below in §§ 11:94 to 11:97.

**§ 11:46 Realization of property subject to lien**

In the event that the mortgagor defaults in the payment of any sum or installment as provided for in the mortgage contract, the mortgagee has the right to apply to the District Land Registry Office to have the property subject to the mortgage sold by public auction. Such an application may only be made after notice has been given to the mortgagor and a period of 30 days has elapsed from the service of the notice with no payment having been received by the mortgagee at the end of this period.

The mortgagor has a right to appeal against a proposed public auction to the appropriate District Court within 30 days of receipt of notice of the proposed sale. If the mortgaged property concerned is the main dwelling and residence of the mortgagor and/or his family, the mortgagor will be entitled to submit the final bid at the public auction, which, if it matches the highest other bid received by the auctioneer, will result in a sale to the mortgagor at that price, with the proceeds being used to pay the mortgagee.

If the proceeds of the auction are insufficient to satisfy the mortgage debt in full, any mortgage or mortgages will remain on the property and the mortgagee will be prohibited from making any further attempt to sell the mortgaged property by public auction for two years from the date of the auction.

In the event that the property is burdened with a prior mortgage, the mortgagee will need to apply to court for an order ordering the Director of the District Land Registry Office to proceed with the sale of the property subject to the requirement that the mortgagee/applicant deposits with the court a certain amount of money that the court shall declare adequate to compensate the other parties that had registered a mortgage prior to the date the applicant had so registered.

**§ 11:47 Termination of liens**

Once the mortgagor has met his obligations under the mortgage and paid his debt to the mortgagee, the mortgagee is obligated to deposit the appropriate forms with the Land Registry Office in order to discharge the property from the mortgage.

A mortgage also may be terminated by the mutual consent of the parties subject to the mortgage contract by depositing with the Land Registry Office the appropriate documentation properly completed and signed signaling their desire to have the mortgage in question discharged.

A mortgage may also be terminated by judicial order, following an application to the court by the mortgagor, where:

1. the mortgagee refuses to discharge the mortgage even though the debt of the mortgagor has been paid in full;
2. the mortgagee unreasonably refuses to accept payment of the debt owed by the mortgagor;
3. the mortgagee has died and his personal representatives cannot be traced; or
4. the mortgagee is a company that has been liquidated.

## **XI. PLEDGES AND CHATTEL MORTGAGES**

### **§ 11:48 In general**

The following sections deal only with pledges, because the law in Cyprus makes it impossible to create a mortgage over a chattel. Only immovable property may be mortgaged.

### **§ 11:49 Property subject to pledge**

A pledge or pawn is a bailment of personal property as security for a debt or engagement. A pawner is the person who relinquishes a thing to another party (the pawnee) to be held as security by the pawnee for the payment of the pawner's debt or liability.

The subject matter of the contract of pawn usually consists of goods and chattels capable of actual or constructive delivery. Other forms of personal property, including negotiable instruments, may be the subject of the contract where they can be identified.

### **§ 11:50 Creation of pledge**

A contract of pledge over a chattel is regulated by the common law and by the Contracts Law. Generally speaking, pledges do not require any specific formalities and the contract creating the pledge may be oral or written. The only requirement is that of actual or constructive delivery of the chattel pawned in consideration of a debt.

However, under article 138 of the Contracts Law, pledges of bills of exchange, promissory notes, bonds, or share certificates are invalid and may not be executed unless the contract of pledge complies with the following requirements, namely:

1. That the contract be in writing;
2. That the contract be signed at the end by the pawner; and
3. That the contract be made in the presence of two witnesses who shall in turn sign it.

### **§ 11:51 Perfection of pledge**

Perfection of a pledge occurs when any relevant formalities concerning the contract of pledge have been adhered to and the chattel that is the subject matter of the pledge contract is delivered by the pawner to

the pawnee or, stated in other terms, when the pawnee takes possession of the pledged item.

In addition, for a pledge over shares in a Cyprus company to be valid and enforceable, the pledgee must give notice of the pledge to the company, the company must make a memorandum of pledge in its register of shareholders against the shares concerned, and it must provide the pledgee with a certificate of the memorandum of pledge.

Law Number 99(I) of 2009 removed the requirement to register pledges over shares in Cyprus companies, and Section 90 of the Companies Law, which deals with registration of charges, has been amended to exclude a pledge of shares and the rights emanating from it from the scope of Section 90. Nevertheless, some lawyers adopt a “belt and braces” approach and register the charge, particularly when acting for lenders, and the Registrar of Companies continues to accept such registrations.

### § 11:52 Realization of property subject to pledge

As provided in article 134 of the Contracts Law, upon default, when the pawner fails to perform the obligations secured under the pledge agreement or fails to pay the debt secured by the pledge on the stated date, the pawnee may take all necessary judicial steps against the pawner in relation to the debt or obligation secured by the pledge and may retain possession of the pledged chattel as collateral security.

Alternatively, the pawnee may sell the pledged chattel subject to the requirement of giving the pawner adequate notice of the sale. If the proceeds of sale are insufficient to discharge the debt then the pawner remains liable to the pawnee for the balance. On the other hand, if the proceeds of sale exceed the value of the debt owed then the pawnee is obliged to pay the surplus to the pawner.

### § 11:53 Termination of pledge

The contract of pledge or pawn is terminated by the satisfaction of the debt or engagement and the redelivery of the pledged property to the pawner, since the common law implies a term in the pledge contract on the part of the pawnee to redeliver the property to the pawner on payment by the latter of the sum advanced with interest.

The essence of this extinction of the contract lies in the pawnee being divested wholly of his “special property” and possession of the property pledged. However, the pawnee has the right to hand back to the pawner the property pledged for a special purpose without affecting his security and without extinguishing the contract.

## XII. INTELLECTUAL PROPERTY

### § 11:54 Copyrights

Copyrights in Cyprus are regulated by the Right of Intellectual

Property Law of 1976, as amended. Copyrights are recognized under the Law for every protected object whose beneficiary is at the time of creation of the right a qualifying person, namely:

1. a person who is a citizen of the Republic of Cyprus or who habitually resides in the Republic;
2. a legal person incorporated in the Republic; or
3. a citizen of another EU member state.

Copyright exists in scientific works, literary works, musical works, computer software, artistic works including photographs, films, databases, sound recordings, and broadcasts, but only until 70 years after the death of the author. In relation to cinematographic films (*i.e.* movies shown in cinema or on television or other media), the copyright continues until 70 years after the death of the last survivor of the following persons:

1. producer;
2. primary director;
3. script writer;
4. screen play writer; and/or
5. music composer who composed the musical score of the film.

The Law provides criminal sanctions and civil remedies for copyright infringement. For the criminal offenses listed in the Law, penalties include a fine or imprisonment for up to three years. In addition, the court may order copies of the work in the possession of the offender to be destroyed or delivered to the owner of the copyright. Civil remedies include damages, destruction or delivery of infringing copies and of the equipment by which copies are produced, an account of profits and an injunction.

#### § 11:55 Trade marks

The registration and protection of trademarks in relation to goods and services is governed by the Trade Marks Law, as amended. The international classification of goods applies under which goods and services are categorized into 34 classes and 11 classes respectively.

To register a trade mark in Cyprus, an applicant or a licensed lawyer must file with the Registrar of Trade Marks an application containing all relevant details, including the name, address and occupation of the applicant, the name and/or picture of the trade mark and a form signed by the applicant authorizing the lawyer to file the application.

On receipt of the application the Registrar appoints a filing date, allocates a number to the trademark and conducts a search to establish the registrability of the trademark. If he considers that the trademark is not registrable, the Registrar may impose conditions or object to the registration of the mark. When the Registrar has accepted the ap-

plication, the mark will be registered and its registration will be advertised in the *Official Gazette of the Republic*.

The duration of registration of the trade mark or validity of such registration is seven years which may be extended for 14 years at a time. In case of infringement, the aggrieved party may apply to the court for a civil remedy such as an injunction and/or damages.

Following Cyprus's accession to the EU, applications for registration of Community Trademarks may be filed directly with the Office of Harmonisation for the Internal Market (OHIM), while all Community Trademarks registered or applied for before the date of accession will automatically be extended to Cyprus.

### § 11:56 Trade secrets

In respect of confidential information and know-how of a commercial or scientific nature, the only means of protection is of a contractual nature. Commercial agreements must contain clauses to protect trade secrets for a specified or indefinite period.

Such clauses should also be included in employment agreements in order to safeguard trade secrets after an employee resigns, retires or is dismissed from his job. It would seem that the only remedies available for breach of such confidentiality agreements are of a civil nature, namely damages and/or injunctions.

### § 11:57 Patents

In Cyprus, the registration and protection of patents are regulated by the Patents Law of 1998, as amended. To register a patent, an applicant or a lawyer licensed to practice law in Cyprus must file an application in the prescribed form with the Patent Registrar.

Once the application has been filed and all relevant fees paid, the application will be examined to determine whether it complies with the relevant provisions of the Law and the result of the examination will be reported to the Registrar. If the application filed does not comply with the provisions of the Law, the applicant will be given the opportunity to make any necessary amendments before the Registrar decides the fate of the application. The application is published in the official gazette of the Republic within 18 months of its filing.

If no problems or complications arise with the application, the applicant will be called on to file within a prescribed period a search report prepared by a prescribed authority which must state the "state-of-the-art" matters which must be taken into account to ascertain whether the subject matter of the application refers to an invention capable of patent protection.

Once the application has been accepted, the registrar will grant a patent on the basis of the application subject to the payment of a fee. The Registrar will then issue a patent certificate, which will be published in the official gazette of the Republic.

Once a patent has been registered, it is protected for a period of 20 years from the date of filing of the application, subject to the payment of annual renewal fees to the Registrar.

Once a patent has been registered, it is prohibited for any person other than the patentee to manufacture, sell, import or otherwise commercially exploit either the patented product or the product obtained by the patented process. In the event of infringement, the patentee may bring an action in court seeking an injunction and/or damages.

### **XIII. ELECTRONIC COMMERCE**

#### **§ 11:58 Digital signatures / encryption policy**

In Cyprus, the topic of electronic signatures or e-signatures is regulated by the Legal Framework for Electronic Signatures and Other Related Matters Law of 2004. This Law was adopted to harmonize Cyprus's legislation with Directive 1999/93/EC of the European Parliament and Council of 13 December 1999 on a Community framework for electronic signatures. The Law's goal is the establishment of a legal framework to govern electronic signatures and certain certification services with the aim of facilitating the use of electronic signatures and their legal recognition. In addition, the Law also requires the providers of certification services to utilize encryption security in the provision of their services.

As far as encryption policy is concerned, most, if not all, e-commerce service providers have technical measures installed to provide encryption security protection to users of their websites, particularly in relation to the processing of sensitive information such as credit card numbers and other personal details. Such service providers have installed encryption technology more out of copying good commercial models as seen abroad as well as to encourage consumer confidence in their service rather than out of any legal obligation.

However, the Data Protection Law of 2001 (Law Number 138(I)/2001) requires persons entrusted with personal data of a sensitive nature, in commercial transactions or otherwise, to take all reasonable steps and technical measures to secure and protect personal data from unauthorized use, interference or loss. This would seem to imply that encryption is a matter that e-commerce providers must take into serious consideration and implement. The new EU General Data Protection Regulation (GDPR) that came into force throughout the European Union, including Cyprus, on 25 May 2018 reinforces the need for persons dealing with the storage, transmission, or processing of personal data to take all reasonable measures to protect the integrity and security of personal data.

#### **§ 11:59 Liability of on-line service providers for actions of subscribers**

Generally speaking, Law Number 156(I)/2004 (*i.e.* Various Aspects



of the Services of the Information Society and especially of Electronic Commerce and Related Matters Law of 2004) does not hold on-line service providers liable for their subscribers' actions where the service provider merely acts as a conduit for the exchange of data and does not initiate or interfere directly with the transmission or receipt of the data.

The Law further provides that on-line service providers shall not be liable where they are not actually aware of any unlawful action on the part of their subscribers and take all reasonable measures to prevent such action (e.g. by cutting off links or access of their clients) when they become aware of any illegal activity.

### § 11:60 Internet jurisdictional issues

As regards the issue of jurisdiction, Law Number 156(I)/2004 does not add to or interfere with matters of private international law. Rather it requires contracting parties to state the governing law of their electronic contract and does not interfere with aspects of freedom to contract as regards jurisdictional matters.

### § 11:61 Licensing issues

Law Number 156(I)/2004 states that the provision of professional services via the internet by professionals (e.g. doctors, lawyers, etc.) is permissible as long as this does not breach rules and regulations of their respective professional bodies dealing in particular with issues concerning their independence, their dignity and their professional ethics as well as matters dealing with professional secrecy and duties owed to their clients and colleagues. It would seem that unless professional associations or bodies bar the provision of services over the internet, there is no licensing requirement for the provision of these services.

### § 11:62 Restrictions on use of Internet

Law Number 22(III)/2004, the “Convention on Cybercrime (Ratifying) Law of 2004” criminalizes a number of activities via the internet. The Law provides for a number of criminal sanctions, including fines and terms of imprisonment, for those persons found guilty of a number of categories of illegal activity using the internet. Offenses include general hacking, hacking into computer or network databases in order to destroy, alter or delete data kept on such networks, denial of service attacks and the creation of programs in order to facilitate hacking.

Further offenses—other than those having to do with hacking—include using a computer for the purpose of forgery or as a means to defraud another person. Another category of offenses relates to internet content and includes offenses relating to the possession or distribution of child pornography, as well as offenses relating to the breach of intellectual property rights.

**§ 11:63 Privacy and e-mail issues**

As regards the issue of privacy, as provided in the Data Protection Law of 2001, a party may process any data of a sensitive or other nature regarding some other person as long as that person has consented. As of 25 May 2018, with the implementation of the EU's GDPR in Cyprus, the Data Protection Law of 2001 has been repealed. However, the principles of consent and related matters are still reflected in the new GDPR regulation on the processing of personal data.

Therefore, it would seem that as long as a party has given his consent, (such as consent to e-mail monitoring by the employer), through a contract or other means which they have freely signed or accepted, then the issue of privacy is circumvented.

**XIV. COMPETITION AND ANTITRUST LAWS****§ 11:64 In general**

The principal laws in this area are the Protection of Competition Laws of 2008 and 2014 (Laws Number 13(I) of 2008 and Number 41(I) of 2014), which regulate restrictive agreements and antitrust, and the Control of Concentrations between Undertakings Law, Law Number 83(I) of 2014, which regulates mergers and acquisitions. These statutes reflect relevant European Union competition law, including the Treaty on the Functioning of the European Union (TFEU), European Community Regulations 1/2003 and 139/2004, and other secondary legislation and guidelines. As in all Member States, European Union law takes precedence over national law; thus, in the event of inconsistency, it is European Union law that will apply.

The Commission for Protection of Competition is the national competition authority responsible for ensuring the existence of a competitive market in accordance with domestic and European Union law. The Commission has the exclusive competence to investigate and take decisions on competition matters and power to impose penalties and set conditions for the conduct of business in the event of breach of the law.

**XV. BUSINESS ORGANIZATIONS****§ 11:65 Corporations—Formation**

A corporation or company is a legal person created under statute that is separate from its shareholders, employees or officers. Corporations in Cyprus are governed by the Companies Law, Chapter 113. A corporation is deemed to have been formed or incorporated in Cyprus on the date of issue of a certificate of incorporation from the Registrar of Companies.

The documents that must be submitted to the Registrar of Compa-

nies prior to incorporation include a duly signed Memorandum and Articles of Association of the company (specifying, among other things, the name, objects, nominal share capital and the fact that the members' liability is limited), notice of the registered address, names and addresses of the founding members of the company and the number of shares allocated to them, and notice of the details of the proposed directors and company secretary. It should be noted that the Registrar requires payment in advance of all its fees before incorporating any company.

### § 11:66 Corporations—Shareholders

Shareholders or members are the owners of the corporation and their details and shareholdings must be recorded in the Register of Members which must be kept by every company at a specified place, usually being the registered address. The Companies Law provides that a private limited company must have at least one member and no more than fifty. A public limited company must have at least seven members, with no upper limit.

A person may become a shareholder by either acquiring shares in a company through a share issue or by transfer from an existing member or by transmission from a deceased member.

A virtually universal feature of limited companies in Cyprus is that the liability of members is limited to paying the nominal share value (including any premium) of issued share capital when called by the company to do so. This means that shareholders are not personally liable for a company's debts or obligations. In the event of a winding-up of a company, if the issued share capital is all paid up then the shareholders will not be liable to pay any further amount. It is possible to incorporate a company with unlimited liability for its members but in practice this is never the case.

Where only one class of shares exists, it is normally presumed that the holders of these shares shall enjoy equal voting rights, dividend rights or other rights enjoyed by other fellow members. Where a company wishes to differentiate the rights enjoyed by its members, it normally has or creates two or more classes of shares with different rights attached.

Most issues that are dealt with at annual general meetings or extraordinary general meetings of shareholders normally require either an ordinary resolution or a special resolution to be ratified by the members. An ordinary resolution requires a simple majority of the voting shareholders in order to be approved, while a special resolution requires a three-quarters majority of the voting members to be passed. These issues are normally dealt with by the Articles of Association of the corporation which specify what kind of resolution is required.

### § 11:67 Corporations—Liability and bankruptcy

As already stated, shareholders of limited companies have limited

liability with respect to the debts or obligations of the corporation. This means that creditors must seek to recover from the assets of the corporation itself and not from the shareholders. However, in certain limited circumstances, a creditor may petition the court to “lift the corporate veil” so to speak in order to hold the shareholders liable in their personal capacity. Such circumstances include where the affairs of the corporation are so closely controlled by the shareholders and it may be shown that the corporation is being manipulated in a fraudulent manner. Another instance where shareholders may be held personally liable is in the situation where a minority shareholder(s) allege(s) oppression on the part of majority with respect to the running of the affairs of the corporation.

Bankruptcy or insolvency is governed by the relevant provisions of the Companies Law, which deal with the rights of creditors to petition the court to have a company wound up on the grounds of insolvency due to its inability to pay its debts within the statutory time period. Alternatively, the members may resolve to wind up the company. The Companies Law also provides procedures for corporations to negotiate compromise arrangements with their creditors without having the corporation wound up, for a secured creditor appoint a receiver, or for the company to be placed under the direction of an independent insolvency practitioner, known as an “examiner”, with extensive powers to restructure it, subject to creditors’ approval.

#### **§ 11:68 Corporations—Management and representation**

The management of a corporation’s business affairs is the sole responsibility of its elected Board of Directors, unless otherwise provided in its constitutional documents. The Board of Directors usually meets frequently to discuss the affairs of the corporation and to pass resolutions which affect the business affairs of the company. Among the Board’s other tasks, the directors approve the issue and transfer of company shares, appoint the company’s staff and approve its financial statements. In performing these duties, the directors must always act in good faith and exercise due care and diligence with respect to the company and its shareholders.

The day to day management of the corporation’s affairs is left to corporate officers appointed by the Board to perform certain tasks. These officers have actual or ostensible authority to bind a corporation with respect to decisions or matters that a person in that position generally makes.

#### **§ 11:69 Corporations—Profit and losses**

The property, assets and liabilities of a corporation do not belong to the shareholders but rather are the property or the responsibility of the corporation itself. As to the issue of profits, these may be disposed of in two ways. Annual profits may either be reinvested in the company or distributed to shareholders as dividends.

The decision for the distribution of share dividends is the prerogative of the corporation's board of directors unless the corporation's constitutional documents provide otherwise. It is common for most corporations to declare the issue of share dividends at the annual general meetings of their members and to have the members approve of the dividend by the passing of an ordinary resolution.

### § 11:70 Corporations—Termination

According to the Companies Law, there are essentially two main ways in which a corporation may be wound up and dissolved. One way is through a compulsory winding up by the court and other way is through a voluntary winding up of the company by its members or its creditors.

A company may be wound up by the court if it has resolved by special resolution to be wound up by the court, if the company fails to commence its business within a year of its incorporation or if it is unable to pay its debts. The parties that are eligible to file a petition with the court to have the corporation wound up are the company itself, the Official Receiver, a creditor or a contributory of the company.

A voluntary winding up is initiated by the members of the company, through the passing of a resolution (usually a special or extraordinary resolution) to this effect. If the company is solvent and the directors file a statutory declaration that it is able to pay off its debts within a 12 month period from the commencement of winding up proceedings, the liquidator is appointed by the members and reports to them. If the company is insolvent and no declaration of solvency can be made then the directors must convene a meeting of its creditors to appoint a liquidator, who is accountable to the creditors.

### § 11:71 Corporations—Liability of officers and directors

In general, directors owe a duty to their corporation to manage it in accordance with the Companies Law generally and in accordance with the corporation's constitution specifically. It may be stated that directors owe fiduciary duties to their company. These fiduciary duties include a duty to exercise their powers for the benefit of the corporation, a duty not to fetter or restrict their right to exercise their powers freely and a duty to avoid conflicts of interest.

In addition to their fiduciary duties, directors owe a duty of care to their company at common law not to act negligently in managing the affairs of the company. The standard of care is higher than that of the reasonable man but rather of the reasonable and prudent director. It should be noted that an error of judgment may not in itself constitute negligence.

The Companies Law also renders a director liable in the case of

fraudulent trading or misapplication of company property. In the case of fraudulent trading, the Law states that in the event of winding up of a company, if it appears that any business of the company has been carried on with an intent to defraud creditors or for any fraudulent purpose, the court may declare that any of the directors who were knowingly a party to the fraud will be personally liable for all the debts of the company. However, prosecutions for fraudulent trading are rare because of the high standard of proof required. The Law also provides for making a director liable to repay or restore money or property with interest to the company if, in the course of winding up, it appears that a director has misapplied or retained or become accountable for any money or property of the company.

### § 11:72 Corporations—Liability of shareholders

As already stated, shareholders are not normally responsible for the actions or liabilities of the corporation. Normally, the liability of a shareholder is limited to the amount unpaid on any issued share capital that he may hold at the time of winding up.

Exceptions to the above rule concern the situation where shareholders have acted in a fraudulent manner, and a court orders the lifting of the corporate veil to allow the shareholders to be held personally liable for the corporation's liabilities. Another exception involves liability of shareholders where proceedings are instigated by an oppressed minority of shareholders.

### § 11:73 General partnerships—Formation

Partnerships are registered in Cyprus under the Partnerships and Business Names Law, Cap.116, as amended, which is based on English legislation. A partnership may consist of between 2 and 100 natural or legal persons, carrying on a business in common with a view to profit. In order for a partnership to be formed, a written declaration signed by all the partners must be sent to the Registrar of Partnerships containing the following information:

1. The proposed name of the partnership;
2. The general nature of its business;
3. Principal place of business;
4. The full names of the partners, their nationality and correspondence address;
5. The date when the partnership was formed; and
6. The names of the partners authorized to manage the partnership and sign on its behalf.

### § 11:74 General partnerships—Liability and bankruptcy

In a general partnership, every partner is liable severally and jointly with the other partners, without limit, for all debts and obligations of

the partnership incurred at the time he was a partner. After a partner's death, his estate is severally liable for such debts and obligations, subject to prior payment of his separate debts.

The bankruptcy of any partner of the partnership will normally dissolve the partnership unless other provision is made in the partnership agreement. However, as a limited company may be a partner in a general partnership it is still possible to limit liability.

#### **§ 11:75 General partnerships—Management and representation**

Every representation made by a partner either orally or in writing or by conduct to any third party in relation to the business matters of the partnership and in the ordinary course of his business can be used as evidence against or may be deemed to bind the partnership. A party that is aware that a partner is acting beyond his powers as partner cannot rely on his representations to bring a claim against the partnership.

Any partner may take part in the management of the partnership, subject to the provisions of any partnership agreement. It is generally accepted that any disagreements regarding specific issues or manner in which the business is being run may be settled by a decision of the majority of partners. However, it is not possible to change the general nature of the business of the partnership without the unanimous decision of all the partners.

#### **§ 11:76 General partnerships—Profit and losses**

Unless a partnership agreement provides otherwise, all partners share equally in the capital and profits of the partnership business and contribute equally to losses sustained by the partnership.

The partnership is obligated to reimburse any partner who sustains expenses on behalf of the partnership during the ordinary course of his business or in relation to anything done to protect the business or the property of the partnership.

#### **§ 11:77 General partnerships—Termination**

A partnership may be dissolved in one of the following five ways:

1. Upon the expiration of a fixed term, where the partnership was formed for a fixed term of time;
2. Upon the completion of a certain transaction, where the partnership was formed to complete a certain transaction;
3. By a partner giving notice of his desire to dissolve the partnership, if the partnership was formed for an indefinite period;
4. Subject to any provisions in the partnership agreement, upon the death or bankruptcy of any partner; and
5. Upon petition to the court by any partner for the dissolution of the partnership according to the provisions of the Law.

**§ 11:78 General partnerships—Liability of partners**

Generally speaking, the liability of partners in a general partnership is unlimited. Each partner is liable jointly with the other partners for all debts and obligations of the firm incurred while he or she is a partner. Therefore, any debts and liabilities not satisfied by the assets of the firm will be paid by the partners individually. In the event of a partner's death, the partner's estate is liable for the dead partner's share of the debts of the partnership.

As noted above, a limited company may be a general partner in a partnership. A person admitted to partnership in an existing firm is not liable for any debts incurred prior to the date of his admission. When a partner retires, his liability persists in relation to the debts of the partnership that existed up to the date of his retirement.

**§ 11:79 Limited partnerships—Formation**

A limited partnership consists of at least one general partner and other limited partners. A limited partnership is formed in exactly the same way as a general partnership except that the declaration signed by the partners and filed with the Registrar must contain a statement that the partnership is a limited partnership and the amount that has been contributed by each limited partner and whether the said amount was paid in cash or otherwise.

**§ 11:80 Limited partnerships—Liability and bankruptcy**

A limited partner cannot render the limited partnership liable for his representations. A limited partner is not liable for any debts or obligations of the limited partnership beyond the amount of his contribution to the partnership. Subject to any contrary provision in the partnership agreement, the bankruptcy of a limited partner will not dissolve the partnership.

**§ 11:81 Limited partnerships—Management and representation**

A limited partner cannot partake in the management of the partnership. A limited partner has the right to inspect the books and records of the partnership and to consult with the other partners on the business and prospects of the partnership.

Subject to the provisions of any partnership agreement, any disagreement over the running of the affairs of the partnership is to be settled by a decision of the majority of general partners. A person may be appointed partner without the consent of the limited partners. As noted above, a limited partner cannot make a limited partnership liable for his representations to third parties.

**§ 11:82 Limited partnerships—Profit and losses**

Generally speaking, partners are free to determine how profits and



losses shall be distributed among the partners on the basis of the partnership agreement. Where the agreement is silent, the limited partner may be expected to share in such profits and losses in proportion to his contribution to the partnership.

#### § 11:83 Limited partnerships—Termination

A limited partnership may be dissolved in the same way by the general partners as is the case in general partnerships. A limited partnership shall not automatically be dissolved by reason of death or bankruptcy of a limited partner and a limited partner cannot dissolve the partnership by giving notice to the other partners.

#### § 11:84 Limited partnerships—Liability of partners

In a limited partnership, general partners are liable for all the debts and obligations of the partnership while the limited partners are only liable for the amount they contribute to the limited partnership. If a limited partner participates in the control or management of the business, he or she risks losing limited liability protection.

### XVI. CIVIL ACTIONS AND PROCEDURES

#### § 11:85 General description of court system

There are two tiers of courts in Cyprus, the Supreme Court and the subordinate courts. The Administration of Justice (Miscellaneous Provisions) Law of 1964 merged the Supreme Constitutional Court and the High Court set up under the Constitution into one court called the Supreme Court.

The Supreme Court consists of 13 members (judges), one of whom is President. The Supreme Court exercises both appellate civil and criminal jurisdictions. The Supreme Court is vested with authority as:

1. The Supreme Constitutional Court;
2. An Admiralty court;
3. An Appellate court; and
4. A court with exclusive jurisdiction to issue prerogative writs (e.g. *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*).

Until 2015 the Supreme Court was also the Administrative Court, having exclusive jurisdiction to adjudicate administrative recourses under Article 146 of the Constitution. However, in 2015 this jurisdiction was transferred to a newly-formed Administrative Court.

There are six types of subordinate courts in Cyprus. These are the District courts, the Assize courts, the Family Courts, the Labor courts, the Rent Control courts and the Military courts.

There exist five District courts which exercise civil and criminal jurisdiction. In its civil jurisdiction, a District court can entertain any

action whose cause arose within its district. When exercising criminal jurisdiction, the District courts can adjudicate on any criminal offense committed within their districts, which has not been specifically assigned to the jurisdiction of the Assize courts and where the statutory punishment for the offences in question does not exceed five years.

The Assize courts are vested with unlimited jurisdiction to try all criminal offenses and to impose punishment provided by the law.

The judges of the Supreme Court are appointed by the President of the Republic, usually from the ranks of existing judges or from members of the legal profession. The judges of the subordinate courts are appointed by the Supreme Court from the ranks of lawyers in private practice or from members of the Attorney-General's Office provided they have practiced law for at least 5 years.

### § 11:86 Jurisdiction of courts

The Supreme Court and the subordinate courts have jurisdiction (subject to their own jurisdictional limitations) to hear and try any action *in personam* where the defendant is served with a writ or other originating process in the manner prescribed by the Rules of Court or where the defendant submits to the jurisdiction of the court.

The service of the writ or other originating process not only notifies the defendant of the action brought against him but also establishes the jurisdiction of the Cypriot courts over the defendant.

Leave of the court is needed before service can be affected on defendants who are not resident in Cyprus. The grounds for an application for leave to serve a notice of the writ of summons outside the jurisdiction are set out in the Rules of Court.

### § 11:87 Parties to lawsuit

It is important to join the right parties in any legal action as the remedies granted by the courts are generally only effective as between the parties. Although it is possible to correct mistakes by amendment at a later stage, the expiry of a limitation period may prevent this.

Persons under a disability, such as minors and mental patients, must sue through a next friend and be sued through a guardian. Generally, causes of action other than defamation survive a plaintiff's death. A deceased defendant's personal representatives may be ordered to be made parties to the action.

Unincorporated associations have no separate legal personality and cannot be parties to proceedings in their own right. Where proceedings are necessary, they are usually brought by or against an individual member or members.

### § 11:88 Depositions

Depositions or affidavits are written statements of a witness made

on oath. Affidavits are, in practice, prepared by a lawyer based on information provided by the witness. Their purpose is to place witnesses' evidence before the court in a convenient form. An affirmation (e.g. for agnostics or atheists) is the equivalent of an affidavit where the witness affirms the evidence rather than swearing to it.

Affidavits may be used in support of any interlocutory proceedings commenced by a writ or in proceedings commenced by originating summons or by petition. Affidavits must be expressed in the first person and be divided into numbered paragraphs.

Any document or thing used in conjunction with an affidavit must be made an exhibit to it. Affidavits may be sworn before a Court Registrar or before a Cypriot consular officer.

### § 11:89 **Discovery**

The purpose of discovery is to make available to the parties all documents relating to matters in issue. Subject to claims for privilege and admissibility, each party is able to use such documents to support their case. A claim for privilege may be made if the documents are confidential communications between lawyer and client for the purposes of litigation. Documents that tend to self-incriminate and privileged documents cannot be inspected.

### § 11:90 **Statutes of limitations**

In Cyprus, as with most common law jurisdictions, claims and rights of recourse to the courts are normally subject to extinction by statutory time-barring. Law Number 66(I) of 2012 provides that the limitation period in respect of a claim commences from the day of completion of the basis of the claim (defined as all events that give rise to an actionable right concerning a claim) and stipulates that unless otherwise provided in the Law or any other law, no proceedings may be issued after 10 years have elapsed from that date.

#### ***Secured Loans***

For loans secured by a mortgage, charge, or pledge, the limitation period is 12 years.

#### ***Civil Wrongs***

The general limitation period for civil wrongs is six years. The limitation period for claims for damages for negligence, nuisance or breach of a statutory duty is three years. The court has discretion to disapply the limitation provisions in the case of civil wrongs leading to bodily harm or death.

The court cannot exercise its discretion to disapply the limitation period once two years have elapsed from the expiry of the prescribed limitation period. The limitation period is one year in the case of proceedings for defamation or malicious falsehood.

***Contracts***

There is a general limitation period of six years for actions based on contractual claims. However, for proceedings related to a contract or to a quasi-contract in relation to an agreed or reasonable remuneration of a lawyer, a doctor, a dentist, an architect, a civil engineer, a contractor, or other independent professional, the limitation period is three years.

For loans with no set repayment date and which do not require advance notice as a condition of repayment of the debt, the limitation period commences on the date of service of written notice to the borrower to repay the debt, from, or on behalf of, the lender (or where there are co-lenders, from or on behalf of one of them).

***Succession***

No action can be commenced questioning the validity of a will, or in relation to the estate of a deceased or any portion or part thereof or bequest, after eight years from the date of death.

In the event that the claimant was absent from Cyprus the limitation period will not be deemed to have been completed unless one year has elapsed from the time that the claimant returned to Cyprus or became aware of the death (or with reasonable diligence could have become aware of the death).

***Specific Exceptions***

The Law provides that the period of limitation will not commence or, if it has commenced, will be suspended, in respect of the following:

1. Between spouses during their marriage, even though the marriage is later annulled;
2. Between parents and children while the children are minors;
3. Between trustees and trust beneficiaries while the trust beneficiaries are minors or, when the beneficiary has not yet been born, until the beneficiary is born and reaches adulthood;
4. Between executors of a will or administrators of the property of a deceased and heirs and legatees of the deceased while the heirs and legatees are minors; and
5. Between cohabiting partners.

**XVII. RECOGNITION OF FOREIGN JUDGMENTS****§ 11:91 Enforceable judgments**

There is no unified system in Cyprus for the enforcement of foreign judgments. A judgment of a foreign court has no direct operation in Cyprus but may be enforceable by action at common law or under statute. A foreign judgment may be enforceable under statute by the process of direct registration, while a judgment creditor wishing to enforce a foreign judgment at common law must bring an action on the foreign judgment.

By virtue of EC Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, a judgment of a court of any EU member state can be enforced in another member state on application by any interested party to the courts of that other member state. Therefore, judgments of courts of other EU member states can be enforced in Cyprus by direct registration of said judgments, subject to any applicable formalities and relevant civil procedure rules. Regulation 805/2004 provides a parallel streamlined enforcement mechanism for uncontested claims.

A foreign judgment may be enforced under statute by a process of direct registration. This system, if applicable, will result in practically all foreign judgments being treated as judgments of the Cypriot courts and having direct operation in Cyprus. In order for the system of direct registration to be applicable, either a bilateral treaty must exist between Cyprus and the country in which the foreign judgment was issued concerning the mutual enforcement of foreign judgments or a multilateral treaty must exist concerning the enforcement of foreign judgments where Cyprus and the country in which the judgment was made are signatories and the treaty is in force.

The prevailing attitude of the Cypriot courts is to assist in the enforcement of foreign judgments, provided that the following requirements are satisfied:

1. The foreign judgment has been issued by a court which has jurisdiction in accordance with Cypriot rules concerning the conflict of laws;
2. The enforcement of the foreign judgment will not injure Cypriot public policy;
3. The foreign judgment has been reached on merit and not according to procedure;
4. The foreign judgment has not been obtained by fraud; and
5. The proceedings which led to the issue of the foreign judgment were not contrary to natural justice.

### § 11:92 Formal requirements of foreign judgment

Formal requirements of a foreign judgment are discussed in § 11:91, *supra*.

### § 11:93 Procedure for enforcement of foreign judgment

A judgment creditor seeking to enforce a foreign judgment at common law must bring an action on the foreign judgment. As soon as the action is filed, usually by a specially endorsed writ with a statement of claim setting out the details of the judgment sought to be enforced, the judgment creditor may apply for summary judgment under Order 18 of the Civil Procedure Rules on the ground that the defendant has no defense to the claim: if the application is successful, the defendant

will not be allowed to defend. It should be noted that where the foreign judgment is enforceable by registration, the courts will not allow an action to be brought at common law.

The court may give leave to the defendant to defend his case at the hearing of the application for summary judgment. In this event, the court will give directions for the trial of the action. There will be an exchange of pleadings and the action will proceed to trial where the court will decide summarily on the merits of the action.

Where the system of statutory registration of a foreign judgment is applicable, an application for registration of the judgment may be made if:

1. The judgment is final and conclusive between the parties;
2. There is a sum of money payable under it which is not for tax or in respect of a fine or a penalty;
3. The application is made within 6 years of the judgment being given or an appeal adjudged;
4. The judgment is unsatisfied, at least in part; and/or
5. The judgment is capable of execution in the original foreign court.

A judgment creditor may petition the court to have the judgment registered in the District court in whose area the debtor resides or where any property to which the judgment relates is situated. The petition must be supported by an affidavit and an exhibit of a certified copy of the original judgment of the foreign court together with a certified translation in Greek of the foreign judgment.

Once the prerequisites have been satisfied, the court may give leave to register the judgment where the judgment is drawn up and on which a period is stated allowing the judgment debtor to apply to have the registration set aside. The order must contain a period of notification and execution of the judgment may not be issued until after the expiration of that period.

## **XVIII. WRITS OF EXECUTION**

### **§ 11:94 Courts which have the power to issue writs of execution**

A monetary judgment issued by any civil court is enforceable by a writ of execution. A writ of execution is a document issued by or under the authority of a court and directed to the official responsible for enforcement of court orders, called a sheriff or court bailiff, authorizing the official to seize and sell (usually by auction) property belonging to the judgment debtor in order to satisfy the judgment of the court.

### **§ 11:95 Execution procedure**

In relation to a writ of execution by sale of movable property (per-

sonalty) of the judgment debtor, the following procedure is followed. The court sheriff must execute the writ between the hours of sunrise and sunset and may seize only that quantity of personal property of the judgment debtor which the sheriff considers necessary to satisfy the judgment debt. The property seized may not be sold until after three days from the date of its seizure and must, in the meantime, be stored in an appropriate place or kept under the care of an appropriate person. The property seized is normally sold by auction unless the court that issued the writ considers it expedient to use some other method and so orders.

A writ of execution by sale of immovable property may not be issued unless a writ of execution for the sale of movable property has been first issued and either returned unexecuted or if executed has not completely satisfied the judgment debt or if the judgment debtor has consented to the writ. No writ of execution for the sale of immovable property can be issued without a prior application to such effect to the court, service of the application on the judgment debtor and the signature of the judge making the said order. Once the writ is issued by the court, the property in question will be sold by public auction subject to the requirement of prior public notice being given.

The public notice must be affixed in the town or village where the property is located, in the town or village where the auction is to take place, in the district courthouse and anywhere else the court may order. The notice must state the name of the auctioneer and the name of the person who is authorized to receive bids from interested parties. The notice must allow for a 15 to 90-day period between its publication and the date of auction to be considered valid. The person responsible for receiving the bids may receive written bids before the date of the auction or oral bids on the date of the auction. The property is sold to the highest bidder. The court may set a reserve price for the property, below which any bid will not be accepted. If it does so, the reserve price must be stated in the public notice.

#### **§ 11:96 Assets affected**

All personal property and assets of the judgment debtor, except that expressly excluded by the operation of law (see § 11:97 below), is subject to execution. In relation to immovable property, all property registered in the name of the judgment debtor in the local District Land Registry Office is subject to execution, except that property which is expressly excluded by the operation of the Law.

#### **§ 11:97 Assets exempt from execution**

According to the Civil Procedure Law, in relation to writs of execution for the sale of movable property, the following personal property is exempted:

1. The required clothing, linen, beds and mattresses of the judgment debtor and his family;

2. The necessary utensils and other items required for cooking by the judgment debtor and his family, as well the television, radio, refrigerator, washing machine, electrical or gas kitchen, and any other item required for the studies of the judgment debtor's children;
3. Books, tools, equipment, machinery, vessels and any other items considered to be necessities for the judgment debtor's occupation, art, craft or industry with an aggregate value not exceeding EUR 10,000;
4. Where the judgment debtor is a farmer, farming equipment or animals with an aggregate value not exceeding EUR 20,000;
5. Any item which is necessary for the use of animals or mechanical farming equipment;
6. Animal feed for six months for the above-excluded animals;
7. Supplies for three months for the judgment debtor and his family;
8. When the judgment debtor is a farmer, sufficient seed for the sowing of the farmer's property normally cultivated by him for one year's cultivation;
9. Lowest value motor vehicle necessary for transport needs of debtor and his family, or for his work.

In relation to writs of execution for the sale of immovable property, the following assets are excluded by the Civil Procedure Law:

1. Immovable property which is used either partly or entirely as the dwelling of the judgment debtor and his family but only to the extent required for their proper housing;
2. Where the judgment debtor is a farmer, so much land as is required for the feeding and/or maintenance of the judgment debtor and his family.

## **XIX. ATTACHMENTS**

### **§ 11:98 Property subject to attachment**

The Law concerning attachments is governed in Cyprus by Order 43 of the Civil Procedure Rules and Part 7 of the Civil Procedure Law. These proceedings are commonly known as garnishee proceedings.

According to the governing Law, property that may be made subject to an attachment order includes any amount of money, goods or movable property in which a judgment debtor has some beneficial interest and which is under the safekeeping or control of some third party. Where the third party is a debtor of the judgment debtor, the judgment creditor may seek an order for this third party to be summoned to court and investigated for property which may be attached for satisfaction of the judgment debt.



**§ 11:99 Types of claims that are the basis for attachment**

Any claim involving any amount of money owed by the judgment debtor to the judgment creditor and all debts owing or accruing from any third party (garnishee) to the judgment debtor may be attached by the judgment creditor.

To be capable of attachment, there must be in existence, at the date when the attachment becomes operative, something which the law recognizes as a debt and not merely something which may or may not become a debt. So long as there is a debt in existence, it is not necessary that it be immediately payable.

**§ 11:100 Attachment procedure**

The judgment creditor makes an application to the court for an order to have the garnishee appear before the court and be examined in relation to the property of the judgment debtor he may have in his possession as specified in the order and also for the garnishee not to relinquish the safekeeping of the property in question.

The court may make any further order it deems appropriate concerning the safe keeping of the property in question after service of the garnishee order on the garnishee. Once the court has heard all interested parties at the appointed date of the hearing of the attachment order, it may order any sum of money attached to be paid over to the judgment creditor or any other property attached to be sold to the extent required to satisfy the judgment debt and the proceeds of sale or the required money to be paid over to the judgment creditor.

**XX. ARBITRATION****§ 11:101 Selection and appointment of arbitrators**

Arbitration in Cyprus is governed by the Arbitration Law of 1960 (Cap. 4) which defines that an arbitration agreement as any written agreement between two or more contracting parties to have any dispute referred to an arbitrator irrespective of whether he or she is named in the agreement.

The arbitrator(s) may be appointed either by the express agreement of the contracting parties who wish to refer their dispute to an arbitrator for resolution pursuant to an arbitration agreement or by appointment by court order. The Law provides that, in the following cases, a court may order the appointment of an arbitrator:

1. Where the arbitration agreement provides for the appointment of a single arbitrator and the contracting parties are unable to agree on the arbitrator;
2. Where the appointed arbitrator is unable or unwilling to perform his duties and the contracting parties are unable to appoint an arbitrator;

3. Where the contracting parties or two arbitrators are free to appoint a third arbitrator and they fail to do so; and/or
4. Where the third arbitrator so appointed is unable or unwilling to perform his duties and the contracting parties or two arbitrators fail to appoint a replacement.

In the above cases, a contracting party may serve written notice to the other contracting parties or to the arbitrators, as the case may be, concerning the appointment of an arbitrator and if an appointment is not made within seven days of service, the court may order such an appointment following an application from the interested contracting party.

#### **§ 11:102 Enforcement of arbitral awards**

The Arbitration Law provides that an arbitration award or decision may, with leave of the court, be executed or enforced in the same manner as a court judgment or order and in such an instance a court judgment may be filed containing the same wording or contents of the arbitral award.

#### **§ 11:103 Appeal from awards**

Generally speaking, an arbitral award is deemed to be final and no appeal will lie therefrom. However, the Law provides that the court has the power to order that an arbitration agreement and the award made under it will cease to have effect or may give leave for its revocation where the impartiality of the arbitrator is successfully challenged or the dispute referred thereto involves a question of fraud. Furthermore, the court may refer back to the arbitrator(s) any matter raised in the arbitration for reconsideration.

#### **§ 11:104 International commercial arbitration**

Foreign arbitration awards are enforceable on the basis of the Law on International Arbitration (Law 101 of 1987) and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of the United Nations of 1958 (“the New York Convention”). As a contracting state, Cyprus is bound to enforce awards made in foreign states which are contracting parties to the New York Convention.

The most important aspect of the Law on International Arbitration is that the intervention of the courts is limited to a few specified instances. Prior to the delivery of the award, these instances are:

1. Where the court appoints an arbitrator if one of the parties or the party-appointed arbitrator fails to do so;
2. Where the tribunal dismisses a challenge against an arbitrator, the court will deal with the challenge;
3. Where the court decides to terminate an arbitrator’s mandate if

he fails to discharge his duties or is guilty of undue delay in doing so; and/or

4. Where the court reviews a ruling by the tribunal concerning the tribunal's jurisdiction in the matter.

After delivery of the award, a court may set aside an award or refuse to recognize it or enforce it on the following grounds:

1. Incapacity of the parties;
2. Invalidity of the arbitration agreement;
3. Lack of proper notice or denial of natural justice;
4. Lack of jurisdiction of the tribunal;
5. Defective composition of the tribunal;
6. The subject matter of the dispute not being capable of settlement by arbitration under the law of Cyprus; and/or
7. The award is contrary to Cypriot public policy or public order.

Provided that the Cypriot courts recognize the validity of the foreign arbitration award, all the methods of execution normally available for Cypriot court judgments are available for the execution of foreign arbitration awards.

## **XXI. BANKRUPTCY AND CREDITORS' RIGHTS**

### **§ 11:105 In general**

Generally speaking, under Cyprus Law the term "bankruptcy" refers to the process of declaring an individual who has incurred debts and is unable to pay those debts bankrupt, and ultimately to release him from the debts after distributing the proceeds of such assets as he has between his creditors. The term "insolvency" is used to refer to the corresponding procedure where the debtor is a company or legal person.

Bankruptcy of individuals is regulated by the Bankruptcy Law and corporate insolvency is governed by the provisions of the Companies Law. What follows below is a discussion of the provisions of the Bankruptcy Law unless otherwise stated.

### **§ 11:106 Distinction between bankruptcy and composition**

Bankruptcy is a form of universal succession by which the assets of an insolvent debtor are made available to his creditors. Bankruptcy is governed by the provisions of the Bankruptcy Law. Bankruptcy proceedings can commence only if the debtor has committed one of the following "acts of bankruptcy:"

1. Where the debtor fraudulently transfers, donates, delivers or grants all his property or part of it;
2. Where the debtor transfers, pledges or mortgages his property or part of it and this act would be considered void as a fraudulent preference if the debtor was declared bankrupt;

3. Where an order for a writ of attachment of the debtor's movables is issued against him ordering their sale;
4. Where the debtor testifies in court and states his inability to pay his debts or files his own application ("petition") for bankruptcy;
5. Where a creditor obtains a final judgment against the debtor or order for payment of any amount and a notice of bankruptcy is served on the debtor;
6. Where a debtor fails to pay or settle his debts in accordance with a court order; and/or
7. Where a Personal Repayment Plan has failed or been terminated in accordance with the Bankruptcy of Natural Persons (Personal Repayment Plans and Debt Relief Order) Law.

Composition involves a debtor, against whom a receiving order (see § 11:111 below) has been made, putting forward a proposal for the settlement of his debts. The proposal must be submitted within four days of the submission by the debtor of his written statement of affairs or within any other time period prescribed by the Official Receiver. The Official Receiver must convene a meeting of the debtor's creditors to decide on whether to accept the proposal or not to accept it.

A majority of three-quarters in value of the creditors with proven debts present and voting is required for acceptance of the proposal. In the event that it is accepted, it binds all creditors subject to ratification by the court. If the proposal is rejected or no decision is made within 14 days following the debtor's public examination, the court will declare the debtor bankrupt and his property will then be distributed among his creditors.

New provisions introduced in 2015 give the court the power to order a 95-day moratorium on enforcement actions by creditors in order to give the debtor time to agree to an arrangement (a "Personal Repayment Plan") with them. If approved by a specified statutory majority of creditors in value and by the court, the arrangement (deemed consensual) will be binding on the debtor and all creditors. Any dissenting creditors will have the right to be heard by the court. In smaller bankruptcies the court has the power to impose a rescheduling (where a consensual personal repayment plan has not been approved by majority of creditors), provided that the following conditions are satisfied:

1. The aggregate liabilities are no more than €350,000;
2. The primary residence of the individual was bought for less than €300,000 and is mortgaged in favor of at least one of the creditors;
3. The total value of the remaining assets does not exceed €250,000;
4. The individual debtor has complied with all his tax obligations

- to the tax department or the tax department has consented to the submission of a personal repayment plan by the debtor; and
5. The inability to pay debts is due to a deterioration of the debtor's financial situation as a result of events outside his or her control, leading to a diminution of income of 25% or more.

In addition, individuals with minimal assets and income (assets not greater than €1,000 and a net monthly income not exceeding €200) may apply to the court via the government insolvency service for an "order for debt relief" of up to €25,000.

### § 11:107 Entities subject to bankruptcy

Any entity can be subject to bankruptcy proceedings under the Bankruptcy Law subject to the requirement of court jurisdiction and that the debtor has committed an act of bankruptcy. A legal person or corporation is normally subject to insolvency proceedings under the provisions of the Companies Law.

### § 11:108 Reorganization

A reorganization is a process by which some compromise agreement may be reached between a debtor and his creditors and is considered to be an alternative to bankruptcy. In relation to individuals or natural persons, this topic has been covered above, in § 11:106.

In relation to the reorganization of corporations, section 198 of the Companies Law provides a method whereby a compromise or arrangement may be made between a company and its creditors.

A scheme under section 198 requires the sanction of the court and may be applicable to both a going concern as well as a company in the process of winding up. The usefulness of the sanction is in that it enables a company to agree a compromise with a majority of its creditors which can then be imposed on all its creditors.

An application may be made by summons to the court to have a scheme under section 198 approved. In deciding whether to exercise its jurisdiction and sanction the scheme, the court will normally need to be satisfied of the following matters:

1. The provisions of the Companies Law have been complied with;
2. The class of creditors has been fairly represented; and
3. The arrangement must be such as a man of business would reasonably approve.

In 2015, in order to promote a rescue culture, the Companies Law was amended to introduce a process called "examinership." It provides for the appointment of an insolvency practitioner as "examiner," whose role is to develop restructuring proposals during a four month moratorium in which the company is protected from creditor action, and place them before creditors and members for approval. It should

be noted in passing that Cyprus taxation law contains advantageous provisions relating to corporate reorganizations, which are generally exempt from tax.

### § 11:109 Court's jurisdiction

The Cypriot courts have jurisdiction to adjudicate bankrupt any debtor who at the time when an act of bankruptcy was committed, was:

1. Personally present in Cyprus;
2. Ordinarily resident or had a residence in Cyprus;
3. Carrying on business in Cyprus personally or by means of an agent or manager; or
4. A member of a firm or partnership which carried on business in Cyprus.

### § 11:110 Petition for bankruptcy

Bankruptcy proceedings start with the filing of a written bankruptcy petition to the court. The petition may be filed by a creditor or by the debtor himself. A creditor's petition must be filed within six months of the alleged act of bankruptcy. If a creditor wishes to file a bankruptcy petition, he must meet the following conditions:

1. The debt due to the creditor applicant or, if two or more of the creditors apply in one petition, the total debts owed to all petitioners must add up to at least EUR 854;
2. The debt is a liquidated sum payable either immediately or at a specified time;
3. The debtor is a resident of Cyprus or had his usual place of residence in Cyprus for the year before the filing of the petition or carried on business directly or through a representative.

It should be noted that a debtor's petition for bankruptcy will only be valid if total debts exceed EUR 15,000 and if these debts are for liquidated sums, are unsecured, and payable immediately or on specified dates.

### § 11:111 Procedural steps in bankruptcy

The effect of a bankruptcy order is to vest the debtor's property in the hands of the Official Receiver, who will hold it until a trustee in bankruptcy is appointed. The trustee may be one of the creditors or a person appointed by the creditors or the Official Receiver himself. The trustee will distribute the assets of the debtor according to the rules of bankruptcy. Following the trustee's appointment, the trustee has the following powers to deal with the bankrupt's property:

1. Sell all or any part of the property by public auction or private contract, with power to transfer the whole of the property to any person or corporation or to sell it in parts;

2. Give receipts for money received by him, which receipts shall discharge the person who pays the money from all responsibility arising from the petition;
3. Prove, rank, claim, and draw a dividend in respect of any debt due to the bankrupt; and
4. Exercise and execute any powers of attorney, deed, and other instruments for the purpose of carrying into effect the provisions of this Law.

Once a bankruptcy order is made, and after the examination of the bankrupt's affairs is concluded, the bankrupt may apply to court for his discharge. This releases him from all provable debts and liabilities, but not from any unproven liabilities such as claims for general damages. In deciding whether to grant or refuse an application the court will examine the Official Receiver's report relating to the debtor's conduct and his affairs and may discharge the debtor or suspend the discharge. Discharge with respect to all provable debts and liabilities is automatic after three years, on the condition that all the bankrupt's undistributed property, both movable and immovable, remaining after said discharge is sold and the proceeds distributed to satisfy any remaining debt to his creditors.

## XXII. ONLINE RESOURCES

### § 11:112 **Elias Neocleous & Co LLC**

The website of Elias Neocleous & Co LLC, author of this Chapter on the Commercial Laws of Cyprus, may be found at the following web-address: [www.neo.law](http://www.neo.law).

### § 11:113 **Other legal resources—Cyprus government websites**

The following are links to specific government ministries and other government departments which have information that may be of interest—e.g. legislation, regulations, treaties, etc.:

1. *Official website of the Republic of Cyprus:* <http://www.cyprus.gov.cy>;
2. *Ministry of Foreign Affairs:* <http://www.mfa.gov.cy>;
3. *Ministry of Finance:* <http://www.mof.gov.cy>;
4. *Statistical Service:* <http://www.mof.gov.cy/cystat/statistics.nsf>;
5. *VAT Service:* <http://www.mof.gov.cy/mof/vat/vat.nsf>;
6. *Department of Customs and Excise:* <http://www.mof.gov.cy/mof/customs>;
7. *Department of Registrar of Companies and Official Receiver:* <http://www.mcit.gov.cy/drcor>;
8. *Ministry of Transport Communications and Works:* <http://www.mcw.gov.cy/mcw>;
9. *The Department of Merchant Shipping:* <http://www.shipping.gov.cy>; and

10. *The official website of the Cyprus Legislature:* <http://www.parliament.cy>.

**§ 11:114 Other legal resources—Other Cypriot websites containing useful information**

1. *Cyprus Bar Association:* [http://www.cyprusbarassociation.org/en/g/index\\_en](http://www.cyprusbarassociation.org/en/g/index_en);
2. *University of Cyprus:* <http://www.ucy.ac.cy>;
3. *Cyprus Stock Exchange:* <http://www.cse.com.cy>;
4. *Cyprus Securities and Exchange Commission:* <http://www.cysec.gov.cy>;
5. *Leginet (on-line portal for legislation/caselaw-subscription required):* <http://www.leginetcy.com>;
6. *CyLaw (on-line portal for Cyprus legislation/caselaw-no subscription required):* <http://www.cylaw.com>; and
7. *Cygazette (on-line edition of the Official Government Gazette):* <http://www.cygazette.com.cy>.

**§ 11:115 Other legal resources—Foreign websites containing information on Cyprus**

1. *CIA World Factbook:* <http://www.odci.gov/cia/publications/factbook/geos/cy.html>;
2. *Tradeport Country Library:* <http://www.tradeport.org.cy/ts/countries/cyprus/o1grw.html>;
3. *The Library of Congress Country Studies:* <http://www.lcweb2.loc.gov/frd/cs/cyoc.html>;
4. *CountryWatch:* <http://www.countrywatch.com>; and
5. *RefDesk.com:* <http://www.refdesk.com>.



# APPENDIX 11A

## Employment Contract

### EMPLOYMENT CONTRACT

THIS AGREEMENT IS MADE this ..... day of ..... 20...

BETWEEN (1) (hereinafter the “**Employer**”)  
.....  
and  
(2) hereinafter the “**Employee**”  
.....  
of  
.....

This Agreement sets out the terms and conditions of employment and generally all the information which is required to be given to the Employee under Law 100(I)/ 2000 as at the date hereof.

#### 1. COMMENCEMENT AND JOB TITLE

1.1. The Employer agrees to employ the Employee from ..... 20... (the “**Commencement Date**”) in the capacity of .....

1.2. The Employee shall initially be employed at the Employer’s main office/ premises in Cyprus. However, the Employer reserves the right to second and/or relocate the Employee to any location in any of the countries in which the Employer or its affiliated companies currently operate (or in the future may operate).

1.3. Both parties acknowledge that the Employer’s business in Cyprus will expand and that new stores/ offices/ premises may be opened and/ or operated by or on behalf of the Employer after the date of commencement of this Agreement. It is understood that for the proper performance of the Employee’s duties and responsibilities under this Agreement the Employee will be responsible for any stores/ offices/ premises which may be opened and/ or operated by or on behalf of the Employer after the date of commencement of this Agreement as may be designated by the Employer from time to time.

1.4. No employment with a previous employer will be counted as part of the Employee’s period of continuous employment with the Employer.

**2. PROBATION PERIOD**

The Employee's employment hereunder is subject to a probation period of 6 months from the Commencement Date (the "**Probation Period**"), during which the Employee may be dismissed by the Employer for any reason whatsoever, with or without cause and notice and without being subject to any disciplinary and/ or grievance procedures of the Employer.

**3. SALARY**

3.1. The Employer shall pay the Employee total salary of ..... gross per year, payable at monthly intervals on or before the last day of each month.

3.2. The Employee's salary shall be paid net of any national insurance contributions, fees impositions or taxes.

3.3. Except where the law requires otherwise, the Employee shall bear sole responsibility for any liability to tax (in any country) on payments made to him/her under this Agreement.

3.4. The Employer shall review the Employee's salary at such intervals as it shall at its sole discretion decide.

**4. HOURS OF EMPLOYMENT**

4.1. The Employee's normal working hours shall consist of 48 hours per week, but the Employee hereby recognizes that the needs of his/her position may require more working hours and hereby consents to working any such hours as may reasonably be required from him/her to meet the requirements of the Employer's business.

4.2. The Employee shall normally work 6 days per week. The Employee may take up to 1 hour break for lunch every full working day.

4.3. The Employee may from time to time be required by the Employer to work such days and/or such times and/or such additional hours to meet the requirements of the Employer's business. The Employee will not be entitled to receive any overtime payment or additional remuneration in relation to such work.

**5. HOLIDAYS**

5.1. The Employee shall be entitled 20 days' holiday per calendar year at full pay in addition to official public holidays. Holidays must be taken at times convenient to the Employer, and the Employee must give his/her supervisor at least 28 days' prior notice of intention to take a holiday. Holidays cannot be carried over into the subsequent holiday year.

5.2. The Employee shall be entitled to payment in lieu of any holiday entitlement accrued due but not taken at the date of termination of his/her employment. If at the date of termination the Employee has taken holiday in excess of his or her accrued entitlement a corresponding deduction will be made from his/her final payment.

5.3. The Employee shall not be entitled to take any holidays during the Probation Period.

## 6. COLLECTIVE AGREEMENTS

There are no collective agreements in force directly relating to the terms of your employment.

## 7. TERMINATION

7.1. The Employer may terminate this Agreement in any event where the Employee is subject to dismissal, with or without notice, in accordance with applicable law.

7.2. Without limitation to the generality of clause 7.1, the Employer may terminate this Agreement by giving written notice to the Employee in any of the following cases:

- (a) where the Employee does not perform his duties in a reasonably satisfactory manner;
- (b) where the Employee has been made redundant; or
- (c) for reasons of *force majeure*, act of war, civil commotion, act of God, destruction etc.

7.3. Where the Employer terminates this Agreement pursuant to clause 7.2, it will give written notice to the Employee of the reasons for dismissal as follows:

- (a) not less than one week's notice during the first year of continuous employment;
- (b) not less than two weeks' notice during the second year of continuous employment;
- (c) not less than four weeks' notice during the third year of continuous employment;
- (d) not less than a further one week's notice for each full year of continuous employment after the fourth year until the sixth year of continuous employment; and
- (e) not less than eight weeks' notice after six years of continuous employment.

7.4. Without limitation to the generality of paragraph 7.1 above, the Employer may terminate this Agreement without notice in any of the following cases:

- (a) where, during the performance of his duties, the Employee displays serious or persistent misconduct;
- (b) where, during the performance of his duties, the Employee has committed a serious criminal offence, has demonstrated indecent behaviour or has repeatedly violated or ignored the rules of his employment; or
- (c) where the Employee displays such conduct as to make it obvious that the relationship between the Employee and the Employer cannot reasonably be expected to continue.

7.5. The Employee may terminate this Agreement after the completion of the Probation Period by giving to the Employer three months' written notice.

- 7.6. After notice of termination has been given by either party:
- (a) the Employer may in its absolute discretion pay the Employee in lieu of all or any part of any notice; or
  - (b) provided the Employee continues to be paid and to enjoy his/her full contractual benefits under the terms of this Agreement, the Employer may in its absolute discretion for all or part of the notice period:
    - (i) exclude the Employee from the premises of the Employer and require that he/she carries out duties other than those specified in his/her Job Description; or
    - (ii) require that he/she carries out no duties at all until the termination of his/her employment.

## **8. CONFIDENTIALITY**

8.1. The Employee is aware that during his or her employment he/she may receive confidential information concerning the Employer and/or the Employer's business. The Employee shall not during the term of his or her employment, disclose or allow the disclosure of any confidential information (except in the proper course of his or her employment).

8.2. After termination of this Agreement for any reason, the Employee shall not disclose or use any of the Employer's trade secrets or any other information which is of a sufficiently high degree of confidentiality to amount to a trade secret for a period of 2 years from the date of termination. The Employer shall be entitled to apply for an injunction to prevent such disclosure or use and to seek any other remedy including without limitation the recovery of damages in the case of such disclosure or use.

## **9. NOTICES**

All communications including notices required to be given under this Agreement shall be in writing and shall be sent either by personal service or first class post to the parties' respective addresses.

## **10. SEVERABILITY**

If at any time any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be invalid, illegal or unenforceable, such invalidity, illegality or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

## **11. VISA AND RESIDENCY**

This appointment is made subject to the Employee qualifying for the requisite entry visas and residency in the country in which the Employee is intended to work pursuant hereto.

## **12. EMPLOYMENT AND EMPLOYER'S POLICY**

This Agreement and all other legitimate policy related documents and/or

declarations and instructions which may be issued by the Employer from time to time regarding safety at work, ethics, dress-code and any other legitimate matter with relation to the Employer's business and the workplace in general, constitute the terms and conditions of the Employee's employment and any waiver or modification must be in writing and signed by the parties to this Agreement

**13. MONITORING OF COMMUNICATIONS**

It may be necessary for the Employer to protect its interests by monitoring communications on private networks (office telephone networks, internet or email, etc.) on the premises of the Employer. The Employee acknowledges that such monitoring may take place and hereby expressly consents to such monitoring.

**14. GOVERNING LAW**

This Agreement shall be construed in accordance with the laws of Cyprus and shall be subject to the exclusive jurisdiction of the Cyprus courts.

**IN WITNESS WHEREOF** the parties hereto have signed this Agreement the day and year first above written.

**SIGNED**

\_\_\_\_\_  
Signed by or on  
behalf of the  
Employer

\_\_\_\_\_  
in the presence of  
(witness)

.....

Dated: \_\_\_\_\_

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Occupation \_\_\_\_\_

**SIGNED**

\_\_\_\_\_  
Signed by the  
Employee

\_\_\_\_\_  
in the presence of  
(witness)

Dated: \_\_\_\_\_

Name \_\_\_\_\_  
Address \_\_\_\_\_  
Occupation \_\_\_\_\_

## APPENDIX 11B

### Instrument of Transfer

#### INSTRUMENT OF TRANSFER

We *[Name of transferor]* Limited of *[Address of transferor]* (hereinafter called the “transferor”) for good and valuable consideration paid to us by *[Name of transferee]* (hereinafter called the “transferee”) do hereby transfer to the said transferee the shares shown in the schedule below held by us in the undertaking called *[Name of Company]* LIMITED (the “Company”).

To hold unto the said transferee, transferee’s executors, administrators and assigns subject to the several conditions on which we held the same at the time of the execution thereof. And the said transferee does hereby agree to take the said shares subject to the conditions aforesaid.

This Instrument of Transfer may be signed in one or more like counterparts and by one or more of parties hereto and a copy (including a facsimile or electronic version) of such signed counterpart shall be deemed to be an original, and such counterparts together shall constitute one and the same Instrument of Transfer and notwithstanding the date of execution shall be deemed to bear the date of *[date of transfer]*.

#### Schedule

No. of shares: *[number]*—*[number in words]*

Serial Nos. of shares From \_\_\_\_\_ to \_\_\_\_\_

Nominal value of each share \_\_\_\_\_

Signature of the transferor

\_\_\_\_\_

Signature of the transferee

\_\_\_\_\_

Witness to the signature of  
transferor

\_\_\_\_\_

Witness to the signature of  
transferee

\_\_\_\_\_

Date:

## APPENDIX 11C

### Power of Attorney

#### POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS THAT, WE, *[Name of Appointer]* (“Company”) of *[Address of Appointer]*, DO HEREBY NOMINATE, CONSTITUTE AND APPOINT *[Name of agent]*, of *[Address of agent]*, bearer of the *[country of issue]* passport no. *[number of passport]*, as our true and lawful Attorney in *[Country of appointment]*, to act for us, in our name and on our behalf:

- 1.1. To consider, negotiate, approve, sign, execute, deliver and/or issue all agreements, documents, certificates and instruments (all whether as a deed or not and under seal if necessary) which the Attorney in his absolute discretion considers desirable in connection with the sale of the Company’s entire shareholding participation in *[Name of investment]* Limited, being *[number of shares]* ordinary shares of *[nominal value of each share]* each, numbered \_\_\_\_\_ to \_\_\_\_\_ inclusive (“Transaction”) including without limitation all documentation necessary to effect the Transaction, subject to such amendments or variations as the Attorney may agree, provided that such amendments or variations are of a minor nature and are not material to the Transaction.
- 1.2. To take any steps or do anything which the Attorney in his absolute discretion considers desirable in connection with the implementation of the Transaction or the implementation and/or execution of the documentation necessary to effect the same including, inter alia, any share purchase agreements or instruments of transfer.

The Attorney is not authorised to delegate the powers granted to him under this Power of Attorney.

This Power of Attorney is issued and shall remain in full legal force and effect for 1 (one) year from the date of the execution thereof, upon the condition however, that this Power of Attorney may be revoked at any time by a single written notification to the Attorney.

This Power of Attorney shall be construed and governed in accordance with the laws of Cyprus.

IN WITNESS WHEREOF, this Power of Attorney has been duly executed this *[date]* day of *[month]*, *[year]*.

The common seal of \_\_\_\_\_ )

**App. 11C**

*[Name of Appointer]* LIMITED )  
is hereunto )  
affixed in the presence of )

\_\_\_\_\_

Director

\_\_\_\_\_

*[Signature of Director/Secretary]*



## APPENDIX 11D

### Sale Agreement

#### SALE AGREEMENT

**AN AGREEMENT** made this *[date]* 20 \_\_, in *[name of place]*, Cyprus.

**BETWEEN** *[vendor's name and address]*, hereinafter called "the Vendor", of the one part and *[purchaser's name and address]*, hereinafter called "the Purchaser" of the other part.

**WHEREAS:**

- (a) The Vendor is the person entitled to be registered as the owner of a house situated within *[property location]*, Cyprus and covered by Registration No. *[number of registration]*, Plot No. *[number of plot]* of Sheet/Plan *[number of sheet/plan]*, hereinafter called "the said house".
- (b) The Purchaser wishes to purchase from the Vendor and the Vendor has agreed to sell to the Purchaser the said house, on the terms and conditions herein contained.

**NOW THEREFORE THIS AGREEMENT** witnesses the following:

1. The recitals of fact and representations, set forth in the preamble above, are true and they are incorporated into the body of this agreement by reference.
2. The Vendor hereby sells to the Purchaser and the Purchaser purchases from the Vendor the said house.
3. The consideration for the said sale is hereby agreed at *[price in numeral]*-*([price in words])* payable by the Purchaser to the Vendor as follows:
  - (a) *[Deposit amount]*-*([deposit amount in words])* upon the signing of this agreement, as deposit, receipt whereof is hereby acknowledged by the Vendor,
  - (b) *[Next payment amount]* – *([amount in words])* on or before *[date due]*, and
  - (c) The balance of *[balance amount]*—*([balance amount in words])* upon the transfer and registration of the said house into the name of the Purchaser, at the time and in the manner provided hereinbelow.

Any installment in arrear shall bear interest at the rate of 8% per annum, from the date of maturity to the date of settlement.

4. The said house is sold in its present condition having been inspected and approved by the Purchaser and the Vendor shall not be in any way responsible or liable for any hidden or apparent defects referring to the construction, condition or functioning thereof.

5. The Vendor shall deliver to the Purchaser free possession of the said house upon the payment by the Purchaser of the sum of *[Next payment amount]*—(*amount in words*), as above. As from the date of such delivery the Purchaser shall be liable to pay all immovable property taxes or other rates or levies related to the occupation of the said property and if such taxes, rates or levies shall be paid by the Vendor they shall be refunded to him by the Purchaser on demand. It is understood that all such taxes, rates or levies accrued before the date of delivery of possession will be borne by the Vendor.
6. The Vendor shall be under an obligation to transfer and register the said house, free of any mortgages, liens, encumbrances or any other charges whatsoever, into the name of the Purchaser or in the name of any party nominated in writing by the Purchaser, subject to the following conditions:
  - (a) The purchase price, plus interest, if any, as well as all expenses and all taxes, rates charges or other sums due and payable by the Purchaser to the Vendor in relation to the said property shall have been paid by the Purchaser in full, and
  - (b)
    - (I) the Purchaser, being an alien, shall have obtained from the Council of Ministers the permit to acquire the said property as provided by the Immovable Property Acquisition (Aliens) Law, Cap.109, as amended and the Vendor shall be under the obligation to supply all information and particulars within his possession or knowledge and in every respect to assist the Purchaser to secure the aforesaid permit.
    - (II) in the event that the Purchaser shall fail to acquire the requisite Council of Ministers permit for the said property he shall be entitled to remain in possession of the said house for as long as is reasonable to dispose of the said property and in which case the Vendor hereby irrevocably undertakes to act upon the instructions of the Purchaser to cancel the present agreement and to enter into a new sales Agreement with such person or persons as will be nominated to the Vendor for such price in cash as the Purchaser shall state, provided that the final resultant financial position of the Vendor shall not be adversely affected by any such new agreement and in consideration of the cancellation of this Agreement the Purchaser agrees to keep harmless the Vendor and to indemnify the Vendor accordingly for any loss or liability that he may incur. All other terms and conditions of the New Sales Agreement shall remain the same as in the present Agreement. Upon compliance with the Purchaser's instruction as above the Vendor shall be discharged from the obligation under the present agreement, but until such compliance the Vendor will be bound by the provisions of this Agreement.
    - (III) For the removal of any doubt it is clarified that the Vendor shall bear no profit or loss from this transaction and will be

compensated by the Purchaser for any loss, liability and/or expenses arising out of the Vendor so acting upon the Purchaser's instructions including, but not limited to any Income Tax payable by the Vendor or any difference in price between this and any future sale. It is also agreed that any burden or loss or liability which may be incurred due to the future sale will be arranged and/or settled between the contracting parties simultaneously with the signing of the new Sales Agreement.

- (c) The transfer fees for the transfer and registration of the said property into the name of the Purchaser or into the name of any other person nominated by him as above, shall be borne by the Purchaser, who will also pay the stamp duty on this agreement.
7. Any party in breach of this agreement shall be liable to the payment to the other of damages in respect thereof, and if the party in breach shall be the Vendor he shall also be liable to refund to the Purchaser all monies paid by him hereunder, with interest thereon at the rate of 8% per annum, from the date of payment to the date of settlement.
8. **WITHOUT** prejudice to the above provision or any provision in this agreement referring to damages, this agreement shall be specifically enforceable, the right of the Purchaser to deposit copy of this agreement with the District Lands Office of *[Name of district]* for specific performance purposes, being hereby absolutely reserved.
9. (a) The present agreement binds the parties, their heirs, executors, administrators and assignees.
- (b) Any notice to be served by either party pursuant to this agreement shall be by service by registered post to the parties= last known address.
- (c) Nothing contained in this agreement shall restrict any right of the Purchaser accruing from the Law of Contracts applicable in Cyprus.
- (d) The present agreement has been made in duplicate each party taking one copy.

**IN WITNESS** whereof the parties hereto have hereunto set their respective signatures, the day and year first above written.

**THE VENDOR**

**THE PURCHASER**

\_\_\_\_\_  
*[Name of vendor]*

\_\_\_\_\_  
*[Name of purchaser]*

**WITNESSES:**

1. \_\_\_\_\_

2. \_\_\_\_\_

## APPENDIX 11E

### Sample Minutes and Resolution

**[Name of Company] LIMITED**  
Registration No. \_\_\_\_\_  
(the "Company")

**MINUTES OF THE EXTRAORDINARY GENERAL MEETING OF THE COMPANY HELD ON [date of meeting] CONVENED IN ACCORDANCE WITH THE ARTICLES OF ASSOCIATION OF THE COMPANY.**

#### PURPOSE OF RESOLUTION:

Following the execution of the Credit Facility between [name of party] and [name of bank] Bank (the "Bank") dated [date of execution], the purpose of these resolutions are to consider the execution of a security arrangement in the form of a corporate guarantee to the Bank for the benefit of [name of beneficiary] to the maximum amount of [amount of guarantee].

After careful and proper consideration of the issues referred to hereunder, having had an opportunity to review the text of the corporate guarantee (the "Guarantee") in question and after careful consideration of the recommendations of the Board of Directors of the Company, the members of the Company have UNANIMOUSLY RESOLVED as follows:

#### ORDINARY RESOLUTION

1. THAT the terms and conditions of the Guarantee are beneficial and in the best interests of the Company and should be and are hereby approved and accepted.
2. THAT the Board of Directors of the Company be and are hereby authorized and directed to do all such acts and things as shall be necessary or desirable to implement, execute and/or register the resolutions herein.

**It is hereby certified that the above is a true copy of the Minutes of the Extraordinary General Meeting of the Company held on \_\_\_\_\_ and of the resolutions resolved by the Members of the Company.**

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**Director**

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**Company Secretary**

