

## **LEGAL UPDATES FOR DECEMBER 2018**

### **1. Modernisation of the Companies Law Cap. 113 (the “Law”)**

On 18 December 2018, the Companies (Amending) (No.3) Law, N.149(I)/2018 (the “**Amending Law**”) was passed, aimed mainly at modernising and at facilitating the filing and registration requirements and processes of the Registrar of Companies (the “**ROC**”), by redesigning the application forms (which are required to be filed with the ROC) and by imposing fines in the event of infringement. These amendments not only intend to simplify the procedure of the ROC but also ensure that the gathering of updated registers is done in an adequate and timely manner, creating overall a more transparent and contemporary system.

#### **(a) Publications on the ROC website (to replace the Official Government Gazette)**

Following an amendment to section 365A of the Law, an “electronic official Gazette” via the ROC’s website was introduced, aimed at replacing publications in the Official Government Gazette.

#### **(b) Filing and Forms of the ROC**

The Amending Law clarified that in the following situations precise ROC forms will need to be filed by companies:

- (i) Change of name;
- (ii) Allotment of shares;
- (iii) Purchase of shares;
- (iv) Share buybacks;
- (v) Increase of share capital;
- (vi) Filing of register of charges and mortgages;
- (vii) Entries of satisfaction and release of charged property;
- (viii) Enforcement of securities;
- (ix) Place of where the company’s register is kept;
- (x) Corporate register; and
- (xi) Merger plan in the event of reorganisation of the company post-merger procedure.

The new updated forms were published in the Official Government Gazette with the Companies (Amending) Regulations of 2018 Κ.Α.Π. 368/2018 and will come into effect upon notification to be issued by the ROC.

#### **(c) Introduction of Administrative Fines for Late Filings**

The Amending Law introduced administrative fines that the ROC may impose for the failure by companies to properly comply with certain filing requirements. These administrative fines shall amount to EUR 50 and a subsequent charge of EUR 1 for

every day for which the default continues, such fine not to exceed EUR 250 for each default. The below notifications are subject to these fines:

- (i) the notification in relation to the allotment of shares (section 51);
- (ii) the notification in relation to a change of the registered address (section 102);
- (iii) the notification in relation to a transfer of shares (section 113A); and
- (iv) the notification(s) in relation to the particulars contained in the company's register of directors and secretaries and any changes made thereto (section 192).

In the event of late filing of the annual return, the ROC shall impose a fine of EUR 50 and a subsequent charge of EUR 1 for every day for which the default continues within the first 6 months, and a subsequent charge of EUR 2 for every day thereafter for which the default continues, such fine not to exceed the amount of EUR 500 for each default (section 120).

## **2. Appointment of a Secretary**

Section 171 of the Law was amended by the Amending Law so as to clarify that every company shall have one secretary.

## **3. Abolition of Privileges of Banks making Annual Return**

Pursuant to the Amending Law, banks shall no longer enjoy the privilege of being deemed to be "banks" and "bankers" once they have duly forwarded to the ROC the annual return required by section 118 of the Law and have added thereto a statement of the names of the several places where they carry their business.

## **4. Regulating Administrative Operations of Overseas Companies**

The Amending Law was amended so as to specify that a company shall need to file a notification with the ROC in the form specified by the ROC, in relation to the place where the overseas register of members is kept. Further, section 349 was amended so that it imposes a requirement for the provision of additional information to be filed with the ROC. The information expected to be filed relates to the change of the names of addresses of the persons authorised to present the overseas company and their place of business, in third party transactions, in Court and towards competent authorities.

Section 349 also introduced the imposition of an administrative fine for failure to comply with the above filing requirements, amounting to EUR 50 and a subsequent EUR 1 for every day for which the default continues, such fine not to exceed EUR 250 for each default.

Finally, additional forms were published in the Official Government Gazette with respect to companies who wish to transfer their registered office to and outside the Republic of Cyprus, with the Transfer of Registered Office To and Outside the Republic (Amending) Regulations of 2018 (Κ.Δ.Π. 365/2018). The new forms will come into effect upon notification to be issued by the ROC.

**5. Modernisation of the Filing Procedure with respect to Societas Europaea (the “SEs”) Companies**

New forms were published in the Official Government Gazette with respect to SEs (European companies), with the Societas Europaea (Amending) Regulations of 2018 (Κ.Δ.Π. 367/2018), which will come into effect upon notification to be issued by the ROC.

**6. Amendments to the Strike-Off Procedure**

Pursuant to the Amending Law, the following amendments were made to strike-off procedure of a company:

(a) Directors’ right to strike-off a company

The ROC may strike off a company upon application of its director(s), which will have to be submitted in the precise form required by the ROC and once the company has satisfied and fulfilled all of its obligations under the Law (section 327(2A)(a)).

If such an application by the directors’ has been submitted to the ROC, the company shall have the right to withdraw the application before the expiry of a three month period, by submitting to the ROC a notice in the prescribed form (section 327(3A)).

(b) Members and Creditors’ Right to Object to a Strike-Off

Any member or creditor shall now have the right to object to the strike-off of a company within the period of 3 months from the relevant notification which has been made to the Official Government Gazette (section 327(5)).

(c) Members and Creditors’ Right to Claim Re-instatement and Court Orders

According to section 327(7), any member or creditor who may feel aggrieved with the strike-off of a company and/or has suffered damages by the actions of the said company prior to its strike-off, may submit a complain to the Court aiming to re-instate the struck-off company. In conjunction with the aforementioned, the Court shall have the right forthwith to order:

- (i) the re-instatement of the struck-off company in such manner as it deems fair in an attempt to bring the company and all of the relevant persons into the position they would have been in, as though the strike-off action had not occurred initially;
  - (ii) that documents and returns be filed to the ROC to bring the company's filing requirements up to date;
  - (iii) that all fees due by the company are paid; and
  - (iv) that the company pays all costs of the ROC in relation to the re-instatement of the company on the register.
- (d) ROC's New Power to Re-instate Struck-Off Companies without the Involvement of the Court

According to new section 327A, any member or director shall have the right to submit an application to the ROC in the prescribed form, demanding the re-instatement of a company which has been struck off on the basis that it was not carrying business, or did not pay the annual levy, or failed to submit to the ROC any document required by the Law and 6 months have lapsed from the notification sent by the ROC to the company. The ROC may thus re-instate such a company provided that:

- (i) the relevant application is submitted within 24 months of the date of the company's strike-off;
- (ii) the company was carrying business and/or was active at the time of the strike-off;
- (iii) all of the company's filing requirements have been brought up to date;
- (iv) the company has paid all fees, levies, penalties and fines due to the ROC;
- (v) the fee of re-instatement is paid upon submission of the re-instatement application; and
- (vi) the ROC has good reason to believe that the strike-off has placed the applicant into a disadvantageous position.

## **7. Registration of Pledges over Cyprus Shares**

The General Attorney of the Republic of Cyprus issued an opinion stating that the ROC shall no longer accept applications for registration of share pledges. Specifically, the exemption shall apply to pledges over Cyprus shares.

**8. Amendments to the Financial Ombudsman Law N.84(I)/2010 – An attempt to capture Credit Facilities within its ambit**

On 19 December 2018, the Financial Ombudsman (Amending) (No.2) Law of 2018, N.159(I)/2018 was passed, which aims to provide assistance in resolving disputes between consumers and financial undertakings (whether natural or legal persons) that carry out activities relating to credit facilities. In particular, section 10 was amended so that consumers whose credit facility has been redeemed by redemption companies shall have the right to submit complaints to the Commissioner.