

Cyprus

Stavros Pavlou, Lia Iordanou and Pavlos Kyriakides

Patrikios Pavlou & Co

Statutes and regulations

- 1** What are the relevant statutes and regulations governing securities offerings? Which regulatory authority is primarily responsible for the administration of those rules?

The main statutes governing securities offerings are: the Public Offer and Prospectus Law, 114(I) of 2005 that implemented Directive 2003/71/EC on the contents of prospectuses when securities are offered to the public or admitted to trading (the Prospectus Directive), the Insider Dealing and Market Manipulation (Market Abuse) Law, No. 116(I) of 2005, implementing the EU Market Abuse Directive (2003/6/EU), the Cyprus Securities and Stock Exchange Law, 14(I) of 1993 and The Cyprus Securities and Exchange Commission (Establishment and Responsibilities) Law, number 64(I) of 2001; but also the Regulations made under the Cyprus Securities and Stock Exchange Law, and in particular the 1995 Regulations as amended.

To the extent that securities would be offered as part of a takeover bid then the Public Takeover Offers Law, 41 (I)/2007 would apply.

The Cyprus Securities and Exchange Commission is the regulatory authority that is primarily responsible for the administration and enforcement of Cyprus securities laws and therefore approves the prospectuses including the consistency of the information given and its comprehensibility. The Cyprus Securities and Exchange Commission also supervises the organised markets operating in Cyprus.

By section 6 of law 64(I) of 2001 the Commission “shall be entrusted with the responsibility of supervising the capital market, securing its smooth operation and methodical development and the monitoring of transactions in transferable securities taking place on the territory of the Republic through the Stock Exchange or outside the Stock Exchange.”

Public offerings

- 2** What regulatory or stock exchange filings must be made in connection with a public offering of securities? What information must be included in such filings or made available to potential investors? Please distinguish between debt and equity, and primary and secondary offerings where relevant.

No offer of securities to the public can be made without the publication of a prospectus which has been approved by the Cyprus Securities and Exchange Commission. Supplementary information also requires approval from the Cyprus Securities and Exchange Commission.

Information contained in any prospectus is governed by the Public Offer and Prospectus Law (114(I) of 2005), ensuring a

high level of protection to investors. Section 8 of the said law provides that the prospectus shall contain all the information which, according to the particular nature of the issuer and of the securities offered to the public or admitted to trading on a regulated market, is necessary to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses and prospects of the issuer and of any guarantor, and of the rights attaching to such securities”.

The information must be in a language that is readily understandable to the investor and must allow the investor to make an informed decision as to whether to acquire or maintain securities in the company. There is a special requirement that, when explaining the risks involved in any investment or in the specific sector of the company’s activities, non-technical language must be used.

A prospectus approved by a competent authority of another EU member state shall and will be accepted in Cyprus for making an offer to the public.

Offering regulated securities to the public without a prospectus is a criminal offence punishable by imprisonment of up to two years and/or a fine of up to C£100,000 (equivalent to approximately €172,500).

The prospectus need not be one document but may comprise of a number of documents viewed together as the “prospectus”.

In the event of non equity securities (including warrants) a short basic prospectus may be issued not necessarily as full as the prospectus for the offer of equities.

The preparation of the prospectus is the work of the company’s sponsor, who may also be the underwriter of the issue. The sponsor is a person or entity licensed to offer investment services by the Cyprus Securities and Exchange Commission.

- 3** What are the steps of the registration and filing process? May an offering commence while regulatory review is in progress? How long does it typically take for the review process to be completed?

Before any security may be traded in the Cyprus Stock Market, the prospectus of the company must be approved and a day for an IPO or direct date of trading must be set by the Cyprus Securities and Exchange Commission. The Commission scrutinises the prospectus and, taking into account the need to enhance investors’ protection and the smooth operation of the capital market, it may require the offeror and the sponsor responsible for the drawing up of the prospectus to make whichever reasonable adjustments or corrections it considers necessary to secure transparency in the capital market.

The decision of the Cyprus Securities and Exchange Commission regarding the approval or rejection of the prospectus is noti-

fied to the issuer, the offeror, or the person asking for admission of securities to trading on a regulated market, as the case may be, within 10 working days of the submission of the draft prospectus. It is provided that if the Cyprus Securities and Exchange Commission fails to give a decision on the prospectus within the time limits abovementioned, this shall not be deemed to constitute approval of the application. This time limit shall be extended to 20 working days if the public offer involves securities issued by an issuer which does not have any securities admitted to trading on a regulated market and who has not previously offered securities to the public.

The Company may accept funds under irrevocable applications of intended investors which must be maintained in a separate escrow account pending approval of the application. In the past there was no requirement for escrow accounts and companies expecting listing were receiving investor funds and issuing shares in return without waiting for approval. As a result there were thousands of criminal cases filed in the Cypriot Courts for failure to refund the money to investors and a major social problem arose. Now the rules do not allow the use of investor funds until the application is approved.

It is quite customary to alert the financial market about the intended offering by circulating a version of the prospectus to the financial institutions, possible underwriters, large investment managers, etc in advance of any approval. However this is made under the clear warning that it is not an offer to the public at large. Under this procedure private placement of shares may sometimes take place and the terms thereof must be fully disclosed to the Securities and Exchange Commission as part of the final draft of the prospectus. As this is on a very limited scale it does not constitute a public offering.

4 What publicity restrictions apply to a public offering of securities? Are there any restrictions on the ability of the underwriters to issue research reports?

Subject to the provisions of section 34 of EU Regulation 809/2004 any types of advertisements relating to an offer of securities to the public or to an admission to trading on the Cyprus Stock Exchange or on other regulated market that takes place in the Republic of Cyprus shall observe the following principles contained in section 30 of Law 114(I) of 2005 that apply only when there is an obligation to draw up a prospectus:

- they shall state that a prospectus has been or will be published and indicate the places where investors will be able to obtain it, or how investors will be able to have access to its full text;
- they shall be clearly recognisable as such;
- the information contained shall not be inaccurate or misleading but consistent and without any conflict or discrepancy with the information contained in the prospectus if already published, or with the information required to be in the prospectus, if the prospectus is published afterwards;
- all information, announcements or advertisements concerning the offer to the public, shall be consistent with that contained in the prospectus;
- any type of announcements and advertisements announcing the offer or the admission to trading on the Cyprus Stock Exchange or other regulated market, shall be previously filed with the Cyprus Securities and Exchange Commission that examines whether the advertising activity and the announcements regarding the offer of securities to the public on the Cyprus Stock Exchange comply with section 30 of Law 114 (I) 2005.

There are no particular restrictions on the ability of underwriters to issue research reports and it is quite common to do so in order to attract institutional investors.

Under the Public Offer and Prospectus Law the prospectus itself may not be published prior to it being approved. There is however no restriction on release of general information about the issuer through the use of underwriters' research reports.

5 Are there any special rules that differentiate between primary and secondary offerings? What are the liability issues for the seller of securities in a secondary offering?

There are no special rules differentiating between primary and secondary offerings in the Public Offer and Prospectus Law. The issue of secondary offerings also requires a prospectus unless another prospectus by the company has been issued and approved, in which case a mini-information memorandum will be required.

However, there is a requirement that all secondary offerings are first offered to the existing shareholders of the company on a pro rata basis unless the general meeting of the company authorises by special resolution the offer of the securities directly to a third party or parties. This right of pre-emption may not be nullified by any relevant reference in the company's articles of association. Indeed, the Commission has requested companies with articles not containing the pre-emption clause to make appropriate amendments to include it.

6 What is the typical settlement process for sales of securities in a public offering?

The securities in Cyprus are in uncertified form and are managed by the central registry operated by the Cyprus Stock Market. This became necessary after the market boom of 1999, when such a great volume of transactions were made daily that the private companies could not keep up.

The issuer is obliged to issue statements to any shareholder or other security holder evidencing the investors holding of the shares or other securities. The Companies Law Cap 113, provides that such document must be provided to the shareholder at the latest within two months from the allotment or transfer of the securities onto the name of the investor.

Private placings

7 Are there specific rules for the private placing of securities? What procedures must be implemented to effect a valid private placing?

Law 114 (I) of 2005 section 4(3), provides the types of offer that do not require the publication of a prospectus and which offers can be considered as non-public offers. These provisions include any offer of shares:

- to professional investors (financial institutions, the government, large companies etc);
- to a limited number of investors;
- (• in packets or as a singular share requiring a consideration of at least €50,000 per investor, (provided that any unit or package may not be co-owned by more than one investor)

There are no provisions in the law requiring special procedures for private placements.

- 8** What information must be made available to potential investors in connection with a private placing of securities?

If an offer is exempt from the obligation to publish a prospectus according to the Prospectus Directive and to Law 114(I) 2005 and qualifies as a private placement, the relevant law (section 30 subsection 7) provides that where no publication and approval of a prospectus is required, material information provided by an issuer or an offeror and addressed to qualified investors or special categories of investors, including information disclosed in the context of meetings relating to offer of securities, shall be disclosed to all qualified investors or special categories of investors to whom the offer is exclusively addressed.

- 9** Do restrictions apply to the transferability of securities acquired in a private placing? And are any mechanisms used to enhance the liquidity of securities sold in a private placing?

There are no legislative requirements regarding the transferability of securities acquired in a private placement. However there is a practice of requiring lock-up deeds to be entered into as a prerequisite for the acceptance of applications for private placements. These vary in context and application depending on the company and the percentage of its shares offered by private placement.

The Cyprus Stock Exchange and the Cyprus Securities and Exchange Commission have viewed such arrangements sceptically as they are in effect a hindrance to the free availability of shares in the market. Generally, lock-up deeds must be disclosed and are only allowed if they constitute such a small fraction of the total freely available shares as to be of insignificant weight in the determination of the share prices through the market mechanisms.

Offshore offerings

- 10** What specific rules, if any, apply to offerings of securities outside the home jurisdiction made by an issuer in your jurisdiction?

The Cyprus Securities and Exchange Commission shall, at the request of the issuer or the offeror provide the competent authority of the host Member State, within three working days following that request or, if the request is submitted together with the draft prospectus, within one working day after the approval of the prospectus:

- a certificate of approval, attesting that a prospectus has been drawn up in accordance with the Cyprus Law 114 (I) of 2005;
- a copy of the approved prospectus by the Cyprus Securities and Exchange Commission.

These documents may be accompanied by a translation of the summary note which is drawn by and under the responsibility of the issuer or the person responsible for drawing up the prospectus.

Particular financings

- 11** What special considerations apply to offerings of exchangeable or convertible securities, warrants or depositary shares or rights offerings?

The Public Offer and Prospectus Law and the Directive do not apply to non-equity securities issued in a continuous or repeated manner by credit institutions provided that these securities are not subordinated convertible or exchangeable (Section 3(2)(s t)(i)).

The directive in preamble paragraph (12) defines convertible notes as falling within the definition of non-equity securities.

There are no special considerations that apply to offerings of exchangeable or convertible securities, warrants or depositary shares.

Underwriting arrangements

- 12** What types of underwriting arrangements are commonly used?

Both book building and fixed price underwriting arrangements are common in the CSE under the usual terms thereof.

- 13** What does the underwriting agreement typically provide with respect to indemnity, force majeure clauses, success fees and over-allotment options?

Indemnity provisions.

The underwriters will certainly require the issuer to provide them with an indemnity against all claims or losses arising out of the breach of the representations and warranties and any untrue statements or omissions contained in the prospectus. If the underwriter is also the sponsor then typically he will require representations and warranties concerning the information given to him to include in the prospectus. Typically the underwriter will require also an indemnity against all claims against him for his services as underwriter, save for gross negligence or fraud.

Section 53 of the Companies Law Cap 113 prohibits a company from giving financial assistance, whether directly or indirectly, to a person acquiring or proposing to acquire shares in the company including financial assistance given by way of an indemnity. Therefore there can be no general indemnity in any underwriting agreement for any losses to the underwriter if the latter is called upon to purchase shares in the company. If there is such an indemnity it will be considered void on the grounds of illegality.

There is of course no limitation to an indemnity or undertaking to pay damages for any breach of representation or warranty made by the issuer to the underwriter.

Force Majeure clauses

Force majeure clauses are quite common and include not only the usual war and act of God provisions but also events related to the financial markets, change of taxation, problems with the smooth operation of the stock market in which the shares will be offered etc.

Success fees

These depend on the underwriting agreement itself and are negotiated between the underwriter and the issuer.

Over-allotment provisions

Where the underwriter is also to undertake price stabilisation (for example in the context of an IPO) over-allotment provisions are often included in the underwriting agreement.

- 14** What additional regulations apply to underwriting arrangements?

With regard to the commission payable to the Underwriter the same must be authorised by the articles of the issuer and cannot exceed 10 per cent of the price at which the shares are offered. Any specific arrangements made in the underwriting agreements, including the commission payable with respect to the underwriting services to be provided to the issuer, must be disclosed to the

Update and trends

Since the adoption of the latest law on takeovers there are no laws in progress to our knowledge that would significantly alter the regulatory or statutory framework governing securities transactions.

There is however the proposal of the European Commission for a Transparency Obligations directive that will need to be followed by Cyprus as a member state and relevant legislation passed.

public.

Ongoing reporting obligations

- 15** In which instances does an issuer of securities become subject to ongoing reporting obligations?

At the time when the issuer becomes listed on the Cyprus Stock Exchange it also becomes subject to ongoing reporting obligations. During the period of the examination of the issuers' application for listing the issuer must keep the Commission informed of all facts relevant to the application.

- 16** What information is a reporting company required to make available to the public?

All sensitive or 'inside' information must be disclosed. This is any information that a reasonable investor would use in order to reach his investment decision either in terms of holding onto the securities or selling them in the market as well as any information which is important for the due operation of the market mechanisms in the determination of the price of the shares of the issuer.

The CSE law 14(I)/1993, specifically provides that all contracts with related persons or entities must be disclosed if their value is above C£100,000 (approximately €172,500) per year per person or group of related persons.

Anti-manipulation rules

- 17** What are the main rules prohibiting manipulative practices in securities offerings and secondary market transactions?

The Market Abuse Directive of the European Union (2003/6/EC), implemented by the Law on Insider Dealing and Market Manipulation (Market Abuse), No. 116(I) of 2005, applies in Cyprus, an EU member state, with all types of market abuse stated therein being prohibited practices for the Cyprus Stock Market.

As mentioned elsewhere, an issuer is prohibited from making misleading statements either within the context of a prospectus or in breach of the issuer's obligation to disclose important and/or sensitive information. Similarly, the withholding of such information is also prohibited. Failure to announce sensitive information or making a misleading statement amounts to a criminal offence and also creates civil liability for damages in favour of any proper recipient who suffers loss as a result of the issuer's breach of his obligations.

Under Law 116(I) of 2005, the offence of market manipulation is committed if a person takes any action or engages in any course of conduct which creates a false or misleading impression as to the market in, or the price of, any investments for the purpose of creating that impression of inducing another person to deal or not to deal in those investments.

The offences of making misleading statements and market manipulation are not mutually exclusive; liability can arise under both offences simultaneously.

Lastly, a person fraudulently using confidential information or passing on to another person confidential information regarding any security listed in the Stock Exchange, which is not generally available to the public through the announcements of the issuer or contained in the prospectus or otherwise, is guilty of a criminal offence.

Liabilities and enforcement

- 18** What are the most common bases of liability for a securities transaction?

The most common basis of liability for Securities transactions is breach of the regulations concerning abuse of the market and misleading announcements by the issuers that induce investors to acquire the shares.

Such liability in certain cases can amount to criminal responsibility as well as a civil obligation to refund the investment or pay damages (or both) for misrepresentation or breach of contract.

Patrikios Pavlou & Co

**Contacts: Stavros Pavlou
Lia Iordanou Theodoulou
Pavlos Kyriakides**

**e-mail: spavlou@pavlaw.com
e-mail: liordanou@pavlaw.com
e-mail: pkyriakides@pavlaw.com**

332 Agiou Andreou Street
3725 Lemesos
Cyprus

Tel:+357 2587 1599
Fax:+357 2534 4548
Website: www.pavlaw.com

19 What are the main mechanisms for seeking remedies and sanctions for improper securities activities?

Civil actions seeking remedies are usually based on misleading announcements that induced investors to acquire the shares or have otherwise affected their investment decisions. It is doubtful whether purely administrative breaches give rise to civil claims and in most cases they will not be held to do so.

The CSE Law as well as the Public Offers and Prospectus Law provide that whoever violates the mandatory provisions thereof is guilty of a criminal offence and can be prosecuted before a Criminal Court with possible imprisonment and/or fines being imposed depending on the type of the offence involved.

The Cyprus Securities and Exchange Commission can impose administrative sanctions, either *ex officio* or upon submission of any relevant complaint. The Cyprus Securities and Exchange

Commission has the power to impose administrative fines under section 30 of the Cyprus Securities and Exchange Commission (Establishment and Responsibilities) Law. Subject to the provisions of the section, the Cyprus Securities and Exchange Commission's power to impose administrative fines is limited to:

- legal persons;
- directors, managers or officials, if it is proved that the violation was their own fault, wilful omission or negligence; or
- legal persons and their directors, managers or officials, if it is proved that the violation was their own fault, wilful omission or negligence.

Where an administrative fine has been imposed, the offender is additionally liable for any damages, including loss of profits, caused to any person who responded to the public offer and purchased securities. This can be done through a civil action.