Chapter XX

CYPRUS

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I OVERVIEW OF GOVERNANCE REGIME

i Legislation and supervision

Corporate governance is relevant to both private and public companies. Nevertheless, this chapter will focus on corporate governance rules, applicable to public limited companies listed on the Cyprus Stock Exchange (CSE).

In Cyprus, the Department of the Registrar of Companies and Official Receiver (DRCOR) is responsible for the registration, compliance and winding up of companies, while the approvals for listing on the CSE are granted by the Cyprus Securities and Exchange Commission (CySEC).

CySEC is the independent public supervisory authority responsible for the supervision of the investment services market and transactions in transferable securities; its mission is to exercise effective supervision to ensure investor protection and the healthy development of the market.

The core legislative provisions are included in the Cyprus Companies' Law, Cap 113 (Companies' Law). This law initially mirrored the provisions of the UK Companies Act 1948, but it has not followed the subsequent amendments of the UK legislation. Cyprus courts, however, seem to follow to a great extent the UK-developed case law. The Companies' Law governs the provisions of a Cyprus company's memorandum and articles of association. Public and private companies may also adopt in whole or in part the model regulations contained in Table A of the Companies' Law.

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Common law principles also apply, such as those concerning the fiduciary duties of directors, or, for example, the duty to act in good faith and for the benefit of the company.

The relevant legislative framework, applicable to Cyprus-listed companies, also consists of:

a the Cyprus Securities and Stock Exchange Laws of 1993–2007, as amended (and relevant regulations);
b the Cyprus Securities and Exchange Commission Law 73(I)/2009, as amended;
c the Transparency Requirements Law 190(I)/2007, as amended (the Transparency Law);
d the Investment Services and Activities and Regulated Markets Law, 144(I)/2007;
e The Takeover Bids law of 2007, Law 41(I) of 2007 as amended (the Takeover Bids Law);
f the Inside Information and Manipulation of the Market (Abuse of the Market) Law, 116(I)/2005, as amended (the Market Manipulation Law); and
g the Corporate Governance Code (4th edition), April 2014 (the Code).

The Transparency Law, the Takeover Bids Law and the Market Manipulation Law have implemented the relevant EU Directives.

CySEC issues directives and circulars regularly, supplementing the relevant regulatory framework. Its main responsibilities include the supervision of the CSE and of issuers of listed securities, the licensing of investment firms and the imposition of administrative sanctions and penalties for infringement of the stock market laws and regulations.

Following the recession that hit the Cyprus stock market in 2000, the CSE issued in 2002 the first corporate governance code purporting to introduce a set of corporate governance principles, offering additional protection to the shareholders of listed companies. Currently, the fourth revised version of the code applies, issued in April 2014.

The Code contains a set of legal principles, rather than inflexible legal rules. It is only obligatory for companies listed on the Main Market and, in part, it is also mandatory for companies listed on the Parallel Market. Its aims include strengthening the monitoring role of the board in listed companies, protecting small shareholders, adopting greater transparency and providing timely information as well as sufficiently safeguarding the independence of the board in its decision-making. Private companies are not bound by its provisions but are encouraged to consider it as guidance and utilise it as a best practice model.

Moreover, Cyprus, as an EU member state, implements and complies in full with all relevant European directives and regulations.

ii Recent developments and trends

Recent studies indicate a positive tendency in adopting the Code, with almost 50 per cent of public companies complying at least partially with it.

The increase in the proportion of women on boards constitutes one of the main challenges in corporate governance. Currently, women represent 8.9 per cent of the board members of public listed companies, which is significantly lower than the EU

average. According to recent European Commission studies regarding the 20 largest listed companies in Cyprus, female chairpersons represent only 5 per cent thereof, while female board members represent 7 per cent thereof. In any case there is a higher level of female representation among non-executive directors. There has been an improvement in the proportion of female board members in recent years, however the European Commission considers the rate of change to be too slow. The target is for 40 per cent, by 2020, of the members of non-executive boards of publicly listed companies to be women.

Relevant challenges have also arisen out of the banking crisis of 2013. It has been identified that the weaknesses in corporate governance practices in Cypriot banks were an essential cause of the banking crisis. This has led to the widespread view that a stricter framework and higher standards of corporate governance are required, in order to promote correct behaviour in the interests of all stakeholders. To this extent in April 2015 legislation was passed to amend the provisions of the Companies' Law, relating to insolvency.

II CORPORATE LEADERSHIP

i Board structure and practices

Structure and composition of the board of directors

The Companies' Law provides for a standard one-tier board structure for all companies.

The Code provides that every listed company should be headed by an effective board of directors, leading and controlling the company. It should function on the basis of the principle of collective responsibility and none of its members should absolve themselves from responsibility.

Pursuant to section A.2 of the Code the board should include a balance of independent non-executive directors and remaining directors, such that no individual director or small group thereof can dominate the decision-making process. The board should contain a sufficient number of non-executive directors, with adequate abilities, knowledge and experience, so their opinion carries significant weight in the decision making.

The board exercises its power as a whole; in principle, such powers are not delegated to individual directors, except for the establishment of specific committees (analysed below). In any case, an individual director can represent and act on behalf of the company if so authorised by a board resolution, and an attorney can be appointed to represent the company pursuant to a power of attorney granted by the company, again following a relevant board resolution.

According to the Code, the roles of the chairman of the board and the chief executive officer should not be exercised by the same individual. The division of responsibilities between them should be clearly established, set out in writing and agreed by the board.

Legal responsibilities

The board of directors should meet regularly, at least six times per year, and these meetings should have a formal schedule of matters. The chairman is responsible for the proper

running of the meetings and should ensure that the items on the agenda are sufficiently supported by all available information. Moreover, the minutes should include all details regarding the resolutions taken and should be at the disposal of the directors as soon as possible, and in any case before the next meeting.

According to the Code, directors should decide on a number of matters especially reserved for them. Such matters include, *inter alia*: the objectives and strategic policy of the company; its annual budget and business plan; significant capital expenditures; mergers, acquisitions and allocations of part of the company's assets; the adoption and any changes in the application of accounting principles; and the material transactions of the company and its subsidiaries.

Directors who have a personal interest in a matter should declare such interest and, depending on the articles, they may be excluded from voting or may not be counted for quorum purposes.

The board has a duty to issue the annual report on corporate governance, which includes, *inter alia*, an assessment of internal control and other financial operational and compliance systems, a verification that the company has not violated any relevant laws and regulations, and a reference to any loans granted, any guarantees provided and to the company's accounts.

Communication with shareholders

As regards the relationship between directors and shareholders, the Code includes the principle that the board should use the annual general meetings (AGMs) to communicate with investors and encourage their participation. The chairman should ensure that the presidents of the respective committees are available to answer the shareholders' questions posed at the AGMs. Also, the agenda and the organisation thereof should allow for substantial dialogue.

Section D.2 of the Code provides that corporate governance practices should stem from the principle of equitable treatment of all shareholders, including minority shareholders, and the procedures at the general meetings should guarantee the equitable treatment of all shareholders. All information pertaining to the company should be distributed fairly, in a timely and costless manner to all shareholders, who should also be given timely and precise reports on all material changes concerning the company.

ii Remuneration

Cyprus companies should establish a formal and transparent procedure for developing a policy on executive directors' remuneration and for fixing the remuneration packages of individual directors. Directors should not be involved in deciding their remuneration.

The Code provides that a remuneration committee should be established, consisting exclusively of non-executive directors so as to avoid potential conflicts of interest, to make recommendations to the board on the context and level of remuneration and to determine specific remuneration packages. At least one member with knowledge and experience of remuneration policy should be included in the committee.

The remuneration of directors is in any case approved by the shareholders at a general meeting. The level of remuneration should be sufficient to attract, retain and motivate the directors necessary to run the company successfully, but a company should

not pay more than is necessary for such purpose. The remuneration of executive or managing directors should be in proportion to the remuneration of other executive or managing directors or other staff members of the company.

The Code recommends that a proportion of executive directors' remuneration should be structured so as to link rewards to corporate and individual performance.

If part of the remuneration is related to performance, this part should be designed to align the directors' interests with those of shareholders and to provide them with keen incentives to perform at the highest levels. Performance criteria should be based on the long-term viability of the company and include non-financial criteria relating to creating long-term value at the company.

In any case, Regulation 76 of Table A of the Companies Law provides that the general meeting is able to determine the directors' remuneration. Also pursuant to Section 188 of the Companies' Law, the relevant details must be included in the financial statements presented before the general meeting for approval.

iii Committees

The Code suggests the establishment of three different board committees; nevertheless, it encourages the board to form additional committees if necessary. Pursuant to Aection A.4.1 of the Code, a nomination committee should be established, responsible for leading the process for board appointments and making relevant recommendations to the board. Moreover, Section B.1.1 of the Code provides for the formation of the remuneration committee, which makes recommendations on the remuneration policy, while section C.3.1 of the Code provides for the establishment of the audit committee. This committee, *inter alia*, submits proposals for the appointment, termination and remuneration of the auditors and keeps under continuous review the scope and results of the audit, its cost-effectiveness and the independence and objectivity of the auditors.

iv Directors

Appointment and term of office

The principle is that there should be a formal and transparent procedure for the appointment of new directors. The board should consist of competent and suitable individuals. Section A.4.2 of the Code provides that the appointment of suitable and competent persons should also take into consideration their honesty and integrity as well as their knowledge and experience.

As outlined above, the procedure for appointments is led by the nomination committee. Non-executive directors should be appointed for a specific term and their re-election should not be automatic. All directors should be subject to election by the shareholders at the first AGM after their appointment, and to re-election thereafter at intervals of no more than three years.

The first directors are appointed either by being named in the articles of association or pursuant to a regulation that provides subscribers with the relevant power to appoint them. Subsequent directors are elected by the shareholders as prescribed in the articles. It is also customary that the board is entitled to appoint a director for the purposes of filling a casual vacancy or as an addition to the existing directors, provided that the maximum number of directors specified in the articles is not affected.

Section 178 of the Companies' Law provides that a company can, by ordinary resolution, remove directors before the expiration of their period in office. However, the director concerned has the right to submit written representations.

Role of non-executive directors

The involvement of non-executive directors in the management of the company is essential since it ensures that the board remains balanced, as to avoid situations where a single director dominates the decision-making process.

The independence of non-executive directors is safeguarded by the Code itself, since it sets certain minimum requirements for their appointment. For example, a non-executive director should not have any business or close family ties with other members of the board or shareholders, or any other material relationship with the company that by its nature may affect his or her independent and unbiased judgment. Also, a non-executive director should not have been an employee of the company during the past five years.

The role of non-executive directors is also important with regards to their participation in the various board committees, since such participation safeguards transparency, especially in the appointment and remuneration process, and assists the avoidance of possible conflicts of interests.

Legal duties and liability of directors

In general, directors must act in good faith, in the best interests of the company and for the benefit of its shareholders as a whole, and in doing so they should consider the long-term consequences of their decisions and the impact on the company's reputation in the market.

Directors owe a fiduciary duty to the company to manage it pursuant to the Cypriot and European laws and regulations, and to its memorandum and articles of association. When in breach of this duty, they are liable for any loss and damage caused by illegal or *ultra vires* acts.

Furthermore, a duty of care in common law exists, which includes a duty not to act negligently in managing the affairs of the company. Nevertheless, pursuant to Section 383(1) of the Companies' Law, if directors act honestly and reasonably according to the specific circumstances of the case, they cannot be held liable.

The directors are also responsible for the monitoring and settlement of any matters of conflicts of interest between executive directors and shareholders, including cases of mismanagement of assets or transactions with associated parties.

Furthermore, a number of statutory provisions impose various notification, disclosure and reporting duties on the directors, especially regarding the acquisition and disposals of shares in the company. A breach of statutory duties may result in sanctions and penalties.

III DISCLOSURE

The primary sources of the corporate governance disclosure requirements, other than the Companies' Law, include the Code, the Transparency Law and the Market Manipulation Law.

In any case all Cyprus companies are subject to certain disclosure and notification requirements set out in the Companies' Law such as the maintenance of corporate registers, including the registers of shareholders, directors and charges, and the submission of annual returns with the DRCOR attaching the audited financial statements of the previous year.

i The Code

The Code imposes an obligation on listed companies to include in the annual report a report on corporate governance by the board. In the first part of the report the company should specify whether it complies with the Code and the extent to which it implements its principles. The second part of the report should include a confirmation that the company has complied with the Code's provisions and, in the event that it has not done so, it should provide adequate explanation for its non-compliance.

Moreover, the company's report on corporate governance should contain a statement of the remuneration policy and related criteria as well as details of the remuneration of the executive and non-executive directors. It should be submitted to the shareholders each year and it is considered the main vehicle through which the company reports to its shareholders on the directors' remuneration.

It is also the board's responsibility to submit a balanced, detailed and understandable assessment of its position and prospects. This extends to all public reports, reports to regulators and information required to be presented by statutory requirements.

ii The Transparency Law

The Transparency Law applies to legal entities whose transferable securities have been admitted to trading on a regulated market. A number of disclosures should be made in relation to such entities.

Financial disclosures

At the latest within four months after the end of each financial year, every company must disclose its annual financial report, including its annual financial statements, the directors' report, and a statement by the board and the general and financial directors confirming that the financial statements have been prepared according to the applicable accounting standards, that they provide a true and fair view of the financial position of the company, and that the director's report provides a fair view of the development and performance of the business of the company. This report should remain available to the public for at least five years.

Moreover, at the latest within two months after the end of the first half of the financial year, every issuer of shares or debt securities must disclose half-yearly financial reports containing interim financial statements; an interim management report that contains, *inter alia*, a detailed and extensive economic analysis, a declaration of income

deriving from extraordinary activities, comparative economic analysis with the previous year, and the principal risks and uncertainties for the year to come; and a relevant statement by the board.

An interim management statement must be published during the first and second halves of the financial year, including an explanation of the material events and transactions that have taken place and their impact on the financial position of the entity, together with a general description of the financial position and performance thereof.

The Transparency Law also provides for the publication of quarterly financial reports in the event of specific circumstances.

Indicative results must also be disclosed regarding the net gain or loss after tax for the full financial year within two months of the end of the financial year, and must be accompanied by a report including a detailed and extensive economic analysis, a declaration of any income from non-recurring or extraordinary activities, an extensive, comparative economic analysis of the figures for the period in comparison with previous periods evidencing the changes and differences between the two periods, and any other substantive information.

Entities that exclusively issue debt securities that are traded on a regulated market whose nominal value per unit is at least €100,000, or the equivalent in another currency, are exempt from the above requirements.

Ongoing obligations

A company acquiring or disposing of its own shares must disclose, at the latest within the next business day, the total amount of shares being acquired or disposed of, provided they amount to or exceed 5 per cent or 10 per cent of the total voting rights in the case of an acquisition, or amount to or fall below these thresholds in the case of a disposal. Furthermore, any change to the rights attached to a class of shares must be disclosed immediately. The company must also disclose, at the end of the relevant calendar month, an increase or decrease in its total capital and voting rights.

Upon receipt of any notification, the company must disclose all the information contained therein as soon as possible and in any event before the close of the next business day following receipt of the notification.

Where a proposal for the amendment of the company's memorandum and articles is made, the company must, as soon as possible, notify CySEC and the regulated market upon which the securities are traded and in any case before the general meeting for the examination of the relevant amendment is called.

Disclosures relating to the acquisition or disposal of shares that attach voting rights

Where a shareholder acquires or disposes of shares attaching voting rights, the company and CySEC must be notified of the percentage of rights held by such shareholder if, in the case of an acquisition, the percentage of voting rights reaches or exceeds specific thresholds or, in the case of a disposal, the voting rights reach or fall below the relevant thresholds. Similar obligations arise where an equivalent event occurs that alters the breakdown of the voting rights and where the voting rights are, *inter alia*, held by a third party. Similar provisions apply where financial instruments held in the company entitle

the holder to acquire shares attaching voting rights. In such cases the obligation to notify arises when, at the date of maturity, the holder has an unconditional right to acquire the underlying shares or the discretion to acquire such shares.

iii The Market Manipulation Law

Further disclosure obligations are imposed by the Market Manipulation Law, aiming to eliminate insider dealing and market manipulation. According to Section 11 companies that deal in financial instruments traded on a regulated market should publish as soon as possible inside information that directly concerns them and significantly affects the prices of the relevant instruments. Such information (or any subsequent alteration of such information) should be published by announcement to CySEC, to the CSE, which will then publish it on its website and by announcement on the website of the issuer.

iv Information on websites

The Companies' Law provides that the name, registration number, registered office and nature of a company (i.e., whether public or private) must be published on its website.

Moreover, a company whose shares are admitted on a regulated market should publish on its website all information that it is obliged to disclose under the Transparency Law, together with any other information as specified in circulars issued by CySEC. The company should also communicate such information to CySEC, which may publish the information on its website.

Also as described in subparagraph iii above, issuers of transferable securities should publish, as soon as possible, inside information on their website and keep it there for at least five years.

v Role of the auditors

Pursuant to the Companies' Law, every company must appoint its auditors at the AGM, while every company required by the Companies Law to prepare consolidated financial statements and every public company and private company (except small companies) must have its financial statements audited. In practice, and since the tax authorities require tax computations to be supported by audited financial statements, all Cyprus companies should have their financial statements audited.

Pursuant to the Transparency Law the auditors must review and report on the periodic financial statements that must be disclosed, as outlined above.

The auditors must be properly licensed to perform the audit and, while doing so, they must be independent from the company, not be involved in the decision-making body and not have a direct or indirect economic, professional or other relationship with the company.

IV CORPORATE RESPONSIBILITY

It is evident that awareness of corporate social responsibility (CSR) in Cyprus is constantly increasing and attempts are being made to integrate the principles of CSR

into the internal policies of Cypriot entities. Therefore, Cypriot entities are moving towards a more active role in achieving responsible business practices and ensuring that their financial goals are not detrimental to social improvement.

The move towards more CSR-friendly practices is being promoted by the government of Cyprus, which is taking active steps in creating awareness of CSR.

More specifically, the government has appointed the Directorate General for European Programmes, Coordination and Development (DG EPCD) as the national coordinator for the promotion of CSR in Cyprus. Steps taken by the DG EPCD include issuing a National Action Plan for 2013–2014, which was approved by the Council of Ministers for the purpose of evaluating and promoting CSR, and aiming to introduce a suitable framework for the systematic development and promotion of CSR practices in both the private and public sectors.

As the responsible public authority, the DG EPCD is expected to carry out a supporting role through an intelligent combination of policy measures and, where necessary, complementary regulations. The measures include the dissemination of CSR guides, the establishment and enhancement of the Cyprus CSR Network website in collaboration with the Cyprus Chamber of Commerce and Industry, the Technological University of Cyprus and the Planning Office, the organisation of seminars, promoting CSR in the academic environment and giving awards for best practices.

V SHAREHOLDERS

A shareholder of a company is a natural or legal person that has legal title to the shares of a company and is able to enjoy and exercise the rights attaching to such shares.

i Shareholder rights and powers

The powers that shareholders have under Cypriot law are considerably less extensive than those of the board of directors. The board of directors, unlike the shareholders, is legally bestowed with the power to manage and control a company, in support of the fundamental principle that a company is a separate legal entity that operates independently from its shareholders. The rights and powers of shareholders are, nevertheless, substantial.

While some of the powers of a shareholder are statutory deriving directly from the Companies' Law, certain others vary depending on the regulations set out in the articles of association of a company (the articles).

The rights and powers of shareholders are exercised through their right to attend and vote at general meetings of a company. This entails the passing of resolutions in one of the following manners, depending on the matter to be addressed and based on the provisions of the Companies' Law as well as the regulations adopted in the articles:

a ordinary resolutions, which require a simple majority;

b extraordinary resolutions passed by a majority of not less than three-quarters of the members;

c special resolutions, which also require a majority of not less than three-quarters of the members, provided 21 days' notice is given specifying the intention to propose the resolution as a special resolution; and

d such other voting mechanics as may be set out in the articles (only applicable with respect to non-statutory powers).

In all the above cases, the percentages are calculated based on the members entitled to vote and who are present and voting at the relevant meetings, either in person or by proxy.

The statutory powers that pertain to the shareholders include, *inter alia*, the following:

a removing directors before the expiration of their period of office;
b increasing or reducing the authorised share capital of the company;
c altering the memorandum of association and the objects contained therein;
d changing a company's name;
e varying rights attaching to classes of shares;
f cross-border mergers;
g amalgamations and schemes of reconstruction;
h voluntary liquidation of the company; and
i holding the annual general meeting for consideration of, *inter alia*, the financial statements, dividend payments (provided such dividend payments are proposed by the directors), appointment and remuneration of auditors, and appointment or removal of directors who have been appointed to fill a vacancy.

Aside from the above statutory powers, shareholders are entitled to have further rights reserved to their competence. Such rights must, however, be included in the articles in order to be binding on the company otherwise they merely remain contractual rights as agreed between the shareholders. The purpose of the articles is to regulate the relationship among the members and between the members and the company. Any such non-statutory rights must not intervene with the statutory rights that pertain to the directors, otherwise such rights will be considered unenforceable.

The rights of shareholders are directly linked to the shares held by them. Specifically, the voting rights each shareholder has are dependent on the rights attaching to those shares (i.e., voting or non-voting rights, rights to dividends, etc.); such rights are specified in the articles. Furthermore, the percentage of shares held by the shareholder determines the controlling power of such shareholder in the decision-making process, unless the articles provide for weighted voting rights with respect to specified matters.

Notwithstanding the above, both the Code and the Companies' Law embody the general principle that shareholders who hold shares of the same class shall be treated equally, and provisions in the articles to the contrary shall be void. The articles and the law contain a number of provisions to ensure that this principle is respected, including rights of pre-emption, sufficient notices for general meetings, etc. The Code specifically provides that all shareholders of the same category should be treated equally and have the same voting rights.

ii Shareholders' duties and responsibilities

The duties and responsibilities of shareholders towards the company, as opposed to those of the directors towards the company, are limited. As mentioned above, Cypriot

companies are separate legal entities that have a separate personality from their shareholders. Shareholders are, therefore, generally not involved in the day-to-day management of a company and thus do not owe any duties and responsibilities to the company or to the other shareholders. In fact, with limited liability companies, the liability of shareholders is limited by the memorandum to the amount, if any, which is unpaid on the shares respectively held by them. Shareholders can be held liable only in exceptional circumstances, such as in cases of fraud. In such cases the corporate veil can be pierced.

A primary duty of the shareholders is to ensure that the company has a management body. On the incorporation of the company the directors are either named in the articles by the shareholders or a clause is inserted in the articles giving the shareholders a right to appoint them. Thereafter, the shareholders should ensure that the number of directors does not fall below the minimum requirement set out in the articles, otherwise this will automatically result in the company ceasing to be operational and thus being struck off the register by the DRCOR.

Furthermore, the shareholders have a duty to pay the subscription price for the shares allotted to them. If a shareholder fails to pay the subscription price, the articles may prohibit such shareholder from exercising its voting rights and the directors may forfeit the shares, in which case such shareholder ceases to be a member of the company. This, however, does not affect the continuity of a company (provided, of course, that the company has other shareholders or, if not, such shares are transferred to a new shareholder), since the company as a separate legal entity can take steps through its management board to resolve the issue.

Although shareholders are not necessarily obligated to attend and vote at general meetings, this constitutes their main task. This ultimately ensures that the shareholders retain a certain level of control over the company through exercising their voting rights. In particular, the shareholders are required to hold AGMs. The first AGM must be convened within 18 months from the date of incorporation of the company; thereafter, the AGM must be convened within 15 months of the last AGM. The issues discussed at the AGM include the consideration of the financial statements, the auditors' and directors' reports, the composition of the board of directors, and the appointment and remuneration of auditors.

With respect to public companies, the Companies' Law' provides that, within a period of not less than one month, nor more than three months, from the date at which the company is entitled to commence business, it is required by law to hold a general meeting of the members of the company – the 'statutory meeting'.

iii Shareholder activism

Although the management and control of a company is vested in the board of directors, the shareholders nevertheless have the power to put pressure on the company's management body.

The most substantial power vested in shareholders is that they have direct control over the composition of the board of directors and, although they do not have control over what decision or action is taken by the directors, this can nevertheless affect the decisions taken by the directors in an indirect manner.

In addition, both the Companies' Law and the Code promote the giving of information to shareholders. The Companies' Law specifically provides that shareholders have the right to inspect or to be provided with, as applicable, the following information, upon payment of a fee:

a the register of the holders of debentures of the company pursuant to Section 84 of the Companies' Law;

b the register and index of the members of the company pursuant to Section 108 of the Companies' Law;

c the minutes of proceedings of all general meetings of the company to date, pursuant to Section 140 of the Companies' Law.

d a certified true copy of all audited financial statements, directors' reports and auditors' reports to date, pursuant to Section 152(2) of the Companies' Law;

e the register of charges, book of mortgages and copies of all instruments creating a charge, and the particulars of all mortgages requiring recording (including with the Registrar of Companies by virtue of Section 90 of the Companies' Law, as well as in the internal register of charges and book of mortgages pursuant to Section 99 of the Companies' Law), pursuant to Section 100(1) of the Companies' Law;

f the register of directors' shareholdings, pursuant to Section 187(5) of the Companies' Law; and

g the register of the directors and secretaries of the company, in accordance with Section 192(6) of the Companies' Law.

Generally, under the Companies' Law, all EGMs are convened by the board of directors, therefore an EGM cannot normally take place unless convened by the board. As an exception to this rule, the Companies' Law provides that, notwithstanding anything in its articles, upon the request of shareholders holding not less than one-tenth of the paid-up capital that carries the right of voting at general meetings or, in the case of a company not having share capital, members of the company representing not less than one-tenth of the total voting rights of all the members with a right to vote at general meetings, the directors of a company shall proceed to convene the EGM.

Despite the fact that Cypriot courts are reluctant to interfere with the internal management of a company, the shareholders have the power to bring the following actions:

a a personal action against the company in relation to a breach of the company's duties towards the shareholders; or

b a derivative action – available only where there is an alleged fraud and the wrongdoers are in control of the company. In this case, the shareholder brings an action on behalf of the company.

In addition to the above, the Companies' Law provides statutory protection to a shareholder. In accordance with Section 202 of the Companies' Law, any member of a company who complains that the affairs of the company are being conducted in a manner oppressive to some of the members (including him or herself), may cause an application to be made to the court by petition for an order. In such case the court, if it considers it just and equitable to do so, may issue such order as it thinks fit, including an order (1) regulating the conduct of the company's affairs in the future, (2) for the purchase of the

shares of any members of the company by other members of the company, (3) for the purchase of the shares of any members by the company and the reduction accordingly of the company's capital, or (4) otherwise.

iv Takeover defences

Generally certain takeover defense tactics exist under Cyprus law however these have been limited by the Takeover Bids Directive 2004/25/EC (the 'Takeover Directive'), which was implemented in law 41(I)/2007 and which seeks to safeguard efficient takeover mechanisms by introducing two key concepts, namely, the breakthrough principle and the board neutrality principle, allowing the bidder to render some pre-existing restrictions inoperable, to remove the board and to change the articles in order to override frustrating actions.

Shareholder- and voting rights plans, and similar measures

The defensive measures under Cyprus law include restrictions on the transfer of securities (either in the articles of the target or contractually agreed between the target company and the shareholders), restrictions on voting rights or weighted voting rights.

Cyprus has taken a more shareholder-friendly approach when implementing the provisions of the Takeover Directive by giving shareholders the option to resolve on disapplying pre-existing restrictions which can make an offer inoperable (such as removing the board and changing the articles in order to override frustrating actions against a potential bid). Instead of making the disapplication of these provisions mandatory under statute the Takeover Law simply allows the target to elect to disapply such provisions by the passing of a shareholders resolution. This ultimately gives the shareholders a level of control over the bid depending on whether the offer is hostile or not. The shareholders may specifically resolve the following (breakthrough principle):

a Any restrictions on the transfer of securities, provided for in the articles of the target company shall not apply vis-à-vis the offeror during the time allowed for acceptance of the bid.

b Any restrictions on the transfer of securities provided for in contractual agreements between the target company and holders of its securities or between holders of its securities, entered into after 21 April 2004, shall not apply vis-à-vis the offeror during the time allowed for acceptance of the bid.

c Restrictions on voting rights provided for in the articles of the target company shall not have effect at the general meeting of shareholders which decides on any defensive measures. In such general meetings every security gives to its holder the right of one vote. Restrictions on voting rights provided for in contractual agreements between the target company and holders of its securities entered into after 21 April 2004, shall not have effect at the general meeting which decides on any defensive measures. Multiple voting securities shall carry only one vote at the general meeting deciding on any defensive measures.

This does not apply to securities where restrictions on voting rights are compensated for by specific pecuniary advantages:

a Where following the bid, the offeror holds 75 per cent or more of the capital carrying voting rights, no restrictions on the transfer of securities or on voting rights nor any extraordinary rights of shareholders concerning the appointment or removal of board members provided for in the articles of the target company shall apply. Multiple vote securities shall carry only one vote each at the first shareholder meeting following the closure of the bid, called by target company in order to amend the articles or remove or appoint board members. To that end, the offeror shall have the right to convene a general meeting at short notice, provided that such meeting does not take place within two weeks of notification. This does not apply to securities where restrictions on voting rights are compensated for by specific pecuniary advantages.

b Where rights are removed on the basis of the above provisions of Section 35, equitable compensation must be provided for any loss suffered by the holder of those rights. The terms of such compensation and payment shall be determined between the bidder and the shareholder whose rights are affected.

Therefore on the basis of the above, the shareholders have control as to whether they will allow defensive measures to frustrate the bid or whether they will resolve to dissapply such measures.

White knight defence

Competing take-over bids are possible provided the competing offeror announces its firm decision any time before the beginning of the fourteenth day before the expiration of the time allowed for acceptance of the original takeover bid and its revision. In such case if the original offeror does not exercise its right to recall its own bid, the time allowed for acceptance of the original bid is automatically extended until the expiration of the time allowed for the acceptance of the competing bid. The recipients may withdraw the acceptance of the original bid if a competing bid is made provided the offeror of the original bid is notified in writing of the withdrawal and the competing bid is validly accepted, in which the letter informing the original offeror of the withdrawal is included as an attachment to the acceptance of the competing bid.

Furthermore, the board is allowed to seek alternative bids; however, as soon as the board of the offeree company becomes aware that a bid is imminent and until the expiration of the time allowed for acceptance or the revocation or cancellation of the bit, it may not, without the prior authorisation of the general meeting of the shareholders, take any action that may result in the frustration of the bid.

Staggered boards

Pursuant to Section 178 of the Companies Law a company may by ordinary resolution remove a director before the expiration of his period of office, notwithstanding anything in its articles or in any agreement between it and him. Therefore, if the new shareholder has 50 per cent plus one vote in the company or if his or her shares can be combined with the votes of another shareholder he or she may remove a director in accordance with the provisions set out in Section 178.

Furthermore, the shareholders may resolve that where following the bid, the offeror holds 75 per cent or more of the capital carrying voting rights, no restrictions on

voting rights nor any extraordinary rights of shareholders concerning the appointment or removal of board members provided for in the articles of the target company shall apply. Multiple vote securities shall carry only one vote each at the first shareholder general meeting following the closure of the bid, called by target company in order to amend the articles or remove or appoint board members. To that end, the offeror shall have the right to convene a shareholders general meeting at short notice, provided that such meeting does not take place within two weeks of notification.

v Contact with shareholders

The Code generally promotes contact with shareholders through the drawing up of reports. The Code specifically provides that shareholders should be given timely and precise reports on all material changes concerning the company, including its financial condition, performance, ownership and corporate governance. The report should contain, *inter alia*, the following material information:

a the financial statement of the company;
b the targets and activities of the company, if diversified;
c the major shareholders and voting rights;
d material foreseeable risks;
e material issues concerning employees and shareholders;
f the structure of governance and policies; and
g any unusual transactions of the company.

The Code further provides that the board of directors should appoint a management executive or an officer of the company as an investor liaison officer so as to ensure that all information pertaining to the company is distributed fairly, in a timely fashion and costless to all shareholders. The Code further encourages constructive dialogue between institutional investors and the companies and specifies that the board of directors should make sure that the agenda and the overall organisation of the general meetings do not eliminate substantial dialogue and the decision-making procedure.

In addition to the above, the Code provides for the submission of the following reports:

a a report by the board of directors on corporate governance, which should be included in the annual report with respect to listed companies, stating whether the company complies with the Code and the extent to which it implements its principles; and
b a remuneration report that is submitted to the shareholders each year as part of the company's annual report. This report should be the main vehicle through which the company reports to shareholders on directors' remuneration.

The Companies' Law generally promotes the communication of information through electronic and telecommunication means, particularly with respect to public listed companies. Section 127A of the Companies' Law provides that, with respect to companies listed in a regulated market, a notice for the calling of a general meeting shall be issued, free of charge, in a manner ensuring fast access to it on a non-discriminatory basis, using such media as may reasonably be relied upon for the effective dissemination

of information to the public throughout the EU Member States. For the purposes of the question and answer procedure, a company listed in a regulated market shall be deemed to have given an answer if the relevant information is already available on its website in a question and answer format.

Furthermore, provided certain conditions are satisfied, the Companies' Law gives a member of a company listed in a regulated market the right, through the use of electronic means or postal services and at the address designated by the listed company in a regulated market, to:

a put items on the agenda of the annual general meeting, provided that each item is accompanied by reasons justifying its inclusion, or a draft resolution to be adopted at the general meeting; and

b table draft resolutions as an item on the agenda of a general meeting.

Last but not least, the Companies' Law additionally provides that a company listed in a regulated market may offer participation in the general meeting by electronic means, including:

a mechanisms for casting votes, whether before or during the meeting. The mechanisms adopted shall not oblige the member to be physically present at the meeting or to appoint a proxy who shall be physically present at the meeting;

b real-time transmission of the general meeting; and

c real-time two-way communication enabling members to address the general meeting from a remote location.

VI OUTLOOK

It is generally recognised that one of the main causes of the banking crisis in Cyprus was failed corporate governance and risk management strategies. The financial crisis has highlighted the significance of following corporate governance rules and the use of such rules as preventative measures and tools for creating a risk-efficient economic environment. It has been recognised that, in a bid to attract investors following the crisis, companies must actively promote transparency, risk management and corporate governance. This is particularly important for increasing investor confidence.

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