

INTERNATIONAL FRANCHISING

Second Edition

DENNIS CAMPBELL
General Editor

JURIS

Cyprus

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Cyprus

*Elias Neocleous and Ramona Livera
Andreas Neocleous & Co LLC
Limassol, Cyprus*

Introduction

Economic and Business Infrastructure

Cyprus is the third largest island in the Mediterranean Sea, with an area of 9,251 square kilometers. It is strategically located in the Eastern Mediterranean at the crossroads of Europe, Asia, and Africa. Its total population is estimated at 1.1 million, of whom approximately 840,000 live in the area controlled by the Republic of Cyprus according to the 2011 census. Up-to-date information for the occupied area is unavailable.

The island was invaded in 1974 by the Turkish army and about a third of the territory remains under Turkish occupation. The so-called Turkish Republic of North Cyprus is recognized only by Turkey, and all the references in this chapter to Cyprus relate to the legitimate government of the Republic of Cyprus. While political uncertainty continues to surround "the Cyprus problem", and it is hoped that there will be a satisfactory resolution in the near future, day-to-day business life is unaffected by the issue.

Cyprus is very well placed as an international business and financial center. Apart from its strategic geographical location, relaxed way of life, and attractive climate, it offers an excellent commercial infrastructure, a highly educated English-speaking labor force, a business-friendly environment, particularly in the area of taxation, a high standard of living, and a low rate of crime. Living costs are moderate, and good airline connections and telecommunications and increasing alignment with the European position in matters of culture and trade make it an effective bridge between West and East. Its time zone is seven hours ahead of New York, two hours ahead of London, one hour behind Moscow, and five hours behind Beijing. The official languages are Greek and Turkish, but English is the lingua franca of business.

Cyprus is an independent, sovereign republic with a presidential system of government and a written constitution which safeguards the rule of law, political stability, human rights and the ownership of private property. Cyprus has been a member of the European Union (EU) since 1 May 2004. In preparation for EU membership, Cyprus made significant structural and economic reforms that transformed its economic landscape and created a modern, open, and dynamic

business environment. Since joining the EU, Cyprus has successfully faced the challenge of European integration, and has established itself as the natural portal for inward and outward investment between the EU and the rest of the world, particularly the rapidly-growing economies of Russia, Eastern Europe, India, and China. Cyprus is a member of the Commonwealth, the Council of Europe, the International Monetary Fund (IMF), the United Nations (UN), the World Bank, and the World Trade Organization (WTO), and a founder member of the Organization for Security and Cooperation in Europe.

On 1 January 2008, Cyprus adopted the euro as its currency.

The legal system, modelled on the English common law system since independence in 1960, is harmonized with the *acquis communautaire* of the EU. Cyprus is a signatory to a large number of international conventions and treaties, including an extensive network of double taxation treaties covering 50 countries.

Cyprus is a low-tax jurisdiction whose fiscal and regulatory regimes are aligned with EU norms, particularly the Code of Conduct for Business Taxation, and fully satisfy the requirements of the Organization for Economic Cooperation and Development (OECD), the Financial Action Task Force of the OECD, and the Financial Stability Forum. It has been on the OECD White List of jurisdictions complying with international best practice since its inception. The regulatory framework is designed to maintain the respectable and responsible reputation of Cyprus while allowing businesses to conduct their activities in an environment as free as possible from onerous bureaucratic restrictions.

Commercial Environment

Cyprus has an open, free-market, service-based economy with some light manufacturing. According to the International Monetary Fund, in 2012, GDP per capita was US \$27,086, thirty-seventh in the world and on a par with Malta and the Czech Republic. The United Nations Human Development Index for 2012 ranks Cyprus thirty-first in the world as regards quality of life.

The government's economic policy is aimed at promoting and maintaining favorable investment conditions and supporting private initiatives. Foreign participation in the economy has been officially encouraged and liberalized for many years. Administrative procedures have been simplified and, in all but a few strategic or specifically regulated industries such as banking, there are no limits on foreign investment. Citizenship is available for significant investors and there is a growing awareness among foreign corporations and individuals of the advantages of using Cyprus as a business base for both inward and outward investment.

Cyprus has twenty-four bilateral treaties for the encouragement and reciprocal protection of investments and more are under negotiation. The purpose of the treaties is to create and maintain favorable conditions for investments made by nationals of one treaty state in the other treaty state for their mutual benefit on a long-term basis, to guarantee the protection of such investments (including the

repatriation of profits), and to establish procedures for settling any disputes that may arise.

World-class professional and business services are available: there are many well-qualified lawyers who are experienced in all aspects of company law and tax planning and the principal international accounting firms have offices in Cyprus, as well as insurance, financial services, and fiduciary companies. Limassol, Cyprus's commercial and shipping center, is among the world's most important third-party ship management centers. The Cyprus telecommunications system is excellent and costs are among the lowest in Europe.

The country's two international airports, situated near Larnaca and Paphos, which serve numerous international airlines, were reconstructed and upgraded in the past few years. Seaborne traffic is served by the two multi-purpose ports of Limassol and Larnaca, which are used as warehouse, distribution, and container transshipment centers.

Doing Business in Cyprus

In General

In general, there are no restrictions on direct investments by natural or legal persons from EU Member States except in regulated sectors such as financial services. Investors from the EU wishing to register a company in Cyprus may do so through a local lawyer.

They also may acquire shares in existing companies. Investors from the EU also may acquire up to 100 per cent of the share capital of a company listed on the Cyprus Stock Exchange. As noted below, there are limited exceptions in strategically important or regulated sectors.

Direct Investment by Non-European Union Citizens

Foreign direct investment in Cyprus from non-EU countries has been fully liberalized since 1 October 2004. Except in regulated sectors such as financial services, there are no minimum investment requirements or limits on the maximum percentages of participation. There is no distinction between companies carrying on business outside Cyprus (previously known as offshore or international business companies) and companies carrying on business inside Cyprus.

One of the practical effects of the liberalization is that non-EU investors wishing to register companies in Cyprus or buy shares in existing Cyprus companies no longer need to seek approval from the Central Bank of Cyprus.

The rules for indirect investment are identical to those applied to EU investors. Up to 100 per cent of the share capital of a company listed on the Cyprus Stock Exchange may be acquired.

Restricted Investment Sectors

For both EU and third-country investors, a small number of restrictions do exist in respect of acquisitions in areas related to national interest. In the banking sector, the maximum equity participation is 50 per cent, and no individual may own, directly or indirectly, more than 9 per cent of a bank's share capital without the approval of the Central Bank of Cyprus. Specifically, there are restrictions on investment in the areas of real estate, tertiary education, public utilities, radio and television stations, newspapers, magazines, and airlines.

The Acquisition of Immovable Property (Aliens) Law, which regulates the purchase of immovable property in Cyprus by non-Cypriots, is a relic of British rule, and the restrictions on foreign ownership of immovable property have all but disappeared.

Since Cyprus joined the EU in 2004, the restrictions on EU citizens have been removed and EU citizens and companies incorporated in other EU member states are free to acquire property on the same terms as Cyprus citizens. Only third-country nationals and Cyprus companies controlled by them are required to go through the approval procedure set out in the law, which in any event is generally a formality.

The provision of public utility services is covered by specific legislation, such as the production and distribution of electricity, telecommunication services, and postal services. With the exception of universities, all private tertiary education institutions can be founded and operated only by EU nationals.

Based on the registration requirements of certain medical professions, only Cyprus nationals or other EU nationals are allowed to exercise their profession in Cyprus. Such professions include, but are not limited to, dentists, dental technicians, psychologists, opticians, chemists, dieticians, physiotherapists, and psychiatrists. Non-EU nationals can individually obtain up to 5 per cent of the total share capital of broadcasting corporations (television and radio stations), while the total percentage of share capital owned by non-EU nationals is limited to twenty-five per cent.

Import Controls and Duties

As a member of the EU and the EU Customs Union, Cyprus is committed to the free movement of goods, persons, services, and capital across EU Member States. The common EU customs tariff applies to goods imported from third countries.

Import restrictions are, therefore, introduced only where they are necessary on the grounds of public morality, public policy, or public security; protection of health and life of humans, animals, or plants; protection of national treasures possessing artistic, historic, or archaeological value; and protection of industrial and commercial property, provided that these grounds are not used as a means of arbitrary discrimination or as a disguised restriction on trade. Import restrictions fall into two categories. In the first, the importation of certain articles is

prohibited. In the second, there is a requirement for an import license. The main articles falling in the first category are those that could prove detrimental to the people, flora, or fauna of Cyprus. Thus, items such as firearms, daggers, narcotics, seditious publications, and certain agricultural products, such as raw vegetables, mushrooms, citrus fruits, vine plants, and grapes, are included.

The articles that may require import licenses appear in relevant lists published in the *Official Gazette*. These articles are of a varied nature, ranging from rubber gloves and matches to raw materials for medicine. Certain exports also are subject to licensing requirements, and the exporting of antiques is prohibited except under a special license from the Director of Antiquities.

Incentives

Successive Cyprus governments have been keen to encourage foreign investment in Cyprus. To facilitate this aim, a number of incentives have been established. These include the following:

- A favorable business environment, with well-educated human capital available at reasonable rates of pay, and world-class infrastructure and services;
- A low taxation environment underpinned by double-taxation treaties with the main economic powers as well as developing nations;
- Freedom from exchange controls, allowing profits, interest, and dividends from approved investments, capital invested, and any capital gains from the disposal of shares in such investments to be freely remitted overseas;
- Membership of the EU and the Eurozone, providing a base for the production and export of goods to the large EU market;
- Modern industrial estates, bonded factories and warehouses, and the Larnaca Free Zone (LFZ), close to the port and international airport, to which equipment and raw materials may be imported free of customs duty through which products manufactured in the LFZ may enter the domestic market on payment of the lowest preferential tariff;
- A framework of grants and other financial incentives; and
- A network of twenty-four bilateral treaties for the encouragement and reciprocal protection of investments, with more under negotiation.

International Business Entities

Until the end of 2002, Cyprus had a special tax regime for international business companies, i.e., companies incorporated and resident in Cyprus but having all their activities outside Cyprus. In preparation for EU accession, the old arrangements were phased out and, since 1 January 2003, there has been:

- A single corporation tax rate of 10 per cent for all companies registered in Cyprus;

- No geographical limitation on the exercise of any company's activities, whereby its income may be derived from any source, including a Cyprus-based source; and
- No restriction on the ownership of a company's shares.

Franchising in Cyprus

In General

Cyprus is a small market, which only in recent years has been transformed into the European model of modern consumerism. Its economy, which was previously based on agricultural production, turned successfully to manufacturing and the provision of services after the island's independence in 1960. The small size of the island's population and its limited spending on consumer goods during the economy's rebound period after 1974 accounted for the fact that Cyprus was often found lagging behind its European neighbors in the development of commercial franchising.

However, several factors have helped to change this situation. The economic boom of the late 1990s had a significant positive impact on the average standard of living of the population, leading to a rapid expansion of retail opportunities. Additionally, the accession of Cyprus to the EU in 2004 paved the way for an increase in the number of well-known franchises such as KFC and Starbucks entering the market.

In addition to the United States franchises on the island, there are many Greek and other franchises, including Accessorize, Everest, Pita Pan, Goody's, Costa Coffee, Debenhams, and Gloria Jeans. Cypriots are exceptionally brand-conscious and present trends suggest that the franchising sector will continue to grow. The fact that Cyprus regularly hosts a large and increasing number of tourists from Europe and farther afield significantly enhances the potential market for products and has helped to create the opportunity for the introduction of popular brand names.

Other Types of Franchising

Arrangements with international soft drinks, beer, cosmetics, and chemical manufacturers have long been in operation and have proved successful. These industries also use Cyprus-based production facilities for exports to the region.

Franchising is viewed as a strong growth area for the Cyprus economy and one where it can offer the foreign investor numerous benefits, such as fiscal advantages and other safeguards and incentives relating to the protection of foreign investment afforded not only by international law but also by the Constitution.

Domestic laws that are based on a liberal economic philosophy and policy also make Cyprus an attractive location for international franchisers. The expansion

of the franchising industry is viewed as likely to benefit the country by enhancing its commercial development and complementing its reputation as a leading services and international business center.

Financing a Franchise

Banks in Cyprus are familiar with the franchise model and are willing to finance franchise ventures that are based on a sound business plan. Finance will not automatically be offered simply because a well-known franchise is involved. In practice, equity participation of at least 30 per cent by the entrepreneur seeking a loan is usually required. The involvement of a well-known international franchise may introduce some downward flexibility in this percentage requirement.

Security for any loan advance may take the form of charges on business assets, personal guarantees, the mortgaging of personal property, and the assignment of life insurance policies. Where transferable licensing rights are involved in a venture, loans are often granted on condition that transfer may take place only with the bank's approval.

Executing Franchise Agreement

There are no specific requirements in Cyprus in relation to the execution of franchise agreements beyond their signature by persons authorized by the parties involved. Although not a requirement, a witness to the signing would add validity to the document.

No specific consents, authorizations, approvals, licenses, or orders are required from any court or government body in Cyprus for the execution and delivery of a franchise agreement with regard to the franchise itself. There is no obligation to file, record, or register a franchise agreement under Cyprus law to render it valid and enforceable.

Stamp duty is payable in connection with the execution, delivery, and performance by the parties of a franchise agreement for it to be admissible as evidence before a Cyprus court and to be submitted to a government authority such as the Registrar of Trade Marks.

Under the Stamp Duty Law,¹ as amended, contracts and all documents that form part of a contract are subject to stamp duty according to their value. The rates of stamp duty are as follows:

- Transactions with a consideration of €5,000 or less are exempt;
- For transactions with a consideration of more than €5,000 but not exceeding €170,000, stamp duty is €1.50 per €1,000 or part thereof;

¹ Law Number 19 of 1963.

- For transactions with a consideration in excess of €170,000, stamp duty is €2.00 per €1,000 or part thereof;
- The maximum stamp duty payable on a contract is capped at €20,000; and
- Where no amount of consideration is specified in the contract, the stamp duty is €35.

The stamp duty on a franchise agreement is not calculated only on the basis of the initial franchise fee or the royalties. The Registrar of Stamp Duty reviews the agreement and takes into account all its aspects to determine the value of the franchise. The Registrar has a right to request further documents such as the annual accounts of the franchiser or a list of possible assets to be provided and their value, to assist in setting the stamp duty to be paid.

Furthermore, under a franchise agreement, certain intellectual property rights will most likely be licensed or transferred, and the instrument by which they are licensed or transferred will need to be registered in order for the authorized user to enjoy statutory protection. The Registrar of Trade Marks will not accept a power of attorney and a licensing agreement for registration unless they are duly stamped, and so a licensee will be unable to register any rights to trade marks that may have been granted to him under an unstamped licensing agreement.

Franchising Interests as Securities

The listing of franchisees on the Cyprus Stock Exchange has become much more common in recent years. The success of companies such as Laser Investment Group plc, which holds franchises such as Burger King and Coffee Beanery (Europe), has increased the familiarity of investors with the franchise business model and so has increased the marketability of shares in ventures of this nature.

Franchise-Specific Legislation and Precedents

No legislation dealing specifically with franchise agreements is currently in force, nor is the enactment of such legislation contemplated. General legal issues involved in franchising agreements have come before the courts, but there has been an absence of franchise-specific litigation.

The few restrictions by which a franchiser will have to abide when entering the Cyprus market are found mainly in the laws of competition, contract, and intellectual property. An overview of the salient provisions of Cyprus law that must be considered when entering an agreement for a franchise business in Cyprus is given in the following sections of this chapter.

Exchange Control

Exchange controls were effectively abolished on 1 May 2004. Currently, both residents and non-residents, whether individuals or corporate bodies, may hold

and manage assets and liabilities in any currency and in any country, including freely convertible and transferable balances with banks on the island. There is no distinction between nationals of Cyprus, nationals of other EU Member States, and third-country nationals.

Competition Law

In General

All franchise agreements must comply with Cyprus competition law, which is governed by the Protection of Competition Law 2008 and 2014² (the “Competition Law”). The Competition Law was introduced to harmonize Cyprus competition law with EU competition legislation. Its main provisions are a reproduction of Articles 81 and 82 of the Treaty establishing the European Community (formerly Articles 85 and 86 of the Treaty of Rome). Articles 81 and 82 have now been replaced by Articles 101 and 102 respectively of the TFEU.

Section 3 of the Competition Law provides that any agreements between undertakings, decisions by associations of undertakings, and concerted practices which may affect trade and which have as their object or effect the prevention, restriction, or distortion of competition within the Republic of Cyprus are prohibited and are void *ab initio*, with particular attention to agreements that:

- Directly or indirectly fix purchase or selling prices or any other trading conditions;
- Limit or control production, markets, technical development, or investment;
- Share markets or sources of supply;
- Apply dissimilar conditions to equivalent transactions with other trading parties, thereby placing them at a competitive disadvantage; or
- Make the conclusion of contracts subject to acceptance by the other parties of supplementary obligations that, by their nature or according to commercial usage, have no connection with the subject of such contracts.

Importantly, Section 4 of the Protection of Competition Law provides that any agreement, decision, or concerted practice that falls within the scope of Section 3 will be allowed and held valid without requiring the prior approval of the EU where it:

- Contributes to improving the production or distribution of goods or to promoting technical or economic progress, while allowing consumers a fair share of the resulting benefit;

² Law Number 13(I) of 2008, as amended by Law Number 41(I) of 2014.

- Does not impose on the enterprises concerned restrictions unless they are absolutely necessary for the achievement of the above-mentioned purposes; and
- Does not afford the enterprises to which the agreement relates the possibility to eliminate competition from a substantial part of the market of the product concerned.

The burden of proof that the agreement, decision, or concerted practice is valid and permitted in accordance with Section 3 rests with the concerned party or concentration of undertakings that make this claim.

Practice and Procedure

The Competition Law establishes the Commission for the Protection of Competition (the “Commission”) as the competent body with exclusive responsibility to investigate infringements of the Competition Law, to reach decisions on complaints and applications, and to give opinions in accordance with the provisions of the Competition Law. The Commission may impose administrative fines and sanctions as well as order interim measures.

The amendments made in 2014 included the insertion of new criteria of urgency where there is a serious danger of irreparable damage to competition. As far as franchising is concerned, the Competition Committee also may put forward recommendations to the Council of Ministers for the issue of Regulations relating to activities which come within the ambit of competition policy and need further clarification.

If the Commission finds an infringement of Section 3 or 6, or both, it may impose a fine of up to 10 per cent of the total turnover of the participating undertaking in the year in which the infringement took place or the year immediately preceding it. If the infringement continues, the Commission may impose a fine of up to five per cent of the average daily turnover of the immediately preceding financial year for each day the breach continues.

The Competition Law empowers the Commission to cooperate with regulatory or other authorities that exercise control in particular sectors of the economy and provide assistance, request assistance of regulatory or other authorities in the exercise of its jurisdiction, and enter into cooperation arrangements with other national competition authorities.

In cases involving infringement of sections 3 or 6 of the Competition Law, the Commission has the right (after conducting a public consultation and taking into account the public interest and possible consequences on competition and consumers) to issue a decision regarding the case, which is published in the Official Gazette and includes the criteria that the Commission has taken into account during its examination of the case.

Criminal Liability

Failure by a legal or physical person to comply with a decision of the Commission in breach of sections 23-25 *et seq.* inclusive is a criminal offence punishable on conviction with imprisonment for up to two years, a fine of up to €340,000, or both.

If the offence is committed by a legal person, all members of the Board of Directors, the managing director, and senior management may be prosecuted and subjected to the same penalties.

Section 28 provides that failure to comply with a decision of the Commission in relation to the issue of interim measures is a criminal offence punishable on conviction with imprisonment for up to one year, a fine of up to €340,000, or both.

Breach of the duty of secrecy imposed on members or employees of the Commission and its associated bodies by Section 33 of the Competition Law is a criminal offence punishable on conviction with imprisonment for up to one year, a fine of up to €3,500, or both.

Substantive Law

There has, as yet, been no franchise case put before the Commission for the Protection of Competition. Thus, it is not clear how the Commission for the Protection of Competition will approach the various competition matters that normally arise in a franchise agreement. However, two interesting points have emerged from cases dealing with other issues:

- The Commission for the Protection of Competition closely follows the reasoning of the European Court of Justice. Thus, in the case of franchising agreements, it is hoped that the relatively liberal view of the Court of Justice on such agreements will be preferred by the Commission for the Protection of Competition.
- The Commission for the Protection of Competition has ruled against any form of price fixing. This might be relevant as to franchising agreements, and a careful drafting of price control provisions in franchise agreements is advisable.

A much closer look, however, must be given to a decision of the Commission for the Protection of Competition regarding an exclusive distribution agreement for car filters between two local companies, that is, the manufacturers and the wholesalers. This agreement was reported to the Commission for the Protection of Competition through the informal complaint of a competitor importer (a distributor of car filters and other car spare parts).

Interestingly, the Commission for the Protection of Competition found that the written agreement between the parties which granted rebates at 20 per cent of the price to the distributor and mentioned the possibility of channeling all sales

of the manufacturer in the local market through the distributor did not specifically exclude future cooperation of the manufacturer with other wholesalers, but such a term could be logically implied by the general meaning of the agreement. It also found that in fact the parties occupied 50 per cent of the Cyprus market for filters, thus viewing the market for local and imported filters as one.

In its reasoning, the Commission expressly stated the view that the "Rule of Reason", as expounded by the European Court of Justice, is to be followed in Cyprus in deciding whether an agreement falls within the ambit of the prohibitive provision in Section 4(1) of the Competition Law. It then examined whether this agreement could be exempt under Sections 4(3) and 5 of the Competition Law. In reviewing the agreement the Commission made express reference to the EC's Block Exemptions regarding exclusive distribution and purchase agreements, although it was made clear that the issue at hand was not to be judged according to the provisions of the exemptions.

In deciding whether the agreement satisfied the three conditions in Section 5 of the Competition Law then in force, the Commission came to the conclusion that it did by pointing to the following considerations:

- The agreement contributed to the improvement of production and distribution of filters. The unhindered and improved offer of goods and the production of new improved goods were benefits that flowed or might flow from the enforcement of the agreement. Although the Commission for the Protection of Competition recognized that one important consumer demand was the achievement of low prices, it took into consideration the fact that prices were anyway kept at a certain level by relevant regulations of the Ministry of Commerce, Industry, and Tourism.
- This general category of agreements had been excluded by the relevant EC Block Exemptions (see "Franchise Block Exemptions", below).
- The European Commission had granted several exemptions where the reasoning on whether the three conditions were met was likewise of a general nature.

Therefore, the Commission, by combining the effect of the Sections, allowed the agreement and found that there had been no breach of Section 3 of the Competition Law. It also found that there had been no breach of Section 6 (abuse of dominant position), although it did not give any reasoning for this conclusion.

Although the Commission has closely followed the decisions of the European Court of Justice, it is not easy to predict its approach to franchise-related issues, as the underlying consideration of the Court of Justice has been the promotion of the Single Market and the avoidance of market partitioning along national borders within Europe. This consideration will not apply per se within Cyprus.

Franchise Block Exemptions

Block exemptions can be granted under Section 5(1) of the Competition Law, under which the Council of Ministers may issue an order relating to such an exemption, following a reasoned opinion by the Commission for the Protection of Competition. An example of such an order is the implementation of the EU Block Exemptions Regulation 2790/99, introduced into Cyprus law by Ministerial Order Number 365/2000. A franchise agreement in the EU must comply with Regulation 2790/99, in force since 1 June 2000. Under it, Section 3 of the Competition Law does not apply to certain vertical agreements or concerted practices containing competitive restrictions that would otherwise come within the ambit of this provision.

The Council of Ministers issued an Order on 07/03/2014 on Block Exemptions (Certain categories of vertical agreements and concerted practices) concerning the motor industry sector and replacing an earlier Ministerial Order of 2003.

Franchising agreements fall under the definition of vertical agreements provided by the Regulation, whereby an agreement can be classified as a vertical agreement if it contains provisions regarding the assignment to the buyer, or the exercise by the buyer, of intellectual property rights on condition that these provisions are not the primary subject matter of such agreements and are directly related to the use, sale, or resale of goods or services by the buyer or its customers. The Regulation provides that the exemption outlined above does not apply where the agreement, directly or indirectly, has as its object:

- A restriction of the buyer's ability to determine selling prices without affecting the supplier's ability to impose a maximum selling price or suggest a selling price which is the result of pressure by any party to the contract or motive provided by any party; or
- A restriction relating to the area in which, or the customers to whom, the buyer can sell the goods or services mentioned in the contract except: (a) restrictions on the active sales in the exclusive territory or to an exclusive group of customers of the same supplier or granted by the supplier to another buyer, provided that the restriction does not limit the sales to the buyer's customers; or (b) restrictions on the sales to end users by the buyer who is active in the wholesale field.

Restraint of Trade

Non-competition clauses are common in franchise agreements to protect the know-how and goodwill of the franchiser that is licensed to the franchisee. Covenants not to compete are classed as restraint of trade clauses under Cyprus law. Section 27(1) of the Contract Law (which is to a great extent a codification of the English common law on contracts) provides that any agreement by which any person is restrained from exercising a lawful profession, trade, or business of any kind is to that extent void.

Section 27(2)(a), (b), and (c) create specific exemptions concerning the sale of the goodwill of a business and partnership after dissolution. There is, however, no express mention in the Contract Law or any other law of franchise or other commercial agreements. Case law of the Supreme Court of Cyprus dating to 1937 suggests that, as far as such clauses are concerned, the list of exemptions in Section 27(2) is exhaustive. Accordingly, any clause in restraint of trade that is not specifically exempted under Section 27(2) is most likely to be considered void.

However, EU law on this subject also is applicable in Cyprus. There is EU case law with regard to Article 81(3) of the EC Treaty and competition restrictions in franchise agreements, where the European Court of Justice admitted that the franchiser must be in a position to protect certain interests vital to the business and to the identity of the network (e.g., the know-how), as long as the provisions made were essential for this purpose.

For this reason the ECJ accepted that the use of non-competition clauses during the term of the franchise agreement and for 12 months after the termination of the agreement in the same area as the franchise outlet was appropriate to protecting the franchiser's know-how and trade secrets.

Guidance also can be found in EU Regulation 2790/1999 on the application of Article 81(3) of the Treaty to categories of vertical agreements and concerted practices, where non-competition obligations in an agreement may be permitted under certain conditions and where they do not exceed five years or have an indefinite duration. This Regulation also provides that a non-competition obligation may be imposed after the termination of an agreement if the following conditions are met:

- It is limited to a period of one year;
- It relates to goods or services that compete with the goods or services that are the subject of the agreement;
- It is limited to the premises from which the goods or services were sold; and
- It is indispensable to protect know-how transferred during the course of the agreement.

The common law approach also is relevant. It has been held that there is a sufficient justification for a restraint of trade clause if the restriction is considered reasonable. The onus of establishing that a restraint of trade clause is reasonable rests with the person relying on the clause, whereas the person who asserts that the clause is contrary to the public interest is responsible for proving that assertion. Even though the courts may be more hesitant to enforce restrictive clauses, it is possible that, in the light of the EU guidance set out above, clauses that serve to protect the franchiser's system and know-how may be accepted and enforced. Non-competition clauses in other agreements have been upheld, and it would be advisable in any event to include a severability clause in the agreement to protect the franchiser if any non-competition clauses are considered void.

Intellectual and Industrial Property Rights

In General

The key elements of a franchising agreement usually relate to the licensing of the business name, trade marks, designs, and know-how of the franchiser. Consequently, it is important to be aware that such intellectual property rights are protected in Cyprus by statutory provisions, Common Law principles, and contractual terms contained in the franchise agreement itself.

Trade Marks

Registration

The registration and protection of marks in relation to goods and services is governed by the Trade Marks Law, Cap. 268, as amended by Laws Number 63 of 1962, Number 69 of 1971, Number 206 of 1990, Number 176(I) of 2000, and Number 121(I) of 2006 by the Regulations issued by the Council of Ministers of 1951 to 2006, as amended. The Nice classification applies under which goods and services are categorized into thirty-four classes and eleven classes, respectively.

Application for Registration

On receipt of an application to register a trade mark, the Registrar appoints a filing date, allocates a number to the mark, and conducts a search to establish the registerability of the mark. Depending on the results, the Registrar may register the mark, object to its registration, or impose conditions.

If the conditions imposed by the Registrar are not satisfied, the application may be rejected. If the Registrar refuses the registration, the applicant may apply to the Supreme Court of Cyprus in its revisional jurisdiction for judicial review of the decision under Article 146 of the Constitution.

Right to Oppose Registration

Any person may, within two months from the date of the advertisement of an application, give notice to the Registrar of opposition to the registration. After the filing of the opposition, the Registrar sends a copy of the notice to the applicant who on receipt must file, in the prescribed manner, a counter-statement of the grounds on which he relies for his application.

If the applicant files such a counter-statement, the Registrar must deliver a copy to the person giving notice of opposition and, after hearing the parties and considering the evidence, must decide whether and subject to what conditions, if any, registration is to be granted. When the Registrar has accepted the application, whether absolutely or conditionally, the mark will be registered and its registration will be advertised in the *Official Gazette* of the Republic of Cyprus.

Protection against Infringement

Under Section 6 of the Trade Marks Law, a registered trade mark may be infringed in the following ways:

- If a mark for goods or services is identical with a registered trade mark;
- Where there is identity or similarity between goods or services and/or similarity between the defendant's sign and the plaintiff's mark, there may be infringement if the plaintiff proves that "there exists a likelihood of confusion on the part of the public, which includes a likelihood of association with the trade mark"; and
- Where a mark has a reputation in the Republic of Cyprus, it constitutes infringement to use an identical or similar sign for dissimilar goods or services, where: "the use of the sign, being without due cause, takes unfair advantage of, or is detrimental to, the distinctive character or the repute of the mark".

Available Remedies

The relief that may be granted by the court in relation to an infringement of a registered trade mark includes an injunction restraining the future use of the mark by the wrongdoer, and damages. If the infringement is on a large scale, the court may order the delivery up of the products bearing the marks for destruction or order the defendant to tender an account of the profits made through the sale of goods or the provision of services in relation to which the proprietor's trade mark was infringed.

A further protection offered to the proprietor of a registered trade mark can be found through the Control of Movement of Goods Which Infringe Intellectual Property Rights Law,³ which allows the proprietor of a registered trade mark to apply in writing (on a specific form) to the Customs Department requesting the Department to suspend the (potential) import of goods that violate the proprietor's intellectual property rights.

Section 4 of the Trade Marks Law specifies that no person may instigate proceedings to prevent the infringement of an unregistered trade mark; nor may damages arising from such an infringement be claimed. It further states, however, that this clause is without prejudice to any rights of action for fraudulent presentation of goods as the goods of another or the remedies available in such circumstances. In the case of a registered mark, the only onus of proof on the applicant is to prove the registration. A defendant will usually resort to the following arguments by way of defense:

- No title by the plaintiff;

³ Law Number 133(1) 2006.

- Invalid registration;
- No infringement; or
- The plaintiff is debarred from suing the defendant for all or part of the relief he seeks by an agreement or some personal estoppel, because the mark is deceptive or because his business is fraudulent.

Duration of Registration and Protection

Trade marks are registered for an initial period of seven years, and they may be renewed on application for further periods of fourteen years from the date of expiry of either the initial registration or the last renewal.

Community Trade Mark

Following its accession to the EU on 1 May 2004, Cyprus became a full member of the Office of Harmonization in the Internal Market (Trade Marks and Industrial Designs).

Since 1 May 2004, applications for the registration of Community Trade Marks (CTMs) may be filed directly with the Registrar of Trade Marks in Cyprus, while all CTMs registered or applied for before the date of accession will automatically be extended to Cyprus (Council Regulation 40/94 on the Community Trade Mark).

Registered Users of Trade Marks

A franchisee may be registered in Cyprus as the user of a registered trade mark. Where this is done, the trade mark is treated as still used only by the proprietor. Licensing of unregistered marks would appear to be permissible as if the marks were registered, either by the signing of a separate license agreement or through the incorporation of a license clause in the franchise agreement.

It is advisable to register any licensed user of a trade mark (whether registered or unregistered) with the Registrar of Trade Marks to avoid any possible issues that may arise about the rights of the licensee with regard to the licensed trade marks. In the event of non-registration of a licensed user, a clause preventing the franchisee from registering the franchiser's trade marks in the franchisee's name can be incorporated. The prudence of registering a trade mark in the franchiser's name in Cyprus and recording any licensed users is illustrated by *Mitsios Trading Limited vs. Swipe Limited*,⁴ where the commercial agent's registration of the principal's trade mark was held to be legal, as the Registrar had granted such registration.

Except where otherwise provided by the franchise agreement itself, a franchisee that becomes a registered user of a trade mark is entitled to call upon the

⁴ *Mitsios Trading Limited v Swipe Limited*, Civil Appeal Number 9828, 28 April 1999.

proprietor to take proceedings to prevent infringement of the mark, and if the proprietor refuses or neglects to do so within two months after being called upon, the registered user may institute proceedings for infringement in his own name as if he were the proprietor, making the proprietor a defendant.

A licensed user may be registered through an application made in writing to the Registrar of Trade Marks by the proposed registered user. The application must be accompanied by a statutory declaration by the proprietor that gives particulars of the existing or proposed relationship between the proprietor and the proposed registered user, the goods or services for which registration is proposed, the conditions or restrictions imposed on the use of the trade mark, and the duration of the permitted use. The registration of a registered user of the trade mark does not confer any assignable or transmissible right to its use.

Patents

In General

In Cyprus, the registration and protection of patents is regulated by the Patents Law,⁵ as amended by Laws Number 21(I) of 1999, Number 153(I) of 2000, Number 163(I) of 2002, and Number 122(I) of 2006. It is extended by the relevant Patent Regulations of 1999 and 2013 (the “Regulations”).

Application for Registration

To register a patent, an applicant or a lawyer licensed to practice law in Cyprus must file a full application with the Patent Registrar on behalf of the applicant. This application must be written in Greek, using the prescribed Form P9, and it must contain all the relevant details, including:

- A request for a patent to be granted;
- The name, address, and nationality of the applicant, the inventor, and the representative;
- The title of the invention in a summary form that must be accurate and precise and must state the item or use to which the invention is related;
- Something that *prima facie* appears to be a description of the invention for which the patent has been applied;
- Something that *prima facie* appears to be a claim or claims, which must be presented in the manner prescribed by law and must state in detail, free from any inaccuracies or ambiguities, the extent of the protection to be conferred by the application for a patent or the patent itself;
- Any drawings referred to in the description or claims; and

⁵ Law Number 16(I) of 1998.

- An abstract of the invention, i.e., a comprehensive and succinct summary, in no more than 150 words, of the matters included in the description of the invention.

Examination of Application by Registrar

Once the application has been filed with the Registrar and the relevant fees paid, the application will be forwarded to an examiner to determine whether it complies with all the requirements contained in the Law and the Regulations. The examiner will then submit his findings to the Registrar. At this stage, the applicant must supply the Registrar with a patent search performed by the European Patent Office. The Registrar of Patents will then either refuse the application or accept it and issue a patent certificate which, with the search report, will be published in the *Official Gazette* of the Republic of Cyprus to allow any interested parties to oppose the registration.

The right to file an application for a patent is vested in the inventor unless the invention arises in the execution of a commission or employment contract, in which case the right is held by the person who commissioned the work or the employer. Where the application filed is not in compliance with the provisions of the Law, the applicant will be given an opportunity to make observations on the report of the examiner and to make any necessary amendments before the Registrar decides the fate of the application.

Registration

When an application is accepted, the Registrar will grant a patent on the basis of the application, upon payment of a fee. The Registrar will then issue a patent certificate, which will be advertised with the search report in the *Official Gazette*.

If the Registrar does not grant a patent, the applicant may apply for judicial review of the decision, under Article 146 of the Constitution, to the Supreme Court of Cyprus in its revisional jurisdiction.

Protection against Infringement

According to Section 27 of the Patents Law, where a patent concerns a product, the owner of it has the right to prevent any third party from:

- Producing the product incorporating the protected invention;
- Offering or supplying the product on the market, using the product, or importing or stocking the product for the purposes of its distribution in the market or similar use; or
- Inducing a third party to carry out these acts.

Where a patent concerns a process, the owner of it may prevent any third party from:

- Using a process that is the subject-matter of the patent;

- If a product is a direct result of this process, performing the acts described in relation to products; or
- Inducing a third party to carry out these acts.

In the event of infringement, the patentee may bring an action in court seeking an injunction and/or damages. The most important grounds upon which any action for infringement of a patent may be defended are that:

- The patent is not for an invention within the meaning of the Law;
- The invention was not novel;
- The invention was obvious;
- The invention is not capable of industrial application;
- The invention belongs to a category of excluded subject matter, such as methods of treating humans and animals;
- The claims of the complete specification are ambiguous;
- The complete specification is insufficiently explicit; or
- The application for the patent was not in order.

Duration of Registration and Protection

A patent granted in accordance with the Law lasts for a period of twenty years from the date of the filing of the application. It is possible, by virtue of Part VIII of the Patents Law, for a patent regarding pharmaceutical products to receive a supplementary protection certificate upon relevant application, which extends the duration of protection for a further five years. In both cases the maintenance of a patent is subject to the payment of annual renewal fees.

Exhaustion of Rights

The Law is in line with EU case law, setting limits on the rights granted to patent owners. For example, once a product has been put on the market by the patent owner or with his express consent, he can neither restrict the use or resale of the product nor prevent private acts that do not substantially affect the financial benefit of the right holder, i.e., acts done for non-commercial purposes.

Priority Rights

The Law contains provisions for priority rights, in accordance with the Paris Convention for the Protection of Industrial Property, for patent applications already filed with other signatory states.

When filing a patent application claiming priority in one or more previous states for regional or international applications filed by the applicant in any state which is a signatory to the Convention, the applicant must submit, within the prescribed time limit, a copy of the initial application, certified by the relevant

authority with which the initial application was filed or, in the case of an international application filed according to the Patent Co-operation Convention, by the International Bureau of the World Intellectual Property Organization (WIPO).

Assignment and Licensing

Patent rights and privileges may be assigned. For an assignment to be recorded by the Registrar of Patents, a lawyer authorized to practice in Cyprus must be appointed by the new proprietor and must complete and submit the necessary forms that indicate the change in proprietor of the patent.

In a case of co-ownership, a transfer or assignment will not be accepted by the Patent Office unless all owners sign the necessary documents. It may be possible to effect a record where a court order is obtained requiring the Registrar of Patents to accept a transfer or assignment without the signature of all owners, but there is no precedent for such a case yet.

It is usual for a franchiser to grant a license to the franchisee with respect to patents, entitling him to use the patents in accordance with the provisions of the franchise agreement. Licensing is not regulated in Cyprus by any specific legislation.

Compulsory Licensing

An application for a compulsory license can now be filed with the Registrar at any time after the expiration of four years from the date on which the patent was granted (or after some other period prescribed by the Registrar).

When making his decision, the Registrar must consider the need to work inventions as well as the need for the inventor to receive reasonable remuneration.

Designs

In General

In line with the harmonization of its legislation with the *acquis communautaire* of the EU, Cyprus enacted the Legal Protection of Industrial Designs and Models Law,⁶ as amended by Law Number 170(I) of 2003 and by Law Number 119 of 2006, to provide for the protection of industrial designs. It applies to designs and samples registered with the Registrar of Companies or under international conventions ratified by Cyprus. For a design to be eligible for protection, it generally needs to be "new" and to have an "individual character".

⁶ Law Number 4(I) of 2002.

Section 4(2) provides that a design is considered to be new if, up to the filing or priority date, no identical design or sample has been disclosed to the public. The Section defines the meaning of "identical" as designs or samples whose characteristics differ only in minor details.

Section 4(3) provides that a design or sample has individual character if the overall impression that it makes on the informed user differs from that made by a design or sample disclosed to the public before the filing or priority date. In order to appraise the individual character of a design or sample, consideration is given to the degree of free will of its creator at the time of its creation.

Application for Registration

To register a design or sample, a lawyer licensed to practice in Cyprus must file with the Registrar on behalf of the applicant:

- Information to identify the applicant such as name, address, and nationality;
- The specification of the product that will incorporate the design;
- A reproducible graphic representation of the design;
- A request for registration of the design;
- Detailed information about any representative of the applicant if the applicant is not a resident of Cyprus and has appointed a representative to undertake registration in Cyprus;
- A list of products which will incorporate the design or to which the design is to be applied;
- Classification of the products in the categories and subcategories provided by the international classification of designs specified in the Locarno Agreement of 1968;
- If the applicant is not the sole creator of the design, a statement as to how he acquired the rights to the design;
- A short description of the characteristic elements of the design including any reference to color;
- A request for publication of the design or postponement of publication (this postponement may not exceed twelve months);
- A priority date if required; and
- A statement as to whether the design has been presented in an exhibition.

Section 4(4) provides the definition of disclosure to the public. A design or sample is considered to have been disclosed if it has been:

- Published, through its filing or any other way;
- Exhibited;

- Used in commerce; or
- Disclosed in any other way.

However, disclosure will prevent another design from receiving protection only when the former is used during normal business practice in the area concerned by professionals who operate either within Cyprus or the European Union before the filing date of the application or the priority date. A design or sample is not disclosed to the public when it is disclosed to someone under an explicit or implicit term.

When the design has been disclosed by its creator, beneficiary, or a third party acting on their behalf within the twelve-month period before the filing or priority date, this does not invalidate novelty, according to Section 4(5)(a). This also applies when the disclosure has taken place as a result of abusive misconduct against the creator or the beneficiary.

Exclusions from Protection

The following are not entitled to protection under the Law:

- A design or sample that is contrary to public order or public morality;
- A product, whose characteristics of appearance derive exclusively from its technical function; or
- A design or sample whose characteristics of appearance must necessarily be reproduced identically for interconnection with another product so that they will enable the latter to perform its function.

However, a design or sample that enables the multiple assembly or connection of interchangeable products inside a modular system does not fall under this exclusion as long as it satisfies the criteria of novelty and individual character. Eligibility for applications for industrial design protection is available to:

- Individuals who are residents of, or have their usual residence in, Cyprus or another EU Member State; and
- Companies or other legal entities that have their actual industrial or commercial establishment in Cyprus or another EU Member State.

Priority Registration

Priority registration may be claimed if the first application for registration in a Convention country was filed within six months from the date of filing in Cyprus.

Protection against Infringement

If a person infringes the registered design or sample of another person and refuses and/or fails to stop after infringement has been drawn to his attention, a civil action can be brought to prevent the infringement.

The relief usually sought is an injunction restraining the further use of the design or sample by the unauthorized party and/or a claim for damages.

Exclusive Rights and Their Limitation

The protection of an industrial design or sample grants to its proprietor the exclusive right to use the design or sample and prohibit others from using it without his consent. The Law itself defines the term "use" as including manufacture, offer, marketing, import and export, and use or possession for these purposes of a product incorporating or applying that design or sample. These rights are not infringed by:

- Private acts done for non-commercial purposes;
- Acts done for experimental purposes; or
- Acts done to reproduce the design or sample for educational reasons.

Duration of Registration and Protection

A registered design or sample can be protected for periods of five years from the date of registration, up to a maximum of twenty-five years.

Assignment

The right to submit an application for registration of a design or the rights that stem from a registered design may be assigned by written agreement or can be inherited. An assignment is brought about by filing the written agreement with the Registrar of Designs. Where the rights to a design are inherited, the assignment is effected by submission to the Registrar of:

- A declaration of residence by the administrator of the property, accompanied by a true copy of the certificate of administration;
- A declaration of residence by the executor of the will with a true copy of the certified will; or
- A certificate of beneficiaries as issued by virtue of the relevant legislation.

Once the necessary documents are submitted to the Registrar, a summary of the assignment is published in the *Official Gazette* of the Republic of Cyprus.

Licensing

The proprietor of a registered design may license its use by written agreement for a certain period of time and for consideration. The license is registered with the Registry of Designs and is published in the *Official Gazette*. An application to record the licensee in the Registry of Designs is accompanied by a notarized written agreement.

Unless otherwise provided by written agreement, the license is not considered exclusive, assignable, or inheritable. As with patents, where national security or

public safety so requires, the Council of Ministers may authorize, without the agreement of the proprietor of the design or design application, the licensing of the design to a government authority by written notice published in the *Official Gazette*.

Trade Names

Registration

Trade names may be registered in Cyprus under the provisions of the Law on Partnerships and Trade Names,⁷ as amended. Registration of a trade name may be effected by sending to the Registrar of Companies, within one month of the date on which the business is commenced, an application containing the following particulars:

- Business name;
- General nature of the business;
- Principal place of the business;
- Date of the commencement of the business; and
- Name (corporate or otherwise), residence, and nationality of the applicant.

The Registrar may refuse to register a business name which is comparatively similar to an existing one, includes the word “Imperial”, “National”, “Corporation”, “Commonwealth” or “Cooperative” or is considered to be misleading or confusing. In the event of infringement of the business name by a third party, no statutory remedies are provided and the only remedy lies in the law of passing off.

Franchise Issues

A franchise agreement would normally allow the franchisee to use the franchiser's trade name in a manner prescribed by the franchiser and also would prohibit him from using it otherwise than in connection with the franchise.

It also would be advisable for the franchiser to include a term in the franchise agreement to the effect that the franchisee is bound immediately to cancel the registration of the trade name in the event of the franchise agreement being terminated for whatever reason. Such cancellation of the registration is possible by virtue of Section 57 of the Civil Wrongs Law, which describes the procedure for the removal of trade names from the register.

However, the procedure for striking a trade name off the Register is complex and may require lengthy court proceedings. Consequently, it is advisable for the franchiser not to give any express or implied authorization for the registration of its trade name in Cyprus in the name of the franchisee.

⁷ Law on Partnerships and Trade Names, Cap. 116.

Know-How and Goodwill

One of the most important and valuable rights granted in any franchising arrangement is access to the know-how and confidential information relating to the franchiser's business or operation including marketing procedures, staff training, and pricing policies, as well as his goodwill and reputation established by the quality of his products and services.

Passing Off

The goodwill of a business in Cyprus is protected by the law of passing off. Confidential information and know-how relating to the franchiser's business or operation is best protected contractually, through the franchise agreement itself, since the law of copyright (see text, below) does not normally cover them.

Subject to limitations posed by competition law principles, the franchise agreement must make it clear that all information, including know-how information (such as advertising schemes or novel ideas reduced to practical technical procedures) which the franchiser discloses to the franchisee during the term of the agreement, will not be disclosed, copied, or reproduced without the prior consent of the franchiser.

Moreover, the franchise agreement should contain a term to the effect that the information supplied to the franchisee is the property of the franchiser and is licensed to the franchisee solely for the purpose of carrying on the franchise business.

Further protection may be available under the Copyright Law in those cases where the confidential information or know-how bears an original distinctive representation of the franchise business, such as an operation manual, slogans, publicity materials, and computer programs.

Copyright

In General

The law of copyright in Cyprus is another potential tool that can be utilized to offer protection to the intellectual property rights of the franchise business together with the other forms of protection outlined above.

For example, literary and artistic copyright is capable of protecting many aspects of the franchise business such as design of products, decoration, uniform of staff, insignia, or other logos and layout plans, irrespective of the fact that such designs or marks may be capable of registration as marks or designs.

Examples of confidential information and know-how that can be copyrighted include operation manuals, slogans, publicity materials, and computer programs. No copyright may exist unless the work is of an original character and has been reduced to writing, recording, or some other material form.

There is currently no system of copyright registration in Cyprus. Therefore, it is advisable that a franchise agreement should clearly stipulate the material and information that the franchiser deems to be protected by copyright, especially where such information is confidential and unpublished, and should set out concisely and comprehensively the conditions on which such material and information is licensed to the franchisee.

Legislation

Copyrights in Cyprus are regulated by the Right of Intellectual Property Law,⁸ as amended by Laws Number 63 of 1977, Number 18 of 1993, Number 54(I) of 1999, Number 12(I) of 2001, Number 128(I) of 2002, Number 128(I) of 2004, Number 123(I) of 2006, and Number 207(1) of 2012. Copyright exists in:

- Scientific works, literary works including computer software, musical works, artistic works including photographs, and an original database for a period of seventy years, commencing from the death of the author; and
- Films, for a period of seventy years, commencing from the death of the last survivor of the following, irrespective of whether they have been appointed conventionally, or are considered by law, as co-creators: (a) producer, (b) primary director, (c) script writer, (d) screenplay writer, and (e) music composer who composes music especially for the film;
- Recordings, for fifty years from the date on which the recording took place, with the reservation that, if the recording was legally published or presented, fifty years will run from the date of first publication or first presentation depending on which occurred first;
- Broadcasts, for fifty years from the date the broadcast was made or the program was included in a cable program service;
- Publication of otherwise unpublished works, for twenty-five years from the first time the work was legally published or presented to the public; and
- Performances and renditions, fifty years from the date of the performance or rendition, with the reservation that if outside this period there is a legal publication or presentation of this material, incorporation of the performance, or rendition, fifty years will run from the date of first publication or first presentation, whichever occurs first.

The 2002 amendment of the Law harmonizes Cyprus legislation with EU Copyright Directive 93/98⁹ of 29 October 1993, which itself harmonized the term of protection of copyright and certain related rights. At the same time it implements other EU directives on the legal protection of software, rental and lending rights, copyright and rights related to copyright applicable to satellite

⁸ Law Number 59 of 1976.

⁹ Copyright Directive 93/98, [1993] O.J. L290/9.

broadcasting and cable retransmission, and the legal protection of databases. Computer programs are treated as literary works and are, thus, copyright-protected, provided they are original and are recorded in writing or by some electronic means. Copyright in a computer program is infringed by making any reproduction or copy of it in any material form.

The 2004 amendment establishes a new type of copyright within the framework of the information society, expands the legal protection afforded to reproductions, and contains new provisions on interactive, on-demand broadcasting and rights-management information. In an effort to combat copyright infringement, a further development is the substantial increase in the amount of fines and the term of imprisonment imposed on persons infringing copyright.

The 2012 amendment provides that, in any criminal proceeding, the burden of proving the existence of a license or consent of the creator or control of the work or significant part of the work is to be borne by the accused.

The 2012 amendment also empowers the Chief of Police or other authorized police officer to settle out of court any offence for copyright infringement stipulated under section 14(a), (b), (c) and (d) of the Law and to accept from the infringer a penalty of up to €20,000 determined by the Chief of Police.

Infringement

The Right of Intellectual Property Law provides remedies for copyright infringement. For the criminal offenses listed in the Law, penalties include a fine of up to €51,258 or imprisonment for up to three years or both. In addition, the court may order copies of the work in the possession of the alleged offender to be destroyed or delivered to the owner of the copyright. On a second or subsequent conviction, the penalties are increased to a fine not exceeding €59,801 and a term of imprisonment not exceeding four years or both. Civil remedies include damages, destruction, or delivery of infringing copies and the equipment by which copies are produced, an account of profits, and an injunction. Preventative remedies are also possible and include the power of search and seizure of infringing material and anticipatory injunctions.

The Law expressly states that certain acts in relation to a work enjoying copyright protection do not constitute copyright infringement. Such acts are, for example, the use of copyright work for the purposes of fair dealing for research, private use, criticism or review, news reporting, or for the purposes of judicial proceedings. In these cases, no license is required from the copyright owner, but there would have to be a public acknowledgment and recognition of the source of the material or work in use.

Assignment

Copyright is transmissible by assignment, testamentary disposition, or by operation of law, as movable property. An assignment or testamentary

disposition of copyright may be limited so as to apply to some acts that the owner of the copyright has the exclusive right to control. No assignment of copyright and no exclusive license to do an act shall have effect unless it is in writing. A non-exclusive license to do an act may be written, oral, or inferred from conduct.

Rights are recognized under the Law for every protected object whose beneficiary or, if there is more than one beneficiary, anyone of them, is at the time of the creation of the right or, if it is a broadcast, the time of the transmission of the broadcast, a qualifying person, namely:

- A person who is a citizen of the Republic of Cyprus or who habitually resides in the Republic;
- A legal person, established in accordance with the laws of the Republic; or
- A citizen of another Member State of the EU.

These provisions also apply to legal persons established in the economy of another Member State of the EU, under the laws of which they are incorporated. The Law also extends the protection to works of non-Cyprus origin by stating that the Law also applies to works that would be eligible for protection by virtue of international treaties or conventions binding the Republic. Such treaties include the Berne Convention (ratified by Number Law 86 of 1979) and the Universal Copyright Convention (ratified by Law Number 151 of 1990), both of which could offer protection in circumstances not covered by the copyright law of Cyprus.

Competent Authority

Amendments to Law Number 59 of 1976 provide for the establishment of a competent authority, consisting of five members having experience and knowledge in matters of copyright. The authority deals with applications from any individual aggrieved by the refusal of a licensing body to grant a license in respect of copyright or by the imposition of unreasonable terms or conditions in granting such license.

The authority is given the power to direct that a license will be deemed to have been granted by the licensing body, fixes the appropriate fees to be paid, and prescribes any reasonable terms and conditions on the granting of such licenses.

Taxation

In General

Cyprus-resident individuals and companies are liable to Cyprus tax on worldwide income. The corporate income tax rate is 12.5 per cent, among the lowest in Europe.

The types of income subject to corporate tax are business profits, interest, rents from immovable property, royalties, and profit from the sale of goodwill. There are significant exemptions and reliefs relating to certain categories of income. Capital gains are not subject to tax unless they derive from immovable property located in Cyprus.

Section 34 of the Law provides for relief from double taxation in relation to income and any tax of a similar character that is imposed by the laws of another country. Unilateral credit is allowed for foreign tax paid if there is no double taxation treaty in force between Cyprus and the country concerned.

A full analysis of the Cyprus tax system is beyond the scope of a general publication such as this and potential investors are recommended to obtain appropriate specialist advice.

Taxation of Franchises

The original investment made for the acquisition of a franchise is written off over a number of years that do not exceed the period of the license. If there is no fixed period, the Income Tax Law provides that it should be written off over a reasonable number of years. The continuing fees paid by the franchisee to the franchiser are considered as normal costs of income and are deductible from the income arising from the franchise.

Any expenses, including advertising and promotion, incurred by a business in the earning of its income may be deducted from the income in arriving at its taxable profit. The income tax authorities will have to be satisfied that the advertising covers Cyprus and that the contribution from Cyprus is proportionate to the franchise income. Where a lump sum is paid to cover advertising for a fixed period of time, it is normal to write off this amount over the period of the advertising campaign.

Franchise Royalties

In 2012, Cyprus introduced a package of incentives and tax exemptions relating to income from intellectual property rights known as an intellectual property box ("IP box"), aimed at stimulating investment in research and development.

Four-fifths of the profit earned from the use of intangible assets (including any compensation for improper use) is disregarded for tax purposes. In addition, four-fifths of any profit resulting from the disposal of relevant intangible assets is disregarded for tax purposes.

The net effect of the new scheme is that the rate of tax on income from the exploitation of intellectual property will be 2.5 per cent or less. Since there are no taxes on dividends paid to non-resident shareholders, a Cyprus company can be used to generate royalties under licensing or similar arrangements with third parties and distribute profits to its shareholders by way of dividends with minimal tax leakage.

Cyprus's effective tax rate of 2.5 per cent or less compares very favorably with the competition: the United Kingdom's new "patent box" regime gives an effective rate of 10 per cent on income; the Irish scheme is more complex, and it is not possible to directly compare rates, but it will generally produce an outcome close to the United Kingdom rate, and the Luxembourg and Netherlands schemes give an effective rate of 5.76 per cent and five per cent respectively, more than double the Cyprus rate. Furthermore, the Cyprus scheme extends to a wider range of assets and is generally subject to fewer restrictions (for example on location of the assets or whether the intellectual property is created within the organization or purchased from a third party).

The intellectual property box regime provides very attractive opportunities for structuring the exploitation of intellectual property assets through Cyprus and in particular through the use of Cyprus-resident intellectual property owners, especially in the context of Cyprus's extensive network of double-tax treaties under which foreign withholding taxes on royalty income are either eliminated altogether or substantially reduced.

Royalties or any other payments to a non-resident for intellectual or industrial property rights are liable to a 10 per cent withholding tax, subject to relief under any applicable double-taxation treaty. EU regulations and tax treaties may provide for lower tax rates subject to meeting the prescribed conditions. No tax need be withheld if the rights are used exclusively outside Cyprus. Rental payments made to a person not resident in Cyprus in respect of films shown in Cyprus are subject to withholding tax at five per cent of the gross amount.

Double-Taxation Treaties

Double-tax treaties are in force between Cyprus and the following countries:

- (1) Armenia;
- (2) Austria;
- (3) Azerbaijan;
- (4) Belarus;
- (5) Belgium;
- (6) Bulgaria;
- (7) Canada;
- (8) China;
- (9) Czech Republic;
- (10) Denmark;
- (11) Egypt;
- (12) Estonia;
- (13) Finland;
- (14) France;

- (15) Germany;
- (16) Greece;
- (17) Hungary;
- (18) India;
- (19) Ireland;
- (20) Italy;
- (21) Kuwait;
- (22) Kyrgyzstan;
- (23) Lebanon;
- (24) Malta;
- (25) Mauritius;
- (26) Moldova;
- (27) Montenegro;
- (28) Norway;
- (29) Poland;
- (30) Portugal;
- (31) Qatar;
- (32) Romania;
- (33) Russia;
- (34) San Marino;
- (35) Serbia;
- (36) Seychelles;
- (37) Singapore;
- (38) Slovakia;
- (39) Slovenia;
- (40) South Africa;
- (41) Spain;
- (42) Sweden;
- (43) Syria;
- (44) Tajikistan;
- (45) Thailand;
- (46) Turkmenistan;
- (47) Ukraine;
- (48) United Kingdom;
- (49) United States; and
- (50) Uzbekistan.