

■ CYPRUS

New Movement Of Capital Law In Line With E.U. Requirements

By Uitiis Neocleotis antl Kynakos Geotgiades, of Andreas Neocleaus & Co., Cyprus. Website: it>u>iv.iicocleoits.com. © Andreas Neockom & Co., 2003.

On May 1, 2004, 10 European countries, including Cyprus, will accede as Member States of the European Union under the terms of the Treaty of Accession signed in Athens on April 16, 2003.

In pursuit of its ongoing drive to harmonise its domestic legislation with the *acqum commnrututaire* of the European Union, the Cypriot legislature enacted the Movement of Capital Law No. 115 (the "Law") in July 2003.

As the name implies, the aim of the Law is to introduce a regime allowing for the free movement of capital and payments,

Scope

The Law governs the movement of capital and payments between residents of Cyprus and residents of Member States of the European Union. It also extends to such movements between residents of Cyprus and residents of third countries. In addition, the Law also covers transactions in foreign currencies and gold within Cyprus.

The purpose of this article is to provide a practical working knowledge of the important aspects of the Law, which will only become effective upon Cyprus' accession to the European Union.

Current Position

At present, the movement of capital to and from Cyprus is primarily governed by the Exchange Control Law (Cap. 199), as amended. Since January 1991 Cyprus had adopted a gradual approach towards the liberalisation of capital movements, starting with the liberalisation of current payments according to its obligations under Article VIII of the Articles of Agreement of the International Monetary Fund and the gradual abolition of exchange control restrictions.

Since 1997 the new policy on direct investment allows foreign participation of up to 100 percent in most sectors. Foreign participation is only prohibited in a limited number of activities, particularly real estate development, tertiary education and public utilities. A ceiling of 49 percent applies to agriculture, hotels and travel agencies, restaurants and recreational centres and agencies representing imported goods and services.

Application

The Law applies in the following cases: ■ movement of capital and payments between residents of Cyprus and residents of Member States;

- movement of capital and payments between residents of Cyprus and residents of third countries; and
- transactions to foreign currency and gold within Cyprus.

"Movement of capital" is defined as the following:

- direct investments;
- investments in immovable property;
- transactions regarding titles and other means normally negotiable in the capital market;
- transactions regarding shares in collective investments schemes;
- transactions in current accounts and deposits in banking institutions;
- credits regarding trading or the provision of services in which a resident of a Member State is involved;
- finance loans and credits;
- sureties, other guarantees and pledges;
- transfers in the execution of insurance contracts;
- movement of capital of a personal nature;
- import and export of documents embodying securities; and
- other capital movements, including inheritance tax, losses and interest, intellectual property rights, etc,

Movements Of Capital

Notwithstanding the provisions of any other law, the Law stipulates that all movements of capital and payments between residents of Cyprus and residents of Member States or third countries may be carried out without any restrictions.

For the purposes of Article 4 of the Law, a "resident of Cyprus" is defined as:

- a natural person, regardless of citizenship, who resides or intends to reside in Cyprus for at least a year;
- a citizen of Cyprus who is working abroad at a Cypriot embassy, consulate or similar;
- a citizen of Cyprus who is studying or who is hospitalised abroad, regardless of the duration of his or her studies or hospitalisation;
- a resident of Cyprus who works on a ship, aircraft or other means of transport, with activities partly or wholly outside Cyprus;
- a department or service of the government and local authority, semi-governmental organisation or civil legal person;
- an organisation or business of any legal form registered and with physical presence in Cyprus; or
- a branch, agency or any other form of agency of a legal entity that is not a resident of Cyprus, but which operates in Cyprus.

Exceptions

The liberalisation of the movement of capital and payments will not affect the restrictions currently imposed on the movement of capital by residents of third countries which involve direct investments (including the acquisition of immovable property) which were in

place on December 31, 1993, as well as on the date on which the Law takes effect.

Additionally, the Law does not affect the provisions and restrictions imposed by the Acquisition of Immovable Property (Aliens) Law (Cap. 109), as amended, whereby the acquisition of real estate property by non-Cypriots requires the approval of the Cyprus Council of Ministers, and imposes restrictions on the size of land which may be acquired and the use to which it may be put.

The Cyprus government is currently in negotiations with the European Union in an effort to obtain a transitional period relief to protect the sensitive property market in so far as the acquisition by E.U. nationals is concerned.

Additionally, under Article 60 of the E.C. Treaty and Article 6 of the Law, Cyprus may, for serious political reasons and on grounds of urgency, take unilateral measures against a third country with regard to capital movements and payments.

It may also take all necessary measures for the prevention of the violation of any law in force in Cyprus, especially in the areas of tax compliance and pre-emptive supervision of banks,

Further, it may set procedures for the declaration of the movement of capital for administrative or statistical purposes and take such measures as is necessary to enforce public order or national security.

Cyprus will also apply any decisions made by the Council of Ministers of the European Union regarding the imposition of any measures against third countries and apply and take any safeguard measures.

The Central Bank of Cyprus also has the power to apply the safeguard measures and sanctions the Council of Ministers of the European Union imposes on the movement of capital and payments against a third country.

Direct Investments

Direct investments in Cyprus by citizens of Member States are carried out according to the Cypriot legislation currently in force and applicable to Cypriot persons. However, the Council of Ministers may restrict such direct investments so as to protect public order, national security and national health or for the purpose of restricting or prohibiting the production or trade of weapons or ammunition.

Policies regarding direct investments by non-Cypriots in Cyprus are approved by the Ministry of Finance, and no person may transfer security titles or participation in existing companies, except for investment portfolios and security titles listed in the Cyprus Stock Exchange, to a non-Cypriot without the prior approval of the Minister of Finance.

Foreign Currency

No person, other than a financial institution, may act as a currency "negotiator" (*i.e.*, a person dealing in foreign currency) in Cyprus without prior permission

from the Central Bank of Cyprus, under the provisions of Article 36 of the Central Bank Law (Law 138(1) of 2002).

Financial services firms authorised under the Financial Services Firms Law No. 148(1) of 2002 may execute transactions of immediate or long-term delivery in foreign currency, only when such services are connected to the provision of financial services.

Banknotes And Gold

Any person entering or leaving Cyprus is obliged either to:

- declare to the relevant officer of the Customs Department the amount of banknotes in Cyprus currency or in foreign currency, or value of carried gold the value of which is equal to or more than GYj£7,30Q or EUR 12,500 or any other amount the Central Bank determines from time to time through the issue of directions; or
- present to the relevant officer of the Customs Department a copy of the relevant transaction if a financial institution was involved in the purchase.

Transitional Provisions

Whilst the Law abolishes the Exchange Control Law, authorisations, licences, regulations, directions, orders and all other administrative acts granted or issued under that law are to be considered as having been granted under the Law, and thus continue to be valid until they expire or are revoked.

Cyprus may take safeguard measures in the case where it is in difficulties or seriously threatened with difficulties as regards its balance of payments, or as a result of the type of currency at its disposal. Where such difficulties are anticipated, and in particular where it is believed that they may jeopardise the functioning of the common market or the progressive implementation of the common commercial policy, Cyprus is obliged to keep the Council of Ministers of the European Union and the other Member States informed of the measures it intends to take to rectify matters.

Conclusion

Cyprus is currently undergoing a number of legislative changes in preparation for its accession to the European Union, including the Law, which is enacted to bring Cyprus in line with Chapter 4 of the *acqub commumutaire*.

The Law lays the foundation for complete alignment with the *acqub* and the elimination of all remaining restrictions in this area.

Also in this issue: The Netherlands' experience with private investments in public equities and rights issues, and the Dutch rules governing such transactions, are analyzed in a Special Report at page 31.