

Cyprus - Partnerships Revisited

Partnership Law has a long-standing background in Cyprus, but it is worth noting that it has received a notable update in October 2015, by the amendments introduced to the General and Limited Partnership and Business Names Law (the “Law” by the amending Law 114(I)/2015). The amending statute introduced for the very first time in Cyprus law the concept of a limited liability partnership with share capital (“Cyprus Limited Liability Partnership”) or (“LLP”).

The new provisions which were introduced bring the Cyprus General Partnerships Law to be in line with provisions existing for many years in the major EU countries such as Germany (*Kommanditgesellschaft auf Aktien* (KGaA)), Luxembourg (with the SCSp partnership) and Poland (*Spółka Komandytowo-Akcyjna* (S.K.A.)).

A. Types of Partnerships under Cyprus Law

Under Cyprus Law, two types of Partnerships are recognized and can be registered:

- **A General Partnership** - In the General Partnership every partner is liable jointly and severally with all the other partners for an unlimited amount as to the liabilities, debts and obligations of the Partnership. It is worth noting that a Partner can also be a company with limited liability or another Partnership; and
- **A Limited Partnership** - in a Limited Partnership there needs to exist at least one General Partner who shall be liable for all debts and obligations of the Partnership, and one or more Limited Partners who shall not be responsible for the firm’s debts and obligations beyond the amount they have contributed to the Partnership. In terms of a Partnership Limited by Shares, which has been defined as a partnership, having a share capital, the liability of the limited partners is limited up to the amount which remains unpaid (if any), for the shares that they hold. A “Limited Partner” in a Limited Partnership by Shares means the limited partner who contributes in the share capital of the Limited Partnership by Shares and to whom shares are allotted *pro rata* to the amount contributed.

An important distinction which needs to be made between a Limited Partnership by Shares (and indeed, any Limited Partnership under Cyprus Law) and a Company which is Limited by Shares, is that the Limited Partnership is not considered as a legal entity with a separate legal personality, and as such, the Partners shall be liable in case of an action against the Limited Partnership.

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In light of the fact that a Partnership does not have a distinct and separate legal personality, it must be noted that any acts done by the Partnership are seen as acts done by the Partners themselves. This is in sharp contrast to a Limited Liability Company registered under the Cyprus Companies Law, Cap. 113.

Although in terms of actual business and commercial reality, a Partnership would be seen very much like a Company, e.g. entering into Agreements in the name of the Partnership and so forth, the legal reality for a Partnership is rather different. The law ignores the Partnership itself and looks to the Partners composing it. What is called the property of the Partnership is, for the law, actually the Partners' property. The same holds true for the debts, obligations and liabilities of the Partnership, which, under the law, are perceived to be the debts, obligations and liabilities of the Partners themselves. This has given rise to two important rules that a Partner should bear in mind:

- A Partner may be the debtor or creditor of his co-partners but he cannot be either debtor or creditor of the Partnership as he would, under the law, be a creditor or a debtor to himself;
- A partnership cannot employ a Partner, as no person can employ himself.

B. Conditions for Setting Up a Cyprus Partnership

Under the Law, a Partnership has been defined as “... *the relation which subsists between persons carrying on business with a view of profit*”.

As such, three conditions need to be satisfied in order to set up a Partnership, as you need to have:

- A Business;
- Two or more persons to carry out this Business (can be both legal or natural persons); and
- The Business should be operated for Profit.

The term “Business” has been very widely defined by the Law to include “...*every trade, occupation or profession*”, and as such, it generally covers most of the activities a person would consider doing. However, the mere fact that a particular activity is profitable will not of itself turn it into a business within the meaning of the law; for example, joint ownership of property does not of itself qualify as a business, but joint ownership for the purpose of renting out the property might well fall within this description.

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It is also worth noting that, although there is a minimum number of two (2) persons required in order to form a Partnership, the Law does provide for a maximum number of Partners being ten (10). It is also stated that no company, association, or partnership consisting of more than 100 persons shall be formed for the purpose of carrying out any operation which is designed to bring profit to the company/association/partnership, or each member of the company/association/partnership, unless it is registered as a Company based on the provisions of Companies Law, or any amendment thereof or has been established according to any other Law

Lastly, as to the third requirement, "Profit" means the net amount remaining after paying out of the revenue of a business all the expenses incurred in obtaining such revenue. As such, the end-goal of the business activities of a Partnership is to make a profit, and thus you can not have a Charitable purpose as a Partnership.

C. Liabilities and Debts as to Partnerships

The main difference between the Limited Liability Partnership and the Partnership, is that in the Limited Liability Partnership a partner can limit his/her exposure to such liabilities and debts of the Partnership up to the level of the amount paid by him/her to obtain his/her partnership share; whereas, in an ordinary Partnership, every partner shall be considered liable in full for such debts and liabilities personally, jointly and severally with the other partners.

It must be noted that the Partnership is liable and bound for all actions and/or omissions of any of the partners when acting for and on behalf of the Partnership (always within any limitations specified as to their authority as per the Partnership Agreement). However, and similarly as per the provisions of Cyprus Companies Law *vis a vis* limitations to the authorities of Directors, even where there are such limitations imposed on the authorities of a partner, an innocent 3rd party who is not aware of such limitations is entitled to reach the assumption that each partner has full authority to undertake acts in the ordinary course of business of the Partnership and to bind the partnership.

It is also worth noting that, even in the event that a partner ceases to be a partner in a Partnership, he still remains liable of all debts, obligations and liabilities of the Partnership if these were incurred during the time period for which he was still a partner. Similarly, a newly admitted partner in a Partnership shall not be liable for any debts, obligations and liabilities of the Partnership which arose prior to his admission date (unless he has agreed to assume such debts and liabilities).

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D. Can a Partner be Expelled?

This is purely a matter covered under the Partnership Agreement which will form the Partnership in questions. It is customary that a Partnership Agreement shall contain relevant provisions as to when, why and how a partner may be expelled. If such provisions are absent from the Partnership Agreement, then these can not be inferred and the partner can not be expelled.

E. Dissolution of Partnership

It should be noted that the dissolution of a Partnership is governed by its Partnership Agreement. There are occasions where a Partnership is formed for a finite period (for example, for five years or until a defined project is finalized), but in the majority of cases the Partnership Agreement shall be for an indefinite period.

In light of the above, it is important to include relevant provisions as to when and how a Partnership may be dissolved in the Partnership Agreement.

It is also noted that a Partnership shall be dissolved immediately in the event of death of one of the two partners (or until only one partner remains alive) and/or in the event of a bankruptcy of one of the two partners (or until only one of the partners remains non-bankrupt).

A partnership may also be dissolved by ways of a Court Order, on the application of any partner. The court has, inter alia, jurisdiction to dissolve a partnership whenever it deems it just and equitable.

F. Accounting and Management of the Partnership

All Partnerships are required to maintain proper Accounting Books and every partner has a duty towards all other partners to provide them with full information and accounts for any matter relating to the Partnership.

Under the new Section **64A** of the Law Cyprus Partnerships Law, additional requirements have been placed on Partnerships. Partnerships fall in the scope of the new Section if they are registered under the Cypriot Partnerships Law and whose partners are:

- Limited liability companies which are incorporated under the Companies Law;
- Companies of a member state;
- Companies registered in any other jurisdiction but are in similar form to those mentioned above;
- Partnerships formed under the Cyprus Partnerships Law;

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- Partnerships formed under any other relevant law of the European Union.

Section 64A goes on to specify the annual requirements Partnerships must comply with, as follows:

- Partnerships must prepare financial accounts in accordance with section 118-122 of the Cyprus Companies Law. To the extent required by the new section the financial accounts are:
 - (i) prepared within 6 months from the end of the financial year;
 - (ii) comply with several requirements specified in the law.

In the event that financial accounts are not prepared, all partners (or general partners in the event of a limited liability partnership) are liable to the imposition of a fine by the Registrar of Companies. It is also noted that it is a criminal offence to prepare financial accounts which do not represent the true and fair picture of the Partnership, such criminal offence being subject to imprisonment which does not exceed one year or a fine of one thousand seven hundred euro or both.

The Financial Accounts, once finalized and signed, have to be submitted to the Registrar of Companies in Cyprus.

As to the management of a Partnership, subject to the provisions of the Partnership Agreement (and not concerning a Limited Partnership), every partner is entitled to participate in the management of the partnership and every partner is entitled to share equally in the capital and profits of the business.

No person may be introduced as a partner without the consent of all existing partners.

G. Taxation of Partnerships

In light of the fact that a Partnership is not a separate legal entity, it is not taxed as a separate legal person itself. As such, the typical tax treatment of a Partnership is that the income of the partnership is considered as income of the actual partners (in the percentages at which they are participating. Each partner's share of profit is added to their overall income and shall be taxed accordingly as personal income tax under the applicable laws of Cyprus.

H. Matters Pertaining to Limited Partnerships

A limited partnership is required to have at least one "general partner" and one or more "limited partners".

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The following limitations are applicable:

- Limited Partners are not allowed to participate in the management of the Partnership and they do not have power to bind the Partnership. In the event that, for whatever reason, then participate in the management, then they lose their status of “limited partners” and shall be liable for all debts and obligations of the partnership which have been incurred while they so take part in the management.
- Limited Partners do not have a right to dissolve the partnership by notice, unless specifically provided for in the Partnership Agreement.
- Only the General Partner(s) is/are allowed to participate in the management of the Partnership.

I. Formation and Registration Requirements

A Partnership is formed on the execution of the Partnership Agreement and commencing of its business activities, and has thirty (30) days from such date to register with the Department of Registrar and Official Receiver in Cyprus (subject to the Registrar approving the proposed name of the Partnership first).

For purposes of registration with the Department of Registrar and Official Receiver in Cyprus, the relevant application forms shall need to be completed and filed; however, the Partnership Agreement is not filed with the Registrar at any stage.

Any change in the particulars of the Partnership, such as name, partners, etc, must be notified to the Registrar within seven days of the date of such change. Failure to effect registration of any changes to the particulars of the Partnership is an offence punishable with a fine calculated on a daily basis.

The content of this Newsletter is intended to provide general guidance only. Expert advice should be sought for your specific circumstances. Our team of highly experienced professionals can advise you further on the basis of your particular facts and circumstances. Please feel free to contact Mr. George Vrikis at vrikis@vrikislegal.com to discuss how we can be of assistance to you.

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