

Cyprus – New Definition for “Shell Companies”

The Central Bank of Cyprus (“CBC”) issued a circular (Ref. BS 6020) on 02/11/2018, with the purpose of clarifying and further explaining the vague information and definitions about the so-called “shell companies” and entities in Cyprus and how licensed Financial Institutions should deal with them. This was highly needed as the original circular which was issued in June 2018 created uncertainties as to the treatment of various entities by the financial institutions.

1. Main Provisions

As provided by the CBC, the term “*shell company/entity*” refers to a limited liability company or any other legal entity that:

- Has no physical presence or operations; “*physical presence*” includes employees, office space (owned or rented), etc. The presence of a third person providing merely nominee services including company secretary duties **does not** constitute on its own physical presence. Also, absence of meaningful mind and management could be construed as lack of physical presence; and
- Has no established economic activity in its country of incorporation/registration, little to no independent economic value and no documentary proof to the contrary.

2. Exclusions from the Shell Companies Criteria

Through the latest circular of the Central Bank of Cyprus, the following type of Companies (with such economic activities) are excluded from the “Shell” Companies criteria:

- Companies which hold stock or shares or other equity instruments of another business entity with identifiable ultimate beneficial owner(s);
- Companies which hold intangible or other assets including real estate, ship, aircraft, portfolio of investments, debt and financial instruments;
- Companies established to facilitate currency trades and asset transfers, corporate mergers, as well as carrying out asset management activities and trading of shares;
- Companies that act as a treasurer for companies, recognized as a group or manages the activities of the group.

CORNER OF MAKARIOS AVENUE
AND AYIAS ELENIS 36,
GALAXIAS COMMERCIAL CENTRE,
BLOCK B, 4TH FLOOR, OFFICE 404,
1061, NICOSIA, CYPRUS

TEL: +357 22 261 777
FAX: +357 22 261 888
EMAIL: VRIKIS@VRIKISLEGAL.COM
SKYPE: GEORGE_VRIKIS



- any other case where convincing evidence can be provided that the company/entity is engaged in legitimate business, with identifiable ultimate beneficial owner(s).

3. Provisions Affecting Offshore Companies

In addition to the above definition if the company/entity is registered in a jurisdiction where companies/entities are not required to submit to the authorities audited financial statements and does not voluntarily prepare audited financial statements by independent qualified professional accountants, or companies/entities which have a tax residence in a jurisdiction included in the EU list of non-cooperative jurisdictions for tax purposes or the OECD's list of non-cooperative jurisdictions for tax purposes, then it is advised that financial institutions should avoid engaging in a business relationship with them.

In all other cases, the financial institution shall decide on whether to engage in or maintain a business relationship, applying a risk-based approach, in accordance with the legal and regulatory framework of the respective jurisdiction, where the company/entity is established.

Considering the above, each financial institution should revise accordingly its customer acceptance policy in order to comply with this circular.

4. **Conclusion**

The CBC ends its Circular by reminding Financial Institutions of their obligations to conduct all necessary due diligence measures and checks, among others concerning the identity of the ultimate beneficial owners (UBOs), the source of funds and the transnational behavior of their customers, in accordance with the applicable legislation and regulatory framework.

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.

CORNER OF MAKARIOS AVENUE
AND AYIAS ELENIS 36,
GALAXIAS COMMERCIAL CENTRE,
BLOCK B, 4TH FLOOR, OFFICE 404,
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SKYPE: GEORGE_VRIKIS