Commercial laws of Cyprus
An assessment by the EBRD
July 2015
# COMMERCIAL LAWS OF CYPRUS
## AN ASSESSMENT BY THE EBRD

**July 2015**

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*Basis of Assessment:* This document draws on legal assessment work conducted by the Bank (see [www.ebrd.com/law](http://www.ebrd.com/law)) and was last updated during the preparation of the 2015 EBRD Strategy for Cyprus, reflecting the situation at that time. The assessment is also grounded on the experience of the Office of the General Counsel in working on legal reform and EBRD investment activities in Cyprus and does not constitute legal advice. For further information please contact ltt@ebrd.com.
Overall assessment

In recent years, the Cypriot authorities have made significant efforts to address the legal issues behind the 2013 crisis, focusing on the legal framework for public finance management and the legal aspects of restructuring of the failed banks. This prompted reforms in other sectors related to the commercial legal framework. However, further efforts need to be undertaken in the area of legislative drafting, and particular attention should be made to the adequate implementation of the existing and particularly recently adopted legal instruments.

The Cypriot Judiciary is generally seen as independent and impartial, and government authorities are believed to respect judicial independence. The electronic communications markets are fully liberalised. The public procurement legal framework, in Cyprus is ranked the highest in the EBRD region. No PPP specific regulatory framework has been identified on top of the public procurement law that, among other things, introduces the fundamental EU concessions principles. Cyprus also enjoys a relatively high level of sophistication of capital markets-related laws.

Capital controls imposed in 2013 have been abolished. A Foreclosure Law and a Law on Alternative Investment Funds have been adopted, along with the Privatisation Law. Major developments also took place in corporate and personal insolvency procedures with the adoption of the insolvency laws package aimed at bringing insolvency legal framework closer to international standards. The implementation of these legal instruments is yet to be assessed.

Certain matters may require further attention. Cyprus still has not adopted the freedom of information law. In the energy efficiency and renewable area, the government should focus on implementation of the recently adopted legislation, improve energy efficiency regulation in industry, buildings and transport sectors, as well as strengthen the legal framework and institutional capacity for development of renewable energy. The Privatisation Law adopted in 2014 should be followed by further advancing the privatisation programme. Shortcomings in the corporate governance framework should be addressed. Non-performing loans remain an issue, resolving which requires a coordinated effort between the government, the central bank, local banks and international financial institutions. Efforts should focus on implementing new legislation on insolvency and foreclosure.

Legal system

Constitutional and political system

Cyprus is a presidential representative democratic republic. The current Constitution was adopted on 16 August 1960, the date of independence from the United Kingdom. As of December 1963, the Turkish Cypriot north does not participate in the government; the Turkish Republic of Northern Cyprus maintains its own constitution and governing bodies. The country continues to be de facto divided between north and south, despite continuous negotiations on a comprehensive political solution.

Legislative power is vested with the House of Representatives. While the Constitution stipulates that the number of the members of the Parliament is fifty, in 1985 a law was passed whereby the number of seats was increased to eighty, with 56 (70%) allocated to the Greek Cypriot Community and 24 (30%) to the Turkish Cypriot Community, in accordance with Article 62(2) of the Constitution. The House of Representatives presently consists of fifty-six members elected by universal suffrage for a five-year term, as well as three observer members representing Maronite, “Latin” (Cypriot Roman Catholic) and Armenian religious groups. The 24 seats reserved for Turkish Cypriot Community remain unfilled. Voting in Cyprus is compulsory. The Constitution does not specify the electoral system or electoral districts. After a period of a majority representation system followed by qualified proportional representation, the current electoral system established in the mid-nineties resembles simple proportional representation. The most recent elections took place in 2013.

The President of Cyprus is both head of state and head of government, elected by universal suffrage in direct election by a simple majority of voters for a five-year term. If no candidate receives more than 50% of the votes validly cast, a second round of elections is held between the two candidates who received the greatest number of votes, and the one that receives more votes than the other is deemed elected. In the event of temporary absence or incapacity of the President, the President of the House of Representatives steps in.

The Council of Ministers is the executive branch chaired by the President of Cyprus and consists of ministers.

Following the independence of Cyprus from British rule in 1960, the Cyprus legal system was and continues to a great extent to be based on English law.
Freedom of information

Freedom of speech and expression is guaranteed by Article 19 of the Constitution, and the 1989 press law safeguards freedom of the press, the right of journalists not to disclose the sources of information and access to official information. The law requires that civil servants obtaining permission from the relevant minister before providing access to government documents. Cyprus has still not adopted a freedom of information law.

Judicial system

The Cypriot Constitution prescribes a strict separation of powers, and the system of justice is generally heavily influenced by the English common law.

The Cypriot judiciary has a two-tiered structure, comprising District, Assize and Family Courts at first instance and the Supreme Court at second instance. The six District Courts, one for each administrative district of the country, hear all civil actions save for matters falling under the jurisdiction of the Rent Control Tribunal, the Industrial Disputes Tribunal and the Family Court; they also try criminal cases for offences punishable with up to 5 years imprisonment. The Assize Court tries more serious criminal cases. The Supreme Court serves as an appellate court for lower courts in civil and criminal matters and hears applications for judicial review of decisions of administrative bodies. The Supreme Court serves as the Supreme Council of Judicature, and has exclusive authority over the appointment, promotion, transfer and discipline of judges of the lower courts. Supreme Court judges are appointed by the President of Cyprus, usually from among the senior members of the judiciary, upon a recommendation of the Supreme Court. The Supreme Council of Judicature sets an annual training programme and provides training, financed by a specific allocation in the judiciary's budget. Although judicial training is not compulsory, it is highly subscribed. The Cypriot Constitution prescribes a strict separation of powers, and the system of justice is generally heavily influenced.

The Cypriot Judiciary is generally seen as independent and impartial, and government authorities are believed to respect judicial independence. Accordingly, there is evidence of high public confidence in the judiciary. There are no structural problems enforcing domestic court orders. The main concerns relating to the Cypriot judiciary are the slow pace of judicial proceedings and the resulting backlogs, problems recently identified under the EAP as requiring attention. In response, the authorities have undertaken to provide more detailed statistics on court backlogs and the duration of court proceedings, and to enact legislation to establish an Administrative court, in order to ease the caseload burden on the Supreme Court.

Reforms of the Cypriot justice system are ongoing and are likely to include: the introduction of an e-justice system; the creation of commercial courts; the promotion of small claims procedures; the establishment of an Administrative Court; and a new system for evaluating judicial output. A further measure which would enhance the functioning of the judiciary would be to establish a comprehensive database of all court decisions; at present, only a selection of recent judgments is published on the website of the Supreme Court. In addition, important upcoming commercial law reforms, such as the passing of an effective foreclosure law, will need to be accompanied by appropriate judicial training.

Investment climate

Although Cyprus was severely hit by the 2013 banking sector crisis, and economic recession persists, signs of recovery are emerging. The outlook is subject to significant risks as the economy is dependent on potential regional instability and the reform agenda is subject to implementation risks.

The international community is supporting Cyprus with a programme managed by the European Commission, the European Central Bank and the IMF (collectively known as the “Troika”), and the country’s performance has been receiving positive feedback in the spring 2015 review, particularly following the adoption of the foreclosure law in April 2015.4

The banking sector is undergoing major restructuring. Problems in the Cypriot banking sector were at the heart of the economic crisis in the past two years, but a fundamental restructuring of the sector is under way. In mid-2013, the largest bank – the Bank of Cyprus (BoC) – which had been declared insolvent was recapitalised through the bail-in of uninsured depositors. The second largest bank, Laiki, was divided into a “good” and “bad” part, with the good part merged into the BoC. Another major bank, Hellenic Bank, was recapitalised with private capital in October 2013, while the cooperative credit sector underwent a significant consolidation and recapitalisation in early 2014. In mid-2014 the BoC announced that it had attracted €1 billion in fresh capital from private markets. The authorities were determined to enhance supervisory standards in the banking sector prior to entering the European Single Supervisory Mechanism.5

Capital controls have been abolished. As part of the authorities’ initial response to the crisis in spring 2013, a range of capital controls was introduced in order to stem the potential outflow of capital from the country’s financial institutions. These included restrictions on cash withdrawals along with similar limitations on cashless payments and transfers. By mid-2014 many of these restrictions had been either...
relaxed significantly or abolished, with last capital controls lifted by April 2015.\textsuperscript{6}

Privatisation efforts are advancing. Under the Troika programme, the authorities have committed to a large-scale privatisation programme, with the aim of raising revenues and improving the performance of privatised entities by attracting capital. In February 2014 the Parliament adopted a new privatisation law, which enables the establishment of a new privatisation unit responsible for preparing and implementing detailed privatisation plans. The main short-term privatisation priorities are the telecommunications company, Cyta, the national airline, Cyprus Airways, and some of the Ports Authority’s commercial activities. During 2014 Cyta started a restructuring process and the authorities committed to convert Cyta into a joint-stock company by the end of 2014, with a view to finding a strategic investor in 2015.\textsuperscript{7} A Privatisation Unit was formally established however it is yet to become fully operational. The legal framework requires further amendments to ensure privatisation of certain objects.\textsuperscript{8}

The level of non-performing loans (NPL) remains high. As of the end of August 2014 the level of NPLs had reached approximately 48 per cent of total loans, an extraordinarily high total by international standards.\textsuperscript{9} Resolving the NPL issue requires a coordinated effort between the government, the central bank, local banks and international financial institutions.

In September 2014 the parliament passed a law on foreclosure that aims to substantially reduce the time needed to foreclose on business loans and mortgages. However, the law was accompanied by other legislation that has raised concerns among Troika members.\textsuperscript{10} Efforts should focus on implementing new legislation on insolvency and foreclosure.

Issues remain in the business environment. The country ranks 64th (out of 189 countries) on the World Bank Doing Business 2015 report for ease of doing business, one of the lowest scores in the European Union. Cyprus ranks poorly on getting electricity, dealing with construction permits, registering property and enforcing contracts.\textsuperscript{11}

Reforms in other areas are ongoing, including implementing the reform on improving business environment, which includes simplification of regulations and licensing requirements on the operation of businesses,\textsuperscript{12} reforms on clarifying beneficial ownership of Cypriot legal entities\textsuperscript{13} and planned reforms of the legal framework of state-owned enterprises.\textsuperscript{14}
Commercial legislation

The EBRD has developed and regularly updates a series of assessments of legal transition in its countries of operations, with a focus on selected areas relevant to investment activities. These relate to investment in infrastructure and energy (concessions and PPPs, energy regulation and energy efficiency, public procurement, and telecommunications) as well as to private-sector support (corporate governance, insolvency, judicial capacity and secured transactions).

Detailed results of these assessments are presented below including infrastructure and energy and private sector development topics.

The completed assessment tools can be found at www.ebrd.com/law.

Infrastructure and Energy

Electronic Communications

The main legal basis for electronic communications regulation in Cyprus is the amended Electronic Communications Act (Law 51(I)/2012), published on 18 May 2012. This act transposed the European Union (EU) 2009 electronic communications framework into domestic legislation. The policy maker for the sector is the Ministry for Communications and Works, and the regulatory authority is the Office of the Commission for Electronic Communications and Postal Regulation (OCECPR).

Cyprus is a member state of the EU, with fully liberalised electronic communications markets. As a member state it has undertaken to apply the necessary implementing measures relevant to the EU’s Digital Agenda for Europe (DAE). To comply with its obligations in this respect Cyprus has adopted a comprehensive plan (2012-2020) to boost the uptake of information and communication technology (ICT), developing Cyprus into a knowledge based economy, entitled “Digital Strategy for Cyprus”, approved in February 2012.

While both mobile and fixed markets were formally liberalised in 2003, meaningful competition only began to take hold in 2006 following the imposition of regulatory remedies on the incumbent Cyprus Telecommunications Authority (Cyta), following OCECPR’s completion of relevant market analyses. Many such measures have continued, in the absence of a fully competitive market, as OCECPR have conducted successive market analyses.

Cyta’s main competitors are (a) South African based MTN, (b) Primetel, a fixed operator and mobile virtual network operator (MVNO) which recently acquired the third mobile network licence; and (c) Cablenet, a cable TV operator which recently bought out a local niche MVNO. Fourth generation mobile licences have already been issued and service is expected to begin in 2015.

While all required competitive safeguards are formally in place, and other operators have entered the market, incumbent Cyta still maintains a sizeable market share both in the fixed and mobile markets. Though decreasing, Cyta’s fixed market share is the highest of an incumbent in the EU and its mobile market share is one of the highest. One of the key issues which competing operators report as an inhibitor to better competition is their inability to gain easy and timely access to Cyta ducts at a viable cost.

A privatisation plan for Cyta was approved by the Council of Ministers on December 2013. A legal framework for the privatisation procedure was enacted in March 2014 and the privatisation is scheduled to be completed by the end of 2015.

While electronic communications is an important contributor to the Cypriot economy in itself, it is the sector’s role as an engine of growth and development across all sectors of the economy, particular in the small and medium enterprise market, that makes continued and vigorous implementation of the ever evolving EU framework critical as a means of attracting the investment necessary to install next generation technologies.

On the regulatory front, attention will likely be focused on the continued implementation of the EU framework and efforts by OCECPR to best facilitate the sector environment for the achievement of the DAE through the implementation of the Digital Strategy for Cyprus. In common with most EU peers, among Cyprus’s challenges into the future is keeping
pace with the evolving EU framework and ensuring its effective implementation as part of the DAE. Of particular importance in this respect are the regulatory enablers surrounding Cyprus’s initiatives on broadband and the creation of an environment that is sufficiently conducive to both attract new investment and accelerate planned investment. Vigorous enforcement of timely access to ducting on viable terms, effective implementation of provisions on rights-of-way and ensuring continued effective regulation of operators with significant market power following the privatisation of Cyta will greatly contribute towards achievement of the DAE targets.

Energy

Electricity

The energy system is highly dependent on imported energy sources and is characterised by rising energy demand, which requires immediate energy sector reforms. In recent years there have been important developments in the sector, including the partial liberalisation of the electricity market, promotion of renewable energy sources investments and discovery of indigenous gas sources.

Electricity Market Law was adopted in 2003 (with subsequent amendments), and market liberalisation efforts resulted in the opening of 35% of the electricity market to competition. In addition, the Council of Ministers established the Cyprus Energy Regulatory Authority (CERA), an independent authority responsible for the regulation of the electricity and gas market with exclusive rights to issue licenses for all activities relating to electricity and gas, to approve tariffs, to dissolve disputes, to protect consumers and to secure a reliable electricity system.15

The power component of the energy sector is dominated by the vertically integrated Electricity Authority of Cyprus (EAC). The authorities have included EAC in the privatisation programme, but the timetable is likely to extend to several years. As a first step, the authorities have committed to unbundling EAC’s activities into separate legal entities by mid-2015.16

Gas

Oil and gas provide for the majority of the Cypriot energy needs, followed by solar and wind energy.

Hydrocarbon exploration and exploitation activities are governed by the Hydrocarbon (Prospection, Exploration and Exploitation) Law of 2007 (No. 4(I)/2007) that implement the EU acquis.

Oil and gas resources are managed by the Cyprus Hydrocarbon Company, fully owned by the Government of Cyprus.

Cyprus is believed to have substantial offshore reserves of natural gas and extensive exploratory work is under way, but the long-term commercial potential of these reserves remains unclear.17 The government is intent to establish the energy supply able to meet the energy demands of the country. Among major recent developments is the announcement of the construction of the natural gas liquefaction plant and export facility. The increased activity in the sector is expected to warrant further legislative developments.

Energy efficiency/renewable energy

The Ministry of Energy, Commerce, Industry and Tourism (“the Ministry”) is the policy maker for renewable energy (RE) and energy efficiency (EE).

In the energy efficiency and renewable area, the government should focus on implementation of the recently adopted legislation, improve energy efficiency regulation in industry, buildings and transport sectors, as well as strengthen the legal framework and institutional capacity for development of renewable energy.

Under the National Energy Efficiency Action Plan (NEEAP) developed in accordance with EU Directive 2006/32/EC, Cyprus adopted an energy saving target of 185 ktoe by 2016, which amounts to 10% of the country’s energy consumption. A 2nd NEEAP was submitted to the EC in mid-2011, and a 3rd NEEAP was due to be submitted by June 2014. The Ministry’s Energy Service is responsible for ensuring that the energy efficiency policy and legislation is harmonised with the EU EE acquis.

Cyprus is one of the several EU Member States that have transposed the Energy Efficiency Directive of 4 December 2012 (EED), which among other things enforces an existing target to cut energy use by 20% by 2020. Cyprus legal and regulatory framework is mainly based on the 122(I)/2003 Law on Regulating the Electricity Market. The Law established CERA, which, among other things, is tasked with long-term planning for energy efficiency and encouraging the efficient use and production of energy. Further, the 33(I)/2003 Law for the promotion of RE and energy savings created a special fund to support grant schemes for the housing, commercial and transport sectors. Governmental financial support for efficient use of energy in buildings includes grants for the installation of thermal insulation, photovoltaics, geothermal and solar thermal. With regard to the transport sector, the government supports hybrid, electric and low-emission vehicles. Financial support schemes have been implemented for co-generation facilities, including a feed-in tariff and capital grants, in addition to a priority access system. Cyprus has transposed the Energy Performance of Buildings
Directive 2002/91/EC into national law (specifically Laws 142(I)/2006 and 30(I)/2009), with the ΚΔΠ 446/2009 regulatory order introducing obligatory measures relating to the installation of solar water heaters in all new residential buildings. The 142(I)/2006 Law sets the minimum EE requirements, energy performance calculations and energy performance certificate of buildings and apartments. It further defines and enforces the proper maintenance of heating systems, cooling systems and boilers.

Legislation is being amended in order to reflect the requirements under the EED, including the Law for Energy Efficiency in End-Use and Energy Services and the Law for the Promotion of Combined Heat and Power Generation.

As of March 2014, Cyprus is implementing a pilot programme for using energy service companies and energy performance contracting for improving the EE of public buildings. The government proposal for utilization of the EU Structural and Cohesion Funds for the 2014-2020 period is aimed at increasing EE in public buildings (3% annual renovation for improving the EE of public buildings) and for operating new incentive programmes for EE measures in households, industries and tertiary sector, as well for a pilot CHP project.

Efforts are also being made for redesigning the national Grand Schemes of the Special Fund for Energy Conservation and the Utilisation of Renewable Energy Sources in order to increase support for EE investments.

Cyprus has a national target for saving 14.3% in primary energy in 2020. In order to achieve such a target, the country should continue promoting EE of buildings, public transport and low emissions' vehicles. The country should also strengthen the policy for promotion of energy efficient appliances with specific information tools to be developed. Information tools and demonstration projects are essential for all sectors but they are especially relevant to the residential sector. The institutional framework and its capacity should be further strengthened to enable support for the growing sectors.

The National Energy Policy as formulated by the Ministry’s Energy Service puts a priority on the development of renewable energy as a means to ensure security of energy supply, economic competitiveness and protection of the environment. As an EU Member State, Cyprus has RE policy commitments, including deriving at least 13% of the final consumption of energy from renewable energy sources. While in 2005 electricity produced from renewable sources was 2.9%, it more than doubled by 2010 and has currently surpassed the indicative targets for the 2015-2016 period. According to the National Action Plan, the aim is to reach 16% by 2020, 3% higher than the EU target.

In December 2012, the House of Representatives approved amendments to existing legislation (i.e. the Regulation of the Electricity Market Law of 2003) aimed at harmonising national legislation with the 3rd Energy Liberalisation Package of the European Union with the main sector law. The 2003 Law was followed by several legislative acts and amendments that dealt more specifically with the issue of RE. Cyprus has implemented the European Directives into its national legislation but because of its geographical location, not all measures are feasible.

Specific measures taken in view of the government’s commitments to increased share of electricity produced by renewable energy sources are the establishment of the Cyprus Institute of Energy tasked with promoting and developing the use of RE, the establishment and operation of the Special Fund, the development of financial Support Scheme Plans (2004-2009 and 2009-2013), power purchase obligations and others. Electricity from renewable sources is promoted through subsidy combined with a net metering scheme. Grid development is planned centrally by the Cypriot TSO and renewable energy is given priority to connect to the grid.

In 2013, several measures were rolled out by the Cyprus Electricity Regulatory Authority (CERA) including a programme for the installation of 5,000 small photovoltaic systems up to 3kW each on the roofs of households. By February 2014, 1498 systems were already connected to the grid. It’s expected that more installations will be connected in 2014. A couple of programmes have been launched by CERA, including for 10MW of installations of self-generation PV’s from companies.

Cyprus is preparing a national action plan for green growth in line with EU targets, including green taxation mechanisms and increased budget for the Renewable Energy Sources fund for 2014.

**PPPs / Concessions**

No PPP specific regulatory framework has been identified on top of the public procurement law that, among other things, introduces the fundamental EU concessions principles. However, as of 2013, initiatives to upgrade PPP laws have been in place as well as a certain project pipeline for transport PPPs, in particular in ports. In an effort to help strengthen public finance, the EC, ECB and IMF have put together a plan for structural reforms matched by the government’s commitment to upgrade the PPP framework. One of the first such steps is the new PPP-related provisions in the Fiscal Responsibility and Budgetary Framework Law adopted in February 2014.
Private sector participation in infrastructure, in particular through concessions and PPPs, have a few notable examples including Larnaca and Paphos international airports concessions as well as a motorway between Paphos and Polis that are underway. The former project has been awarded “Best Transport Project in Europe” in 2013. In addition to transport PPPs are considered as having potential in education and waste management.

In its Country Assessment for Cyprus prepared for the recipient country status approval in April 2014 the EBRD envisaged that it will support private sector participation through concessions and PPP and provide the authorities with technical assistance on the implementation of PPP provisions. The Bank will also consider assistance with the PPP legal, institutional and/or regulatory frameworks upgrade.

Public procurement

Public procurement laws in Cyprus are of good quality and the country is one of the top-scoring countries in the region for compliance with the international best practice and the EBRD Core Principles on Public Procurement. However, some reform is still needed to upgrade the law to the standards of the 2014 EU directives on public procurement, especially in the areas of integrity and flexibility of public procurement processes.

Public procurement in Cyprus is governed by individual laws regulating (1) government procurement and public law institutions, (2) public procurement of the entities in the utilities sector, (3) review and remedies procedures and (4) defence procurement, adopted in 2010 (the PPL). Several government decrees supplement the PPL in Cyprus, providing for standard tender documents and regulating electronic procurement procedures and contract management, in particular.

The public procurement legislation in Cyprus is a substantial but well-coordinated legal framework, based on the 2004 EU public procurement directives. The PPL comprehensively regulates all phases of public procurement processes, addressing both procurement planning and contract amendment procedures. In the EBRD legal assessment completed in August 2014, the Cypriot public procurement legal framework scored high compliance with international best practice. In terms of transparency, competition and review and remedies procedures, the ‘law on the books’ in Cyprus is the top-ranking in the EBRD region (see Chart 1).

In Cyprus, the national regulatory authority – the Department for Public Procurement (the Department) forms a part of the Treasury of the Republic of Cyprus. The Department is responsible for development and implementation of public procurement regulations. The Department is also managing a central eProcurement platform used by all contracting entities in Cyprus. Further, the Department acts as a Central Purchasing Body, managing online purchasing based on framework agreements. The independent Public Procurement Review Board acts as the review and remedies body for procurement procedures. The members of the Board are subject to appointment and removal by the Prime Minister. The suppliers and contractors are allowed to seek remedial action by the Board as well as the right to seek compensation from the civil court.

The PPL stipulates obligatory eligibility criteria for economic operators, as well as optional qualification criteria that can be prescribed by the contracting entity. Further, the law stipulates that technical specifications, requirements for tenderers and award criteria must be consistently and accurately described in the tender documents.

The PPL specifies an open procedure as the default procedure and regulates several types of procedures such as (a) restricted (b) negotiated (c) competitive dialogue and (d) online framework agreements and (e) dynamic purchase system. The law requires that the selection of a procurement method is to be based on the specifics of the purchase and public contract profile. The legislation promotes equal treatment and forbids the preferential treatment of domestic bids.

The law contains guidelines on how to draft tender documents and standard terms of reference for all types of procurement methods and contract types. Additionally, several provisions of the PPL aim for transparency in an effort to combat corruption. It contains a specific requirement that procurement officers should avoid any conflict of interest while conducting procedures. While the legal framework is of general good quality, there are some weaknesses in policy areas such as integrity, economy and flexibility of the public procurement laws.

Presently, the Treasury of Cyprus is working on the implementation of the 2014 EU directives and a new law on concessions will be developed, based on the new 2014 EU directive on concessions. This process should be supported by the EBRD; however there are no policy dialogue activities developed yet since Cyprus was included in the EBRD region only recently.

The PPL in Cyprus needs to be updated to implement the 2014 EU directives on public procurement and further develop the eProcurement procedures, to include the online dynamic purchasing system and new e-catalogue procedures for small value contracts, recommended by the latest international best practice. If future reforms are implemented, Cyprus will achieve a very modern and efficient public procurement regulatory framework.
Chart 1: Cyprus - Quality of public procurement legal framework

Key: Extremities of the chart = International best practice

Note: The diagram shows the quality of the legal framework as benchmarked against international standards (European Union). The extremity of each axis represents an ideal score of 100 per cent, that is, full compliance with international standards. The fuller the “web”, the closer the overall telecommunications legal framework of the country approximates these standards.

Source – 2014 legal assessment of the Cyprus public procurement legislation
Private Sector Support

Access to finance

There is no modern all-encompassing secured transactions system in Cyprus that would allow the creation and perfection of security rights over movable property. The Company Law provides for the taking of non-possessory collateral over movable things and rights and comprises a limitative list of assets over which establishment of non-possessory security requires registration, namely: issued debentures; uncalled share capital; intellectual property; book debts. It is also possible to create a floating charge on the company’s assets. This not only limits the types of assets to be used as non-possessory collateral but also excludes debtors who are not governed by the Company Law (e.g. individuals). The Cyprus Registrar of Companies maintains a file for each legal entity which contains, inter alia, details of charges registered. This file and information is available for review by the general public both online and at the offices of the Cyprus Registrar of Companies, subject to payment (either online or at the Cyprus Registrar of Companies) of the applicable fee (Euro 10).

Depending on the nature of the pledge and the type of property to be pledged, it is necessary to describe the property with some reasonable degree of certainty. If the pledge to be created is a floating pledge which will also secure any future unidentified property, then a generic description would be sufficient (e.g. a pledge over all the present and future stock of a company).

The Transfer and Mortgage of Immovable Property Law (hereafter Mortgage Law) provides that mortgages must be registered with the Department of Lands and Survey. Mortgages can be created only if the immovable property is free from any other mortgages or with the consent of the beneficiary of the prior mortgage. Mortgages created by Cypriot legal entities must also be registered as a charge over the assets of the Cypriot Company with the Cyprus Registrar of Companies pursuant to Company Law. The mortgage registry is not electronic and access to information is limited only to the registered owner of the property, the administrator of his estate or a judgement creditor of the registered owner. A search must be performed on the premises of the Department of Lands and Surveys.

Enforcement is a big hurdle in Cyprus with the average foreclosure proceedings lasting of up to 15 years. The Cyprus parliament has recently enacted a new law with the aim to accelerate foreclosures on business loans and mortgages (September 2014) however not without some controversies as it seems that some measures that have been introduced to protect borrowers might not be compatible with the EU bailout terms.

The First Cyprus Credit Bureau (FCCB) is the first credit reference agency in Cyprus and is a joint venture between The Chamber of Commerce and Industry (CCCI) and Infocredit Group. The main sector of activity is the collection, process and provision of information that concerns the credit behaviour of businesses and consumers within the spectrum of their obligations towards third parties. The Office of the Commissioner for Personal Data Protection oversees the activities of the bureau based on the Processing of Personal Data (Protection of the Individual) Law of 2001 transposing the EU Directive 95/46/EC of the European Parliament and the Council of the European Union of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data. All individuals and companies that are recorded in the defaulters’ databank are notified in writing by the bureau and are given a timeframe within which they can access and object. Should this timeframe lapse and no objection has been received the data is made available to subscribers.

There is no special legislation of factoring or leasing apart from general “assignment of claim by contract” and lease provisions of the Contract Law which provides basis for assigning account receivables and leasing property. As a result there is no definition of factoring services or types of factoring transactions which can help increase legal certainty of the factoring transactions and hence reduce involved costs and risks of re-characterisation of transactions. The same goes for financial leasing transactions.

Overhaul of a general secured transactions system to allow establishment of non-possessory security rights over a wide spectrum of assets and introduction of a centralised pledge register which could be searched against the name of the debtor would be welcome in order to increase legal certainty and accessibility of collateral to a wider population. Introduction of laws governing financial leasing and factoring could improve access to the NBFI products.

Capital Markets

Cyprus has been an EU member since 2004, and introduced the euro as local currency in 2008. As such, the country had to transpose the EU directives into national law and is otherwise subject to the acquis communautaire and supervision by the relevant EU authorities, including the ECB, the EBA, the EIOPA and the ESMA. The main framework governing the issuance of and trading in securities in Cyprus comprises, in particular, the Public Offer and Prospectus Law of 2005, the Insider Dealing and Market Manipulation (Market Abuse) Law of 2005, the Investment Services and Activities and Regulated

Supervision of the financial sector is fragmented. The main regulator of the securities markets is the Cyprus Securities and Exchange Commission (CySEC). The Central Bank of Cyprus (CBC) exercises authority over payment, clearing and settlement systems and other related matters. The Insurance Companies Control Service attached to the Ministry of Finance is responsible for the supervision of insurance undertakings.

Market infrastructure includes the Cyprus Stock Exchange (CSE) and the Central Securities Depository and Central Registry (organised as a department within the CSE). The CSE is 100% owned by the state.

The Cypriot government does not exercise effective control over the northeastern portion of the island of Cyprus. The authority of local bodies, including the so-called “Central Bank of the Turkish Republic of Northern Cyprus”, is not recognised by the Cypriot government or the international community.

As a member of the EU, Cyprus has a relatively sophisticated legal framework for capital markets. The preliminary results of an assessment recently undertaken by the Bank indicate that local legislation provides for a comprehensive regulation of both equity and debt issuances, associated disclosures, listing requirements and safeguards against insider trading. The preliminary results also show that there are laws in place providing for a multitiered pension framework, which have been updated in 2006 in line with the EU Pension Funds Directive. However, there is no “traditional” tier 2 in the pension system. International Financial Reporting Standards (IFRS) compliance is mandatory for publicly traded companies.

Despite the presence of a robust regulatory framework in the above areas, the current economic crisis in Cyprus is thought to be related to poor standards of corporate governance and supervision in the banking sector. Government policies have recently been dominated by the response to the crisis, in particular, the strengthening of the legal framework for public finance management and addressing the legal aspects of restructuring of the failed banks.

In respect of securities markets, the October 2013 report of the “Independent Commission for the Future of the Cyprus Banking Sector”, set up by the CBC, recommends “that Cyprus encourage the development of new sources of finance such as capital markets, particularly a local bond market, and investment funds. This can be based on local initiatives in the areas of tax and regulation, but also on wider moves at the EU level to complete the single market in financial services and improve cross border access for EU member states to new sources of capital”.

The new foreclosure law has been adopted, which is expected to help address the issue of non-performing loans. Furthermore, the Law on Alternative Investment Funds was adopted in 2014.18

Corporate governance

Corporate governance legislation in Cyprus is mainly detailed in the Companies Law, Cap. 113, enacted in 1951, as amended.

Other relevant acts are:

- The Cyprus Securities and Stock Exchange Law of 1993, as amended and relevant implementing regulation, which regulate the competencies of the Stock Exchange and its powers and duties.
- The Cyprus Securities and Exchange Commission Law No. 73(I)/2009 enacted in 2009, as amended, which regulates the structure, responsibilities, powers and organisation of the Securities and Exchange Commission and other related issues.
- The Transparency Requirements Law, Law No. 190(I)/2007 enacted in 2007, as amended (the “Transparency Law”), which transposes the EU Directive 2004/109 and Directive 2007/14. This law applies to all issuers of transferable securities listed for trading on a regulated market which have the Republic of Cyprus as their EU home member state.
- The Investment Services and Activities and Regulated Markets Law, No. 144(I)/2007 enacted in 2007, which transposes the EU “Markets in Financial Instruments Directive” 2004/39/EC (so-called MIFID). This law harmonises the domestic framework with the relevant EU Directives regarding investor compensation schemes, capital adequacy of investment firms and credit institutions, organisational requirements, operating conditions and record keeping obligations for investment firms, transaction reporting, market transparency and admission of financial instruments to trading.
- The Inside Information and Manipulation of the Market (Abuse of the Market) Law, No. 116(I)/2005 enacted in 2005, as amended (the “Market Manipulation Law”), which addresses matters concerning the disclosure and use of confidential information relating to financial instruments admitted for trading in a regulated market in Cyprus.

The Cyprus Securities and Exchange Commission (CYSEC) is the market regulator and the primary body responsible for the Cyprus Corporate Governance Authority.
The current Cyprus Corporate Governance Code (the “Code”)\(^\text{19}\) was issued in September 2002 by the Council of the Cyprus Stock Exchange (CSE) in order to improve the governance of listed companies following the collapse of the stock market in Cyprus. The CSE is also responsible for the Code’s monitoring and revision. Representatives from both the CSE and CYSEC take part in a committee created to monitor the Code and pursue its development. The current Code is in its fourth edition, lastly amended in April 2014. Pursuant to the regulation No. 326/2009, the Code applies to companies listed on the main market, the major projects market and the shipping companies market of the CSE. Companies listed on the parallel market must apply only sections B3.1 (on the disclosure of the Board’s remuneration) and C3 (on Audit committee, auditors and Compliance with the Code) of the Code. All other companies listed on the CSE are required to apply only section B3.1.

Structure and Functioning of the Board, Internal Control and Rights of Shareholders appear to be the weakest links in the Cypriot Corporate Governance framework, based on the EBRD Corporate Governance Assessment 2014 (see Chart 2).

In line with EU regulation, the CG Code is established under the so-called “comply or explain” approach.

The recent crisis in Cyprus revealed many corporate governance shortcomings. They mainly relate to the structure of the board of directors and the company’s management. In particular, the lack of real independent non-executive directors; the poor directors’ oversight over corporate governance issues and conflict of interests and the weak internal control framework were flagged as some of the issues that led many companies to distress. Further, non-financial disclosure has room for improvement. In general, listed companies seem to include a corporate governance report within their annual report; however it is very difficult to find meaningful explanations in case of non-compliance with the CG Code.

As regards the corporate governance of banks, the October 2013 Report\(^\text{20}\) of the “Independent Commission for the Future of the Cyprus Banking Sector”, set up by the Central Bank of Cyprus\(^\text{21}\), pointed to the weaknesses in corporate governance as a cause of the Cyprus’ banking crisis. As a corollary of this banking crisis, the widespread view is now that a stricter framework and higher standards of corporate governance are required.

Pursuant to the Report, the main issues were:

- boards were structurally weak with inappropriately qualified members. They failed to carry out their responsibility to ensure that that their banks were prudently run;
- Senior executives pursued risky strategies bypassing internal controls and procedures;
- key information did not reach directors, reporting lines were diverted and proper board procedures were flouted; and
- a sound risk management culture was missing at all management levels.

With reference to the country’s compliance with EU legislation, since Cyprus’s accession to the European Union in 2004, the country is bound to transpose all relevant Acquis Communautaire. According to the latest information available – updated as of 18/01/2012 – Cyprus has transposed 90% of the Acquis on company law and anti-money laundering.\(^\text{22}\)

As a result of the crisis, the Independent Commission for the Future of the Cyprus Banking Sector issued a number of recommendations for improving the level of corporate governance of banks by enhancing the qualifications and independence of directors, increasing their number and powers, improving the directors’ awareness of the fundamentals of corporate governance, creating effective audit and risk committees, and assigning the board with key functions as the preparation of a long term strategy.
Note: the extremity of each axis represents an ideal score, that is, legislation fully in line with the OECD Principles of Corporate Governance; the fuller the ‘web’, the better the quality of the legislative framework.

Source: EBRD Corporate Governance Assessment 2014

Debt restructuring and bankruptcy

In April 2015, the Cypriot parliament adopted a package of long-awaited insolvency-related laws that aimed to reform both natural persons as well as legal entities insolvency frameworks in line with international practices. The insolvency framework package includes, among others, the personal insolvency law, the amendments to bankruptcy law (streamlining bankruptcy procedure for individuals), amendments to the Companies Law related to companies’ liquidation and companies’ debt restructuring, as well as insolvency practitioners law. The practical implication of these laws is yet to be assessed.

Set out below is the assessment of the pre-April 2015 system of insolvency regulation in Cyprus.

The insolvency and restructuring are mainly regulated by the Companies law (Chapter 113). The Companies law is largely inspired from the England and Wales Companies Act of 1948. Although it has been extensively amended in order to bring it into line with EU legislation, large sections, including those relating to receivership and liquidation, remain unchanged since before independence from the UK in 1960.

The initial review has focused upon interpretation of existing Cypriot Insolvency legislative texts and analysis of commentary from leading Cypriot legal practitioners on insolvency. In other words, the following analysis will be exclusively focusing on the Cypriot corporate insolvency regime.

In Insolvency cases, courts in Cyprus follow English law precedents where no local precedent exists and there is an abundance of such precedents which makes Cypriot insolvency law a comfortable territory for most British practitioners.

Insolvency refers to the inability of a company to repay debts which it has incurred. Insolvency is defined as the procedure whereby a company which has incurred debts is wound up, and its liquidator aims to settle the debts from the assets of the company.

Despite the strong English law heritage, Cyprus does not have any modern form of reorganisation procedure in insolvency such as the UK Company
Voluntary Arrangement (CVA) and Administration. However, Cyprus recognizes the ‘scheme of arrangement’ which can be a flexible tool in restructurings, although it does not have the benefit of a moratorium on creditor actions. Moreover, receivership may be used to sell businesses as a going concern by secured creditor but this remains a self-help remedy and not a collective insolvency proceeding for the benefit of all creditors.

In spite of many shortcomings that will be highlighted in the following paragraphs, investors might feel more comfortable with the assurance that operating in an environment with clear, simple and well tested rules. Such preference could be reflected when a choice of jurisdiction is available for international practitioners.

The Companies law in Cyprus offers two main reorganisations procedures that are the Scheme of Arrangement and Receivership. If there is a failure to redress the Company under one of the above schemes, the Companies law places it under one of the following insolvency procedures: Winding-up by the court (compulsory liquidation) or Creditors’ voluntary liquidation.

Our review has highlighted a number of areas in the Cypriot Insolvency regime which may benefit from reform.

The lack of a modern reorganisation procedure in the Companies law, introduced more than 60 years ago, doesn’t demonstrate a sound enterprise culture that seeks to rescue troubled businesses rather than terminates them.

Insolvency practitioners called for reforms mainly through adopting effective restructuring tools used under the law of England and Wales that are not currently applicable under the Cypriot insolvency law.

The Insolvency and Restructuring framework in Cyprus can benefit from the recognition of CVA and Administration procedures.

The CVA aims to achieve a rescue plan for the company or simply to facilitate the distribution of the company’s assets to creditors. The CVA seeks to bind dissenting creditors to the proposals formulated by the company so that it can come to an arrangement with its entire creditors. In order for the proposal to be approved, more than one half majority in value of the shareholders and more than three quarters in value of the creditors must vote in favour of the CVA.

CVAs have the benefit of a moratorium that is crucial to achieve its objective. During the moratorium, security cannot be enforced and proceedings cannot be commenced or continued against the company or its property except with the consent of the court.

Formal Proceedings

The main insolvency and restructuring options for insolvent companies under the Companies Act are the Scheme of Arrangement, Receivership, Winding up by the court (Compulsory liquidation) and Creditors’ voluntary liquidation.

There is an additional solvent liquidation procedure which can be led by shareholders known as members’ voluntary liquidation, but this procedure is outside of this analysis.

Scheme of Arrangement:

This procedure is used for the financial restructuring of a company which is viable but subject to short term liquidity problems. It can be also used to achieve a wide range of mergers and reorganisations of companies but it can be also used to wind-up companies such as insurance companies with running liabilities.

The scheme of arrangement aims to achieve a compromise or arrangement between a company and its creditors, or between a company and its members or any class of them.

The company, a creditor, member or, in the case of a company being wound-up, the liquidator can apply to the court for an order for a meeting of the creditors or members of the company to be convened, in whatever way the court directs, to consider the proposals. In order for the compromise to be binding, the compromise or arrangement must be passed by a majority in number and voting at the meeting of creditors or members. The approval of the court is required for the convening of any meetings and to sanction the resolutions passed at those meetings.

The scheme of arrangement is controlled by the company and its advisers. The court order approving the compromise must be delivered to the Registrar of Companies. This procedure is considered as flexible and fast as it can be completed within weeks if properly organised.

Receivership

Receivership is principally a “self-help” remedy for debenture holders, although other creditors may make an application to court for a court-appointed receiver. Receivership is not a collective proceeding and is not listed in the Annexes of the EC Insolvency Regulations.

The purpose of receivership is the recovery of the secured creditor’s debt. Unlike the liquidation procedure it does not bring the existence of the corporate debtor to an end. Receivership may lead to a going concern sale of the debtor’s business if it is found to be financially expedient.
A creditor holding a charge over assets can appoint a receiver to realise the assets subject to the charge and discharge of the debt out of the proceeds. If the charge is a floating charge covering substantially all the assets of the company, the creditor can appoint a receiver or a manager.

Receivership ends the directors’ power of management over the assets encompassed by the receivership and places them in the hands of the receiver. The extent of his powers and the degree of supervision over him are provided in the document appointing him which may be a court order or an appointment under a charge. Within seven days of appointing a receiver, the appointer must notify the Registrar of Companies.

If the appointment is under a floating charge covering substantially all the assets of the company, the receiver must immediately notify the company, which must within 14 days provide the receiver with a statement of affairs, including a statement of all assets and liabilities.

Based on this, the receiver decides whether to realise assets fragmentary or as a whole.

Debenture holders or other creditors of a company can make an application to the court. The court orders a receiver to be appointed. Otherwise, a secured creditor may appoint a receiver under specific powers contained in the charge.

The court appoints a receiver if it considers that the interests of the creditors concerned require protection by the appointment of a receiver, depending on the circumstances of the case. An appointment under a charge merely requires compliance with the provisions of the charge.

Once the receiver has repaid the sum due to the appointer or has concluded that it is uneconomic to continue the receivership, he will account to the appointer and the company and notify the Registrar of Companies that he has ceased to act.

Receivership can be completed in months if the receiver can quickly realise the charged assets and account to his appointer and the company. However, more usually, this can take years to conclude.

Winding up by the court (Compulsory liquidation)

In this procedure, the company immediately ceases to trade, the assets are realised and distributed and the company’s existence comes to an end. Compulsory liquidation is initiated through a petition for the winding up of a company that can be presented by (1) the company, (2) any creditor or (3) a shareholder.

If a winding up order is made, on hearing the petition, the liquidation will be deemed to have commenced at the time of the presentation of the petition unless a resolution has previously been passed for voluntary winding up, in which case liquidation will be deemed to have begun with the passing of the resolution.

The court can wind-up a company if any of the following applies:

- The members of the company resolve by special resolution that the company be wound up by the court;
- There is a default in delivering the statutory report to the Registrar of Companies or in holding the statutory meeting;
- The company does not commence business within a year from the date of its incorporation or suspends its business for one whole year;
- The number of members of the company is reduced, in the case of a public company, below seven;
- The company is unable to pay its debts;
- The court decides that it is just and equitable for the company to be wound up.

Upon the winding up order, any disposition of the company’s property that takes place after the commencement of winding up and any transfer of shares or alteration in the status of the members of the company after the commencement of the winding up will be void unless the court orders otherwise.

The official receiver is responsible for realising the assets and distributing the proceeds among the creditors. The directors are required to provide the official receiver with a statement of affairs detailing all the company’s assets and liabilities, including prospective and contingent assets and liabilities. The official receiver (or liquidator appointed to act in his place) will realise the assets, determine the amount of individual claims and distributes any funds in accordance with the priorities of creditors. The liquidator has extensive powers to realise the assets and determine claims. Liquidators in compulsory liquidations have extensive powers to investigate the conduct of persons involved with the company.

Legal actions and proceedings against a company in respect of which a winding up order has been made cannot proceed unless a court’s leave is obtained or subject to such terms as the court may impose. Once the assets have been realized and the funds have been distributed, the liquidator can apply to the court for the dissolution of the company. The company is dissolved with effect from the date of the order.

The liquidator must send a copy of the order to the Registrar of Companies.

Creditors’ voluntary liquidation

This is the only form of voluntary liquidation available to a company that is unable to pay in full and is controlled by the creditors, in whose interests the winding up is undertaken. This procedure is initiated
by the convening of two separate meetings; a members’ meeting and creditors’ meeting.

The members’ meeting aims to pass a resolution to wind-up the company and appoint a liquidator. This resolution can be special or ordinary, with the same conditions as a members’ voluntary liquidation (See section on members’ voluntary liquidation above).

The creditors’ meeting aims to present creditors with a statement of the company’s financial position and a list of creditors’ claims. The creditors’ meeting also nominates a liquidator (to act in place of the liquidator appointed by members) and appoint a committee of inspection up to five persons to assist and oversee the liquidator and fix his/her remuneration. If the creditors and members nominate different people to act as liquidator, the creditor’s wishes will prevail subject to a right to apply to the court.

The creditors’ meeting must be convened for the same day as the members’ meeting, or the following day and notice of the meeting must be posted to creditors simultaneously with the notice to members and advertised in the Official Gazette and two local newspapers.

The liquidators’ powers, the creditors’ benefits of execution or attachments to debt against the liquidator, and the conclusion of the procedure are the same as in a members’ voluntary liquidation with the only difference that a final meeting of creditors must also be convened.

21. www.icf-cbs.org
25. Sections 198 and 306 of the Companies Law, Cap 113
27. Section 97 of the Companies Law, Cap 113
28. Section 340 of the Companies Law, Cap 113
29. Section 97 of the Companies Law, Cap 113
30. Section 211 of the Companies Law, Cap 113
31. Section 233 of the Companies Law, Cap 113
32. Section 257 of the Companies Law, Cap 113
33. Section 260 of the Companies Law, Cap 113
34. Sections 276 To 278 of the Companies Law, Cap 113