

Progress Report on the Regulation of Fiduciaries, Administration Businesses and Company Directors Bill of 2006

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The regulation of trustee and company service providers has long been a topic for debate in Cyprus. However, membership of the European Union, coupled with the introduction of the third EU anti-money laundering Directive in 2005, has provided the impetus required for legislation to furnish a regulatory framework for suppliers of fiduciary services.

Early 2006 saw the Central Bank of Cyprus (CBC) introduce a draft bill of the Regulation of Fiduciaries, Administration Businesses and Company Directors Law (the Bill) for discussion with interested parties. The Bill is intended to bring all providers of fiduciary services into line with best practice (which most already follow voluntarily). Activities to be regulated under the proposed legislation were detailed in full in the "Proposed regulation of Trust and Company Service Providers in Cyprus" published in *Offshore Investment*, Issue 169, September 2006.

Important provisions of the Bill are summarised below:

Licensing

Regulated activities may only be conducted by persons or entities in possession of a current licence issued by the CBC. The CBC will publish a list of all licensees; those refused a licence; and those who have ceased to hold a licence (together with the reason for cessation).

Certain professionally qualified persons and entities such as advocates and qualified auditors (qualifying persons) will be exempted from the application process and entitled to a licence as of right. However, they will remain subject to the same duties and obligations as all other regulated service providers.

Applications for licences are to be made in writing to the CBC in the prescribed form which includes details of the proposed activities; key personnel; and the name which the applicant intends to use. Importantly, the CBC may reject the name (even if it is an established business name) if it deems it to be unsuitable. The CBC will ordinarily determine an application within six months of its submission. A licence granted to a fiduciary business will cover the activities of

its employees performed during the course of their employment.

To obtain a licence the applicant and key personnel must satisfy the criteria laid down by the CBC. Specifically:

- i) Business must be carried out with appropriate, prudence, professional skill and integrity.
- ii) Applicants must demonstrate that they are "fit and proper" persons to undertake the responsibilities of a licensed fiduciary.
- iii) The business must be effectively directed by at least two individuals of appropriate standing and experience who are resident in Cyprus.
- iv) The business must be conducted in a prudent manner. An appropriate level of capital base and insurance cover must be in place to safeguard the interests of clients.

The CBC may impose conditions on any licence issued and has the power to give directions to the licensee in order to safeguard client interests. It may also revoke any licence if it has good cause. The Bill also gives the CBC the power to regulate the effective control of licensed fiduciaries. No person, unless a qualifying person, may become a shareholder controller or an indirect controller or a managing director of a fiduciary business without the consent of the CBC. If the CBC believes that any person is no longer fit and proper to undertake regulated activities it may issue a prohibition order against that person.

To avoid disruption of activities arising out of the introduction of the Bill there is provision for a transitional period during which a person who carried on regulated business in Cyprus before the Bill will be considered to be 'licensed'.

Enforcement powers

The Bill grants the CBC significant powers to ensure that it can adopt a proactive approach to enforcing its provisions. These include:

- power to demand such information as it may reasonably require and, if deemed necessary, to require the production of a report by an expert third party;
- power to appoint inspectors to investigate

- any purported licensed fiduciary;
- power to obtain a warrant to search premises in the event that a business fails to comply with a CBC order and there is a threat of relevant documentation being tampered with;
- power to seek the recovery of profits of illegitimate exercise of regulated activities; and
- power to seek a winding up order of a current or past fiduciary in specified circumstances such as failure to pay debts.

Segregation of accounts and audit

The Bill obliges licensed fiduciaries to maintain a separate accounting system to record all transactions relating to clients' money. Licensed fiduciaries are also required to give the CBC notice of any intended change of auditor. Similarly any auditor of a fiduciary business must inform the CBC if he intends to qualify his report on the accounts or to remove himself as auditor. This obligation extends for three years after a fiduciary has ceased to hold a licence and indefinitely in the event of fraud.

Disclosure of information

The Bill prohibits the disclosure of any information without the consent of the person to whom it relates or from whom it was obtained. Important exceptions to this rule include: information already in the public domain; disclosure by the CBC which is in the interests of the client or the public; and disclosure under the law.

The current position

It was originally expected that the Bill would become law early in 2007 and in general its provisions have been warmly welcomed by the financial community. There has, however, been significant discussion in respect of the following:

- The Cyprus Bar Association is seeking to exclude its members from the scope of the Bill on the grounds that its existing guidance to them meets all the requirements of the third anti-money laundering Directive and they are already sufficiently regulated.
- Prospective fiduciaries oppose the six-month period given to the CBC to decide an application as being too long. Pressure exists to reduce this to two months.
- Some existing trustee firms are concerned that the wide powers given to the CBC to obtain information will discourage clients. These powers are regarded as being important to bring the sector in line with international standards and hence, they are unlikely to be diluted.

The consequence of these discussions, coupled with a significant weight of other legislation competing for parliamentary time, is likely to be a delay in the introduction of the Bill. Enactment is now expected towards the end of 2007, and is to be welcomed as a positive step that will bring Cyprus to the forefront of international best practice and consolidate its position as a leading financial centre and international trust jurisdiction.

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