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CYPRUS Law: Public Offers and Insider Dealing Publicity Guidelines

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This article provides a short account of the Cyprus Republic (“**Cyprus**”) legislative guidelines (hereinafter the “**guidelines**”) in connection to publicity and/or the release of information and/or inside information when securities and/or financial instruments are offered to the public and/or admitted to trading on a regulated market.<sup>1</sup> It should be noted that the present merely serves as an indicative supplement to the existing legal framework set below and it should be read closely together with the same.

### **A. Legal Framework**

All the relevant publicity provisions applicable in Cyprus are contained in the following legislative acts:

- Law 116 (1)/2005 (Law on Insider Dealing and Manipulation (Market Abuse) of 2005).
- Law 114 (1)/2005 (Law providing for the conditions for making an offer to the public for securities on the prospectus to be published, when securities are offered to the Public).
- Council Regulation 809/2004 (Implementing Directive 2003/71/EC).
- Council Regulation 211/2007 (EU Regulation regarding amending Regulation 809/2004 for the implementation of the European Directive 2003/71/EC).
- Regulation 1787/2006 (European Union Regulation regarding information contained in prospectuses).
- Regulation 2273/2003 (Implementing Directive 2003/6/EC of the European Parliament and of the Council).
- Law 64(1)2001 (The Cyprus Securities and Exchange Commission (Establishment and Responsibilities) Law).
- Law 144 (1)/2007 (Law which provides for the provision of investment services, the exercise of investment activities, the operation of regulated markets and other related matters).

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<sup>1</sup> Terms and/or definitions herein employed, except otherwise stated are in accordance with the context of Cyprus legislation.

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- Regulations under Sections 53(3), 56(3), 58(2) and 72 of Investments Firm Laws (Consolidated Regulations based on the Investment Firms Law).

The above legal nexus aims to ensure a uniform framework to prevent insider dealing, market manipulation and enhance the prompt and fair disclosure of information to the public, hence to establish market integrity. The applicable Cyprus legislation was recently redefined to fully implement the relevant EU Regulations and Directives and in this sense it envisages largely the same spirit as the respective legislation of the rest EU member states. The set of the relevant EU Regulations and Directives constitutes a further step in the development of a unified capital market in the EU which remains the main objective.

Failure to comply with the guidelines may result, inter alia, in administrative fines and/or criminal penalties. It could further:

- (i) jeopardise the success of a proposed offer.
- (ii) limit the jurisdictions in which an offering may be made
- (iii) result in the ability of a company to enforce agreements to purchase shares in an offering.
- (iv) result in liability to compensate investors in relation to untrue public statements.

The Cyprus Securities and Exchange Commission is the competent authority responsible for ensuring the supervision and application of the provisions set by the law and the directives issued thereof,<sup>2</sup> as well as the imposition of administrative sanctions.

Certain provisions of the law<sup>3</sup> apply in relation to actions carried out in Cyprus concerning financial instruments that are admitted to trading on the Cyprus Stock Exchange or a regulated market abroad or for which a request for admission to trading on such market has made. The law regulates the conditions for drawing up, approval and distribution as well as the context of the prospectus to be published when securities are offered to the public or admitted to trading in the local Exchange market and every other regulated market outside Cyprus, provided that the home member state is the Republic of Cyprus. Further provisions regulate extensively issues for persons possessing confidential and/or “*inside information*”.<sup>4</sup>

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<sup>2</sup> The Commission has the power to issue directives for the regulation of any other matter, which is apt or is susceptible to determination. Until today the Commission issued, inter alia, the following directives:

- i. Directive 1/2005 - Obligations of Issuers of Financial Instruments.
- ii. Directive 2/2005- Elements taken into account when assessing Market Manipulation.
- iii. Directive 3/2005 – Methods that constitute Market Manipulation.
- iv. Directive 4/2005 – Accepted Market Practices.
- v. Directive 5/2005 – Code of Conduct of directors and related persons.

<sup>3</sup> Namely Law 116 (1)/2005 (Law on Insider Dealing and Manipulation (Market Abuse) of 2005) combined with Law 114 (1)/2005 (Law providing for the conditions for making an offer to the public for securities on the prospectus to be published, when securities are offered to the Public)

<sup>4</sup> “Inside Information” as defined in the text of the law means information of a precise nature which has not been made public, relating directly or indirectly, to one or more issuers of financial instruments and which, if it were made public, would be likely to have in the opinion of the Commission, a significant

Inside information it is every information which concerns:

- (i) one or more specific transferable securities.
- (ii) one or more issuers or relates to a fact which can affect the future prospects of the company.
- (iii) is of a specific nature (circumstances which exist or may reasonably expected to come in existence).
- (iv) which is not publicly known and
- (v) if it was publicly known could have materially affected the price of the share or shares.

Possessors of inside information are deemed to be:

- (i) every person who possesses confidential information and knows that it is privileged.
- (ii) because of his capacity as a member of administrative, managing or supervisory bodies of any issuer.
- (iii) because of his participation in the capital of any issuer.
- (iv) because he has access to that information as a result of the functions of his employment, office or profession, or
- (v) due to the facts that such information is derived directly or indirectly, from a source or person falling under the above.
- (vi) due to the fact that he has close association with the abovementioned persons.

In the light of the above mentioned besides any company intending to proceed to a public offer (hereinafter called “**the Issuer**”<sup>5</sup>) the guidelines for publicity and the release of information with regards to the offering of shares also apply to any related persons such as its investment manager, any subsidiary and/or related companies, the company’s secretary, the auditors and any of the Issuer’s employees or directors or employees or auditors of the Issuer’s subsidiary or parent company who, because of his post or employment by the Issuer or by the Issuer’s subsidiary or parent company may possess inside information.

## **B. Prohibition of certain acts by the possessor of inside information and violation**

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effect on the prices of those financial instruments or on the price of related derivative financial instruments. It is further provided that information which, if it were made public, would be likely to have significant effect on the prices of financial instruments include any information a reasonable investor would be likely to take into account in taking his investment decisions. For persons charged with the execution of orders concerning financial instruments “inside information” also means information conveyed by a client and related to the client’s pending orders, which is of a precise nature, which relates directly or indirectly to one or more issuers of financial instruments or to one or more financial instruments, and which if it were made public would be likely to have a significant effect on the prices of those financial instruments.

<sup>5</sup> This is the term employed by the legal text referring to any legal person which issues or proposes to issue securities and includes a legal person whose securities constitute the object of public offer or request for admission to trading on a regulated market.



It is prohibited to persons who are possessors of inside information, directly or indirectly to:

- (a) use that information to buy, sell, dispose or try to buy/sell for the own account or for the account of a third party or via persons who have close association with, directly or indirectly the affected, by the information, financial instruments.
- (b) announce such information to a third party, except where the communication of such information shall be done within the usual framework of his employment, profession or duties.
- (c) urge or advice a third party to, based on this information, to buy sell, either for own account or for the account of a third party, the financial instruments affected by the information, regardless of whether the third party knows of the fact or not.

### **C. Provisions in relation to the obligations of the Issuer of financial instruments**

Notwithstanding that it is prohibited to directors of the Issuer or to its executive officers, in the provision of information in relation to the financial position of the Issuer or its prospects, to make a statement, promise or prediction which is false, misleading or fraudulent, or conceal anything material the Issuer is obliged to:

- a. publicize as soon as possible the inside information which directly concerns them and ensure that they are posted on their internet sites, provided that the Issuer maintains internet sites, for at least five years. It is further provided that in order to be deemed that the Issuer complies with the above he promptly informs the public regarding the coming into existence of a set of circumstances, or a set of circumstances that are likely to come into existence, or the occurrence of an event, albeit not yet formalised.
- b. publicize their inside information in the following manners:
  - (i) by announcement to the Cyprus Stock Exchange which lists it immediately on its Internet site and
  - (ii) by announcement to the Cyprus Securities and Exchange Commission and
  - (iii) by announcement to the internet site of the Issuer

It is further provided that, where information is destined to be published in any media of mass communication, the Issuer is obliged to notify them in advance to the Cyprus Stock Exchange and to the Cyprus Securities and Exchange Commission, so that the official announcement or posting in the Cyprus Stock Exchange Internet site is made as soon as possible and precedes their publication.

- c. not to combine in a misleading way the provision of inside information to the public with the commercial promotion of their activities.

- d. publicize the confidential information which either they, or a person acting on his account or on his behalf, disclose to a third party in the normal exercise of their profession or duties.
- e. publicize any significant changes concerning already publicly disclosed inside information after these changes occur, through the same channel as the one used for the public disclosure of the original information.
- f. take reasonable care to ensure changes that the disclosure of inside information to the public is synchronised as closely as possible between all categories of investors in regulated markets of the Republic and abroad in which those the Issuer have requested or received approval for the admission to trading of their financial instruments.
- g. it is further prohibited to the Issuer, within the framework of compliance with the preceding paragraph to provide information which is false, misleading or fraudulent regarding a material element of it or to conceal anything material.

Inside information that must be published includes:

- (a) any substantial information relating to the Issuer capable of assisting its shareholders and the public at large to make the best possible assessment of the situation and evaluation of the securities, so as to avoid price fluctuation of the securities not justified by the assets, the profits and the issuers' prospects, or a false impression regarding the extent of the investment interest or the investment activity connected with these securities; and
- (b) any new development of major importance in the domain of his activities which is not publicly known, and which may, because of its effects on the assets and his obligations or his financial situation or the general progress of his activities cause a substantial price fluctuation of his securities, or in the case of listed financial instruments, cause a substantial price fluctuation thereof or substantially affect the issuer's ability to meet his obligations.

According to the respective directive<sup>6</sup> issued by the Cyprus Securities and Exchange Commission "Inside Information" that must be published is deemed to indicatively consist of the following:

- (a) any decisions of the Issuer to materially alter his business plan.
- (b) any decisions or agreements of the Issuer for the entering into or the discontinuance of material agreements or business alliances, as well as for every material international initiative on his part.
- (c) any decisions of the issuer for the submission of a public offer for purchase.

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<sup>6</sup> Directive 1/2005 - Obligations of Issuers of Financial Instruments



- (d) any decisions or agreements of the Issuer for his participation in the procedure of a merger, break up, take-over, purchase or assignment of shares which represent a percentage of at least 5% of a company which, the issuer or members of its board of directors or its shareholders owing at least a percentage of 10% of its share capital, participate in with a percentage of 10%.
- (e) any decisions for change of composition of the board of directors or of senior directors of the issuer.
- (f) any decisions for the distribution and the payment or non-payment of dividends or the payment of interest, for practices relating to the issue of new financial instruments, distribution, register, resignation and change in its share capital. Specifically, the Issuer is obliged to publish the day on which the administrative bodies are called to discuss the above subjects, ten days in advance.
- (g) any decisions for change of material information mentioned in the latest prospectus of the Issuer, including the commitment undergone for the use of obtained capital.
- (h) any material change in the financial situation or in the capital structure of the Issuer, in particular regarding its borrowing burden and its performance, and the general direction of cases regarding the issuer.
- (i) as regards an issuer who draws up complete financial statements, any change that materially affects the capital structure or the complete financial affairs of the group or association of companies.
- (j) any profit warning announcement in relation to the financial results of the issuer, if this deviates materially:
  - (i) from the last published results and or
  - (ii) from representations given to the investing public via statements made by officials of the issuer.
- (k) any change in the tax regime governing the Issuer.
- (l) any revocation of a decision for the granting of credit by creditors to the Issuer or the refusal of the granting of such credits.
- (m) non-creditworthiness of debtors of the issuer that may affect the financial situation and the results of the issuer.
- (n) material changes to estimated or predicted results that have been announced by the issuer.

For the purposes of best applying the aforesaid, the Issuer must abstain from the announcement of every information capable of placing several persons or a class or category of persons in a privileged position against others in whatever relates to the

trading of securities or capable of misleading the public as to the execution of transactions, prices which do not respond to the latest available to the Stock Exchange information, in relation to the issuer or his securities or to companies linked to him.

Issuers must publish, without delay, the purchase or buyout of listed debentures by them or by the group of companies to which the issuers belong, as stated below:

- (1) Any issuer is obliged to publish this fact if the total sum of debentures bought out amounts to 3% of the total number of securities. In addition the issuer is obliged to publish every occasion whereby he proceeds with a purchase or buy-out of an additional percentage of 1% of the total number of securities.
- (2) The issuer is obliged to publish the fact at least one hour before the commencement of the stock exchange meeting of the following working day that proceeds the purchase or buy-out, and to state the amount of debentures which have been purchased or bought-out and the purchase or buy-out price or if this price differs, the highest and lowest purchase and buy-out price.

In case the Issuer judges that the public disclosure of inside information may prejudice his legitimate interests<sup>7</sup>, he is obliged to inform the Commission which has the power, in justified cases, to allow the delay of publication of the said information, provided that:

- a. is satisfied that the public disclosure of these information is contrary to the public interest or results to serious damage to the Issuer.
- b. the non-disclosure is not capable of misleading the public which are essential for the appreciation of the relevant instruments and
- c. the Issuer may safeguard their confidentiality.

For the safeguarding of his confidentiality the Issuer must:

- (i) establish effective arrangements denying access to such information to persons other than those who require it for the exercise of their functions within the issuer.

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<sup>7</sup> Legitimate interests may relate to negotiations in course or related elements, where the outcome or normal pattern of those negotiations would be likely to be affected by public disclosure. In particular, in the event that the financial viability of the issuer is in grave and imminent danger public disclosure of information may be delayed for a limited period where such disclosure would seriously jeopardize the interest of existing and potential shareholders by undermining the conclusion of special negotiations designed to ensure the long-term financial recovery of the issuer.

Further decisions taken or contracts made by the management body of an issuer which need the approval of another body of the issuer in order to become effective, where the organization of such an issuer requires the separation between these bodies, provided that a public disclosure of the information before such approval, together with the simultaneous announcement that this approval still pending would jeopardize the correct assessment of the information by the public.



- (ii) take necessary measures to ensure that any person with access to such information is aware of his duties accruing from the law and is aware of the sanctions in case of their violation.
- (iii) have in place measures which allow immediate public disclosure in case the issuer was not able to ensure confidentiality of the relevant inside information.

The Issuer or persons acting on his account or on his behalf, are obliged to make a list of the persons working for them, either by a contract of employment or otherwise, and who have access to inside information, and to update frequently this list and to forward it to the Cyprus Securities and Exchange Commission whenever required.

The Issuer shall ensure that the lists of persons in possession of inside information includes all persons who have access to inside information relating, directly or indirectly, to the Issuer, whether on a regular or occasional basis.

The lists created pursuant to the above shall state at least the following information:

- (a) The identity of any person having access to inside information;
- (b) The reason why any such person is on the list;
- (c) The date at which the list of insiders was created and update.

The lists of insiders shall be promptly updated:

- (a) whenever there is a change in the reason why any person has been included on the list;
- (b) whenever any new person has to be added on the list;
- (c) by mentioning whether and when any person already on the list has no longer access to inside information.

The Issuer shall ensure that lists of insiders shall be maintained for at least five years after being drawn up and that any person included on a list of persons that has access to inside information, acknowledges the duties and obligations accruing from the law and the sanctions which he may attract in case of violation of the said duties and obligations.

#### **D. Transactions of persons discharging managerial responsibilities**

The persons discharging managerial responsibilities within the Issuer of financial instruments, and the persons closely related to him, are obliged to publicize every transaction made on their account and related to the financial instruments issued by the Issuer, and traded on a regulated markets connected with those. The rules of notification to which the said persons have to comply with shall be those of the state where the Issuer is registered.

The notification shall contain, as a minimum, the following information:

- (a) The name of the person effecting the transaction;
- (b) The reason for the obligation to publish;
- (c) The name of the issuer;
- (d) A description of the financial instrument;
- (e) The nature of the transaction (e.g. acquisition or disposal);
- (f) The date and place the transaction came into effect;
- (g) The price and volume of the transaction.

For the purposes of the law “Person discharging managerial responsibilities within an issuer” shall be deemed:

- (a) A member of the administrative, management or supervisory bodies of the Issuer;
- (b) A senior executive, who is not a member of the bodies referred to in paragraph (a), having regular access to inside information relating, directly or indirectly, to the issuer, and the power to take managerial decisions affecting the future developments and business prospects of the issuer.

### **E. Market Manipulation**

It is prohibited to any natural or legal person to engage in market manipulation.

Methods of market manipulation based on information are considered:

- (i) the dissemination of false or misleading information in order to cause purchasing movement or the collective sale by others.
- (ii) Dissemination of false or misleading signals via any kind of media and/or the internet.
- (iii) the announcement of false information involving important facts.
- (iv) the failure to undergo a public announcement involving important facts or the incomplete announcement of such information.
- (v) purchase for own account before its introduction to others and its subsequent profitable sale.
- (vi) the manipulation of circumstantial or regular access to the traditional or electronic media by expressing an opinion for a financial instrument (or indirectly for the Issuer) when positions have previously been obtained for the particular financial instrument, and subsequently obtaining a benefit from the effects that such opinions have on the price of the financial instrument, without the prior clear and effective publication of the particular conflict.

- (vii) concealing the beneficial ownership of a financial instrument via the breach of disclosure requirements.<sup>8</sup>

Provided that the methods mentioned in the present paragraph are not exhaustive and it must be considered that they alone necessarily constitute market manipulation.

#### **F. Advertisements and announcements**

Any type of advertisements relating to an offer of securities to the public or to an admission to trading on the Cyprus Stock Exchange or on other regulated market, that takes place in the Republic, shall observe certain principles as follows<sup>9</sup>:

- b. it shall state that a prospectus has been or will be published and indicate where investors are or will be able to obtain it, or how investors will be able to have access to its full text.
- c. advertisements shall be clearly recognizable as such.
- d. the information contained in an advertisement shall not be inaccurate, or misleading but consistent and without any conflict or discrepancy with the information contained in the prospectus if already published or with the information required to be in the prospectus, if the prospectus is published afterwards.
- e. in case, all information, announcements or advertisements concerning the offer to the public or the admission to trading on the Cyprus Stock Exchange or on other regulated market disclosed in an oral or written form, even if the information, announcement or advertisement is not made for advertising purposes, shall be consistent with that contained in the prospectus.
- f. where no publication and approval of a prospectus is required, material information provided by an issuer or an offeror and addressed to qualified investors or special categories of investors, including information disclosed in the context of meetings relating to offers of securities, shall be disclosed to all qualified investors or special categories of investors to whom the offer is exclusively addressed.
- g. in any case of an offer of securities to the public or an admission to trading on the Cyprus Stock Exchange or on other regulated market, any type of announcements and advertisements and commercials, announcing the offer or the admission to trading on the Cyprus Stock Exchange or other regulated market, shall be previously filed with the Cyprus Securities and Exchange Commission. The latter is the competent authority to examine whether the

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<sup>8</sup> This practice does not cover cases where there are legitimate reasons for financial instruments to be held in the name of a party for financial instruments to be held in the name of a party other than the beneficial owner, for example where there is authorisation for nominee holdings on behalf of the beneficial owner.

<sup>9</sup> See section 30 of the Law 114 (1)/2005.

advertising activity and the announcements regarding the offer of securities to the public or the admission to trading on the Cyprus Stock Exchange or on other regulated market comply with the requirements set by the law.

It should be further noted that the term “advertisement” is not defined within the text of the Cypriot law but the relevant provision of the law is subject to article 34 of the Regulation 804/2003 and it shall be construed according to the exhaustive index contained therein. In particular article 34 reads as follows:

“Advertisements related to an offer to the public of securities or to an admission to trading on a regulated market may be disseminated to the public by interested parties, such as issuer, offeror or person asking for admission, the financial, intermediaries that participate in the placing and/or underwriting of securities notably by one of the following means of communication:

1. Addressed or unaddressed printed matters;
2. Electronic message or advertisement received via a mobile telephone or pager;
3. Standard letter;
4. Press advertising with or without order form;
5. Catalogue;
6. Telephone with or without human intervention;
7. Seminars and presentations;
8. Radio;
9. Videophone;
10. Videotext;
11. Electronic mail;
12. Facsimile machine (fax);
13. Television;
14. Notice;
15. Bill;
16. Poster;
17. Brochure;
18. Web posting including internet banners.”

### **Conclusive Remark**

Practising fairness and efficiency by market participants is essential in order not to create prejudice to normal market activity and market integrity. Transparency of market practices is crucial for considering whether a particular market practice can be accepted by the competent authority.

It is quite certain that the implementation of the relevant EU law leads to a more homogeneous field on a European level and the Cyprus’ attempt was one of straight transposition into domestic law when implementing the Directives. Still there is cope for variation in the adjustments required of market participants in the different member states as a consequence of the regulatory regime dictated by EU. Bearing in mind the variation of legal systems and structures across Europe national regulators and courts are likely to interpret key concepts in different ways.



Whether the legal framework shall be effective remains to be seen in practice. Significant is the role expected by the Cyprus Securities and Exchange Commission taken into account the way supervision and enforcement shall be performed. Nevertheless, the establishment, by issuers or persons acting on their behalf of lists of persons working for them under a contract of employment or otherwise and having access to inside information relating, directly or indirectly, to the issuer, is a positive measure for protecting market integrity. The notification of transactions conducted by persons discharging managerial responsibilities within an issuer on their own account, or by persons closely associated with them constitutes a valuable mean for the competent authority to supervise the market. For issuers, though not falling within the ambit of the present article, the main advantage of the law<sup>10</sup> implementing the Prospectus Directive is that they will only need to produce one prospectus in their home member state if they want to sell a product across the EU instead of issuing separate prospectuses for each country.

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<sup>10</sup> Law 114 (I)/2005 (Law providing for the conditions for making an offer to the public for securities on the prospectus to be published, when securities are offered to the Public).