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MEMORANDUM

From: Alexandros Economou / Electra Theodorou

Date: 27 March 2015 (last updated on 28 January 2020)

Subject: **Annual Returns (HE 32 Form)**

Background

The (non-)filing of the Annual Return (HE 32 Form) to the Registrar of Companies (the “**Registrar**”) has always been one of the common omissions by Cyprus companies (together with the holding of AGMs and the filing of tax returns with the Tax Department).

Companies that are not up-to-date with their Annual Returns can be (i) subject to administrative fines and/or criminal proceedings; (ii) refused the issuance of certificates (e.g. certificate of directors, certified true copies of documents, etc.) or filings (e.g. change of directors, etc.); and, most importantly, (iii) stricken off the Register of Companies (the “**Register**”).

The Registrar proceeds with the strike off on the basis of the said omission in accordance with section 327(6) of the Companies Law (the “**Law**”), by sending a letter reminding the company that it is in default with its Annual Returns and noticing it that it will be automatically stricken off unless they are duly filed within six months.

What is the Annual Return?

Companies with a share capital must submit once every calendar year their Annual Return to the Registrar. The Annual Return must-

- (a) enclose:
 - (i) all documents presented in every general meeting (whether Annual or Extraordinary) that took place from the last return date or in the case of a first return, since the date of the incorporation of the company. These documents may be submitted in the English language and in any other language the Registrar has officially approved; and

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- (ii) the audited financial statements of the company, the approval of which is reserved for the AGM.

- (b) include the following information (as per Part I of the Sixth Schedule of the Law):
 - (i) the registered office of the company;
 - (ii) registers of members and debenture holders;
 - (iii) shares and debentures;
 - (iv) indebtedness; and
 - (v) past and present members and directors and secretary.

The Annual Return must be made up to a date until the 'return date of the company' and a copy thereof must be delivered for filing to the registrar within 28 days from its drafting date. 'Return date of the company' means:

- (a) the day following the expiry of the period of 18 months from the date of incorporation of the company, or
- (b) the day on which one or more years, from the first return date of the company, are completed, or
- (c) where the last annual return of the company delivered to the registrar has a different drafting date from the day referred to in paragraph (b) above, the day on which one or more years, from that date, are completed; or
- (d) another date which does not exceed three 3 months from the return date of the company determined as per paragraphs (b) or (c) above and which the company notifies to the Registrar before the expiry of the return date of the company specified above for the specific year.

Strike Off under Section 327

Strike off is a 'fast track' method that is (rarely) used by professionals/shareholders for dissolving/striking off a company which does not carry on business any longer and has no assets or liabilities whatsoever. In fact this procedure is avoided by professionals as the company that is stricken off can be re-instated by the company, a shareholder or a creditor of the company (through Court proceedings) within 20 years of its strike off (as opposed to two years through dissolution by a member's voluntary liquidation). Though stricken off, the liability, if any, of every director, managing officer and member of the company continues and may be enforced at any time after the strike off as if the company had not been stricken off.

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According to section 327 of the Law, the Registrar has the power to strike off companies if he has reasonable cause to believe that a company is not carrying on business or is not in operation, if the Company does not pay the Annual Levy, or if a company omits to file any document required by the Law. As mentioned above, the Registrar may provide for the automatic strike off of a company by giving notice to the company, subject to compliance in the meantime.

As mentioned above, a company which has been stricken off can be re-instated within 20 years of its strike off; if the Court is satisfied that the company was at the time of the striking off carrying on business or in operation, or otherwise that it is just that the company be restored to the Register, then the company will be so restored and shall be deemed to have continued in existence as if its name had not been stricken off.

Administrative Fines / Criminal Proceedings

Criminal aspect

If a company fails to comply with the obligation to make the annual return up to a date until the return date and to deliver a copy thereof to the Registrar within 28 days, the company and every officer of the company who is in default may be liable to a default fine. The same also applies if a company fails to annex to the Annual Return copies of all documents presented in every general meeting as aforementioned.

In addition to the above, the following amount to criminal offences under the Law:

- Directors who fail to comply with their duty to keep books of accounts for the preparation of financial statements may be subject to a fine not exceeding €1,708 and/or to a maximum of one year imprisonment.
- Directors who fail to comply with their duty to prepare and publish financial statements (or consolidated financial statements, as the case may be) may be subject to a fine not exceeding €1,700 and/or to a maximum of one year imprisonment.
- Directors who fail to present to the AGM (i) the set of financial statements; (ii) the directors' report; and (iii) the auditors' report, may be subject to a fine not exceeding €8,543.
- Directors who fail to make available at least twenty-one days before the AGM (i) the set of financial statements; (ii) the directors' report; and (iii) the auditors' report, may be subject to a fine not exceeding €5,125.

Administrative aspect

If a company fails to comply with the obligation to make the annual return up to a date until the return date and to deliver a copy thereof to the Registrar within 28 days, the Registrar has the statutory power to impose an administrative fine not exceeding €8,543.

If a company omits to annex to the Annual Return copies of all documents presented in every general meeting as aforementioned, the Registrar has the statutory power to impose an administrative fine not exceeding €8,543.

Filing of audited accounts with the tax authorities

The filing of Annual Returns with the Registrar of Companies and the filing of the audited accounts with the tax authorities are separate and independent obligations. It is a legal requirement for every company to file audited accounts with the tax authorities. In case of non-compliance, the tax authorities will refuse to issue tax clearance and residence certificates and may take legal action against the directors for non-compliance.

The documents to be submitted to the tax authorities are:

- (a) the income tax return; and
- (b) the completed questionnaire which is compiled on the basis of the accounts and includes the tax computation.

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