

Presentation during 2009 UBA Conference, Limassol, Cyprus  
Use of Jurisdictions for structuring business projects in Ukraine

# Ukrainian Bar Association Cyprus Companies September 2009

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# Section 1: The Cyprus Legal System

Until 1960

- Cyprus a British Colony
- Legal system based on the English Legal System
- Applicable laws: laws enacted in Cyprus and principles of Common Law and Equity

# The Cyprus Legal System (cont.)

## After 1960

- Cyprus an Independent Republic
- English Legal System largely preserved in particular in relation to business, commercial and tax legislation
- Applicable Laws:
  - The Constitution
  - Laws enacted prior to 1960 and preserved by the Constitution
  - Principles of Common Law and Equity
  - Laws enacted by the House of Representatives

## The Cyprus Legal System (cont.)

2004 to date

- Cyprus acceded to the European Union
- Directives implemented in local legislation
- Regulations have direct application

# Section 2: The Cyprus Company Law Legal Framework

## Legal Framework

- Law enacted for the Colony
- Based on the U.K. Companies Act 1948
- Preserved by the Constitution in 1960
- Amended to reflect Cyprus reality
- Amended to comply with European Law
- Retained its flexibility
- English Common Law is applied
- English judicial authorities are of persuasive effect and always of great assistance and guidance

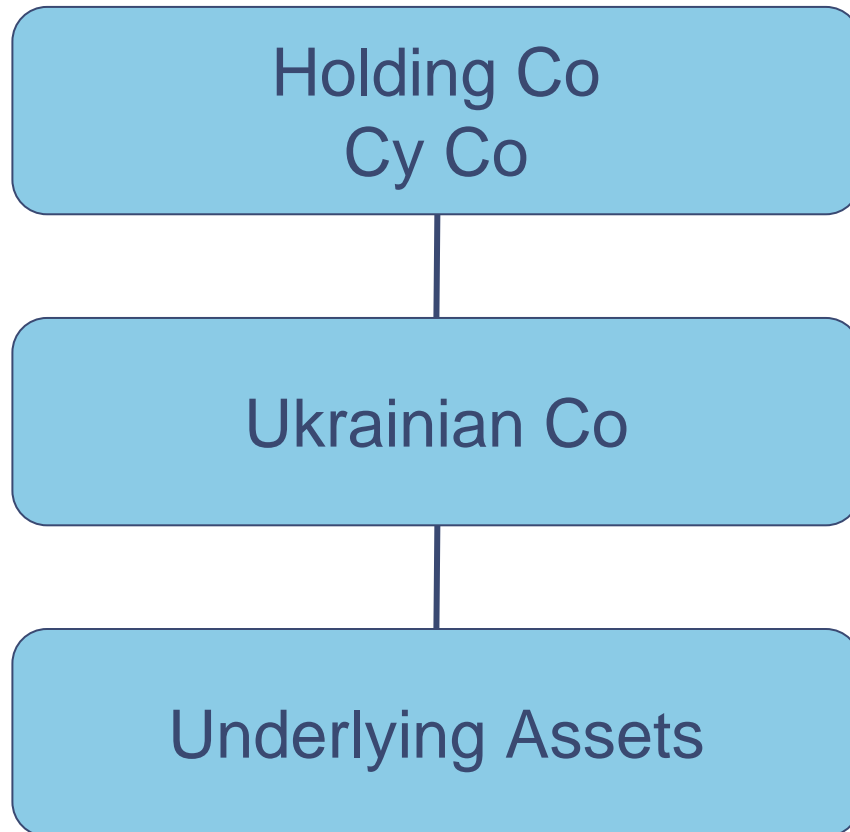
## Section 3: The use of Cyprus Companies in International Structures

Cyprus Companies (Cy Co) may be used for all intends and purposes in business and holding structures including:

- Using a Cy Co as a Holding Company
- Using a Cy Co as an SPV
- Using a Cy Co as an IP Holding Company

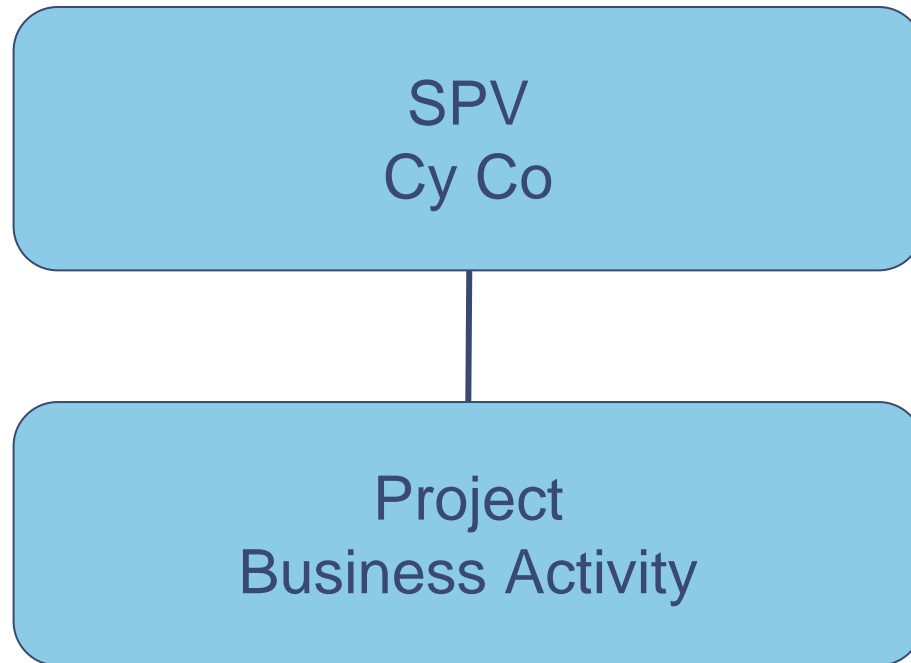
## The use of Cyprus Companies in International Structures (cont.)

- Using a Cy Co as a Holding Company



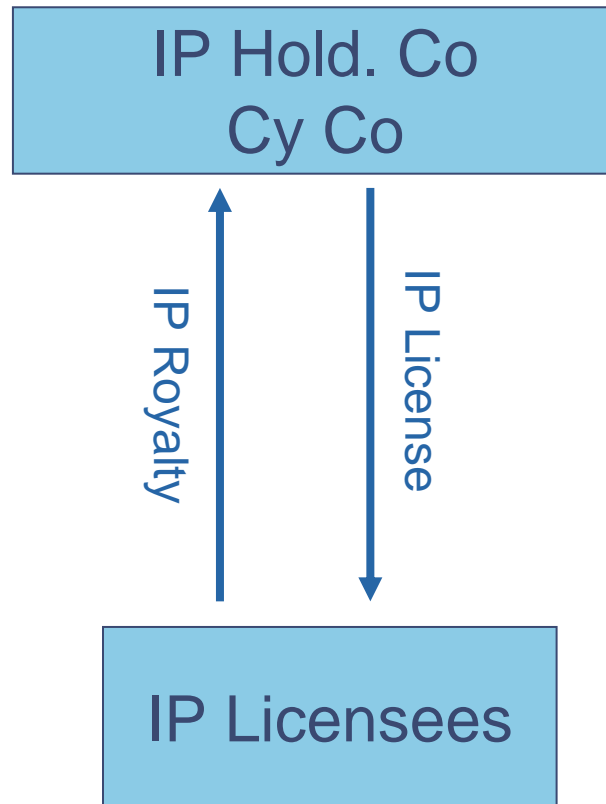
## The use of Cyprus Companies in International Structures (cont.)

- Using a Cy Co as an SPV



## The use of Cyprus Companies in International Structures (cont.)

- Using a Cy Co as an IP Holding Company



# Section 4: Regulating the Affairs of a Cy Co

## Memorandum and Articles of Association

- Memorandum:
  - Name
  - Registered Office in Cyprus
  - Objects
  - That the liability of the Members is limited
  - Initial Share Capital

# Regulating the Affairs of a Cy Co (cont.)

## Objects

- Company's operations should be confined to its Objects
- Objects clause usually widely drafted
- Not only objects, but also power
- Practice proves advisable to have widely drafted Objects clauses
  - Avoids risks of ultra vires acts
  - Director's personal liability
  - Costs and expenses to amend in case of change of business
  - Facilitates Dealings with third parties

## Regulating the affairs of a Cy Co (cont.)

### Articles:

- Domestic regulations of the company
- Govern its internal administration
- Determine how the powers conferred by the memorandum shall be exercised
- Subordinate to the Memorandum

## Regulating the affairs of a Cy Co (cont.)

- Issues usually regulated
  - issue of shares
  - alteration of share capital
  - transfers of shares
  - appointment, remuneration powers and duties of directors
  - how general meetings are called
  - notice and proceedings at general and directors' meetings
  - dividends etc
  - Table A- Deviation from- Need of modification?
- A contract between company and members
- Articles do not bind the members to each other
- Members enter into Shareholders' Agreements

# Section 5: Regulating the relationship between shareholders of a Cy Co

## Shareholders Agreements (SHA)

- More and more frequently used in recent years
- Principal uses:
  - 'Quasi-partnership' Companies
  - Institutional Lenders
  - To give effect to particular and special needs, i.e. Minorities

## Regulating the relationship between shareholders of a Cy Co (cont.)

- Why use Shareholders Agreements vs Articles:
  - Memorandum and Articles do not or cannot contain all required mechanisms, provisions or arrangements
    - Deadlock situations, Exit Mechanisms, Valuation of Shares
    - Subsequent Investments
    - Unanimity or increased majorities, where this would be in conflict with Cy Law
  - Privacy and confidentiality
  - The SHA binds the members amongst them
- Directors and Company: Inadvisable to include as parties

## Section 6: Regulating the relationship of Cy Co and 3<sup>rd</sup> parties

- Representation by authorised persons
- May enter into contracts in the English or any other language
- Freedom of Choice of Law in contacts
- Enforceability of Judicial and Arbitral Judgements
  - In relation to judgements of civil and commercial matters in EU Member States
  - In relation to judgements of other jurisdictions
    - in countries with the Republic of Cyprus by a Bilateral Agreement/Multilateral Convention
    - in other countries not related to the Republic of Cyprus as above.

# Summary

- Cyprus Legal System still largely similar to the English Legal System- Flexibility has been retained
- Cyprus Companies used for all intends and purposes in International Structures
- Regulation of the affairs of a Cyprus Company largely through its Memorandum and Articles of Association
- Regulation of relationship of Shareholders of Cyprus Companies through Shareholders' Agreements
- Legal system allowing for the relationship of Cyprus Companies with third parties to be conducted with flexibility, as to representation, choice of law and forum whilst having a large degree of certainty in relation to recognition by the Cyprus Courts

Any questions?

# Thank you

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