

Name: Thomas Papadopoulos

Date: 4 December 2023

## QUESTIONNAIRE ON DELISTING

Cyprus

### PART I. VOLUNTARY DELISTING

A delisting is deemed voluntary if it is initiated by the company or a shareholder.

**1. Is voluntary delisting explicitly allowed by national laws or by jurisprudence?**

Yes (X)                      No

**Relevant provision:**

Article 2.4.1.3 of Regulatory Decision of the Council of the Cyprus Stock Exchange on the Stock Exchange Markets states: 'A transferable security may be delisted from a non-regulated/organised market upon its issuer's request, subject to the approval of a special resolution of the General Meeting of the Shareholders of the securities to be delisted, which has been approved by Shareholders holding 90% of the represented securities and after a period of 15 working days or any other longer period which the Council will determine after the publication of the relevant application.'

The legislative authorization to the Council of the Cyprus Stock Exchange in order to regulate such issues, including the issue of delisting, is provided by Article 1.1 of the Regulatory Decision of the Council of the Cyprus Stock Exchange on the Stock Exchange Markets:

**'1.1. LEGISLATIVE AUTHORISATION**

The Council of the Cyprus Stock Exchange by virtue of the power vested in it by articles 10(2)(e), 33, 48, 57, 58, 59, 70, 72, 73, 83, 89, 113, 117, 118, 119, 125, 126, 140, 144, 179 & 186 of the Securities and Cyprus Stock Exchange Laws of 1993 to 2012 and Regulation 88 of the Securities and Cyprus Stock Exchange Regulations and after having obtained the approval of the Cyprus Securities and Exchange Commission, where required, has decided the following.'

**2. If the answer to 1. is yes, who decides so?**

BoD                      GA (X)                      Other

**Relevant provision:**

Article 2.4.1.3 of Regulatory Decision of the Council of the Cyprus Stock Exchange on the Stock Exchange Markets

**3. What is the quorum requirement for the delisting decision of the competent organ?**

Quorum is specified by the articles of association. If the articles of association do not specify the required quorum, then Article 128(1)(c) of Cyprus Companies Law (Chapter 113) applies.

Article 128(1)(c) states: '(1) Subject to the provisions of subsection (2) the following provisions shall have effect in so far as the articles of the company do not make other provision in that behalf: ... (c) in the case of a private company with more than one members, two members, and in the case of any other company, three members, personally present shall be a quorum'.

**4. What is the majority requirement for the delisting decision of the competent organ?**

90 per cent of the represented securities.

**5. Do (minority) shareholders have statutory veto rights as to a delisting decision?**

Yes                      No (X)

**6. Should delisting take place within a specific timeframe after the relevant decision? Is there a specific period of time after the decision in which the delisting should be completed?**

Yes (X)                      No

***Relevant provision:***

After a period of 15 working days or any other longer period which the Council of the Stock Exchange will determine (Article 2.4.1.3 of Regulatory Decision of the Council of the Cyprus Stock Exchange on the Stock Exchange Markets).

**7. Should the delisting application give a full statement of reasons for the submission of such application?**

Yes (X)                      No

***Relevant provision:***

The proposed special resolution of the general meeting approving the delisting should include a full statement of reasons.

**8. Is it required that a competent authority approves the voluntary delisting?**

Yes (X)                      No

***Relevant provision:***

Article 2.4.1.1 of Regulatory Decision of the Council of the Cyprus Stock Exchange on the Stock Exchange Markets states: "A transferable security of a regulated/organised market is delisted from the Stock Exchange **upon the Council's decision**, which is taken ex officio or upon the issuer's application, **provided it is approved by the Cyprus Securities and Exchange Commission**".

***If the answer to 8. is yes, does the competent authority has the competence to verify the reasons of delisting?***

Yes (X)                      No

***If the answer to 8. is yes, does the competent authority have any discretion? Can the competent authority impose additional terms for investor protection? Can the competent authority postpone the decision? If Yes, do you know whether this discretion has been used in the past?***

Yes (X)                      No

**9. In case of a voluntary delisting does the issuer have to make an offer to buy the shares of (dissenting) shareholders?**

Yes (X)                      No

***Relevant provision:***

In Cyprus, minority shareholders are protected under the oppression remedy of Article 202 of Cyprus Companies Law<sup>1</sup> (it is a precursor of the modern UK unfair prejudice remedy). If the delisting is considered to be an oppression of minority shareholders, the Court, under the oppression remedy of Article 202 of Cyprus Companies Law, could order the company to buy the shares of (dissenting) shareholders.

***If the answer to 9 is yes, at what price should the offer be made? How is the price calculated?***

The price is calculated by an independent expert/statutory auditor.

**10. Are there any restrictions due to the principle of maintenance of the share capital?**

Yes (X)                      No

***Relevant provision:***

With regard to the purchase of the shares of any members by the company, Article 57A of Cyprus Companies Law limits the scope of Article 202 of Cyprus Companies Law. Article 57A

---

<sup>1</sup> 'Alternative remedy to winding up in cases of oppression.

Article 202. (1) Any member of a company who complains that the affairs of the company are being conducted in a manner oppressive to some part of the members (including himself) or, in a case falling within subsection (3) of section 163, the Council of Ministers may cause an application to be made to the Court by petition for an order under this section.

(2) If on any such petition the Court is of opinion-

(a) that the company's affairs are being conducted as aforesaid; and

(b) that to wind up the company would unfairly prejudice that part of the members, but otherwise the facts would justify the making of a winding-up order on the ground that it was just and equitable that the company should be wound up, the Court may, with a view to bringing to an end the matters complained of, make such order as it thinks fit, whether for regulating the conduct of the company's affairs in future, or for the purchase of the shares of any members of the company by other members of the company or by the company and, in the case of a purchase by the company, for the reduction accordingly of the company's capital, or otherwise.

(3) Where an order under this section makes any alteration in or addition to any company's memorandum or articles, then, notwithstanding anything in any other provision of this Law but subject to the provisions of the order, the company concerned shall not have power without the leave of the Court to make any further alteration in or addition to the memorandum or articles inconsistent with the provisions of the order; but, subject to the foregoing provisions of this subsection, the alterations or additions made by the order shall be of the same effect as if duly made by resolution of the company and the provisions of this Law shall apply to the memorandum or articles as so altered or added to accordingly.

(4) An office copy of any order under this section altering or adding to, or giving leave to alter or add to, a company's memorandum or articles shall, within fourteen days after the making thereof, be delivered by the company to the registrar of companies for registration; and if a company makes default in complying with this subsection, the company and every officer of the company who is in default shall be liable to a default fine.

(5) In relation to a petition under this section, section 333 shall apply as it applies in relation to a winding-up petition.'

of Cyprus Companies Law regulates the right of a company to purchase or acquire its own shares.

**11. Does a (majority) shareholder or a third person has the right to offer to buy the shares of (dissenting/all) shareholders and relieve the issuer?**

Yes (X)                      No

***Relevant provision:***

If the delisting is considered to be an oppression of minority shareholders, the Court, under the oppression remedy of Article 202 of Cyprus Companies Law, could order the majority shareholders or a third party to buy the shares of (dissenting) shareholders

**12. In case of a voluntary delisting does the issuer or a third person have the obligation to publish a prospectus / informational document?**

Yes                      No (X)

**13. Is an exit opportunity / mechanism that allows investors to exit their investments (e.g. sell – out right) available for shareholders in case of delisting? What are the relevant provisions (please provide translations)?**

Yes (X)                      No

***Relevant provision:***

The shareholders can exercise the oppression remedy of Article 202 of Cyprus Companies Law and ask to sell their shares at a fair price and exit the company.

***If yes, please define:***

**14. Is there any specific provision on downlisting? If not, is downlisting allowed, and how does it take place?**

A downlisting occurs when the shares are no longer traded on a regulated market (as defined by Union law) but on an MTF.

Yes (X)                      No

***Relevant provision:***

Article 179 of the Securities and Cyprus Stock Exchange Laws states:

‘Transfer of a security from one market to another

179. (1) The Council decides, by a Decision thereof, on the transfer of securities from one Stock Exchange market to another, in particular upon the issuer’s application as well as ex officio, when the conditions of trading on the market in which the securities were traded up till then are no longer fulfilled, subject to the provisions of article 120.

(2) The Council may, by Decisions thereof, determine the cases of transfer from one Stock Exchange market to another, the conditions and procedure for effecting such transfer, the relevant obligations of the issuing company as well as any other special matter.

(3) Save in the cases where the transfer is imposed as a sanction within the meaning of clause (6) of article 120, the Council Decisions of clause (2) ensure compliance with the deadlines prescribed in the provisions of clause (5) of article 57, which apply accordingly.’

***If yes, please define:***

**15. Is there any specific provision on market migration (delisting from a regulated market and listing in another)?**

Yes (X)                      No

***Relevant provision:***

Article 179 of the Securities and Cyprus Stock Exchange Laws

***If yes, please define:***

Article 179 of The Securities and Cyprus Stock Exchange Laws states:

‘Transfer of a security from one market to another

179. (1) The Council decides, by a Decision thereof, on the transfer of securities from one Stock Exchange market to another, in particular upon the issuer’s application as well as ex officio, when the conditions of trading on the market in which the securities were traded up till then are no longer fulfilled, subject to the provisions of article 120.

(2) The Council may, by Decisions thereof, determine the cases of transfer from one Stock Exchange market to another, the conditions and procedure for effecting such transfer, the relevant obligations of the issuing company as well as any other special matter.

(3) Save in the cases where the transfer is imposed as a sanction within the meaning of clause (6) of article 120, the Council Decisions of clause (2) ensure compliance with the deadlines prescribed in the provisions of clause (5) of article 57, which apply accordingly.’

**16. Is there any specific provision on voluntary delisting in case of increase of listing requirements by both the Law and Stock Exchange?**

Yes                      No (X)

**17. Are there different rules on delisting for national and foreign listed companies?**

Yes                      No (X)

**18. Cold delisting is usually described as a transformation of a listed company resulting to its delisting, including especially the merger by absorption of a listed company by an unlisted company. What is defined as cold delisting in your legal order? Is there any specific provision on cold delisting?**

There is no specific definition for cold delisting. Cold delisting is not prescribed in any law or regulation.

**19. Does the merger of a listed company with a non-listed company lead to delisting? Is an exit opportunity available for shareholders? What are the relevant provisions? (please provide translations)**

Yes                      No (X)

**20. Does the successful completion of a mandatory bid give the right to delisting? If yes, are there any preconditions?**

Yes (X)                      No

***Relevant provision:***

The successful completion of a mandatory bid provides the possibility of delisting, especially in case of a subsequent exercise of the squeeze-out right following a successful mandatory bid. Article 13 of the Takeover Bids Law (Law 41(I)/2007) regulates the mandatory takeover bid. Article 36 of the Takeover Bids Law (Law 41(I)/2007) regulates the squeeze out right.

***If yes, please define:***

**21. Are there specific rules on delisting from an MTF?**

No.

**PART II. OBLIGATORY DELISTING**

A delisting is deemed compulsory/obligatory, if it is initiated by a supervisory authority or a market operator without consent of the company.

**22. What are the prerequisites for compulsory delisting by the competent national supervisory authority?**

Article 2.4.1.2 of Regulatory Decision of the Council of the Cyprus Stock Exchange on the Stock Exchange Markets states:

‘A transferable security is delisted from a non-regulated/organised market of the Stock Exchange upon the Council’s decision as long as it is established that it does not fulfil the listing requirements or it violates any of its obligation, e.g. if the issuer:

- (a) remains in suspension of trading for a time period exceeding six months;
- (b) presents a negative net worth for the last three years without taking measures to reinforce its capital;
- (c) does not has a Nominated Advisor for a period of six months.’

Article 70 of Law 87(I)/2017 regarding the provision of investment services, the exercise of investment activities and the operation of regulated markets states:

‘Supervisory powers.

70.-(1) The Commission and the Central Bank have all the supervisory powers, including investigatory powers and powers to impose remedial measures, necessary to fulfil their duties under this Law and under Regulation (EU) No 600/2014.

(2) The powers of the Commission and the Central Bank referred to in subsection (1), shall include, in addition to the powers of the Commission set out in the Cyprus Securities and Exchange Commission Law, and of the Central Bank, set out in this Law, at least, the following powers:

- (a) to have access to any document or other data in any form which they consider could be relevant for the performance of their duties and receive or take a copy of it;
- (b) to require or demand the provision of information from any person and if necessary to summon and question a person with a view to obtaining information;
- (c) to carry out on-site inspections or investigations;
- (d) to require existing recordings of telephone conversations or electronic communications or other data traffic records held by an IF or a credit institution, or any other entity regulated by this Law or by Regulation (EU) No 600/2014;

- (e) to require the freezing or the sequestration of assets, or both;
- (f) to require the temporary prohibition of professional activity;
- (g) to require that auditors of CIFs, regulated markets of the Republic and data reporting services providers, provide information;
- (h) to ensure for the exercise of criminal prosecution;
- (i) to assign to auditors or experts to carry out verifications or investigations;
- (j) to require or demand the provision of information, including all relevant documentation, from any person regarding the size and purpose of a position or exposure entered into via a commodity derivative, and any assets or liabilities in the underlying market;
- (k) to require the temporary or permanent cessation of any practice or conduct that the Commission or the Central Bank considers to be contrary to the provisions of Regulation (EU) No 600/2014 and the provisions of this Law, and prevent repetition of that practice or conduct;
- (l) to take any measure to ensure that IFs, regulated markets and other persons to whom this Law or Regulation (EU) No 600/2014 applies, continue to comply with legal requirements;
- (m) to require the suspension of trading in a financial instrument
- (n) to require the removal of a financial instrument from trading, whether on a regulated market or under other trading arrangements;
- (o) to request any person to take measures to reduce the size of the position or exposure;
- (p) to limit the ability of any person from entering into a commodity derivative, including by introducing limits on the size of a position any person can hold at all times in accordance with section 58 of this Law;
- (q) to issue public notices;
- (r) to require existing data traffic records held by a telecommunication operator, where there is a reasonable suspicion of an infringement and where such records may be relevant to an investigation into infringements of this Law or of Regulation (EU) No 600/2014;
- (s) to suspend the marketing or sale of financial instruments or structured deposits where the conditions of Articles 40, 41 or 42 of Regulation (EU) No 600/2014 are met;
- (t) to suspend the marketing or sale of financial instruments or structured deposits where the CIF has not developed or applied an effective product approval process or otherwise failed to comply with section 17(3) of this Law;
- (u) to require the removal of a natural person from the management board of an CIF or market operator of the Republic.'

**23. Which body has been designated as the competent authority, in particular regarding the power to require the removal of a financial instrument from trading pursuant to art. 69(2)(n) MiFID II?**

The bodies designated as the competent authority by Article 70 of Law 87(I)/2017 are the Cyprus Securities and Exchange Commission and the Central Bank of Cyprus.

More specifically, Article 68 of Law 87(I)/2017 regarding the provision of investment services, the exercise of investment activities and the operation of regulated markets states: 'The Commission and the Central Bank are designated as the competent authorities to exercise the competencies set out in the different provisions of Regulation (EU) No. 600/2014 and this Law.'

Article 70 of Law 87(I)/2017 regarding the provision of investment services, the exercise of investment activities and the operation of regulated markets states:

‘Supervisory powers.

70.-(1) The Commission and the Central Bank have all the supervisory powers, including investigatory powers and powers to impose remedial measures, necessary to fulfil their duties under this Law and under Regulation (EU) No 600/2014.

(2) The powers of the Commission and the Central Bank referred to in subsection (1), shall include, in addition to the powers of the Commission set out in the Cyprus Securities and Exchange Commission Law, and of the Central Bank, set out in this Law, at least, the following powers:

- (a) to have access to any document or other data in any form which they consider could be relevant for the performance of their duties and receive or take a copy of it;
- (b) to require or demand the provision of information from any person and if necessary to summon and question a person with a view to obtaining information;
- (c) to carry out on-site inspections or investigations;
- (d) to require existing recordings of telephone conversations or electronic communications or other data traffic records held by an IF or a credit institution, or any other entity regulated by this Law or by Regulation (EU) No 600/2014;
- (e) to require the freezing or the sequestration of assets, or both;
- (f) to require the temporary prohibition of professional activity;
- (g) to require that auditors of CIFs, regulated markets of the Republic and data reporting services providers, provide information;
- (h) to ensure for the exercise of criminal prosecution;
- (i) to assign to auditors or experts to carry out verifications or investigations;
- (j) to require or demand the provision of information, including all relevant documentation, from any person regarding the size and purpose of a position or exposure entered into via a commodity derivative, and any assets or liabilities in the underlying market;
- (k) to require the temporary or permanent cessation of any practice or conduct that the Commission or the Central Bank considers to be contrary to the provisions of Regulation (EU) No 600/2014 and the provisions of this Law, and prevent repetition of that practice or conduct;
- (l) to take any measure to ensure that IFs, regulated markets and other persons to whom this Law or Regulation (EU) No 600/2014 applies, continue to comply with legal requirements;
- (m) to require the suspension of trading in a financial instrument
- (n) to require the removal of a financial instrument from trading, whether on a regulated market or under other trading arrangements;
- (o) to request any person to take measures to reduce the size of the position or exposure;
- (p) to limit the ability of any person from entering into a commodity derivative, including by introducing limits on the size of a position any person can hold at all times in accordance with section 58 of this Law;
- (q) to issue public notices;
- (r) to require existing data traffic records held by a telecommunication operator, where there is a reasonable suspicion of an infringement and where such records may be relevant to an investigation into infringements of this Law or of Regulation (EU) No 600/2014;
- (s) to suspend the marketing or sale of financial instruments or structured deposits where the conditions of Articles 40, 41 or 42 of Regulation (EU) No 600/2014 are met;



- (t) to suspend the marketing or sale of financial instruments or structured deposits where the CIF has not developed or applied an effective product approval process or otherwise failed to comply with section 17(3) of this Law;
- (u) to require the removal of a natural person from the management board of an CIF or market operator of the Republic.'

**24. What are the rules of the market that can justify a compulsory delisting imposed by market (art. 52 MiFID II)?**

Article 53 of Law 87(I)/2017 regarding the provision of investment services, the exercise of investment activities and the operation of regulated markets states:

'Suspension and removal of financial instruments from trading on a regulated market of the Republic.

53.-(1) Without prejudice to the right of the Commission under section 70(2) to demand suspension or removal of a financial instrument from trading, a market operator of the Republic may suspend or remove from trading a financial instrument which no longer complies with the rules of the regulated market of the Republic, unless such suspension or removal would be likely to cause significant damage to the investors' interests or the orderly functioning of the market of the Republic. ...'

**25. Have any of the voluntary or obligatory delisting requirements above changed materially since 2010 (e.g., due to a legal decision or amendment of the regulations)?**

No.

**PART III. GENERAL QUESTIONS (if not already answered)**

**26. How are dissenting shareholders protected in voluntary delisting?**

Dissenting shareholders are protected by the oppression remedy of Art. 202 of Cyprus Companies Law. Moreover, protection could be provided by a derivative action. Cyprus company law does not have a statutory derivative action, but it applies the English common law derivative action (exceptions to the rule in *Foss v Harbottle* case). For a comparative analysis of derivative action in Cyprus company law, see: G Zouridakis and T Papadopoulos, 'A Comparative Analysis of Derivative Action in Cypriot Company Law: Comparison with English Company Law and the Prospect of Statutory Reform (2022) 29 *Maastricht Journal of European and Comparative Law* 62.

**27. What are the sanctions in case of a breach of the delisting rules?**

Administrative sanctions in the form of fines.

**28. Is there a special duty of loyalty (for the board or, if applicable, the shareholders) imposing further restrictions in connection with a delisting?**

The directors of a Cyprus company are subjected to the directors' duties deriving from common law and law of equity: 1) fiduciary duties and 2) duty of skill, care and diligence. Delisting is subjected to these two categories of directors' duties.

**29. How are shareholders protected in obligatory delisting?**

It is an administrative law dispute. The shareholders can challenge, under administrative law, the decision of the Council of the Stock Exchange. The competent courts are the administrative courts. The appeal is made on the basis of Article 146 of the Constitution of Cyprus.

**30. Have shareholders successfully challenged delisting decisions in the past? If Yes, could you provide any names of cases?**

There are no such cases in Cyprus law.

**31. How is the issuer protected in (obligatory) delisting?**

It is an administrative law dispute. The issuer can challenge, under administrative law, the delisting decision of the Council of the Stock Exchange, of the Cyprus Securities and Exchange Commission and of the Central Bank of Cyprus. The competent courts are the administrative courts. The appeal is made on the basis of Article 146 of the Constitution of Cyprus.

**32. How does insolvency and restructuring of a listed company affects delisting? Specifically: a) Does the initiation of formal insolvency (liquidation) procedures automatically trigger mandatory delisting? b) Does the initiation of formal restructuring / reorganization procedures automatically trigger mandatory delisting? c) If the above scenarios do not automatically trigger mandatory delisting, what else are the implications? d) Please give empirical information (if available) on the treatment of insolvent listed firms by trading venues in your jurisdiction e) What are the relevant provisions (please provide translations)?**

The above scenarios do not automatically trigger mandatory delisting. Insolvency and restructuring of a listed company does not affect delisting.

**33. Do relevant courts have the power to examine the delisting reasons on the merits?**

No, administrative courts cannot examine the merits, but they proceed only to legality review. However, Civil Courts can examine the delisting reasons on the merits.

**34. What are the legal consequences of delisting: a) on shares, b) on shareholders, c) on the issuer?**

Delisting does not have any specific legal consequences on the general position of shares, shareholders and the issuers.

**35. Are there any statistical data on delisting in your Country? If yes, please provide further details. Are there any statistical data, or evidence, on downlisting in your Country? If yes, please provide further details. Are there any statistical data, or evidence, on delisting from an MTF in your Country? If yes, please provide further details.**

No data available.

**36. More specifically, how many cases of voluntary delisting and / or obligatory delisting by the competent national supervisory authority have there been since MiFID I entered into force in 2007? Please also provide the main reasons for mandatory delistings, if available.**

No data available.