E&G ECONOMIDES LLC

REDEEMABLE PREFERENCE SHARES A USEFUL TOOL IN CORPORATE FINANCING

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Under the Companies Law Cap.113, Article 57(A) only public companies are permitted to buy back their own shares. However, Cyprus private companies may be able to avoid the limitations contained in Article 57(A), by issuing and allotting Redeemable Preference Shares.

Preference shares carry preferential rights in comparison to other classes of shares; such special rights are set out in the Articles of Association of the company and usually include priority rights to dividends, increased number of votes at a prescribed event or on certain resolutions and return of capital on winding up and liquidation.

Under Article 57 of the Companies Law Cap.113, a Cyprus private limited liability company may, if so authorized by its articles, issue redeemable preference shares at the option of the company or its shareholders.

Redeemable preference shares may either be issued at a nominal value or at a premium; however such shares must be issued as redeemable from the outset, as ordinary shares cannot be converted into redeemable preference shares after being issued.

Redeemable preference shares are usually used by private limited companies and SPVs to finance private equity as well as other corporate projects. As regards to their nature, redeemable shares can be considered as quasi-capital, in the sense that they function as equity until the board of Directors opts to redeem them and in case the right of redemption is with the shareholder then they are considered as a liability (more like a loan).

Redemption can take place either at (i) the discretion of the issuing company; or (ii) at the discretion of the shareholder; or (iii) upon the occurrence of a specific event.

However, Article 57 limits the redemption of redeemable preference shares to following extent:

(i) redemption can only be made out of profits or the proceeds of a fresh issue made for the purpose of redemption;

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(ii) Only fully paid shares can be redeemed

(iii) The premium, if any, payable on redemption, must have been provided for out of the profits of the company or out of the company's share premium account before the shares are redeemed.

Upon the redemption of the shares, the rights to vote, receive dividends and capital will be cancelled and in exchange, the shareholders can receive cash or new ordinary shares. Subsequently, the amount of the company's issued share capital is reduced by the nominal value of the shares redeemed whereas the company's authorised share capital remains unaffected.

Redeemable shares are issued following a shareholders' ordinary resolution and the right of redemption gives the company or the holder of redeemable preference shares the option to redeem the shares in exchange for cash or the issuance of new shares.

The redemption mechanism and the amount for which such shares will be redeemed, will be stipulated in the Company's Articles of Association, subject to the availability of profits.

In case where redeemable preference shares are to be redeemed at the option of the Company, the Company will have the right to do so by a special resolution of the General Meeting.

The purpose of this article is to provide a general guideline on the subject and not to be considered, in any way, as legal advice. It is advisable to seek professional and legal advice on this subject before proceeding with any general information provided to you. For further clarifications and advice please contact us at legal@economideslegal.com.

Konstantinos Ermogenides, LL.B., LPC, MSc

Advocate

konstantinos.ermogenides@economideslegal.com