CLIENT UPDATE

CYPRUS BAIL-OUT

MOSCOW
Alan V. Kartashkin
avkartashkin@debevoise.com

LONDON
Lord Goldsmith QC
phgoldsmith@debevoise.com

The Government of Cyprus has announced that, as part of the bail-out package agreed with the Troika (the European Central Bank, the International Monetary Fund and the European Commission), two of its largest banks – the Bank of Cyprus and Laiki Bank – will be restructured, and that capital controls will be imposed "exceptionally and temporarily" to avoid capital flight. Current reports indicate that depositors who hold over €100,000 in these banks, together with the banks' shareholders and bondholders, are all likely to face substantial, and, as yet, undefined losses.

This action raises immediate concerns regarding obligations at international law under a number of bilateral investment treaties to which Cyprus is party (including with Belgium, Bulgaria, Czech Republic, Egypt, Hungary, India, Lebanon, Luxembourg, Poland, and Romania). The losses likely to be suffered may constitute unlawful expropriation in breach of these treaties. Questions are also likely to be raised regarding Cyprus' obligations to accord foreign investors fair and equal treatment and permit the free transfer of payments abroad.

Whether the precise form of the proposed restructuring (initially proposed as a tax on large deposit holders) will allow Cyprus successfully to avoid these obligations is as yet unknown, as is the position of the Cypriot Government, which could seek to avoid its obligations under public international law.

In addition, the current uncertainty surrounding the use of measures to control capital movements out of Cyprus is a new development in the Eurozone crisis and one that may raise its own issues under the relevant provisions of the Treaty on the Functioning of the European Union.

Debevoise & Plimpton LLP Partners in the London and Moscow offices are currently considering a number of potential avenues of redress for affected deposit holders.

* * *

Please do not hesitate to contact us with any questions.

March 27, 2013