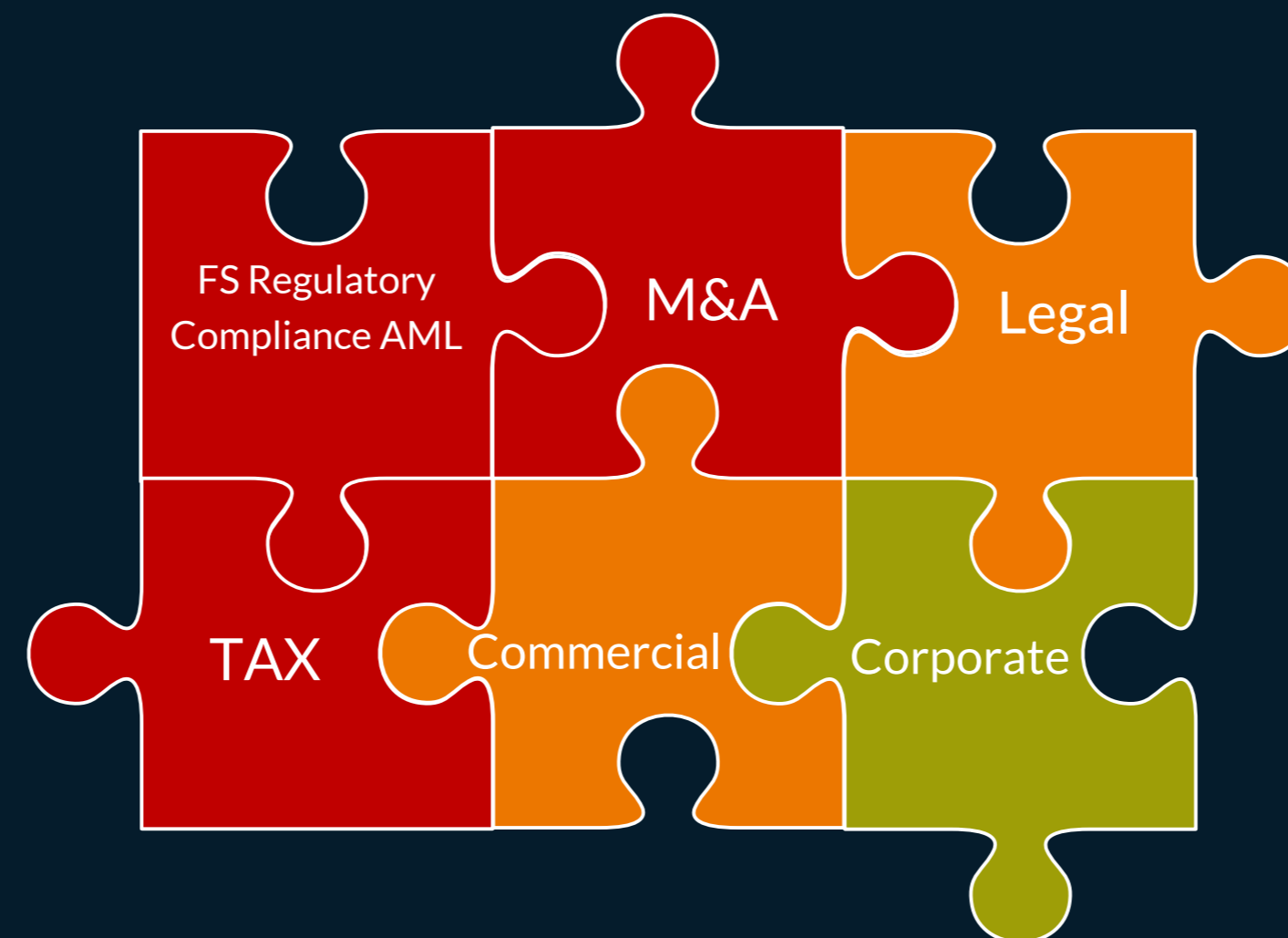


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Cyprus: The International Business Hub



Cyprus: The International Business Hub

- ✓ One of the most important business hubs in Europe
- ✓ Adaptable Economy
- ✓ Efficient and safe operations
- ✓ A healthy economy through transparency.

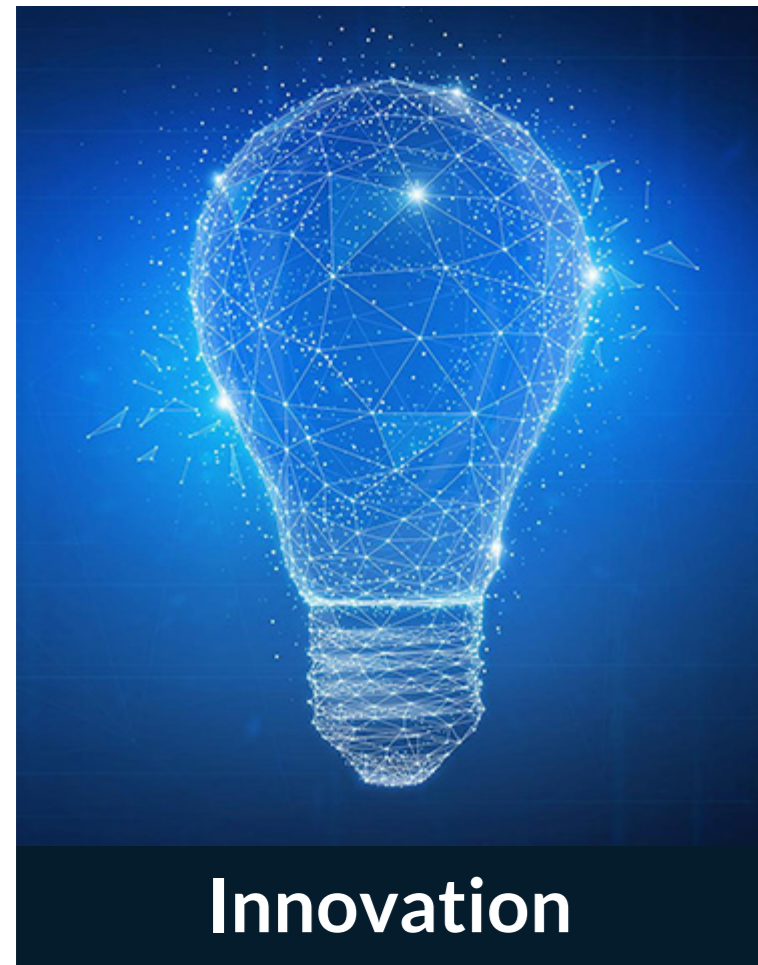


Cyprus: An Ideal Jurisdiction



- Strategic Geographic Location
- EU Member State Efficient, Up to Date Legal and Regulatory Framework
- Human Talent and Quality Services
- Advanced Infrastructure
- Safe and Comfortable
- Life Economic Prospects
- Climate and Environment

Cyprus: The 5 Pillars of the Economy



Innovation

Tech startups.

EU funding for innovation clusters.



Tourism

Occupies a dominant position in the economy.

4 million tourist arrivals per year.



Real Estate

Large scale projects worth around 8 billion.

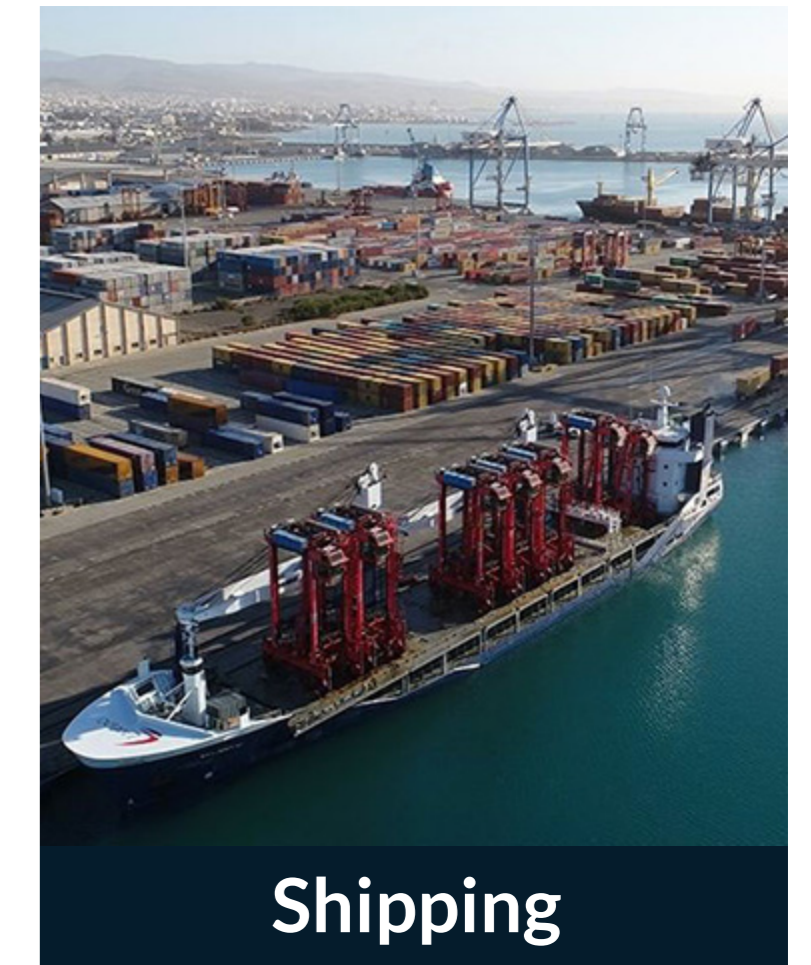
2020 pandemic impact.



Financial Services

Growth rate of 6.5% per annum.

Over 30 Cypriot and international banks operating.



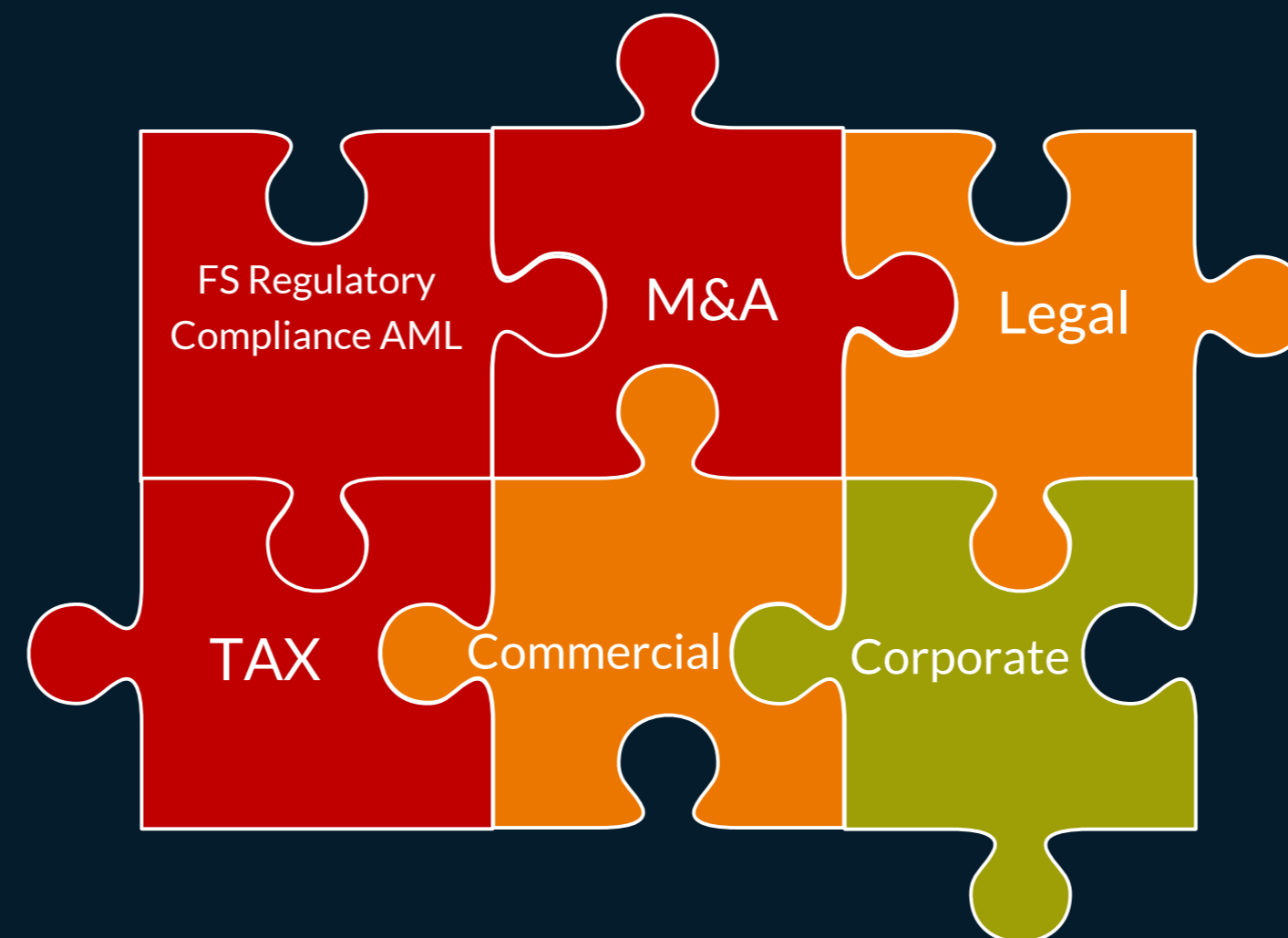
Shipping

Limassol, is considered to be the largest third party ship management centre in the European Union.

The Cyprus Registry is classified as the 11th largest merchant fleet globally.

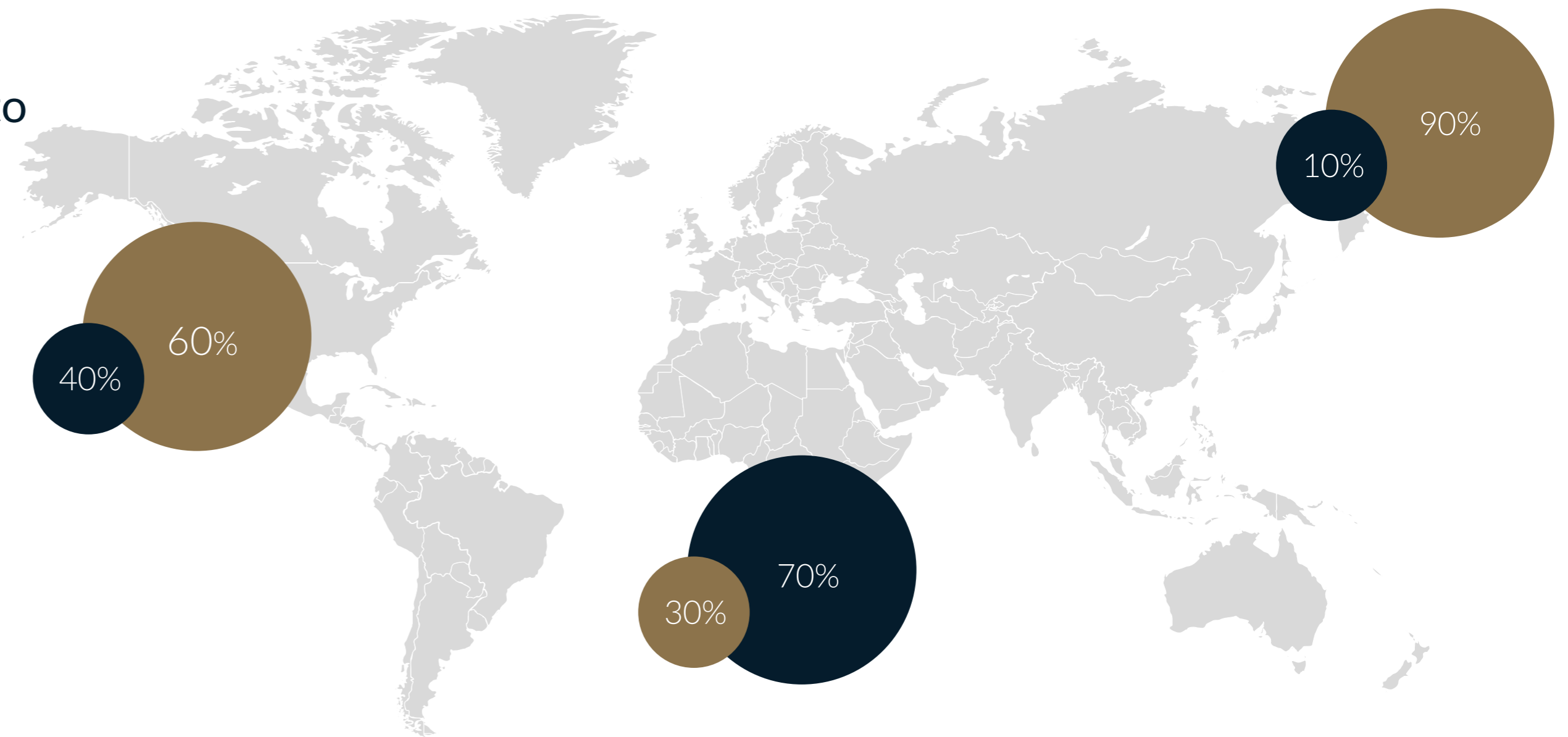
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M&As: Legal Framework



Key legislation: The Companies Law CAP. 113 as amended (the 'Companies Law')

- Mergers
- Transfer of assets
- Exchange of shares in two or more companies that intend to merge together;
- Mergers of public companies in compliance with EU rules;
- Cross-border M&A



Legal framework

Other relevant laws:

- ❖ The Transparency Requirements (Securities Admitted on a Regulated Market) Law (190(I)2007) as amended (the 'Transparency Law');
- ❖ The Takeover Bids Law;
- ❖ The Market Abuse Law;
- ❖ The Control of Concentrations between Undertakings Law (83(I)/2014);
- ❖ The Corporate Governance Code (5th ed) January 2019 issued by the CSE for listed companies;
- ❖ The Preservation and Safeguarding of Employees' Rights on the Transfer of Business, Facilities or Parts of Business or Facilities Law (104(I)/2000) as amended in relation to the protection of employees' rights on the transfer of a business.

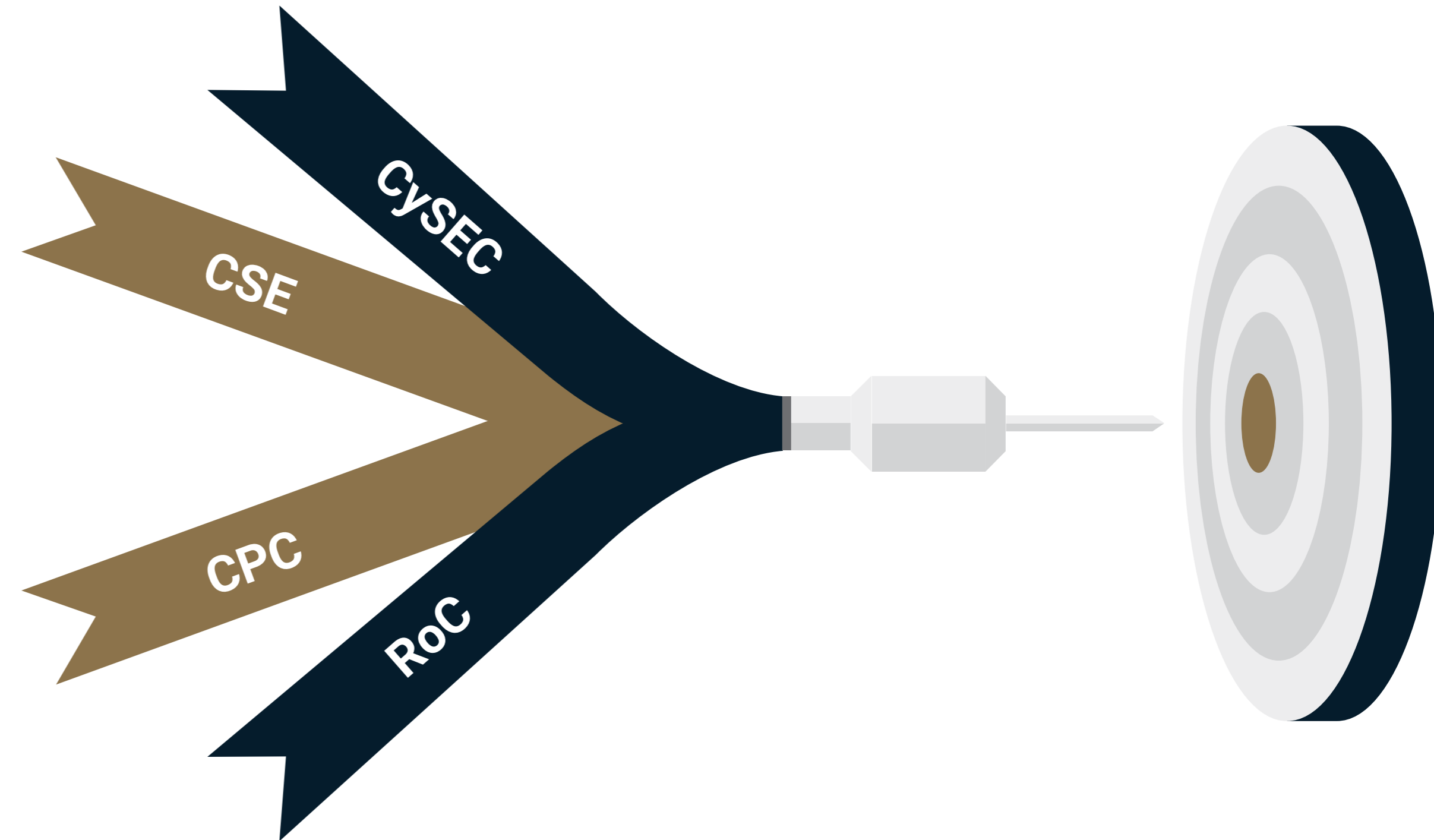


Key regulators

- Key Regulators: Cyprus Stock Exchange (CSE), Cyprus Securities and Exchange Commission (CySEC), Commission for the Protection of Competition (CPC)



- Registrar of Companies and Official Receiver of the Republic of Cyprus (RoC)

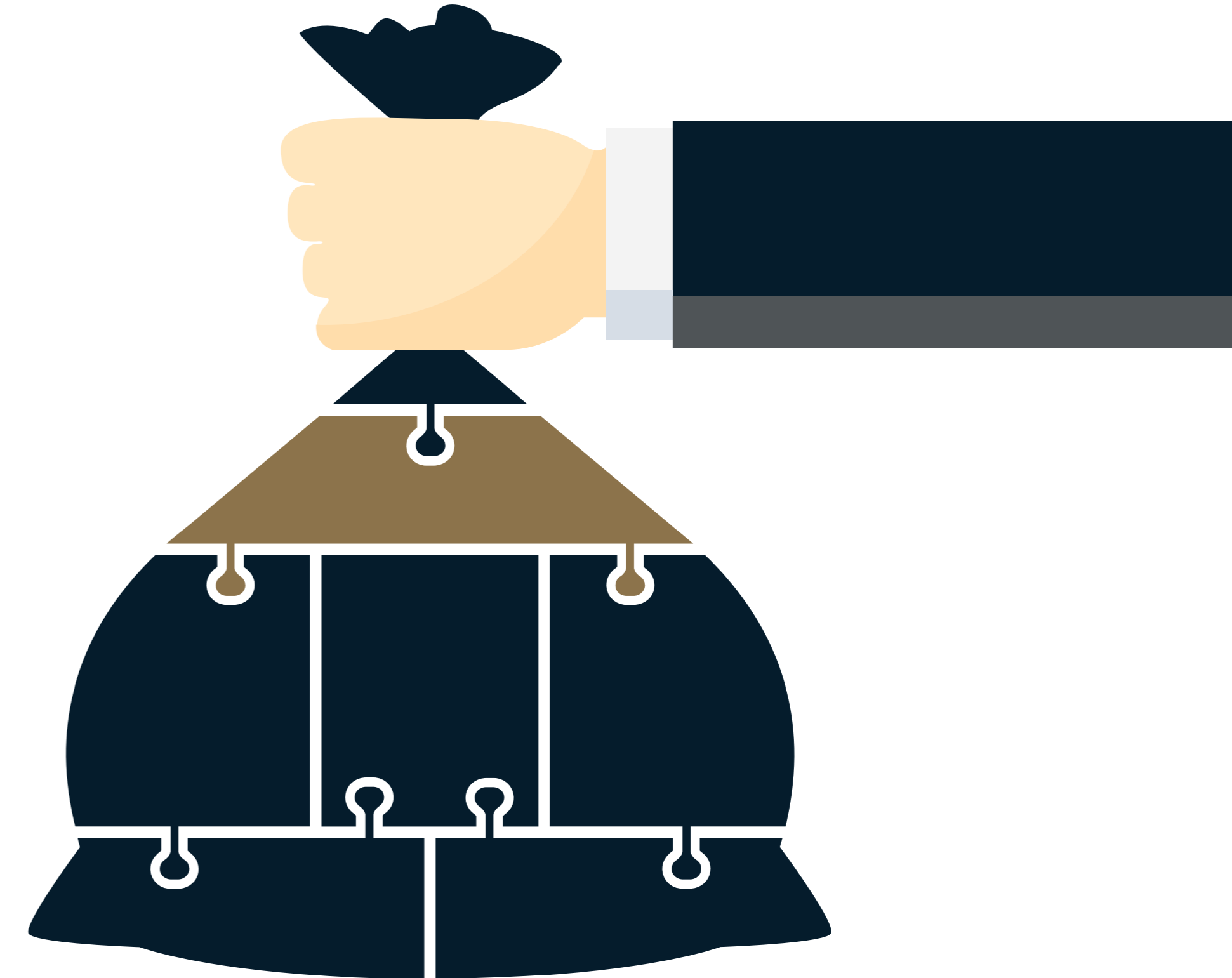


The Prevention and Suppression of Money Laundering and Terrorist Financing Laws

The Prevention and Suppression of Money Laundering and Terrorist Financing (Amending) Law of 2021

Implementation of the Register of Ultimate Beneficial Owner (UBO) (currently as an interim solution)

Six-months period from that date during which the information about the UBOs into the relevant interim reporting system should be submitted.



Definition of UBO

A UBO is defined as:

Any natural person who ultimately owns or controls the entity in question through direct or indirect ownership of a sufficient percentage (25% plus one) of the shares, voting rights, or ownership interest in that entity, or who exercises such control via other means.

If no natural person has such qualifying ownership or control or no person under 25% plus one is identified, the natural person(s) holding the position of senior managing official(s) will be reported.



Access to the UBO Registry & Applicable timeframe

Upon submission of a request to the Registrar of Companies, during the interim solution, access to the UBO Register is **limited to competent authorities** only such as the Police, Tax authorities, the Central Bank of Cyprus, the CySEC and others.

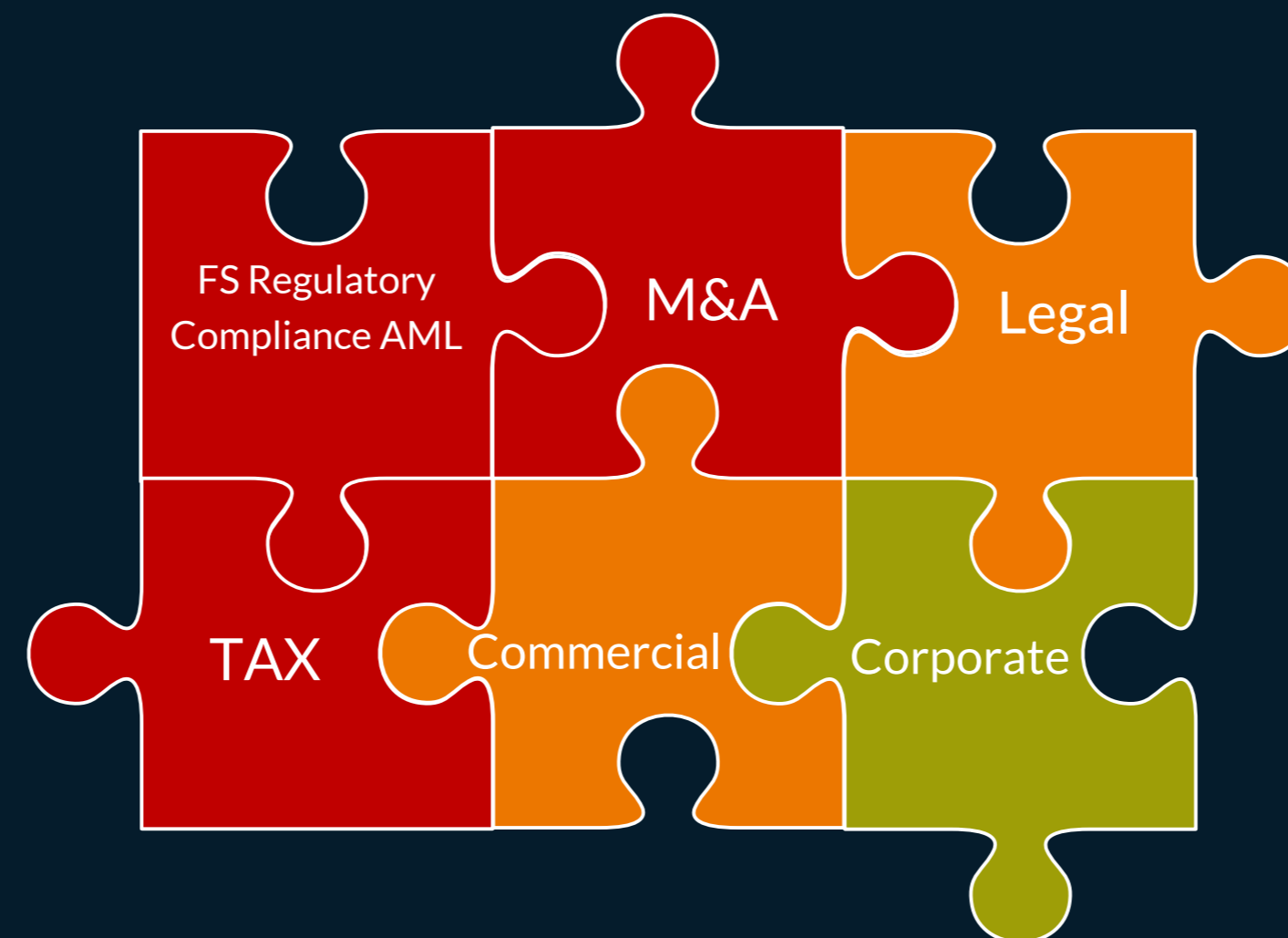
The relevant supervisory authorities and regulators will have access to the information if they have a legitimate interest to do so.

It will not be publicly available for the time being.

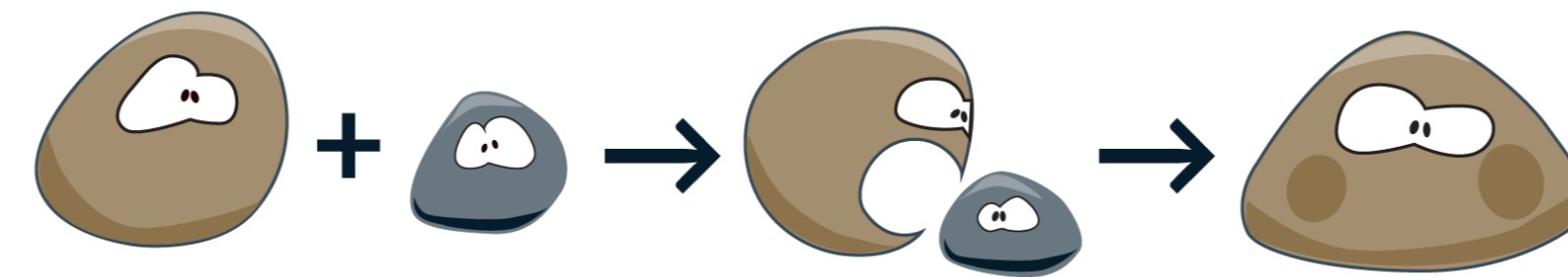


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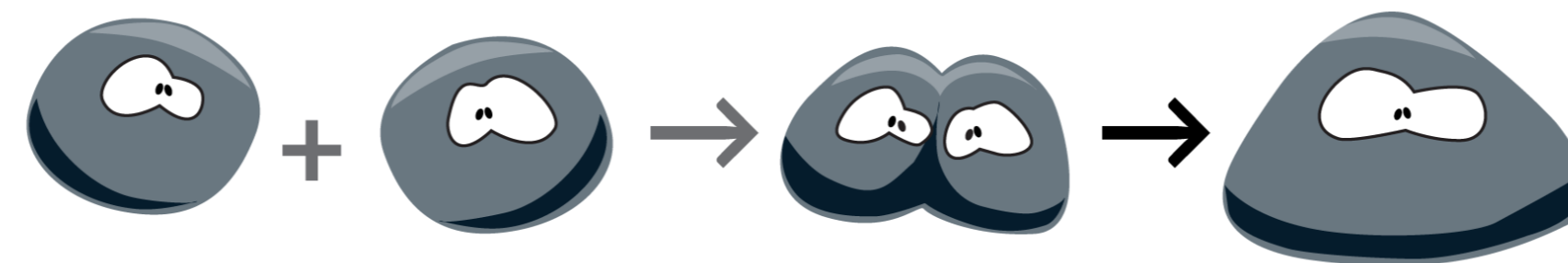
Local and Cross-Border Mergers Joint Ventures



Types of Mergers and Acquisitions for private companies



Acquisition



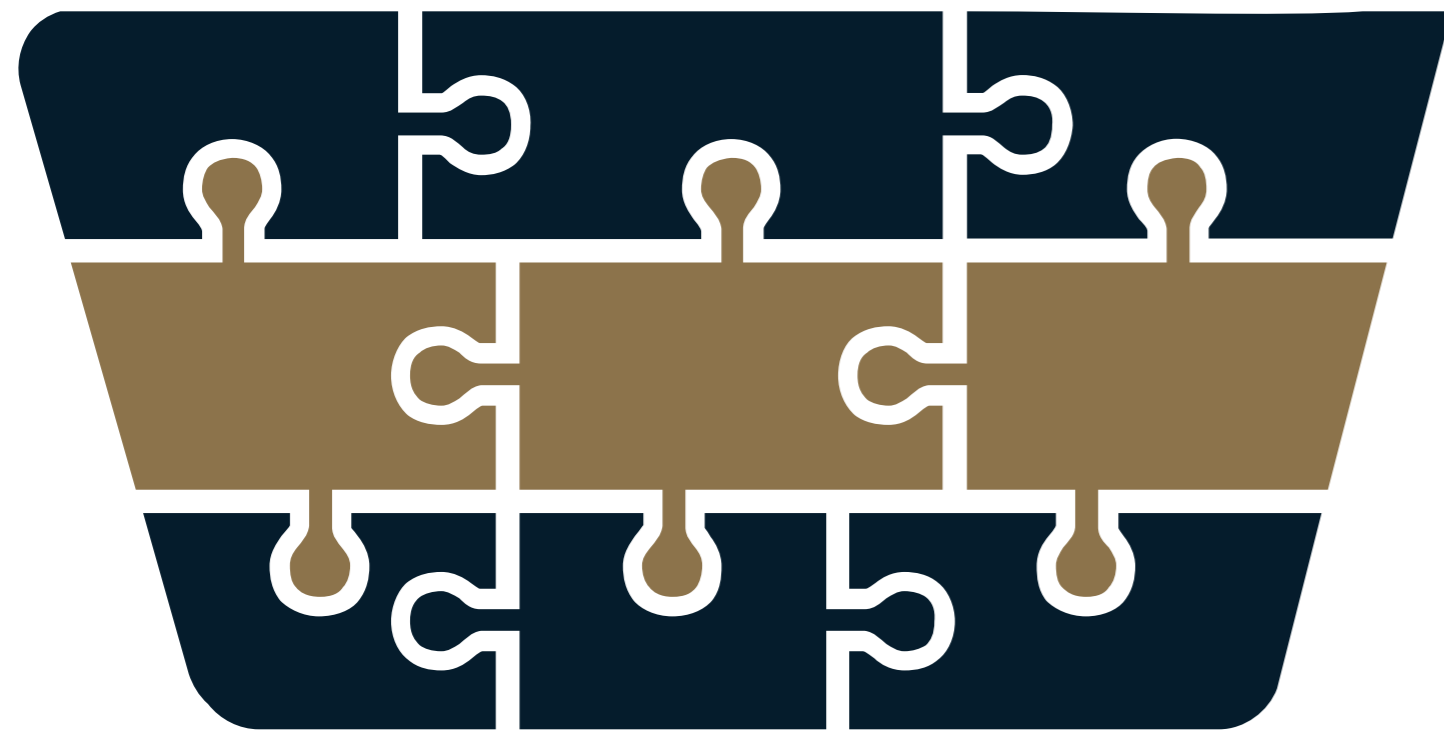
Merger

1. Merger by acquisition
2. Merger by the creation of a new company
3. Merger by way of holding company absorbing a subsidiary

Steps of Mergers



Process of Local Mergers in Cyprus



1

Local mergers must receive a court approval (hereinafter “merger order”) before they can be conducted. Several actions need to be taken in order to enable the parties to appear before the Courts in Cyprus for the approval of the requested merger.

2

Upon receipt of the relevant Merger Order, it should be submitted to the Registrar of Companies along with all necessary documents/applications in order to proceed with liquidating the Target Company without appointing Liquidator and making the relevant publications with the Governmental Gazette within three months.

3

Within the period of liquidation of the Target Company, both parties will proceed with transferring all assets of the Target Company to the ownership of the remaining company and/or new company as well as arranging the said company to undertake any existing obligations and debts of the Target Company.

4

Liquidation Certificate of the target company issued by the Registrar of Companies determines the finalization of the process.

Cross-Border Mergers

Criteria:

- ✓ Limited Liability Companies
- ✓ Companies to be governed by the laws of different Member-States



The provisions governing cross-border mergers in Cyprus are set out in Articles 201H-201KZ (A.201ΘA.201ΚΖ)



Cross-Border Mergers

1. Common Draft Terms
2. Procedure prior to approval
 - i. Filing and Publication in Cyprus
 - ii. Directors' Report
 - iii. Independent Expert's Report
 - iv. Shareholders' Approval
3. Verification Procedure
 - i. Pre-merger Certificate
 - ii. Completion of Cross-Border Merger

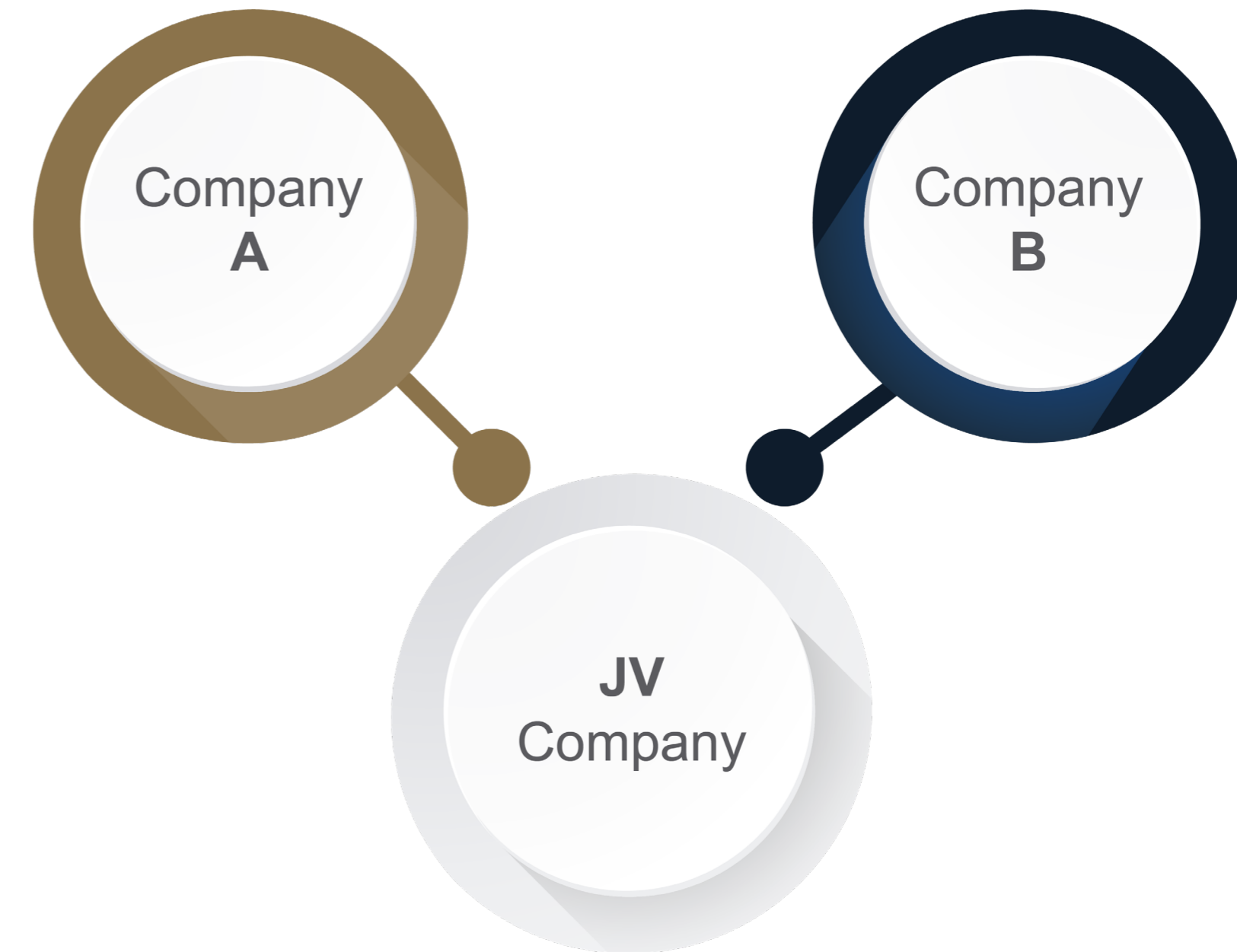


* Results and Consequences of a Cross-Border Merger

Joint Ventures in Cyprus

In current practice, there are four types of joint ventures:

1. Contractual Joint Ventures
2. Partnership Joint Ventures
3. Corporate Joint Ventures
4. European Economic Interest Groupings (EEIG)



i According to Companies Law, Cap. 113, there is no definition of a joint venture in Cyprus.

Pros and Cons of Contractual JV



- Flexibility
- Common law provisions
- No company registration
- Time efficient
- No joint liability
- Possible independent tax planning



- Difficulty in establishing contracts with third parties
- Lack of legal framework
- Risk of classification of the relationship as a partnership by a court (thus, joint liability)

Pros and Cons of Partnership JV



- Few formalities
- Registration requirements but not disclosure of actual agreement
- Sue or be sued in its own name and may trade under its name
- Attribution profits to partners
- Independent tax planning possibility for each participant



- Significant powers to unlimited partners
- Liability comes with involvement in the management and control
- Natural persons taxed at higher rates resulting avoidance of tax transparency

Pros and Cons of Corporate JV



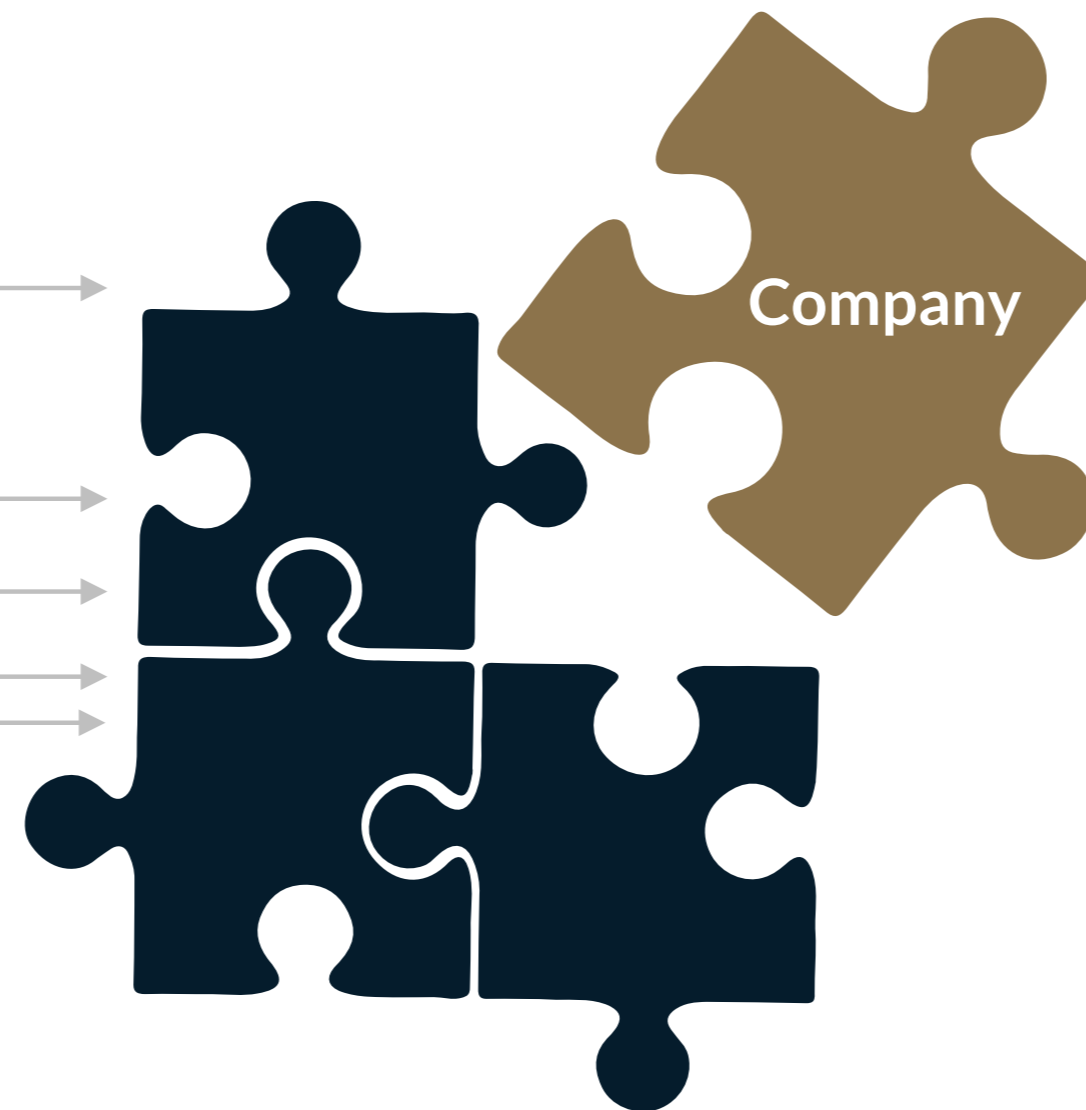
Limited liability of the participants to capital

Participants control the company by appointing BoD

Governed by Companies Law, Cap 113

Corporate Tax 12.5%

Wide range of double tax treaties



Less flexible

Deal with deadlocks

Operational costs

Restrictions and conditions for the transfer of shares

If participants are natural person residing in Cyprus, the corporate profit and dividends might be subject to taxation

More expensive procedure

Pros and Cons of **EEIG**



Established under European Law

Tax transparency

Fewer formalities ≈ cost effective

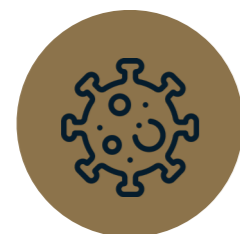


Can be bound by the managers as regards third parties

Unlimited liability to participants

Limited use

Cyprus - Challenges of 2021



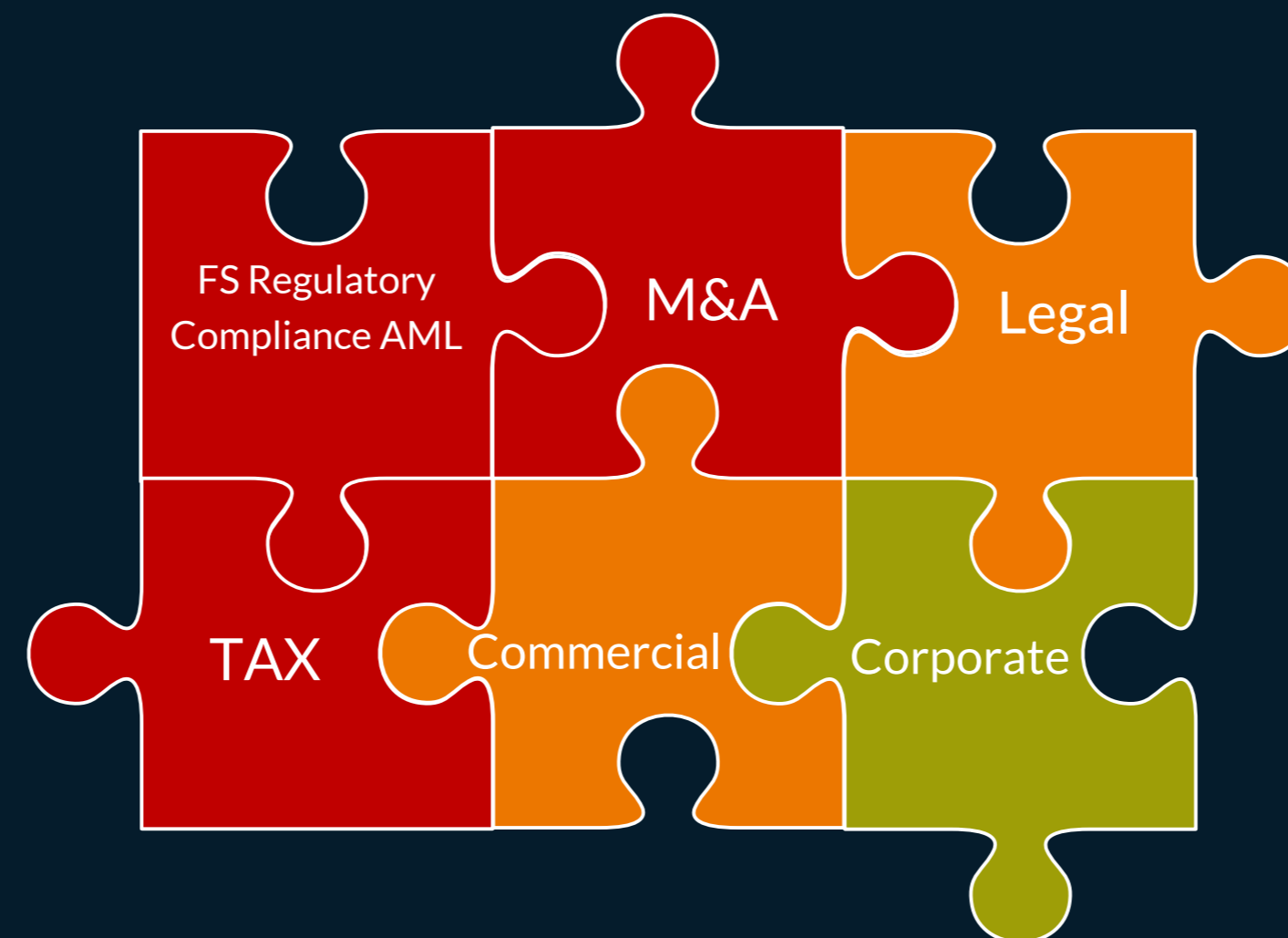
Covid-19 impact



Brexit

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Cyprus Tax Insights



Tax benefits of an approved merger and/or reorganisation



No balancing statement is required for assets transferred.



No capital gains on the transfer of Cyprus immovable property.



Any **losses carried forward** of a transferring company can be transferred to the receiving company.



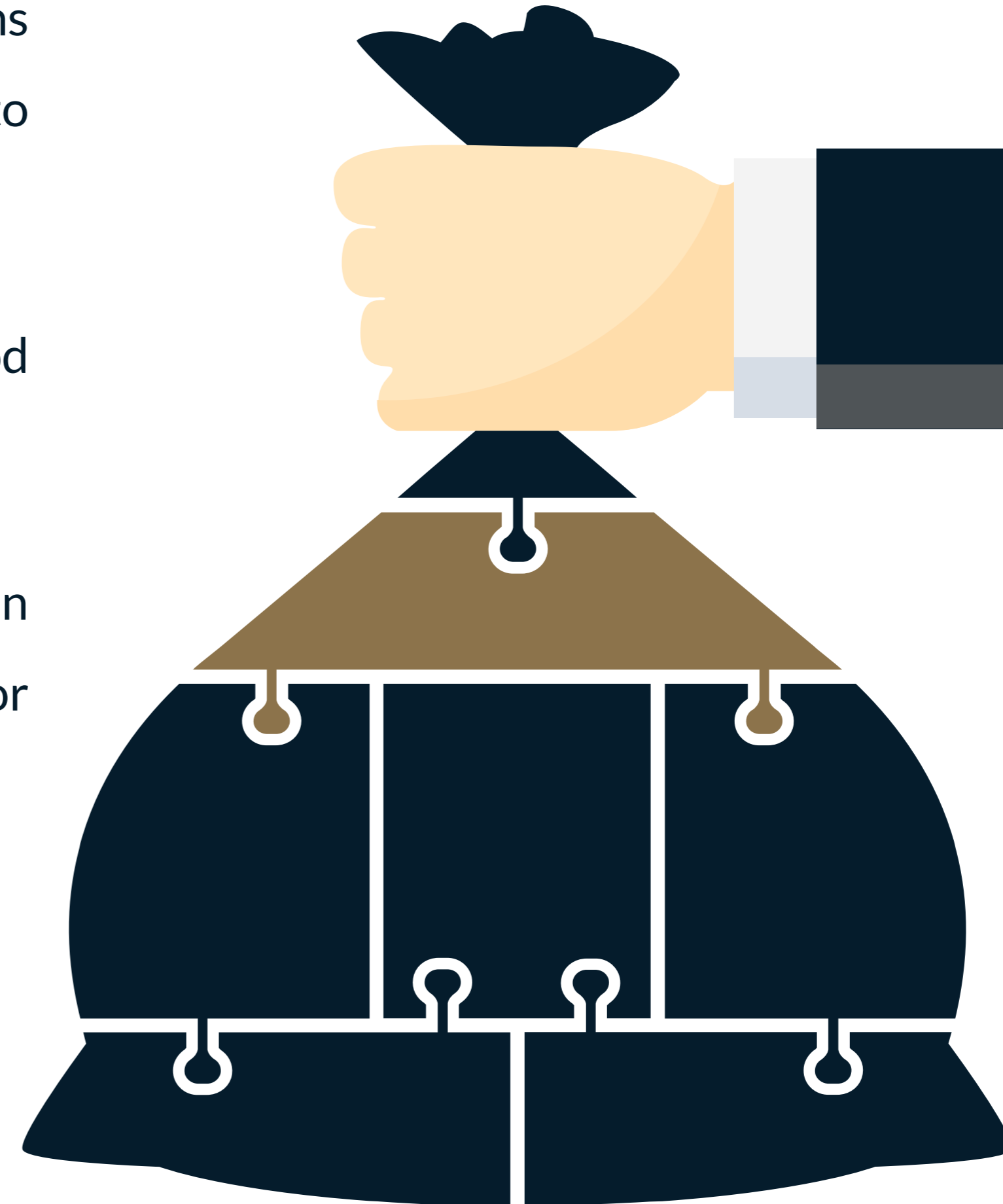
No transfer fees or stamp duty.



No taxes on the transfer on any assets.

Anti-avoidance provisions

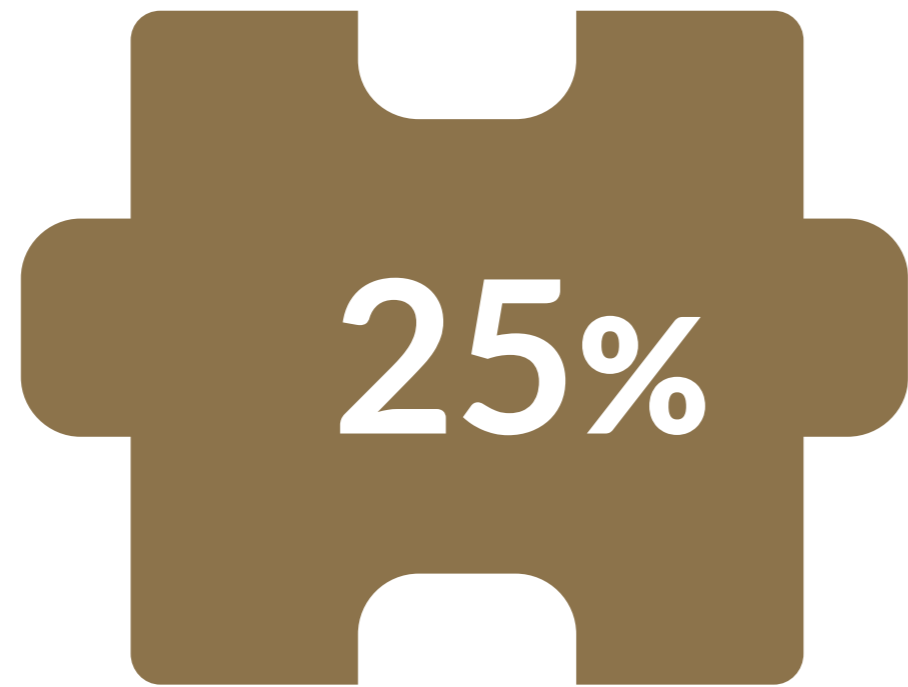
1. Strict adherence to the rules imposed within the types of reorganizations is necessary – the Commissioner may deem the reorganization void to the contrary
2. Conditions may be imposed by the Commissioner as to a holding period of the shares received under a reorganization.
3. As reorganizations are a tax-free tool, the Commissioner may void an approval for reorganization if of the belief that no genuine commercial or financial reasons existed for the reorganization.



The EU Merger Directive

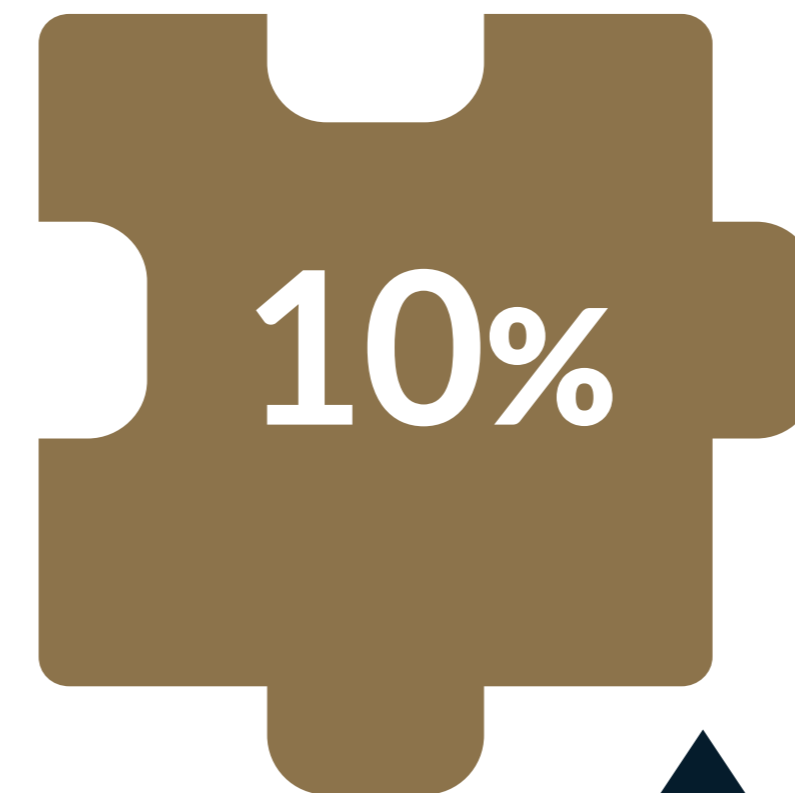


* The EU Merger Directive allows for all reorganization types between EU members



**The Parent Interest and
Royalties Directive**

Nil imposition of withholding taxes on interest and royalties payments between EU members provided a minimum 25% capital holding exists.

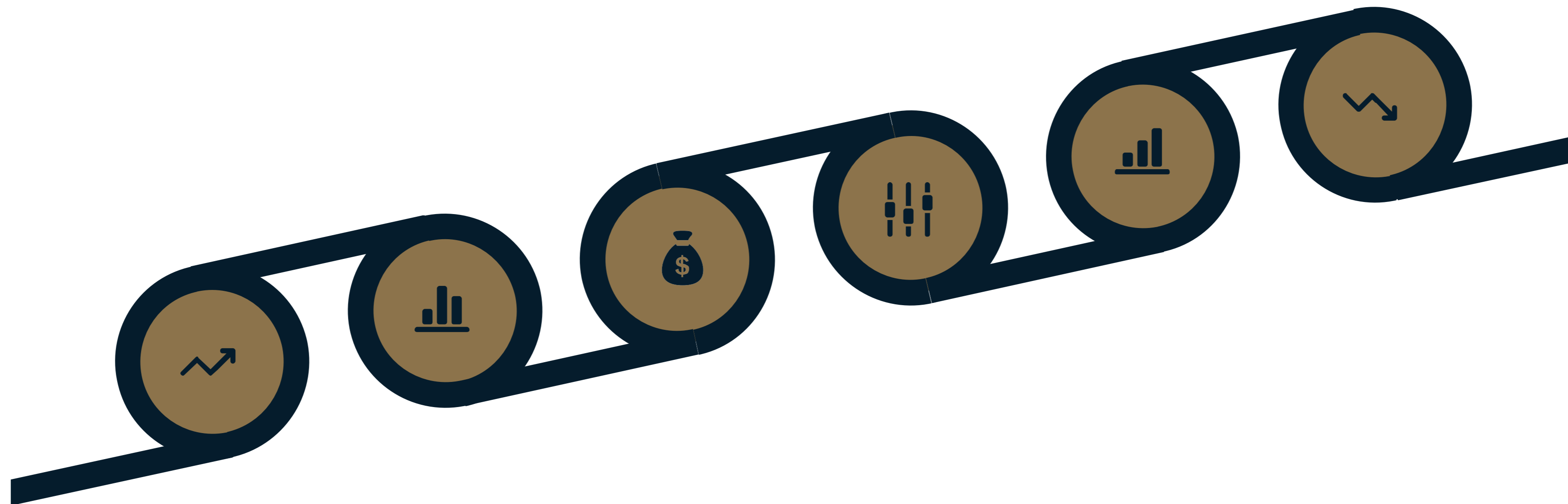


**The Parent
Subsidiary Directive**

Nil imposition of withholding taxes on dividend payments between EU members provided minimum 10% capital holding exists.

Utilisation of losses

- i. **On a company level** – Tax adjusted losses can be carried forward and set off against tax adjusted profits for the next five subsequent years.
- ii. **On a group level** – group members may surrender losses from one loss making member to another profitable one.

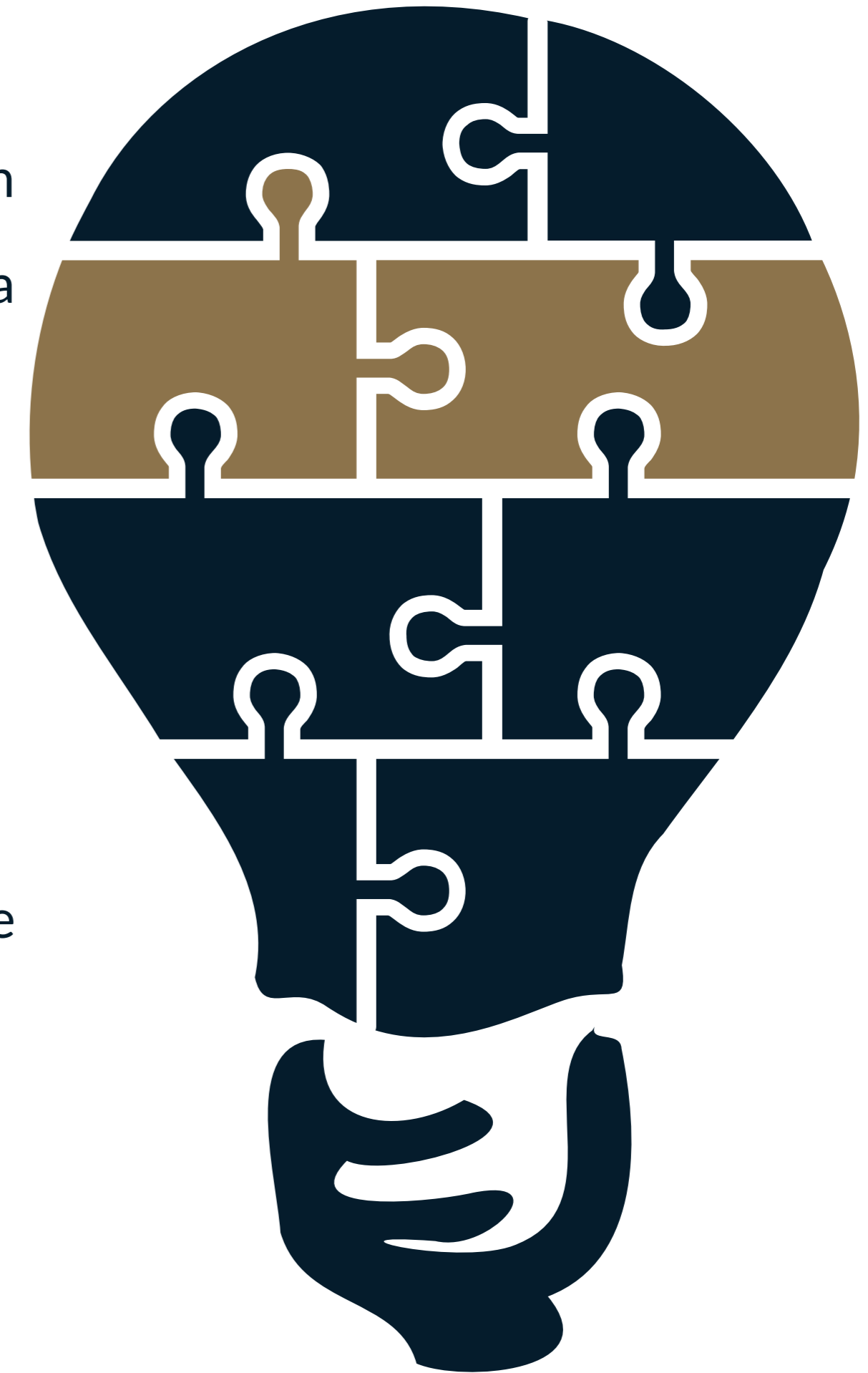


New Cyprus IP Box Regime

As per the provisions of the **New Cyprus IP Box regime**, qualifying intangible asset are defined as an asset which has been acquired, developed or exploited by a person in the course of carrying on a business, which is the result of research and development activities.

Qualifying Intangible asset specifically comprise of:

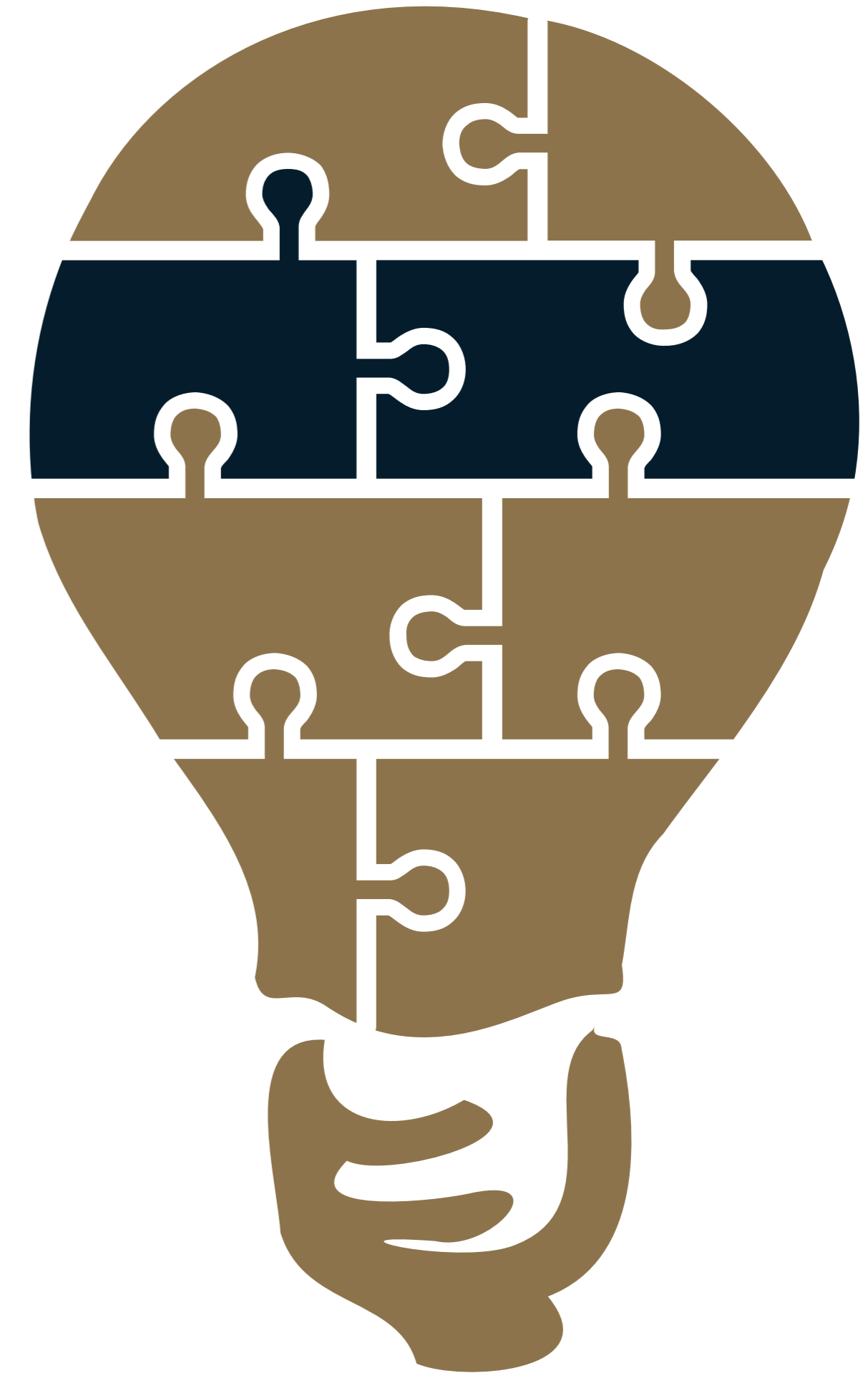
1. Patents
2. Computer Software
3. Other intangibles that are non-obvious, useful and novel (trademarks and copyrights are excluded).



New Cyprus IP Box Regime

The new IP box regime follows what is called the ‘**nexus approach**’ whereby a direct link between qualifying income and own qualifying expenses is essential for the intellectual property to qualify and in this case 80% of qualifying profits generated by qualifying assets is deemed to be tax deductible expense for qualifying taxpayers.

In order to get the full benefit from the IP regime, a company should perform the **R&D activities either itself or through R&D work outsourced to non-related parties**. The acquisition cost of the IP and any work subcontracted to related parties are not considered to be qualifying expenses.

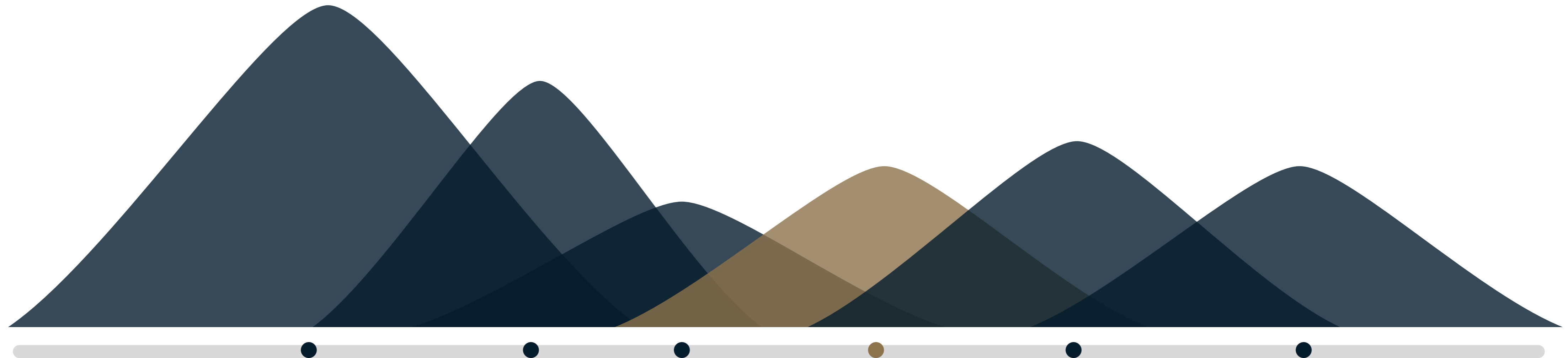


Notional Interest Deduction

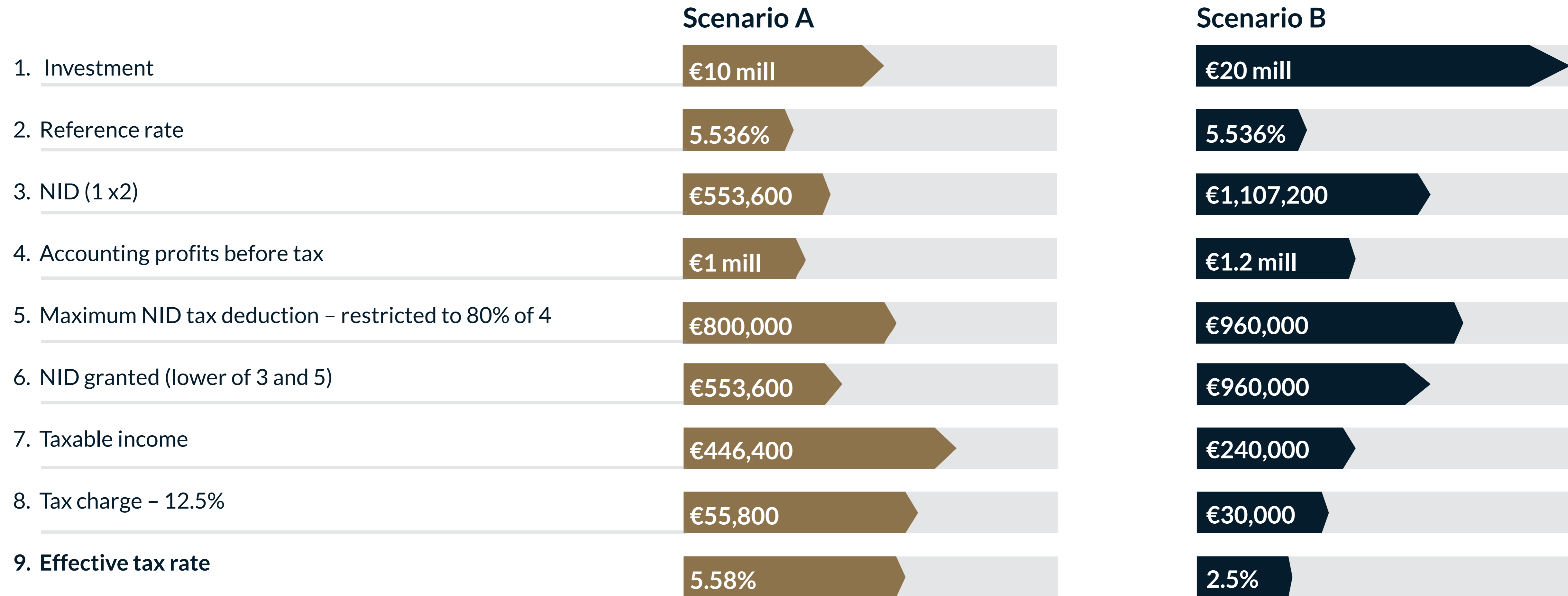
The main intention of NID is to provide a company which has taxable incomes generated from own funds/new equity to have a relative notional interest deduction.

This an incentive provided to any new project used in order to finance taxable income generating assets (as long as this new equity is in the form of share capital or share premium). The exemption is limited to 80% of annual taxable income during the whole life of the investment and it is applied by a deduction in the tax computation calculated by multiplying a reference rate to the amount of equity.

NID Reference Rate is defined as the interest rate of the 10-year government bond yield of the country in which the new equity is invested (as published annually) increased by 5%. The reference rate for 2020 applying to Cyprus based investments was 5.536%, which is the 10-year Bond yield (0.536%) plus 5%.



Notional Interest Deduction



Various other tax benefits regarding non Cyprus tax resident

- ✓ Payment of Interest to a non Cypriot tax resident legal or physical person
 - Nil withholding tax applies in all cases.
- ✓ Payment of Dividend to a non Cypriot tax resident legal or physical person
 - Nil withholding tax applies in all cases.
- ✓ Payment of Royalties (or any other intellectual property rights) to a non Cypriot tax resident legal or physical person – A maximum 10% withholding tax applies on the gross amount of such payment only if the royalty rights were used in Cyprus.
- ✓ No tax on the profits from the sale of securities that classify as “titles”.
- ✓ All of the before mentioned plus the very low tax rate of 12.5% make Cyprus a very attractive jurisdiction.



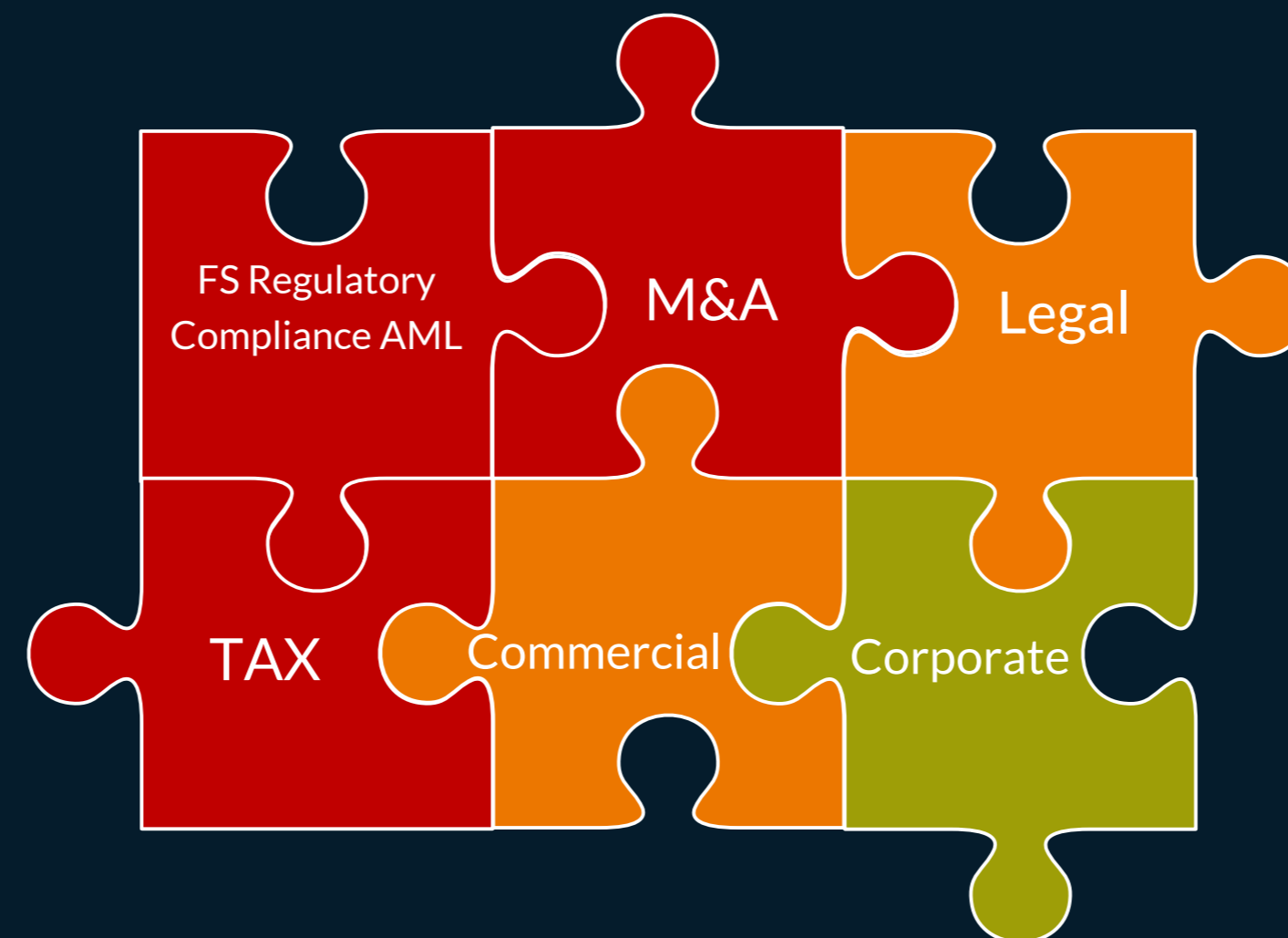
Special defence contribution (SDC) tax - non - domiciled Cyprus tax resident

- Cyprus tax resident individuals for SDC purposes includes the domicile concept. As such an individual who is Cyprus Tax Resident as per the Income Tax Law definition but not domiciled in Cyprus is exempted from the chargeability of SDC on all passive incomes such as Dividends, Interest and Rental Income.
- What this basically means is that for a Non-Domiciled Cyprus Tax Resident dividends and interest (of a passive nature) can be received tax free.
- Non-domiciled tax residents are those that were not tax residents of Cyprus during 17 out of the last 20 years and do not have a Cyprus domicile of origin.



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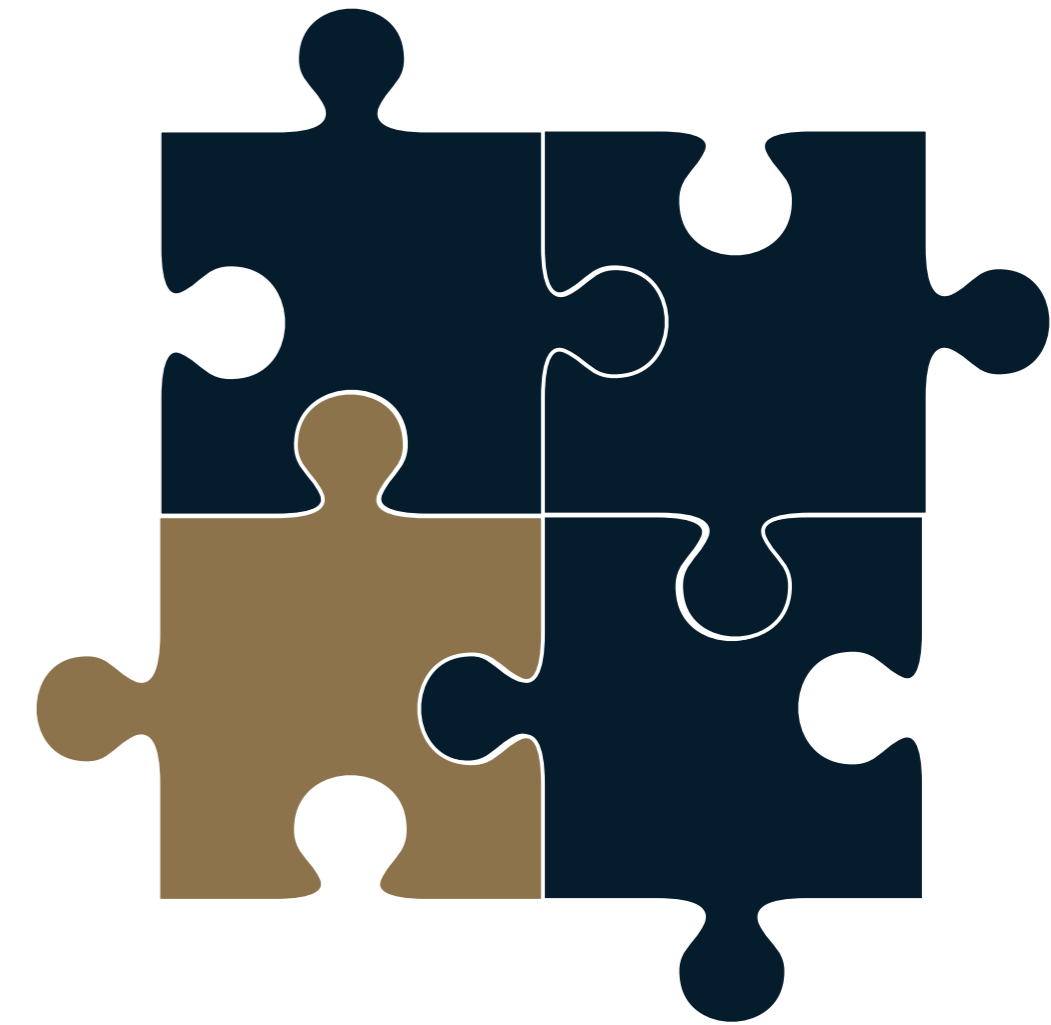
Exit Strategies



M&A disputes

M&A related disputes can arise in three (3) different stages:

1. Pre-signing - e.g. breach of NDAs and MOUs
2. Between signing and completion - e.g. non-fulfillment of CPs, triggering material adverse clauses (MACs)
3. Post-completion - e.g. breach of warranties and indemnities, price adjustment clauses, misrepresentation and fraud claims



Winding up

A company may be wound up compulsorily by the Court if the Court is of the opinion that it is **'just and equitable'** to do so (s.2011 (f)) – this secures the right of an aggrieved shareholder to petition to the court for a just and equitable winding up.

A petition may be presented if there is, amongst others:

- i. Irretrievable breakdown in the relationship (e.g. deadlock)
- ii. Lack of probity and loss of confidence
- iii. Exclusion from management in a quasi-partnership



Winding up

However in many cases it is not in the interest of the aggrieved shareholder to petition for the winding up of the company.

This is because:

- i. The winding up of the company may result in the sale of the company's assets at break-up value, without regard to the value of the goodwill or know-how of the company
- ii. long term company debts may become due immediately;
- iii. liquidator's expenses may be high.



Oppression on the minority (s.202 of the Companies Law, Cap.113):

A minority shareholder protection remedy as an alternative remedy to winding up on just and equitable grounds.

- Section 202 is equivalent to section 210 of the UK Companies Act 1948.
- Section 210 of the Companies Act 1948 was replaced by section 75 of Companies Act 1980, which introduced the concept of unfair prejudice in place of oppression, relaxing the requirements for court intervention. This concept was carried out into s.459 of the Companies Act 1985.
- Section 994-999 of the Companies Act 2006 replicates the unfair prejudice provisions of the Companies Act 1985.



Section 202 of the Companies Law, Cap. 113

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) 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 the opinion - that the company's affairs are being conducted as aforesaid; **and 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."



Section 202 of the Companies Law, Cap. 113

Section 202 entitles an oppressed shareholder to file a petition to the Court for an order that:

- a) regulates the way in which the future affairs of the company will be conducted; or
- b) orders the purchase of the shares of some members of the company by other members of the company or, the purchase of the shares of some members of the company by the company itself – which is essentially a buy-out remedy.

In practice, the order that is normally sought is for the oppressed minority shareholders to be bought out by the majority shareholders at a price to be fixed by the court.



What does amount to “oppressive” conduct for the purposes of section 202?

“*Oppressive*” conduct has been interpreted by courts to mean conduct that is “*burdensome, harsh and wrongful*”

(Scottish Co-operative Wholesale Society Ltd. v. Meyer [1959] A.C. 324)

Inefficiency or negligence in the conduct of the company’s affairs do not constitute sufficient evidence for oppressive conduct.

(Re Pelmako Development Ltd (1991) 1 C.R.L. 246)



Derivative Action (under common law)

1. Given that a company is a distinct legal entity from its members, if a wrongdoing is committed against it, then the proper plaintiff in a litigation is the company itself (the proper plaintiff rule).
2. The members may not sue if the act complained of could be done by an ordinary resolution in a general meeting. The decision of majority shareholders prevails over minority shareholders (the majority rule).

(Foss v Harbottle (1843) 67 ER 189)

Issue: striking a balance between concepts of majority rule vis-à-vis minority shareholders' protection against abuse of power.

Derivative Action (under common law)

A derivative action can be brought as one of the exemptions to the common law rule in Foss v. Hartbottle which places the company as the proper claimant in litigation for a wrong done against it.

It is described as derivative because the shareholder's right to sue is not personal to him but derives from a right of the company which the company is not able to exercise (given wrongdoer/ majority control).

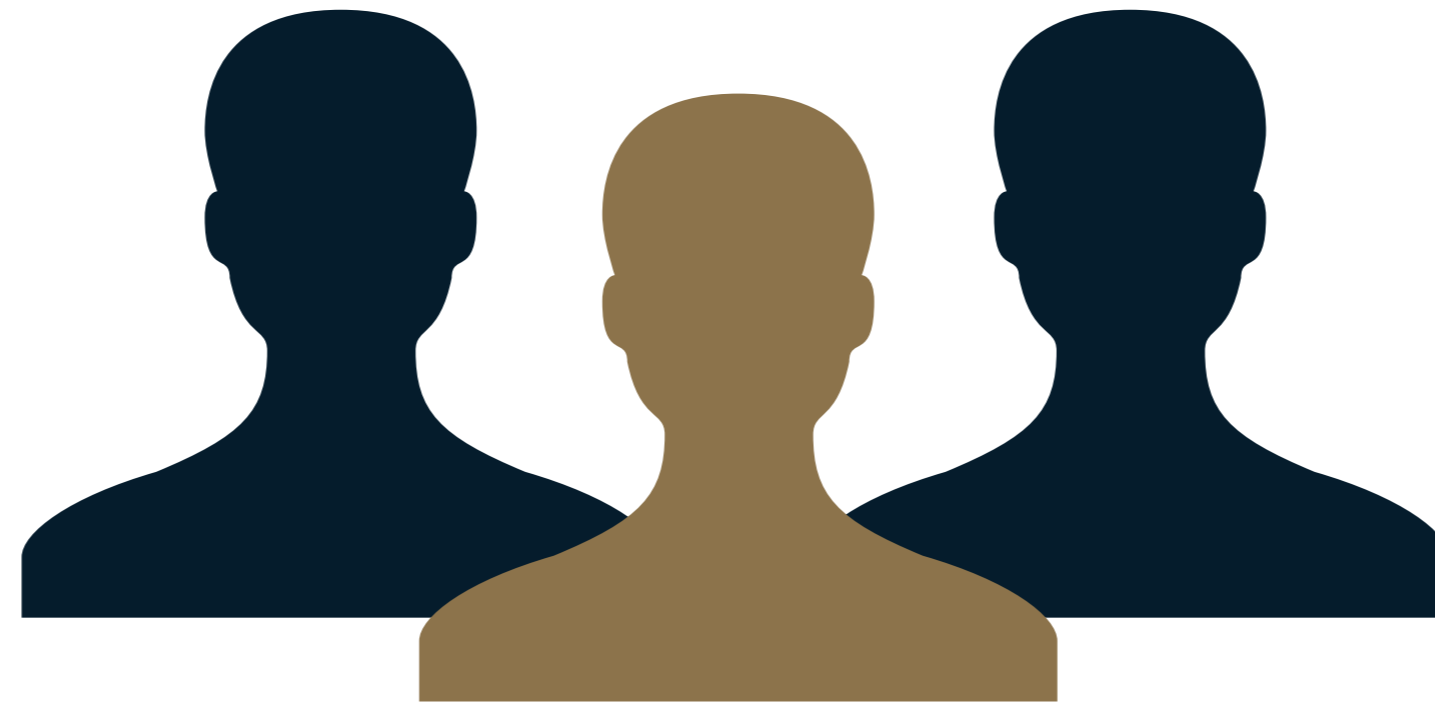
Requirements:

- a. the alleged wrong must constitute **fraud** against the minority
- b. the alleged wrongdoers are in **control** of the company

Multiple Derivative Actions

A multiple derivative action may be brought by a minority shareholder in a parent company for wrongs done to and damage suffered by the parent company's subsidiaries.

The minority shareholder will be claiming damages on behalf of the subsidiary. (*Universal Project Management Services Ltd v Fort Gilkicker Ltd* [2013] EWHC 348)





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