

# Cyprus

## Christina Antoniadou and Maria Violari

Andreas Sofocleous & Co

www.sofocleous.com.cy

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### Litigation

#### 1 Court system

What is the structure of the civil court system?

In Cyprus, there are two types of courts, the Supreme Court and the subordinate courts.

#### Supreme Court

The Supreme Court consists of a president, who is primus inter pares without any second or casting vote, and 12 members. The jurisdictions that are exercised by the Supreme Court are original and appellate civil and criminal. It has authority as the Supreme Constitutional Court, as an administrative court, as an admiralty court, as appellate court and as a court with exclusive jurisdiction to issue prerogative writs.

The Supreme Court has the authority to review all the evidence or hear or receive further evidence, to draw its own inferences and to give judgment or make any order such as an order for retrial.

#### Subordinate courts

There are five types of subordinate courts. The first type is the district court, one of which is situated in each of the districts of Nicosia, Larnaca, Limassol, Paphos and Famagusta. The district courts exercise civil and criminal jurisdiction and can entertain any action whose cause arose within the district where the court is situated or in which the defendant or one of the defendants in the action resides. They can also entertain a claim that has not been specifically assigned to the jurisdiction of the family courts, labour courts or rent control courts or to the original jurisdiction of the Supreme Court.

The second type of subordinate court is the assize court. There are two assize courts in Nicosia, and one for each of the districts of Larnaca, Paphos, Limassol and Famagusta. The assize courts try all criminal offences and impose punishment provided by the law.

The third type is the rent control court. There is one for the district of Nicosia, one covering both Larnaca and Famagusta and one covering both Limassol and Paphos. This type of court deals with matters arising from rented premises in the district situated within the area specified by the Rent Control Law.

The fourth type is the labour court. Only the districts of Nicosia and Limassol have labour courts. Labour courts deal with claims that concern the relationship between employers and employees, and every dispute that may come up concerning that relationship.

The fifth type is the family court. All of the districts in Cyprus have their own family court. Family courts have jurisdiction in all family matters such as:

- divorces;
- custody disputes;
- property provisions; and

- issues regarding child support and all other matters ancillary thereto.

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#### 2 Judges and juries

What is the role of the judge and the jury in civil proceedings?

The role of the judge in Cyprus is to hear evidence, to accept submissions from both sides and to make decisions on issues of fact and law. A single judge sits. Juries do not take part in any court proceedings in Cyprus.

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#### 3 Limitation issues

What are the time limits for bringing civil claims?

Depending on the nature of each claim, there is a different limitation period. On a tort claim, the time limit according to article 68 of Cap 148 is three years and a contractual claim's time limit is generally six years. Time ends for limitation purposes with the filing of the case. The running of time can be suspended if both sides agree.

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#### 4 Pre-action behaviour

Are there any pre-action considerations the parties should take into account?

In civil actions, there are no required procedures. The parties, however, can exchange letters before filing an action to solve the issue without taking legal action, except in cases where the plaintiff applies for an ex parte injunction.

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#### 5 Starting proceedings

How are civil proceedings commenced?

There are three forms of originating process: the writ of summons, the application for originating summons and the petition.

Any action before a district court, except where other provision is made, shall be commenced by a writ of summons. There are two forms of writ, the writ with the general endorsement, which has only a brief statement of the nature of the claim and the remedy sought, and the specially endorsed writ with the complete statement of the plaintiff's claim, together with the remedy or relief to which the plaintiff claims to be entitled.

According to the provisions of the Cyprus Civil Procedure Rules, the following actions must be brought by a writ with a general endorsement: actions for libel, slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage, and actions in which fraud is alleged by the plaintiff.

The overwhelming majority of originating processes begin with a

writ of summons, which is issued when sealed by the court. After the writ is issued it is valid for service purposes for 12 months. If the writ is not served within these 12 months then the time can be postponed after application to the court for another six months. Furthermore, on the day of issue, the time for limitation ends.

The writ of summons is a command by the state to the defendant and if the defendant does not respond to this command, and he or she does not file his or her appearance to the claim within 10 days after the claim is served to him or her, then the plaintiff gains the procedural right to apply to the court for a decision.

As mentioned above, there are two more ways of commencing proceedings. The application for originating summons, in more exceptional cases, and the petition.

An originating summons is defined in order 1, rule 2 as ‘any summons other than a summons pending cause or matter’. According to the provision of order 55, rule 1 of Cyprus Civil Procedure Rules: ‘Any person claiming to be interested under a deed, will, or other written instrument, may apply to the court by originating summons, for the determination of any question of construction arising under the instrument, and for a declaration of the rights of the persons interested.’

Petitions are used in divorce proceedings, bankruptcy and winding up. Insolvency and matrimonial cases have their own procedure rules.

## 6 Timetable

What is the typical procedure and timetable for a civil claim?

Firstly, the parties need to exchange pleadings. In cases of specially endorsed writ with the complete statement of the plaintiff’s claim, after the writ of summons is issued the claimant has to serve it to the defendant. After the writ is issued, it is valid for service purposes for 12 months. If the writ is not served within these 12 months then the time can be postponed by an application to the court. A defendant shall enter his or her appearance to a writ of summons within 10 days after it is served on him or her.

In cases of general endorsement, the claimant has to file the particulars of claim within 14 days from the date where the memorandum of appearance is filed by the defendant.

A defendant disputing a claim has to file a defence, so after the filing of the particulars of claim by the claimant, the defendant has to file his or her defence within 14 days after the filing of the claimant’s particulars of claim. If the claimant finds it is needed, he or she can file a reply to the defence within seven days after the defence is filed.

A defendant may combine the filing of his or her defence with making a counterclaim. This happens in cases where the defendant has a cause of action against the claimant and instead of bringing separate proceedings, he or she can do it by way of counterclaim in the existing action. This pleading is known as defence and counterclaim. The claimant answers the counterclaim with a defence to counterclaim. If the claimant wishes to reply to the defence then this is the reply and defence to counterclaim all together.

The parties, of course, may agree to extend the above-mentioned timetable.

Pleadings are formal documents used to define what each party says about the case brought to court. Through pleadings, the parties state material facts in summary form and define the matters to be decided by the court.

After the closing of the pleadings, the court will set the case for directions, where on the date of directions the judge may order, or the parties may request, discovery and inspection of documents or delivery of further and better particulars.

With the completion of the above procedure, the case is ready for hearing.

If the defendant does not respond to the writ, and he or she does not file a new appearance to the claim within 10 days after the claim is served to him or her, then the plaintiff gains the procedural right to apply to the court for a decision.

## 7 Case management

Can the parties control the procedure and the timetable?

The time limits for the exchange of pleadings are prescribed in the Civil Procedure Rules and set out in question 6. A party may apply for a judgment against the other party when that other party fails to deliver the needed pleading within the period prescribed by the Civil Procedure Rules. Most of the time, applications like the above-mentioned give the opportunity for the party in default to rectify the mistake and file the missing pleading.

If the claimant is bound to deliver the statement of claim and does not deliver it within the time allowed, the defendant may, after the expiration of that time, apply to the court so as to dismiss the action, with costs, for lack of prosecution.

With the fulfilment of the pleadings and directions the case will be set for hearing. It is then up to the time schedule of the court and parties to start the hearing.

## 8 Evidence – documents

Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

After the closing of the pleadings the court will set the case for directions, where on the date of directions the judge may order, or the parties may request, the discovery and inspection of documents or delivery of further and better particulars. The discovery and inspection is set out in order 28, rule 1 of the Cyprus Civil Procedure Rules: any party may without filing an affidavit apply to the court for an order directing any other party to any cause or matter to make discovery on oath of the documents that are or have been in his or her possession or power relating to any matter in question therein. On the hearing of such application the court or judge may either refuse if satisfied that such discovery is not necessary, or make such order either generally or limited to certain classes of documents as may in the court’s discretion be thought fit.

If a party ordered to make discovery of documents fails to do so, he or she shall not afterwards be at liberty to submit as evidence on his or her behalf in the action any document he or she failed to discover or to allow to be inspected, unless the court is satisfied that he or she had sufficient reason for the prior non-submission.

## 9 Evidence – privilege

Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

It is a general principle that evidence that is relevant to the issues in legal proceedings should be admitted. However, this principle may give way where either there are doubts as to the reliability or probative value of the evidence in question or allowing the evidence to be proved might run counter to some aspect of public policy.

Documents that are confidential, self-incriminating documents and documents that are covered by legal professional privilege are considered to be privileged documents. Legal professional privilege attaches to certain communications between a lawyer and client and

to certain communications relating to pending or contemplated litigation between a lawyer, a client and third parties. The privilege is that of the clients. Where the privilege attaches to a particular communication, the client can insist on non-disclosure by the lawyer or third party in question.

The rules provide the following: ‘Where on an application for an order for inspection privilege is claimed for any document, it shall be lawful for the court or a Judge to inspect the documents for the purpose of deciding as to the validity of the claim of privilege.’

The question of whether the court should inspect the documents is one for the discretion of the court and primarily for the judge of first instance. Each case must depend on its own circumstances. If, however, looking at the affidavit of documents, the court finds that the claim to privilege is formally correct and that the documents in respect of which it is made are sufficiently identified and are such that, prima facie, the claim to privilege would appear to be properly made in respect of them, then the court should, generally speaking, accept the affidavit as sufficient to justify the claim without inspecting the documents.

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### 10 Evidence – witnesses

Do parties exchange written evidence from witnesses and experts prior to trial?

Any fact that needs to be proved by the evidence of witnesses must be proved at trial by their oral examination. Usually, expert witnesses like doctors, estimators and many others reveal to the other party their written reports on the subject matter, before the trial, summarising their findings.

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### 11 Evidence – trial

How is evidence presented at trial? Do witnesses and experts give oral evidence?

Both parties have the right to call expert witnesses. A written report that summarises the parties’ evidence and that is signed is produced for the court at the beginning of the hearing. The expert witnesses can be cross-examined by the other side in relation to their professional opinion and evidence.

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### 12 Interim remedies

What interim remedies are available?

If a defendant’s alleged wrongdoing will cause the claimant irrevocable long-term damage pending trial, or if the damage is already done by the time the case comes up for trial, the courts can make orders to avoid any prospective injustice. This is made by application from the party seeking the interim injunction. The application can be made by summons, but in urgent circumstances by *ex parte* application (ie, in the absence of and without representation or notification of the party against which relief is sought).

A writ is issued, which must be supported by an affidavit, before an application for interlocutory relief can be filed. Such documentation must establish prima facie that the applicant has a case and that if an order is not made, there is a great risk that any judgment issued in favour of the applicant will not be satisfied. In addition, it must be established that there is a possibility that a judgment on the merits will be issued in favour of the applicant and that on the balance of convenience, the court should issue the requested order in favour of the applicant.

The right to obtain an interlocutory injunction is ancillary and incidental to a pre-existing cause of action against the respondent

arising out of an invasion (actual or threatened) of a legal or equitable right of the applicant for the enforcement of which the respondent is amenable to the jurisdiction of the court. The right itself is not a cause of action and cannot stand on its own.

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### 13 Remedies

What substantive remedies are available?

Remedies awarded by the courts in Cyprus are:

- mandatory declarations;
- award of damages;
- interest and costs;
- mandatory and prohibitory injunctions;
- specific performance; and
- appointment of receivers.

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### 14 Enforcement

What means of enforcement are available?

There are several ways of enforcing a judgment available to a litigant, because in most cases the mere issue of the judgment does not obtain the remedy sought in the proceedings. There is always a worry that the order will not be obeyed by the other side. Most of the time, a court order is disobeyed.

Leaving aside the possibility of an appeal, the following means of enforcement are available to the party that obtained the judgment:

- execution by attachment of debt or property: a garnishee order has the effect of transforming the garnishee’s obligation to pay money to the judgment debtor into an obligation to pay that money to the judgment creditor;
- writ of moveables;
- writ of delivery of the claimant’s goods specified by the judgment;
- writ of possession of land, where the judgment orders the possession of such land to the party that obtained the judgment;
- writ of sequestration, mostly used in trade union cases, used in order to punish contempt;
- registration of a charging order;
- oral examination for the repayment of the debt by monthly payments; and
- bankruptcy proceedings against the judgment debtor.

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### 15 Public access

Are court hearings held in public? Are court documents available to the public?

Court hearings are held in public. There are, however, some exceptions where the court might order otherwise. The public cannot be provided with court documents. The public can obtain true copies if they explain to the court the reasons why they want the documents.

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### 16 Inter partes costs

Does the court have power to order costs?

Usually, the unsuccessful party is ordered by the court to pay costs to the successful one. The successful party does not obtain 100 per cent of the case’s actual legal costs. The court will order that the costs are to be assessed by the registrar.

In some circumstances and where the defendant is concerned that in the event of winning, the claimant will be unable to meet any order for costs, a plaintiff ordinarily resident outside Cyprus may at any stage of the action be ordered to give security for costs.

**17 Funding arrangements**

Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Where there is a specific written agreement between the lawyer and his or her client the costs of a case are not issued by the taxation of the registrar. Thus, there has to be a written agreement between a lawyer and his or her client as far as contentious matters are concerned, otherwise contingency fees are not allowed.

According to the Civil Procedure Rules, if a lawyer makes an agreement with his or her client as to the fees to be paid by the client, such an agreement shall not affect the amount of or any rights or remedies for the recovery of any costs recoverable from the client by any other person, or payable to the client by any other person, and any such person may require any costs payable or recoverable by him or her to or from the client to be taxed according to the Civil Procedure Rules, unless such person has otherwise agreed. This is provided that the client that has entered into any agreement with his or her advocate shall not be entitled to recover from any other person, under any order for the payment of any costs that are the subject of such agreement, more than the amount payable by the client to his or her own advocate under the same agreement.

**18 Insurance**

Is insurance available to cover all or part of a party's legal costs?

Insurance is not available to cover all or part of a party's legal costs.

**19 Class action**

May litigants with similar claims bring a form of collective redress? In what circumstances is this permitted?

Litigants with similar claims may bring a class action or other form of collective redress. This is permitted at any stage of proceedings, unless the court decides otherwise. The judgment must bind all people, either the claimant or the defendants. Class action procedures are more commonly used in cases of limited liability companies where the shareholders act on behalf of all other shareholders in an attempt to redress wrongs that have been committed against the company.

**20 Appeal**

On what grounds and in what circumstances can the parties appeal? Is there a right of further appeal?

No appeal from any interlocutory order, or from an order, whether final or interlocutory, in any matter not being an action, shall be brought after 14 days, and no other appeal shall be brought after 42 days, unless the court or judge at the time of making the order or at any time subsequently, or the Court of Appeal, increase the time. The said respective periods are calculated from the time that the judgment or order becomes binding on the intending appellant, or in the case of the refusal of an application, from the date of such refusal.

The grounds where the parties may appeal are, firstly, against the decisions of law and, secondly, against findings of fact in the event of insufficient evidence or in the event of a wrong decision.

**21 Foreign judgments**

What procedures exist for recognition and enforcement of foreign judgments?

A foreign judgment is enforceable in Cyprus only if it is registered in court, according to provisions of existing reciprocal agreements between the Republic of Cyprus and the country where the foreign judgment was issued. In other cases, a judgment of a foreign country is not enforceable in Cyprus. Provisions as to the recognition of foreign judgments under Foreign Judgments Reciprocal Agreements are applicable.

Special provisions apply for the recognition and enforcement of judgments of competent courts in any of the member states of the European Union, since Cyprus is a member of the European Union.

The registration of a foreign judgment is made by an application from the judgment creditor supported by an affidavit requesting the registration, recognition and execution of the foreign judgment at the court.

**22 Foreign proceedings**

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

In Cyprus there is no jurisdiction to force non-resident parties or witnesses to give evidence before courts in Cyprus. A general exception, however, permits the obtaining of evidence from witnesses who are resident in member states of the European Union.

**Arbitration****23 UNCITRAL Model Law**

Is the arbitration law based on the UNCITRAL Model Law?

Cyprus Arbitration Law is based on the the UNCITRAL Model Law. The Domestic Arbitration Law cap. 4 regulates all other domestic arbitrations.

**24 Arbitration agreements**

What are the formal requirements for an enforceable arbitration agreement?

The only formal requirement is that the arbitration agreement must be in writing. Article 7 of the UNCITRAL Model Law applies in relation to international arbitrations.

**25 Choice of arbitrator**

If the arbitration agreement and any relevant rules are silent, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

If the arbitration agreement and any relevant rules are silent, the appointing authority or the competent district court can appoint a sole arbitrator. There are no restrictions on the right to challenge the appointment of an arbitrator.

**26 Procedure**

Does the domestic law contain substantive requirements for the procedure to be followed?

No substantive requirements are contained in domestic law regarding the procedure to be followed. The UNCITRAL Model Law's procedural requirements should be followed in international arbitration.

**27 Court intervention**

On what grounds can the court intervene during an arbitration?

After the application of any party, the court can intervene during arbitration by removing arbitrators for misconduct, by ordering security for costs, by granting interim relief, by setting aside or rectifying an award and by enforcing an award.

**28 Interim relief**

Do arbitrators have powers to grant interim relief, such as to preserve assets or documents?

The arbitrators do not have powers to grant interim relief. Only courts have such authority.

**29 Award**

When and in what form must the award be delivered?

The award must be delivered within a reasonable time. Failure to deliver on time means that the arbitrator will be liable to be removed for misconduct upon the application of one or both parties. The award's form is not regulated.

**30 Appeal**

On what grounds can an award be appealed to the court?

An award can be appealed to the court on the grounds stated in the Domestic Law. However, international awards can be appealed only on the grounds specified in the UNCITRAL Model Law.

**31 Enforcement**

What procedures exist for enforcement of foreign and domestic awards?

Enforcement of a foreign award can be made by the judgment creditor with application by summons supported with an affidavit to the court requesting the recognition and enforcement of the award. It is almost the same procedure as the one for recognition and enforcement of foreign judgments. After leave of the court, the enforcement of a foreign arbitral award is the same as the enforcement of a court judgment. The same happens with domestic awards. With application by summons supported by an affidavit accompanied with a true copy of the award and the arbitral agreement the judgment creditor obtains leave from the court to execute. As mentioned above, the means of enforcement of domestic awards are the same as the means of enforcement of a court judgment.

**32 Costs**

Can a successful party recover its costs?

A successful party can recover its costs, if the arbitrator orders it and if it has not been agreed otherwise by the parties. If the parties ask the arbitrator to tax the costs, the arbitrator may do so.

**Alternative dispute resolution****33 Types of ADR**

What types of ADR process are commonly used? Is a particular ADR process popular?

Mediation, conciliation, early neutral evaluation, and adjudication are considered to be the most commonly used types of ADR process. ADR processes are becoming more popular in Cyprus.

**34 Requirements for ADR**

Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

There is not, at present, a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings. However, before a hearing, the parties are invited to mediate.

**Miscellaneous**

**35** Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

In Cyprus, there is not a split legal profession. The courts in Cyprus are becoming increasingly familiar with arbitration.

# Andreas Sofocleous & Co

**Christina Antoniadou**  
**Maria Violari**

**cantiadiou@sofocleous.com.cy**  
**mviolari@sofocleous.com.cy**

Archbishop Makariou III Avenue 155  
Proteas House, 5th floor  
3026, Limassol  
Cyprus

Tel: +357 25 849000  
Fax: +357 25 849100  
info@sofocleous.com.cy  
www.sofocleous.com.cy