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Cyprus

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Efficiency of process

Cyprus was a British colony until 1960, when it became an independent sovereign republic. The court system in Cyprus comprises the Supreme Court of Cyprus, the Administrative Court and the remainder subordinate District and Assize courts.

The Supreme Court consists of a president, who is *primus inter pares* without any second or casting vote, and 13 members. The jurisdictions that are exercised by the Supreme Court are original and appellate, civil and criminal. The Supreme Court of Cyprus in its capacity as an appellate court has jurisdiction to hear and determine all appeals from lower courts in civil and criminal matters. Appeals are heard by a panel of three judges. In the exercise of its appellate jurisdiction the Supreme Court may uphold, vary or set aside the decision appealed from, or it may order a re-trial.

The Supreme Court has exclusive jurisdiction to issue the prerogative writs of *Habeas Corpus*, *Mandamus*, *Certiorari*, *Quo Warranto* and *Prohibition* as well. The Supreme Court has original and appellate jurisdiction in admiralty cases too. As an electoral court, it has exclusive jurisdiction to hear and determine petitions concerning the interpretation and application of the electoral laws. Finally, the Supreme Court has jurisdiction to examine the constitutionality of any law or any conflict of power which arises between any organs or authorities of the Republic.

Further to the above, the Administrative Court of Cyprus has exclusive jurisdiction to hear any recourse filed against a decision, act or omission of any person, organ or authority exercising executive or administrative authority. A decision, act or omission may be annulled on the ground that it is in excess or abuse of any power vested in the administrative organ.

The remainder subordinate courts comprise:
(a) the District Court;
(b) the Assize Court;
(c) the Family Court;
(d) the Rent Control Court;
(e) the Industrial Disputes Tribunal; and
(f) the Military Court.

More specifically, in Cyprus there are six District Courts, one for each administrative district of the Republic of Cyprus (Nicosia, Famagusta, Limassol, Larnaca, Paphos and Kyrenia). The District Court exercises 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. It can also entertain a claim that has not been

specifically assigned to the jurisdiction of the Family Court, Industrial Disputes Tribunal or Rent Control Court or to the original jurisdiction of the Supreme Court.

In addition to the six District Courts, at present, there are four Assize Courts in session in the Republic, based in Nicosia, Limassol, Larnaca and Paphos. The Assize Court has unlimited jurisdiction to hear and determine at first instance any criminal case. In practice, only offences which are punishable with more than five years' imprisonment are tried by the Assize Court. Offences punishable with up to five years' imprisonment are tried by the District Courts.

Moreover, there are three Family Courts: one for Nicosia and Kyrenia; one for Limassol and Paphos; and one for Larnaca and Famagusta. There is also one Family Court for Religious Groups, based in Nicosia. Family courts have jurisdiction in all family matters such as:

- divorces;
- custody disputes;
- property disputes between spouses, and maintenance and all other matters ancillary thereto,

between spouses where the parties are members of the Greek Orthodox Church. If the parties belong to one of the other religious groups, jurisdiction is vested in the Family Court for Religious Groups.

In regard to the Rent Control Court, there is one in the district of Nicosia, one for Larnaca and Famagusta, and one for Limassol and Paphos. This court deals with matters regarding recovery of possession of controlled rented property and the determination of fair rent, as well as any other ancillary matter thereto. There are also currently three Industrial Dispute Tribunals in the Republic, situated in Nicosia, Larnaca and Limassol. The Industrial Disputes Tribunal has exclusive jurisdiction to determine matters arising from the termination of employment and generally in relation to the relationship between employers and employees and every dispute that may arise in regard to this relationship.

Lastly, the Military Court has jurisdiction to try offences committed by military personnel contrary to the Criminal Code, the Military Criminal Code or any other law.

There are no general pre-action protocols or other procedural formalities that need to be dispensed with by the parties prior to the commencement of court proceedings in Cyprus.

Furthermore, different limitation periods apply to different classes of claim for the bringing of proceedings before the Cypriot Courts**.** Limitation periods are governed by the Law 66(I) of 2012 as amended, stating specific periods for bringing a claim. For example, the general limitation period for a contractual claim is six years. According to Law 66(I) of 2012 as amended, the limitation period for bringing a claim based on tort is six years from the date of accrual of the cause of action − except for cases of negligence/nuisance/breach of statutory duty where there is a three-year limitation period from the date of accrual of the cause of action.

There are three forms of originating process: the writ of summons; the 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 includes only a brief statement of the nature of the claim and the remedy sought; and the specially indorsed writ, which includes the complete statement of the claim and the remedy the claimant claims to be entitled to.

According to the provisions of Order 2 Rule (6) of the Cyprus Civil Procedure Rules, the following actions must be brought by a writ with a general indorsement: actions for libel,

slander, malicious prosecution, false imprisonment, seduction or breach of promise of marriage; and actions in which fraud is alleged by the claimant.

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 12 months. If the writ is not served within these 12 months, then an application to the court for its renewal for another six months may be made. 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 ten days of service of the writ on him or her, then the claimant is afforded the procedural right to apply to the court for a judgment in his or her favour and against the defendant.

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

An originating summons is defined in the Civil Procedure Rules as "*any summons other than a summons in a pending cause or matter*". According to the provision of order 55, rule (1) of the 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.*"

Service of the writ of summons will be effected by a private bailiff by leaving the copy with the person to be served; but if he is not found at his house or at his usual place of employment, the service will be deemed to be effected if the copy is left:

(i) with any member of his family of apparently 16 years and upwards then in his town or village or within the lands thereof;
(ii) with any person apparently of such age and in charge of the place of his employment; or
(iii) with his master in the case of a servant living with his master.

If service, as explained above, cannot be effected then substituted service is possible whereby an application to the court for an order for substituted service may be filed, supported by an affidavit setting forth the grounds upon which the application is made. The service can be effected, for example, by placing a notice on the board of the court, by public advertisement or even by notice via any electronic means.

In order for the writ of summons to be served on the defendant out of the jurisdiction, leave must first be obtained from the court. Service out of the jurisdiction, pursuant to Order 6 of the Civil Procedure Rules, may be allowed by the court whenever:

(a) the whole subject matter of the action is immovable property of any kind situated in Cyprus;
(b) any act, deed, will, contract, obligation, or liability affecting immovable property of any kind situated in Cyprus, is sought to be construed, rectified, set aside, or enforced in the action;
(c) any relief is sought against any person domiciled or ordinarily resident in Cyprus;
(d) the action is for the administration of the movable property of any deceased person who at the time of his death was domiciled in Cyprus, or for the execution (as to property situated in Cyprus) of the trusts of any written instrument, of which the person to be served is a trustee, which ought to be executed according to the law of Cyprus;
(e) the action is one brought to enforce, rescind, dissolve, annul, or otherwise affect a contract or to recover damages or other relief for, or in respect of, the breach of a contract:

(i) made in Cyprus, or
(ii) made by or through an agent trading or residing in Cyprus on behalf of a principal trading or residing out of Cyprus,

or is one brought in respect of a breach committed in Cyprus of a contract wherever made, even though such breach was preceded or accompanied by a breach out of Cyprus which rendered impossible the performance of the part of the contract which ought to have been performed in Cyprus; or

(f) the action is founded on a civil wrong committed in Cyprus;
(g) any injunction is sought as to anything to be done in Cyprus, or any nuisance in Cyprus is sought to be prevented or removed, whether damages are or are not also sought in respect thereof; or
(h) any person out of Cyprus is a necessary or proper party to an action properly brought against some other person duly served in Cyprus.

The service of documents related to civil proceedings commenced in Cyprus against defendants who are residents in any Member State of the European Union is regulated by European Regulation 1393/2007 on the Service in Member States of Judicial and Extrajudicial Documents in Civil and Commercial Matters. Service of such documents will be effected also in accordance with the bilateral and multilateral conventions which Cyprus has ratified and has entered into.

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

Once the writ of summons is issued and proceedings commence, parties in the action exchange pleadings. In the case of filing a specially indorsed writ, after the writ of summons is issued, the claimant has to serve it on the defendant. A defendant will enter his or her appearance to the writ of summons within ten days after it is served on him or her.

In the case of filing a writ with a general indorsement, the claimant has to file the statement of claim within ten days of the filing of the defendant's memorandum of appearance. If the defendant does not respond to the writ, and he or she does not file an appearance within ten days of service of the writ on him or her, then the claimant can apply to the court for a judgment in default.

A defendant disputing a claim has to file a defence, so after the filing of the statement of claim by the claimant, the defendant has to file his or her defence within 14 days of the filing of the claimant's statement of claim. If the claimant deems it necessary, he or she can file a reply to the defence within seven days of the filing of the defence.

A defendant may combine the filing of his or her defence with making a counterclaim. This occurs 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 may dispute the counterclaim by filing a defence to the counterclaim. A claimant may further file a reply and defence to the counterclaim all together.

In general, pleadings are formal documents used by each party to state their case. In the pleadings, each party states material facts in summary form and outlines the matters that need to be decided by the court.

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

Once the above procedure is dispensed with, the court may set the case for a hearing.

Court hearings are held in public. There are, however, some exceptional cases where the court might order otherwise. Any fact that needs to be proved by the evidence of witnesses must be proved at the hearing by their oral examination. Both parties have the right to call expert witnesses. The expert witnesses can be cross-examined in relation to their professional opinion and evidence.

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 will be brought after the expiration of six weeks, unless the court or judge at the time of making the order or at any time subsequently, or the Court of Appeal, will extend 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.

Integrity of process

The principle of an independent Judiciary has its origin in the theory of separation of powers, upon which the Constitution of Cyprus is founded, whereby the Executive, Legislature and Judiciary form three separate branches of government. This achieves the purpose of preventing any abuse of power to the detriment of the general public. Only an independent Judiciary is able to render justice impartially on the basis of law, thereby also protecting the human rights and fundamental freedoms of the individual. The Judiciary in Cyprus is both independent and neutral, exercising its professional responsibilities without being influenced by the Executive, the Legislature or any other factor. Court proceedings in Cyprus are adversarial and the role of judges is to hear evidence, accept submissions from both sides and decide on issues of fact and law.

In general, judges are members of the Judicial Service of the Republic. All judges except the judges of the Supreme Court are appointed by the Supreme Council of Judicature, a body composed of the judges of the Supreme Court. This body is responsible for the appointment, promotion, transfer and discipline of judges. Supreme Court judges are appointed by the President of the Republic. Once appointed, a judge cannot be removed except under very exceptional circumstances.

Privilege and disclosure

Privilege

Advocates admitted to the Cyprus Bar are regulated by the Advocates' Law (Cap. 2) and the Advocates' Code of Conduct Regulations of 2002 (hereinafter referred to as the "Regulations").

The Regulations provide that, as a general rule, legal professional privilege applies to the dealings and communications of all advocates with their clients. Legal professional privilege is recognised as a fundamental right and an obligation of the advocate not to disclose any confidential information which has arisen from communications with his client, whether in the context of legal proceedings or through a discovery process. Communications between an advocate and client, for the provision of legal advice and services connected to legal proceedings, are also protected by legal professional privilege.

Pursuant to section 13 (6) of the Regulations, the duty of maintaining secrecy includes the protection of confidential information provided by third persons in the context of

the advocate's professional capacity, as well as confidential information arising from conversations necessary in view of reaching an agreement, which later did not materialise. Legal professional privilege extends to communications between clients and third parties if the sole or dominant purpose for which they were produced was to obtain legal advice in respect of litigation. In such types of communications, litigation needs to be in reasonable prospect at the time when the document was created, and the sole and dominant reason for obtaining such document must either be to enable an advocate to advise as to whether a claim should be made or resisted, or to produce such document as evidence at trial.

In addition to the above, pursuant to the Regulations, advocates cannot take on an additional case without their clients' consent if such case touches upon a matter with regard to which the client has disclosed information to them during the provision of professional services. Advocates are not prevented from accepting a case, unless they honestly and justifiably believe that, in the exercise of their duties, they would find themselves in an embarrassing situation as a result of the trust demonstrated by another client to whom they had previously given advice regarding the matter in question. Advocates must respect the secrecy of all information and evidence entrusted to them by their clients without any time limitation.

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.

Disclosure

After the closing of the pleadings the court will set the case for directions, and on that date the judge may order, or the parties may request, the discovery (disclosure) and inspection of documents or delivery of further and better particulars. Any party may 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 be thought fit in the court's discretion.

If a party ordered to make discovery of documents fails to do so, he or she will 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 allow to be inspected, unless the court is satisfied that he or she had sufficient reason for not disclosing it before.

Disclosure against third parties can be sought on the basis of the Norwich Pharmacal principle, according to which a person who is involved in, or in some way connected to, the wrongdoing of another is under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoer.

Costs and funding

The general principle is that the court makes an order for costs in favour of the successful party. The unsuccessful party usually therefore pays the successful party its costs in the action. The court will order that the costs are to be assessed or taxed by the registrar.

An order for security for costs can be made by the court in favour of a defendant, at the defendant's request, if the claimant is domiciled outside the jurisdiction, in a country which is not a Member State of the EU, and provided that the claimant has insufficient assets within the jurisdiction to satisfy any cost order that may be made against him. An order for security of costs will ensure that in the event of being successful in the action, the defendant's costs will be paid by the claimant.

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 will 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 will 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.

Funding of the litigation proceedings is normally undertaken by the parties and a lawyer may reach a special agreement with his client about his fees.

Interim relief

If a defendant's alleged wrongdoing causes the claimant irrevocable long-term damage pending the hearing of the main action and the *status quo* needs to be preserved in the interests of justice, the court has the discretion to issue interim relief, such as:

(a) mandatory and prohibitory orders;
(b) disclosure orders;
(c) receivership orders;
(d) orders for the appointment of a provisional liquidator;
(e) orders for the specific performance of a contract;
(f) gagging orders;
(g) Mareva injunctions (an order freezing the assets of the respondent, in order not to be alienated and to be preserved for the enforcement of a prospective order against the respondent upon full hearing of the main action);
(h) Anton Piller orders (a set of interlocutory orders enabling the applicant to preserve evidence which might be tampered with by the respondent);
(i) Norwich Pharmacal disclosure orders (a disclosure order against third parties becoming innocently involved in any wrongdoing); or
(j) Chabra orders (a freezing order issued against the assets held by a third party who is in fact controlled by the respondent),

to avoid any prospective injustice.

The applicant may file an application either with notice to the party against which the interim relief is sought (by summons) or without notice to the party against which the interim relief is sought (*ex parte*) in order to seek interim relief from the court. The *ex parte* application can be filed only if the circumstances of the case are urgent or if there are any other special circumstances.

Section 32 of the Courts of Justice Law − 14/60, confers power on the court to issue interim relief "in all cases in which it appears to the court just or convenient so to do". However, the justice and convenience of the case is not the sole consideration to which the court should pay heed in the case of an interlocutory injunction, and no such interim relief should be granted, unless the following conditions are satisfied:

(a) a serious question arises to be tried at the hearing;
(b) there appears to be "a probability" that the plaintiff is entitled to relief; and
(c) unless it will be difficult or impossible to do complete justice at a later stage without granting an interlocutory injunction.

If an *ex parte* application is filed, the applicant is under a duty of full and frank disclosure to the court in relation to all material facts and documents which the court may consider in order to decide whether to issue the interim relief or not.

According to section 9 (2) of the Civil Procedure Law, Cap. 6, before issuing any such order without notice, the court will require the person applying for it to enter into an agreement, with or without a surety or sureties as the court thinks fit, as security for any damages that may be caused to the person against whom the order is sought.

If the court decides to issue the interim order sought, the applicant will have to serve it personally on the other side at least four clear days before the date which the court has set the application for directions. At that date, the respondent will have the right to appear, requesting time to file an opposition to the issued order so it does not become absolute. On the other hand, the respondent may consent at that date to the order becoming absolute until the final adjudication of the main action.

If and once an opposition is filed, either party may request the court for leave to file a supplementary affidavit for replying or clarifying issues raised in the affidavit(s) filed by either party. Then the application is set for hearing and when the hearing takes place, judgment is reserved. Either party has the right to file an appeal to the Supreme Court of Cyprus within 14 days from the issuance of the judgment.

Enforcement of judgments/awards

There are several ways of enforcing a domestic judgment available to a litigant. Leaving aside the possibility of an appeal, the following means of enforcement are available to the party that obtained the judgment:

(a) 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;
(b) writ of movables, namely the seizure and sale of movable property;
(c) by sale of immovable property;
(d) writ of delivery of the claimant's goods specified by the judgment;
(e) writ of possession of land, where the judgment orders the possession of such land to the party that obtained the judgment;
(f) writ of sequestration, mostly used in trade union cases, used in order to punish contempt;
(g) registration of a charging order over shares and an order for the sale of the shares charged;
(h) oral examination for the repayment of the debt by monthly payments; and
(i) bankruptcy proceedings against the judgment debtor.

There are several ways of enforcing a foreign judgment available to a litigant, namely:

(a) Regulation (EC) No 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, which applies between all Member States of the European Union, whereby a judgment given in a Member State will be recognised in the other Member States, and specifically in Cyprus, without any special procedure being required. A judgment given in a Member State and enforceable in that State will be enforced in another Member State when, on the application of any interested party, it has been declared enforceable there. The application will be filed at the Cypriot Court. The appeal against the decision on the application for a declaration of enforceability is to be lodged with the Supreme Court of Cyprus.
Regulation (EC) No 44/2001 has been replaced by Regulation (EU) No 1215/2012

(Brussels I Regulation (recast)) (hereinafter referred to as "the Recast Regulation") as from 10 January 2015. The Recast Regulation applies only to legal proceedings instituted, to authentic instruments formally drawn up or registered, and to court settlements approved or concluded on or after 10 January 2015. Regulation (EC) No 44/2001 continues to apply to judgments given in legal proceedings instituted, to authentic instruments formally drawn up or registered, and to court settlements approved or concluded before 10 January 2015 which fall within the scope of that Regulation. The main advantage of the Recast Regulation is that a judgment given in a Member State will be recognised in the other Member States, and specifically in Cyprus, without any special procedure being required.

Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims, which creates a European Enforcement Order for uncontested claims. It dispenses, under certain conditions, with all intermediary measures in Cyprus in the verifiable absence of a dispute over the nature or extent of a debt. Those conditions mainly concern the service of documents in the case of judgments by default. Abolishing the exequatur procedure enables creditors to obtain quick and efficient enforcement in Cyprus without involving the courts of Cyprus in time-consuming and costly formalities. No application for approval of the foreign judgment is required to be filed the Cypriot courts.

(b) Bilateral Treaties between:
   (i) Cyprus and the Union of Soviet Socialist Republics;
   (ii) Cyprus and Ukraine;
   (iii) Cyprus and the People's Republic of China;
   (iv) Cyprus and the Syrian Arabic Republic;
   (v) Cyprus and the Socialist Federal Republic of Yugoslavia;
   (vi) Cyprus and Bulgaria;
   (vii) Cyprus and Czech Republic;
   (viii) Cyprus and Greece;
   (ix) Cyprus and Hungary;
   (x) Cyprus and Poland;
   (xi) Cyprus and Slovenia; and
   (xii) Cyprus and Serbia.

(c) Multilateral Conventions on:
   (i) the Recognition of Foreign Judgments in Civil and Commercial Matters and Supplemental Protocol signed in the Hague in 1971; and
   (ii) the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

(d) Statutes:
   (i) the Law 121 (1)/2000 which regulates the procedure of recognition, registration and enforcement of foreign judgments in Cyprus; and
   (ii) the Foreign Judgments (Reciprocal Enforcement) Law of 1935, Cap. 10 as amended, which provides a mechanism for enforcement of judgments obtained in the UK and the British dominions as well as other foreign countries, affording substantial reciprocity of treatment to judgments.

(e) Common law, whereby an action can be commenced for the enforcement of a foreign judgment in Cypriot courts.

Cross-border litigation

Interim orders in aid of court proceedings in European Union Member States

The courts of Cyprus have jurisdiction to issue interim orders in aid of proceedings pending before the courts of any Member State of the European Union.

Cyprus is bound by the Recast Regulation which replaced EC Regulation No. 44/2001.

Article 35 of the Recast Regulation provides the following: "*Application may be made to the courts of a Member State for such provisional, including protective, measures as may be available under the law of that Member State, even if the courts of another Member State have jurisdiction as to the substance of the matter.*"

The text of Article 35 of the Recast Regulation is identical with the text of Article 24 of the Brussels Convention of 27 September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (hereinafter referred to as the "Convention"). The wording of Article 24 of the Convention (and respectively Article 35 of the Recast Regulation) outlines that the type of provisional measures that can be granted are determined by the national law of the court that hears the application. The Court of Justice of the European Union (hereinafter referred to as the "CJEU") has, in its case law, interpreted Article 24 of the Convention. Specifically, it was held by the CJEU in the case of ***Van Uden Maritive BV, C-391/95***, in paragraphs 40 and 41 of the judgment, that:

> "*40. It follows that the granting of provisional or protective measures on the basis of Article 24 is conditional on, inter alia, the existence of a real connecting link between the subject-matter of the measures sought and the territorial jurisdiction of the Contracting State of the court before which those measures are sought.*
>
> *41. It further follows that a court ordering measures on the basis of Article 24 must take into consideration the need to impose conditions or stipulations such as to guarantee their provisional or protective character.*"

Interim orders in aid of international commercial arbitration proceedings

In addition to the above, the courts of Cyprus also have jurisdiction to issue interim orders in aid of international commercial arbitration proceedings pursuant to Section 9 of the International Commercial Arbitration Law 101/1987 (hereinafter referred to as "Law 101/87"), which states that: "*the Court has the power, following the request of one of the parties, to issue interim orders, at any time before the commencement or during the arbitration proceedings*."

Pursuant to Article 7(2) of Law 101/87, an arbitration agreement is valid if it is in writing. Article 7(3) further states that an arbitration agreement is deemed to be in writing if it is included in a document signed by the parties, or in the exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other. In addition, according to Article 7(1) of Law 101/87, an arbitration agreement may be in the form of an arbitration clause duly incorporated into a contract, or stand on its own as a separate agreement.

According to section 2(4) of Law 101/87: "'*commercial' is the arbitration which refers to matters that arise out of relations of a commercial nature, contractual or otherwise*", a definition which is quite extensive. In accordance with Section 2(5), relations of a commercial nature include, but are not limited to, commercial transactions for the provision of goods or services, distribution agreements, leases, construction projects, provision of advisory services, mechanical constructions, granting of licences, investments, financing,

banking and insurance services, operating licences, joint business ventures and other forms of industrialised or professional cooperation and aerial, marine, railway and road transport of goods or passengers.

The arbitration is considered as 'international' if any of the following criteria are satisfied:

(a) when the arbitration agreement was signed, the parties had their place of business in different countries; or

(b) if any of the following places is located outside the country where the parties have their place of business:

  (i) the seat of the arbitration, as defined in the arbitration agreement;

  (ii) the place of performance of a significant part of the obligations that arise from the relation of a commercial nature which constitutes the subject matter of the dispute or the place which is closely connected with the subject matter of the dispute; or

(c) if by the express agreement of the parties it was defined that the subject matter of the dispute is related to more than one country.

For the purposes of Law 101/87, when one of the parties in the arbitration has no place of business, then the place of ordinary residence will be considered as the place of business of that party. If, on the other hand, a party in the arbitration has more than one place of business then the place of business which is the most closely related to the arbitration agreement will be considered as that party's place of business.

Similarly, a court may issue interim injunctions in aid of arbitration proceedings pursuant to the provisions of Article 26 of the Domestic Arbitration Law, Cap. 4 (hereinafter referred to as "Cap. 4") as well as, *inter alia*, orders for the taking and preservation of evidence, the granting of security for costs and the discovery of documents and interrogatories.

International arbitration

Domestic arbitration

Cap. 4 regulates all domestic arbitrations. Pursuant to the provisions of Article 2(1) of Cap. 4, an arbitration agreement must be in writing.

No substantive requirements are contained in domestic law regarding the procedure to be followed in an arbitration. The parties are therefore free to agree upon the procedure to be followed in the course of the arbitration proceedings. In the absence of such an agreement, the arbitral tribunal may determine the procedure to be followed as it deems appropriate.

Cap. 4 allows national courts to intervene extensively in the arbitration proceedings as, upon 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 an award if improperly procured, and by enforcing an award. The arbitrators do not have powers to grant interim relief. Only courts have such power to issue interim relief in aid of the arbitration proceedings.

Also, it should be noted that Cap. 4 provides that where a civil action has been filed in relation to a matter agreed to be referred to arbitration, if satisfied that there is no sufficient reason why a matter agreed to be referred to arbitration should not be so referred in accordance with the arbitration agreement, a court may make an order staying the court proceedings upon the request of a party.

Insofar as the arbitral award is concerned, pursuant to the provisions of Cap. 4, it should be delivered within a reasonable time. Additionally, under Article 20 of Cap. 4, an award may

be set aside by the court where an arbitrator has misconducted himself or the proceedings, or an award has been improperly procured.

Under Cap. 4, an arbitral award may, by leave of the court, be enforced in the same manner as a judgment or order issued in civil proceedings to the same effect, and in such case, judgment may be entered in terms of the award.

It should be noted that, pursuant to the provisions of Article 23 of Cap. 4, any provision in an arbitration agreement that the parties will pay their own costs of the reference or award will be void. As such, the costs of the reference and award will be at the discretion of the arbitrators or umpire, who will direct to whom and in what manner such costs will be paid. If no provision is made by an award with respect to the costs of the reference, any party to the reference may within 14 days of the publication of the award, or such further time as a court may direct, apply to the arbitrator for an order directing by and to whom such costs will be paid, and thereupon the arbitrator will amend his award by adding thereto such directions as he may think proper with respect to the payment of the costs of the reference to arbitration.

International arbitration

International arbitration proceedings are regulated by Law 101/87 which is based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration of 1985.

Subject to the provisions of Law 101/87, the parties to an arbitration are free to decide matters of procedure. The parties can, for example, agree on the language of the proceedings, composition of the arbitral tribunal, choice of law, the pleadings and generally the whole process. In short, the law intervenes only where the parties cannot agree on essential issues.

Unlike Cap. 4 which provides for extensive interference of the courts in the arbitration proceedings, Law 101/87 allows for the intervention of national courts in the arbitral proceedings in certain specific cases only, including the setting aside of an arbitral award in exceptional cases, and the recognition and enforcement of a foreign arbitral award.

Contrary to Cap. 4, Article 17 of Law 101/87 enables arbitral tribunals, unless agreed otherwise by the parties, to exercise their discretion in issuing interim relief when they consider necessary in respect of the subject matter of the dispute.

Pursuant to the provisions of Law 101/87, a court before which an action is brought in a matter which is the subject of an arbitration agreement, will, at the request of a party, stay the proceedings and/or refer the matter to arbitration, unless it finds that the agreement in question is null and void, inoperative or incapable of being enforced.

Under Law 101/87, in the absence of an agreement by the parties as to the form of an arbitral award, the award should be in writing, signed by the tribunal, state its date and place of arbitration and include the reasons for the award (unless the parties have agreed otherwise in relation to this requirement).

An arbitral award may be challenged before a national court within three months from the date on which the party making the application has received the award, and only if one of the following conditions are satisfied, as prescribed in Article 34 of Law 101/87:

(a) where the party making the application proves that:
    (i) a party to the arbitration agreement was under some incapacity, or the agreement was not valid under the law to which the parties subjected it or, in the absence of any agreement thereon, under the laws of Cyprus; or
    (ii) it was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was unable to present its case; or

(iii) the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration; or

(iv) the composition of the arbitral tribunal or the procedure was not in accordance with the agreement of the parties or of the law; or

(b) the court finds that:

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the laws of Cyprus; or

(ii) the award is in conflict with the public policy of the Republic of Cyprus.

Under the provisions of Law 101/87, an arbitral award will be recognised as binding and, upon an application in writing to the court accompanied by the duly authenticated original award or a duly certified copy thereof, as well as the arbitration agreement, will be enforced in the Republic of Cyprus unless any of the conditions of Article 36 thereof are satisfied.

Finally, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which Cyprus is a signatory and which has been transposed into national law by virtue of the Law No. 84/1979, can be applied by the Cypriot courts in relation to the recognition and enforcement of foreign arbitral awards in Cyprus.

Mediation and ADR

The establishment of ADR centres such as the Euro-Mediterranean Alternative Dispute Resolution Centre (EMADRC) (http://www.euromedadr.org), the Cyprus Arbitration and Mediation Centre (CAMC) (http://www.cyprusarbitration.com.cy) and the Cyprus Eurasia Dispute Resolution and Arbitration Centre (CEDRAC) (http://www.cedrac.org) clearly shows that mediation and other ADR procedures are becoming more popular in Cyprus. The above mentioned centres have their own sets of rules as well as their own codes of conduct. Additionally, the local branch of the ICC in Cyprus, named Cyprus Chamber of Commerce and Industry, offers ICC arbitration (http://www.ccci.org.cy).

Mediation in civil and cross border disputes is regulated by the Certain Aspects of Mediation in Civil Matters Law of 2012, Law 159 (I)/2012.

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