

Cyprus

Andreas Sofocleous & Co.

Andreas Frangos



1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of Cyprus?

The only requirement for a valid arbitration agreement and subsequently a valid arbitration procedure in Cyprus is the arbitration clause to be in written form. The Cyprus domestic Arbitration Law Cap. 4 which regulates domestic arbitrations provides that the agreement to refer any present or future disputes to arbitration is irrevocable unless the Court decides otherwise.

1.2 Are there any special requirements or formalities required if an individual person is a party to a commercial transaction which includes an arbitration agreement?

The Law doesn't provide of any such requirements or formalities.

1.3 What other elements ought to be incorporated in an arbitration agreement?

It is advisable that the parties include a detailed arbitration clause in their agreements and regulate in detail the arbitration procedure in order to better serve their needs for a well organised, quick, efficient, and final resolution of their disputes, without excessive costs.

The arbitration procedure must be analysed in detail, otherwise any missing practical points such as the number of the arbitrators, the arbitrator's powers, the seat (place) of the arbitration and many others will be regulated according to article 6 of the Arbitration Law Cap. 4.

1.4 What has been the approach of the national courts to the enforcement of arbitration agreements?

The Cyprus Courts are in favour and very supportive to arbitration and any other alternative dispute resolution processes. Article 8 of the Arbitration Law enables the Court to stay any proceedings commenced while an arbitration agreement is in force. The Court has the discretion to stay the proceedings if it finds that there is no important reason why the matter in dispute must not be referred to arbitration, or the applicant is willing to proceed with any steps required to resolve the issue in dispute in the context of a well organised arbitration procedure.

1.5 What has been the approach of the national courts to the enforcement of ADR agreements?

You may consult the above question; nevertheless the Courts must follow a more strict approach imposing penalties to any party who tries to overpass an ADR agreement, balancing their right to their natural judge.

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration agreements in Cyprus?

The enforcement of the domestic arbitration agreements are governed by the Arbitration Law Chap. 4. International arbitrations though are governed and enforced by the International Arbitration in Commercial Matters Law 1987 ('IACM') which is the law specifically for international arbitration agreements. Cyprus is also a signatory of the New York Convention.

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do the laws differ?

As already mentioned above, there are different arbitration laws regulating domestic and international arbitration proceedings. The Arbitration Law, Chapter 4 governs the conduct of domestic arbitration proceedings while Law 101 for International Arbitration in Commercial Matters Law of 1987 is the law for international arbitration proceedings. The 1987 Law has adopted the UNCITRAL Model Law in its whole with some minor amendments.

We may note that the domestic arbitration law is more susceptible to extensive intervention by the courts at any stage of the proceedings, whereas the 1987 International Arbitration law minimises the court's intervention allowing such intervention only in some specific cases.

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the governing law and the Model Law?

Yes, UNCITRAL Model Law as mentioned above, is mirrored in the Cyprus International Arbitration in Commercial Matters Law of 1987, in which the IACM has included an additional definition for the term "commercial".

3 Jurisdiction

- 3.1 Are there any subject matters that may not be referred to arbitration under the governing law of Cyprus? What is the general approach used in determining whether or not a dispute is "arbitrable"?**

Article 9 (2) of the Arbitration Law provides that when a question of fraud of one of the parties is raised, then the Court has the authority to decide the question and to cease the effects of any arbitration agreement.

The Arbitration Law itself provides in article 33 that trade disputes are subject to the Trade Disputes (Conciliation, Arbitration and Inquiry) Law as the Arbitration Law is not applicable in such cases.

- 3.2 Is an arbitrator permitted to rule on the question of his or her own jurisdiction?**

The International Commercial Arbitration Act 1987 grants the right to the arbitrator to rule on questions on the tribunal's jurisdiction and on questions on the validity and existence of the arbitration agreement.

The domestic Arbitration Law, however, doesn't make an extensive reference to this matter. The parties have the right to apply to the Court against a decision of an arbitrator on its jurisdiction or on any matter where they believe the arbitrator exhibited misconduct in relation to the procedure.

- 3.3 What is the approach of the national courts in Cyprus towards a party who commences court proceedings in apparent breach of an arbitration agreement?**

As already mentioned above the Court has the right to stay the proceedings if it is of the opinion that there is no special reason why the arbitration procedure must not take place or proceed.

- 3.4 Under what circumstances can a court address the issue of the jurisdiction and competence of the national arbitral tribunal?**

The Court will give its ruling followed by an application of a party.

- 3.5 Under what, if any, circumstances does the national law of Cyprus allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?**

The arbitral tribunal may assume jurisdiction over third parties only in the case of summoning witnesses to be examined or to produce any documents related to the dispute. It is not possible, however, to force someone to produce any documents in an arbitration proceeding that they would not also be compelled to produce at a trial.

As it concerns the arbitral award, it binds only the parties in dispute and no jurisdiction may be assumed over any third party outside the arbitration agreement.

4 Selection of Arbitral Tribunal

- 4.1 Are there any limits to the parties' autonomy to select arbitrators?**

There are no provisions in the domestic Arbitration Law limiting the parties' options to select anyone as arbitrator. They have the right, however, to apply to the Court to remove an arbitrator if during the arbitration procedure one party is of the opinion that said arbitrator is not impartial.

- 4.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?**

Article 10 of the domestic Arbitration Law allows the intervention of the Court if the parties or the arbitrators fail to appoint an additional arbitrator or to find a resolution to the tribunal itself, according to the case. The Law gives the right to each party to appoint the arbitrator of its choice and to give such notice to the other party. If the other party does not accept the arbitrator or doesn't reply in seven days, then the party which has made the appointment may apply to the Court to appoint the arbitrator.

- 4.3 Can a court intervene in the selection of arbitrators? If so, how?**

The Court has the right to intervene as described above in question 4.2.

- 4.4 What are the requirements (if any) as to arbitrator independence, neutrality and/or impartiality?**

The domestic Arbitration Law has no expressed provisions as to the impartiality of an arbitrator; nevertheless if a party is of the opinion that an arbitrator or umpire is impartial it may apply to the Court to seek relief.

5 Procedural Rules

- 5.1 Are there laws or rules governing the procedure of arbitration in Cyprus? If so, do those laws or rules apply to all arbitral proceedings sited in Cyprus?**

There is no specified procedure of the arbitration procedure itself in the domestic Arbitration Law. The International Commercial Arbitration Act of 1987 gives the power to the parties to regulate the procedure according to their needs. If such regulations have not been agreed by the parties then the tribunal is free to conduct the arbitration procedure as they consider most appropriate. They have also the power to set the rules on the use of evidence during the procedure.

- 5.2 In arbitration proceedings conducted in Cyprus, are there any particular procedural steps that are required by law?**

As mentioned above the domestic Arbitration Law does not provide for any particular procedural steps.

- 5.3 Are there any rules that govern the conduct of an arbitration hearing?**

Article 18 of the International Commercial Arbitration Law sets

the following as fundamental principles of arbitration proceedings: the right and chance for parties to fully present their cases and the equality of parties in hearings and in the arbitration procedure in general.

5.4 What powers and duties does the national law of Cyprus impose upon arbitrators?

The domestic Arbitration Law implies many of the arbitrators' duties such as his duty to conduct the procedure efficiently avoiding any unnecessary delays. Specifically, in Article 16 the Law grants the right to the tribunal to put under oath the witnesses and to correct any typographical errors of the award. Article 27 gives the power to an arbitrator to refer to the Court any legal issues that may arise in order for the Court to rule on those issues. The arbitrator has also the right to submit to the Court part or the award itself in order the Court to decide on any special issue that may arise from the award.

5.5 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

The domestic Arbitration Law grants jurisdiction to the national Courts to intervene in the arbitration procedure.

5.6 Are there any special considerations for conducting multiparty arbitrations in Cyprus (including in the appointment of arbitrators)? Under what circumstances, if any, can multiple arbitrations (either arising under the same agreement or different agreements) be consolidated in one proceeding? Under what circumstances, if any, can third parties intervene in or join an arbitration proceeding?

No specific considerations or provisions exist for conducting multiparty arbitrations in Cyprus.

5.7 What is the approach of the national courts in Cyprus towards ex parte procedures in the context of international arbitration?

Article 9 of the International Commercial Arbitration Law grants the right to any of the party to apply to the Court ex parte at any time before or during the arbitration procedure. The Courts though, following the principle of equality of the parties and their right to have the opportunity to fully present their case, may not issue any order before the presentation of the other's party case on the issue of the ex parte application.

6 Preliminary Relief and Interim Measures

6.1 Under the governing law, is an arbitrator permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitrator seek the assistance of a court to do so?

The International Commercial Arbitration Law allows the tribunal to issue any such interim measures in order of the matter in dispute to be protected until the issue of the final award, if the parties have not decided otherwise. The tribunal has the power to ask for an appropriate security to be provided in relation to its preliminary order.

6.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

Article 26 of the domestic Arbitration Law gives jurisdiction to the Court to order the measures specified in schedule two of the above Law. The Court may order the following:

- (a) security of costs;
- (b) discovery of documents and interrogatories;
- (c) examination under oath of any witness before an officer of the court or any other person, and the issue of commission or request for the examination of a witness out of the jurisdiction;
- (d) the preservation, interim custody or sale of any goods, which are the subject matter of the reference;
- (e) securing the amount in dispute in the in the arbitration proceedings;
- (f) the detention, preservation or inspection of any property or thing which is the subject of the reference or as to which any question may arise therein, and authorising for any of the purposes aforesaid any persons to enter upon or into any land or building in the possession of any party to the reference, or authorising any samples to be taken or any observation to be made or experiment to be tried which may be necessary or expedient for the purposes of obtaining full information of evidence; and
- (g) interim injunctions or the appointment of a receiver.

In the context of an international arbitration proceedings, the Court, followed by an ex parte application of any of the parties, may issue any such interim orders or conservatory measures.

6.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

National Courts in Cyprus are not very willing to grant interim orders to arbitration agreements.

6.4 Does the national law allow for the national court and/or arbitral tribunal to order security for costs?

Yes, as mentioned above in question 6.3.

7 Evidentiary Matters

7.1 What rules of evidence (if any) apply to arbitral proceedings in Cyprus ?

Article 17 of the domestic Arbitration Act gives the right to any party to apply to the Court to summon any person to be examined and give evidence.

The International Commercial Arbitration Act enables the parties to seek the Court's support in taking evidence according to the Court's rules.

7.2 Are there limits on the scope of an arbitrator's authority to order the disclosure of documents and other disclosure of discovery (including third party disclosure)?

The principle that governs the disclosure of documents is that any

person may be compelled to disclose in an arbitration procedure only those documents, he would have been allowed and compelled to disclose on the trial in an action before any national Court. The Court has the power to order third party disclosure.

7.3 Under what circumstances, if any, is a court able to intervene in matters of disclosure/discovery?

As mentioned above a Court may intervene in the process of taking evidence and support the procedure following an application of the arbitral tribunal or any of the parties in dispute.

7.4 What is the general practice for disclosure / discovery in international arbitration proceedings?

The principle that governs the general practice for disclosure and or discovery is that any kind of document disclosed, must be communicated to the other party. The tribunal or any of the party may apply to the Court to seek support in the procedure of taking evidence.

7.5 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal? Is cross-examination allowed?

In case of an absence of agreement between the parties on how the presentation of evidence must take place the tribunal may decide to hold oral hearings or to proceed with written submissions of the evidence from the parties. Oral hearings may be held at any stage upon request of a party.

The tribunal has the right to administer oath and cross examination is allowed during the arbitration procedure.

7.6 Under what circumstances does the law of Cyprus treat documents in an arbitral proceeding as being subject to privilege? In what circumstances is privilege deemed to have been waived?

No provisions have been made for documents subject to privilege. Arbitrators and the arbitral tribunals though, use the Cyprus Courts' case law as a guideline in order to characterise a document privileged.

8 Making an Award

8.1 What, if any, are the legal requirements of an arbitral award?

The legal requirements of an award depend on the law chosen by the parties. If such law has not been designated, then the tribunal will apply the law of the country which, in their opinion, is applicable.

There are however some typical characteristics of a valid award such as the award to state the reasons on which it was based (unless the parties have agreed not to give reasons), to be in written form and to be signed by the arbitrators indicating the date that the award has been issued.

9 Appeal of an Award

9.1 On what bases, if any, are parties entitled to appeal an arbitral award?

Article 34 of the International Arbitration Act specifies the cases on

which a party after the delivery of an award may challenge its validity. It must be noted that a party may appeal an arbitral award and ask the Court to set it aside only if one of the cases described in the above article is met.

9.2 Can parties agree to exclude any basis of appeal or challenge against an arbitral award that would otherwise apply as a matter of law?

As mentioned above a party may challenge an award only if one of the cases described in article 34 of the International Arbitration Act applies. A general right to appeal doesn't exist.

9.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

No. Such right doesn't exist.

9.4 What is the procedure for appealing an arbitral award in Cyprus?

If any of the parties after the delivery of the award is of the opinion that any of the cases described in article 34 of the International Arbitration Act is met, it may apply to the Court to set aside the award.

10 Enforcement of an Award

10.1 Has Cyprus signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

Cyprus is a signatory and has ratified without any reservations the New York Convention and the relevant Law is Law 84 of 1979.

10.2 Has Cyprus signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

Cyprus has signed several bilateral agreements, which include provisions for the mutual recognition of arbitral awards.

10.3 What is the approach of the national courts in Cyprus towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?

National Courts, according to article 35 of the International Arbitration Act may issue an order enforcing the award in Cyprus followed by a written application of any party mentioned in the award. Article 36 states the cases under which the Courts may refuse to enforce an award.

10.4 What is the effect of an arbitration award in terms of res judicata in Cyprus? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

An arbitral award is final and binding for the parties in dispute. The Court may set aside the award only on the cases specified and mentioned above as they exist in article 34 of the International Arbitration Act of 1987.

11 Confidentiality

11.1 Are arbitral proceedings sited in Cyprus confidential? What, if any, law governs confidentiality?

No legal provisions exist as to the confidentiality of the proceedings and publication of the award. The parties have the freedom to regulate this issue. In Cyprus the general principle is that the trials are conducted in public with the exclusion of some cases, especially when minors are involved.

11.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

It is a matter which must be regulated by the parties.

11.3 In what circumstances, if any, are proceedings not protected by confidentiality?

Law as mentioned above doesn't regulate confidentiality issues.

12 Remedies / Interests / Costs

12.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

No limitation on the type of damages exist.

12.2 What, if any, interest is available?

Article 22 of the domestic Arbitration Law, impose interest on any arbitral award with the same rate of any other judgment issued by the Courts of Cyprus. Such interest may be excluded if the parties agreed to do so.

12.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

The general practice is that "the loser pays" the costs of the proceedings. If a provision regarding the costs has not been made in the award, any of the parties is entitled to apply to the Court giving him directions to apply usually in two weeks from the delivery of the award, to the arbitral tribunal in order to decide on the costs.

12.4 Is an award subject to tax? If so, in what circumstances and on what basis?

First schedule Article 6 of the domestic Arbitration Law gives the tribunal or the arbitrator the discretion to decide on costs. If the award is subject to tax and which party and how it must be paid, it is also at the discretion of the arbitral tribunal.

13 Investor State Arbitrations

13.1 Has Cyprus signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965)?

Yes, Cyprus is a signatory of the above Convention. It signed and

ratified the Convention on 25th November 1966.

13.2 Is Cyprus party to a significant number of Bilateral Investment Treaties (BITs) or Multilateral Investment treaties (such as the Energy Charter Treaty) that allow for recourse to arbitration under the auspices of the International Centre for the Settlement of Investment Disputes (ICSID)?

Cyprus has signed several Bilateral and multilateral Investment and other Treaties, mentioning the reference to arbitration as an alternative dispute resolution process. Cyprus has also signed the Energy Charter Treaty since 16th January 1998.

13.3 Does Cyprus have standard terms or model language that it uses in its investment treaties and, if so, what is the intended significance of that language?

No such language is being used.

13.4 In practice, have disputes involving Cyprus been resolved by means of ICSID arbitration and, if so, what has the approach of national courts in your country been to the enforcement of ICSID awards?

At the moment in Cyprus no such dispute has been resolved by means of IC SID arbitration.

13.5 What is the approach of the national courts in Cyprus towards the defence of state immunity regarding jurisdiction and execution?

As mentioned above national Courts have not yet had the opportunity to rule on the above issues.

14 General

14.1 Are there noteworthy trends in the use of arbitration or arbitration institutions in Cyprus? Are certain disputes commonly being referred to arbitration?

The business world in Cyprus day-by-day understands the value of alternative dispute resolution processes and especially arbitration. They realise the advantages a procedure like arbitration has and certain disputes like construction and trading disputes use arbitration as their means to resolve their disputes. Cyprus as member of the European Union and due to its geographical location is increasingly becoming a centre of resolving international disputes of any kind.

14.2 Are there any other noteworthy current issues affecting the use of arbitration in Cyprus?

As mentioned above Cyprus provides both the legal framework and experienced professionals able to deal with any kind of international or domestic arbitration dispute that may arise. Its modern venues are able to host such arbitration procedures satisfying the needs and requirements of a contemporary seat of arbitration.



Andreas Frangos

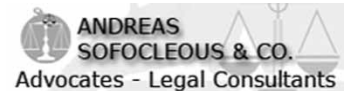
Andreas Sofocleous & Co.
Proteas House
155 Makariou III Avenue
3026 Limassol
Cyprus

Tel: +357 2584 9000
Fax: +357 2584 9100
Email: afrangos@sofocleous.com.cy
URL: www.soflawfirm.com

Mr. Andreas Frangos was born in Limassol, Cyprus in 1975. He graduated from the National and Capodistrian University of Athens in 2002 and obtained his L.L.M in Disputed Resolution in London at Kingston University in 2003. He is a Barrister at Law, member of the Honourable society of Lincoln's Inn of London. He was admitted to the Cyprus Bar Association in 2003 and he is a member of the London Chartered Institute of Arbitrators.

Areas of Practice: His main areas of practice are Civil and Criminal Litigation, Corporate and Commercial Law, European Law, Intellectual Property Law, Banking and Finance, Property Law and Conveyancing, Alternative Dispute Resolution Methods (ADR), International and Domestic Arbitration.

He speaks Greek and English.



Proteas House
155 Archbishop Makarios III Avenue
P.O.Box 58159 ,CY3731
Limassol - Cyprus
Tel: +357 - 2574 6955
Fax: +357 - 2574 8135
Email: info@sofocleous.com.cy

Managing Partner: Andreas Sofocleous

Other offices: Russia - Moscow, Ukraine - Kiev, Georgia - Tbilisi, UK

Andreas Sofocleous & Co. was founded by Mr. Andreas Sofocleous in 1995. The firm nowadays is one of the most successful Corporate and Commercial law firm in Cyprus. Headquartered in Limassol and with offices in Eastern Europe and UK, the firm provides legal services for individuals and companies at national and multinational levels across a wide range of industries, dealing with mergers and acquisitions, cross-border transactions, joint ventures, intellectual property licensing, as well as company formation and management and other business arrangements.

Areas of practice: Corporate law, banking law, investments and finance, international transactions, mergers and takeovers, international business entities, competition law, commercial law, factoring, trade regulation, public procurement, trade regulation, shipping, aviation, building and engineering law, general insurance, marine insurance, intellectual property, trademarks and patents, taxation, public and administrative law, administration of estates, employment law, civil litigation, arbitration, family law.

Languages spoken: Greek, English, Russian, Spanish, Rumanian, Ukrainian.