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# Litigation

Cyprus

Law & Practice

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## Law and Practice

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## 1. General

### 1.1 General Characteristics of the Legal System

The legal system of Cyprus is based on Common Law and court proceedings in the criminal and civil jurisdictions are adversarial in nature. The process of examination of witnesses is conducted *viva voce* (in person with oral evidence being given before the court) and every witness is examined in chief, evidence in chief is often provided in the form of a written statement, cross-examination and re-examination of each witness then follows.

At the conclusion of the evidence each side delivers its final address with the party that called the last witness (usually the defendant) delivering its final address first. Final addresses are more often than not delivered in writing, although this is a relatively recent (last five or six years) development. In the administrative courts, where the court has jurisdiction to annul an administrative act or decision, the court adopts a more inquisitorial role in that it often asks questions and seeks clarifications of responses at the clarifications stage.

Appeals are conducted in an adversarial manner with the appellant filing a notice of appeal containing the grounds of appeal. No leave is required for the filing of any appeal. The grounds of appeal are approved by the court as being sufficiently justified. Following the acceptance of the grounds of appeal by the court, each side files its skeleton argument and thereafter at the hearing each party has the right to address the court for a maximum period of 30 minutes.

### 1.2 Court System

In Cyprus there is a two-tier court system: the courts of first instance and the court of appeal (the Supreme Court). The court system of Cyprus is based upon the administrative districts of Cyprus, namely Nicosia, Limassol, Larnaca, Famagusta and Kyrenia. Each district has an Assize Court, a District Court, a Family Court, a Rent Review Court, a Military Court and an Employment Disputes Court. The other first instance court, namely the Administrative Court, sits only in Nicosia.

The courts of first instance are the following:

- Criminal Jurisdiction:
  - (a) The Assize Court which tries serious criminal cases in which a sentence in excess of five years or a fine in excess of EUR85,000 (or both) may be passed.
  - (b) The District Court for the less serious criminal cases.
- Civil Jurisdiction:
  - (a) The District Court.
  - (b) The Family Court.
  - (c) The Rent Review Court.
  - (d) The Employment Disputes Court.

- (e) The Administrative Court that sits only in Nicosia.

All appeals are heard by the Supreme Court in its Criminal, Civil or Administrative Jurisdiction. The Supreme Court also sits as a Constitutional Court and an Electoral Court (issues arising out of elections).

### 1.3 Court Filings and Proceedings

Once filed, court proceedings are not open to the public. Access to court filings is only granted to parties within the proceedings. All court filings are kept at the Court Registry and may only be viewed or searched following a written application to the Registrar of the Court.

There is, however, nothing to stop any party publishing its court filings or the filings of its opponent.

### 1.4 Legal Representation in Court

Cyprus has a fused legal profession. The division of barristers and solicitors does not exist in Cyprus and only lawyers who are members of the Cyprus Bar Association and pupil advocates (subject to certain restrictions) may appear in the courts of Cyprus.

Advocates have full rights of audience before the courts; however, only lawyers with more than two years call to the Bar may appear before the Supreme Court.

No members of foreign Bars may appear in the courts of Cyprus and only the official languages of Cyprus, which are Greek and Turkish, may be used in the courts of Cyprus. An advocate may not address the court or conduct proceedings through an interpreter.

Cyprus does, however, comply with EU regulations pertaining to the movement of labour in respect to the legal profession, and members of foreign Bars may become members of the Cyprus Bar after a period of pupillage, which is currently three years.

## 2. Litigation Funding

### 2.1 Third-Party Litigation Funding

Litigation funding is not prohibited in Cyprus. However, it is not present in any real sense in the Cyprus legal system due to the vast delays that are inherent in cases before Cyprus courts.

### 2.2 Third-Party Funding: Lawsuits

In theory, all types of third-party funding are available in Cyprus, but in practice none exist as such an enterprise cannot prosper economically in Cyprus due to the delays in the Cyprus court system and the relatively small size of the Cyprus market.

## 2.3 Third-Party Funding for Plaintiff and Defendant

See 2.2 Third-Party Funding: Lawsuits.

## 2.4 Minimum and Maximum Amounts of Third-Party Funding

Due to the lack of a litigation funding market, there is no available data from which to be able to discern minimum and maximum amounts of funding. There are no legal maximums or minimums in respect of third-party funding.

## 2.5 Types of Costs Considered under Third-Party Funding

Due to the lack of a litigation funding market there is no available data from which to be able to discern minimum and maximum amounts of funding. There are no legal maximums or minimums in respect of third-party funding in relation to costs.

## 2.6 Contingency Fees

Contingency fees are not permitted in Cyprus. Despite this, it is commonly known that many advocates enter into such arrangements or into “no win no fee” arrangements with clients.

## 2.7 Time Limit for Obtaining Third-Party Funding

There are no time limits with respect to third-party funding.

# 3. Initiating a Lawsuit

## 3.1 Rules on Pre-action Conduct

There are no rules on pre-action conduct before initiating legal proceedings in Cyprus.

## 3.2 Statutes of Limitations

There is a Limitation of Actions law in Cyprus. The rules are generally as follows:

- for cases of breach of contract, the limitation period is six years from the date upon which the cause of action arises; and
- in cases of tort the limitation period is three years from the date of commission of the tort.

In cases where the results of the tort are fraudulently concealed or are not apparent (for instance, in situations of latent defect) the limitation period runs from the date when the tort could reasonably have been discovered.

## 3.3 Jurisdictional Requirements for a Defendant

Suit may be commenced against a defendant in Cyprus as follows:

- Criminal jurisdiction:
  - (a) for crimes committed in Cyprus.
- Civil jurisdiction:
  - (a) where the defendant is resident or carries on business in Cyprus;
  - (b) where a breach of contract or a tort has been committed in Cyprus; and
  - (c) where the defendant has submitted to the jurisdiction of the Cyprus courts by contract or otherwise.

## 3.4 Initial Complaint

Each law suit is commenced by the filing of a writ of summons. The writ of summons may be generally endorsed – that is to say, containing a brief general description of the claim of the plaintiff against each defendant – or it may be a generally endorsed writ which contains a full, detailed statement of claim containing where prescribed by the rules of pleading.

A party may amend its initial pleading once without leave of the court and thereafter by leave of the court. There is no set limit for the number of amendments that may be made to the initial writ or the time. The initial writ may be amended any time before judgment and even after judgment in certain instances such a misnomer of a party.

## 3.5 Rules of Service Service of Legal Process

Legal process is effected by way of private service agents who are authorised to serve writs of summons, applications and appeals by the Registrar of the Supreme Court of Cyprus. The service agent swears an affidavit of service which is filed in court along with a copy of the document that has been served. The affidavit states the time, place and mode of service. It is the responsibility of the plaintiff to effect legal valid service.

### Substituted Service

Where service in the normal manner is not possible, the court may, upon application of the plaintiff, authorise an alternative mode of service, commonly referred to as substituted service. Substituted service may be effected in a number of ways, such as by affixing the document to be served onto the door or wall of the dwelling of the defendant.

### Service Out of the Jurisdiction

Where a defendant is outside the jurisdiction of Cyprus, the plaintiff must apply firstly for the writ of summons to be sealed by the court and then for a notice of the writ of summons translated into a language known to the defendant to be served upon the defendant outside the jurisdiction at the defendant's place of abode or place of business. The manner of service will vary depending upon any international treaties that may exist between Cyprus and the country in which service is intended,

the Hague Convention 1965 to which Cyprus is a signatory and in the case of service within the EU Council Regulation EC 1393/2007.

Where such service has been attempted and has failed, the plaintiff may subsequently apply to the court for an order for substituted service, such as by international courier. Such a mode of service may also be requested where no other form of service is prescribed.

### **Prerequisite for Service Out of the Jurisdiction**

In order to obtain an order for service out of the jurisdiction, the plaintiff must convince the court that it has a good prima facie case against the defendant(s). An application for substituted service is made in a prescribed form and supported by affidavit that seeks to present the case of the plaintiff in a manner so as to persuade the court that a good prima facie case exists.

### **3.6 Failure to Respond**

#### **Judgement in Default of Appearance**

If a defendant does not respond to a writ of summons within the time prescribed for the response, which is ten days, the plaintiff may apply to the court for judgment in default of appearance. Such application is granted upon proof of the validity of the claim. Proof is usually by way of affidavit. The defendant may appear any time before judgment is granted. In cases where judgment is granted, the defendant may apply to the court to grant a stay of execution and leave to appear and defend the claim.

In order to succeed in such an application, the defendant must persuade the court that it has a viable defence to the claim. The court, if so convinced, will grant the stay of execution and leave to defend subject to certain conditions, which will almost certainly include the payment of costs incurred by the plaintiff to date.

### **3.7 Representative or Collective Actions**

There are no rules of civil procedure that govern representative actions or collective (class actions) as such. Although there is no prescribed mechanism for this kind of action, a lawyer can have in an action as many plaintiffs or defendants as they wish.

### **3.8 Requirements for Cost Estimate**

There are no formal requirements obliging an advocate to provide to his client a cost estimate of the potential litigation at the outset. This is, however, almost universally requested by clients, especially in large-scale litigation cases, and a fee is invariably agreed. As stated above, contingency fee or “no win no fee” arrangements are not permissible. Despite this, it is known that many advocates do enter into such arrangements.

## **4. Pre-trial Proceedings**

### **4.1 Interim Applications/Motions**

It is possible to make an interim application – motion before the trial or substantive hearing of a claim to obtain an injunctive relief. These applications are not limited to case management issues and the parties can obtain remedies from the court. The power of the court to grant such remedies/injunctions emanates from the provisions of Article 32 of the Courts Law, L 14/1960 and the well-established common law principles which arise from equity.

The Civil Procedure Rules provide for a number of interim applications prior to trial.

The most common applications are the following:

- for further and better particulars of a claim or a defence;
- for discovery of documents;
- for specific discovery of documents;
- for inspection of documents;
- for specific inspection of documents;
- for notices to produce documents at trial;
- for an admission of facts; and
- for directions of the court relating to the number of witnesses, summary of evidence and written statements of witnesses.

### **4.2 Early Judgment Applications**

A party can apply for an early/summary judgment on all the issues in dispute and can request the other party’s case to be struck out before trial or substantive hearing of the claim.

#### **Summary Judgment**

A plaintiff may, after filing its statement of claim and before the filing of a defence, apply to the court for summary judgment in respect of its claim or any part thereof. A court will grant a summary judgment in cases where there is clearly no legal or viable defence to the claim. Due to the drastic nature of this remedy as it effectively deprives the defendant of its right to be heard before the court, summary judgment is granted in only the clearest of cases and provided that the plaintiff can show to the court that there is indeed no valid or viable defence to the claim.

An application for summary judgment is made by summons and the defendant. In order to defeat an application for summary judgment, the defendant must show to the court that it has a viable defence to the claim. The standard of proof for both parties is the standard applied in civil cases in Cyprus, which is “on a balance of probabilities”. The burden of proof is on the plaintiff.

## Striking Out of Claims or Defences

Both a plaintiff and a defendant may apply to the court for the whole or parts of the claim or defence to be struck out at any stage prior to the hearing of the case.

In order for the court to grant an application, the applicant must show that on the face undisputed facts set out in the pleadings, there is no valid claim or defence in law.

## Judgment on the Basis of Admissions

In addition to the above, in the event that a defendant in its defence admits to the claim or any part thereof, the plaintiff apply to the court prior to the hearing of the case for judgment to be entered in favour of the plaintiff for that part of the claim that has been admitted.

## Striking out of Pleadings

Additionally, claims that are frivolous and vexatious or parts of pleadings that are scandalous or embarrassing may, upon application, be struck out.

## 4.3 Dispositive Motions

The dispositive motions that may be made in Cyprus are those that are set out above, namely:

- the application for summary judgment, seeking to give judgment to the plaintiff against a defendant who has not yet filed a defence, which effectively disposes of the defence;
- the application to strike out a claim or a defence on the basis that it contains no cause of action or no valid defence as the case may be;
- an application for judgment on the basis of admissions contained in the defence; and
- an application to strike out parts or certain paragraphs/ references of the statement of claim which are considered frivolous and/or vexatious.

## 4.4 Requirements for Interested Parties to Join a Lawsuit

Interested parties can apply in writing to join a lawsuit provided that their direct legal and economic interests are affected. Also, when there is a dispute as to property rights.

## 4.5 Applications for Security for Defendant's Costs

The defendant can apply for an order that the plaintiff – claimant must pay a sum of money as security for costs. This is usually done in cases where the plaintiff resides abroad (certain citizens from abroad are excluded from such an order where the country in which the claim is filed has a bilateral agreement excluding its citizens from such an application) and in cases where the

plaintiff is a legal entity without any property or assets registered in its name.

## 4.6 Costs of Interim Applications/Motions

Even though there are no rigid rules in relation to the costs of interim applications/motions, in most cases the courts order that the costs be paid when the main proceedings are concluded. There are no specific rules and the only exception to the rule that the succeeding party is entitled to its costs is when the matter raised is a novel one (only in very rare cases, which are almost now extinct given that the legal frame in case law is rapidly expanding).

## 4.7 Application/Motion Timeframe

A party can request that an application – motion be dealt with on an urgent basis only in cases of interim orders filed on an ex parte basis. There is no special request/application for this and the court registrar, when such an application is filed, sets the case almost immediately before a judge so that the applicant can be heard on an ex parte basis, usually within a day or two from its filing.

## 5. Discovery

### 5.1 Discovery and Civil Cases

Discovery is available in civil cases and can be done by filing a written application based on the relevant civil procedure rules.

In small claims, ie, below EUR3,000, discovery includes both documents and witness testimony. In all other cases, discovery concerns only the production of documents. In these cases, the witness testimony is provided to the other party upon instructions of the court prior of the hearing of the case.

Discovery is administrated by the litigants based on relevant orders of the court.

There are no mechanisms by which the scope of the discovery process can be curbed and the costs are usually awarded to the succeeding litigant upon conclusion of the main proceedings.

### 5.2 Discovery and Third Parties

It is not possible to obtain discovery from a third party. However, a plaintiff can request the procurement of documents by a third party in the context of an interim application on an ex parte or by summons basis.

### 5.3 Discovery in This Jurisdiction

The discovery procedure is a well-established and regular procedure in civil cases. The party discloses the documents they wish to produce at the hearing of the case and should also disclose

documents that they do not intend to produce in the hearing process on the basis of confidentiality and/or legal privilege. Having said the above, there are no detailed rules governing disclosure.

## 5.4 Alternatives to Discovery Mechanisms

See 5.3 Discovery in This Jurisdiction.

## 5.5 Legal Privilege

The concept of legal privilege is fully recognised in this country. Communication between a client and their lawyer or the lawyer with third parties is privileged when this is made with the main purpose of discussing pending or potential court proceedings.

Having said the above, the court has discretion to consider or decide that there was an implicit waiver of the legal privilege when a document was disclosed because of an obvious mistake that a lawyer could or should be aware of (its disclosure). The exception to this is when the disclosure was a result of fraud on behalf of the adversary party or their lawyer.

## 5.6 Rules Disallowing Disclosure of a Document

Apart from privileged communication or documents, as described, a party will not disclose a document if it is irrelevant to the proceedings or if it is self-incriminating (mainly criminal proceedings).

# 6. Injunctive Relief

## 6.1 Circumstances of Injunctive Relief

An injunctive relief may be awarded sparingly in rare and critical cases where an interim relief is urgently needed to safeguard the applicant's rights and/or property. This kind of injunctive relief can be obtained in the context of an action or petition. There are many types of injunctions available and these are:

- freezing injunctions (Mareva);
- gagging injunctions;
- mandatory injunctions;
- injunctions against a third party (Chabra);
- Anton Piller orders;
- Norwich Pharmacal orders;
- quia timet orders; and
- injunctions in aid of foreign proceedings, etc.

These types of orders are issued on very rare occasions, provided the requirements of Article 32 of the Courts Law, L 14/1960, are fulfilled, namely:

- good arguable case;
- reasonable chances of success; and

- chance of irreparable damage in case the orders are not issued.

There is also a fourth criteria which is set by case law and it is exhaustively examined when the three above-mentioned provisions are fulfilled, which is the balance of justice, ie, whether it is fair and just and will serve the purposes of justice for the order to be issued. It goes without saying that urgency is the jurisdictional provision that also needs to be fulfilled.

In relation to the injunctions to prevent parallel proceedings in another jurisdiction, the matter is rather complicated. Having said that, the Cyprus courts are fully compliant with the relevant European case law, which states that these orders do not contradict Article 6 of the European Convention of Human Rights. In cases where there are parallel proceedings within jurisdiction, and these are usually considered as antisuit injunctions, the courts prefer to deal with parallel proceedings in the context of applications to set aside an action on the basis of abuse of the court process.

## 6.2 Arrangements for Obtaining Urgent Injunctive Relief

An injunctive relief, which in any case can only be achieved on an urgent basis, can be issued within a day or two from its filing. Unfortunately, there are no prescribed arrangements for out-of-hours judges, therefore, these can only be filed from 8.00am until 1.30pm.

## 6.3 Availability of Injunctive Relief on an Ex Parte Basis

As already advised, an injunctive relief can be obtained on an ex parte basis (See 6.2 Arrangements for Obtaining Urgent Injunctive Relief).

### Interlocutory Injunctive Relief

Interim or injunctive relief is able to be granted in Cyprus before the hearing of the claim.

### Types of Interim Injunctive Relief

In cases in which a legal action has been commenced and a prohibitory or mandatory injunction can be justified in order to preserve the status quo or the subject matter of the action or to prevent money or property from being transferred or removed out of the jurisdiction (ie, general quia timet or Mareva-type injunctions, or where Norwich Pharmacal type disclosure orders are sought prior to trial and indeed prior to service of proceedings upon a defendant), the plaintiff may apply ex parte to the court for the granting of interim relief. If the court grants the interim relief sought, it will fix a return date, which is usually no longer than it estimates that it will take for due service of process to be made. At the return date the defendant may



appear and give reasons as to why the interim relief should be terminated.

## **6.4 Liability for Damages for the Applicant Undertaking or Guarantee as to Damages**

The applicant can be held liable for damages suffered by the respondents if at a later stage the court decides that the order was wrongfully issued. For this purpose, the applicant can only obtain the official transcript of the order that will be served on the respondent after the signing of a guarantee or the submission of a bank guarantee, the amount of which depends on the circumstances of the case.

## **6.5 Respondent's Worldwide Assets and Injunctive Relief**

An injunctive relief can be granted against worldwide assets of the respondents (Worldwide Freezing Injunction).

## **6.6 Third Parties and Injunctive Relief**

An injunctive relief can be obtained against third parties.

## **6.7 Consequences of a Respondent's Non-compliance**

If the respondent fails to comply with the terms of an injunction, then a written application for contempt of court is filed, which is a quasi-criminal process, meaning that the court cannot only issue an order of sequestration but also the imprisonment of the respondent.

# **7. Trials and Hearings**

## **7.1 Trial Proceedings**

The trials are conducted by combining written and oral evidence and the witnesses are always subject to cross-examination. The only instance in which the hearing is conducted in writing via written arguments is in the context of administrative law (administrative courts). In very rare cases, a party can apply in writing for the court to allow the adduction of evidence.

## **7.2 Case Management Hearings**

The hearings of interim motions or applications are conducted by submitting an affidavit which accompanies the application or objection. The parties can apply to the court via written application to cross-examine the affiant or certain allegations contained in paragraphs of the affidavit. Cross-examination on the entirety of the allegations is not allowed.

There are no prescribed case management hearings in complex trials and it is up to the discretion of the court on the date upon which the case is set for directions to request from the parties'

lawyers to state the number of witnesses and the timeframe that will be requested for presenting each and every one.

## **7.3 Jury Trials in Civil Cases**

The concept of jury is not recognised in Cyprus because of the small population of the island.

## **7.4 Rules That Govern Admission of Evidence**

Generally, all evidence is admitted at trial provided that it is not considered inadmissible, ie, fraudulently or illegally obtained. Further, hearsay evidence is admissible in court and subject to evaluation by the court if sufficient explanations are provided for not submitting the original evidence. The best evidence rule is fully applicable.

## **7.5 Expert Testimony**

Expert testimony is, of course, permitted at trial, but the court cannot seek an expert testimony or guidance on its own. Expert witnesses are evaluated as any other witness and are brought in by the parties themselves.

## **7.6 Extent to Which Hearings are Open to the Public**

Hearing proceedings are open to the public, except in criminal cases involving minors where the court orders for the hearing to be conducted "closed doors". The transcripts of the hearings are only available to the parties to the proceedings and not available to the public.

## **7.7 Level of Intervention by a Judge**

The system is adversarial and not interrogatory, therefore, the legal system in Cyprus does not permit extensive intervention by the judge, ie, the judge cannot extensively ask questions or clarifications.

There are instances where judgments or decisions are given at the hearing (ex tempore), but these are limited, exceptional cases and generally in the context of interlocutory proceedings. Where evidence is provided, the court usually reserves its decision for a later stage so it can justify its decision appropriately, citing the evidence of each party.

## **7.8 General Timeframes for Proceedings**

Usually, there is a timeframe of five to seven years from the commencement of the claim until the final decision. The typical duration of trials is two months to two years.

## 8. Settlement

### 8.1 Court Approval

A lawsuit in the nature of a civil dispute may be settled by agreement between the parties thereto. No particular court approval is required, except where specific legislation may so provide, eg, settling a matter affecting minors or their property rights.

The settlement may be concluded before the court in which the lawsuit is pending and may take the form of a court judgment entered into by consent of the parties.

As an alternative to a judgment by consent, the parties may declare in court that they have reached an agreement in settlement of the case, stating the terms thereof if they so wish, and the lawsuit is then withdrawn and dismissed by the court as settled. In such a case the settlement is in the nature of a contract, known as contract of record. The legal effect of such a contract is the same as that of an ordinary contract.

### 8.2 Settlement of Lawsuits and Confidentiality

A settlement may remain confidential as long as the parties to it so agree and subject to the terms of the relevant agreement.

### 8.3 Enforcement of Settlement Agreements

A settlement agreement which has taken the form of a court judgment is enforced as such, in accordance with the ordinary methods of enforcing a judgment under the Civil Procedure Law. If no judgment has been issued, a settlement agreement is enforced by ordinary civil action.

### 8.4 Setting Aside Settlement Agreements

A settlement agreement may be set aside on any ground on which a contract may be set aside, eg, the illegality of the agreement, fraudulent misrepresentation, incapacity of a party.

## 9. Damages and Judgment

### 9.1 Awards Available to the Successful Litigant

The judicial remedies available are those ordinarily recognised under common law and equity and may be broadly categorised as follows:

- declaratory judgment, whereby the court adjudicates on the parties' rights, eg, declaring that a party is the owner of a property, that a contract has been terminated;
- damages, intended to compensate a claimant for the loss it has suffered as a result of an actionable act of the defendant, eg, breach of contract, tort or breach of statutory duty; and
- equitable remedies, granted as a matter of court discretion and particularly:

- (a) injunctive relief, which may be prohibitory or mandatory, of a temporary nature granted through interlocutory court orders, or it may be perpetual when issued in final resolution of a dispute; and/or
- (b) specific performance, which may be ordered by the court in order to compel performance of contractual obligations; for example, ordering the transfer of a piece of land, which the defendant failed to do in breach of their contractual obligations under a sale of land agreement.

### 9.2 Rules Regarding Damages

Damages for breach of contractual obligations are characterised by the objective of compensating the innocent party for the loss or damage caused to him which naturally arose in the usual course of things from such breach, or which the parties knew to be likely to result from the breach at the time of entry into the contract. The renowned rule enunciated in the English case of *Hadley v Baxendale*, to the effect that damages are recoverable for the foreseeable loss, is well established under Cyprus law.

Restitutionary damages may be awarded in order to prevent unjust enrichment.

Award of damages in tort aims to restore the injured party to his pre-tort position.

Punitive damages to punish the behaviour of the defendant are also available at the court's discretion and in this regard English common law precedents are followed.

A basic statutory rule under Cyprus contract law is that liquidated damages, ie, specific sum named in a contract as the amount to be paid in case of breach of it, is considered to be in the form of a penalty and is not recoverable except to the extent that a loss is actually proved. The specified sum operates as a ceiling of the maximum sum to be awarded, although the actual loss may be higher.

### 9.3 Pre and Post-Judgment Interest

Interest is awarded in accordance with any contract that may exist between the parties or a specific statutory provision.

Legal interest is awarded in the absence of contractual provision or specific statutory provision. Every court judgment awarding a sum of money carries, under the Court of Justice Law, "legal interest" from the date the legal action in which the judgment has been given, was filed in court, until the judgment debt is fully paid. The court maintains, however, discretion to award interest as from a date after the filing of the action, as it may deem just having regard to the particular circumstances of the case.

The rate of the legal interest is subject to review by the Minister of Finance in December of each year. As at the date of this article, the rate of legal interest is 2% per annum.

In cases involving deceit or fraud, legal interest may be awarded as from the date that the cause of action arose.

Interest by way of damages may be also awarded by way of compensation for a claimant's loss which may be recoverable for breach of contract or in tort.

## 9.4 Enforcement Mechanisms of a Domestic Judgment

The methods for enforcing a judgment issued by a Cyprus court are provided by the Civil Procedure Law.

### Monetary Judgments

The methods of executing a judgment directing payment of money are the following.

#### *Seizure and sale of movable property*

Movable property of the judgment debtor may be seized and sold upon an application by or on behalf of the judgment creditor to the registrar of the court in which the relevant judgment has been issued, following which a writ of movables is issued. Under such a writ, a competent officer of the court is empowered to seize and sell movable property of the judgment debtor and the proceeds are paid to the judgment creditor towards the outstanding debt.

#### *Sale of immovable property*

Immovable property belonging to the judgment debtor may be sold by a writ of execution issued on an application to the court for leave to issue such a writ.

#### *Attachment of movable property*

A writ of attachment may be issued, by leave of the court (known as garnishee proceedings) in respect of any money, goods or other movable in which the judgment debtor is beneficially interested, and which is under the custody or control of a third party. The third party having control of the property in question is ordered to pay the money to the judgment creditor, and in the case of other property it is seized and sold through a competent court officer.

### Examination of Judgment Debtor

A judgment creditor may apply to the court for an order that the debtor be examined in respect of his financial means and ability to pay the debt. The debtor is compelled for examination before the court. The process may disclose assets against which execution may be levied. The court is further empowered, having regard to his financial means or income of the debtor,

to order periodical payments, eg, on a monthly basis, by him towards his debt, and any failure to abide by such an order may amount to contempt of court, entailing sentencing.

### Recovery of Immovable Property

Judgment for the recovery or delivery of any immovable property may be enforced by a writ of possession (issued by leave of the court following an application by the judgment creditor) and directing a competent court officer to put the judgment creditor in possession of that property.

### Recovery of Movable Property

Judgment for the recovery or delivery of any movable property may be enforced by a writ of delivery, also issued by leave of the court and directing a competent court officer to take such movable property and deliver it to the judgment creditor.

### Judgment as a Charge

In aid of execution of a monetary judgment, charges may be registered on certain assets of the judgment creditor and particularly:

- Immovable property may be charged with the registration of memorandum of the judgment with the Land Registry Office. The registration operates as a charge on the immovable property which may be eventually sold through a prescribed process of public action, for satisfying the judgment debt.
- Bonds, shares and other securities, as may be specified by order of the Council of Ministers, belonging to the judgment debtor may be charged and sold, by leave of the court, in execution of a judgment.

## 9.5 Enforcement of a Judgment from a Foreign Country

### Judgments of EU Member States

The Recast Brussels Regulation, (EU) 1215/2012, applies in Cyprus and regulates jurisdiction and recognition and enforcement of court judgments issued in EU member states.

The Regulation covers all main civil and commercial matters, whilst specified matters, such as matrimonial matters, wills and succession, arbitration, legal capacity, are excluded from its scope.

Recognition and enforcement of EU judgments is made without special procedure or declaration of enforceability being required, and the relevant process is simple as prescribed by the Regulation. What is basically required is production of an authenticated copy of the judgment and a certificate issued by the court of origin certifying, inter alia, that the judgment is enforceable in the country of origin. The Cyprus court may require a translation in Greek.

Recognition and enforcement may be refused by the domestic court, upon application of an interest party, on limited grounds specified in the Regulation, eg, public policy, lack of jurisdiction of the issuing court, irreconcilability of the judgment with a previous judgment.

### Judgments of Third Countries

Judgments from third countries may be registered and enforced in the context of relevant bilateral or multinational treaties, which are invariably based on reciprocity.

Subject to any specific provision of a treaty, a third-country judgment may be registered and enforced by leave of the court. The court does not examine the substance of the case and may refuse registration and enforcement upon limited grounds, eg, public policy, breach of rules of natural justice, lack of jurisdiction of the issuing court.

## 10. Appeal

### 10.1 Levels of Appeal or Review to a Litigation

As a general rule, every judgment of a first instance court affecting the rights of a party is subject to appeal to the Supreme Court in its appellate jurisdiction.

The ordinary composition of the Appeal Court is three judges of the Supreme Court. The Supreme Court may decide, having regard to the importance of the issues which fall for determination, to hear a case as a full bench consisting of all or the majority of the Supreme Court Judges. At present the Supreme Court consists of 13 judges.

The Supreme Court's judgments are final, unless overruled by the European Court of Human Rights (ECHR) or the European Court of Justice (ECJ).

### 10.2 Rules Concerning Appeals of Judgments

No leave is required for filing an appeal, except where the only complaint concerns costs of the proceedings, in which case leave of the Appeal Court is required. An appeal is filed by a notice of appeal stating whether the appeal is against the whole or part of the judgment, and also setting out the grounds of appeal and the reasoning of each such ground, in a concise form.

The grounds of the appeal should be evidenced by the records of the trial, reflecting the evolution of the proceedings and comprising the documentary evidence and the witnesses' evidence adduced before the trial.

### 10.3 Procedure for Taking an Appeal

An appeal against a final judgment, ie, a judgment on the substantive merits of an ordinary legal action, must be lodged before the court that has issued it, within six weeks as from the date of its issue. An appeal against a judgment in interlocutory or other applications relating to a pending legal action is filed within 14 days as from its issue.

The time for filing an appeal may be extended by the court that issued the judgment or by the Supreme Court.

The respondent litigant in the appeal may file a cross-appeal within 30 days as from the service on it of the notice of appeal. By the cross-appeal any part of the appealed judgment may be challenged or the cross-appeal may aim at supporting the judgment under appeal by grounds not invoked by the trial court.

An appeal does not operate as a stay of execution of the appealed judgment, unless the trial court or the Appeal Court otherwise orders upon application by the party thereby affected.

### 10.4 Issues Considered by the Appeal Court at an Appeal

The Appeal Court deals with the grounds of the appeal and any cross-appeal. In general, matters not taken up before the trial court cannot be raised before the Appeal Court. The question of jurisdiction, however, may be considered by the Appeal Court if raised by a party, or on its own motion.

The Appeal Court considers legal and factual issues raised through the grounds of appeal (and cross-appeal). It is a cardinal principle that the Appeal Court will not interfere with the factual findings of the trial court except where such findings are patently unwarranted by the evidence adduced or when a finding is based on evidence wrongly accepted or rejected. Likewise, the Appeal Court will not interfere with the exercise of discretion by the trial court pursuant to statutory provision, except if totally unreasonable having regard to the circumstances of the case.

The Appeal Court has all the powers of the trial court, including power to order amendment of pleadings and receive further evidence. Further evidence, however, will only be received on special grounds.

The Appeal Court may reverse the first instance judgment in whole or in part, draw inferences of fact and generally may issue any judgment or order as may be required.

## 10.5 Court-Imposed Conditions on Granting an Appeal

The Appeal may impose conditions on granting an appeal to the extent that the trial court could do under the civil procedure or any statutory provision.

## 10.6 Powers of the Appellate Court after an Appeal Hearing

The Appeal Court, after hearing an appeal, may dismiss it, or grant it and reverse in whole or in part the judgment appealed and enter judgment as the circumstances may require.

The Appeal Court may order retrial of the case, which means that the appealed judgment is annulled and a new trial is directed to be conducted de novo by the first instance court, almost invariably before a different judge.

## 11. Costs

### 11.1 Responsibility for Paying the Costs of Litigation

The general rule is that “costs follow the event”, and consequently the successful litigant is entitled to his legal and court costs of the proceedings.

The recoverable costs are fixed amounts and not time-based and comprise the following main headings:

- court expenses, basically consisting of the value of stamps affixed on the writ and other court documentation. These costs are based on scales but are not of significant amounts;
- advocates’ fees calculated on the basis of scales which are categorised having regard to the value of the subject matter of the proceedings – the fees are fixed on a per legal step basis, eg, initial instructions to handle the case, preparation and filing of writ of summons, statement of claim or defence, applications, affidavits, per appearance in court for directions, hearing, issue of judgment, etc; and
- other expenses, such as costs of witnesses by way of remuneration, travelling, etc.

The costs are, as a general rule, assessed by the court registrar and approved by the court. The recoverable costs generally do not represent the actual costs of a litigant. In complicated commercial cases, they may be a small part of the litigants’ costs.

### 11.2 Factors Considered When Awarding Costs

Whilst the general rule is that “costs follow the event” as aforesaid, the court maintains wide discretion and may not award costs and direct that each party will bear its own costs, or award

part of the costs. The overall circumstances of each case are taken into account, including particularly the following:

- conduct of litigants, mostly in the course of the proceedings, eg, whether “nuisance” defence or other unnecessary interim proceedings are taken, applying delaying tactics;
- complexity of legal issues; and
- full or partial success of the remedies claimed.

### 11.3 Interest Awarded on Costs

Awarded costs carry legal interest (see 9.3 Pre and Post-Judgment Interest) as from the filing in court of the proceedings, unless otherwise directed by the court. It is a rather prevailing practice for interest to be awarded as from the date of issue of the judgment until final settlement of the judgment debt.

## 12. Alternative Dispute Resolution

### 12.1 Views of Alternative Dispute Resolution within the Country

Arbitration is a well-established dispute resolution method in Cyprus.

Mediation has been formalised with the enactment of the Mediation Law on 2012, transposing EU Directive 2008/52/EC. Mediation is also provided by certain specific legislative enactments as follows:

- the Alternative Resolution of Consumer Disputes Law, harmonising national law with EU Directive 2013/11; and
- the Establishment and Functioning of Single Entity of Out of Court Settlement Financial and Monetary Disputes Law, implementing EU Recommendation 98/257 on out-of-court settlement of consumer disputes.

### 12.2 ADR within the Legal System

Under the existing legal regime, the practical implementation of the Mediation Law presupposes willingness of the interested parties to co-operate for resolving a dispute without resorting to, or exhausting, litigation. Mediation, through the appointment of a mediator and generally through utilisation of the mechanism of the Law, is still sparingly used in Cyprus.

A good number of disputes pending or about to commence are settled through informal negotiations between the parties with the assistance of their lawyers. Formal mediation in the context of the relevant law, however, has no tradition in Cyprus and it seems that it will take time for it to be established as a popular method for resolving disputes. Revisiting the existing court procedural regime and making the mediation stage obligatory in the course of case management would facilitate and encour-

age increased use of mediation and consequently enhance the prospects of settlement of disputes through a quick and rather inexpensive process.

The mechanisms of the aforementioned consumer enactments, however, are extensively used. The apparent reason for this is that entrepreneurs prefer to settle consumer disputes for commercial reasons and also for avoiding possible administrative sanctions.

### 12.3 ADR Institutions

The main institutions offering ADR services are the following:

- the Cyprus Chamber of Commerce and Industry;
- the Cyprus Eurasia Dispute Resolution and Arbitration Center; and
- the Cyprus Arbitration and Mediation Center.

Each of the said institutions is well organised and may substantially facilitate an ADR process, arbitration being the main area in which they are actively involved.

## 13. Arbitration

### 13.1 Laws Regarding the Conduct of Arbitration

Arbitration in Cyprus is governed by two statutory enactments.

#### Arbitration Law, CAP 4

This is a law based on English law, first introduced in 1944, and governs all domestic arbitrations, for which the International Commercial Arbitration Law (mentioned below) has no application.

#### International Commercial Arbitration Law (“ICA Law”)

The ICA Law was introduced in 1987 and is based on the 1985 UNCITRAL Model Law.

The ICA Law applies in “international commercial disputes” as defined therein. The term basically comprises commercial disputes with an international element as specified in the Law, eg, the parties have their seat of business in different countries, the place for conducting the arbitration has been provided by the arbitration agreement to be in a country other than the country where the parties have their seat of business.

### 13.2 Subject Matters Not Referred to Arbitration

Matters which may not form the subject matter of a valid agreement and which may be tried in a civil process cannot form the subject matter of arbitration. Matters of personal status, such as divorce, matters affecting minors, and criminal offences cannot

be settled in arbitration; however, a civil claim for compensation may well be settled in arbitration.

### 13.3 Circumstances to Challenge an Arbitral Award

#### ICA Awards

The ICA Law provides that an award issued thereunder in an international commercial dispute may be challenged for annulment by application filed before the District Court, upon any of the following grounds:

- a party to the arbitration agreement lacked contractual capacity, or the arbitration agreement is invalid under its governing law, or under Cyprus law, if no particular law has been chosen;
- a party was not notified in a timely manner and on a regular basis of the appointment of the arbitrator or the arbitration proceedings, or has otherwise been deprived of the opportunity to present and argue their case;
- the composition of the tribunal or the arbitration was in breach of the agreement of the parties or the ICA Law;
- the subject matter of the dispute is not arbitrable under Cyprus law; and
- the arbitral award conflicts with the public policy of Cyprus.

The application for annulling an ICA award has to be filed in a District Court within three months as from its notification to the party seeking its annulment.

#### Other Domestic Awards

Awards under the Arbitration Law, CAP 4 (see **13.1 Laws Regarding the Conduct of Arbitration**), may be challenged by application before the District Court. Section 21 of the Law provides that where an arbitrator has committed any misconduct regarding themselves or the proceedings, or an arbitration or award has been improperly procured, the Court may set the award aside.

The particularised grounds upon which a domestic award may be set aside have been developed through case law and relate to public policy, lack of jurisdiction, breach of the arbitration agreement, breach of the principles of natural justice, wrongful admission or rejection of evidence and generally patent violation of the law.

No time limit is provided for applying to set aside an award. In practice, the court normally postpones granting an application for leave to execute the award (see **13.4 Procedure for Enforcing Domestic and Foreign Arbitration**), pending the disposition of an application to set it aside and this militates in favour of an early filing of an application to set aside the award.

An award under the Arbitration Law may be also challenged with a view to remitting it, in whole or in part, to the arbitrators. The effect of such remission is that the award becomes ineffective to the extent that it is remitted and the arbitrators reconsider and decide de novo on the matters referred. The grounds for remitting an award are broadly the same as those for setting it aside. The question of whether an award should be remitted or set aside is for the court's discretion to be exercised having regard to all the circumstances of the case.

### 13.4 Procedure for Enforcing Domestic and Foreign Arbitration

"Domestic" is considered as the award issued in an arbitration conducted in Cyprus and "foreign" is the one issued in an arbitration conducted in another country.

#### ICA Awards

An award issued under the ICA Law, irrespective of the country where it is issued, may be recognised and enforced, following an order of the District Court issued upon application of the party concerned.

The procedure for recognition and enforcement is simple. The application must be accompanied by original or certified copies of the award and the arbitration agreement. An application for recognition and enforcement may be refused by the court if the respondent proves one of the grounds for which the validity of the award may be challenged (see **13.3 Circumstances to Challenge an Arbitral Award**).

An ICA award for which leave for recognition and enforcement was granted by the court is enforceable in the same manner as a court judgment or order to the same effect.

#### Domestic Awards

A domestic award issued under the Arbitration Law may, by leave of the District Court, be enforced in the same manner as a court judgment or order to the same effect, and where leave is granted, judgment may be entered in terms of the award.

The court will grant leave to enforce the award as a judgment unless there is either a ground for doubting the validity of the award or the award is not in a form in which it can be enforced as a judgment.

An application to the court for leave to enforce the award may be made by originating summons or ex parte, supported by an affidavit exhibiting the arbitration agreement and an original or certified copy of the award. If the award is in a foreign language, the court may require a translation in the Greek language. Leave for enforcement granted ex parte may be set aside upon applica-

tion of the respondent party and proof of a ground affecting the validity of the award.

#### Foreign Awards

Pursuant to ratification of Law 84/79, Cyprus has ratified the New York Convention on Recognition and Enforcement of Foreign Arbitration Awards 1958 and therefore foreign arbitration awards may be recognised and enforced pursuant to the terms of the Convention.

Recognition and enforcement of a foreign award which is enforceable in the country in which it has been issued may be also effected pursuant to the terms of a bilateral treaty which Cyprus may have concluded with another country.

## 14. Recent Developments

### 14.1 Proposals for Dispute Resolution Reform

Cyprus is presently in a transitional period with intensive activities by the state for major reforms of the country's judicial system. Draft laws are under discussion whereby the following fundamental reforms are being pursued:

- establishment of a third instance court system as opposed to the present two instance system;
- establishment of a commercial court to adjudicate major commercial disputes, composed of judges with specific expertise on the matters; and
- restructuring of the Legal Council, the competence of which concerns appointment of judges and disciplinary functions.

The reforms in progress entail amendments of the Constitution and enactment of various statutes. The intended reforms appear to attract wide support and are expected to come to fruition by mid-2021.

In addition, reforms are under consideration for extensive revision of the courts' procedural rules for expediting and rendering judicial proceedings more efficient and productive. The procedural reforms are intended to also cover conduct of proceedings through electronic means, an issue which has become pressing following the COVID-19 pandemic.

### 14.2 Impact of COVID-19

COVID-19 has heavily impacted major areas of the community's functioning, including the operations of the courts.

During the first wave of the pandemic in the period of March to June 2020, the Supreme Court issued a number of practice directions resulting in adjournments of most of the hearings and aiming at catering for the practical necessities which had

arisen. The situation improved in the months which followed, but the revival of the disease with a second wave, as from early November, has forestalled reverting to normality.

The practice directions of the Supreme Court in force at the time of writing comprise also suspension of time limitations for various procedural steps. It is clarified that the time limitations provided under the Limitation of Actions Law have not been suspended.



# CYPRUS LAW AND PRACTICE

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**Ioannides Demetriou LLC** has a litigation team of 25 lawyers and provides the full range of civil and public/administrative law litigation services. The litigation team is recognised for its expertise in the fields of both international and local commercial litigation, including corporate, banking, financial disputes and public and administrative law recourses before the courts

of Cyprus and administrative organs such as tender review authorities and competition tribunals and the full range of arbitration and ADR services. The firm has been involved in many of the largest civil litigation suits heard in Cyprus and regularly represents foreign governments, international corporations, public bodies and private clients before the courts of Cyprus.

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