



# PRACTICAL LAW

MULTI-JURISDICTIONAL GUIDE 2012/13

## DISPUTE RESOLUTION VOLUME 1

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# Cyprus



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## MAIN DISPUTE RESOLUTION METHODS

### 1. What are the main dispute resolution methods used in your jurisdiction to settle large commercial disputes?

Litigation is the predominant method for resolving disputes. Arbitration, although at an infant stage, is becoming more popular, particularly in disputes relating to construction, insurance, shipping and trade.

If a commercial dispute does result in a court action it falls within the jurisdiction of the District Courts (except in the case of admiralty disputes (see *Question 3*)).

Litigation does not preclude the parties from achieving settlement. The courts favour settlement to reduce their heavy workload, and encourage the parties to exhaust settlement possibilities before a case is scheduled for hearing.

It remains to be seen whether and to what extent Directive 2008/52/EC on mediation in civil and commercial matters will affect dispute resolution in Cyprus.

## COURT LITIGATION

### Limitation periods

### 2. What limitation periods apply to bringing a claim and what triggers a limitation period?

The Limitation of Actions Law, Cap. 15 (Limitations Law) sets out the time limits within which claims must be brought before a court. However, the Limitations Law was suspended in 1964 following inter-communal disturbances and has remained suspended ever since.

The Suspension of Limitation Period (Provisional Provisions) Law (110(I)/2002) provided that the Limitations Law would re-enter into force with effect from 1 June 2005, except in relation to any immovable or movable property situated in areas now occupied by Turkish troops (or any property which was situated there at the time of the invasion). However, its entry into force has been postponed by a succession of laws passed in the interim, each temporarily extending the suspension. The latest of these, enacted in December 2011, extends the suspension until 30 June 2012.

The main provisions of the Limitations Law are as follows:

- In relation to bonds in a customary form or any mortgage, the time limit is 15 years from the date the cause of action arose.
- In relation to any judgment the time limit is 15 years from the date on which the judgment became enforceable.
- In relation to any book debt due to or from a bank, the time limit is six years from the date the cause of action accrued.
- In relation to any goods sold and delivered, bills, work done and wages, the time limit is two years from the date the cause of action accrued.
- In relation to Evkaf or Vakf property (property irrevocably earmarked for Muslim, religious or charitable purposes) the time limit is 15 years from the date the cause of action accrued. Where the action concerns the corpus of any such property, the limitation period is 36 years.

In relation to causes of action not expressly provided for by the law or not expressly exempted, the limitation period is six years from the date when such cause of action accrued (*section 5, Limitations Law*).

The limitation periods will continue to be suspended in relation to any immovable or movable property situated in areas now occupied by Turkish troops (or property which was situated there at the time of the Turkish invasion).

In relation to torts, section 68 of the Civil Wrongs Law (Cap. 148) states that generally, no action can be brought in respect of any civil wrong unless such action commences:

- Within three years after the act, neglect or default of which the complaint is made.
- Where the civil wrong causes fresh damage continuing from day to day, within three years after the ceasing of such damage.
- Where the cause of action does not arise from the doing of any act or failure to do any act, but from damage resulting from such act or failure, within three years after the claimant suffered such damage.
- If the civil wrong has been fraudulently concealed by the defendant, within three years of the discovery of it by the claimant, or of the time when the claimant would have discovered such civil wrong if he had exercised reasonable care and diligence.

As long as the Limitations Law remains suspended there is no limitation period except for claims in respect of civil wrongs.



### Court structure

#### 3. What is the structure of the court where large commercial disputes are usually brought? Are certain types of dispute allocated to particular divisions of this court?

The District Courts hear all commercial disputes, except for admiralty disputes, which fall within the admiralty division of the Supreme Court (*section 19(a), Courts of Justice Law of 1960*).

Cases in the District Courts are allocated to different ranks of judge on the basis of the value of the claim. There are three ranks of judges:

- Presidents.
- Senior judges.
- District judges.

Large commercial disputes are usually allocated to presidents who, as a general rule, hear disputes valued at EUR500,000 (as at December 2011, US\$1 was about EURO.7) and above.

The answers to the following questions relate to procedures that apply in the District Courts.

### Rights of audience

#### 4. Which types of lawyers have rights of audience to conduct cases in courts where large commercial disputes are usually brought? What requirements must they meet? Can foreign lawyers conduct cases in these courts?

##### Rights of audience/requirements

All practising lawyers registered with the Cyprus Bar Council and the Supreme Court Registrar have the right to conduct cases in the courts. By implication, in-house lawyers do not have such rights.

##### Foreign lawyers

In certain circumstances, EU lawyers have the right to appear before the courts but they must be accompanied by a Cyprus-qualified lawyer. Such lawyers are required to use their home jurisdiction's title and present documents evidencing their legal qualification. If they provide legal services on a permanent basis, they must register with the Cyprus Bar Council.

Third-country lawyers may with special permission from the Bar Council practise as advocates provided they present the necessary documentation to the Supreme Court Registrar. To appear before the court, they must be accompanied by a Cyprus-qualified lawyer.

### FEES AND FUNDING

#### 5. What legal fee structures can be used? Are fees fixed by law?

Hourly rates and caps are the most common fee arrangements, especially in larger commercial disputes with an international element. Fee agreements must be in writing. Contingency fees are not permitted.

The Supreme Court has a scale of fees related to the size of the action, the nature of the case and the time involved. If there is a special retainer (that is, a special lawyer-client agreement governing legal fees) then, provided it is deposited with the Supreme Court, the scale does not apply.

#### 6. How is litigation usually funded? Can third parties fund it? Is insurance available for litigation costs?

##### Funding

Insofar as the Cyprus courts are concerned, funding of litigation is provided by the parties to the legal proceedings and any court orders relating to costs will be made for or against a party to the action (except for executors, administrators or trustees who have not unreasonably instituted or resisted legal proceedings, where the court has a discretion to order their costs to be paid out of a particular estate or fund).

##### Insurance

Insurance for litigation costs is not available in Cyprus. However, depending on the nature and value of the proceedings, the court may (following an application or otherwise) require a party to provide a guarantee from a respectable institution to be deposited with the court registrar as security for costs.

### COURT PROCEEDINGS

#### 7. Are court proceedings confidential or public? If public, are the proceedings or any information kept confidential in certain circumstances?

Public hearings are the norm except in special cases such as to protect minors. Third parties and the public have no access to court files and the documents in them, unless specifically authorised by the court.

#### 8. Does the court impose any rules on the parties in relation to pre-action conduct? If yes, are there penalties for failing to comply?

Unless a court order affecting the parties is already in place, there are no specific rules in relation to pre-action conduct of the parties. Any relevant conduct of the parties prior to the action that affects the issues in dispute will be taken into consideration by the court when delivering its judgment and may affect the nature and extent of the remedies that may be awarded.

#### 9. What are the main stages of typical court proceedings?

##### Starting proceedings

Civil proceedings start with the issue or filing of originating process (the two forms of which are the writ of summons and the originating summons), stating the nature of the claim and the relief sought.

A writ of summons may be either:

- Specially endorsed (that is, it contains the full statement of claim).



- Generally endorsed (that is, it contains only the relief and the remedies sought (the prayer)).

Certain legislative acts require that an action be initiated by an originating summons. For example, applications for the winding-up of Cyprus companies under the Companies Law (Cap. 113), take the form of an originating summons.

Unlike writs of summons, originating summonses are not categorised as generally or specially endorsed.

#### Notice to the defendant

Each defendant named on the writ of summons must be served, in the manner provided by the Civil Procedure Rules (*Order 5*), with an official copy of the writ. Service is effected by leaving a copy of the writ with the person to be served. A party may also apply to the court for an order for either:

- Substituted or other service.
- Service by letter, public advertisement or other means of bringing the matter to the attention of the defendant, provided the court is satisfied that it is not possible to effect service in the ordinary manner.

In relation to the service of judicial documents within the EU, Regulation (EC) 1348/2000 on the service in the member states of judicial and extra-judicial documents in civil and commercial matters applies and the modes of service may vary depending on each member state.

A writ of summons can be in force for no more than 12 months from the day of its issue. If a writ of summons is not served on a defendant within this period, it must be renewed by an application to the court before the period expires.

The same rules apply to originating summonses.

#### Subsequent stages

If the writ is generally endorsed, the claimant must file and deliver to the defendant a statement of his claim, containing the relief or remedy to which he claims to be entitled, within ten days after the defendant files an appearance to the writ. The time for the defendant to file an appearance is ten days from service. However, if the defendant resides abroad, then depending on the specific country, the court may allow an extension of time for the defendant to file an appearance.

The defendant must file and deliver to the claimant his defence or his defence and counterclaim within:

- 14 days from the filing of an appearance in the case of a specially endorsed writ.
- 14 days from the filing of the statement of claim in the case of a generally endorsed writ.

The claimant may (but is not obliged to) file a reply to the defendant's defence (or defence and counterclaim) within seven days from the filing of the defence.

If a party fails to file a pleading within the prescribed time limit, the other party may file an application for judgment in default. In that case, the defendant may request that the application for judgment in default be set aside on the basis that it has

subsequently entered an appearance. However, if the matter is dealt with by the Supreme Court the defaulting party will bear the legal costs of the proceedings on the basis of the scale of the claim which is based on the value of the claim (*see Question 5*).

Usually, following the exchange of the pleadings and the determination of any interrogatory procedures, the hearing of the main action will commence.

On the completion of the hearing, the court usually reserves judgment.

#### INTERIM REMEDIES

##### 10. What actions can a party bring for a case to be dismissed before a full trial? On what grounds must such a claim be brought? What is the applicable procedure?

There are proceedings available before the trial for summary judgment and striking out of a claim. To obtain a summary judgment, the applicant must show that the defendant has no real defence to the action.

Over the years, the courts have recognised a number of instances where an action may be struck out, such as where:

- There is an abuse of the court process.
- No reasonable cause of action is disclosed in the pleadings.
- The courts do not have jurisdiction.
- There is a more appropriate forum to try the action.

The courts have a degree of discretion whether to strike out a claim depending on the facts of the case.

Requests of such nature are made by an application supported by affidavits, setting out the facts and reasons why the relevant orders are requested. Assuming that the opposing party is likely to contest the application, then reasonable time is allowed for it to file its opposition with a supporting affidavit. The application is then scheduled for hearing (with the permission of the court, affiants (that is, any party who makes an affidavit) can be cross-examined about the contents of their affidavits) and the court then delivers its judgment.

##### 11. Can a defendant apply for an order for the claimant to provide security for its costs? If yes, on what grounds?

A defendant can apply for security for costs, which ensures that the successful defendant will be able to recover costs from an unsuccessful claimant. Two conditions must be satisfied to obtain security for costs:

- The claimant must be domiciled outside the EU.
- The claimant must not have sufficient assets within the jurisdiction to satisfy any order that may be made against him to pay the defendant's costs.

The court has an inherent jurisdiction to grant or refuse to grant an order for security for costs. The same conditions must be satisfied in respect of a foreign defendant's counterclaim.



If an order for security for costs is not satisfied within the time directed by the court, the action may be dismissed. The amount of security that may be ordered is the amount of the costs expected to be incurred defending the action.

See also *Question 6, Insurance*.

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## 12. What are the rules concerning interim injunctions granted before a full trial?

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### Availability and grounds

The courts can grant interim injunctions of a prohibitory or mandatory nature.

A right to obtain an interim injunction is not a cause of action and it cannot stand on its own. It is ultimately at the discretion of the court whether to grant the injunction or not.

To obtain an injunction, the applicant must be able to demonstrate all of the following to the court:

- There is a serious question to be tried.
- There is a probability that the claimant is entitled to relief.
- It will be difficult or impossible to award justice at a later stage without the granting of the interim injunction.

An order for an interim injunction usually requires an appropriate undertaking as to damages being lodged with the court.

### Prior notice/same-day

Interim orders can be obtained without prior notice to the defendant and even on the same day in cases of urgency. The court will consider whether it is just and equitable to grant the injunction in *ex parte* applications, and it is of primary importance for the applicant to demonstrate that the case is of an urgent nature and that it has disclosed all material information to the court.

### Mandatory injunctions

In principle, mandatory interim injunctions to compel a party to act in a certain manner are available, provided that the applicant can satisfy the court that the granting of such injunction is necessary.

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## 13. What are the rules relating to interim attachment orders to preserve assets pending judgment or a final order (or equivalent)?

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### Availability and grounds

Interim attachment orders to preserve assets pending the full trial are available on satisfaction of the court that certain preconditions are met (see *Question 12*).

### Prior notice/same-day

Interim orders can be obtained without prior notice to the defendant and even on the same day in urgent cases. In such circumstances the applicant must ensure that it has disclosed all material facts to the court and it must show to the court that the case is of an urgent nature.

### Main proceedings

The main proceedings need not be in Cyprus.

### Preferential right or lien

The granting of interim injunctions does not create any lien or preferential rights over the seized assets in favour of the applicant.

### Damages as a result

In principle, a defendant that has suffered loss due to the inappropriate granting of an interim injunction may raise an action for compensation. However, actions of this nature are practically non-existent or, at least, not frequent.

### Security

The applicant is generally required to lodge security with the court in the form of a bank guarantee or cash.

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## 14. Are any other interim remedies commonly available and obtained?

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The Courts of Justice Law of 1960 gives Cyprus courts discretion to issue a wide variety of provisional measures. In addition to Mareva injunctions (that is, asset freezing orders) it is also possible to obtain:

- Norwich Pharmacal disclosure orders.
- Search orders to obtain and prevent the destruction of evidence.
- Gagging orders.
- Orders for the appointment of a receiver.
- Orders for specific performance.

Interim orders concerning discovery of documents and interrogatories are commonplace.

## FINAL REMEDIES

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## 15. What remedies are available at the full trial stage? Are damages just compensatory or can they also be punitive?

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The most frequently requested and awarded remedy is damages to provide compensation for the loss suffered. In addition, the courts may order specific performance of a contract. In contracts relating to the sale of goods, an unpaid seller may be entitled to:

- A lien on the goods, provided they remain in his possession.
- A right of stoppage of the goods in transit after the goods ceased to be in his possession.
- A right to resell the goods.

In general, a party may apply for most of the remedies usually available under common law and equitable principles.

Punitive damages have been awarded by the courts, but not frequently.



## EVIDENCE

### Disclosure

#### 16. What documents must the parties disclose to the other parties and/or the court? Are there any detailed rules governing this procedure?

Any party may apply to the court for an order for discovery on oath as well as for inspection of documents which are or have been in the other party's possession or power relating to any matter in question in the action. If a party ordered to make discovery of documents fails to do so, it may not subsequently put in evidence, on its behalf in the action, any document that it failed to discover or allow to be inspected, unless the court is satisfied that the party had sufficient excuse for not doing so.

The procedure is governed by Order 28 (Rules 1 to 15) of the Civil Procedure Rules.

### Privileged documents

#### 17. Are any documents privileged? If privilege is not recognised, are there any other rules allowing a party not to disclose a document?

#### Privileged documents

The following documents are privileged:

- Confidential documents.
- Self-incriminating documents.
- Documents covered by legal professional privilege.

Legal professional privilege is regarded as being of fundamental importance and must be protected by the court and any government and public authority (*Cyprus Bar Association Rules on Ethics (Cap. 2), Rules 42/61, Advocates Law*). Therefore, a lawyer must keep confidential any information or document in his knowledge or possession that has been acquired in the course of his professional activity.

The following can be covered by this privilege:

- Communications between a lawyer and his client for the purpose of giving or obtaining legal advice.
- Communications and exchanges of documents between a client and a third party for the purposes of giving or obtaining legal advice, or in relation to litigation.

Legal professional privilege extends to foreign but not in-house lawyers.

However, the Prevention and Suppression of Money Laundering Activities Law Number 61(I) of 1996 as amended relaxes professional privilege in relation to lawyers offering services susceptible to money laundering or other similar activities.

#### Other non-disclosure situations

Privileged documents are protected from disclosure (*see above, Privileged documents*). Without prejudice documents are treated in the same way as in other common law jurisdictions (that is, communications that are genuinely part of a settlement attempt and are clearly marked "without prejudice" are protected from disclosure).

### Examination of witnesses

#### 18. Do witnesses of fact give oral evidence or do they just submit written evidence? Is there a right to cross-examine witnesses of fact?

#### Oral evidence

Witnesses of fact belong to the category of oral evidence and are examined at the hearing of the case. Until 2004, hearsay evidence was not admissible, but Law 132(I) of 2004 changed the law by providing that hearsay evidence should not be excluded from any procedure before the court merely because it is hearsay.

By virtue of a recent amendment to section 25 of the Evidence Law (Cap. 9) the examination-in-chief of a witness may take the form of a written statement the contents of which the said witness must orally adopt.

Exceptionally, a number of interim applications are supported exclusively by affidavits, which are written evidence submitted by a witness. It falls in the inherent jurisdiction of the court to permit the cross-examination of a witness of fact in these circumstances.

In a limited number of other proceedings such as a petition concerning the winding-up of a company, a mixture of oral and written evidence is most common.

At the end of the trial, it is usual for judgment to be reserved for delivery at a later date, to allow time for the judge to consider all the evidence and witnesses in the light of the pleadings and draft his judgment. Judgments set out the reasoning by which the court arrived at its findings of facts and conclusions as well as the principles of law on which the court relied and their application to the particular case.

#### Right to cross-examine

The opposite party has the right to cross-examine the witness orally. However, the permission to cross-examine a witness is granted only when the court believes it is necessary in the circumstances of the case.

### Third party experts

#### 19. What are the rules in relation to third party experts?

#### Appointment procedure

Either or both parties may present expert witnesses to support their claims. The opinion of an expert witness, based on facts which are proved by evidence that can be admitted by the court, is generally admissible when an issue in dispute is of a technical, scientific or professional nature.

#### Role of experts

The role of experts is generally to give their professional opinion and/or evidence on matters that have been raised and fall within their area of expertise. In principle, they should provide independent advice to the court.

#### Right of reply

Experts' reports may be exchanged before the trial. The experts (depending on the case) will appear before the court to give evidence and be cross-examined on the contents of their report.



## Fees

In principle, an expert's fees are paid by the party who requests his services.

## APPEALS

### 20. What are the rules concerning appeals of first instance judgments in large commercial disputes?

#### Which courts

A party who is not satisfied with all or part of a first instance judgment can apply to the Supreme Court for review of the judgment. However, judgments relating to interim applications are not subject to an appeal unless they affect essential rights of the appellant.

After the notice of appeal has been filed (*see below, Time limit*) the appeal is scheduled for directions, which is when the Supreme Court usually gives instructions as to the filing of written submissions by the parties in a specified time frame. Following filing of the written submissions, ordinarily a hearing date is set for any clarifications the Supreme Court may require and then the matter is decided (ordinarily judgment is reserved).

#### Grounds for appeal

The grounds for appeal against a first instance judgment may be any disputed interpretation of the case, legal or factual. The Supreme Court rarely interferes with matters in relation to which the judge at first instance exercised his discretion.

#### Time limit

A notice of appeal, setting out all the grounds of appeal and the reasons relied on, must be filed within:

- Six weeks from the date of a judgment on the merits of the case (unless an extension is granted by the Supreme Court).
- 14 days from the date of an interim judgment.

## CLASS ACTIONS

### 21. Are there any mechanisms available for collective redress or class actions?

Where numerous persons have the same interest in one cause or matter, one or more of these persons may be authorised by the court to sue or defend in such cause or matter, on behalf or for the benefit of all interested persons (*Civil Procedure Rules*). Before any such order is made, a duly certified power of attorney, signed by the persons to be represented and empowering the person who is to sue or defend on their behalf, must be filed with the writ of summons. The exception applies in the case of any unincorporated religious, charitable, philanthropic, educational, social or athletic institution or association not established or conducted for profit.

Where any such order is made, the persons represented are all bound by the judgment of the court in the action, and the court's judgment may be enforced against them in all respects as if they were parties to the action.

If any class member cannot be found, the court may, if satisfied that it is expedient to do so, appoint a person to represent the class member. Any judgment or order of the court in the presence of the person(s) so appointed shall be binding on the person represented. An application to the court in this respect must be supported by an affidavit describing the efforts made to find the person concerned.

In relation to funding and costs, the same rules apply as in all other civil actions (*see Questions 6 and 22*).

## COSTS

### 22. Does the unsuccessful party have to pay the successful party's costs and how does the court usually calculate any costs award? What factors does the court consider when awarding costs?

Any award of the costs is in the sole discretion of the court. Generally, the costs of the litigation are awarded to the successful party. The court, in its costs order, directs whether the costs will be assessed or taxed by the registrar of the court in which the proceedings have taken place.

Pre-trial offers to settle do not have any effect on cost orders unless they are in the form of payment to the court.

### 23. Is interest awarded on costs? If yes, how is it calculated?

Legal costs awarded to a litigant by the court bear legal interest (currently 5.5% per year) from the date of their award.

## ENFORCEMENT OF A LOCAL JUDGMENT

### 24. What are the procedures to enforce a local judgment in the local courts?

Any person against whom a judgment is given must comply with and fully satisfy it. If a party fails to obey a judgment made against him, measures can be taken for the execution and enforcement of the judgment to enable the successful party to obtain the remedy to which it is entitled. These measures are:

- A writ of execution for the sale of movables.
- Garnishee proceedings (requiring a third party who owes money to the judgment debtor to pay the money to the judgment creditor).
- The registration of a charging order over the immovable property of the judgment debtor or over his chattels.
- A writ of delivery of goods, ordering those goods to be delivered to the judgment creditor.
- A writ of possession of land, ordering that land to be delivered to the judgment creditor.
- Committal for breach of an order or undertaking.
- A writ of sequestration ordering the seizure or attachment of property.
- Bankruptcy or liquidation proceedings against the judgment debtor.



## CROSS-BORDER LITIGATION

### 25. Do local courts respect the choice of governing law in a contract? If yes, are there any areas of law in your jurisdiction that apply to the contract despite the choice of law?

In the majority of cases the law which governs most elements of the contract is the law which the parties intend to apply, and it is termed the proper law of the contract, or *lex causae*. The proper law is determined as follows:

- Where the parties have expressly chosen the law by which they wish their contract to be governed, this will be the proper law.
- Where no express choice has been made, the intention is to be inferred from the terms of the contract and the surrounding circumstances.
- Where no express choice has been made, and the intention cannot be inferred, the proper law will be the law with which the transaction has its closest and most real connection.

One exception to the above principle concerns the matters of procedure relating to remedies under the contract. These matters are governed by the law of the forum or court in which the case is tried (*lex fori*), and not by the proper law.

Also, the Cyprus courts will not enforce a contract that is contrary to Cyprus public policy.

### 26. Do local courts respect the choice of jurisdiction in a contract? Do local courts claim jurisdiction over a dispute in some circumstances, despite the choice of jurisdiction?

Where the parties have expressly agreed that disputes arising from their contract will be referred to arbitration or to a foreign tribunal, or be determined according to the law of a foreign country, the court generally insists that the parties honour their bargain. However, the court will consider whether strong and convincing reasons have been put forward for displacing this presumption.

Since the accession of Cyprus to the EU, Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Regulation) gives the Cyprus courts exclusive jurisdiction over the following:

- An action *in rem* (that is, relating to a right that is enforceable against the asset itself) against:
  - immovable property (including ships) situated in Cyprus;
  - tenancies of immovable property situated in Cyprus, of greater than six months' duration.
- Actions relating to the validity of the constitution or dissolution of Cyprus companies.
- The validity of entries in the public registries of Cyprus, except for the validity of European patents in relation to which the courts in all member states have jurisdiction.
- Proceedings relating to the enforcement of judgments if the Cyprus courts are the forum where the judgment has been, or is to be enforced.

The Brussels Regulation applies only if the parties are domiciled in countries that are bound by it.

### 27. If a foreign party obtains permission from its local courts to serve proceedings on a party in your jurisdiction, what is the procedure to effect service in your jurisdiction? Is your jurisdiction party to any international agreements affecting this process?

In relation to proceedings instituted within the EU area, Regulation (EC) 1393/07 on the service in the member states of judicial and extra-judicial documents in civil and commercial matters is applicable. The Regulation provides a number of different ways in which service can be effected.

One of the prescribed ways, which may also be used in relation to the service of proceedings that were initiated in a country not belonging to the EU, is by arranging for the service of the documents through an authorised private bailiff.

### 28. What is the procedure to take evidence from a witness in your jurisdiction for use in proceedings in another jurisdiction? Is your jurisdiction party to an international convention on this issue?

Regulation (EC) 1206/2001 on co-operation between the courts of the member states in the taking of evidence in civil or commercial matters is in force. Other than that, it is for the relevant foreign court to decide on the admissibility of any evidence taken in Cyprus for the purposes of the proceedings before it.

#### Enforcement of a foreign judgment

### 29. What are the procedures to enforce a foreign judgment in the local courts?

The Brussels Regulation has substantially altered the situation in relation to the recognition and enforcement in one EU member state of a judgment obtained in another member state. Generally, a judgment given in one member state must be recognised in another without the need for any special procedure (with the exception of Denmark). Under no circumstances can the substance of a judgment given in one member state be reviewed in another. In addition, if a judgment issued in a member state is enforceable in that state, it is also enforceable in another member state when, on application by any interested party, it has been declared enforceable. Judgments are declared enforceable immediately on the filing of both:

- A copy of the judgment.
- A certificate issued by the court in which the judgment originated.

The following can also apply in relation to the enforcement of foreign judgments:

- **Statute.** A foreign judgment can be enforceable by direct registration, under the provisions of an applicable statute. For example, the registration of judgments obtained in the UK is governed by the Foreign Judgments (Reciprocal Enforcement) Law 1935 and the rules made under the Law





by an Order in Council. The Law is modelled on the corresponding UK statute, the Foreign Judgments (Reciprocal Enforcement) Law Rules and the Maintenance Orders (Facilities for Enforcement) Law 1921.

Cyprus is also bound by bilateral treaties relating to the recognition and enforcement of foreign judgments with Bulgaria, China, Germany, Greece, Hungary, Poland, Russia, Serbia and Syria, and it is a signatory to various multilateral conventions relating to the recognition and enforcement of foreign judgments.

For a judgment to be registered, it must comply with the following requirements:

- the judgment is final and conclusive;
- there is a sum of money payable under it which is not related to tax claims or similar charges, or a fine or penalty;
- the application is made within six years of the judgment having been given or an appeal adjudicated;
- the judgment is unsatisfied, at least in part; and
- the judgment is capable of execution in the original foreign court.

The application is made without notice and must be accompanied by an affidavit exhibiting a certified copy of the judgment, authenticated by its seal, and a translation into Greek certified as correct by a diplomatic or consular agent, a sworn translator or any other person so authorised.

- **Common law.** A judgment creditor can enforce a foreign judgment in Cyprus at common law by bringing a fresh action. As soon as he files a writ of summons (usually specially endorsed), he can apply by summons for summary judgment under Order 18 of the Civil Procedure Rules on the ground that the defendant has no defence to the claim. If his application is successful, the defendant will not be allowed to defend. Alternatively, the judgment creditor, instead of filing an action on the foreign judgment, can file an action relying on the facts which created the cause of action in which the foreign judgment was given.

Regulation (EC) 1346/2000 on insolvency proceedings is directly applicable in Cyprus. Under the regulation, a judgment initiating insolvency proceedings issued by a competent court of an EU member state will be recognised in Cyprus and vice versa.

## ALTERNATIVE DISPUTE RESOLUTION

**30. What are the main alternative dispute resolution (ADR) methods used in your jurisdiction to settle large commercial disputes? Is ADR used more in certain industries? What proportion of large commercial disputes is settled through ADR?**

There are three main ADR methods in Cyprus:

- **Mediation.** This is the least formal method of ADR. The parties voluntarily refer their dispute to an independent third party who will discuss the issues with both sides and help them discuss and negotiate areas of conflict and identify and settle certain issues.

- **Conciliation.** This lies between informal mediation and formal arbitration. The process is very similar to mediation, but the third party can offer a non-binding opinion which may lead to a settlement.
- **Arbitration.** An arbitration agreement is irrevocable and, therefore, binding unless it contains a provision or a court order is issued to the contrary (*section 3, Arbitration Law 1944 (Cap. 4) (Arbitration Law)*). An arbitration agreement must be in writing (*section 2, Arbitration Law and section 7(2) of the International Commercial Arbitration Law L.101/87*).

ADR is most frequently used in the construction industry. Arbitration is also used to some degree in the shipping and energy related sectors.

**31. Does ADR form part of court procedures or does it only apply if the parties agree? Can courts compel the use of ADR?**

ADR is used when the parties mutually agree either orally or in writing to submit their dispute to ADR to avoid litigation. In addition, even in litigation, the court can (and frequently does) urge the parties to consider settling the case through ADR, with the court playing a consulting role in the process. However, in the absence of an express agreement by the parties to the use of a form of ADR, the court will not compel the parties to use ADR.

**32. How is evidence given in ADR? Can documents produced or admissions made during (or for the purposes of) the ADR later be protected from disclosure by privilege? Is ADR confidential?**

The answers to these questions depend on the form of ADR and the particular set of procedural rules that the parties have agreed to apply.

**33. How are costs dealt with in ADR?**

This also depends on the form of ADR and the particular set of procedural rules that the parties have agreed to apply.

**34. What are the main bodies that offer ADR services in your jurisdiction?**

There are no official bodies offering ADR services in Cyprus.

## PROPOSALS FOR REFORM

**35. Are there any proposals for dispute resolution reform? If yes, when are they likely to come into force?**

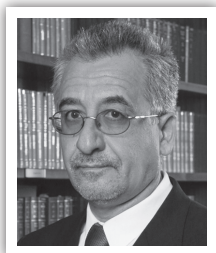
Directive 52/2008 EC on mediation in civil and commercial matters has been adopted at EU level. Article 5.1 of the Directive provides that a court before which an action is brought may, when appropriate and having regard to all circumstances of the case, invite the parties to use mediation to settle the dispute. The court



may also invite the parties to attend an information session on the use of mediation. EU member states, including Cyprus, had to bring into force the necessary legislation to comply with the provisions of this Directive by 21 May 2011, with the exception

of Article 10 (Information on competent courts and authorities), for which the date of compliance was 21 November 2010. Cyprus has not yet passed the necessary legislation and the European Commission has begun enforcement action.

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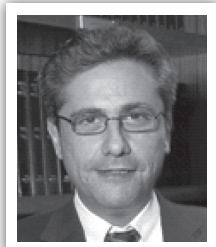
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**Qualified.** Cyprus Bar, 1981

**Areas of practice.** General commercial and civil litigation; administration and public law; matrimonial law; intellectual property law.

#### Recent transactions

- Successfully defending a company against a EUR600,000 claim concerning the delivery of goods.



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**Qualified.** Cyprus Bar, 1995

**Areas of practice.** Admiralty and shipping law; company law; international trade law; shareholders' disputes; Mareva injunctions.

#### Recent transactions

- Acting on behalf of the trustees of a Cyprus International Trust with assets in excess of EUR300 million, to obtain worldwide freezing orders, tracing orders and discovery orders against employees who had embezzled assets, securing the restitution of all the assets, and obtaining an order for the immediate removal of the protector of the trust.



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**Qualified.** Cyprus Bar, 2004

**Areas of practice.** Admiralty and shipping; commercial law; international trade.

#### Recent transactions

- Advising an international bank in relation to litigation between the controlling shareholders of a substantial corporate borrower.
- Obtaining Norwich Pharmacal disclosure orders against a bank holding funds misappropriated from a company and asset freezing orders and gagging orders against all respondents prohibiting them from informing recipients of funds or fellow conspirators of the existence of the proceedings.



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**Areas of practice.** Contract law; international trade law; competition law; general commercial litigation.

#### Recent transactions

- Recovering EUR950,000 which had been fraudulently extracted from the bank account of a Luxembourg company and deposited in a bank in Cyprus.
- Successfully negotiating a settlement of a EUR40 million claim against two companies.