



# Litigation & Dispute Resolution

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# Cyprus

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## Efficiency of process

Cyprus was a British colony until 16 August 1960, when it became an independent sovereign republic. On 1 May 2004 Cyprus formally joined the European Union, and on 1 January 2008 it became the 14th member of the Eurozone and the euro became the official currency.

Although approximately one-third of the island has been under Turkish occupation since 1974, this has no impact on the day-to-day life of most people, and Cyprus enjoys political and social security and stability, economic prosperity and a high quality of life. The so-called Turkish Republic of North Cyprus is recognised only by Turkey; the *acquis communautaire* of the EU does not apply there, and all references in this chapter are to the legitimate government of the Republic of Cyprus and the legislation enacted by it.

The constitution of Cyprus adopts the doctrine of the separation of powers, with authority divided between an executive branch headed by a president, a legislature and an independent and separate judiciary, comprised of the Supreme Court of Cyprus and its subordinate district and assize courts. On account of Cyprus's history as a former British colony, Cyprus law is heavily influenced by English law and the English legal system. Cyprus, which is a common law jurisdiction, has adopted the Anglo-Saxon system and cites English cases in its courts, mostly as guidelines but, under certain circumstances, as binding law.

One exception to the common law judicial system is the sphere of administrative law. Article 146 of the Constitution grants the Supreme Constitutional Court (which is now the Supreme Court of Cyprus) jurisdiction to annul administrative acts as in Greece and other continental countries. Another deviation from the common law system is that the Supreme Court of Cyprus relies on and applies precedents from the United States when it exercises its constitutional power to declare legislation unconstitutional and void or to interpret or amend any legislation.

The Supreme Court of Cyprus, which comprises 13 members, one of whom is its president, is the amalgamation of the Supreme Constitutional Court and the High Court. The Supreme Court has jurisdiction to act as the Supreme Constitutional Court and to adjudicate all matters relating to the constitutionality of legislation, and matters relating to conflicts of power or competence between state organs as well as questions of constitutional interpretation. It is also vested with the authority to act as an administrative court and thus to revise the decisions of the various administrative agencies of the government and to annul them if necessary. The Supreme Court of Cyprus also acts as an admiralty court with jurisdiction to adjudicate all admiralty matters both at first instance and on appeal. It has exclusive jurisdiction to issue the prerogative orders of *certiorari*, *habeas corpus*, *mandamus*, *prohibition* and *quo warranto*. The Supreme Court of Cyprus is the final appellate court in the Republic and has

jurisdiction to hear and determine appeals in civil and criminal cases from the other courts.

The five district courts, one for each geographic district, exercise initial criminal and civil jurisdiction. The Courts of Justice Law, Number 14 of 1960, gives district courts first-instance jurisdiction to hear and decide any action whose cause arose partly or wholly in the area where the court is situated or the defendant or any one of the defendants resides or works. A district court may hear any matter that does not come under the jurisdiction of the assize courts, the family courts, or the labour and rent control courts.

Proceedings in Cyprus civil courts are adversarial, with detailed procedures set out in the Civil Procedure Rules, which closely follow the English rules of the Supreme Court. The judge's role is confined to deciding a case fairly between the parties on the evidence available. The claimant in a civil court action usually has the burden of proof and the usual standard test of proof is on the balance of probabilities.

Limitation periods are governed by Law 66(I) of 2012 as amended. This provides that the limitation period in respect of a claim commences from the day of completion of the basis of the claim (defined as all events that give rise to an actionable right concerning a claim) and stipulates that unless otherwise provided in the Law or any other law, no proceedings may be issued after ten years have elapsed from that date.

Law 66(I) prescribes specific periods for certain categories of claim, as follows:

- For loans secured by a mortgage, charge or pledge the limitation period is 12 years.
- The general limitation period for civil wrongs is six years. The limitation period for claims for damages for negligence, nuisance or breach of a statutory duty is three years. The court has discretion to disapply the limitation provisions in the case of civil wrongs leading to bodily harm or death. The limitation period is one year in the case of proceedings for defamation or malicious falsehood.
- There is a general limitation period of six years for actions based on contractual claims. However, for proceedings related to a contract or to a quasi-contract in relation to an agreed or reasonable remuneration of a lawyer, a doctor, a dentist, an architect, a civil engineer, a contractor or other independent professional, the limitation period is three years.
- For loans with no set repayment date and which do not require advance notice as a condition of repayment of the debt, the limitation period commences on the date of service of written notice to the borrower to repay the debt, from or on behalf of the lender (or where there are co-lenders, from or on behalf of one of them).
- No action can be commenced questioning the validity of a will, or in relation to the estate of a deceased or any portion or part thereof or bequest, after eight years from the date of death. In the event that the claimant was absent from Cyprus, the limitation period will not be deemed to have been completed unless one year has elapsed from the time that the claimant returned to Cyprus or became aware of the death (or with reasonable diligence could have become aware of the death).

Law 66(I) provides that the period of limitation will not commence or, if it has commenced, will be suspended, in respect of the following:

- between spouses during their marriage, even though the marriage is later annulled;
- between parents and children while the children are minors;
- between trustees and trust beneficiaries while the trust beneficiaries are minors or, when the beneficiary has not yet been born, until the beneficiary is born and reaches adulthood;

- between executors of a will or administrators of the property of a deceased and heirs and legatees of the deceased while the heirs and legatees are minors; and
- between cohabiting partners during their cohabitation.

The thorough and detailed nature of court procedures, combined with the heavy workload of the courts, means that litigation can be protracted, and can often take several years to conclude. However, the courts provide a wide range of interim measures that effectively protect litigants' interests despite any delays in the main proceedings.

### **Integrity of process**

By reason of the separation of powers under the Constitution, the judiciary in Cyprus is fully independent of the other two traditional powers – the legislative and the executive. Neither may intervene in the judiciary's sphere of authority.

The President of the Republic appoints the President of the Supreme Court, who also sits as a member of the Court. The President of the Republic also appoints the other Supreme Court judges, who are either presidents of the district or assize courts or active lawyers. Supreme Court judges must retire at the age of 68. Judges of the subordinate courts are appointed by the Supreme Court from members of the Cyprus Bar Association the Attorney-General's office. They must have at least six years' experience in the legal profession and be of high moral standing. The judges of subordinate courts must retire at the age of 63. Most of the judges are experienced litigators.

### **Privilege and disclosure**

Any party may apply to the court for an order of discovery on oath or for inspection of documents that are or have been in the other party's possession or power as regards any matter relating to such documents. If a party ordered to produce documents in a discovery proceeding fails to do so, he or she may not subsequently enter any document as evidence on his or her behalf that he or she failed to disclose or declined to allow to be inspected, unless the court is satisfied that he or she had sufficient excuse. If the documents that are the subject of the discovery or inspection are confidential, self-incriminating or privileged, a claim for privilege may be raised.

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.

Legal professional privilege covers not only communications between a lawyer and his client for the purpose of giving or obtaining legal advice, but also 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 lawyers, but not in-house lawyers.

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

Without prejudice documents are treated in the same way as in other common law jurisdictions: communications that are genuinely part of a settlement attempt and are clearly marked "without prejudice" are protected from disclosure.

## Costs and funding

The most common basis of charging fees for larger disputes involving overseas litigants is by reference to time spent at specified hourly rates, sometimes with an upper limit on the fee. Contingency fees or success fees are strictly prohibited and insurance for litigation costs is not available in Cyprus.

The agreement between the lawyer and the client governing legal fees must be deposited with the Supreme Court; otherwise fees will be assessed by reference to the prescribed scale published by the Supreme Court, which is based primarily on the amount at issue in the action.

In regard to litigation matters, the winning party is usually awarded an order for costs (including disbursements), either in part or in full, to be paid by the unsuccessful party. The court may make an order either for the assessment or taxation of the costs by the registrar of the district court.

When a written agreement exists between a lawyer and a client, legal fees are not subject to taxation, but when there is no such agreement, a bill submitted by a lawyer to his or her client may be taxed by the registrar of the district court.

Lawyers' rates and legal fees are generally controlled and constantly scrutinised by the local Bar associations. In the event that a complaint about overcharging arises, it is investigated by the Bar Association or by disciplinary bodies and may result in an order for repayment or any other sanction.

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).

The court has an inherent jurisdiction to grant or refuse to grant an order for security for costs. A defendant can apply for security for costs, which ensures that the successful defendant will be able to recover costs from an unsuccessful claimant. The amount of security that may be ordered is the amount of the costs expected to be incurred defending the action. Two conditions must be satisfied to obtain security for costs:

- The claimant must be domiciled outside the EU.
- The claimant must have insufficient assets within the jurisdiction to satisfy any order that may be made against him to pay the defendant's 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.

## Interim relief

In order to ensure that litigants' interests are fully safeguarded, courts in Cyprus are prepared to issue a wide range of 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.

Article 32 of the Courts of Justice Law provides that in order to obtain an injunction the applicant must demonstrate, on the balance of probabilities, 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.
- If the interim injunction is not granted it will be difficult or impossible to award justice at a later stage.

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

Applications for interim orders may be made by summons, with the hearing date a few working days following the service of the application on the respondent. However, if the circumstances make it appropriate, interim orders can be obtained without prior notice to the defendant and even on the same day in cases of urgency. In the case of such *ex parte* applications the applicant is under an obligation of the utmost good faith to disclose to the court all information that may be relevant to the court's deliberations as to whether it is just and equitable to grant the injunction, and it is crucially important for the applicant to demonstrate that the case is of an urgent nature and that it has disclosed all material information to the court.

The injunction, once issued, is served on the respondent who appears before the court on the scheduled date and either consents to the injunction remaining in force until the final adjudication of the case or declares his intention to oppose the injunction being made absolute. In the latter case, the court will allow the respondent several days in which to prepare and file his or her written notice of opposition, accompanied by an affidavit, sworn and signed by a person who knows the facts of the case well and can swear to them positively.

The applicant and the respondent, if they consider it to be favourable to their case, may request court leave to file a supplementary affidavit as a reply to the other's affidavit or to clarify issues raised in the other side's affidavit. They can also apply to the court for an order to cross-examine the affiant of each other's affidavit. An order for cross-examination should be served personally on the affiant against whom the order has been issued in order to bind the affiant.

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.

An appeal against an interim order may be made to the Supreme Court of Cyprus. The grounds of appeal may include:

- Any legal arguments such as breach of the applicant's duty to fully and frankly disclose all material facts.
- Misdirection of the court, such as mistaken application of the law to the facts, and erroneous findings and conclusions as to the satisfaction of the requirements which need to be met.

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 rare.

The Courts of Justice Law of 1960 gives Cyprus courts discretion to issue a wide variety of provisional measures. The specific order that the court may be prepared to make depends on the nature of the application, the background circumstances of the case and the potential harm that the applicant may suffer if the order is not made.

The orders most commonly encountered in practice are:

- *Mareva* injunctions restraining a defendant from disposing of assets or removing assets from the jurisdiction;
- Anton Piller orders to obtain and prevent the destruction of evidence; and

- Norwich Pharmacal disclosure orders.

The purpose of a *Mareva* injunction is to prevent the injustice that may be caused as a result of the defendant's assets being hidden or dissipated so as to deprive the plaintiff of the benefit of any judgment he or she may obtain. The effect of the injunction is to freeze the respondent's specific assets in such a way as to ensure that they will not be removed from the jurisdiction prior to the issuance of a judgment in favour of the applicant. Applications for *Mareva* injunctions are made *ex parte*.

In addition to the three conditions set out in article 32 of the Courts of Justice Law, the court must be satisfied that the respondent has assets within the jurisdiction and that there is a real risk that the defendant may dissipate those assets before any judgment can be enforced.

Cyprus courts have also extended the reach of freezing orders to third parties against whom there is no substantive cause of action, but where there is good reason to suppose that the assets of the third party may in truth be the assets of the defendant against whom a cause of action is asserted. This type of order is known as "Chabra" relief, based on the English case of *TSB Private Bank International v Chabra*. Its rationale is that since the principal defendant controls a third party, it effectively controls the assets of that third party. Consequently, such assets can be considered as the principal defendant's assets.

An Anton Piller order is a bundle of interlocutory orders designed to enable a plaintiff to secure the preservation of relevant evidence that might otherwise be destroyed or concealed by the defendant. Such orders require the defendant to allow his or her premises to be searched and provide that specified documents and materials may be inspected and removed. The application is made *ex parte*, as secrecy is essential.

In order to obtain such an order the applicant must demonstrate not only the existence of a good *prima facie* case, but also that the defendant's actions or activities result in serious potential or actual harm to the interests of the applicant, that there is clear evidence of the existence of incriminating documents or evidence, and a real possibility that these documents or evidence may be destroyed.

Courts in Cyprus frequently issue Norwich Pharmacal disclosure orders requiring any third parties that have innocently become involved in wrongdoing (for example, a bank that has been used by fraudsters to transmit illicitly obtained funds) to disclose documents or information, so as to assist the applicant in identifying and bringing legal proceedings against the wrongdoers.

In addition, courts in Cyprus issue gagging orders, orders for the appointment of a receiver, orders for specific performance and anti-suit injunctions.

### **Enforcement of judgments**

There are several mechanisms available in Cyprus for the recognition and enforcement of foreign judgments, namely:

- EU Regulation 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (the Brussels I Regulation), Regulation 1215/2012, its "recast" successor, and Regulation 805/2004, which establishes a European Enforcement Order for uncontested claims;
- bilateral treaties and multilateral conventions;
- statute; and
- common law.

Which mechanism will apply depends on the circumstances of the case. For judgments originating in the courts of EU countries, the appropriate route is the Regulation. Claims are brought under statute when there is a bilateral treaty or the judgment originates in a court of a Commonwealth country. Common law actions are taken in other cases.

Following Cyprus's accession to the EU, enforcement via EU Regulations has become the most common route for enforcement of judgments. Article 66 of Regulation 1215/2012 sets out the arrangements for transition between it and Regulation 44/2001. Regulation 1215/2012 applies to legal proceedings instituted, to authentic instruments formally drawn up or registered, and to court settlements approved or concluded on or after 10 January 2015. Notwithstanding its repeal by Regulation 1215/2012, Regulation 44/2001 will continue to apply to judgments given in legal proceedings instituted, to authentic instruments formally drawn up or registered, and to court settlements approved or concluded before 10 January 2015 which fall within its scope.

One of the major changes introduced with Regulation 1215/2012 is that an "imported" judgment is now deemed to be recognised unless a local court decides that it should not be. Regulation 44/2001 required the holder of the judgment to apply to the court for recognition; when examining an application for recognition under Regulation 1215/2012, the court presumes that the judgment meets all the conditions that allow it to be recognised in another member state and restricts its examination to confirming that there are no grounds for refusal of recognition. This change in approach indicates the intention of the EU to further simplify the recognition procedures.

Regulation 805/2004 provides a streamlined enforcement mechanism for uncontested claims in civil and commercial matters, allowing for the certification of a judgment on an uncontested claim as an EU enforcement order by the originating jurisdiction. The Regulation does not cover revenue, customs or administrative matters, or liability of the state for acts and omissions in the exercise of state authority. Regulation 805/2004 has the advantage that there is no need for an application to the court of the second member state to approve the foreign judgment.

The Foreign Judgments (Reciprocal Enforcement) Law of 1935, Cap 10, as amended by the Reciprocal Execution of Certain Judgments of the Commonwealth Countries Law, 130(I) of 2000 provides an enforcement framework for judgments obtained in the United Kingdom, British dominions, protectorates and mandated territories as well as other foreign countries which accord reciprocal treatment to judgments given in the Republic of Cyprus. However, its use as a vehicle for recognition and enforcement of foreign judgments has fallen significantly since Cyprus joined the EU in 2004 and the European Regulations became available.

Cyprus has signed bilateral agreements that cover legal and judicial cooperation, including matters relating to the recognition and enforcement of judgments, with Bulgaria, China, the Czech Republic, Egypt, Greece, Hungary, Poland, the Russian Federation, Serbia, Slovenia and Syria. Cyprus has also acceded to the Convention on the Recognition of Foreign Judgments in Civil and Commercial Matters and Supplemental Protocol signed in The Hague in 1971, and to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

All the methods of execution of domestic court judgments are available for recognised overseas judgments, including a garnishee order, a charging order, an order for the appointment of a receiver, an order for committal and a sequestration order. In addition, the judgment debtor may be summoned to be examined with respect to his assets and debts.

The filing of an appeal does not prevent the judgment from being executed. An appeal can be made only on a point of law under the conditions set out in article 45 of Regulation 1215/2012.

### Cross-border litigation

Within the EU, the choice of appropriate court to adjudicate disputes is determined by Regulation 1215/2012. There are a number of changes from Regulation 44/2001, for instance in the *lis pendens* rules, the rules relating to jurisdiction and choice of court agreements, the special jurisdiction rules and the arbitration exclusion. Otherwise, the general principles regarding jurisdiction are as follows. Courts in Cyprus have jurisdiction to hear and try civil cases when a writ of summons or other originating process is served on a defendant, as prescribed by the Civil Procedure Rules, or when a defendant submits to the jurisdiction of the court. The service of a writ of summons or other originating process serves two purposes – to notify the defendant that a civil action has been commenced against him or her, and to inform the defendant that the court asserts jurisdiction to try the issue.

If the defendant resides outside the jurisdiction of the court, the leave of the court must be obtained before a writ or a notice of a writ of summons or other originating process can be served. According to the Civil Procedure Rules, service of a writ of summons or notice of a writ of summons outside the jurisdiction will be allowed by the court if any of the following circumstances apply:

- the entire subject matter of the action is immovable property of any kind situated in Cyprus;
- any act, deed, will, contract, obligation, or liability affecting immovable property in Cyprus is sought to be construed, rectified, set aside, or enforced in the action;
- any relief is sought against any person domiciled or ordinarily resident in Cyprus;
- the action is for the administration of the movable property of any deceased person who at the time of death was domiciled in Cyprus, or for the execution (as regards property situated in Cyprus) of the trusts of any written instrument, of which the person to be served is a trustee, which ought to be executed according to the law of Cyprus;
- the action relates to a contract made in Cyprus or made by or through an agent trading or residing in Cyprus on behalf of a principal trading or residing abroad;
- the action relates to a breach of a contract, wherever made, committed in Cyprus, even though such breach was preceded or accompanied by a breach outside Cyprus that rendered the performance of the part of the contract that ought to have been performed in Cyprus impossible;
- the action is founded on a civil wrong committed in Cyprus;
- an injunction is sought to carry out any action in Cyprus, or to prevent or remove any nuisance in Cyprus, regardless of whether damages are sought; or
- any person outside Cyprus is a necessary or proper party to an action properly brought against another person duly served in Cyprus.

An order allowing service of a writ of summons or notice of a writ of summons outside the jurisdiction may direct that it should be served by registered mail, by hand through a local bailiff or lawyer, or by the method prescribed by any bilateral agreement that exists between Cyprus and the country where the defendant resides. For counterparties in the EU, Regulation (EC) 1393/2007 on the service and notification of judicial and extrajudicial documents in civil and commercial matters will determine the procedure.

According to common law, an overseas litigant is deemed to have submitted to the jurisdiction when:

- there is an express agreement in a particular transaction that the jurisdiction will adjudicate disputes;
- the defendant appears in the proceedings;
- the defendant instructs a lawyer to accept service on his or her behalf;
- interim relief is sought solely with the intention to contest the merits of the proceedings, and a counterclaim is brought in the action; or
- a foreign plaintiff begins an action in the jurisdiction.

Cyprus applies the doctrine of *forum non conveniens*. The burden of proof lies with the party trying to invoke the application of the doctrine to show that not only is Cyprus an inappropriate forum, but that there exists another forum that is clearly more appropriate than Cyprus. As a general rule, if the parties have expressly agreed that disputes will be referred to arbitration or to a particular tribunal or be determined according to the law of a particular country, the court will insist on the parties honouring their agreements unless strong and convincing reasons have been put forward in favour of displacing this presumption.

### **International arbitration**

International arbitration proceedings are governed by the Law on International Commercial Arbitration of 1987, Law 101 of 1987 (“the ICA Law”). There is a separate law governing domestic arbitration. The ICA Law reproduces the provisions of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration of 1985, with the only difference being that the ICA explicitly defines the word “commercial”. It limits the involvement of the domestic courts in arbitral proceedings to a small number of specified circumstances, including the setting aside of an arbitral award in exceptional cases and the recognition and enforcement of foreign arbitral awards.

If a party commences court proceedings regarding an issue covered by an arbitration agreement the ICA Law requires the court to refer the matter to arbitration at the request of the other party, unless it finds that the agreement in question is null and void, inoperative or incapable of being enforced. However, if both parties submit to the jurisdiction of the court, then the court will hear the case despite the existence of an arbitration agreement.

Under the ICA Law, unless the parties agree otherwise, arbitral tribunals are entitled to issue such interim relief, in the form of interim measures of protection, as they consider necessary in respect of the subject-matter of the dispute. In addition, article 9 of the ICA Law empowers a national court to issue interim measures of protection before or during the arbitration proceedings at the request of a party, and courts do issue interim injunctions in aid of arbitration proceedings provided that the relevant requirements and conditions are satisfied and the facts of the case justify the issuing of an injunction.

Cyprus has signed and ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards by means of the Law on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1979, Law 84 of 1979. The courts apply the Convention only to the recognition and enforcement of awards made in the territory of another contracting State, and only with regard to differences arising out of legal relationships, whether contractual or not, that are considered commercial under the national law.

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## Mediation and ADR

Mediation and other ADR procedures have been little-used in Cyprus until recently, but several ADR centres have now been established, principally the Euro-Mediterranean Alternative Dispute Resolution Centre (EMADRC), the Cyprus Arbitration and Mediation Centre (CAMC) and the Cyprus Eurasia Dispute Resolution and Arbitration Centre (CEDRAC). Each of these centres has its own code of conduct and set of rules. In addition, ICC arbitration is offered through the local branch of the ICC in Cyprus, the Cyprus Chamber of Commerce and Industry.

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