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Chapter 28

Cyprus

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1 Arbitration Agreements

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

The principal laws regulating arbitration proceedings in Cyprus are the Arbitration Law, Cap 4, and the Law on International Commercial Arbitration of 1987, Law 101 of 1987 ("the ICA Law").

Both laws require an arbitration agreement to be in writing (*article 2(1) of Cap 4* and *article 7 of the ICA Law*). Under the ICA Law, an agreement is deemed to be in writing if it is contained in a document signed by the parties, or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other. An arbitration agreement may take the form of a separate agreement, or an arbitration clause incorporated into a contract or another document referred to in a written contract.

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

The only formal requirement is that the arbitration agreement should adequately demonstrate the parties' intention to submit all or any present or future differences or disputes to arbitration. It is, however, advisable and customary to include details regarding the procedure to be followed in the arbitration, such as the number and powers of the arbitrators, the procedure for their appointment and the venue and language of the arbitration.

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

Courts in Cyprus are generally supportive of the use of arbitration and other alternative dispute resolution methods. If a civil action has been filed in relation to a matter which is covered by an arbitration agreement, the court is obliged under article 8(1) of ICA Law, on the request of any party before the delivery of any pleadings or the taking of any steps in the proceedings, to stay the proceedings and refer the dispute to arbitration. Under article 8 of Cap. 4, the court may stay proceedings if it is satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement.

2 Governing Legislation

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

The enforcement of arbitration proceedings in Cyprus is governed by the provisions of Cap 4 (which relates to domestic arbitrations), the ICA Law (which relates to international commercial arbitrations), and the Law on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1979, Law 84 of 1979, which transposed the provisions of the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards into national legislation.

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

No, domestic arbitration proceedings are governed by Cap 4 and international commercial arbitrations are governed by the ICA Law.

Article 2(2) of the ICA Law defines an international arbitration as one in which:

- at the time of conclusion of the arbitration agreement, the parties to the agreement have their place of business in different countries;
- the place of arbitration, if determined in, or pursuant to, the arbitration agreement, or the place of performance of a substantial part of the obligations deriving from the commercial relation which forms the basis of the dispute or the place with which the subject matter of the dispute is most closely connected, is situated outside the country in which the parties have their place of business; or
- the subject matter of the dispute has been expressly agreed by the parties to relate to more than one country.

The ICA Law reproduces the provisions of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration of 1985, and limits the intervention of national 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 an foreign arbitral award. Cap 4 allows for more extensive intervention by national courts.

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

Yes, the ICA Law reproduces the UNCITRAL Model Law, with the only difference being that the national legislation explicitly defines the word "commercial".

2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in Cyprus?

There are a number of mandatory rules dealing with issues such as the power of the court to stay legal proceedings, challenges to arbitral awards and recognition and enforcement of arbitral awards.

3 Jurisdiction

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

Criminal matters, matrimonial disputes, and disputes with public policy implications cannot be settled by arbitration.

Cap 4 does not contain any specific definition of matters that may not be referred to arbitration, but it gives the court discretion to order that an arbitration agreement will cease to have effect when a dispute arises between the parties which involves the question of whether any such party has been guilty of fraud.

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

Article 16 of the ICA Law empowers arbitral tribunals to rule on their own jurisdiction and to examine any objections raised as to the existence or validity of the arbitration agreement. There is no similar provision in Cap 4.

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

Under Cap 4, a court before which an action has been brought in relation to an issue that is covered by an arbitration agreement may make an order staying the court proceedings, if it is satisfied that there is no sufficient reason why the matter should not be referred in accordance with the arbitration agreement and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all things necessary to the proper conduct of the arbitration.

Under the ICA Law, at the request of a party against whom legal proceedings are brought, the court is required to stay the proceedings and refer the matter to arbitration, unless it finds that the agreement in question is null and void, inoperative or incapable of being enforced.

However, in either case, if both parties submit to the jurisdiction of the court, then the court will hear the case despite the existence of an arbitration agreement.

3.4 Under what circumstances can a court address the issue of the jurisdiction and competence of the national arbitral tribunal? What is the standard of review in respect of a tribunal's decision as to its own jurisdiction?

Articles 13 and 14 of Cap 4 empower the court, on the application of any party to a reference to arbitration, to remove an arbitrator who fails to use all reasonable dispatch in entering on and proceeding with the referral and making an award, and to appoint a replacement.

Article 16(3) of the ICA Law provides that if, in response to a plea from any party made no later than the submission of the statement of defence that the arbitral tribunal does not have jurisdiction, the tribunal rules, as a preliminary question, that it does indeed have jurisdiction, any party may apply to the court to decide the matter of jurisdiction. The application must be made within 30 days of the initial ruling by the tribunal. Such a decision will not be subject to appeal, but the arbitral tribunal may continue the arbitration proceedings and make an award pending the court's final determination on the matter.

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

There is no power for an arbitral tribunal to assume jurisdiction over natural or legal persons who are not parties to the arbitration agreement, except in cases of administration of a deceased's estate or the appointment of a trustee in bankruptcy over the estate of a party, unless the third party wishes to be included in the arbitration and all other parties to the arbitration agree to include the third party in the proceedings.

Usually, third parties may only be summoned to appear before a tribunal for the purposes of testifying or producing documents. Third parties cannot be compelled to produce any documents which they would not be compelled to produce at trial.

3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in Cyprus and what is the typical length of such periods? Do the national courts of Cyprus consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?

Article 24 of Cap 4 and article 21(3) of the ICA Law provide that the limitation provisions applicable to legal proceedings also apply to arbitration proceedings. Law 66(I) of 2012 sets out the limitation periods for various classes of claims. For claims arising from contracts, the limitation period is generally six years.

Any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred to arbitration until an award is made under the agreement, will be disregarded for the purposes of the law regarding limitation periods, and a cause of action will be deemed to have accrued at the time when it would have accrued, but for that term in the agreement.

The limitation period constitutes a procedural defence and this is confirmed by the relevant Cyprus case law and Law 66(I) of 2012 which provides that the court cannot, on its own motion, take into account the limitation period (article 20), and within the context of an action, the limitation period can be pleaded by any party.

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3.7 What is the effect in Cyprus of pending insolvency proceedings affecting one or more of the parties to ongoing arbitration proceedings?

Article 5(1) of Cap 4 provides that an arbitration agreement contained in an agreement to which a bankrupt is a party will be enforceable by or against the trustee in bankruptcy if the trustee adopts the overall agreement. In addition, if the provisions of article 5(1) do not apply, the trustee in bankruptcy or any other party to the agreement may apply to the court for an order directing that any disputed matter covered by the agreement should be referred to arbitration in accordance with the arbitration agreement.

4 Choice of Law Rules

4.1 How is the law applicable to the substance of a dispute determined?

As a general principle, arbitration tribunals should determine any dispute in accordance with the rules of law chosen by the parties as applicable to the substance of the dispute. If the parties to the arbitration agreement have not made any choice, the tribunal should apply the law determined by the conflict of law rules which it considers applicable.

4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?

While Regulation (EC) No 593/2008 on the law applicable to contractual obligations (particularly article 9(3)) refers to the applicability of overriding mandatory provisions, article 1(e) of the Regulation expressly excludes from its scope arbitration agreements and agreements on the choice of court.

4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?

There are no specific choice of law rules governing the formation, validity and legality of arbitration agreements, and the usual factors such as the express choice of the parties and the existence of a close and real connection with a specific jurisdiction will determine the choice of law.

5 Selection of Arbitral Tribunal

5.1 Are there any limits to the parties' autonomy to select arbitrators?

Neither Cap 4 nor the ICA Law places any limit on the parties' freedom to select arbitrators.

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

Article 10 of Cap 4 provides for a default procedure in cases where the parties' chosen method for selecting arbitrators fails. In particular, where:

(a) the arbitration agreement provides for a reference to a single arbitrator and the parties do not concur in the appointment of an arbitrator;

(b) an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be filled, and the parties do not fill the vacancy;

(c) the parties are at liberty to appoint an umpire or third arbitrator and do not appoint him; or

(d) an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the arbitration agreement does not show that it was intended that the vacancy should not be filled, and the parties do not fill the vacancy,

and no appointment is made within seven clear days after the service of a written notice to appoint an arbitrator, umpire or third arbitrator by any party, the court may, on the application by the party who gave the notice, appoint an arbitrator, umpire or third arbitrator with the same powers as if he had been appointed with the consent of all parties.

Article 11(3)(a) of the ICA Law provides that if the agreement stipulates that three arbitrations should be appointed and the parties fail to do so, then each party appoints one arbitrator, and the two arbitrators appointed by the parties select a third arbitrator. Article 11(3)(b) of the ICA Law provides that if the agreement is to appoint one arbitrator and the parties fail to do so, the arbitrator is appointed by the court following an application by any of the parties to the arbitration agreement.

5.3 Can a court intervene in the selection of arbitrators? If so, how?

Article 13 of Cap 4 provides that the court may, on the application by any party to a reference, remove an arbitrator or umpire who fails to use all reasonable dispatch in entering on and proceeding with the reference and making an award.

Article 14 of Cap 4 empowers the court, on the application of any party, to appoint a replacement for an arbitrator whose appointment has been revoked or who has been removed by the court on the grounds of misconduct or failure to act with due despatch.

Under article 11 of Cap 4, if the agreement provides for two arbitrators and one of them ceases to act, the party who appointed him may appoint a replacement. If no appointment is made, the remaining arbitrator may be appointed as sole arbitrator. In either case the court has the power to set aside the appointment.

Article 10 of the ICA Law expressly specifies that the method for appointing arbitrators and the number of arbitrators to decide the dispute is a matter for the parties. The court will become involved in the process of choosing arbitrators only as a last resort, for example, if the parties fail to appoint arbitrators and do not agree on a mechanism for choosing their arbitrators or to apply the default procedure provided for by section 11(3) (namely that each party appoints one arbitrator, and the two arbitrators appointed by the parties select a third arbitrator).

Article 12 of the ICA Law, which reproduces article 10 of the UNCITRAL Model Law, provides a mechanism for challenging and potentially replacing an arbitrator if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence, or for reasons of which the arbitrator becomes aware after the appointment has been made. Article 13 gives the parties the power to agree on the procedure for challenging an arbitrator. It also allows the court to assist in determining an arbitrator's impartiality and independence. In such a case, the court's decision will be binding and no review or appeal to a higher court is permitted.

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Article 14 of the ICA Law provides that an arbitrator's mandate may be terminated if he becomes *de jure* or *de facto* unable to perform his functions, or fails to act without undue delay for other reasons. The arbitrator's mandate may be terminated if this is the case, if he withdraws from his office or if the parties agree on the termination. If, however, controversy remains concerning any of these grounds, any party may request the court to decide on the termination of the mandate, which decision shall be subject to no appeal.

5.4 What are the requirements (if any) as to arbitrator independence, neutrality and/or impartiality and for disclosure of potential conflicts of interest for arbitrators imposed by law or issued by arbitration institutions within Cyprus?

Cap 4 does not contain any express requirements as to the independence, neutrality or impartiality of an arbitrator, but article 9(1) of Cap 4 provides that a party may apply to the court, on the ground that the arbitrator named or designated is not or may not be impartial, for leave to revoke the arbitration agreement, or for an injunction to restrain any other party or the arbitrator from proceeding with the arbitration.

Article 12 of the ICA Law reproduces the disclosure requirement of the UNCITRAL Model Law and requires any person who is approached in connection with his possible appointment as arbitrator to disclose any circumstances which are likely to give rise to justifiable doubts as to his impartiality or independence. Once appointed, arbitrators are under a similar obligation throughout the proceedings. The ICA Law expressly provides that an arbitrator may be challenged if circumstances exist that give rise to justifiable doubts as to his impartiality or independence, and also requires a court or other authority appointing an arbitrator to have due regard to any qualifications required of an arbitrator by the agreement of the parties and to considerations of independence and impartiality.

6 Procedural Rules

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

There are no detailed rules governing the procedure of arbitration and the parties are free to agree on the procedure to be followed. In the absence of such an agreement, the arbitral tribunal may conduct the proceedings in the manner it deems appropriate.

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

No, there are no particular procedural steps required by law.

6.3 Are there any particular rules that govern the conduct of counsel from Cyprus in arbitral proceedings sited in Cyprus? If so: (i) do those same rules also govern the conduct of counsel from Cyprus in arbitral proceedings sited elsewhere; and (ii) do those same rules also govern the conduct of counsel from countries other than Cyprus in arbitral proceedings sited in Cyprus?

The ICA Law requires all parties to be treated with equality throughout the proceedings and to be given a full opportunity to present their case, but leaves the parties free to determine the detailed conduct of the proceedings.

Similarly, Cap 4 does not prescribe any detailed procedural rules.

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

An arbitrator or umpire acting under an arbitration agreement has a number of powers that are incidental to the power to make an award, including the power to administer oaths or take the affirmations of the parties and witnesses appearing in the proceedings, to appoint expert witnesses, and to request the production of documents for inspection.

In domestic arbitrations, Cap 4 requires arbitrators to conduct the arbitration and issue an award with all due diligence and expedition. Article 27 of Cap 4 also gives an arbitrator power to apply to the court to resolve any legal issue that arises during the arbitration.

6.5 Are there rules restricting the appearance of lawyers from other jurisdictions in legal matters in Cyprus and, if so, is it clear that such restrictions do not apply to arbitration proceedings sited in Cyprus?

The Advocates Law, Cap 2, allows lawyers residing in other EU member states, and who meet the requisite conditions, to offer their services in Cyprus on the same footing as a local lawyer.

The ICA Law makes clear that the parties are free to agree on the conduct of the proceedings, and imposes no restrictions on appearance.

6.6 To what extent are there laws or rules in Cyprus providing for arbitrator immunity?

There are no laws or rules relating to arbitrator immunity.

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

Cap 4 provides that domestic courts have jurisdiction to deal with a number of procedural issues listed in the second schedule, including the securing of the attendance of witnesses, the taking and preservation of evidence, the granting of interim relief or the appointment of a receiver, and the determination of preliminary points of law.

The ICA Law leaves matters of procedure to be agreed between the parties. The courts may intervene only where the ICA Law expressly permits their involvement (for example, as to replace an arbitrator to assist in taking evidence at the request of the arbitral tribunal).

7 Preliminary Relief and Interim Measures

7.1 Is an arbitrator in Cyprus permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitrator seek the assistance of a court to do so?

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, and do not require the assistance of the court for this purpose.

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

Article 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. Similarly, article 26 of Cap 4 empowers the court to make a number of orders in the context, and in support, of arbitration proceedings; for example relating to the taking and preservation of evidence, the granting of security for costs, the discovery of documents and interrogatories, and the issuance of interim relief.

These do not affect the jurisdiction of the arbitral tribunal and its power to issue any order with regard to any of these matters.

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

In practice, 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 issuance of an injunction.

7.4 Under what circumstances will a national court of Cyprus issue an anti-suit injunction in aid of an arbitration?

Although this has not been tested in the Cyprus courts, ECJ case law effectively makes it impossible for courts to issue anti-suit injunctions to restrain proceedings in another EU Member State. However, courts in Cyprus are still prepared to issue anti-suit injunctions relating to proceedings outside the EU on the same basis as they have always done.

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

Yes, both national courts and arbitral tribunals may order the granting of security for costs.

8 Evidentiary Matters

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

The ICA Law gives the arbitral tribunal freedom to determine the admissibility, relevance, materiality and weight of any evidence, as well as the time, manner and form in which such evidence is to be exchanged and produced by the parties before it, unless the parties expressly agree otherwise. Furthermore, the ICA Law provides that the arbitral tribunal or a party with the approval of the arbitral tribunal may request assistance from the court in taking evidence.

In domestic arbitration proceedings, article 30 of Cap 4 provides that in the absence of any other applicable rules, the current Civil Procedure Rules apply, *mutatis mutandis*, to domestic arbitration proceedings. Additionally, article 26 empowers the court to make orders in respect of the matters set out in the Second Schedule of Cap 4, including the giving of evidence by affidavit and authorising any samples to be taken or any observation to be made, or experiment to be carried out, which may be necessary or expedient for the purpose of obtaining full information or evidence.

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

In general, and unless the parties expressly agree otherwise, an arbitrator may order the disclosure of any documents which are deemed to be relevant to the subject-matter of the dispute between the parties. Of course, these powers do not extend to third parties. A party to an arbitration agreement may apply to the court for the issue of a summons requiring any person to attend for examination or to produce any document.

In contrast, a court could order such third-party disclosure as long as the third party concerned could be also compelled to disclose the relevant documents in the context of a trial of a civil action.

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

Please see the answers to questions 8.1 and 8.2 above.

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

Under the provisions of Cap 4, an arbitrator in domestic arbitration proceedings has the power to administer oaths to or take the affirmation of the parties and witnesses appearing in the proceedings.

The ICA Law gives the parties maximum freedom regarding the proceedings. Hearings can be either oral or document-based, subject to agreement between the parties. Unless the parties have agreed that no hearings should be held, the tribunal must hold hearings at an appropriate stage of proceedings, if so requested by a party (*ICA Law, article 24(1)*). There is no detailed prescription and it is up to the parties to agree on the procedure. If the parties fail to agree, the arbitral tribunal may conduct the arbitration in the manner it considers appropriate. This discretion includes the power to determine the admissibility, relevance, materiality and weight of any evidence (*ICA Law, article 19*). Further to this, article 27 provides that the arbitral tribunal, or a party with the approval of the arbitral tribunal, may request assistance from the court in taking evidence. The court may execute the request within its competence and according to its rules on taking evidence. As far as concerns expert evidence, article 26 empowers the arbitral tribunal, unless otherwise agreed by the parties, to appoint experts to report on specific issues and to require a party to provide the expert with any relevant information or to produce or provide access to any relevant documents, goods or other property for his inspection. Section 26 further provides that, unless otherwise agreed by the parties, an expert may participate in a hearing after having delivered his oral or written report so that the parties may put questions to him and produce expert witnesses in order to testify on the points at issue, if a party requests this or the arbitral tribunal considers it necessary.

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8.5 What is the scope of the privilege rules under the law of Cyprus? For example, do all communications with outside counsel and/or in-house counsel attract privilege? In what circumstances is privilege deemed to have been waived?

All dealings and communications between advocates and their clients, whether in the context of legal proceedings or at a discovery process, are privileged. Communications between an advocate and a third person are also privileged as long as they take place predominantly in the context of pending or anticipated proceedings.

Legal professional privilege is only waived with the express or implied consent of a party, since once a document has been produced by a party, it is generally required to be disclosed both to the other party and the tribunal.

9 Making an Award

9.1 What, if any, are the legal requirements of an arbitral award? For example, is there any requirement under the law of Cyprus that the Award contain reasons or that the arbitrators sign every page?

Under the ICA Law, unless the parties agree otherwise, the award should be in writing, signed by the tribunal, contain the reasons for the award (unless the parties have agreed to dispense with the reasons) and state the seat of the arbitration and the date of its issuance.

10 Challenge of an Award

10.1 On what bases, if any, are parties entitled to challenge an arbitral award made in Cyprus?

Article 34 of the ICA Law sets out an exhaustive list of grounds on which a court may set aside an arbitral award, as follows:

(a) where a party proves that:

- a party to the arbitration agreement was incapacitated, or the agreement was not valid under the law to which the parties subjected it to or, in the absence of any agreement thereon, under the laws of Cyprus;
- it was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was unable to present its case;
- the award deals with a dispute not contemplated by, or not falling within, the terms of the submission to arbitration, or contains decisions beyond the scope of the arbitration; or
- the composition of the tribunal or the procedure of arbitration was in breach of the agreement of the parties or of the Law; or

(b) where the court finds that:

- the subject-matter of the dispute is not capable of settlement by arbitration under the laws of Cyprus; or
- the award is in conflict with the public policy of the Republic of Cyprus.

An application must be made within three months from the date on which the party making it received the award.

In addition, under article 20 of Cap 4, an award may be set aside by the court where an arbitrator or umpire has misconducted himself or the proceedings, or an arbitration or award has been improperly procured.

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

There is no local precedent to give guidance on this issue.

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

The grounds set out in article 34 of the ICA Law are exhaustive.

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

Please refer to the answer to question 10.1 above.

11 Enforcement of an Award

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

Yes, Cyprus has ratified the New York Convention by means of the Law on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1979, Law 84 of 1979.

Cyprus applies 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.

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

Cyprus has also ratified the Washington Convention of 1965, and has signed the Convention on Conciliation and Arbitration within the Conference on Security and Cooperation in Europe of 1992.

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

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

Similarly, under the provisions of the ICA Law, an arbitral award will be recognised as binding and enforceable in Cyprus upon a written application to the court accompanied by the duly authenticated original award or a duly certified copy, together with the arbitration agreement, unless any of the reasons for non-recognition set out in article 36 of the ICA Law (which reproduces article 5 of the New York Convention) apply. When considering applications for recognition and enforcement of an arbitral award, the courts will have regard to Law 84 of 1979 and to Law 121(1) of 2000 on the Recognition and Enforcement pursuant to a Convention on Judgments of Foreign Courts.

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An arbitral award issued in a contracting state of the New York Convention will be duly recognised as binding and enforced in Cyprus following the procedure described in Article IV of the Convention.

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

A final and binding award issued in the context of arbitral proceedings, which is not challenged and set aside as explained in question 10.1 above, precludes the commencement of civil proceedings in relation to the same dispute or claim.

11.5 What is the standard for refusing enforcement of an arbitral award on the grounds of public policy?

A national court may refuse to recognise and enforce an arbitral award if it considers that this would be contrary to public policy. The scope and definition of the term 'public policy' were subject to judicial interpretation by the Supreme Court in the case of the ***Republic of Kenya v Bank fur Arbeit und Wirtschaft AG (1999) 1(A) C.L.R. 585***. In this case the claimant sought to invoke the public policy exception as the basis for annulling an ICC award before the district court of Larnaca on the ground that the arbitral tribunal's treatment of its counterclaim as withdrawn was contrary to Cyprus public order. The Supreme Court held that the district court's ruling did not offend the public order of Cyprus and that the provision of section 6 of the International Arbitration Law was clear in providing that the courts can intervene only in the limited circumstances that the law defines. The Supreme Court emphasised the decisive role played by Article V. 1(a) to (e) of the New York Convention as providing the only reasons under which an application for recognition and enforcement of an award may be refused.

12 Confidentiality

12.1 Are arbitral proceedings sited in Cyprus confidential? In what circumstances, if any, are proceedings not protected by confidentiality? What, if any, law governs confidentiality?

Neither Cap 4 nor the ICA Law contain any provisions regarding confidentiality of the proceedings, and the parties are free to determine this issue as they wish.

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

Such information could be disclosed in other proceedings, either on the basis of the express consent of the parties, or if the court deems such disclosure to be essential and appropriate in the interests of justice or for public policy reasons.

13 Remedies / Interests / Costs

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

There is no limitation on available remedies.

13.2 What, if any, interest is available, and how is the rate of interest determined?

Article 22 of Cap 4 provides that a sum directed to be paid by an award shall, unless the award otherwise directs, carry interest as from the date of the award and at the same rate as a judgment debt.

The ICA Law is silent on the matter.

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

Under Cap 4, any provision in an arbitration agreement as to the costs of the reference or award is void, and the costs of the reference and award are at the discretion of the arbitrators. If the award does not deal with the costs of the reference, any party may (within 14 days of the publication of the award or such further time as a court may direct) apply to the arbitrator for an order directing by and to whom such costs shall be paid.

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

According to the First Schedule of Cap 4, an award may be subject to tax at the arbitrator's or umpire's discretion.

13.5 Are there any restrictions on third parties, including lawyers, funding claims under the law of Cyprus? Are contingency fees legal under the law of Cyprus? Are there any "professional" funders active in the market, either for litigation or arbitration?

Contingency fees are not permitted in Cyprus. Third party funding is permissible, but rarely encountered. Funding of claims is generally provided by the parties to the proceedings, and any orders as to costs will be made for or against a party to the proceedings.

14 Investor State Arbitrations

14.1 Has Cyprus signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (otherwise known as "ICSID")?

Yes, Cyprus signed and ratified ICSID in 1966.

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14.2 How many Bilateral Investment Treaties (BITs) or other multi-party investment treaties (such as the Energy Charter Treaty) is Cyprus party to?

Cyprus has concluded bilateral investment treaties with 23 countries, including China, Greece, Israel, Qatar, Syria and the United States. These guarantee protection of investments carried out by a national of one contracting state in another contracting state and provide regulations for settling any disputes that may arise from them. It is also a signatory to the Energy Charter Treaty.

14.3 Does Cyprus have any noteworthy language that it uses in its investment treaties (for example in relation to "most favoured nation" or exhaustion of local remedies provisions)? If so, what is the intended significance of that language?

The term 'investment' is defined broadly to comprise every kind of asset connected with direct or indirect participation in companies, associations and joint ventures, whether the participation is taken in cash, in kind or in services.

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

National courts will generally recognise and enforce arbitral awards issued against another state and will only exceptionally entertain a defence of state immunity.

15 General

15.1 Are there noteworthy trends in or current issues affecting the use of arbitration in Cyprus (such as pending or proposed legislation)? Are there any trends regarding the type of disputes commonly being referred to arbitration?

There has been an ongoing effort to encourage the use of arbitration instead of the more time-consuming and expensive method of litigation. The most common type of disputes referred to arbitration are construction and banking disputes.

15.2 What, if any, recent steps have institutions in Cyprus taken to address current issues in arbitration (such as time and costs)?

A number of alternative dispute resolution centres have recently been established in Cyprus, namely 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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