

Dispute Resolution

in 47 jurisdictions worldwide

Contributing editor: Simon Bushell

2012



Published by

Getting the Deal Through
in association with:

Achour & Hájek
 Anderson Mōri & Tomotsune
 Andreas Neocleous & Co LLC
 Araújo e Policastro Advogados
 Attorneys-at-law Juridia Ltd
 Bharucha & Partners
 Biedecki
 Bonelli Erede Pappalardo Studio Legale
 Bredin Prat
 Cariola Diez Pérez-Cotapos
 Charles Adams Ritchie & Duckworth
 Condon & Forsyth LLP
 ELIG Attorneys-at-Law
 EnGarde Attorneys at Law
 Frank Advokatbyrå AB
 Fulbright & Jaworski LLP
 Gan Partnership
 Gilbert + Tobin
 GSK Stockmann + Kollegen
 Habib Al Mulla & Company
 Herbert Smith LLP
 Hoet Peláez Castillo & Duque
 Ivanyan & Partners
 Jenner & Block LLP
 Jun He Law Offices
 Kleyr Grasso Associés
 Liedekerke Wolters Waelbroeck Kirkpatrick
 Lund Elmer Sandager
 MacRobertson
 Miller, Canfield, Paddock and Stone PLC
 Moravčević Vojnović Zdravković in cooperation with Schönherr
 Motieka & Audzevičius
 MS Consultores
 Nagy és Trócsányi Ügyvédi Iroda
 Niederer Kraft & Frey AG
 Odvetnik Šelih & partnerji, o.p., d.o.o.
 Polenak Law Firm
 Preti Flaherty Beliveau & Pachios LLP
 Richards Layton & Finger PA
 SCA Bulboaca & Asociații
 Shin & Kim
 Sofunde, Osakwe, Ogundipe & Belgore
 Specht Böhm
 Tilleke & Gibbins
 Werksmans Attorneys
 Wiesner & Asociados Abogados
 Woods LLP

Dispute Resolution 2012

Contributing editor
Simon Bushell
Herbert Smith LLP

Business development managers
Alan Lee
George Ingledew
Robyn Hetherington
Dan White

Marketing managers
Ellie Notley
Alice Hazard

Marketing assistants
William Bentley
Zosia Demkowicz

Subscriptions manager
Rachel Nurse
Subscriptions@
GettingTheDealThrough.com

Assistant editor
Adam Myers

Editorial assistant
Lydia Gerges

Senior production editor
Jonathan Cowie

Chief subeditor
Jonathan Allen

Production editor
John Harris

Subeditors
Davet Hyland
Caroline Rawson

Editor-in-chief
Callum Campbell

Publisher
Richard Davey

Dispute Resolution 2012
Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910
© Law Business Research Ltd
2012
No photocopying: copyright
licences do not apply.
First published 2003
Tenth edition 2012
ISSN 1741-0630

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of June 2012, be advised that this is a developing area.

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

Law
Business
Research

Introduction Simon Bushell <i>Herbert Smith LLP</i>	3
Australia Steven Glass and Airlie Goodman <i>Gilbert + Tobin</i>	4
Austria Erhard Böhm and Paul Proksch <i>Specht Böhm</i>	11
Belgium Joe Sepulchre, Hakim Boularbah and Charlotte Marquet <i>Liedekerke Wolters Waelbroeck Kirkpatrick</i>	17
Brazil Sylvio Fernando Paes de Barros Jr and Alexandre Lins Morato <i>Araújo e Policastro Advogados</i>	27
Canada – Quebec James A Woods, Christopher L Richter and Marie-Louise Delisle <i>Woods LLP</i>	32
Cayman Islands Graham F Ritchie QC and David W Collier <i>Charles Adams Ritchie & Duckworth</i>	37
Chile Florencio Bernales and Raimundo Moreno <i>Cariola Diez Pérez-Cotapos</i>	43
China Honghuan Liu and Xi Zhou <i>Jun He Law Offices</i>	48
Colombia Dario Cadena Lleras and Eduardo A Wiesner <i>Wiesner & Asociados Abogados</i>	54
Cyprus Panayiotis Neocleous and Costas Stamatiou <i>Andreas Neocleous & Co LLC</i>	60
Czech Republic Daniel Hájek <i>Achour & Hájek</i>	66
Denmark Morten Schwartz Nielsen and David Frølich <i>Lund Elmer Sandager</i>	72
Dominican Republic Enmanuel Montás and Yanna Montás <i>MS Consultores</i>	78
England & Wales Simon Bushell <i>Herbert Smith LLP</i>	83
Finland Martina Kronström <i>Attorneys-at-law Juridia Ltd</i>	90
France Tim Portwood <i>Bredin Prat</i>	95
Germany Karl von Hase <i>GSK Stockmann + Kollegen</i>	103
Hungary Zoltán Csehi Nagy és Trócsányi Ügyvédi Iroda	110
India Vivek Vashi and Kanika Sharma <i>Bharucha & Partners</i>	117
Italy Vittorio Allavena, Paolo Di Giovanni and Monica Iacoviello <i>Bonelli Erede Pappalardo Studio Legale</i>	124
Japan Tetsuro Motoyoshi and Akira Tanaka <i>Anderson Mōri & Tomotsune</i>	131
Korea Benjamin Hughes and Seungmin Lee <i>Shin & Kim</i>	136
Lithuania Ramūnas Audzevičius, Tomas Samulevičius and Rimantas Daujotas <i>Motieka & Audzevicius</i>	142
Luxembourg Marc Kleyr <i>Kleyr Grasso Associés</i>	149
Macedonia Tatjana Popovski Buloski and Aleksandar Dimic <i>Polenak Law Firm</i>	156
Malaysia Foo Joon Liang <i>Gan Partnership</i>	162
Nigeria Babajide O Ogundipe and Lateef O Akangbe <i>Sofunde, Osakwe, Ogundipe & Belgore</i>	170
Poland Anna Herman <i>Biedecki</i>	175
Romania Valentin Bera and Diana Teodorescu <i>SCA Bulboaca & Asociatii</i>	181
Russia Sergey Chuprygin <i>Ivanyan & Partners</i>	187
Scotland Julie Hamilton and Susan Hill <i>MacRoberts LLP</i>	195
Serbia Matija Vojnović and Nataša Lalatović <i>Moravčević Vojnović Zdravković in cooperation with Schönherr</i>	201
Slovenia Gregor Simoniti and Luka Grasselli <i>Odvetniki Šelih & partnerji, o.p., d.o.o.</i>	208
South Africa Des Williams <i>Werksmans Attorneys</i>	217
Sweden Marcus Axelryd and Helena Dandenell <i>Frank Advokatbyrå AB</i>	223
Switzerland Ernst F Schmid <i>Niederer Kraft & Frey AG</i>	229
Thailand Thawat Damsa-ard and Noppramart Thammateeradaycho <i>Tilleke & Gibbins</i>	235
Turkey Gönenç Gürkaynak and Ayşin Obruk <i>ELIG Attorneys-at-Law</i>	241
Ukraine Irina Nazarova and Dmytro Donenko <i>EnGarde Attorneys at Law</i>	247
United Arab Emirates Habib Al Mulla and Gordon Blanke <i>Habib Al Mulla & Company</i>	254
United States – California Scott D Cunningham and Natasha N Mikha <i>Condon & Forsyth LLP</i>	261
United States – Delaware Samuel A Nolen, Robert W Whetzel and Chad M Shandler <i>Richards Layton & Finger PA</i>	267
United States – Illinois Lawrence S Schaner <i>Jenner & Block LLP</i>	273
United States – Maine Gregory P Hansel <i>Preti Flaherty Beliveau & Pachios LLP</i>	279
United States – Michigan Frederick A Acomb and Mary K Griffith <i>Miller, Canfield, Paddock and Stone PLC</i>	285
United States – Texas William D Wood, Kevin O’Gorman and Lance R Bremer <i>Fulbright & Jaworski LLP</i>	291
Venezuela Carlos Dominguez <i>Hoet Peláez Castillo & Duque</i>	299

Cyprus

Panayiotis Neocleous and Costas Stamatou

Andreas Neocleous & Co LLC

Litigation

1 Court system

What is the structure of the civil court system?

The Supreme Court of Cyprus is the final appellate court, with jurisdiction to hear and determine appeals in civil and criminal cases from the other courts. The Supreme Court further has jurisdiction to act as the Supreme Constitutional Court, as the Admiralty Court and as the Administrative Court. Moreover, it has exclusive jurisdiction to issue the prerogative orders of certiorari, habeas corpus, mandamus, prohibition and quo warranto. The Supreme Court of Cyprus consists of 13 members, one of whom is its president.

Each of the five districts of Cyprus (Nicosia, Limassol, Larnaca, Paphos and Famagusta) has a district court which acts as first-instance court in criminal and civil proceedings. Pursuant to the Courts of Justice Law, district courts have first-instance jurisdiction to hear and decide any action whose cause arose partly or wholly in the area where the court is situated or an action in which the defendant or any one of the defendants resides or works in the area where the court is situated. First-instance proceedings are determined by a single judge. A district court may hear any matter which does not come under the jurisdiction of one of the specialist courts described in the following paragraphs.

The assize court has unlimited jurisdiction to hear and determine at first instance any criminal case. In practice only criminal cases where the sentence provided by law for the offence in question exceeds five years' imprisonment are brought before the assize court. Lesser offences are tried by the district courts. At present there are four assize courts, based in Nicosia, Limassol, Larnaca and Paphos. Each is composed of three judges, one of whom will be a district court president. There is no jury.

There are three family courts, based in Nicosia, Limassol and Larnaca, and a family court for religious groups, based in Nicosia. The family courts have exclusive jurisdiction to determine petitions for divorce, custody of children, maintenance and property disputes between spouses where the parties are members of the Greek Orthodox Church. If the parties belong to one of the other religious groups, jurisdiction is vested in the family court for religious groups. Cases are heard and determined by a single judge, except divorce petitions, which are heard and determined by a court composed of three judges.

There are three rent control courts, which have jurisdiction to determine matters regarding recovery of possession of controlled rented property and the determination of fair rent, as well as any other incidental matter. Each comprises a president, who is a member of the judiciary, and two lay members. The lay members have a purely consultative role.

There are also three industrial disputes tribunals, based in Nicosia, Larnaca and Limassol, with exclusive jurisdiction to determine matters arising from the termination of employment such as the payment of compensation (except where the amount claimed exceeds

the equivalent of two years' salary, in which case jurisdiction is vested in the district court), payment in lieu of notice, compensation arising out of redundancy and any other claim for any payment arising out of the contract of employment. Additionally, the industrial disputes tribunal has jurisdiction to determine any claim arising out of the application of the Protection of Motherhood Law, cases of unequal treatment or sexual harassment in the workplace and disputes between provident funds and their members. Each comprises a president, who is a member of the judiciary, and two lay members appointed on the recommendation of the employers' and employees' unions. The lay members have a purely consultative role.

The military court has jurisdiction to try offences committed by military personnel in contravention of the Criminal Code, the Military Criminal Code or any other law, irrespective of the sentence provided. If the accused has the rank of colonel or above the military court is constituted in the same manner as an assize court. The court comprises a president, who is a member of the judiciary, plus two army officers who are appointed by the Supreme Council of Judicature. The army officers have a purely consultative role.

2 Judges and juries

What is the role of the judge and the jury in civil proceedings?

Cyprus follows the adversarial trial system. Judges generally have a passive role. Jury trials are not applicable in Cyprus.

3 Limitation issues

What are the time limits for bringing civil claims?

When Cyprus became independent in 1960 it retained the colonial-era Limitation of Actions Law, Cap 15, which prescribed the time limits within which claims must be brought before a court. However, the Limitation of Actions Law was suspended in 1964 following inter-communal disturbances and has remained suspended ever since.

A new law, Law 66(I) of 2012, with respect to the limitation periods of actionable rights, is due to enter into force on 1 July 2012.

Article 3 of the law provides that the limitation period in respect of a claim commences from the day of completion of the basis of the claim (defined in article 2 as all events that give rise to an actionable right concerning a claim) and article 4 stipulates that, unless otherwise provided in the law or any other law, no proceedings may be issued after 10 years have elapsed from that date.

Secured loans

Article 5 provides that for loans secured by a mortgage, charge or pledge the limitation period is 12 years.

Civil wrongs

Article 6 prescribes a general limitation period of six years for civil wrongs. However, the limitation period for claims for damages for

negligence, nuisance or breach of a statutory duty is set at three years by article 6(2). Article 6(3) allows the court discretion to disapply the limitation provisions in the case of civil wrongs leading to bodily harm or death. In making its decision the court is required to consider the length of the delay in issuing proceedings and the reasons for it, the duration of any inability on the part of the claimant to handle the case, the steps taken by the claimant to safeguard any relevant evidence, as well as the stance of the defendant in relation to the application and the consequences of the delay in relation to the preservation and the reliability of the evidence. The court cannot exercise its discretion to disapply the limitation period once two years have elapsed from the expiry of the prescribed limitation period.

Article 6(4) provides for a limitation period of one year in the case of proceedings for defamation or malicious falsehood.

Contracts

Article 7 sets 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).

Succession

Article 9 provides that 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).

Specific exceptions

Article 12 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 and 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.

4 Pre-action behaviour

Are there any pre-action considerations the parties should take into account?

EC Directive 52/2008 on mediation in civil and commercial matters encourages the court before which an action is undertaken to invite the parties to use mediation to settle the dispute. Cyprus has not yet enacted legislation to transpose the directive into national law.

5 Starting proceedings

How are civil proceedings commenced?

Civil proceedings are initiated by the filing of a writ of summons or an originating summons depending on the nature of the claim.

6 Timetable

What is the typical procedure and timetable for a civil claim?

A typical civil procedure commences with the filing of a generally endorsed writ of summons (specifying the requested remedies) or a specifically endorsed writ of summons (including both the statement of claim and the requested remedies) which must be served on the defendants.

Assuming the defendant is within the jurisdiction, he is required to enter his appearance within 10 days from the date on which the writ of summons was served on him. Where 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 10 days from the defendant filing an appearance.

In the case of a specially endorsed writ of summons, the defendant must file and deliver a defence or a defence and counterclaim within 14 days from the filing of an appearance. In the case of a generally endorsed writ of summons, the defence or the defence and counterclaim must be filed and delivered within 14 days from the filing of the statement of claim. The claimant may file a reply to the defendant's defence or a reply and defence to the defendant's defence and counterclaim.

Various interlocutory applications may be filed by the parties including applications for the discovery and inspection of documents prior to the trial. Such applications may be opposed, in which case a hearing will be conducted so that the court may determine whether to issue the requested orders or not.

The main trial allows each side to present its witnesses, who may be cross-examined by the other side. Once all testimony is complete the parties will be invited to present their final submissions to the court in support of their arguments. On the conclusion of the hearing the court normally reserves judgment, which is issued some weeks or months later.

7 Case management

Can the parties control the procedure and the timetable?

The parties do not control the timetable but may indirectly influence it taking into consideration the various interlocutory applications that they may potentially elect to file. Delay and tardiness on the part of a party may, depending on the nature of the proceedings, be taken into consideration by the judge in deciding whether to approve a relevant application.

8 Evidence – documents

Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

Pursuant to the Civil Procedure Rules, any party may apply to the court for an order directing any other party to any cause or matter to make discovery on oath of the documents which are or have been in his possession or power relating to any matter in question therein. On the hearing of such application the court may make an order for discovery, specifying the time allowed for the party directed to make discovery to file his affidavit; or refuse an order if it is satisfied that discovery is unnecessary (or not necessary at that stage of the cause or matter); or may limit the scope of documents to be disclosed.

9 Evidence – privilege

Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

The following are privileged:

- confidential documents;
- self-incriminating documents; and
- documents covered by legal professional privilege.

Legal professional privilege covers communications between a lawyer and his client for the purpose of giving or obtaining legal advice and communications and exchanges of documents between the client and a third party for the purposes of giving or obtaining legal advice, or in relation to litigation. It extends to foreign but not in-house lawyers.

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). Lawyers must keep confidential any information or document in their knowledge or possession that has been acquired in the course of their professional activity.

The Prevention and Suppression of Money Laundering and Terrorist Financing Law of 2007 restricts the categories of communications for which legal professional privilege may be claimed.

10 Evidence – pretrial

Do parties exchange written evidence from witnesses and experts prior to trial?

The parties do not normally exchange evidence unless they intend to adopt written statements as part of the examination-in-chief of a witness and the court directs that such statements are given to the other side prior to the hearing. Expert reports may be exchanged prior to trial. The experts will generally appear in court to give evidence and be cross-examined on the content of their reports.

11 Evidence – trial

How is evidence presented at trial? Do witnesses and experts give oral evidence?

All civil trials are held in open court. Witnesses normally give oral evidence. The process starts with the examination-in-chief of the witness by the lawyers of the party that has summoned the witness. The witness may then be cross-examined by the lawyers of the other side. Finally the lawyer of the party that has summoned the witness may re-examine him.

Following the entry into force of Law 32(I) of 2004, hearsay evidence is no longer excluded from any procedure before the court simply because it is hearsay and any witness in any proceedings may adopt the content of his written statement. In such cases, the witness's written statement is deposited in court and is deemed to be the witness's examination-in-chief, but the witness remains subject to cross-examination in relation to his written statement. The credibility of hearsay evidence depends on the court's discretion.

Experts will generally appear in court to give evidence and be cross-examined on the contents of their reports.

12 Interim remedies

What interim remedies are available?

Section 32(1) of the Courts of Justice Law (Law 14/1960) empowers the courts to grant injunctions, which may be interlocutory, perpetual or mandatory, in all cases in which it appears to the court just or convenient so to do. A wide range of interim remedies is available including freezing orders, Norwich Pharmacal disclosure orders, Anton Piller search orders, orders for the appointment of a receiver and, in Admiralty proceedings, ship arrests.

Injunctive relief is discretionary in nature and each application is examined on its own facts. Before issuing an interlocutory injunction the court must be satisfied that there is a serious question to be tried at the hearing, that there is a probability that the plaintiff is entitled to relief and that it will be difficult or impossible to do complete justice at a later stage unless an interlocutory injunction is granted. Cyprus courts have jurisdiction to issue injunctive relief with worldwide effect as well as injunctive relief in support of international arbitration proceedings and foreign legal proceedings.

13 Remedies

What substantive remedies are available?

The following are the principal civil remedies under Cyprus law:

- damages are awarded to compensate for losses suffered;
- restitution is a common law principle which provides remedies in respect of unjust enrichment and money had and received;
- specific performance is a discretionary remedy which is granted only if damages are an inadequate remedy; and
- injunctive relief is a discretionary remedy which is extremely useful for tracing and recovering assets.

14 Enforcement

What means of enforcement are available?

The following enforcement measures are available:

- bankruptcy or liquidation proceedings;
- writ of execution for the sale of moveables;
- garnishee proceedings;
- writ of sequestration;
- registration of a charging order over the immovable property of the judgment debtor or over his chattels;
- writ of possession of the land ordered to be delivered to the judgment creditor;
- writ of delivery of the goods ordered to be delivered to the judgment creditor; and
- committal for breach of an order or undertaking.

Disregard or breach of a court order may lead to criminal proceedings, arrest and seizure of assets.

15 Public access

Are court hearings held in public? Are court documents available to the public?

Court hearings are held in public. However, only the parties to the proceedings may have access to the court files.

16 Costs

Does the court have power to order costs?

Courts have power to award costs, which are normally assessed on the basis of the applicable court scales, depending on the value of the dispute. In general, costs are awarded in favour of the winning party but there may be deviations from this principle. Claimants may be required to provide security for costs only if they are domiciled outside the EU and do not have sufficient assets within the jurisdiction to satisfy any order that may be made against them to pay the defendant's costs.

17 Funding arrangements

Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

'No win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, are prohibited. Whether a party will initiate proceedings using third-party funding is a private matter between the party (not its lawyer) and the third party. However, depending on their terms, such agreements may not be valid under Cyprus law. Cyprus, like many other Commonwealth countries, is averse to champertous arrangements.

18 Insurance

Is insurance available to cover all or part of a party's legal costs?

'Before the event' insurance cover for legal costs as an ancillary feature of household or motor insurance policies is not uncommon and is accepted. There is no 'after the event' insurance market and any such arrangement could well fall foul of the strict prohibitions against contingency fee arrangements.

19 Class action

May litigants with similar claims bring a form of collective redress?
In what circumstances is this permitted?

The Civil Procedure Rules provide that where several persons have the same interest in one cause or matter, one or more of them may be authorised by the court to pursue or defend an action on behalf or for the benefit of all interested persons. In order for such an order to be 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. 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.

20 Appeal

On what grounds and in what circumstances can the parties appeal?
Is there a right of further appeal?

A party who is dissatisfied with a judgment or order of a court may appeal against the whole or any part of the judgment or order by filing a notice of appeal. This must state all the grounds of appeal and set forth fully the reasons relied upon for the grounds stated. The time limit for filing an appeal against a final judgment is six weeks. Notice of an appeal against an interim order must be filed within 14 days of the order.

21 Foreign judgments

What procedures exist for recognition and enforcement of foreign judgments?

The recognition and enforcement of foreign decisions may be accomplished under EU regulations, local statutes or through a common law action.

Cyprus has entered into bilateral treaties relating to the recognition and enforcement of foreign judgments with several countries, including China and Russia, and is a signatory to various multilateral conventions relating to the recognition and enforcement of foreign judgments, including:

- the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters 1971 and Supplementary Protocol thereto;
- the European Convention on the Recognition and Enforcement of Decisions concerning Custody of Children and/or Restoration of Custody of Children 1980; and
- the European Convention on the Recognition and Enforcement of Certain International Aspects of Bankruptcy 1990.

Pursuant to EC Regulation 44/2001, no special procedure is required for the recognition of a judgment given in an EU member state. In Cyprus, a mere application according to the relevant local procedure will suffice. Recognition should be refused only in the situations listed within the regulation. EC Regulation 805/2004 provides an 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 common law rules will normally apply to the recognition of judgments which originate in countries with which Cyprus has no relevant bilateral or multilateral treaties. A person seeking to enforce a foreign judgment in Cyprus at common law must bring an action on the foreign judgment provided the said judgment is final and conclusive. The action is filed on a specially endorsed writ which enables the claimant to apply for summary judgment against the debtor under the Civil Procedure Rules on the ground that the latter has no real prospect of successfully defending the claim.

22 Foreign proceedings

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

This matter is not regulated by the Civil Procedure Rules but may be regulated by specific bilateral treaties. At EU level the matter is regulated by EC Regulation 1206/2001, which is directly applicable in Cyprus and provides for two ways of taking of evidence between member states, namely, direct transmission of requests between the courts and the direct taking of evidence by the court requesting it.

Arbitration**23 UNCITRAL Model Law**

Is the arbitration law based on the UNCITRAL Model Law?

The International Commercial Arbitration Law of 1987 regulates international commercial arbitration in Cyprus in accordance with the UNCITRAL Model Law, following the example of many other, mostly European, countries. It respects and maintains all the essential provisions of the UNCITRAL Model Law, from which it deviates only in terms of the format of the introductory articles, due to respect for the common pattern of laws in Cyprus, and in setting a limitation period.

24 Arbitration agreements

What are the formal requirements for an enforceable arbitration agreement?

The Arbitration Law, Cap 4, defines the arbitration agreement as 'contract' which is defined as 'a written agreement to submit present or future disputes to arbitration, whether the arbitrator is named therein or not'. The International Commercial Arbitration Law of 1987 defines an 'arbitration agreement' as 'an agreement to submit to arbitration all or some disputes, present or future deriving out of a defined legal relationship, contractual or not'.

Both laws require the agreement to arbitrate to be in writing.

25 Choice of arbitrator

If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

A local arbitration under the Arbitration Law will be conducted by a sole arbitrator if the composition of the arbitral tribunal is not specified in the arbitration agreement.

In international commercial arbitrations under the International Commercial Arbitration Law of 1987 the arbitration will be conducted by three arbitrators. The International Commercial Arbitration Law of 1987 provides that the parties have the power to agree the procedure to be followed in the arbitration. It furthermore provides that the parties are free to agree the process of appointment of the arbitrators and prescribes default rules in the event that they do not.

26 Arbitral procedure

Does the domestic law contain substantive requirements for the procedure to be followed?

As noted above, the International Commercial Arbitration Law of 1987 provides that the parties have the power to agree the procedure to be followed in the arbitration. In the event that specific procedural rules have not been contractually agreed, the arbitration process is procedurally regulated by the Civil Procedure Rules adjusted to the necessary degree to arbitration proceedings.

27 Court intervention

On what grounds can the court intervene during an arbitration?

The general approach of the courts is to respect arbitration agreements and arbitration proceedings.

The Arbitration Law provides for the court to intervene in a local arbitration to resolve disputes over the appointment of arbitrators and to remove arbitrators in the event of partiality or misconduct on their part. The court may also revoke any arbitration agreement involving fraud on the part of one of the parties. In addition, the second schedule of the Arbitration Law gives the court power to take steps to facilitate arbitration, including the issuance of injunctive relief, appointment of a receiver, security for costs, discovery orders, preservation of assets that constitute the subject matter of the arbitration, orders relating to the examination of a witness before the court or the issuance of an order or request for the examination of a witness outside the jurisdiction.

28 Interim relief

Do arbitrators have powers to grant interim relief?

The powers of the arbitrators as regards the parties depend on the arbitration rules that the parties have agreed. Section 26 of the Arbitration Law empowers the courts to take steps to facilitate arbitration, including the issuance of injunctive relief, appointment of a receiver, security for costs, discovery orders, preservation of assets that constitute the subject matter of the arbitration, orders relating to the examination of a witness before the court or the issuance of an order or request for the examination of a witness outside the jurisdiction.

29 Award

When and in what form must the award be delivered?

The award must be in writing and signed by the arbitrator or arbitrators. Arbitrators may be removed by the court if they fail to advance the process and issue their award with the appropriate speed. The court has power under section 18 of the Arbitration Law to extend the time of delivery of an award.

30 Appeal

On what grounds can an award be appealed to the court?

Under the Arbitration Law, the court may remove an arbitrator or cancel an arbitration award in instances of misconduct by the arbitrator or where the arbitration process was conducted irregularly or the arbitration award was irregularly issued. The judgment of the first-instance court may be appealed to the Supreme Court.

A party who is dissatisfied with an award in an arbitration under the International Commercial Arbitration Law of 1987 may apply to the court within three months of receiving the award. The grounds for appeal are limited to invalidity of the arbitration agreement, incapacity of a party, failure to be given proper notice of the arbitration, that the award was beyond the scope of the arbitration or defects in the composition of the arbitral panel. The court may also set the award aside if it finds that it is contrary to public policy.

31 Enforcement

What procedures exist for enforcement of foreign and domestic awards?

A local arbitration award can be enforced by registration as a court judgment, commenced by an application by summons filed by the creditor. The debtor may oppose the application on the grounds that the award was invalid. Once the award is registered it is equivalent to a court judgment and can be executed in the same way.

As regards international arbitration awards, Cyprus is bound to enforce awards made in foreign states that are signatories to the New York Convention of 1958. A creditor seeking to enforce a foreign arbitral award in Cyprus may request the relevant district court to recognise and enforce the award. To do this the creditor will file an application by summons.

The application must be served on the debtor and supported by an affidavit together with the documents specified in article IV of the New York Convention, namely the authenticated original award and the original agreement (or duly certified copies) and duly certified translations of both these documents into Greek.

32 Costs

Can a successful party recover its costs?

In the event that the arbitration award does not deal with the matter of costs, any party may apply to the arbitrator to determine the question.



Panayiotis Neocleous, Costas Stamatou

info@neocleous.com

Neocleous House
195 Makarios III Avenue
PO Box 50613
Limassol, CY 3608
Cyprus

Tel: +357 25 110 000
Fax: +357 25 110 001
www.neocleous.com

Alternative dispute resolution

33 Types of ADR

What types of ADR process are commonly used? Is a particular ADR process popular?

Arbitration proceedings are the most popular form of ADR, particularly in the real estate and shipping sectors. Other forms of ADR are still in the developmental stages and rarely encountered. Mediation should become more widely used when Directive 2008/52/EC is transposed into national law.

34 Requirements for ADR

Is there a requirement for the parties to litigation or arbitration to consider ADR before or during proceedings? Can the court or tribunal compel the parties to participate in an ADR process?

At present there is no such requirement. Cyprus failed to transpose Directive 2008/52/EC, which promotes mediation, by the deadline of 24 May 2011 and the European Commission has instituted enforcement proceedings.

Update and trends

At some stage Cyprus will have to take steps to transpose Directive 2008/52/EC into national law, but it is not clear when this will happen.

Miscellaneous

35 Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

There is considerable enthusiasm for mediation within the legal profession and a number of independent ADR facilities have recently been established. The Mediterranean Maritime Arbitration Association transferred its seat to Cyprus during 2011.

GETTING THE DEAL THROUGH

Annual volumes published on:

Air Transport	Licensing
Anti-Corruption Regulation	Life Sciences
Arbitration	Merger Control
Banking Regulation	Mergers & Acquisitions
Cartel Regulation	Mining
Climate Regulation	Oil Regulation
Construction	Patents
Copyright	Pharmaceutical Antitrust
Corporate Governance	Private Antitrust Litigation
Corporate Immigration	Private Equity
Dispute Resolution	Product Liability
Dominance	Product Recall
e-Commerce	Project Finance
Electricity Regulation	Public Procurement
Enforcement of Foreign Judgments	Real Estate
Environment	Restructuring & Insolvency
Foreign Investment Review	Right of Publicity
Franchise	Securities Finance
Gas Regulation	Shipbuilding
Insurance & Reinsurance	Shipping
Intellectual Property & Antitrust	Tax on Inbound Investment
Labour & Employment	Telecoms and Media
	Trademarks
	Vertical Agreements



**For more information or to
purchase books, please visit:**
www.gettingthedealthrough.com



Strategic research partners of
the ABA International section



THE QUEEN'S AWARDS
FOR ENTERPRISE:
2012



The Official Research Partner of
the International Bar Association