



Litigation & Dispute Resolution

First Edition

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CONTENTS

Preface	Michael Madden, <i>Winston & Strawn London</i>	
Australia	Martin Garrett & Matthew Eglezos, <i>Freehills</i>	1
Belgium	Koen Van den Broeck & Thales Mertens, <i>Allen & Overy LLP</i>	14
Bermuda	Kiernan Bell & Martin Ouwehand, <i>Appleby (Bermuda) Ltd.</i>	19
BVI	Andrew Willins, <i>Appleby</i>	26
Bulgaria	Assen Georgiev, <i>CMS Cameron McKenna LLP - Bulgaria Branch</i>	37
Cayman Islands	Tony Heaver-Wren & Shaun Tracey, <i>Appleby (Cayman) Ltd.</i>	44
China	Hongji Li & Jie Ma, <i>Commerce & Finance Law Offices</i>	59
Costa Rica	Róger Guevara & Abraham Balzer, <i>Batalla Abogados</i>	64
Cyprus	Nicos G. Papaefstathiou & Maria Papaefstathiou, <i>Tassos Papadopoulos & Associates LLC</i>	68
Ecuador	Jorge Sicouret Lynch, César Sánchez Icaza & Gabriela Lecaro Malnati, <i>Coronel & Pérez</i>	76
England & Wales	Michael Madden & Bryn Dodson, <i>Winston & Strawn London</i>	85
Estonia	Pirkka-Marja Pöldvere, <i>Aivar Piltv Law Office</i>	100
France	Denis Chemla & Erwan Poisson, <i>Allen & Overy LLP</i>	110
Germany	Jörg Staudenmayer & Judith Walz, <i>CBM International Lawyers LLP</i>	120
Guernsey	Jeremy Le Tissier & Adam Cole, <i>Appleby</i>	127
Hong Kong	Giovanna Kwong, <i>SJ Berwin LLP</i>	133
India	M. Dhyan Chinnappa & M.V. Sundararaman, <i>CrestLaw Partners</i>	141
Indonesia	Kartini Muljadi, <i>Kartini Muljadi & Rekan</i>	148
Isle of Man	Chris Cope, Elizabeth Simpson & Gillian Duffy, <i>Appleby (IOM) LLC</i>	157
Italy	Ferdinando Emanuele & Milo Molfa, <i>Cleary Gottlieb Steen & Hamilton LLP</i>	170
Japan	Yoshio Otani, Junya Naito & Tsuyoshi Suzuki, <i>Momo-o, Matsuo & Namba</i>	180
Jersey	Fraser Robertson & Davida Blackmore, <i>Appleby</i>	189
Malaysia	Tiang Joo Su, <i>Cheah Teh & Su</i>	199
Mexico	Miguel Angel Hernandez Romo Valencia & Miguel Angel Hernandez Romo, <i>Bufete Hernandez Romo</i>	209
Netherlands	Marius Josephus Jitta & Damiën F. Berkhout, <i>Stibbe</i>	215
Nigeria	Kolawole Mayomi & Debo Ogunmuyiwa, <i>SPA Ajibade & Co.</i>	224
Spain	Álvaro López de Argumedo & Juliana de Ureña, <i>Uría Menéndez</i>	235
Switzerland	Balz Gross, Claudio Bazzani & Julian Schwaller, <i>Homburger</i>	243
Turkey	Gönenç Gürkaynak, İlay Yılmaz & Gözde Kitapçı, <i>ELIG Attorneys at Law</i>	252
Ukraine	Andrey Astapov, Oleh Beketov & Oleksiy Zorin, <i>AstapovLawyers International Law Group</i>	260
USA	Kapil Longani & Gunjan Sharma, <i>Skadden, Arps, Slate, Meagher & Flom LLP</i>	270

Cyprus

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Introduction

Disputes in Cyprus are mainly resolved in litigation proceedings by the courts. Arbitration and other forms of alternative dispute resolution ('ADR') are increasingly used, but are still uncommon.

The Republic of Cyprus was established in 1960, when Cyprus gained independence from the United Kingdom. The Republic of Cyprus is a member of the United Nations, the British Commonwealth, the Council of Europe and the European Union (since 1 May 2004). In Cyprus, the principle of the separation of powers is observed, with the judiciary being totally independent from the other branches of government. Related to this principle is the guarantee that any party is entitled to have his or her matter heard by an independent and impartial court. The Constitution of Cyprus fully protects human rights and fundamental freedoms, which are set out in the Articles of the Constitution. In Cyprus, the European Convention on Human Rights and Fundamental Freedoms is observed as a matter of superior municipal law.

There are two tiers of courts in the Cyprus legal system. For civil cases, the courts of first instance are the district courts. For each administrative district there is one district court made up of one or more presidents, senior district judges and district judges, as decided by the Supreme Court. The competence of each level of judge is determined by the amount in dispute. Cases dealing with more than €500,000 are within the jurisdiction of a district court president. The trial judge determines all issues of law, as well as of fact. The second-tier court, or appellate court, is the Supreme Court of Cyprus and has 13 members, including its president. An appellate division of the Supreme Court in civil matters consists of three judges (except in special cases where a case, because of its importance, may be heard by an enlarged Bench). Every judgment of a district court exercising civil jurisdiction is subject to appeal to the Supreme Court. In civil and criminal appeals the judges of the Supreme Court sit in panels of three or more. The scope of an appeal to the Supreme Court is set out in Section 25(3) of the Courts of Justice Law 1960 (Law 14/60, as amended).

There are also courts with special jurisdiction such as family law courts, rent control courts, industrial disputes courts and military courts. These specialist courts try the matter at first instance and appeals are tried by the Supreme Court.

Furthermore, being a member of the Council of Europe and of the European Union, the Republic of Cyprus is subject to the jurisdiction of the European Court of Human Rights and of the European Court of Justice as well as, of course, the Court of First Instance and decisions of the European Commission.

i Substantive law:

The Constitution is the supreme law of the Republic and has superior force over any other law. Apart from the Constitution, the following laws are applicable in the Republic of Cyprus (see Section 29 of the Courts of Justice Law of 1960 (Law 14/60, as amended)):

- (a) the laws made under the Constitution; this principally refers to legislation enacted following 1960;
- (b) the laws saved under Article 188 of the Constitution subject to the conditions provided therein, except insofar as other provision has been or shall be made by a law made or becoming applicable

under the Constitution; this provision preserves certain colonial legislation dating from before independence;

- (c) the common law and the doctrines of equity, except insofar as other provisions have been or shall be made by any law made or becoming applicable under the Constitution or any law saved under point (b), *supra*, insofar as they are not inconsistent with, or contrary to, the Constitution;
- (d) the Acts of Parliament of the United Kingdom of Great Britain and Northern Ireland that were applicable to Cyprus immediately before Independence Day (i.e., 16 August 1960), except insofar as other provisions have been or shall be made by any law made or becoming applicable under the Constitution and insofar as they are not inconsistent with, or contrary to, the Constitution; and
- (e) following the accession of the Republic of Cyprus as a full Member State of the European Union, the Constitution was amended to reflect the principle of supremacy of European Law whereby any directives, regulations decisions and instructions issued by the relevant European bodies, such as the European Commission or other relevant European Union administrative bodies, supersede the application and interpretation of Cypriot legislation, including the Constitution and none of the existing constitutional terms can be used in a manner so as to prevent the enforcement of any such European Union directive, regulation, decision or instruction.

ii Private law:

The Republic of Cyprus is essentially a common law jurisdiction and, though quite a few areas of substantive law have been codified or have been set out in unified legislative enactments, the courts of Cyprus still apply common law principles, as well as principles of equity (as the terms are understood in the United Kingdom and as these principles are developed by English and Commonwealth judicial authorities and precedents), except where there is specific legislation on the matter in issue or where different case law has been developed on the point by the Cyprus courts. The doctrine of precedent, as used in the United Kingdom and in English jurisprudence, also applies.

iii Contract and tort:

The Law of Cyprus on the subject of contracts is set out in Chapter 149, the Contract Law and on the subject of civil wrongs (torts) in Chapter 148, the Civil Wrongs Law. These enactments are essentially a codification of common law. It is noteworthy that Section 2(1) of both laws provides as follows: ‘This Law shall be interpreted in accordance with the principles of legal interpretation obtaining in England, and expressions used in it shall be presumed, so far as is consistent with their context, and except as may be otherwise expressly provided, to be used with the meaning attaching to them in English law and shall be construed in accordance therewith.’

Although the judgments of English courts on matters of contract and civil wrongs (torts) after the independence of the Republic of Cyprus are not binding on the courts of the Republic, they are regarded as persuasive authority and are generally cited and followed in the judgments of Cypriot courts, including those of the Supreme Court.

iv Equity – law of trusts:

A trust is the creature of equity. The rules of English law relating to trusts, being part of the doctrines of equity, are part of Cyprus law by virtue of Section 29 of the Courts of Justice Law of 1960. The courts of Cyprus apply principles of equity, unless it is otherwise expressly provided by statute.

v Practice and procedure:

The courts of the Republic of Cyprus follow rules of practice and procedure adopted for the specific type of court. District courts follow the Civil Procedure Rules of Cyprus (Chapter 12, Subsidiary legislation), as modified from time-to-time.

The Civil Procedure Rules were introduced during the Colonial Administration (in 1938). They were, in substance, almost identical with the English Rules of Court and were in the English language. These same rules continue to be in force now with only very minor amendments. They have not been translated into any of the official languages of the Republic of Cyprus and thus continue to be in force in English.

It is important to point out that rights to a fair trial are enshrined in, and protected by, the Constitution of the Republic of Cyprus, as well as by the European Convention previously referred to.

Proceedings before Cyprus courts must be conducted in one of the official languages of the Republic, namely Greek or Turkish. Though English is widely used in Cyprus, it is not one of the official languages and therefore judicial proceedings cannot be conducted in English. This does not mean, however, that documents in English cannot be produced before, or accepted by, a court in Cyprus, since, by virtue of Law 154/90, documents, including *affidavits*, in a foreign language, are admissible as evidence, though if a party's attorney requests it, a document or any part thereof should be translated into one of the official languages of the Republic. In practice, documents in the English language are routinely put before the courts of Cyprus and accepted as evidence.

As regards oral testimony before the Cyprus courts, there are highly competent translators who translate from any language into Greek and the reverse. Every day, trials are conducted before Cyprus courts between foreign litigants or a foreign and a local litigant, with the said persons speaking and testifying in their language, using the services of an instantaneous translator.

vi Procedure and evidence:

As stated, *supra* procedures before Cyprus courts are very similar to those in use in England before 1960. There are procedures for discovery, particulars and interim relief (such as freezing and interlocutory orders). Witnesses in Cyprus can be compelled to attend court and testify. Witnesses who refuse to attend court and testify if so directed will be punished by the court for contempt. Once called as a witness, a person is compelled to testify and can refuse to do so only on very exceptional grounds of privilege, such as legal privilege or the privilege against self-incrimination.

Cyprus courts have numerous devices for compelling the attendance of unwilling witnesses. Broadly speaking, the Cyprus Law of Evidence (which in itself is based on the common law, though it has been set out in a number of legislative enactments) recognises the distinction between competent and compellable witnesses. Any person within the Republic, who is summoned to give evidence or to produce a document in his or her possession or power, must attend the court at the specified time and place. If he or she fails and does not excuse his or her failure to the satisfaction of the court, a warrant may compel his or her attendance and he or she shall also be liable to imprisonment, or to a fine, or both (Sections 48 and 49 of the Courts of Justice Law of 1960 (Law no. 14/60, as amended)).

Efficiency/integrity

The courts in Cyprus are efficient in their workings, but because of the heavy workload, they tend to be slow in setting cases for hearing and delivering judgment. This statement is true to the extent that a case involves a civil matter (e.g., damages following a civil wrong), whereas criminal or company related matters are normally dealt with in a short time. There are procedures that may be initiated where the case should be resolved as a matter of urgency but these are used in exceptional circumstances. The fact that other methods of dispute resolution (such as arbitration) are not commonly used means that litigation is the standard means of dispute resolution in Cyprus. This in turn leads to an overload of cases being taken to courts whereas these could be dealt with in a much quicker and less expensive manner out of courts.

However, it is important to stress that the courts in Cyprus are integral and unbiased in their workings. There have not been any problems with biased or prejudiced judges, nor has there ever been a claim about the impartiality of a judge. Actually, quite the opposite is true. The principle of judicial independence is maintained seriously in Cyprus and it is even secured by the Constitution. The doctrine of the separation of powers precludes any intervention by the legislature or the executive in the administration of justice.

It should be pointed out that a person that is dissatisfied with the judgment of the court may appeal to the Supreme Court. There is a strict timeframe for lodging the appeal, and that is 42 days from the date of the judgment, or 14 days from the date of the interim judgment. A judgment of the Supreme Court may be appealed, and it will be heard in plenary session by the Supreme Court.

Enforcement of judgments/awards

There are several methods of enforcing a judgment in Cyprus. As far as domestic judgments

are concerned, these can be enforced by a writ of execution for the sale of movables, garnishee proceedings where a third party that owes money to the debtor is required to pay the money to the judgment creditor. Furthermore, the successful party can enforce the judgment by the registration of a charging order over the immoveable property of the judgment debtor or the sale of such immoveable property or a writ for the delivery of goods that orders goods to be delivered to the judgment creditor. In addition, bankruptcy or liquidation proceedings may be initiated against a judgment debtor but these are not enforcement methods in that they do not guarantee payment of the judgment debt. The procedures for bankruptcy and liquidation put pressure on the debtors to comply with the judgment.

It is possible to enforce judgments from foreign jurisdictions in Cyprus. With regard to the enforcement methods of judgments obtained abroad, if the judgment was obtained in an EU country, then it can be recognised and enforced by the Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Once a judgment is recognised by the Cyprus courts, then it is subject to the same enforcement methods as domestic judgments.

By virtue of the Council Regulation No 44/2001, an applicant must first apply with an *ex parte* application to the court to recognise the judgment of a foreign court as long as this was handed down in a court of a Member State or a contracting state to the Brussels Regulation or Lugano Convention. The recognition of the judgment is a relatively easy procedure in that the applicant needs to file a copy of the judgment, an official translation of it and a certificate of the court that issued the judgment and then the applicant has to decide on the enforcement methods.

Enforcement of a judgment (for uncontested claims only) can also be achieved through another Regulation, namely, EC Regulation 805/2004. This is a much quicker procedure but one not widely used in Cyprus yet. The Regulation allows for the creation of a European Enforcement Order (EEO) for uncontested claims, and thus permits the free circulation of judgments, court settlements and authentic instruments throughout all Member States without any intermediate proceedings needing to be brought in the Member State of enforcement prior to recognition and enforcement, provided some requirements are met.

Foreign judgments, which the EC Regulation does not apply to, are subject to more stringent requirements. In particular, the judgment must (a) have been issued by a court that has jurisdiction under the rules of private international law in Cyprus, (b) not be contrary to public policy, (c) be obtained on merit and not on procedure, (d) not be obtained by fraud, and (e) not be contrary to the rules of natural justice in Cyprus.

In addition, Cyprus is bound by a number of bilateral treaties and multilateral conventions on recognition and enforcement of judgments. The matter is governed by the Foreign Judgments (Reciprocal Enforcement) Law 1935.

Privilege and disclosure

Order 28 of the Civil Procedure Rules provides that a party to the proceedings may apply to the court for an order directing another party for discovery on oath of the documents (or to allow inspection of such documents) that are or have been in his or her possession, and which relate to the proceedings. If the party that has been ordered to make discovery or to allow inspection, fails to do so, then he or she cannot put into evidence on his or her behalf any documents that he or she failed to discover or allowed to be inspected.

What is considered as a privileged document is usually a confidential document, a self-incriminating document or documents protected by legal professional privilege. Legal professional privilege covers all communications between client and lawyer that are for the purpose of obtaining legal advice for the client, as well as communications between the lawyer and a third party for the purpose of advice to the client or in relation to litigation. This type of privilege attracts great importance from the courts, public authorities and the government. The Cyprus Bar Association included the issue of privilege in the Code of Conduct Regulations, a breach of which may lead to disciplinary proceedings against the lawyer. The existence of legal professional privilege extends to foreign lawyers who may request advice on contemplated litigation in Cyprus, or who request advice on issues of law in the Cypriot jurisdiction.

The law on legal privilege and the Code of Conduct Regulations apply only to members of the Cyprus Bar Association. An in-house lawyer will not be protected by privilege, because they will not be registered members of the Cyprus Bar Association as they do not comply with the requirements set by the Cyprus Bar Regulations.

Legal professional privilege may be waived where the Prevention and Suppression of Money-Laundering Activities Law 61(1) of 1996 applies, that is, where the lawyer is offering services susceptible to money laundering.

Under Order 28 of the Civil Procedure Rules, a party to the proceedings must produce all documents it has been ordered to produce. The question of relevance of documents is whether the documents relate to any matter at issue in the proceedings before the court.

Documents that are referred to in the pleadings or affidavits must be produced when the other side applies in writing, by notice, requiring them to produce the documents for inspection and to allow them to take copies of them. A party that fails to make these documents available for the other side cannot use them as evidence at the hearing. If a party to the proceedings claims that the documents are not in his or her possession, he or she must explain when the last time was that they were in his or her possession, and what has become of them, or who he or she believes to be their current holder.

Costs and funding

The funding of litigation is provided mainly by the parties to the proceedings and orders as to costs will usually burden the unsuccessful party to the action. There have not been any circumstances where a non-litigant would fund litigation.

The costs of litigation can be the subject of agreement between lawyer and client before the commencement of the proceedings. The agreement may be for a fixed amount, or it may be that the parties agree for the lawyer to charge in accordance to the Cyprus Bar Regulations which set the legal fees according to the amount of the claim. The court usually orders that the unsuccessful party pays for the legal fees of the successful party, but this amount may only be part of the successful party fees. In other words, nothing prevents the lawyer from charging a higher amount than what the unsuccessful party is ordered to pay.

Interim relief

An application for interim relief is usually made by summons. However, in exceptional cases an application for an interim order can be made with an *ex parte* application, but only once the claim form has been filed. There are requirements for granting an interim order where the court will ascertain whether it involves a matter of great urgency. In such case, the order will be granted by the court on the same day. The affidavit in support of the application for an interim injunction must show that the applicant has a *prima facie* case, that there is a serious matter at issue, that the applicant will most likely succeed in the claim and that without granting the injunction, it will be impossible to satisfy the judgment. The applicant must reveal to the court all material facts, and, if he does not comply with this requirement, the injunction will be lifted only on this ground. It is also important that the person seeking the injunction goes to court with ‘clean hands’, so that he cannot rely on his own inequitable conduct. In addition, the applicant must lodge a counter security to indemnify the respondent against any loss sustained as a result of the injunction.

The court may ask for an application for an interim injunction to be served on the other party for it to state its position if the court considers that the application does not involve matters of urgency. It will then ask both parties to make their submissions and then have a hearing on the issues, to decide if it will grant the injunction or not.

Courts in Cyprus may also grant a *mareva* injunction. This sort of injunction is an interim order that restrains the other party from removing his assets from the jurisdiction of the court until the trial of the matter or until further order of the court. The reason for such an order is to prevent the alienation of assets from the jurisdiction in order to prevent execution of a judgment. The courts’ power to grant a *mareva* injunction derives from Section 32 of Law no. 14/60 as explained above. It is subject to

the same requirements as general interim orders, but they may be granted less often and with onerous conditions.

Cyprus courts would refuse to grant extraterritorial *mareva* injunctions because they were considered to be outside of their jurisdiction. However, in recent years courts in Cyprus have granted a worldwide *mareva* injunction. This was the case in *Dmitry Rybolovlev Vs Elena Rybolovleva and others* (judgment of 29.01.2010), where the *mareva* injunction was lifted by the Supreme Court, not because of its extraterritorial effect, but because the affidavit that supported the application failed to reveal all material facts. This was considered to be a major change of attitude towards worldwide *mareva* injunctions.

International arbitration

International arbitration is often used in Cyprus. It is governed by the International Commercial Arbitration Law of 1987, Law no. 101/87. It involves a dispute concerning two businesses with their centres of business outside of the Republic of Cyprus, who choose to carry out the arbitration procedure in Cyprus. It is possible for this to be stipulated in an agreement between the parties. Furthermore, an international arbitration is defined as such where the parties are from more than one state, or where a substantial part of the agreement was to be performed in Cyprus. The issues to be arbitrated have to be commercial alone. The law applied in such arbitrations is determined either by agreement or as stipulated in the relevant agreement or by reference to the principles of conflict of laws of Cyprus.

Mediation and ADR

There are three main alternatives to litigation in Cyprus: arbitration; mediation; and conciliation. Negotiation is sometimes used before or during proceedings at court, particularly in cases where both sides know that they will suffer harm as the result of litigation and this is usually the case in large commercial transactions. Until the past couple of years, however, litigation was the primary means of dispute resolution in Cyprus.

Mediation is not very well known in Cyprus. There are no rules obliging the parties to refer their issues to mediation. However, there have been cases where parties have instructed a third party to identify the real issues of disagreement between the parties and to negotiate with them and offer more constructive solutions to the problem. Mediators are not regulated by a central body and there are no formal qualifications that mediators must possess to be able to practice.

Arbitration is often used in Cyprus and particularly in large building contracts. Since it is voluntary, in that the parties voluntarily stipulate in their agreements that any disputes will be resolved in arbitration, it is a highly effective and often a faster means of dispute resolution. An arbitration agreement is irrevocable in the sense that only a court order can revoke it. The Arbitration Law 1944 as amended stipulates that the winning party to the arbitration can apply to the court for an order to enforce the arbitration award as if it were a court judgment.

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 was ratified by Law 84 of 1979, and therefore applies to arbitrations in Cyprus. Arbitration is preferred as a means of dispute resolution when the matter is urgent and it can be cheaper than litigation.

Alternatively, the parties can refer the issue for expert determination. The parties select an expert in the disputed field to decide the case for them. They agree to accept the expert's opinion and if one of them fails to do so, the other can sue for breach of contract. However, expert determination differs from arbitration in that the expert's decision cannot be enforced as a court judgment.

Conclusion

In Cyprus, litigation is considered to be the most efficient and integral system of dispute resolution. The old English Civil Procedure Rules (in use before 1960) make it difficult for the courts to adapt to today's standards and developments.

The fact that it may take up to five or more years for court proceedings to be completed, the plethora of interim applications that are used in order to delay court procedures, and the old rules for service that do not accommodate for the new electronic methods, all form a system that is anachronistic and in serious need of reform.

Arbitration is increasingly considered a more popular choice within the business community of Cyprus, particularly where the disputes involve complex technical issues or foreign parties, as arbitration offers efficiency, cheaper services and is conducted in an informal way which avoids the adversarial litigation system. However, litigation remains the most common way for the resolution of disputes.

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Nicos served two terms as elected president of the Cyprus Bar Association (2000-2006). He was appointed president of the Committee for Property Statement and Control of State Officials (2004-2010). He also served as a member of the Legal Council (1994-2006), the Lawyer's Disciplinary Board (2000-2006), the National Organisation for the Protection of Human Rights (2000-2006), the Co-ordinating Body Against Corruption and the Accountants' Disciplinary Board (since 2003), as Head of the Cypriot Delegation to the Council of Bars and Law Societies of Europe (2000-2006), and as president of the Union of Balkan Bar Associations (2004-2006).

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