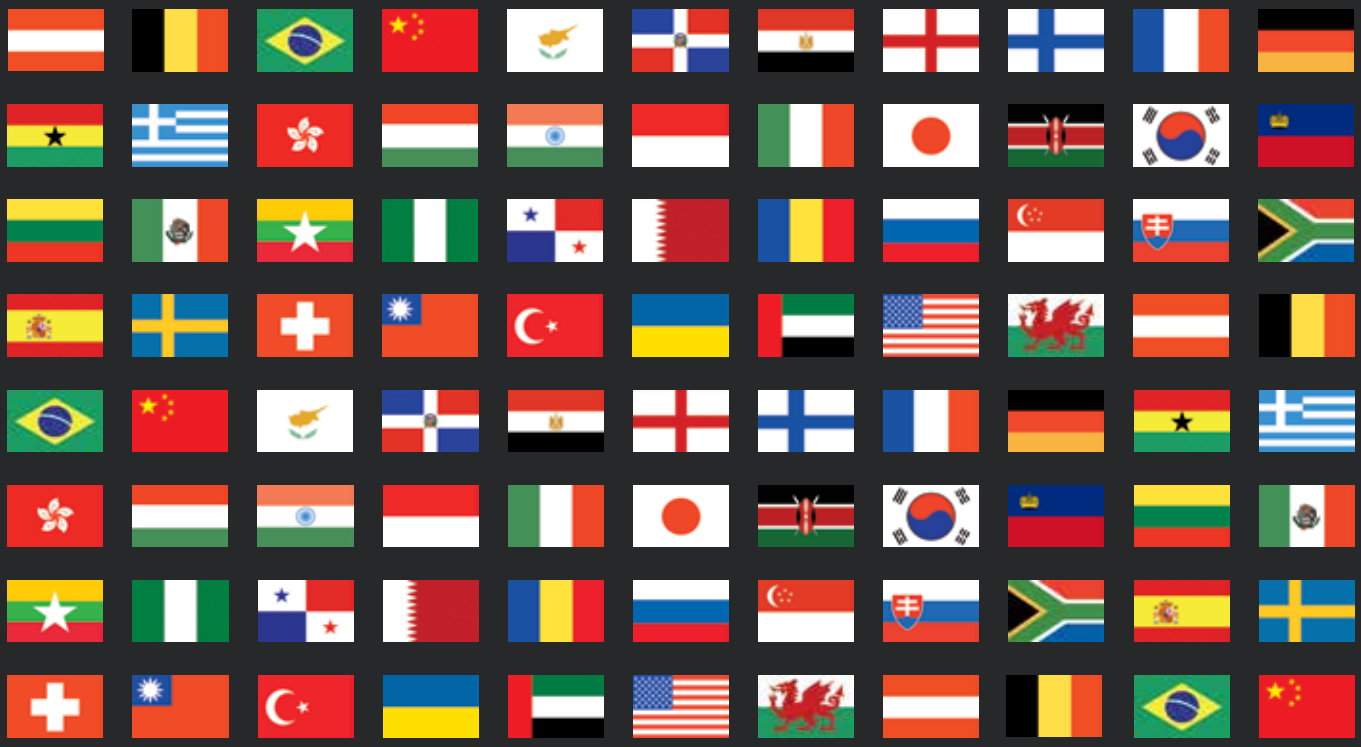
Arbitration

Contributing editors
Gerhard Wegen and Stephan Wilske



2018

GETTING THE DEAL THROUGH

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Arbitration 2018

Contributing editors

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Thirteenth edition

Getting the Deal Through is delighted to publish the thirteenth edition of *Arbitration*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Cyprus, Finland, Liechtenstein, Lithuania, Panama, Russia and South Africa.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Gerhard Wegen and Stephan Wilske of Gleiss Lutz, for their continued assistance with this volume.

GETTING THE DEAL THROUGH

London
January 2018

Cyprus

Victoria-Zoi Papagiannis and Dimitris Papapolyviou

Dr K Chrysostomides & Co LLC

Laws and institutions

1 Multilateral conventions relating to arbitration

Is your country a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Since when has the Convention been in force? Were any declarations or notifications made under articles I, X and XI of the Convention? What other multilateral conventions relating to international commercial and investment arbitration is your country a party to?

The Republic of Cyprus is a contracting state to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) since 29 December 1980. The Convention was transposed into Cypriot Law by virtue of the enactment of the Law on the Convention and Enforcement of Foreign Arbitral Awards of 1979, Law No. 84/1979 (Law No. 84/1979). The Republic of Cyprus has declared that it will apply the Convention, on the basis of reciprocity, to the recognition and enforcement of awards made only in the territory of another contracting state and only in relation to differences arising out of legal relationships, whether contractual or not, that are considered as commercial under Cypriot law. In addition, Cyprus has ratified the Washington Convention of 1965 on the Settlement of Investment Disputes between States and Nationals of Other States and signed the Convention on Conciliation and Arbitration within the Conference on Security and Cooperation in Europe of 1992.

2 Bilateral investment treaties

Do bilateral investment treaties exist with other countries?

There are 27 Bilateral Investment Treaties currently in force between Cyprus and other counties.

3 Domestic arbitration law

What are the primary domestic sources of law relating to domestic and foreign arbitral proceedings, and recognition and enforcement of awards?

Domestic arbitral proceedings are regulated and governed by the Arbitration Law, Cap 4 (Cap 4), whereas international arbitral proceedings of a commercial nature are governed by the Law on International Commercial Arbitration of 1987, Law No. 101/1987 (Law No. 101/1987).

Awards issued following domestic arbitral proceedings are enforced pursuant to the provisions of Cap 4, whereas awards issued following international arbitral proceedings are enforced in accordance with the provisions of the Law No. 101/1987, as well as the Law No. 84/1979.

Pursuant to section 2 of the Law No. 101/1987, an arbitration is considered 'international' in the following circumstances:

- if, at the time of conclusion of the arbitration agreement, the parties to the agreement have their place of business in different countries;
- (i) the place of arbitration, if determined in, or pursuant to, the arbitration agreement or (ii) the place of performance of a substantial part of the obligations deriving from the commercial relation that 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.

4 Domestic arbitration and UNCITRAL

Is your domestic arbitration law based on the UNCITRAL Model Law? What are the major differences between your domestic arbitration law and the UNCITRAL Model Law?

As previously mentioned, domestic arbitrations are governed by the provisions of Cap 4, which is based on the provisions of the UK Arbitration Act of 1950. The UNCITRAL Model Law has been effectively adopted in Cyprus, almost in its entirety, by virtue of the Law No. 101/1989 in relation to international commercial arbitrations; the sole difference between the two lies in the fact that the Law No. 101/1987 provides an express definition of the term 'commercial'.

5 Mandatory provisions

What are the mandatory domestic arbitration law provisions on procedure from which parties may not deviate?

There are certain mandatory domestic arbitration law provisions in Cyprus, pertaining to matters such as the setting aside of an arbitral award, and the recognition and enforcement of an award. Further, in the absence of an express agreement to the contrary, the provisions of the First Schedule of Cap 4 are deemed to apply on all domestic arbitrations; the First Schedule provides that, in the absence of any legal objection, the parties shall be submitted to be examined by the arbitrators, and shall produce before the arbitrators all books, deeds, papers, accounts, writings and documents in their possession.

6 Substantive law

Is there any rule in your domestic arbitration law that provides the arbitral tribunal with guidance as to which substantive law to apply to the merits of the dispute?

The parties to an arbitration are free to designate the substantive law to be applied to the adjudication of their dispute. If the parties have not specified the substantive law in the arbitration agreement, the tribunal shall try the matter on the basis of the law determined by the conflict of law rules that it considers applicable in the circumstances.

7 Arbitral institutions

What are the most prominent arbitral institutions situated in your country?

The main arbitral institutions having a presence in Cyprus are the following:

The Cyprus Chamber of Commerce (CCC)
38 Grivas Dhigenis Ave & 3 Deligiorgis Str
PO Box 21455
1509, Nicosia
www.ccci.org.cy

The Cyprus Arbitration and Mediation Centre (CAMC)
Panayides Building, Suite 203
1 Chrysanthou Mylona Street
3030 Limassol
http://cyprusarbitration.org.cy

The Cyprus Eurasia Dispute Resolution and Arbitration Centre (CEDRAC)
6 Diogenous Str, Engomi
PO Box 22006
1516, Nicosia
www.cedrac.org

To the best of our knowledge, only CAMC makes use of a pre-existing list of arbitrators when it comes to the appointment of an arbitrator in arbitration proceedings.

Further, although each institution has its own rules, it is possible to apply different procedural rules to the proceedings, as the parties will choose in the circumstances, and there are no limitations on the language or the law applicable thereto.

Arbitration agreement

8 Arbitrability

Are there any types of disputes that are not arbitrable?

Criminal matters, matrimonial disputes or any matters that may give rise to public policy implications are not considered arbitrable in Cyprus. In addition, Cap 4 provides that the courts may decide to override an arbitration agreement (ie, order that an arbitration agreement shall cease to have effect when a dispute arises between the parties) and try the matter themselves, in certain cases involving fraud. Further, Cap 4 states expressly that it does not apply to proceedings of an arbitral tribunal that has been set up pursuant to the provisions of the Trade Disputes (Conciliation, Arbitration and Inquiry), Cap 187, or in relation to any award such a tribunal may issue.

9 Requirements

What formal and other requirements exist for an arbitration agreement?

Both Cap 4 and the Law No. 101/1987 expressly provide that an arbitration agreement must be in writing. Section 7 of the Law No. 101/1987 provides that an agreement is considered to be in writing if it is contained in: (i) a document signed by all the parties; (ii) correspondence exchanged between them in the form of letter, telex, telegrams or other means of telecommunication that provide a record of the agreement; or (iii) the exchange of statements of claim or defence, in which the existence of an arbitration agreement is pleaded by one party and not denied by the other party. Further, an arbitration agreement may be in the form of a clause contained in a contract, or be a stand-alone agreement. Under the Law No. 101/1987, a mere reference in a contract to another document containing an arbitration agreement may be regarded as constituting an arbitration agreement, if the contract is in writing and the reference is such as to render the arbitration clause part of the contract. It is worth noting that an arbitration agreement may be made ex post facto or ex ante.

10 Enforceability

In what circumstances is an arbitration agreement no longer enforceable?

Arbitration agreements are no longer enforceable if the parties expressly terminate them. Further, if a dispute that is amenable to arbitration is submitted before a national court and the respondent party does not apply for the stay of the court proceedings and the referral of the dispute to arbitration, then the arbitration agreement shall no longer be deemed to be enforceable in relation to this dispute.

It should also be noted that section 16 of the Law No. 101/1987 provides that while an arbitration clause is considered an integral part of a contract, for the purposes of establishing the jurisdiction of the arbitral tribunal, the tribunal may consider it as distinct from the other conditions of the contract and decide on its applicability, notwithstanding the fact that the underlying contract may be deemed void. In light of this provision, a decision of the arbitral tribunal that declares the contract void shall not make the arbitration clause automatically invalid as well and, consequently, an arbitration agreement may survive or be enforceable even after the termination of the underlying contract.

Since it may be considered as a separate contract, an arbitration clause can be deemed void or voidable only on the basis of grounds that relate to that agreement.

11 Third parties – bound by arbitration agreement

In which instances can third parties or non-signatories be bound by an arbitration agreement?

The general rule under Cypriot law is that a third party is not bound by an arbitration agreement. Nevertheless, an exemption applies in cases of assignment, administration of a deceased person's estate, a trustee in bankruptcy and where the third party voluntarily wishes to be included in the arbitration, provided that all the contracting parties to the arbitration agreement consent to such an inclusion.

12 Third parties – participation

Does your domestic arbitration law make any provisions with respect to third-party participation in arbitration, such as joinder or third-party notice?

No such provisions are included in our domestic arbitration law. As discussed in question 11, a third party may voluntarily be included and participate in an arbitration, provided that all the parties to the arbitration agreement consent to such an inclusion. Otherwise, the principles of privity of contract are recognised under Cypriot law and, as such, a third party cannot be bound by arbitration proceedings that it has not consented to and cannot be deemed as a party to an arbitration agreement that it has not signed.

13 Groups of companies

Do courts and arbitral tribunals in your jurisdiction extend an arbitration agreement to non-signatory parent or subsidiary companies of a signatory company, provided that the non-signatory was somehow involved in the conclusion, performance or termination of the contract in dispute, under the 'group of companies' doctrine?

There is currently no precedent or guidance under Cypriot law (either statutorily or case law-based), in relation to the application of the 'group of companies' doctrine. Nevertheless, if such an issue were to be raised before them, the Courts of Cyprus would look to interpret the matter in accordance with English law, and the English case law would, therefore, be of persuasive guidance to them (even though not binding thereon). To the best of our knowledge, English courts have shown great reluctance to pierce the corporate veil in arbitration cases and have extended the arbitration agreement beyond the signatories only in very exceptional cases. Therefore, it is reasonably expected that the Cypriot courts and arbitral tribunals would follow a similar approach if such a matter were to arise before them.

14 Multiparty arbitration agreements

What are the requirements for a valid multiparty arbitration agreement?

Besides the general requirements pertaining to the validity of an arbitration agreement discussed in question 9, no other requirements are imposed by the national law as far as multiparty agreements are concerned. In the case of such agreements, however, it is advisable that the arbitration clause also provides for the procedure, according to which the parties would nominate the members of the arbitral tribunal. In default of that, the members of the tribunal would be appointed by the appointing authority or through the court's involvement.

Constitution of arbitral tribunal

15 Eligibility of arbitrators

Are there any restrictions as to who may act as an arbitrator? Would any contractually stipulated requirement for arbitrators based on nationality, religion or gender be recognised by the courts in your jurisdiction?

There are no restrictions set by Cypriot law in relation to the persons who may act as arbitrators. Active judges may not act as arbitrators, but there is no restriction for retired or former judges to do so. Further, there is no restriction as to the nationality of the arbitrator.

Disputes arising from regulated activities, such as construction or technical services, are usually referred to institutional arbitrations and, as such, the arbitrators appointed thereby are usually selected from a relevant list of arbitrators registered with the relevant professional body.

Contractually stipulated requirements for arbitrators have not been tested by the Cypriot courts to date. In light of the fact that Cypriot courts usually follow the applicable English case law on legal issues where no Cypriot authority exists, we consider it reasonably likely, however, that the reasoning of the English case *Jivraj v Hashwani* would be adopted by the Cypriot courts as well.

16 Background of arbitrators

Who regularly sit as arbitrators in your jurisdiction?

Experienced lawyers and legal professionals (eg, retired judges, in-house counsel, law professors) normally sit as arbitrators in Cyprus. Further, registered members of certain professional bodies, such as the Cyprus Scientific and Technical Chamber (ETEK), usually act as arbitrators in disputes concerning their relevant field.

17 Default appointment of arbitrators

Failing prior agreement of the parties, what is the default mechanism for the appointment of arbitrators?

Both Cap 4 and the Law No. 101/1987 provide for default mechanisms for the appointment of arbitrators where the parties' prior agreement fails. Pursuant to section 10 of Cap 4, if (i) the arbitration agreement provides for a reference to a single arbitrator and the parties do not consent as far as the person to be appointed is concerned, (ii) an appointed arbitrator refuses to act, or is not capable of acting or passes away, and there is no provision in the arbitration agreement as to how such a vacancy shall be treated, (iii) the parties are free to appoint an umpire or third arbitrator and opt not to do so or (iv) an appointed umpire or third arbitrator refuses to act or is not capable of acting or passes away and there is no provision as to how such a vacancy shall be treated, and no appointment is made within seven clear days from the service of a notice in writing for the appointment of an arbitrator, umpire or third arbitrator by any of the parties, the court may, on the application by the party who gave the said notice, appoint an arbitrator, umpire or third arbitrator who shall have the same powers to act in the reference, as well as to make an award, as if he or she had been appointed ab initio with the consent of all the parties. A similar default procedure for the appointment of arbitrators is provided for in section 11 of the Law No. 101/1987.

The courts are also involved in the selection of arbitrators in cases of removal of arbitrators, as on the application of any party to the arbitration agreement the court may appoint a person or persons to act as arbitrators in the place of the persons so removed thereby (section 14 of Cap 4). The court may also appoint a person as sole arbitrator, on the application of any party to the arbitration agreement, in cases where the appointment of an arbitrator or arbitrators or umpire is revoked following a relevant court order, as well as in cases where a sole arbitrator or all the arbitrators or an umpire who has entered on the reference is or are removed by the court. It is worth mentioning that in the latter cases the court may also order that the arbitration agreement ceases to have effect with respect to the dispute referred.

In addition, pursuant to section 11 of Cap 4, the court may set aside any appointment made by a party in cases where the arbitration agreement expressly provides that reference shall be made to two arbitrators, one to be appointed by each party and (i) a party appoints a new arbitrator in the place of an appointed arbitrator who refuses to act or is incapable of acting or passes away, or (ii) the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, if the other party has failed to appoint an arbitrator within seven clear days from the service thereon of a notice to make the appointment.

18 Challenge and replacement of arbitrators

On what grounds and how can an arbitrator be challenged and replaced? Please discuss in particular the grounds for challenge and replacement, and the procedure, including challenge in court. Is there a tendency to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration?

See also question 17.

Under sections 13 and 20 of Cap 4, a court may, on the application of any party, remove an arbitrator or umpire who fails to use all reasonable dispatches in entering on and proceeding with the reference and making the award, or who has misconducted him or herself or the proceedings, or in cases where an arbitration award has been improperly procured.

In accordance with the Law No. 101/1987, an arbitrator may be challenged if circumstances exist that give rise to justifiable and reasonable doubts relating to his or her impartiality or independence, as well as in cases where the arbitrator does not meet the qualifications prescribed by the parties' agreement. It should be noted that a party involved in the appointment of an arbitrator may only challenge his or her appointment for reasons the said party was not aware of at the time of the appointment.

It is worth mentioning that section 12 of the Law No. 101/1987 reproduces the disclosure requirement laid down by the UNCITRAL Model Law on any person who is approached with regard to a potential appointment as arbitrator, namely to disclose any circumstances that are likely to give rise to justifiable doubts as to his or her impartiality or independence. The said obligation remains with the arbitrator throughout his or her appointment and for the duration of the arbitral proceedings.

We are not aware of any general tendency in Cyprus to apply or seek guidance from the IBA Guidelines on Conflicts of Interest in International Arbitration.

19 Relationship between parties and arbitrators

What is the relationship between parties and arbitrators? Please elaborate on the contractual relationship between parties and arbitrators, neutrality of party-appointed arbitrators, remuneration and expenses of arbitrators.

See questions 17 and 18 above.

The applicable laws do not define the type of relationship being formed between parties to an arbitration agreement and the appointed arbitrators; it is understood, therefore, that the said relationship is merely determined contractually pursuant to the terms of the arbitrators' contract.

As previously discussed, however, parties in both domestic and international arbitral proceedings may apply for the removal of an arbitrator in cases where there are justifiable suspicions as to the said arbitrator's impartiality and independence. Party-appointed arbitrators are, therefore, obliged to conduct themselves independently and not be biased towards the party appointing them.

In respect of the arbitrators' fees, these are usually agreed upon between the parties and the arbitrators, save where the applicable rules of procedure provide otherwise. Further, the tribunal may require the parties to provide advance deposits in respect of fees or even withhold the delivery of the award if its fees are not covered in a timely manner.

20 Immunity of arbitrators from liability

To what extent are arbitrators immune from liability for their conduct in the course of the arbitration?

There are no laws or relevant rules in Cyprus that grant arbitrators immunity from liability.

Jurisdiction and competence of arbitral tribunal

21 Court proceedings contrary to arbitration agreements

What is the procedure for disputes over jurisdiction if court proceedings are initiated despite an existing arbitration agreement, and what time limits exist for jurisdictional objections?

In cases where a civil action has been filed in relation to a matter that is covered by an arbitration agreement, Cypriot courts are obliged, upon the request of a party to that effect, to stay or set aside the proceedings or refer the dispute to arbitration. The party that wishes to file such a request has to do so before taking any step in the court proceedings, such as the filing of pleadings, the filing of an unconditional memorandum of appearance, etc, as the taking of any such steps would be deemed as a waiver on the said party's rights to challenge the court's jurisdiction to adjudicate the matter. This approach is consistent with the provisions of both the Law No. 101/1987 and Cap 4.

If both parties submit to the jurisdiction of the court, however, then the court will adjudicate the matter despite the existence of an arbitration agreement.

22 Jurisdiction of arbitral tribunal

What is the procedure for disputes over jurisdiction of the arbitral tribunal once arbitral proceedings have been initiated and what time limits exist for jurisdictional objections?

Before the submission of the statement of defence, a party may raise the issue of the arbitral tribunal's jurisdiction. Under section 16(1) of the Law No. 101/1987, an arbitral tribunal has the competence to rule on its own jurisdiction and to examine any challenges brought by one of the parties. If the arbitral tribunal decides that it does indeed have jurisdiction to adjudicate the matter referred thereto, any party may, within 30 days from the receipt of notice of the arbitral tribunal's ruling, file a relevant application to the court to decide the matter of jurisdiction. A decision issued on these grounds cannot be subject to appeal, but the arbitral tribunal may continue the arbitration proceedings and even make an award pending the court's final determination on the matter.

Arbitral proceedings

23 Place and language of arbitration

Failing prior agreement of the parties, what is the default mechanism for the place of arbitration and the language of the arbitral proceedings?

Section 20 of the Law No. 101/1987 provides that failing a prior agreement of the parties to that effect, the arbitral tribunal chooses the place of arbitration, taking into consideration the factual circumstances of the dispute, as well as the convenience of the parties. Further, irrespective of the above and in the absence of an agreement to the contrary, the tribunal may hold meetings, hearings, witnesses' or experts' examination, autopsies or document review in any place it may deem fit.

Further, if there is no provision in the arbitration agreement in relation to the language to be used in the arbitral proceedings, section 23 of the Law No. 101/1987 provides that the arbitral tribunal shall choose the language to be used in the proceedings.

24 Commencement of arbitration

How are arbitral proceedings initiated?

Pursuant to Cap 4, arbitral proceedings are deemed to be commenced when one of the parties to the arbitration agreement serves the other party (or parties) with a notice of arbitration.

The Law No. 101/1987 also provides that the arbitral proceedings are deemed to be commenced on the day the notice of arbitration is served on the person which it is addressed to.

In addition, domestic institutional rules provide additional requirements in relation to the notice for arbitration, as follows.

CAMC's Rule 3 provides that a notice of arbitration shall include the following:

- a demand that the dispute be referred to arbitration;
- the names and contact details of the parties;
- identification of the arbitration agreement that is invoked;
- identification of any contract or other legal instrument out of or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;
- a brief description of the claim and an indication of the amount involved, if any;
- the relief or remedy sought; and
- a proposal as to the number of arbitrators, language and place of arbitration, if the parties have not previously agreed thereon.

Similarly, CEDRAC's Rule 3 provides that a notice of arbitration to be commenced in accordance with its rules shall include the following at a minimum:

- a demand that the dispute be referred to arbitration;
- the names and addresses, telephone and fax numbers, and email addresses of the parties and of their counsel;
- a reference to the arbitration clause or the separate arbitration agreement that is invoked;
- a reference to the contract out of or in relation to which the dispute arises;
- the general nature of the claim and an indication of the amount involved, if any;
- the relief or remedy sought together with the amounts of any quantified claims and, to the extent possible, an estimate of the monetary value of any other claims;
- a proposal as to the number of arbitrators (ie, one or three), if the parties have not previously agreed thereon, and any nomination of an arbitrator required thereby; and
- all relevant particulars and any observations or proposals as to the place of arbitration, the applicable rules of law and the language of the arbitration.

25 Hearing

Is a hearing required and what rules apply?

Cap 4 provides that, in the absence of an express intention to the contrary, all domestic arbitrations falling within the scope thereof are deemed as containing a number of implied terms prescribed by the First Schedule of the said law. In accordance with the implied terms in question, the parties to the reference shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matter in dispute, and shall produce before the arbitrators or umpire all books, deeds, papers, accounts, writings and documents within their possession or power respectively that may be required or called for, and do all other things that during the proceedings on the reference the arbitrators or umpire may require. In addition, the witnesses on the reference shall, if the arbitrators or umpire think fit, be examined (and cross-examined) on oath or affirmation.

Subject to any agreement to the contrary, an arbitral tribunal has the discretion to decide if oral hearings will be held or that the proceedings will be conducted on the basis of the exchange of written or documentary evidence and materials.

26 Evidence

By what rules is the arbitral tribunal bound in establishing the facts of the case? What types of evidence are admitted and how is the taking of evidence conducted?

In the context of international commercial arbitrations governed by the provisions of the Law No. 101/87, an arbitral tribunal is free 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.

Cap 4, on the other hand, only states that any party to an arbitration agreement may apply to the court for the issuance of a summons requiring any person to attend the proceedings for the purposes of examination or the production of any document; no person may be compelled, however, under any such writ if he or she could not be so compelled in the trial of an action. Pursuant to section 30 of Cap 4, in the absence of any other applicable rules, the Civil Procedure Rules currently in force in Cyprus apply – with the relevant adjustments – to arbitration proceedings under the said law.

IBA Rules are considered as useful guidance to documents and evidence and may be taken into account, at the discretion of the arbitral tribunal or subject to the parties' previous agreement.

27 Court involvement

In what instances can the arbitral tribunal request assistance from a court and in what instances may courts intervene?

Pursuant to section 27 of the Law No. 101/1987, the arbitral tribunal, or any of the parties to the arbitration upon the approval of the arbitral tribunal, may request the court's assistance in relation to the adducing of evidence. The courts may, in accordance with their competence, as well as the applicable rules of evidence, satisfy such a request.

Cap 4 also provides that domestic courts have jurisdiction to deal with a number of procedural issues that may arise during an arbitration, such as securing the attendance of witnesses, the taking and preservation of evidence, the granting of interim relief and the determination of preliminary points of law.

The courts also have the power to intervene regarding, for example, procedural objections and issues pertaining to the courts' or the arbitral tribunals' jurisdiction (see questions 21 and 22), or in cases involving the removal or replacement of arbitrators (see questions 17 and 18).

28 Confidentiality

Is confidentiality ensured?

There are no express provisions in either Cap 4 or the Law No. 101/1987 regarding the issue of confidentiality in the context of arbitral proceedings. As such, the parties may determine this issue in the arbitration agreement. However, as a matter of practice, information and other materials disclosed in arbitral proceedings are disclosed in other judicial or similar proceedings only if the parties expressly consent to that effect or if the court deems that such disclosure would be appropriate and in the interests of justice, or would serve public policy purposes.

Interim measures and sanctioning powers

29 Interim measures by the courts

What interim measures may be ordered by courts before and after arbitration proceedings have been initiated?

Both Cap 4 and Law No. 101/1987 contain provisions that enable the national courts to issue interim orders in support of arbitral proceedings.

In particular, section 9 of the Law No. 101/1987 provides for the national courts' power to issue provisional measures (interim orders) in aid of arbitral proceedings, either in anticipation thereof or following the commencement of the proceedings and regardless of whether these proceedings are or will be initiated in Cyprus or abroad.

Similarly, section 26 of Cap 4 grants the courts the power to issue a number of orders in the context and in support of arbitration proceedings, including the issuance of interim relief.

The issuance of such orders is not considered as having any effect on the jurisdiction of the arbitral tribunal, and does not preclude its power to issue any order on similar matters in the context of the proceedings. As such, the courts' powers are considered to be concurrent to the tribunal's powers to issue injunctive relief.

It is worth mentioning that Cypriot courts are generally supportive of requests for the issuance of interim relief in aid and support of arbitral proceedings.

30 Interim measures by an emergency arbitrator

Does your domestic arbitration law or do the rules of the domestic arbitration institutions mentioned above provide for an emergency arbitrator prior to the constitution of the arbitral tribunal?

Neither Cap 4 nor the Law No. 101/1987 provide for an emergency arbitrator prior to the constitution of the arbitral tribunal. The same applies in relation to the CEDRAC and the CAMC Rules.

The CCC, on the other hand, normally applies the ICC Rules, which provide for the appointment of an emergency arbitrator.

31 Interim measures by the arbitral tribunal

What interim measures may the arbitral tribunal order after it is constituted? In which instances can security for costs be ordered by an arbitral tribunal?

In the absence of any agreement to the contrary, the Law No. 101/1987 empowers arbitral tribunals to issue interim measures of a protective nature in the form of interim relief of protection, as they deem fit in the circumstances in respect of the subject matter of the dispute. The arbitral tribunals do not require the assistance of the courts to issue such orders.

Further, as discussed in question 19, arbitral tribunals in both domestic and international arbitral proceedings may also order the granting of security for costs, as per their discretion.

32 Sanctioning powers of the arbitral tribunal

Pursuant to your domestic arbitration law or the rules of the domestic arbitration institutions mentioned above, is the arbitral tribunal competent to order sanctions against parties or their counsel who use 'guerrilla tactics' in arbitration? May counsel be subject to sanctions by the arbitral tribunal or domestic arbitral institutions?

Section 13 of Cap 4 imposes a general duty of due diligence and expedience on arbitrators. As such, arbitrators in domestic proceedings may utilise their powers in order to effectively minimise such 'guerrilla' tactics. Further, as explained in more detail in question 50, practising lawyers in Cyprus are bound by the applicable rules stemming from the provisions of the Lawyers' Law, Cap 2, as well as the applicable Lawyers' Code of Conduct Regulations, which apply not only when a lawyer appears before the Cypriot courts, but also when he or she appears in the context of arbitral proceedings.

It is worth noting that, even though the domestic law does not expressly provide for the imposition of sanctions on counsel, breach of any of the applicable rules pertaining to the lawyers' conduct may give rise to civil liability for negligence and breach of contract for the provision of services, as well as disciplinary and other proceedings.

Awards

33 Decisions by the arbitral tribunal

Failing party agreement, is it sufficient if decisions by the arbitral tribunal are made by a majority of all its members or is a unanimous vote required? What are the consequences for the award if an arbitrator dissents?

As far as the issuance of awards by a multi-member tribunal is concerned, this is done by majority, unless the parties have agreed otherwise. There is no requirement, in other words, for a unanimous decision to be issued. For other decisions (on procedural matters, for example), it is common for these to be taken by the presiding arbitrator alone, if authorised by the parties or the other members of the tribunal.

34 Dissenting opinions

How does your domestic arbitration law deal with dissenting opinions?

See question 33. Even though dissenting opinions are permitted under the law, in practice they are not commonly issued.

35 Form and content requirements

What form and content requirements exist for an award?

In the absence of an agreement between the parties as to the form that an award should take, the only requirements imposed by the Law No. 101/1987 are that the award be in writing, signed by the tribunal, contain the reasoning for the award (unless the parties have agreed to dispense with the reasons) and state the seat of the arbitration and the date of the award.

In addition, for the purposes of enforcing the award in another contracting state to the New York Convention, the award should also be 'duly authenticated'.

36 Time limit for award

Does the award have to be rendered within a certain time limit under your domestic arbitration law or under the rules of the domestic arbitration institutions mentioned above?

Neither Cap 4 nor the Law No. 101/1987 provide time limits for the issuance of an arbitral award. Nevertheless, Cap 4 provides an obligation on the arbitrator to act with all due expediency in relation to the issuance of the arbitral award.

In relation to the domestic arbitration institutions, please note that neither CEDRAC nor CAMC rules provide a time limit in relation to the issuance of an award. The CCC's arbitrations on the other hand, in which the ICC Rules usually apply, provide for a time limit of six months, within which the arbitral tribunal must render its final award. The ICC court may, however, extend the time limit pursuant to a reasoned request from the arbitral tribunal or on its own initiative if it deems this appropriate.

37 Date of award

For what time limits is the date of the award decisive and for what time limits is the date of delivery of the award decisive?

See question 42.

It should be noted that any application to set aside an arbitral award has to be lodged within three months from the date of the notification of the award.

In cases where an application for a corrective or supplementary award has been made, the said period of three months for the setting aside of the award is deemed to start running from the day that the tribunal issues its decision on the merits of the application.

38 Types of awards

What types of awards are possible and what types of relief may the arbitral tribunal grant?

Neither Cap 4 nor the Law No. 101/1987 limit the type of relief that may be granted by an arbitral tribunal, and the parties are therefore free to decide on the matter accordingly. In the absence of an agreement between the parties to the contrary – and assuming of course that the applicable procedural rules in place do not prescribe otherwise – a tribunal may grant the same type of relief that a national court could (mutatis mutandis).

39 Termination of proceedings

By what other means than an award can proceedings be terminated?

Besides the issuance of an award, international arbitral proceedings can be terminated in cases where a settlement is reached; if the arbitral tribunal is requested to do so by the parties, it may also record the terms of the settlement agreement as an arbitral award.

Further, the arbitral proceedings may be also terminated in cases where the party that commenced the proceedings withdraws its claim, unless the respondent party objects to the said withdrawal and the tribunal deems that the respondent party has interest in the final adjudication of the dispute.

In addition, the arbitral proceedings may be terminated upon the parties' request, as well as in cases where the tribunal may consider that the continuation of the proceedings is unnecessary or impossible in the circumstances.

40 Cost allocation and recovery

How are the costs of the arbitral proceedings allocated in awards? What costs are recoverable?

The costs of a reference and award are at the arbitrator or tribunal's full discretion, who shall direct to whom and in what manner such costs are to be allocated and paid. It should be noted that, pursuant to Cap. 4, any provision in an arbitration agreement as to the costs of the reference or the award shall be void. There are no similar provisions contained in the Law No. 101/1987.

As a general rule, however, 'costs follow the event' and it is reasonably expected that the losing party shall, in the majority of cases, bear the costs of the proceedings.

41 Interest

May interest be awarded for principal claims and for costs and at what rate?

Pursuant to the provisions of section 21 of Cap 4, unless the award directs otherwise, the judgment debt shall carry interest as from the date of the award at the same rate as a normal court judgment debt would, namely 3.5 per cent, which is the current legal interest rate applicable in Cyprus.

Proceedings subsequent to issuance of award

42 Interpretation and correction of awards

Does the arbitral tribunal have the power to correct or interpret an award on its own or at the parties' initiative? What time limits apply?

Section 33 of the Law No. 101/1987 provides that within 30 days from the date of receipt of the award, or in accordance with any other period of time agreed between the parties, a party, with notice to the other party, may request the arbitral tribunal to correct any errors in computation, typographical or of similar nature in the award. The tribunal may correct such errors on its own initiative, within 30 days of the date of the award.

Further, by notice to the other party, a party may request the arbitral tribunal to interpret a specific point or part of the award, provided that there is an agreement of the parties to this effect.

If the arbitral tribunal considers such requests to be justified, it shall make the relevant correction or interpretation, within 30 days from the receipt of the request. The interpretation shall form part of the award.

Subject to an agreement of the parties to the contrary, a party, by notice to the other party, may request the arbitral tribunal, within 30 days from the receipt of the award, to make an additional award as to claims presented in the arbitral proceedings but omitted from the award. If the arbitral tribunal considers the request to be justified, it shall make the additional award within 60 days.

The above deadlines in relation to the issuance of an additional award, an interpretation, as well as a correction, may be extended by the arbitral tribunal if it deems such an extension necessary.

43 Challenge of awards

How and on what grounds can awards be challenged and set aside?

An arbitral award may be challenged before a national court within three months from the date on which the party making the application has received the award. It should be noted that it is not possible to challenge the merits of the award per se but, rather, a challenge may be brought only in the following circumstances, as prescribed in article 34 of the Law No. 101/1987:

- where a party proves that:
  - a party to the arbitration agreement was incapacitated, 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
- 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 Cyprus.

Update and trends

There are unfortunately no emerging trends in arbitration proceedings taking place in Cyprus nor are there any recent or impeding legislative amendments affecting the domestic arbitration framework. We are also not aware of any proposed changes to the procedural rules of the main arbitration institutions operating in Cyprus.

Cyprus is currently involved as a respondent in a high-profile ICSID arbitration brought against it by Greek investors for a claim of US$1.2 billion relating to the financial crisis and the bail-in measures of March 2013.

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

44 Levels of appeal

How many levels of appeal are there? How long does it generally take until a challenge is decided at each level? Approximately what costs are incurred at each level? How are costs apportioned among the parties?

As explained above, it is not possible to challenge the merits of the award per se, but rather to challenge the award on the grounds described in question 43.

An appeal, however, can be filed against the decision issued by the court adjudicating the challenge of an arbitral award. Appeals of this nature are adjudicated by the Supreme Court of Cyprus, and it normally takes one to three years for a judgment in relation thereto to be issued. There is no further level of appeal provided under Cypriot law. The costs of the proceedings normally follow the 'costs follow the event' rule, meaning that the losing side will usually be called upon to bear the costs, unless exceptional circumstances apply.

45 Recognition and enforcement

What requirements exist for recognition and enforcement of domestic and foreign awards, what grounds exist for refusing recognition and enforcement, and what is the procedure?

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

Similarly, under the provisions of the Law No. 101/1987, an arbitral award shall be recognised as binding and, upon a written application before the appropriate court accompanied by the duly authenticated original award or a duly certified copy thereof, as well as the arbitration agreement, shall be enforced in Cyprus unless any of the reasons set out in section 36 of the law are present in the circumstances.

Section 36 provides that an application for the recognition and enforcement of an arbitral award, irrespective of the state in which it was issued, may only be rejected for any one of the following reasons:

- on the application of the party against whom the recognition and enforcement of the arbitral award is being sought, if the said party (respondent) shows that:
  - one of the parties to the arbitration agreement was lacking contractual capacity or that the said agreement is not valid under the law governing the agreement, or in the absence of an express agreement of the parties as to the choice of law, under the law of the country in which the arbitral award was issued;
  - he or she was not duly notified of the appointment of the arbitrator or the carrying out or conduct of the arbitration, or was in any other way deprived of the opportunity to appear and present his or her case;
  - the arbitral award refers to a dispute that was not anticipated or did not fall within the terms of the arbitration agreement, or includes decisions on issues that fall outside the scope of the arbitration agreement;
  - the composition of the arbitral tribunal or the conduct of the arbitration proceedings was not in accordance with the relevant agreement of the parties or in the absence of such an express agreement, took place in breach of the law of the country where the arbitration took place; or
  - the arbitral award has yet to become binding on the parties or has been set aside or been suspended by a competent court of the country in which it was issued or in pursuance to whose laws it was issued; or
- if the court makes a finding that:
  - the subject matter of the dispute is not capable of settlement by arbitration under the laws of Cyprus (ie, is not arbitrable); or
  - the recognition or enforcement of the arbitral award would be contrary to public policy principles in Cyprus.

It should be noted that from the relevant case law of the Supreme Court of Cyprus on the matter, it is evident that the courts of Cyprus requested to recognise and enforce a foreign arbitral award will not look at the merits thereof, but will rather limit themselves to a procedural examination of the process leading up to the issuance of the award alone (ie, whether the correct procedure has been followed and whether the prerequisites for enforcement are duly met in the circumstances).

Finally, pursuant to the provisions of the New York Convention, as these have been transposed into national law by virtue of Law No. 84/79, an arbitral award issued in a contracting state shall be duly recognised as binding and enforced in Cyprus following the procedure described in article IV of the Convention. As mentioned above, Cyprus applies the provisions of the New York 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.

46 Enforcement of foreign awards

What is the attitude of domestic courts to the enforcement of foreign awards set aside by the courts at the place of arbitration?

On the assumption that the decision setting aside an award has been issued by a foreign court in due process, then the Cypriot courts will recognise and enforce such a decision on the basis of the applicable regulatory framework as the case may be, namely: the applicable Regulation (EU) 44/2001 or 1215/2012, if the seat of the arbitration is another EU member state; the Lugano Convention, if the seat of arbitration is Norway, Iceland or Switzerland; the Judgment of Foreign Courts (Recognition, Registration and Enforcement pursuant to Treaty) Law of 2000, Law No. 121(I)/2000, where a bilateral treaty exists between Cyprus and the country of the seat of the arbitration; or, finally, the relevant common law provisions if none of the aforementioned options are available in the circumstances. The only exception to that general rule applies in cases where the decision contradicts public policy principles.

47 Enforcement of orders by emergency arbitrators

Does your domestic arbitration legislation, case law or the rules of domestic arbitration institutions provide for the enforcement of orders by emergency arbitrators?

See also question 31.

The Law No. 101/1987 is silent as to what constitutes an 'award' and whether an interim award is also considered to be an award. Nevertheless, practice indicates that the Cypriot courts do not refuse to recognise and enforce interim awards in the same way as final awards, particularly since mutatis mutandis Cap 4 explicitly recognises interim awards as awards in the same way as final awards.

Notwithstanding the above, in the absence of relevant case law on the matter, it is questionable whether a decision made during an emergency arbitrator procedure shall be deemed to be an arbitral award at all (even an interim one) and, therefore, recognised and enforced domestically. Given that, once constituted, an arbitral tribunal will, in almost all cases, not be bound by the decision made during the emergency arbitrator procedure, we are of the opinion that a likely approach of the Cypriot courts to orders by an emergency arbitrator may be that they are deprived of finality and are, thus, not enforceable.

It could perhaps also be possible that an emergency arbitrator procedure takes place pursuant to an arbitration agreement where a form of emergency arbitration had been agreed ex ante. In such cases,

interim awards issued in the context of a procedure similar to the emergency arbitrator procedure could be considered awards and be deemed binding on the parties on a contractual basis. In any case, we find that international practice suggests that even if there is no enforceability mechanism in place, for numerous reasons, parties typically comply with the decisions of emergency arbitrators. Assuming for discussion purposes that an emergency arbitrator's decision were to be treated as an arbitral award and form the subject of an application for its recognition and enforcement, pursuant to section 36 of the Law No. 101/1987, there is an exhaustive list of grounds on which such an application, irrespective of the country in which the award was granted, could be rejected, as described above. If a Cypriot court refuses to recognise or enforce an emergency arbitrator decision, the relevant party could still apply in court for the issuance of an interim order until the proper initiation of the arbitration proceedings. This is provided for by virtue of section 9 of the Law No. 101/1987, which enables a national court, at the request of a party, to issue provisional measures before the initiation of, or during, arbitration proceedings.

48 Cost of enforcement

What costs are incurred in enforcing awards?

Stamp duty and legal fees have to be paid by the party wishing to enforce the award in the process of enforcing both domestic and international arbitral awards. The actual fees to be incurred are determined by the matter value of the award and may be recovered at a later stage by the other side.

Other

49 Judicial system influence

What dominant features of your judicial system might exert an influence on an arbitrator from your country?

It is anticipated that a legal professional acting as an arbitrator shall be influenced from the features of the Cypriot judicial system. For example, since cross-examination before Cypriot courts can be quite 'abusive' towards the other side's witness, a Cypriot arbitrator may also be more tolerant towards a more 'aggressive' cross-examination in the context of arbitration proceedings. Further, the lodging of written witness statements is now common practice before the Cypriot courts and, as such, it is likely that such an approach will also be adopted in the course of arbitral proceedings.

Companies' officers may also testify on behalf of legal entities involved in arbitral proceedings.

50 Professional or ethical rules applicable to counsel

Are specific professional or ethical rules applicable to counsel in international arbitration in your country? Does best practice in your country reflect (or contradict) the IBA Guidelines on Party Representation in International Arbitration?

Practising lawyers in Cyprus are bound by the applicable rules stemming from the provisions of the Lawyers' Law, Cap 2, as well as the relevant Lawyers' Code of Conduct Regulations of 2002. Under the said provisions and regulations, lawyers have, inter alia, a general duty to always serve justice and work towards its administration, always act with honour, dignity, due care and independence, dedicate oneself to the basic principles of the legal profession, serve the truth and the law with independence and dignity, respect the court, their colleagues and clients, comply with the applicable Code of Ethics (deontology), abide by the relevant legislative provisions in force, retain professional privilege, promote and further the interests of their clients, disclose any conflict of interest and refrain from acting in a way that creates any conflict, refrain from any fraudulent, dishonest, misleading or harmful conduct, and provide due and sound legal advice.

It is clear that these rules find applicability in every aspect of practice of the legal profession, including, therefore, cases where lawyers are involved in arbitration proceedings.

51 Third-party funding

Is third-party funding of arbitral claims in your jurisdiction subject to regulatory restrictions?

Third-party funding is not available in Cyprus. Funding of claims should be provided by the parties to the proceedings and any orders as to costs will be made for or against a party to the proceedings.

52 Regulation of activities

What particularities exist in your jurisdiction that a foreign practitioner should be aware of?

Cyprus is a member of the European Union since 2004. As such, no visa requirements exist for EU nationals. Non-EU nationals will have to obtain the relevant work or business permit for the duration of the proceedings. Cyprus is generally known as a business-friendly environment, with a focus on international clients and businesses and foreign practitioners coming to Cyprus for arbitration, either to act as arbitrators or as counsel, should therefore expect to be warmly welcomed to conduct their business and offer their services in Cyprus.

Foreign persons residing and conducting business in third countries are not subject to Cypriot taxes, either income tax or VAT, as they are taxed in the country of their permanent residence. There are, however, some exemptions to this general rule, and it is advisable for practitioners to obtain relevant tax advice from their local tax advisers to this effect.

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