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Litigation

Cyprus

Dr. K. Chrysostomides & Co LLC

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Law and Practice

Contributed by Dr. K. Chrysostomides & Co LLC

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Dr. K. Chrysostomides & Co LLC has 19 lawyers in its Dispute Resolution team, with significant experience in a wide range of commercial litigation matters, focusing on both international and domestic corporate disputes, fraud and conspiracy claims, the enforcement of foreign judgments/arbitration award applications, and winding-up applications, among other matters. The lawyers seek to identify and implement the most appropriate solutions for clients, through either pursuing or defending litigation or other

alternative dispute resolution mechanisms, such as arbitration and mediation. The team works very closely with the firm's other practice areas, such as corporate, tax and finance, antitrust, administrative and criminal law, and with the IP department, to perform risk assessments to help reduce overall litigation exposure for clients. Lawyers have extensive experience before the Cyprus courts and various international arbitration courts and tribunals.

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1. General

1.1 General Characteristics of Legal System

The Cypriot legal system is considered a mixed legal system. Private law is based on common law, and public law derives from the civil law tradition. Procedural law is based on common law.

The legal process in both civil and criminal matters is adversarial and is conducted with both written submissions and oral arguments.

1.2 Structure of Country's Court System

The court structure has two tiers, comprising the District and Specialised courts (first tier) and the Supreme Court (second tier).

The District Courts have jurisdiction to hear and try civil actions and criminal proceedings at first instance, as well as any other actions that do not fall within the jurisdiction of the specialised courts.

The main specialised courts are as follows:

- the Assizes Court tries criminal offences, which are punishable with more than five years' imprisonment;
- the Industrial Disputes Tribunal has the exclusive jurisdiction to determine any dispute arising from the employment relationship between employers and employees and its termination;
- the Family Courts have jurisdiction in all family disputes;
- the Rent Control Courts deal with the recovery of possession of any controlled properties and the determination of a fair rent for said properties;
- the Military Court has jurisdiction to try offences committed by military personnel; and
- the newly established Administrative Court has the exclusive jurisdiction to hear recourses filed against a decision, act or omission of any person, authority or organ exercising executive or administrative authority, which is contrary to the Constitution or any law, or has been issued in excess or abuse of powers vested in such authority, organ or person.

The Supreme Court acts as an Admiralty Court and as the final appellate court, and has jurisdiction to hear and determine all appeals from the first-tier courts.

1.3 Court Filings and Proceedings

The general rule is that Court proceedings are conducted in public, but courts can order that hearings must take place in private in certain circumstances. The courts can also anonymise parties and witnesses to the litigation, and impose reporting restrictions where doing so is necessary to protect minors or vulnerable adults, or where the case concerns issues of national security.

The filings and the content of the case file is only available to the parties of the dispute and their lawyers. A third party may be granted access to the filings and the case file only with the Court's leave and upon the filing of an application supported by an affidavit in which the affiant must demonstrate the reasons upon which the request is premised.

1.4 Legal Representation in Court

Legal representatives appearing before the Courts of the Republic of Cyprus must be qualified advocates who are full members of the Cyprus Bar Association and duly registered with the Chief Registrar of the Supreme Court.

Qualified lawyers in EU member states may be registered as EU lawyers in Cyprus. However, they must act jointly with a local advocate in representing a party to the court proceedings concerned. EU lawyers with three or more years of practice in Cyprus may be registered as full members of the Cyprus Bar Association and provide legal services on a permanent basis.

Lawyers from a non-EU jurisdiction can be granted rights of audience before the courts of Cyprus on a temporary basis, with the leave of the Bar Council. However, they may only appear before the courts in pending proceedings if they are accompanied by a duly registered local advocate.

2. Litigation Funding

2.1 Third-party Litigation Funding

Legal fees are charged in accordance with the Advocates' Code of Conduct. The Supreme Court has also issued regulations that apply minimum and maximum charges for each stage of litigation, depending on the scale of the claim. The precise legal fees charged depend on the complexity of the case, the nature of the claim and the extent of the proceedings (for example, whether interim proceedings will also be filed and pursued).

Civil litigation is funded by the parties to the proceedings, and the general rule is that "costs follow the event", which in practice means that the unsuccessful party has to pay not

only his own costs but also the costs of his victorious opponent.

Third-party funding is not prohibited, but is rarely used.

Pursuant to the provision of the Legal Aid Law (L.165(I)/2002), as amended, legal aid may be provided by the Republic when individuals cannot bear the costs of the legal proceedings without affecting their personal and family basic needs and obligations. As far as civil litigation is concerned, legal aid can be granted only in the context of civil proceedings for specific violations of human rights, cross-border disputes and proceedings relating to family and matrimonial law disputes.

2.2 Third-party Funding of Lawsuits

All types of civil lawsuits are available for third party funding. See **2.1 Third-party Litigation Funding** regarding which proceedings are eligible for legal aid from the Republic.

2.3 Third-party Funding for Plaintiffs and Defendants

Third party funding is available to both the plaintiff and the defendant.

2.4 Minimum and Maximum Amounts of Third-party Funding

There is no minimum or maximum amount for third party funding.

2.5 Third-party Funding of Costs

A third party funder will consider funding all the legal fees pertaining to the dispute, depending on the terms of the relevant agreement between the funder and the party receiving the funding.

2.6 Contingency Fees

As explained above, there are scales with minimum fees for each legal service; therefore, contingency fees conflict with the provisions of the Advocates' Code of Conduct and are not allowed.

2.7 Time Limit for Obtaining Third-party Funding

There are no time limits for when a party to the litigation should obtain third party funding.

3. Initiating a Lawsuit

3.1 Rules on Pre-action Conduct

The general rule is that no pre-action steps are required before the filing of a lawsuit. There is also no requirement for the parties to engage in ADR either before or during the trial. However, for certain special proceedings (eg, winding up proceedings or probate actions), the civil procedure rules

(CPR) prescribe specific steps and procedures that must be followed before the initiation of the main proceedings.

3.2 Statutes of Limitations

The Limitation of Actionable Rights Law of 2012 – Law 66 (I) of 2012 (Limitation Law) that repealed all previous relevant statutes – regulates the limitation periods applicable to civil and commercial claims.

Accrual of the limitation period

The limitation period for a claim is triggered on the day of completion of the cause of action – ie, all events giving rise to an actionable right.

However, the limitation period for claims that are based on actionable rights that existed as of 01.01.2016 accrues from 01.01.2016 and not from the date the cause of action was completed.

For new claims after 01.01.2016, the limitation period accrues from the date upon which the cause of action was completed.

As far as civil wrongs are concerned, if the cause of action is based on an action or omission that took place before the enactment of Law 66(I)/2012 (ie, 01.07.2012), then those actions are subject to a three-year time bar (pursuant to the specific provisions of section 68 of the Civil Wrongs Law). If the cause of actions is based on a civil wrong that took place after the enactment of the new legislation, then the provisions of Law 66(I)/2012 apply, including the provision that the limitation period for claims that are based on actionable rights that existed before 01.01.2016 accrues from that date.

Law 66(I)/2012 provides for different limitation periods, depending on the nature of the actionable right. It provides for a general limitation period of ten years, and introduces various limitation periods for specific actionable rights.

Civil Wrongs

The general limitation period for civil wrongs is six years.

The limitation period for claims for damages for negligence, nuisance or breach of a statutory duty is three years.

A one-year limitation period applies in relation to a claim for defamation or malicious falsehood.

A competent court has discretion to disapply the limitation provisions for civil wrongs causing bodily harm or death, provided that no more than two years have passed since the limitation period expired. In exercising its discretion, the court must consider the following:

- 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;
- steps taken by the claimant to safeguard any relevant evidence;
- the behaviour of the defendant in relation to the application; and
- the consequences of the delay in relation to the preservation and reliability of the evidence.

Contracts

There is a general limitation period of six years for actions based on contractual claims.

However, the limitation period is three years for proceedings related to a contract or to a quasi-contract in relation to an agreed or reasonable remuneration of a lawyer, doctor, dentist, architect, civil engineer, contractor or other independent professional.

For loans secured by a mortgage, charge or pledge, the limitation period is 12 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

No action can be commenced by a successor in relation to a deceased person's estate or towards challenging the validity of a will if eight years have passed from the date of death.

If 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 of the deceased (or with reasonable diligence could have become aware of the death).

Specific Exceptions

Law 66(I)/2012 also introduces, among other things, mechanisms for suspending the limitation periods, and criteria for their computation. According to the provisions of said legislation, the period of limitation will not commence or will be suspended if it has already commenced, in the following situations:

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

yet been born, until the beneficiary is born and reaches adulthood;

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

3.3 Jurisdictional Requirements for a Defendant

Jurisdiction in civil and commercial claims is established under Regulation No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Recast Regulation), and under the national Courts of Justice Law (Law 14/1960).

In both regimes, the domicile concept is adopted in establishing jurisdiction, with some “subject matter of the dispute” exceptions.

As per Article 4(1) of the Recast Regulation, the general jurisdiction rule is that persons domiciled in a Member State shall be sued in the courts of that Member State, regardless of their nationality.

There are also additional claim-based grounds for jurisdiction, which are set forth in Articles 7-26 of the Recast Regulation.

As far as the domestic regime is concerned, pursuant to section 21 Law 14/1960, the District Courts in Cyprus have civil jurisdiction to hear and decide any action, provided that:

- the cause of action has arisen either wholly or in part within the geographical boundaries of the district in which the Court is established;
- the defendant or any of the defendants at the time of the institution of the action resides or carries on business within the district in which the Court is established;
- all the parties are Cypriot citizens and the cause of action has arisen partly or wholly within the British Sovereign Base Areas (the BSBA), or if the defendant or any of the defendants resides or carries on business within the BSBA;
- the cause of action has arisen partly or wholly in the BSBA as a result of the use of a vehicle by a person who was or should have been insured; or
- the cause of action has arisen partly or wholly in the BSBA as a result of an accident or illness of an employee that took place in the course of his/her employment and relates to the liability of an employer who was or should have been insured.

If the action concerns the sale or distribution of immovable property, such claim should be initiated before the District Court of the area where the immovable property is situated.

If a defendant resides outside the jurisdiction, leave of the court must be granted before the claim is served on him/her. According to Order 6 of the CPR, such leave may be granted where:

- the whole subject matter of the action is immovable property of any kind situated in Cyprus;
- any act, deed, will, contract, obligation or liability affecting immovable property of any kind situated in Cyprus is sought to be construed, rectified, set aside, or enforced in the action;
- any relief is sought against any person domiciled or ordinarily resident in Cyprus;
- the action is for the administration of the movable property of any deceased person who at the time of his/her death was domiciled in Cyprus, or for the execution (as to property situated in Cyprus) of the trusts of any written instrument of which the person to be served is a trustee, which ought to be executed according to the law of Cyprus;
- the action is brought to enforce, rescind, dissolve, annul or otherwise affect a contract or to recover damages or other relief for or in respect of the breach of a contract made in Cyprus or made by or through an agent trading or residing in Cyprus on behalf of a principal trading or residing out of Cyprus, or is one brought in respect of a breach committed in Cyprus of a contract wherever made, even though such breach was preceded or accompanied by a breach out of Cyprus which rendered impossible the performance of the part of the contract that ought to have been performed in Cyprus; the action is founded on a civil wrong committed in Cyprus;
- any injunction is sought as to anything to be done in Cyprus, or any nuisance in Cyprus is sought to be prevented or terminated, whether or not damages are also sought in respect thereof; or
- any person out of Cyprus is a necessary or proper party to an action properly brought against some other person duly served in Cyprus.

3.4 Initial Complaint

Civil proceedings are commenced by filing a writ of summons or an originating petition with the competent district court's registry. Under the Civil Procedure Rules of the Republic of Cyprus (CPR), a writ of summons must be either:

- specially endorsed, containing the full statement of claim (Order 2, Rule 6, CPR); or
- generally endorsed, containing only the relief and remedies sought (Order 2, rule 1, CPR).

Where the writ is generally endorsed, the statement of claim must be filed separately.

Unlike the rules in other common law jurisdictions, the writ of summons does not contain statements under oath, and no other documents are appended.

Proceedings against defendants who all reside out of the jurisdiction can only be commenced following leave of the court to seal the writ of summons and leave to serve it out of the jurisdiction of the Cypriot Court.

Amendment of Pleadings

Before any claim filed after 1.1.2016 is served to the defendants, claimants may amend their pleadings without the leave of the Court.

After the exchange of pleadings and before the first summons for directions is issued, one more amendment of pleadings can take place, without the leave of the Court.

Following the issuance of the aforesaid summons for directions, no amendment to a pleading is allowed unless the Court is satisfied that such amendment is necessary due to a bona fide mistake or because the applicants became aware of new facts that were not available to them at the time of the drafting of the pleadings.

In relation to all claims filed before 1.1.2015 (the value of the dispute is irrelevant) and claims that were filed within 2015 where the value of the dispute exceeds the amount of EUR10,000, an amendment of pleadings can take place at any time, but only with the prior leave of the Court.

3.5 Rules of Service

Service is the responsibility of the plaintiff, and each defendant included in the writ of summons must be served with an official copy of the writ.

Pursuant to Order 5 of the CPR, service of the court documents on a defendant is effected in person, through a process server (bailiff) by leaving the copy with the person to be served. If the defendant is not found at his/her house or usual place of employment, the service shall be deemed to be effected if the copy is left with any member of his family of apparently 16+ years in his town or village, or with any person apparently of such age and in charge of the place of his/her employment.

Service on a company must take place at its registered office address, or must at least be served upon one of the members of its board of directors.

The private process server must file an affidavit of service, supported by a duplicate of the copy of the writ of summons served, within seven days of the service.

Where service is effected by leaving the copy with a person other than the person to be served, the affidavit of service shall specify that the person to be served was not found at his/her house or usual place of employment.

A party can also apply to the court for leave for substituted service, such as service via post, service via courier, public advertisement of a notice in relation to the pending court proceedings, fax or email or any other means that will bring the pending proceedings to the attention of the defendant, provided that the court is satisfied that it is not possible to effect service in the ordinary way prescribed by the CPR.

If a defendant resides outside the jurisdiction, leave of the court must be granted before the claim is served on him/her, as explained above.

The method of service is governed by the relevant bilateral treaties and international conventions and regulations to which the Republic of Cyprus is a party.

In member states of the European Union, service of a claim can be effected pursuant to Council Regulation (EC) No. 1393/2007 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters.

In non-EU member states, service of a claim can be effected pursuant to the Hague Convention of 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, to which Cyprus has acceded.

Cyprus has also entered into treaties that regulate and facilitate service of court documents with the following countries: Belarus; Bulgaria; China; the Czech Republic; Georgia; Germany; Greece; Hungary; the Russian Federation; Serbia; Slovakia; Slovenia; Syria; and Ukraine.

A writ of summons remains in force for 12 months from the day of its issue. If a writ of summons is not served on a defendant within this period, the claimant must apply to the court to renew it.

3.6 Failure to Respond to a Lawsuit

The defendant must file a memorandum of appearance within ten days of the service of the writ and deliver his/her defence to the claimant or his/her defence and counterclaim within:

- 14 days of the filing of an appearance in the case of a specially endorsed writ; or
- 14 days of the filing of the statement of claim in the case of a generally endorsed writ.

The claimant may (but is not obliged to) file a reply to the defendant's defence (or defence and counterclaim) within seven days of the filing of the defence.

If a party fails to file a pleading within the prescribed time limit, the other party may file an application for judgment in default.

3.7 Representative or Collective Actions

Class actions, per se, are not available under Cyprus law.

However, according to Order 9 Rule 9(1) of the CPR, where there are many persons that have the same interest in one cause or matter, one or more of such persons may be authorised by the Court or a Judge to sue or defend in such cause or matter, on behalf or for the benefit of all persons so interested. Where any such order is made, the person represented shall be bound by the judgment of the Court, and said judgment may be enforced against them in all respects, as if they were parties to the action.

Moreover, under Order 14 of the CPR, when two or more actions are pending in the same Court, whether by the same or different plaintiffs against the same or different defendants, and the claims of such actions involve a common question of law or fact of such importance in proportion to the rest of the matters involved in such actions as to render it desirable that the actions should be consolidated, the Court or a Judge may order consolidation upon the application of one of the parties to said actions.

3.8 Requirement for a Costs Estimate

It is common for clients to request a cost estimate of the potential litigation at the outset, but this is not a condition for the filing of a lawsuit.

4. Pre-trial Proceedings

4.1 Interim Applications/Motions

Following a recent amendment of Order 30 of the CPR, the claimant must issue a summons for directions which is accompanied by a specific form/table indicating the directions and case management sought by the court on preliminary matters, within 90 days of the filing of all the pleadings.

If the claimant fails to issue the summons for directions within the specified timeframes, the defendant may request the dismissal of the action for want of prosecution.

The preliminary matters that can be included in the form/table are as follows:

- request for further and better particulars of the pleadings;
- request for admission of facts;
- request for disclosure and inspection of documents;
- request for joinder of actions;
- request for security for costs;
- special requests for costs in the proceedings; and
- any other procedural issue that must be dealt with before a hearing date is fixed.

After the summons is served on the other side, defendants must also serve their form/table with the case management

requests and directions sought, within 30 days of the receipt of the claimant's summons for directions.

The case will be fixed before the court for directions within a period of at least 60 days and, on that sitting, the Court will issue its directions on the basis of the parties' case management forms or issue directions for relevant applications to be filed.

The court has a general discretion to hear interim applications and grant interim remedies. The most commonly used pre-trial applications (in addition to the requests included in the case management form/table) are as follows:

- Setting aside of the service – the defendant may obtain a Court order for the setting aside of the service of the court documents, if it is proved that the documents were served improperly or contrary to the CPR and/or the Court's directions/orders relating to service.
- Want of prosecution and judgments by default – if the plaintiff fails to deliver the statement of claim within the timeframe prescribed in the CPR, the defendant may, on the expiration of the specified timeframe, apply by summons to the Court to dismiss the action with costs for want of prosecution. Similarly, if the defendant does not deliver a defence within the timeframe allowed, the plaintiff may apply for a judgment in default. Please also refer to **3.6 Failure to Respond to a Lawsuit** above.
- Application for summary judgment – please refer to **4.2 Early Judgment Applications** below.
- Application for interim relief – please refer to **6.1 Circumstances of Injunctive Relief** below.
- Application for the striking out of a statement of claim or a pleading – please refer to **4.2 Early Judgment Applications** below.
- Application for joinder of additional claimants or defendants – please refer to **4.4 Requirements for Interested Parties to Join a Lawsuit** below.
- Third-party proceedings and relief against co-defendants – under Order 10 of the CPR, the Court may give leave to the defendant to issue and serve a “third party notice” or a notice for a claim against a co-defendant in cases where the defendant is able to claim against a third party or a co-defendant that:
 - (a) he/she is entitled to contribution or indemnity;
 - (b) he/she is entitled to any relief or remedy relating to or connected with the original subject matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or

(c) that any question or issue relating to or connected with said subject matter is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and defendant and the third party, or between any or either of them.

4.2 Early Judgment Applications

Applications for early judgment on some or all of the issues in dispute and applications requesting the other party's case to be struck out before the hearing of the merits of the claim are available under the CPR.

Application for Summary Judgment

A claimant can file an application for summary judgment after the defendant has filed an appearance but before the defendant has filed its defence, where the claimant can show that the defence has no real prospect of success.

Most specifically, Order 18 of the CPR provides that “*where the defendant appears to a writ of summons specially endorsed under Order 2, Rule 6, the plaintiff may on affidavit made by himself, or by any other person who can swear positively to the facts, verifying the cause of action, and the amount claimed (if any), and stating that in his belief there is no defence to the action, apply for judgment for the amount so indorsed, together with interest (if any), or for the recovery of the land (with or without rent), or for the delivering up of a specific chattel, as the case may be, and costs. And judgment for the plaintiff may be given thereupon, unless the defendant shall satisfy the Court that he has a good defence to the action on the merits or disclose such facts as may be deemed sufficient to entitle him to defend.*”

If the conditions prescribed under Order 18 of the CPR are satisfied, then a summary judgment may be given on the whole or part of the claim, unless the defendant is able to convince the Court that he/she has a good defence on the merits of the pending claim.

Application for Striking Out a Statement of a Claim or a Pleading

The Court can order the striking out of any pleading on the following grounds:

- if the pleading discloses no reasonable cause of action or defence;
- if the proceedings are scandalous, frivolous or vexatious;
- if the proceedings constitute an abuse of process;
- if the Court lacks jurisdiction to hear the case and/or there is a more appropriate forum to hear the proceedings; or
- if there has been a failure to comply with a rule, direction or order of the Court.

Both applications must be supported by an affidavit (with or without exhibits) setting out the facts and reasons why the relief sought should be granted. Reasonable time is allowed for the opposing party to file its notice of opposition, which is also supported by an affidavit (with or without exhibits).

The time taken for the Court to deal with the above applications will vary from four to nine months, and depends upon their complexity and the workload of the Court.

4.3 Dispositive Motions

As explained above, the main dispositive motions made before trial are as follows:

- applications for want of prosecution and judgment in default;
- applications for the striking out of a statement of claim or a pleading; and
- applications for a summary judgment.

In addition, defendants may apply for security for costs, as explained below.

4.4 Requirements for Interested Parties to Join a Lawsuit

As explained above, the CPR (Order 9) contain provisions for the joinder of claimants or defendants as parties to the claim, provided there is a cause of action by or against the additional parties, and that such joinder will facilitate the adjudication of all disputed issues.

The leave of the Court is necessary for adding additional parties, and the Court preserves the discretionary power to order separate trials in order to ensure the efficient conduct of the proceedings and that such joinder will not delay the main trial.

4.5 Applications for Security for Defendant's Costs

Defendants may apply for security for costs in order to ensure that they will be able to recover the litigation costs from an unsuccessful claimant. The conditions that must be satisfied in order for a security for costs order to be made are as follows:

- the claimant or counterclaimant must be domiciled in a non-EU state;
- the claimant or counterclaimant must not have sufficient assets within the jurisdiction to satisfy any order that may be made against him/her in relation to the defendant's litigation costs; and
- the claimant or counterclaimant must satisfy the Court that he/she has a good case on the merits.

The amount of the security will be equal to the amount of the costs expected to be incurred.

4.6 Costs of Interim Applications/Motions

Any award of the costs is at the sole discretion of the court.

However, the general rule is that the costs of interim applications are awarded to the successful party. In its costs order, the Court directs whether the costs are to be assessed or taxed by the registrar, and whether these costs will be payable immediately or upon the conclusion of the main proceedings.

4.7 Application/Motion Timeframe

The time taken for the Court to deal with the above applications will vary from four to nine months, and depends upon their complexity and the workload of the Court.

Parties may request that the interim application should be dealt with on an urgent basis, but the timeframe is totally up to the discretion of the Court. Interim injunction applications may be filed without notice to the other side, and can be dealt with on an urgent basis (ie, within one or two days from the date of filing). For more details on interim injunctions, please refer to section **6 Injunctive Relief** below.

5. Discovery**5.1 Discovery and Civil Cases**

Under Order 28 of the CPR, any party can apply to the Court for an order for discovery under oath, and for inspection of documents that are relevant to the dispute and are or have been in the other party's possession, custody or power that.

The disclosure process is supervised by the Court and if a party ordered to make discovery of documents fails to do so, he shall not afterwards be at liberty to submit as evidence any document he failed to discover or to allow to be inspected, unless the Court is satisfied that he had sufficient excuse for so failing, in which case the Court may allow such document to be submitted as evidence on such terms as it deems fit.

In order to avoid additional delays and costs, the parties may obtain orders for the disclosure and inspection of documentary evidence during the hearing of the Summons for Directions, without the filing of a separate application to this effect, as explained in **4.1 Interim Applications/Motions** above.

Parties effect disclosure by including a list of documents in an affidavit that is served on every other party to the litigation. The list identifies the documents that are disclosable and further indicates which of them will be withheld from inspection and which of them are no longer in their possession, custody or control.

The duty for a full disclosure is a continuing one, and the parties must disclose to their opponents any new relevant

documents that come into their possession after the initial disclosure.

In cases where there are valid grounds to suspect that the other party has not provided full disclosure, it is possible for a party to apply for specific disclosure of particular documentary evidence.

Taking of the other side's witness testimony before trial is not possible unless this testimony is in writing and already in the possession of the parties (eg, expert opinions).

5.2 Discovery and Third Parties

The general rule is that a non-party to the claim cannot be compelled to make disclosure.

If the material or information held by the non-party is relevant to the main trial or to a pre-trial hearing, a subpoena duces tecum may be issued, under which a non-party may be compelled to produce documents to the Court during the trial.

Disclosure against non-parties who are 'mixed up in the tortious acts of others so as to facilitate their wrongdoing' can also be obtained by applying to the Court for a 'Norwich Pharmacal Order', which requires the third party to disclose relevant documents or information.

5.3 Discovery in this Jurisdiction

For the general approach to discovery and the rules governing disclosure, please see **5.1 Discovery and Civil Cases** and **5.2 Discovery and Third Parties** above.

5.4 Alternatives to Discovery Mechanisms

The legal system in Cyprus provides for discovery, as explained above.

5.5 Legal Privilege

All persons that are admitted to the Cyprus Bar are considered to be advocates, and are consequently regulated by the Advocates' Law (Cap. 2) and the Advocates' Code of Conduct regulations. The relevant regulations of the Code provide that, as a general rule, the Legal Professional Privilege (LPP) applies to the dealings and communications of all advocates with their clients.

Strict adherence to the principle of professional confidentiality is considered an important prerequisite to the attainment of trust between an advocate and his/her client. In this regard, an advocate is basically regarded as a custodian of the confidential information that has been entrusted to him/her by his/her client and is, therefore, not permitted to divulge that information without said client's consent.

LPP is both a fundamental right and a duty of an advocate, who is prohibited from disclosing any confidential infor-

mation that has arisen from communications with his/her client, whether in the context of legal proceedings or at the pre-trial stage. Furthermore, it is important to note that communications between an advocate and a third person are also considered privileged as long as they take place predominantly in the context of pending or anticipated litigation.

LPP may be extended to foreign lawyers, but it is questionable whether the Cypriot Court will apply the LPP principles to communications of in-house lawyers with their employers and other colleagues, since they act as business advisers and not as lawyers of their employers. This conclusion is also supported by the decision of the European Court of Justice in the *Akzo Nobel* case, where the ECJ laid down a very strict interpretation of the applicability of LPP, by deciding that communications between in-house counsel and their companies' employees in the context of EC competition investigations are not privileged.

5.6 Rules Disallowing Disclosure of a Document

Without prejudice documents are also covered by the LPP, and are protected from disclosure if the Court is satisfied that they were exchanged as part of a genuine attempt to settle a dispute.

6. Injunctive Relief

6.1 Circumstances of Injunctive Relief

Pursuant to section 32 of the Courts of Justice Law (L. 14/1960), the Courts in Cyprus have the discretion to issue interim injunctions if they are satisfied that:

- there is a serious issue to be tried;
- there is a probability that the applicant is entitled to relief in his/her claim; and
- it will be difficult or impossible to do complete justice at a later stage if the interim order is not granted.

Furthermore, the Court will assess whether it is just and convenient to grant the order on the basis of all the pertaining facts.

Injunctive relief is most commonly sought at the outset of the proceedings, but, in appropriate circumstances, it can also be granted at any stage of the proceedings, even after a judgment has been given.

A wide range of injunctive remedies (prohibitory or mandatory) is available, as follows.

Asset Freezing Orders

Freezing orders aim to freeze defendants' assets so that they are prevented from transferring them to another jurisdiction or from unjustifiably dissipating them. According to well-established case law, the Courts of Cyprus have the power

to grant a freezing injunction in respect of assets both in Cyprus (domestic injunctions) and worldwide (worldwide injunctions).

The Courts of Cyprus may also grant so-called "Chabra orders", which aim to freeze assets that are in the possession of a co-defendant or even a third party. Chabra orders may be granted without a direct cause of action against the respondent if the Court is satisfied that he is in possession or control of assets to which the main defendant is beneficially entitled.

Disclosure Ancillary to the Freezing Order

These orders are issued in support of the freezing order, and force the respondent to disclose under oath the location and value of his/her assets.

Norwich Pharmacal Orders

A Norwich Pharmacal Order is an order for the disclosure of documents or information. It takes its name from the well-known case of *Norwich Pharmacal Co. v. Commissioners of Customs and Excise*, in which the House of Lords decided that, if a person gets mixed up in the tortious acts of others so as to facilitate their wrongdoing, then he/she may incur no personal liability but he/she comes under a duty to assist the person who has been wronged by giving him full information and disclosing the identity of the wrongdoers.

Appointment of a Receiver

Under the appropriate circumstances, Cypriot Courts have jurisdiction to issue an order appointing a receiver, who is entitled to receive and, if authorised by the Court, also to manage specific assets and to deal with them as authorised under the order.

Search and Seizure Orders/Anton Piller Orders

A search order is a form of mandatory injunction that orders the defendant to allow the claimant's representatives to enter into the defendant's premises and search for, copy, remove and detain documents, information or other material.

Search orders were formerly called Anton Piller orders, following the Court of Appeal judgment in *Anton Piller KG v Manufacturing Processes Ltd*. They are also referred to as "search and seizure" orders.

The purpose of a search order is usually to preserve evidence and/or property that is or may be the subject of an action, or as to which a question arises in the context of an action.

Anti-suit Injunctions

These are injunctions ordered by a Cypriot Court to restrain a party from commencing or continuing proceedings abroad, and can also be used to restrain proceedings before the domestic courts. Anti-suit injunctions can also apply to proceedings for the recognition or enforcement of a judg-

ment, and can thereby operate to restrain a judgment creditor from taking proceedings to enforce a judgment.

Quia Timet Orders

A quia timet injunction is granted where no actionable wrong has been committed, to prevent the occurrence of an actionable wrong or to prevent the repetition of an actionable wrong.

Injunctions in aid of judicial or arbitration proceedings pending in EU Member States

Provision and protective orders can also be issued under the provisions of Article 35 of the Recast Regulation in aid of foreign, court or arbitration proceedings in other EU Member States.

Section 9 of the International Commercial Arbitration Law (Law. 101/1987) also provides for provision measures in aid of international arbitral proceedings, as will be explained below.

Injunctions in aid of judicial or arbitration proceedings pending in non-EU Member States

In the absence of a legal basis similar to Article 35 of the Recast Regulation, it is questionable whether the Cypriot Courts are able to issue injunctions in aid of judicial proceedings commenced in a non-EU Member State.

However, in relation to arbitration proceedings, section 9 of Law 101/1987 provides for the domestic court's power to issue provisional measures in aid of international arbitral proceedings, either in anticipation of or following the commencement of said arbitral proceedings and regardless of whether these proceedings will actually take place in Cyprus or abroad.

6.2 Arrangements for Obtaining Urgent Injunctive Relief

Injunctive relief can be obtained without providing notice to the respondent, within one or two working days from the date of filing or even on the date of filing if the circumstances are extremely urgent.

There are no arrangements for "out-of-hour" judges in civil proceedings. However, it is possible to obtain injunctive relief during the Courts' recess for summer, Christmas and Easter holidays.

6.3 Availability of Injunctive Relief on an Ex Parte Basis

Under section 9 of the Civil Procedure Law (Cap.6), injunctive relief can be obtained on an ex-parte basis (ie, without notice to the respondent), provided that the applicant is able to satisfy the Court that this is a matter of overwhelming urgency and that, under the circumstances, the orders should be issued in the absence of the other side.

In all applications made ex-parte, the applicant is under a duty to provide full and frank disclosure of all material facts and evidence.

After the service of the order to the respondent, the respondent will have the right to object to the application and request the cancellation of the orders issued ex-parte, during an inter-partes hearing.

6.4 Applicant's Liability for Damages

Applicants will have to pay compensation to the respondent for any loss suffered by the latter as a result of the injunction if the order is set aside and it is proved that it was issued without a good reason and/or justification.

With the affidavit supporting their request for interim relief, the applicants will have to demonstrate that they will be able to pay such compensation and provide security for the respondent's potential damages.

The amount of the security and its form (eg, the signing of a bond, bank guarantee or payment of money into Court) will be determined by the Court, on the basis of the particular facts of the case and the amounts in dispute.

This provision of security for the respondent's potential losses is a prerequisite for the issuance of the orders.

6.5 Respondent's Worldwide Assets and Injunctive Relief

Injunctive relief can be granted against the worldwide assets of the respondent. The Courts of Cyprus have long deemed that the powers granted to them by virtue of Section 32 of the Courts of Justice of 1960 (Law No. 14/60) pertaining to the issuance of injunctive relief are very wide and enable them to issue worldwide interim orders for the freezing of assets of respondents located even outside of the jurisdiction – ie, abroad (see, for example, *BP Holdings Ltd e.a. v Kitalides e.a.* (No. 2) (1994) 1 A.A.D. 694 and *Seamark Consultancy Services Limited v. Joseph Lasala* (2007) 1 A A.A.D. 162).

6.6 Third Parties and Injunctive Relief

It is indeed possible for an applicant to apply for and secure injunctive relief against a third party.

The possibility of issuing freezing injunctions against non-parties (third parties) to pending proceedings has been expressly recognised by Cypriot caselaw, which has adopted the principles laid down in the famous case of *T.S.B. Private Bank International S.A. v. Chabra and Another* (1992) 1 W.L.R. 231. Such jurisdiction s are exercised on an exceptional basis, and are available where there is good reason to believe that the assets of the third party – against whom there is no cause of action – are, in truth, the assets of the defendant (ie, the third party is in possession of assets beneficially owned by the defendant, and the latter can be shown

to substantially control or have a power of disposition over the assets held by the third party in a way that the assets would be amenable to the execution of a judgment obtained against the defendant).

It is also possible to obtain other types of injunctive relief against third parties, such as disclosure orders (eg, the “Norwich Pharmacal” order), in cases where a third party has been involved in a wrongdoing, innocently or not, and the provision of information/documentation is necessary for the purposes of identifying the wrongdoer, tracing his/her assets, substantiating the plaintiff’s cause of action against him/her or finding a missing piece of the jigsaw (see, for example, *TBF (Cyprus) Ltd (2001) 1(A) A.A.D. 153* and *Avila Management Services Ltd e.a. v Frantisek Stepanek e.a. (2012) 1 A.A.Δ. 1403*).

6.7 Consequences of a Respondent’s Non-compliance

Disobeying a Court Order constitutes “contempt of court”. Pursuant to Section 42 of the Courts of Justice of 1960 (Law No. 14/60), and Order 42A of the Civil Procedure Rules, a Cypriot Court has the power to compel a person to obey the provisions of any Order issued by it ordering or prohibiting any action, through the imposition of a penalty (ie, fine) or a sentence of imprisonment, or through the attachment or sequestration of assets.

In addition, any Cypriot Court has the power to penalise a party to a court process or any other person for contempt, and/or to compel obedience of any of its Orders, as long as such person has taken notice of the Order and knowingly and willfully encourages or conspires to the contempt of the Order.

7. Trials and Hearings

7.1 Trial Proceedings

The trial of any action for a claim exceeding the amount of EUR3,000 takes place through oral witness testimony in open court. Any witnesses/expert witnesses are normally examined *viva voce*, unless the Court orders, for good reason, any particular fact or facts to be proved by affidavit, or that the affidavit of any witness is read at the hearing or trial of the case, on such conditions as the Court may deem reasonable, or that any witness whose attendance in Court ought to be dispensed with, for some sufficient cause, or examined by interrogatories or otherwise before a commissioner or examiner. The Court may also allow the examination-in-chief of a witness to take place via a written statement, provided that said written statement contains no inadmissible evidence.

Furthermore, where any witness is resident or present in a country with which a convention has been concluded, the Court may order such witness to be examined before the

competent Court or authority of such country or before any person appointed by such Court or authority, provided that, where it appears to the Court that the other party *bona fide* desires the production of a witness for cross-examination and that such witness can be duly produced in Court in Cyprus, an order shall not be made authorising the evidence of such witness to be given by affidavit.

7.2 Case Management Hearings

Interlocutory applications or petitions are usually tried on the basis of sworn affidavits and written submissions filed before the Court in support of the application and opposition thereto, respectively, without oral testimony.

Similarly, the hearing of actions for claims under EUR3,000.00 takes place via the exchange of written testimony in the form of sworn affidavits, accompanied by all relevant evidence.

Case management appearances (referred to as appearances for the issuance of “Directions” by the Court) are held after the pleadings are deemed to be closed – ie, once these have been exchanged between the parties and filed in Court, for the purposes of determining issues such as the discovery and inspection of documents, the admission of facts, the consolidation of actions, the issue of costs, the list of witnesses, the date of the hearing, etc.

7.3 Jury Trials in Civil Cases

There are no jury trials.

7.4 Rules That Govern Admission of Evidence

The general rule is that all available material evidence at a party’s disposal should be presented during the hearing of the action in Court, regardless of whether such evidence is oral, documentary or real. However, such evidence will only be accepted as being admissible if it is relevant to the litigious facts, and is the best available evidence at hand. Evidence that is irrelevant or deemed to be extrinsic, or that breaches privilege, was obtained illegally or is in violation of the Constitution shall not be permitted.

7.5 Expert Testimony

The parties are free to produce expert witness testimony to support their case when an issue in dispute is of a scientific (eg, medical), technical or professional nature, and an expert’s professional opinion and evidence – within his/her sphere of expertise – is required to clarify a particular matter.

It is also possible for the Court itself to seek the provision of expert testimony, pursuant to Section 48 of the Courts of Justice of 1960 (Law No. 14/60), which provides that any Court, in the context of its civil jurisdiction, may either by its own motion or on the application of any one of the parties call any person within the Republic to testify or produce any

document in his/her possession, and may also examine the same as a witness or expert witness.

7.6 Extent to Which Hearings are Open to the Public

Hearings are generally open to the public and the press, and are conducted in open court. As per the provisions of Article 30 of the Constitution, however, a Court may decide to conduct the trial in camera or in chambers (ie, behind closed doors), and exclude the public or the press from either the whole or part of a trial for reasons of national security, constitutional order or public policy, for the protection of the interests of minors or the private life of parties, or in other special circumstances where the Court deems that the presence of the public or any publicity might jeopardise the interests of justice.

Unless the Court's permission has been sought and secured by a third party to the contrary, transcripts of hearings are available only to the parties of the proceedings.

7.7 Level of Intervention by a Judge

Judges may intervene in the process of a trial for the purposes of deciding on a number of procedural or substantial matters (such as the admission of evidence) and for generally determining the conduct of the proceedings between the parties. It is also possible for a Judge to pose questions on a witness testifying in Court, although this right is limited to issues that have transpired from, or are directly relevant to, the testimony in question and require clarification.

An interlocutory or final judgment or decision may be issued by the Court either *ex tempore* (ie, during the hearing – see, for example, *Attorney-General of the Republic v. Mouzouri* (1996) 2 A.A.D. 66) or *curia advisari vult* (ie, on a future date, after it has been reserved – see *Mavroyeni v. House of Representatives e.a.* (No. 1) (1996) 1 (A) A.A.D. 49). This is entirely at the Court's discretion.

7.8 General Timeframes for Proceedings

For claims over EUR3,000.00, the usual applicable timeframe for the determination of the action ranges from two to five years, depending on the amount of the claim, the complexity of the case, the Court's caseload, the length of the trial, the number of witnesses summoned to testify, any delaying tactics employed by the defendant, etc. Most of this period is usually the time between the filing of an action and the actual commencement of the trial, since the trial itself is usually completed within three to nine months, depending on the number of witnesses, the number of adjournments and the Court's workload.

8. Settlement

8.1 Court Approval

Civil actions can be settled at will, and no court approval is required to do so. However, pursuant to Order 15 of the Civil Procedure Rules, Court leave is required for the discontinuance of a pending action after the defendant has filed a defence or taken any other steps in the action (apart from any interlocutory application).

8.2 Settlement of Lawsuits and Confidentiality

If a settlement agreement is reached between the parties to a dispute and the civil action is simply withdrawn or discontinued as a result thereof, then this may remain confidential between the parties. If, however, the settlement agreement is declared before the Court and recorded as a judgment by consent or rule of court, then it may become publicly available.

8.3 Enforcement of Settlement Agreements

If the settlement agreement is declared and recorded before the Court as a final judgment to the dispute, it can then be enforced in the same manner as any other domestic judgment, through any one of the available methods of execution.

8.4 Setting Aside Settlement Agreements

A settlement agreement shall be seen and treated under the principles governing contracts in general. As such, it may be set aside if it is determined to be void *ab initio*, in which case it shall be deemed as having no legal effect and as lacking any contractual force (examples include cases where both parties to the agreement are under a common mistake as to a matter of fact that is essential to the agreement, if any part of a single consideration for one or more objects, or any one or any part of any one of several considerations for a single object, is unlawful, agreements made without consideration, agreements in restraint of trade or access to justice, etc), or if it is determined to be voidable, in which case it shall be considered to be valid and binding unless and until rescinded by the party with the right to rescind it (examples include agreements where the consent was caused by coercion, fraud, misrepresentation, undue influence, etc). It should be noted that the Cypriot Contracts' Law does not provide for a formalised procedure of rescission. As such, unless the other party consents to the rescission of the contract, both parties shall continue to be bound by the contractual obligations provided therein unless and until the contract is set aside by an order of rescission made by the court at the instance of the party seeking to terminate or set it aside (*Islington London Borough Council v. UCKAC* [2006] EWCA Civ 340).

9. Damages and Judgment

9.1 Awards Available to a Successful Litigant

The Courts of Cyprus have a very wide discretion and may issue judgments for the payment of damages, specific performance, declaratory judgments, summary judgments, judgments in default, and judgments in relation to interest and costs, among others.

9.2 Rules Regarding Damages

The type and volume of damages that are awarded in the context of civil proceedings is at the Court's discretion, and Cypriot courts generally have very wide discretion to order the payment of compensation by way of general, special and even punitive or exemplary damages against a party to the proceedings.

Apart from the general rules regarding reasonableness and remoteness of damage, mitigation of loss and proof of damage, as well as the ceiling placed by penalty clauses (which may or may not be upheld by the Courts of Cyprus, depending on a number of factors), there are no limits on the maximum amount of damages that may be recovered by the winning party.

Special damages compensate a plaintiff for the quantifiable monetary losses suffered as a result of the defendant's conduct and, therefore, must be specifically pleaded (with detailed particulars) and proved by the plaintiff in order to be awarded by the Court.

General damages are awarded to compensate a plaintiff for non-quantifiable loss suffered as a result of the defendant's wrongdoing, such as future pain and suffering, loss of amenity, loss of earnings, damage to reputation, etc.

Punitive or exemplary damages are very rarely awarded by the Courts of Cyprus and only in cases where the Court deems that the defendant's conduct was egregiously insidious or accompanied by elements of arrogance, insolence or malice such that it is necessary to punish the defendant in an exemplary manner, so as to either reform him/her or deter him/her and other parties from pursuing a similar course of action in the future as that which damaged the plaintiff (see, for example, *Savvas Paraskevas v. Despina Mouzoura* (1973) 1 C.L.R. 78, *Berengaria P. Papakokkinou v. Princess Zena De Tyras Kanther* (1982) 1 CLR 65 and *Attorney General v. Palma et al.*, Civil Appeal no. 44/2013, 19/11/2015).

9.3 Pre- and Post-judgment Interest

Pursuant to Section 33 of the Courts of Justice of 1960 (Law No. 14/60), in the context of any proceedings for the collection of any debt for which interest is also payable, either on the basis of an agreement or otherwise, the Court may award the payment of such interest (at the agreed rate or otherwise,

in no case exceeding the maximum statutory rate) from the date of its accrual until final repayment.

In addition, unless otherwise ruled by the Court, any court judgment – including the part relating to the payment of legal costs – shall normally also bear legal interest (currently set at 3.5%) from the date of the filing of the action until final repayment of the judgment debt.

9.4 Enforcement Mechanisms for a Domestic Judgment

A domestic judgment may be enforced in the Republic of Cyprus through the pursuit of any of the available measures of execution, as follows:

- writ of execution for the sale of movable property;
- registration of a charging order (“Memo”) over the immovable property of the debtor company or the sale of the debtor's immovable property;
- registration of a charging order over the judgment debtor's chattels – eg, shares;
- order for the repayment of the debt by monthly installments;
- writ of delivery of goods, ordering those goods to be delivered to the judgment creditor;
- garnishee proceedings; or
- bankruptcy or liquidation proceedings against the judgment debtor.

9.5 Enforcement of a Judgment From a Foreign Country

The recognition and enforcement of a foreign court judgment shall largely depend on whether or not said judgment was issued in another EU Member State.

In the former case, a judgment falling within the umbrella of Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (the “Regulation”), which applies to judgments issued by a court of another EU Member State on or after 10.01.2015, shall normally be recognised by a Cypriot Court in the Republic of Cyprus without any special procedure being required, and without the need for the issuance of a declaration of enforceability by the Cypriot Court (as was the case under the old Regulation No 44/2001). To this end, it is essential to furnish the Court with a copy of the court judgment that satisfies the conditions necessary to establish its authenticity (ie, an original or duly certified copy of the judgment in question) and a certificate issued by the court of origin in the form provided in Annex I of the Regulation, with a translation of said documents into Greek.

It should be noted that, as provided for under Article 45 of the Regulation, the recognition of a foreign judgment can be

refused at the request of any interested party for any of the reasons stated therein, namely:

- if recognition is manifestly contrary to the public policy of the member state addressed;
- where the judgment was given in default of appearance, if the defendant was not served with the document instituting the proceedings or an equivalent document in sufficient time and in such a way as to enable him or her to arrange for his or her defence;
- where the judgment is irreconcilable with another given in a dispute between the same parties in the Member State in which recognition is sought;
- where the judgment is irreconcilable with an earlier judgment given in another Member State or in a non-Member State between the same parties and involving the same cause of action, where the earlier decision fulfils the conditions required for recognition in the state of recognition; or
- where the judgment conflicts with sections 3, 4 or 5 of Chapter II (ie, jurisdiction in matters relating to insurance, consumer contracts and employment contracts) and with section 6 of Chapter II (the provisions for exclusive jurisdiction, for example). However, under no circumstances will the substance of the judgment be reviewed by a Cypriot court, as provided for by Article 52 of the Regulation.

For a judgment issued by a non-EU Member State, the applicable law and procedure pertaining to the recognition and enforcement of such a foreign judgment shall stem from a number of sources, such as:

- multilateral treaties of which Cyprus is a part, such as the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, which has been transposed into national legislation and which allows for a Decision rendered in one of the Contracting States of the Convention to be recognised and enforced in Cyprus in cases where the Decision was given by a Court considered to have jurisdiction within the meaning of the Convention, the Decision is no longer subject to ordinary forms of review in the State of origin, and the Decision is enforceable in the State of origin;
- bilateral treaties with other states;
- domestic laws, such as the Judgments of Foreign Courts (Recognition, Registration and Enforcement by Convention) Law of 2000, Law No 121(I)2000, which provides for the mutual recognition of court judgments issued in countries with which Cyprus has concluded agreements, or the Foreign Judgments' Law, CAP. 10, for judgments issued by a Commonwealth country, on the basis of the mutuality/reciprocity principle.

In any of the above-mentioned cases, an application shall need to be filed before the appropriate District Court, seeking the recognition and subsequent enforcement of the issued foreign judgment; and

- common law principles – if there is no multilateral or bilateral agreement between the state of origin and Cyprus, then a new civil action shall need to be filed in the Republic of Cyprus based on the provisions of the foreign judgment in question. Assuming that the judgment is final and for a definitive sum, the judgment creditor shall then be able to seek the issuance of summary judgment on the basis of the argumentation that the judgment debtor does not have a defence to the proceedings.

Once a foreign judgment has been recognised and registered in the Republic of Cyprus, it shall obtain the status of a domestic judgment and may therefore be enforced through any of the methods mentioned in **10.4 Issues Considered by the Appeal Court at an Appeal** above.

10. Appeal

10.1 Levels of Appeal or Review Available to a Litigant Party

Cyprus has a two-tier court system:

- the subordinate (or first-instance) courts, namely the District Courts, the Administrative Court, the Industrial Disputes Courts, the Family Courts, the Rent Control Courts, the Military Courts, the Assize Courts, and the Admiralty Court (said jurisdiction is exercised by the Supreme Court, as a first-instance court); and
- the Supreme Court, which acts as the Appellate Court.

10.2 Rules Concerning Appeals of Judgments

As per the provisions of Article 25 of the Courts of Justice of 1960 (Law No. 14/60), an appeal before the Supreme Court of Cyprus may be brought in relation to:

- any final judgment or order of a court exercising civil jurisdiction;
- any order of a prohibitory or imperative nature, or any order for the appointment of a receiver;
- interlocutory judgments having a determinative effect on the rights of parties; and
- any judgment issued by a court exercising criminal jurisdiction.

The appellant may, by his appeal notice, appeal against the whole or any part of the judgment. The appeal notice must state all the grounds of appeal and set forth fully the reasons relied upon for the support or justification of the grounds stated.

10.3 Procedure for Taking an Appeal

An appeal of any interlocutory order, or of any final or interlocutory order in any matter not being an action, must be brought within 14 days of the date of issuance thereof, whereas any other appeal must be brought within six weeks

of the date of issuance of the judgment. These respective periods shall be calculated from the time that the judgment or order becomes binding on the intending appellant or, in the case of the refusal of an application, from the date of such refusal. All appeals must be filed in writing before the Registrar of the Court appealed against, together with an office copy of the judgment complained of and appealed against.

10.4 Issues Considered by the Appeal Court at an Appeal

In its capacity as an appellate court, the Supreme Court has very extensive powers in the context of appeal proceedings brought before it. In particular, pursuant to Order 35 Rules 8 and 9 of the Civil Procedure Rules, the Court of Appeal shall have power to draw inferences of fact and to give any judgment and make any order that ought to have been made, and to make such further or other order as the case may require. These powers may be exercised by the Supreme Court despite the fact that the notice of appeal of the appellant may be that only a part of the decision may be reversed or varied; such powers may also be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have appealed against or complained of the decision.

The Supreme Court also has the power to make such order as to the whole or any part of the costs of the appeal as may be just.

Furthermore, if upon the hearing of an appeal it appears to the Court of Appeal that a new trial ought to be held, the Court may order that the decision appealed against shall be set aside either wholly or in part, and that a new trial shall be held either generally or with regard to a particular issue or matter.

Finally, the Court of Appeal shall have all the powers and duties as to amendment and otherwise of the Trial Court, together with full discretionary power to receive further evidence upon questions of fact, with such evidence to be either by oral examination in Court, by affidavit, or by deposition taken before an examiner or commissioner. Upon appeals from a judgment after trial or hearing of any cause or matter upon the merits, such further evidence (except matters subsequent, as aforementioned) shall be admitted on special grounds only, and not without special leave of the Court.

10.5 Court-imposed Conditions on Granting an Appeal

Apart from the requirements that an appeal must be filed within the prescribed period and using the provided form, and be fully substantiated, there are no further conditions imposed by the applicable legal framework and Civil Procedure Rules, and the Supreme Court's leave shall not be required prior to the filing of an appeal, except where the appeal concerns solely an alleged wrong decision with re-

gard to costs, in which case the Court's prior leave shall be required.

10.6 Powers of the Appellate Court After an Appeal Hearing

The Supreme Court may vary the whole or part of the first instance judgment or order, cancel, reverse or confirm the same, or order a retrial.

11. Costs

11.1 Responsibility for Paying the Costs of Litigation

An award of costs is solely at the discretion of the Court, but the general rule is that the losing party has to bear the costs of the proceedings and reimburse the winning party for his/her legal costs, although it is not unusual for the Court to order each side to bear its own costs. The standard costs that are recoverable are legal costs, disbursements (such as stamp duty, service costs, etc) and VAT. Legal costs are, as a matter of practice, calculated by the Registrar of the Court on the basis of the existing cost scales and approved by the Court. It is possible for a party to challenge the amount of the costs.

11.2 Factors Considered When Awarding Costs

Pursuant to Order 59 of the Civil Procedure Rules, the factors that a Court may take into consideration when awarding costs are, *inter alia*, the nature, importance, difficulty or urgency of a case, as well as the demeanor of the parties. In relation to this last point, if it appears to the Court or Judge that costs have been incurred either improperly or without any reasonable cause, or if any costs properly incurred have nevertheless proved fruitless to the person incurring the same due to any undue delay in proceeding under any judgment or order, or to any misconduct or default of the advocate, the Court or Judge may disallow such costs or make any other order the Court deems fit.

11.3 Interest Awarded on Costs

Legal costs awarded to a successful litigant bear legal interest (currently set at 3.5%).

12. Alternative Dispute Resolution

12.1 Views on ADR in this Jurisdiction

As expected, litigation is still the most popular dispute resolution method in the Republic of Cyprus, although recent years have seen a significant rise in the recourse of parties in dispute to arbitration, which is the most popular alternative dispute resolution method; mediation proceedings are also on the rise, although to a significantly lesser extent. Arbitration proceedings of either an *ad hoc* or institutional type are becoming increasingly common, not least because of the

obvious benefits associated with arbitration, including the speedy determination of the dispute.

12.2 ADR Within the Legal System

Recourse to ADR is not compulsory so the parties have the discretion to decide whether to refer their dispute to arbitration or mediation for settlement.

It should be noted that Article 15(1) of the Law on Certain Aspects of Mediation in Civil Matters of 2012 (Law No. 159(I)/2012) expressly provides that, in the context of pending litigation proceedings for the determination of a specific dispute amenable to mediation within the ambit of said Law, the judge presiding over the proceedings may follow one of the following processes, at any stage before the issuance of a judgment:

- organise an information meeting together with all the parties, during which he/she shall inform them about the mediation process and the possibility of resolving their dispute by way of such a process; or
- decide on the postponement of the judicial proceedings in order to allow mediation to take place should one party (with the consent of the other parties) or all of the parties apply before the Court in that regard.

However, both of these processes are discretionary and not compulsory, and in practice are rarely followed by Judges.

12.3 ADR Institutions

There are a number of institutions offering ADR services in the Republic of Cyprus, including the Cyprus Chamber of Commerce and Industry (CCCI), the Cyprus Arbitration and Mediation Centre (CAMC), and the Cyprus Eurasia Dispute Resolution and Arbitration Centre (CEDRAC). All three institutions are well organised and encourage the recourse to arbitration/mediation under their auspices.

13. Arbitration

13.1 Laws Regarding the Conduct of Arbitrations

Pursuant to both the Arbitration Law (CAP. 4), which regulates and governs domestic arbitral proceedings, and the Law on International Commercial Arbitration of 1987 (Law No 101/87), 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 dispute.

Following the institution of the arbitral tribunal, the parties are free to agree upon and determine the procedure to be followed in the course of the arbitration proceedings. In the absence of such an agreement, the arbitral tribunal may conduct the proceedings in a manner it deems appropriate in the circumstances.

However, in the absence of an express intention to the contrary, all CAP. 4 arbitration agreements are deemed as containing the implied terms of the First Schedule of said Law, which postulates that the parties shall, subject to any legal objection, submit to be examined by the arbitrators, on oath or affirmation, in relation to the matter in dispute, and shall produce before the arbitrators all books, deeds, papers, accounts, writings and documents within their possession or power respectively which may be required or called for, and do all other things which may be required by the arbitrators during the proceedings. Further, the witnesses shall, if the arbitrators think fit, be examined on oath or affirmation. In addition, CAP. 4 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. However, no person may be compelled under any such writ if he could not be so compelled on 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 the Republic of Cyprus apply *mutatis mutandis* to arbitration proceedings under said Law.

With regard to international commercial arbitrations, Law 101/87 stipulates that all parties shall be treated with equality and given a full opportunity to present their case; furthermore, the 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.

Finally, the IBA Rules are also considered as useful guidance on the production of documents and evidence, and may be taken into account at the discretion of the arbitral tribunal or if so agreed between the parties.

It is not mandatory for the tribunal to hold a final hearing on the merits, but it is a matter of agreed procedure, or, in default of such an agreement, the choice of the arbitral tribunal. It is possible to submit a final written submission in lieu of a final hearing on the merits.

Both CAP. 4 and Law No 101/87 contain express provisions regarding the recognition and enforcement of arbitral awards, as elaborated in detail under **13.4 Procedure for Enforcing Domestic and Foreign Arbitration** below.

13.2 Subject Matter not Referred to Arbitration

Any matter concerning criminal law or family law, or that may have public policy implications (such as foreign commercial contracts that would otherwise be considered illegal under Cyprus law) is considered to be non-arbitrable in the Republic of Cyprus.

In addition, CAP. 4 provides that courts have the competence to decide on any question of fraud of one of the parties, and to cease the effects of any arbitration agreement.

13.3 Circumstances to Challenge an Arbitral Award

As far as international commercial arbitrations are concerned, pursuant to Section 34 of Law No. 101/1987, an arbitral award cannot be challenged on the merits per se, but a court application can be made for the award to be set aside, within three months of the notification/communication of the arbitral award, based on the following grounds:

- one of the parties to the arbitration agreement had no capacity to create legal relations;
- the arbitration agreement was not valid in accordance with the chosen law, or, in the absence of choice, Cypriot law;
- the challenging party was not notified duly and normally of the appointment of the arbitrator or the conduct of the arbitral proceeding, or was in any way deprived of his or her right to appear and present his or her case;
- the arbitral award refers to a dispute not foreseen by or within the limits of the arbitration agreement, or refers to matters outside the limits of the arbitration agreement (if the flawed parts of the award may be separated, then only the ultra vires part of the award will be annulled);
- the composition of the arbitral tribunal or the conduct of the proceeding was in breach of the arbitration agreement or the law;
- the object of the dispute is non-arbitrable in accordance with Cyprus law; or
- the arbitral award violates Cypriot public order.

As far as domestic arbitrations are concerned, in accordance with Section 20 of CAP. 4, an award may be set aside by the court where an arbitrator has misconducted himself or the proceedings, or where an arbitration or award has been improperly procured.

13.4 Procedure for Enforcing Domestic and Foreign Arbitration

Under CAP. 4, a domestic arbitral award may be enforced in Cyprus by leave of the court, in exactly the same way as a court judgment (issued in the context of judicial proceedings) and, in such a case, judgment may be entered in the terms of the award.

Similarly, pursuant to the provisions of Law No. 101/87 and Law No. 84/79 (which has transposed the provisions of the New York Convention of 1958 on the Recognition and Enforcement of Foreign Arbitral Awards), a foreign arbitral award can be recognised as binding and be enforced in the Republic of Cyprus upon the filing of a written application in Court accompanied by the duly authenticated original award or a duly certified copy thereof, as well as the arbitra-

tion agreement, unless any of the reasons set out in Section 36 of Law No. 101/87 are present.

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

- on the application of the party against whom the recognition and enforcement of the arbitral award are being sought, if said party (respondent) shows that:
 - (a) one of the parties to the arbitration agreement was lacking contractual capacity or that said agreement is not valid under the law governing the agreement or, in the absence of an express agreement of the parties as to choice of law, under the law of the country in which the arbitral award was issued; in the case under examination, therefore, the parties would have to prove that the arbitration agreement was invalid under English Law; or
 - (b) he was not duly notified of the appointment of the arbitrator or the carrying out/conduct of the arbitration, or was in any other way deprived of the opportunity to appear and present his case; or
 - (c) 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; or
 - (d) 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
 - (e) the arbitral award has yet to become binding on the parties or has been set aside or 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 finds that:
 - (a) the subject matter of the dispute is not capable of settlement by arbitration under the laws of the Republic of Cyprus – ie, is not arbitrable; or
 - (b) the recognition or enforcement of the arbitral award would be contrary to public policy principles in the Republic of Cyprus.

It should be noted that the Courts of Cyprus that are requested to recognise and enforce a foreign arbitral award will not look at the merits/substance thereof and will limit themselves to a procedural examination of the process leading up to the issuance of the award and a determination of whether the arbitral award is contrary to public policy (*Re Beograd-ska Banka D.D.*, Application No. 74/95 (1995) 1 A.A.D. 737).

Once registered, the award in question may be enforced in the Republic of Cyprus as any other Cypriot judgment could, through the pursuit of any of the available measures of execution.

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