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Law and Practice

Contributed by Dr. K. Chrysostomides & Co LLC

Contents

Dr. K. Chrysostomides & Co LLC is known for its dispute resolution practice and is especially acknowledged for its strong international orientation and notable experience in complex multi-jurisdictional disputes, both before national courts and in the context of arbitral proceedings. The firm's dispute resolution department consists of an 18-person strong team, including partners, senior associates and associates – all general practitioners as well as experts in their own fields. The practice's ability to correspond professionally in six European languages makes Chrysostomides one of the preferred firms on the island. It regularly advises and represents clients in the context of high-value and high-profile arbitration cases, either ad hoc or institutional, in both Cyprus and abroad, and it has been particularly successful in securing interim injunctions in favour of arbitral or enforcement proceedings for the purposes of freezing and securing assets located in Cyprus.

Authors

George Mountis is a partner and head of the firm's dispute resolution department. He plays a leading role in the handling of high-profile commercial and corporate litigation, and the arbitration cases resulting from this, such as major shareholder disputes and high-value commercial and corporate fraud cases. He also specialises in the issuance of injunctive relief. He represents clients in all types of multi-jurisdictional cases, and his many years of courtroom experience render him one of the leading litigators in Cyprus. George is a Fellow of the Chartered Institute of Arbitrators (FCiArb) and has acquired significant experience in this area, both as a legal adviser and counsel, as well as arbitrator. Furthermore, he is a CEDR-accredited mediator.

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1. General

1.1 Prevalence of Arbitration

Litigation remains the prevailing means of dispute resolution used by parties within the jurisdiction of the Republic of Cyprus, and it tends to be clearly favoured over arbitration, even though Cyprus is seeing an increase in the number of disputes being referred to arbitration for final and binding determination.

Arbitration is most often used in the context of construction disputes and disputes between shareholders, as well as in relation to high-value facility agreements. Additionally, Cypriot courts regularly deal with applications for the recognition and enforcement of foreign arbitral awards, or for the issuance of injunctive relief in support of such proceedings either in Cyprus or abroad.

1.2 Trends

It is notable that an increasing number of key domestic players are including arbitration clauses in their agreements, signifying an increase in the reliance on arbitration for the resolution of potential disputes. This is arguably due to the increased popularity of arbitration as a more time-efficient method, especially in light of the heavy workload that national courts have been faced with over the last few years.

1.3 Key Industries

The construction industry is known for its reliance on arbitration, but there has also been increased activity regarding the resolution of shareholder disputes through arbitration.

1.4 Arbitral Institutions

There are currently three private institutions in Cyprus that can be used for international arbitration: the Cyprus Chamber of Commerce and Industry (CCCI), which houses the Cyprus National Committee of the International Chamber of Commerce; the Cyprus Arbitration and Mediation Centre (CAMC); and the Cyprus Eurasia Dispute Resolution and Arbitration Centre (CEDRAC).

2. Governing Legislation

2.1 Governing Law

There are two pieces of national legislation governing arbitration in Cyprus: the Arbitration Law (Cap. 4) and the International Commercial Arbitration Law of 1987 (No 101/1987). The latter is an almost identical adaptation of the original UNCITRAL Model Law of 1985, and it applies exclusively to international commercial arbitrations, which are defined as arbitrations:

- between parties with places of business in different countries;
- where the subject matter of the dispute has been expressly agreed upon between the parties as relating to more than one country; or,
- where either the place of arbitration or the place of performance of a substantial part of the obligations deriving from the commercial relation in question, is situated outside the jurisdiction.

All other domestic arbitral proceedings are regulated by Cap. 4, which is based on the English Arbitration Act, 1950.

Law No 101/1987 does not diverge any further from the UNCITRAL Model Law beyond expressly providing a definition of the term 'commercial arbitration' under Article 2(4), as "an arbitration regarding issues stemming from relations of a commercial nature, whether contractual or not."

2.2 Changes to National Law

No significant amendments have been made to the arbitration laws of Cyprus in the past year, nor is there currently any bill pending parliamentary voting that may significantly affect or alter arbitral proceedings in Cyprus.

3. The Arbitration Agreement

3.1 Enforceability

The only legal requirement regarding the enforceability of an arbitration agreement is that the agreement must be in writing, otherwise it shall be deemed invalid. This is set out in both Article 2(1) of Cap. 4 and Article 7 of Law No 101/1987. No further formal requirements are imposed by the arbitration laws of Cyprus, nor are there any requirements in terms of the content of an arbitration agreement beyond demonstrating an intent by the parties for arbitration. However, Article 7(3) of Law No 101/1987 does elaborate on the meaning of 'written' as including:

- documents signed by the parties;
- an exchange of letters, telexes, telegrams, or other means of telecommunication that provide a record of the relevant agreement; or
- the exchange of statements of claim and defence, through which one side is claiming the existence of an arbitration agreement, while the other side is refuting this.

Article 7 further establishes that an arbitration agreement may take the form of an arbitration clause incorporated in a contract as a term thereof, or it may be the subject of a separate agreement.

3.2 Arbitrability

Neither Cap. 4 nor Law No 101/1987 expressly stipulates any subject matter that may not be referred to arbitration. However, Article 9(2) of Cap. 4 does grant Cypriot courts the discretion to order that an arbitration agreement ceases

to have effect if a dispute arises concerning whether a party thereto has been found guilty of fraud. Moreover, Article 33 of the same law also makes it clear that Cap. 4 shall not apply to any arbitral proceedings of a tribunal operating on the basis of the Trade Disputes (Conciliation, Arbitration and Inquiry) Law, or in relation to any award issued by such a tribunal.

Generally, most subject matters may be referred to arbitration, with the exception of the following, which are non-arbitrable in Cyprus: criminal matters, matrimonial disputes, and disputes with public policy implications.

3.3 National Courts' Approach

The approach of the national courts of Cyprus is generally very favourable towards recourse to arbitration. As such, the Cypriot courts tend to enforce arbitration agreements. In circumstances where a civil case concerns a matter that is already covered by an arbitration agreement, a party to the case may, prior to the submission of any pleadings or before any other steps in the proceedings have been taken, request the stay of the proceedings and/or the referral of the said dispute to arbitration. Upon such a request, the Cypriot courts are obliged to do as requested, unless the court finds that the agreement is null and void, inoperative or incapable of being performed.

3.4 Validity

Pursuant to Article 16(1) of Law No 101/1987, an arbitration clause contained in a contract shall be deemed as an agreement separate to the other terms of said contract. Therefore, in arbitral proceedings that fall within the scope of Law No 101/1987, that is, international commercial arbitrations, the tribunal may consider an arbitration agreement valid even if the underlying contract in which it is contained is invalid.

4. The Arbitral Tribunal

4.1 Limits on Selection

The arbitration laws of Cyprus do not impose any limits on the parties' autonomy to select arbitrators. Parties are free to select anyone to act as an arbitrator, irrespective of their nationality, as well as to decide on the number of arbitrators to be appointed. Article 11 of Law No 101/1987 states that parties are free to decide on the appointment procedure of the arbitrator(s) as well.

4.2 Default Procedures

Pursuant to Article 10 of Cap. 4, where all parties to a dispute fail to agree on the previously agreed-upon appointment of a single arbitrator, or where the parties or the two arbitrators fail to appoint a third arbitrator, or where the sole-appointed arbitrator or the third arbitrator refuses to act, is incapable of doing so, or dies, then any party to the dispute may serve the other parties or the arbitrators with a written notice to make the necessary appointment. Should this appointment not be made within seven days after service of said notice, the court may subsequently appoint an arbitrator, following an application to that effect by the party who gave the notice.

Similarly, Article 11(3) of Law No 101/1987 sets out the following: where three arbitrators are to be appointed and one party fails to appoint one within 30 days, or if the two arbitrators fail to appoint a third within 30 days, then the arbitrator shall be appointed by the court, following an application by one of the parties. Where a single arbitrator is to be appointed, but the parties fail to agree on said appointment, then the court shall make the appointment, again, following an application by one of the parties to this end.

4.3 Court Intervention

In addition to the abovementioned default procedures for the selection of arbitrators, all of which allow for the intervention of the courts under specific circumstances, Article 11(4) of Law No 101/1987 further stipulates that if any party, or two arbitrators, or any other person (including the arbitral tribunal), fail to act in accordance with the agreed-upon appointment procedure, then the court shall, following an application by one of the parties, have the power to take the necessary action. However, this power is limited, as a court will not be able to exercise it if the agreed-upon appointment procedure of an arbitrator provides otherwise.

Moreover, under Article 11 of Cap. 4, which governs circumstances where an arbitration agreement provides for the appointment of two arbitrators, the court may set aside any appointment made by a party in the place of a previously appointed arbitrator who refused to act, was incapable of doing so, or died. The court may also set aside any appointment made by one party, who appointed their chosen arbitrator to act as the sole one, seven days after the other party to the dispute failed to appoint their own selected arbitrator, who was to be the second to be appointed.

4.4 Challenge and Removal of Arbitrators

Article 13 of Cap. 4 governs the removal of an arbitrator by the court if they "fail to use all reasonable dispatch in entering on and proceeding with the reference and making an award," while Article 14 of the same law provides that, where an arbitrator is removed, the court has the power to appoint another to act as arbitrator in their place, following an application by a party to the arbitration agreement.

The provisions of Law No 101/1987 that govern the challenge or removal of arbitrators are Articles 12–15. Pursuant to these, an arbitrator may be challenged only if justifiable doubts have risen as to their impartiality or independence, or if they do not have the qualifications previously agreed upon by the parties. Parties have the freedom to agree on a procedure for challenging an arbitrator, in the absence of which, a party may challenge an arbitrator within 15 days of

becoming aware of the reason for the challenge. If an arbitrator fails to act without delay or becomes unable to perform their functions, then they may withdraw from office, or the parties may agree on the termination of the said arbitrator's mandate. Finally, where an arbitrator's mandate is terminated, a substitute arbitrator is appointed in accordance with the rules that applied to the appointment of the now-removed arbitrator.

Also see **4.3 Court Intervention**, above.

4.5 Arbitrator Requirements

As already explained in **4.4 Challenge and Removal of Arbitrators**, Law No 101/1987 makes explicit reference to the requirement that arbitrators must be independent and impartial, failing which, their appointment may be challenged. Article 12 further imposes an obligation on persons being considered for appointment as arbitrators to disclose any circumstances that may give rise to their lack of impartiality or independence. Finally, the said law also requires a court to have due regard to any qualifications specifically agreed upon by the parties as having to be satisfied for the appointment of an arbitrator, and to such considerations and other factors that are expected to secure the appointment of an impartial and independent arbitrator.

Cap. 4, on the other hand, provides no express requirements as to the independence and/or impartiality of an arbitrator. It is, however, noteworthy that pursuant to Article 20 of Cap. 4, the courts may set aside an arbitrator and/or an award issued by the same, if they are found to be guilty of misconduct or to have misconducted the proceedings.

5. Jurisdiction

5.1 Matters Excluded from Arbitration

See section **3.2 Arbitrability**, above.

5.2 Challenges to Jurisdiction

While Cap. 4 contains no provision as to whether an arbitral tribunal may rule on its own jurisdiction, the principle of competence-competence is included in Law No 101/1987 under Article 16, which unequivocally allows arbitral tribunals to rule on their own jurisdiction, including on objections regarding the existence or validity of an arbitration agreement.

It is also possible, following the determination by the tribunal of the issue of its own jurisdiction, for a party to apply within 30 days before a national court for another decision on the same matter. Such a decision may not be subject to appeal.

5.3 Circumstances for Court Intervention

As mentioned above, on the application of one of the parties, which must not be raised after the submission of the statement of defence, the tribunal may decide on its own jurisdiction; if it decides that it does indeed have jurisdiction to adjudicate the dispute in question, then a party may still request, within 30 days from the date of receipt of the tribunal's decision, for a national court to rule on the matter of the tribunal's jurisdiction.

5.4 Timing of Challenge

Pursuant to Article 16(2) of Law No. 101/1987, parties may challenge the arbitral tribunal's jurisdiction at any time until the submission of the statement of defence. Where parties wish to raise the issue that the arbitral tribunal is exceeding the scope of its authority, this must be done as soon as the matter that is allegedly beyond said scope is raised in the proceedings.

5.5 Standard of Judicial Review for Jurisdiction/ Admissibility

While there is no leading case law on the standard of judicial review for questions of admissibility and jurisdiction, and this matter is not explicitly determined by legislation, courts are expected to review the said issues de novo. Therefore, the court will review the issue from the beginning and shall not be bound by the tribunal's findings and reasoning thereon.

5.6 Breach of Arbitration Agreement

Article 8 of Law No 101/1987 sets out that, where an action is brought before a court for a matter that is the subject of an arbitration agreement, then a party may request to stay the proceedings and refer the matter to arbitration, unless the court finds that the agreement in question is null and void, inoperative or incapable of being performed. While such an issue is pending before the court, the arbitral proceedings may, in the meantime, commence or continue regardless.

Similarly, Article 8 of Cap. 4 also allows for the courts to make an order staying the proceedings upon an application by any party to the proceedings, provided that the court is satisfied that there is no sufficient reason as to why the matter should not be referred to arbitration as per the agreement.

5.7 Third Parties

See section **13.5 Third Parties**, below.

6. Preliminary and Interim Relief

6.1 Types of Relief

Arbitral tribunals are allowed to issue preliminary and interim relief without seeking a court's assistance to that effect, unless the arbitration agreement expressly prohibits this. Such relief can take the form of an interlocutory injunction of a prohibitory or protective nature, and disclosure orders

may also be issued by a tribunal; such interim relief is of a binding nature and may be issued either on an ex parte or an inter partes basis.

In addition, arbitral tribunals may also order the granting of security for costs.

6.2 Role of Courts

Pursuant to the provisions of Article 9 of Law No 101/87, Cypriot courts may issue interim relief in aid or in support of foreign arbitral proceedings, either pending or envisaged, ie, proceedings which have yet to be commenced but are reasonably contemplated to be brought in the near future. In the latter case, the proceedings must actually be contemplated or manifestly intended and the court must be satisfied that the foreign arbitral proceedings are going to commence within a reasonable time.

It should be noted that the 'intervention' of national courts through the issuance of interim relief in support of arbitral proceedings does not impact on the jurisdiction of the arbitral tribunal, nor does it limit its power to issue any order itself on similar matters in the arbitration. In other words, the tribunal's and the courts' powers to issue such type of relief are considered to be concurrent and not mutually exclusive.

Both Cap. 4 and Law No 101/87 enable a national court to make an order for interim relief in support of arbitral proceedings; such measures include prohibitory or protective injunctions, while orders for the inspection or property and disclosure orders may be also issued.

Neither Cap. 4 nor Law No 101/81 expressly provide for recourse to an emergency arbitrator before the arbitral tribunal has been constituted.

6.3 Security for Costs

Under national law, both the courts and arbitral tribunals are permitted to order the granting of security for costs.

7. Procedure

7.1 Governing Rules

In terms of the applicable procedural rules governing domestic arbitrations, Cap. 4 provides that, in the absence of a different provision in the arbitration agreement, domestic arbitrations are deemed as containing the implied terms prescribed by the First Schedule of the Law. These terms/rules provide, inter alia, for the examination of the parties by the arbitrators or umpire and the production of all books, deeds, papers, accounts and documents in the parties' possession etc. Further, Section 30 of Cap. 4 also states that, unless otherwise specified, the Civil Procedure Rules currently in place in Cyprus will apply to domestic arbitral proceedings as well, naturally with the necessary adjustments.

As far as international arbitral proceedings are concerned, Law No 101/87 states that the parties are free to determine how the arbitration is conducted and that all the parties must be given a full opportunity to present their case and be treated equally.

It is important to note that the parties are free to choose any set of procedural rules to govern the resolution of their dispute by arbitration. The most popularly used rules in Cyprus are the ICC, LCIA and UNCITRAL Rules.

7.2 Procedural Steps

No particular procedural steps are required by law. The parties are free to agree upon the procedure to be followed in the context of an arbitration and, in the absence of such an agreement, the arbitral tribunal may conduct the proceedings as it deems appropriate.

7.3 Powers and Duties of Arbitrators

Pursuant to national law, arbitrators have a number of powers, most notably the power to administer oaths or take the affirmations of the parties and witnesses appearing in the proceedings, to request the production of documents for inspection, to appoint expert witnesses, to correct any clerical mistakes or errors arising from any accidental slip or omission in awards, to issue an award etc.

Further, in line with the provisions of Law No 101/87, unless the parties have agreed otherwise, arbitrators are free to determine the admissibility, relevance, materiality and weight of any evidence as well as the way (manner and form) and time in and at which such evidence is to be exchanged by the parties.

In addition, arbitrators are allowed to issue preliminary and interim relief, as explained in **6.1 Types of Relief**, above.

As far as arbitrators' duties are concerned, domestic legislation imposes a general duty for the proceedings to be conducted, and the award to be issued, with all due diligence and expedience.

In addition, Section 12 of Law No 101/87 imposes a disclosure requirement on any person who is approached for potential appointment as an arbitrator, to disclose any circumstances which are likely to give rise to justifiable doubts as to their impartiality or independence. This obligation remains with the arbitrator throughout the duration of their appointment during the arbitral proceedings.

Pursuant to Article 27 of Cap. 4, an arbitrator may be ordered to refer to the court any legal issue that arises during the arbi-

tration, or the award or part of the award, so that the same may be ruled upon by the court.

7.4 Legal Representatives

There are no particular qualifications or other requirements needed for a legal representative to act as counsel in the context of (domestic or international) arbitral proceedings sited in Cyprus. The sole requirement is that the said legal representative is a qualified Cyprus-based lawyer. It should be noted that, pursuant to Cap. 2, the Lawyers' Law, a lawyer residing in another EU member state and meeting the conditions set out in the said law, may duly offer their legal services in Cyprus, including therefore in the context of an arbitration.

8. Evidence

8.1 Collection and Submission of Evidence

Under Law No 101/87, unless the parties have agreed otherwise, the tribunal is free to determine all matters pertaining to the collection and submission of evidence, including the time, manner and form in which such evidence will need to be exchanged and produced by the arbitration parties. An arbitrator may also order the disclosure by the parties of all documents which are deemed relevant to the subject matter of the dispute. In addition, pursuant to Section 7 of the law, the arbitral tribunal (or any of the parties with the approval of the tribunal) may request the court's assistance in relation to the adducing of evidence.

As far as Cap. 4 is concerned, the legislation states that a party may apply to the court for the issuance of a summons requiring the attendance of any person at the pending proceedings in order to be examined or in order to produce any document (although no person may be compelled to do so unless they could be so compelled in the context of a trial). Cap. 4 also provides that, in the absence of any other applicable rules, the Civil Procedure Rules will apply to arbitral proceedings as well (with the necessary adjustments).

8.2 Rules of Evidence

As explained in **8.1 Collection and Submission of Evidence**, above, unless the parties expressly agree otherwise, the tribunal is free to decide on the rules of evidence that will apply in the context of a specific arbitration.

In the context of domestic arbitral proceedings governed by Cap. 4, the Civil Procedure Rules will obviously apply.

8.3 Powers of Compulsion

See **8.1 Collection and Submission of Evidence**, above.

9. Confidentiality

9.1 Extent of Confidentiality

It should be noted that neither Cap. 4 nor Law No 101/87 deal expressly with the issue of confidentiality in the context of arbitral proceedings, and as such, this issue may be determined contractually between the parties.

In terms of common practice, however, information/documentation disclosed in the context of arbitral proceedings is only used or disclosed in the context of other (judicial) proceedings if the parties expressly consent to this or if the court before which the said information/documentation is brought considers such disclosure to be in the interests of justice or in line with other considerations, such as public policy, etc.

10. The Award

10.1 Legal Requirements

Law No 101/87 imposes the following as the only requirements regarding the issued award:

- it should be in writing;
- it should be signed by the tribunal;
- it should contain the reasons behind it, although the parties may choose to dispense with the reasoning; and
- it should state the seat of arbitration and bear the date of issuance.

It should be noted that there is no legal requirement for an arbitral award to be issued unanimously in cases of multiple appointed arbitrators.

Under both Cap. 4 and Law No 101/87, no time limit is expressly provided for the rendering of an award, although Cap. 4 states that the arbitrator must act with all due expediency in the issuance of the award.

10.2 Types of Remedies

There is no limitation on the type of remedy/relief that may be issued or ordered by the arbitral tribunal under the pertinent legislation relating to either domestic or international arbitrations.

It should be noted that, unless the parties agree otherwise, a tribunal may by analogy issue the same orders/grant the same remedies as a national court.

10.3 Recovering Interest and Legal Costs

As far as interest is concerned, unless otherwise directed by the tribunal, this shall be added to the sum of the award as from the date of issuance of the award.

With regard to the costs of the reference and/or the award, these shall be ordered to be paid at the tribunal's discretion,

although the general rule is that the costs follow the event, so that the losing party is usually ordered to incur and bear the costs of the proceedings.

It should be noted that Cap. 4 provides that any clause or reference in the arbitration agreement as to the costs of the reference or the award shall be void.

11. Review of an Award

11.1 Grounds for Appeal

There are only two possible 'challenges' that may be brought by a party in relation to an arbitral award: a request for the correction thereof, or a request for the setting aside thereof based on specific grounds.

Request for the Correction of an Award

As far as a request for the correction of an award is concerned, Section 33 of Law No 101/87 provides that within 30 days from the date of receipt of the award (or otherwise agreed between the parties), a party may request the tribunal to correct any computation or typographical errors, or errors of a similar nature, in the award; notice to the other party to this effect must also be given by the requesting side. If the tribunal considers that the request in question is justified, it will make the pertinent correction within 30 days from receipt of the relevant request.

It should be noted that it is also possible, unless the parties have agreed otherwise, for a party to request the tribunal to make an additional award as to claims presented in the proceedings but omitted from the award and, if the tribunal deems that the request is justified, it will make the additional award within 60 days.

Request for the Setting Aside of an Award

As far as a challenge to the award is concerned, as prescribed by Section 34 of Law No 101/87, it is only possible to bring a challenge within three months from the date on which the party making the application received the award and only in the following circumstances:

Where a party can prove that:

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

Where the court finds that:

- the subject matter of the dispute cannot be settled by arbitration under the laws of Cyprus; or
- the award is in conflict with the public policy of Cyprus.

In addition, as provided for by Section 20 of Cap. 4, it is possible for an award to be set aside by a court in cases where the arbitrator or umpire has not conducted themselves properly in the proceedings, or the arbitration itself or the award was improperly procured.

It should be noted that it is not possible to challenge the merits of an award per se. Nonetheless, an appeal before the Supreme Court of Cyprus can be filed against the decision issued in relation to the challenge of the award.

11.2 Excluding/Expanding the Scope of Appeal

An award may only be challenged on the basis of the grounds set out in **11.1 Grounds for Appeal**, above.

11.3 Standard of Judicial Review

It is not possible to seek a review of the merits of an arbitral award. See **11.1 Grounds for Appeal**, above.

12. Enforcement of an Award

12.1 New York Convention

Cyprus has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and transposed its provisions into national legislation through the Law on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1979, Law No 84/1979.

It should be noted that the said convention applies only to the recognition and enforcement of awards made in the territory of another contracting state and only with regard to the differences arising out of legal relationships considered commercial under the national law (whether contractual or not).

Cyprus has also ratified the Washington Convention of 1965 and the Convention on Conciliation and Arbitration within the CSCE of 1992.

12.2 Enforcement Procedure

Pursuant to Cap. 4, an arbitral award issued in the context of domestic arbitral proceedings may, by leave of the court, be enforced in the same manner as a court judgment issued in civil proceedings, through any one of the available enforcement measures, such as a writ of execution for the sale of movable property, the registration of a charging

order ('memo') over the immovable property of the debtor company or sale of the debtor's immovable property, the registration of a charging order over the judgment debtor's chattels (eg, shares), an order for the repayment of the debt by monthly instalments, garnishee proceedings and others.

Similarly, an arbitral award issued in the context of international commercial arbitral proceedings governed by Law No 101/87, will normally be recognised and enforced in Cyprus following the filing of an application before a national district court, accompanied by a duly authenticated original award or a duly certified copy thereof, as well as a copy of the arbitration agreement, unless any of the conditions set out in Section 36 of the law are present in the circumstances.

Section 36 of Law No 101/87 provides that an application for the recognition and enforcement of an arbitral award may only be rejected for 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; or
- the respondent was not duly notified of the appointment of the arbitrator or the conducting of the arbitration, or was in any other way deprived of the opportunity to appear and present their case; or
- the arbitral award refers to a dispute which was not anticipated or did not fall within the terms of the arbitration agreement or includes decisions on issues which fall outside the scope of the arbitration agreement; or
- the composition of the arbitral tribunal or the way the arbitration proceedings were conducted 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 was held; 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 cannot be settled by arbitration under the laws of the Republic of Cyprus, ie, it is not arbitrable; or
- the recognition or enforcement of the arbitral award would be contrary to public policy principles in the Republic of Cyprus.

Finally, an arbitral award issued in a contracting state of the New York Convention will be duly recognised as binding and will normally be enforced in Cyprus, following the procedure described in Article IV of the convention and assuming that none of the reasons set out in Article V thereof apply.

It is important to clarify that a national court will not look at the merits of an award where the recognition and enforcement of this award is being sought.

If the decision setting aside the award has been issued by a foreign court in due process, then Cypriot courts will normally recognise and enforce the said decision on the basis of:

- the applicable European Regulation (EU) 44/2001 or 1215/2012, as the case may be, if the seat of 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, if a bilateral treaty exists between Cyprus and the seat of arbitration; or
- on the basis of common law provisions, if none of the abovementioned scenarios apply.

Sovereign immunity is not provided for by Cypriot law as a defence that may be raised, either at the enforcement stage or otherwise.

12.3 Approach of the Courts

Refer to section **12.2 Enforcement Procedure**, above.

The general approach of Cypriot courts is that an arbitral award issued either in Cyprus or abroad will be duly recognised and enforced, unless any of the reasons set out in the applicable law are present.

As mentioned above, Law No 101/87 provides that a court may refuse to enforce a foreign arbitral award if it finds that the recognition or enforcement in question would be contrary to public policy principles in Cyprus. It should be noted that there is no legislative definition of the concept of public policy; the relevant case law on the matter attempts to describe the said notion as the fundamental values which a society recognises at a specific time period (see, for example, Attorney General of the Republic of Kenya v Wirtschaft AG (1999) 1A CLR 585). A Cypriot court would, therefore, refuse to recognise a foreign judgment where the judgment in question is deemed to be at variance to an unacceptable degree with the legal order of the Republic of Cyprus, inasmuch as it would infringe on a fundamental principle or would impact on the orderly functioning of the legal, social or commercial life of the Republic of Cyprus. It should be clarified that, as a matter of practice, the public policy principle is rarely invoked before the Cypriot courts.

13. Miscellaneous

13.1 Class-action or Group Arbitration

While class action/group arbitration is not provided for in Cyprus, see section **13.4 Consolidation**, below, on the possible applicability of the Civil Procedure Rules, pursuant to Order 9(1) which says that persons may be allowed to join in a single action where any right to relief arises from the same occurrence.

13.2 Ethical Codes

Counsel are bound by the pertinent rules governing the provision of services by lawyers, as prescribed by the Lawyers' Law, Cap. 2, as well as the Lawyers' Code of Conduct Regulations of 2002.

Pursuant to these provisions, while providing their legal services (including therefore in cases where they act in the context of an arbitration), lawyers have a general duty to act with honour, dignity, due care and independence, to always serve justice and its administration, to serve the truth and the law with independence and dignity, to respect the court, their clients and their colleagues, to abide by the legislative provisions in force at any given time, as well as, with the applicable codes of ethics (deontology rules), to further the interests of their clients, to disclose any conflict of interest and refrain from acting in a way which might give rise to any conflict, to provide due and sound legal advice, to not act in a fraudulent, dishonest, misleading or harmful way, to retain professional privilege, etc.

Arbitrators, on the other hand, may be challenged under Law No 101/87 where circumstances exist that give rise to justifiable doubts as to their impartiality or independence, and are also required to disclose any possible conflict of interest both before and throughout the duration of the arbitral proceedings.

13.3 Third-party Funding

Third-party funding is not permitted in Cyprus and the funding of any claims must, therefore, be made by the parties to the proceedings.

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13.4 Consolidation

The consolidation of arbitral proceedings is not governed by the arbitration laws of Cyprus. However, by virtue of Article 30 of Cap. 4, consolidation of arbitral proceedings is possible, provided that the conditions set out by the Civil Procedure Rules under Order 14 are met. These comprise circumstances when actions are brought by the same party against different parties in respect of the same issue; or when two or more actions by the same or different parties are pending against the same or different parties, and the claims involve common questions of law or fact that are of great significance in comparison to the other issues of the actions. Still, the consolidation of arbitral proceedings is not something that has happened in practice.

13.5 Third Parties

The national law is silent on whether third parties can be bound by an arbitration agreement or award. However, given that the principle of privity of contract is recognised under Cypriot law, the general rule is that a third party cannot be bound by an arbitration agreement it has not signed and by arbitral proceedings it has not consented to be a party to.

The only possible exceptions to this general rule can be found in cases of assignment, administration of a deceased's estate, and trusteeship in bankruptcy, where the third party voluntarily agrees to be included in the arbitration and the contracting parties consent to such an inclusion or, arguably, where the inclusion of a third party is deemed necessary and appropriate in the circumstances, under the 'group of companies' doctrine, which is however untested in Cyprus.

Since Cypriot courts follow English precedent (English case law is considered to provide persuasive guidance to Cypriot courts), it is probable that when faced with such an issue, Cypriot courts would look to deal and interpret the matter in line with English case law; for its part, English law duly recognises and applies the said doctrine in exceptional cases where a non-signatory foreign third party was involved in the conclusion, performance or termination of the contract in question and the courts consider it necessary to pierce the corporate veil and extend the arbitration agreement beyond its signatories.

In addition, third parties have been known to also be bound by interim orders issued by national courts in the context of arbitral proceedings, for the purposes of preserving assets when there is good reason to suppose that the assets of the third party are, in truth, the assets of the defendant. It should be noted that so-called 'Chabra'-type orders are only issued by Cypriot courts in exceptional circumstances, as the courts are generally reluctant to extend their jurisdiction to non-signatories of the arbitration agreement.