

THE REAL ESTATE
LAW REVIEW

TENTH EDITION

Editor
John Nevin

THE LAWREVIEWS

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PREFACE

Just as the ninth edition of *The Real Estate Law Review* was being published, the world was thrown into total confusion by the rapid spread of a deadly new disease. Covid-19 has affected the global economy like nothing this generation has experienced, with every major jurisdiction forced into a series of lockdowns. However, it must not be forgotten that the pandemic is primarily a human tragedy with more than 93 million cases globally and 2 million deaths. As we begin to see light at the end of the tunnel, the global health crisis will undoubtedly complete its transition into an economic one, with significant global debt and widespread unemployment. Covid-19 will leave its mark on all aspects of how we live and work, including each and every sector of the global real estate market.

A great deal has happened since the first edition of *The Real Estate Law Review* appeared in 2012, but nothing more significant than the covid-19 pandemic, a truly global crisis. This tenth edition of *The Real Estate Law Review* will continue to prove its worth by providing readers with an invaluable overview of how key markets across the globe operate and how they react to major world events. Covid-19 has served as a stark reminder that it is no longer possible to look at domestic markets in isolation. Investors and their advisers need to understand real estate assets in the context of global events, and *The Real Estate Law Review* continues to help its readers to do just that.

This edition extends to 27 key jurisdictions around the world, and I am very grateful to all the distinguished practitioners for their insightful contributions. Each chapter has been updated to highlight key developments and their effect on the relevant domestic market. Together, the chapters offer a helpful and accessible overview of the global real estate market. Overseas investors are key influencers in most markets, and it is vital that practitioners are able to advise on a particular deal in the light of an understanding of their client's own jurisdiction.

In the year that the UK finally left the EU and Joe Biden became president of the United States, the significance of Brexit and American politics have been put into perspective by the covid-19 pandemic. Covid-19 is a truly global issue affecting every jurisdiction and, of course, its real estate market. In the background, and almost forgotten, Brexit and the associated economic and political fallout has continued to be a concern for the UK economy and its real estate markets. Although investment volumes fell off a cliff in the first half of the year, we have started to see interest from both overseas and domestic investors, underlining the continued importance of UK real estate as an investment asset. The world's cache of investment capital is likely to prompt a surge in investment activity once some degree of confidence returns. The UK, and London in particular, seem certain to remain attractive to overseas investors looking for a safe haven for their funds. The next few years will undoubtedly

be challenging as we begin the road to recovery, but opportunities will arise, and real estate will remain a key part of investment strategies.

Once again, I wish to express my deep and sincere thanks to all my fellow contributors to this tenth edition of *The Real Estate Law Review*. I would also like to thank the members of the Law Review team for their sterling efforts in coordinating the contributions and compiling this edition. Finally, I wish everyone the very best of health for 2021 and beyond.

John Nevin

Slaughter and May

London

February 2021

CYPRUS

Stella Strati and Stylianos Trillides¹

I INTRODUCTION TO THE LEGAL FRAMEWORK

Real estate in Cyprus is generally owned on a freehold basis, with all rights on land and other real estate properties being registered with the Land Registry Department (LRD), which issues land registration certificates that serve as proof of ownership. Certain real estate developments located in special interest areas, such as marinas, which are being operated on a BOT (build-operate-transfer) basis by private entities on behalf of the government of Cyprus or a public authority, may be sold on a long leasehold basis, with the option to renew, depending on the underlying agreement between the company operating the development and the government as owner of the land. In such cases, the consent of the government granting the lease may be required. Additional rights to a property may include easements, privileges on right of way, long leases, rights reserved, mortgages and encumbrances, contracts of sale, springs, wells, watercourse irrigation channels and rights thereon, trusts and other leaseholds. Ownership may be directly by the individual or entity with some restrictions being applicable on third country (non-EU) purchasers.

A general survey and subsequent registration of all land was conducted in the 1920s by the British administration of Cyprus at the time, which resulted in the adoption of detailed survey plans where every piece of land was registered and numbered. Subsequently all privately owned land was effectively registered in central records with title deeds issued to each owner. Each title deed corresponds to a specific plot or piece of land on the land registry maps. Recently, all land information (save details of ownership) were made publicly available on the LRD online portal to enable data collection as to the characteristics of each plot. A holder of a valid title deed certificate issued by the LRD is fully protected against adverse possession or any other claims.

It is recommended that Cyprus Law is applied on every transaction involving an acquisition or sale of real estate in Cyprus to avoid any conflict with local legislation that may affect certain elements of the real estate in question (for example mortgages or other securities placed on it). In addition, as any transfer of ownership will need to be recorded with the LRD, local procedures and certain formalities will need to be followed.

¹ Stella Strati is a partner and Stylianos Trillides is a senior associate at Patrikios Pavlou & Associates LLC.

II OVERVIEW OF REAL ESTATE ACTIVITY

The local real estate market is currently affected by various trends and developments that affect its activity both positively and negatively. The most unpredictable factor remains the covid-19 pandemic, which has frustrated a number of investments from foreign investors, as well as local transactions due to uncertainty, especially for retail, office and hospitality-related real estate. Despite the negative effects, several landmark projects have been supported by high levels of sales and are currently under construction and expected to be completed within 2021 and 2022.

In addition, the Cyprus Investment Programme, which was discontinued at the end of 2020, has negatively affected the activity on high-end residential real estate that was preferred by investors aiming to apply for Cyprus citizenship under this popular scheme. On the other hand, the pandemic has caused a number of foreign investors to relocate from their home countries and seek a second home in Cyprus, attracted by the outdoor lifestyle and open spaces. In addition, continuing uncertainty in several regions of the Middle East has also attracted individuals and companies wishing to establish a more reliable environment within the EU to Cyprus, as an international base for their operations.

The availability of finance remains strong, with low interest rates, and multiple schemes from the government aiming to support home ownership. In addition, following a series of new pieces of legislation introduced in order to tackle non-performing loans (NPLs) in Cyprus, a substantial amount of real estate has been recovered by banking institutions and is currently being auctioned or managed by asset managers in Cyprus. These property transactions, where mortgages have been placed on them, with the connected loan being classified as an NPL, benefit from reduced land registry transfer fees and stamp duty. Despite several efforts, high levels of NPLs remain in existing bank loan portfolios. Demand from non-Cypriot purchasers and investors has kept real estate prices stable, although certain areas of Cyprus and older properties have been negatively affected.

At the time of writing, a moratorium has been applied on most loan repayments due to the pandemic until the end of 2020, and it remains to be seen whether NPL rates will increase, with possible negative effects on real estate prices.

III FOREIGN INVESTMENT

Cyprus is a developed free market economy, abiding to the rule of law and EU principles. Overseas investors may invest in Cyprus real estate directly or through legal entities. Foreign investors (non-EU) are required to apply for, and obtain, a Council of Ministers permission to register real estate in their name, which is more of a formality especially in the context of the average residential or retail property as such permissions are generally granted. Foreign individuals may also own shares in Cypriot companies, with these companies being owners of Cyprus real estate.

Individuals and businesses wishing to relocate to Cyprus benefit from several government initiatives aiming to facilitate the relocation of individuals that can contribute to the Cypriot economy. These range from fast-track permanent residence permits to individuals, to schemes for relocating third-country staff for companies with substantial operations in Cyprus. It is noted that EU and EEA nationals are not subject to restrictions as they enjoy freedom of establishment and movement under EU rules.

We note that any property acquisitions in the occupied north part of Cyprus, although technically being part of the EU, are not currently under the effective control of the Republic of Cyprus and have a risk of being challenged by owners of the property that may have been displaced in the 1974 invasion. Multiple cases have been brought before various courts, local and international, including the European Court of Justice, with the previous owners being awarded damages and remedies.

IV STRUCTURING THE INVESTMENT

Investors looking to acquire immovable property in Cyprus may acquire it directly on their names or through a Cyprus private limited liability company with shares.

The Acquisition of Immovable Property (Aliens) Law (Cap. 109, as amended) imposes restrictions on the acquisition of real estate property in Cyprus by third country nationals (including any Cyprus companies controlled by them) and as stated above, a Council of Ministers permission may be required. There are no restrictions on real estate acquisitions by EU citizens; therefore, nationals of EU member states (either personally, or through legal entities registered and tax residents in Cyprus) can register as many properties as they wish on their name. It should be noted that obtaining the relevant permit is a straightforward procedure, and permission is easily obtained (provided that the relevant conditions set by the Acquisition of Immovable Property (Aliens) Law are met) to all bona fide purchasers.

The acquisition of property is defined by the above-mentioned Law as either the purchase of a freehold property or the acquisition of a lease exceeding 33 years.

Generally, the most popular vehicle through which investors usually structure the acquisition of immovable property in Cyprus is the Cyprus private limited liability company with shares. An advantage of structuring an immovable property investment through a Cyprus private company is that no restrictions on foreign share ownership exist in Cyprus – subject of course to the restrictions imposed by the Acquisition of Immovable Property (Aliens) Law mentioned above. In addition, Cyprus corporate law is very flexible and can be tax-efficient for holding real estate under a Cyprus entity. As a result, a transaction involving the sale of shares of a real estate owning company is more straightforward and subject to fewer formalities than a transaction involving an outright sale and transfer of immovable property. The purchase and transfer of shares in a Cyprus company can be completed within a day; therefore, the whole process of transferring and registering real estate through the appropriate land registry department can be avoided.

Capital gains tax applies to direct and indirect disposals involving immovable property situated in Cyprus. It is imposed at the rate of 20 per cent (subject to specific adjustments) on gains from the disposal of immovable property or gains from the disposal of shares in companies that directly or indirectly own immovable property situated in Cyprus. It should be noted that in relation to the sale of shares of companies holding real estate, capital gains tax is imposed on the market value of the property which is owned by the relevant company and not on the whole consideration for the relevant sale.

Profits from the sale of immovable property in Cyprus are not subject to income tax. However, if the seller has entered in a number of similar transactions and thus is considered as trading in land, income tax will be applicable instead of capital gains tax. Therefore, if an investor is purporting to invest in immovable property in Cyprus, with an intention to trade in land, it is preferable that he or she effects this through a legal entity since the

applicable corporation tax in Cyprus is one of the lowest in Europe (business profits of a Cyprus company, adjusted for various disallowances and exemptions are subject to tax at 12.5 per cent). In any case, Cyprus corporation tax is considerably lower than the applicable personal income tax progressive rates: the first €19,500 is tax free, the next €8,500 is subject to a tax rate of 20 per cent, the next €8,300 is taxed at 25 per cent, the next €23,500 at 30 per cent and any amount above €60,000 at 35 per cent.

Hence, for the reasons briefly explained above, a popular vehicle used by investors for structuring a real estate transaction is the Cyprus private company.

V REAL ESTATE OWNERSHIP

i Planning

In most cases, a planning permit will be required from the local town council where the property is situated. For this permit, multiple authorities are involved in order to assess all factors of the proposed property. Depending on the area, certain restrictions may arise (for example industrial and retail units may only be established in certain areas). Once this is approved, a building permit will be required in order for the building works to commence. Cover permits may be used for alterations to existing structures. A certificate of final approval is issued when the building is complete, and a committee representative inspects the completed property. Changes to the use of the property are permitted, if this is provided in the urban planning laws of the local area or permitted by the local authorities. As existing procedures can be lengthy, a new fast-tracked procedure has been established whereby a permit may be issued within 10–20 days for single residential units within residential plots. These fast-track applications can be submitted online and are expected to cover more than half of permit applications being currently submitted and reduce overall workload and processing times for all applications.

Larger developments, such as high-rise buildings, hotels and malls will have to meet additional requirements, depending on the use and expected impact of the development on the local community and the environment.

ii Environment

Apart from any civil liability that may arise under the law of tort, environmental contamination may also be classified as a criminal offence under the Control of Water Pollution Law,² which covers a range of practices and events that could accidentally or purposefully contaminate water reserves, water beds, rivers and the coastal areas. Penalties include monetary fines and even imprisonment in severe cases. Clean up of any environmental impact is not mandatory or prescribed in the law, although it may generally act as a mitigating factor. Certain industries and buildings, as part of their planning permit procedures, may be required to include procedures or specialised facilities for the avoidance of pollution in their application to obtain a planning permit (i.e., waste water treatment where connection to the sewerage system is not possible).

2 Law 106/2002.

iii Tax

Transfer fees are applicable by the Land Registry Department for every transaction (with some exceptions provided for under the law, for example when parents are gifting property to their children) and are based on the market value of the property. The fees are calculated with specific percentage rates on specific value bands that range from 3 to 8 per cent. The first €85,000 being at 3 per cent, the next band being €85,001 to €170,000 at 5 per cent and the final band being any amount over €170,001 at 8 per cent. In addition, stamp duty is applicable on every sale agreement that shall be filed with the land registry, in accordance with the value of the property being sold.

Stamp duty is in general payable on any document that concerns any property situated in the Republic of Cyprus or matters or things to be executed or done in the Republic of Cyprus, irrespective of the place of execution of the document. Stamp duty rates are calculated under specific band ranges, ranging from €1.50 to €2 per €1000, with a maximum stamp duty payable being 20,000. The date for this stamp duty payment is within 30 days of the date of the signing of a document that is considered to be stampable.

Inheritance and estate taxes are not imposed under Cyprus tax laws.

iv Finance and security

Real estate securities, to have validity and rights over the property, in general need to be registered with the LRD. In general, earlier rights have priority over later rights, provided that they are registered with the LRD. Most common forms of security granted over real estate are mortgages, memos, charges and other contracts of sale for the same property.

The most common form of security taken over real estate is the mortgage. Legal mortgages (i.e., those that fulfil formalities and are registered with the LRD) give the mortgagee a contractual priority right on the immovable property and a right to apply to the LRD for the sale of the same, upon a default in the repayment of the loan. In addition, under revised legislation, the mortgagee has the right to commence private auction and foreclosure procedures, which in practice is the preferred route for most banking and asset administration institutions due to the expedited procedures.

If the mortgagor is a legal entity (i.e., a Cyprus company), it must also register the mortgage under Section 90 of the Companies Law, Cap. 113, as amended with the Registrar of Companies, on the prescribed form³ within the prescribed time limit.

VI LEASES OF BUSINESS PREMISES

All leases are governed by the Cyprus Contracts Law (Cap. 149) which essentially codified basic principles of contract law established under the common law. These contractual tenancies are however subject to restrictions introduced by the Rents Control Law,⁴ as amended. The Rents Control Law provisions are applicable under specific criteria. Those include where the property is located, the age of property and whether any contractual tenancy has lapsed with the tenant retaining possession of the property. The 'rent control' or 'statutory' tenancies under the Rents Control Law, regulate by law the adjustment of rents, relations between

³ HE24Y.

⁴ Law 23/1983.

landlords and tenants and protect tenants from eviction, unless in specific circumstances (i.e., non-payment of rent due). Business premises are afforded the same protections under the Rents Control Law as residential properties.

The length of any lease as well as arrangements for any extension and increases of rent are determined by the lease itself, and the parties are free to determine their own terms. There are no relevant statutory provisions other than the Rent Control Law provisions mentioned above, which if applicable may commence at the expiry of a contractual lease.

Long leases exceeding 15 years may be registered with the Land Registry Department. These registered leases grant certain rights to the tenant, including the right to trade such lease. As also mentioned above, third-country nationals may require a Council of Ministers permission to register a lease exceeding 33 years as such lease is considered to amount to a property right. A business permit may be required by the local town council depending on the activity (i.e., a restaurant may require licences from health authorities and the Cyprus Ministry for Tourism).

It is common for tenants to be liable for the maintenance of internal decorations and repairs of the parts of the building they occupy, while landlords will generally be liable for structural repairs. Of course, it is at the discretion of the parties to agree specific terms in accordance with their requirements. Tenants have the option to sublet but may not sublet a property (or part thereof) without the explicit consent of the landlord. Several co-working spaces are operating in Cyprus where it is possible to pay a daily, weekly or monthly rent to use a dedicated or flexible working space to operate a business exclusively or part-time, which is popular with freelance professionals. For these arrangements, it is not generally required to obtain a business licence or meet any formalities.

VII DEVELOPMENTS IN PRACTICE

The outbreak of the covid-19 pandemic has unquestionably impacted the real estate sector, since many transactions were put on hold due to the uncertainty created worldwide by the pandemic. Undeniably property sales were considerably reduced in 2020 in comparison with previous years in accordance with official statistics. Despite that during the first months of 2020, there was increased worldwide interest in Cyprus real estate, with 45 per cent of properties sold acquired by non-Cyprus residents, there was an overall reduction in real estate transactions in 2020 due to travel restrictions and other measures imposed to tackle the pandemic. In addition, the overall value of immovable property transactions fell by 55 per cent during 2020, while as the year progressed, a shift was identified from foreign to local purchasers.

As briefly mentioned above, the Cyprus Investment Programme, which granted Cypriot citizenship to individuals making qualifying investments in real estate or entities with operations in Cyprus for a minimum amount of €2 million, and also maintaining a permanent residence in Cyprus, for a minimum value of €500,000, has been abolished and is currently unavailable. It is important to note that the vast majority of investments made in accordance with the Cyprus Investment Programme were made in real estate. Nevertheless, the Cypriot government seeks to relaunch the programme in the future, following consultation with all stakeholders in order to promote foreign companies relocating their headquarters or substantial operations to Cyprus. It is expected that any new scheme will require a high level of investment and offer in return incentives to entice new businesses and start-up companies to relocate or establish in Cyprus. Individuals can currently still benefit from the fast-track

processing of applications for permanent residence permits, provided they will invest in residential real estate of at least €300,000 in Cyprus. A permanent residence permit enables individuals to freely enter Cyprus, and they may easily then obtain a Schengen visa to freely travel throughout the EU (note that Cyprus is an EU Member State but currently not part of the Schengen zone).

Despite the abolishment of the Cyprus Investment Scheme, a current trend is evident in the transfer of the headquarters of international companies to Cyprus (especially those operating in the field of IT or wishing to apply for the new Cyprus Intellectual Property Regime). Such companies intend to relocate in Cyprus, increase their physical presence and substance on the island and employ additional personnel in Cyprus, for the purposes of fully taking advantage of the benefits offered by the Cyprus tax system. Thus, a higher demand for high quality office space is evident, and this is expected to increase during the coming years. Presently various office spaces are under construction, and it is expected that during the next few months approximately an additional 300,000 square meters will be available on the market.

Tourism was traditionally and still remains a key driving force of local real estate development. The Limassol Marina, a €350 million waterfront development able to accommodate 800 vessels is in the last stages of development, while residential, commercial and retail establishments are already in operation. Furthermore, the Ayia Napa Marina, a €220 million project able to accommodate 600 vessels and featuring two high-rise buildings, has commenced construction in 2016. The tender for the Larnaca Marina was approved during the second half of 2020 and is expected to attract more than €1 billion for real estate development and construction. Also, an integrated casino resort is currently being developed in Limassol by a consortium formed by Melco International and Cyprus Phasouri (Zakaki) Limited, having successfully obtained a 30-year license agreement to develop and operate an integrated casino resort. The overall investment will exceed €600 million as it expected to be one of the largest investments in Cyprus and the largest casino resort in Europe.

Additionally, local and international investors are seeking to invest in listed and preserved historical buildings located in the city centres of the main cities, with most of the investors interested in converting the buildings to office space. The Cyprus government offers significant incentives to investors wishing to renovate or commercially use listed buildings, sometimes amounting to one third of the investments. Also building density can be sold and used by other buildings entitled to acquire it, while rents from listed buildings enjoy exemptions from tax (subject to certain conditions). Interestingly, there has also been recent investment in Cyprus' lesser-known countryside and mountain destinations and retreats, as local and international investors are aiming to renovate historic old hotels and establish new sustainable guest houses and destinations. Developments made within villages, must in certain cases, adhere to strict urban planning rules, in order to preserve the historic appearance of the community and respect the local building techniques in place (i.e., by using local stone in the outer walls of the building).

During the past few years, an increase in student housing has been identified as well, which goes hand in hand with the high growth rate of Cyprus' higher education sector, which attracts thousands of students in its English-speaking universities. There are three public and five private universities on the island, and along with the various public and private colleges, they have created a well-developed higher educational system that aims to become a regional

knowledge hub. Currently a number of student halls are being constructed, while at the same time vacant commercial buildings located in city centres are being converted and refurbished to house both local and international students in modern student accommodation.

It is anticipated that during the next year, and as many landmark projects are expected to be completed, there will be a need for the Cypriot real estate market to refocus and to identify new strategies that will lead to the development of new projects able to have a positive effect on the Cypriot economy and able to support sustainable growth.

VIII OUTLOOK AND CONCLUSIONS

Undoubtedly the impact of the covid-19 pandemic affected real estate transactions and developments globally, and of course this was the case in Cyprus as well. Although targeted measures and incentives were introduced, it is early to predict any policy changes or reforms. We have witnessed that traditional workspace use is now being challenged as work from home arrangements may become the norm for a number of professionals. Retail is also being transformed, with most sales in the developed world being made online. In addition, a substantial amount of businesses ranging from retail to hospitality are currently struggling as their business has vanished overnight. This may result in additional support measures from the government, which has already provided tax relief to property owners willing to offer flexibility or discounts to tenants not able to meet their lease payments.

As a rent control regime already operates in Cyprus, as explained above, it is unlikely that any additional radical legislative measures are introduced. We are not aware of any other legislative measures being proposed. A moratorium on all loan payments has been available since March 2020, and at the time of writing we are not aware whether this will be extended. Statistics are also not yet available on levels of loan default; these are likely to guide further targeted government intervention initiatives in order to support households and small businesses.

Additionally, as mentioned above, the government has recently terminated the Cyprus Investment Programme which allowed high net worth individuals to apply for Cyprus citizenship on the basis of investments in Cyprus. This highly popular scheme, although not restricting investment in Cyprus companies or other assets, was utilised mostly for real estate investments, which guided the offering by local developers and created the market for high-rise residential properties as well as large-scale projects such as marinas, golf courses and integrated resorts. The effects are still not evident, although in accordance with government reports, transactions in real estate acquisition in Cyprus from non-EU individuals have decreased substantially. This, however, could also be an effect of the pandemic as potential investors could not freely travel for the most part of 2020.

It is worth mentioning that the introduction of high-rise buildings in Cyprus has caused reactions from several groups as there are concerns about the long-term impact of such developments to the environment as well as the possible deterioration of the quality of life in their surroundings from increased traffic, reduced sunlight and waste management. Although there are established legal frameworks both from the government and the EU, it may be the case that more stringent criteria are required to accommodate this relatively new type of development in Cyprus. It is possible that the parliament or the government may enact additional measures to ensure strict adherence to EU guidelines.

In general, we expect that certain targeted government initiatives will be introduced in order to support small businesses in the retail and hospitality sector from the fallout of

the pandemic as Cyprus is a services-oriented market, relying heavily on tourism. However, we do not expect any wide-ranging new legislation that will affect the real estate market in Cyprus other than the recent developments mentioned throughout this legal overview of the Cyprus real estate market.

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Stella Strati is the corporate finance, tax and private client partner of Patrikios Pavlou & Associates LLC. Stella has been practising law for the past 14 years in the banking, finance, corporate, commercial, private client and asset protection and tax law areas. She is highly expert on the setting up of trusts, and her private client work concerns providing specialist legal advice on all real estate and property-related issues. She regularly advises important multinational and financial organisations and leading European and Russian banking institutions and some of the largest land developers in Cyprus on landmark projects. She also advises high net worth individuals on real estate investments, asset protection and a wide range of tax matters. Stella is an International Tax Affiliate of the Chartered Institute of Taxation, having gained the ADIT qualification, a member of the Society of Trust and Estate Practitioners (STEP) and the International Bar Association (IBA). Furthermore, she has authored a number of publications, and she has participated as a panellist and speaker in a number of conferences in Cyprus and abroad.

STYLIANOS TRILLIDES

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Stylianos Trillides is a senior associate with the corporate finance department of the firm. He holds an LLB from Brunel University, London, an LLM in commercial and corporate law from Queen Mary, University of London and was admitted to the Cyprus Bar in 2012. In addition, he has completed courses by the Chartered Institute of Arbitrators on International Arbitration. Stylianos has wide-ranging expertise in real estate law, commercial law and banking and finance, through his experience frequently advising both local and international high-profile clients. He focuses on advising HNWIs, corporate entities and financial institutions on cross-border finance transactions and real estate transactions and also has an interest in international arbitration. He is currently acting as the firm's data protection officer and often advises clients on legal and regulatory matters concerning privacy laws. In addition, Stylianos is a university lecturer on matters relating to banking and finance law and has authored various articles and press releases in notable international guides and publications and regularly attends conferences in Cyprus and abroad. He is fluent in Greek, English and French.

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