The Dispute Resolution Review

Seventh Edition

Editor
Jonathan Cotton

Law Business Research

The Dispute Resolution Review

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THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

THE DISPUTE RESOLUTION REVIEW

THE EMPLOYMENT LAW REVIEW

THE PUBLIC COMPETITION ENFORCEMENT REVIEW

THE BANKING REGULATION REVIEW

THE INTERNATIONAL ARBITRATION REVIEW

THE MERGER CONTROL REVIEW

THE TECHNOLOGY, MEDIA AND
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EDITOR'S PREFACE

The Dispute Resolution Review covers 48 countries and territories. Disputes have never respected national boundaries and the continued globalisation of business in the 21st century means that it is more important than ever before that clients and lawyers look beyond the horizon of their home jurisdiction.

The Dispute Resolution Review is an excellent resource, written by leading practitioners across the globe. It provides an easily accessible guide to the key aspects of each jurisdiction's dispute resolution rules and practice, and developments over the past 12 months. It is written with both in-house and private legal practitioners in mind, as well as the large number of other professionals and businesspeople whose working lives bring them into contact with disputes in jurisdictions around the world.

This Review is testament to the fact that jurisdictions face common problems. Whether the issue is how to control the costs of litigation, which documents litigants are entitled to demand from their opponents, or whether a court should enforce a judgment from another jurisdiction, it is fascinating to see the different ways in which different jurisdictions have grappled with these issues and, in some cases, worked together to produce a harmonised solution to international challenges. We can all learn something from the approaches taken by the 48 jurisdictions set out in this book.

A feature of some of the prefaces to previous editions has been the impact that the turbulent economic times were having in the world of dispute resolution. Although at the time of writing the worst of the global recession that gripped many of the world's economies has largely passed, it is has left its mark. Old and new challenges and risks remain in many parts of the world such as renewed speculation on the future of the eurozone, the sanctions imposed on Russia, and falls in the price of oil. In some regions, the 'green shoots' of recovery have blossomed while in others they continue to need careful nurturing. Both situations bring their different challenges for those involved in disputes and, while the boom in insolvency-related disputes and frauds unearthed in the recession remain, the coming year could see an increase in investment and acquisitions with a subsequent focus on disputes concerning the contracts governing those investments.

I would like to express my gratitude to all of the contributors from all of the jurisdictions represented in *The Dispute Resolution Review*. Their biographies start at p. 739 and highlight the wealth of experience and learning from which we are fortunate enough to benefit. I would also like to thank the whole team at Law Business Research, in particular Nick Barette, Eve Ryle-Hodges and Shani Bans, who have impressed once again in managing a project of this size and scope, and in adding a professional look and finish to the contributions.

Jonathan Cotton
Slaughter and May
London
February 2015

Chapter 11

CYPRUS

Eleana Christofi and Katerina Philippidou[1]

I INTRODUCTION TO DISPUTE RESOLUTION FRAMEWORK

Cyprus became an independent and sovereign republic on 16 August 1960. Before that it was a British colony and many features of the British legal system have remained embedded in the judicial system of Cyprus.

Prior to Cyprus's accession to the European Union in 2004, its Constitution was the supreme law of Cyprus, which provides, *inter alia*, for the separation of powers – with the judiciary being independent from the other branches of the government – and for the full protection of human rights and fundamental freedoms. Following Cyprus's accession to the European Union, European law is the supreme law of the Republic and the Constitution takes second place, and where inconsistencies exist between EU law and the Cyprus Constitution, the former will prevail. The supremacy of EU law has been recognised by the Constitution itself through an amendment effected for that purpose.

Cyprus is a common law jurisdiction and operates on an adversarial system. Most Cypriot law has been modelled after English common law, the basic principles of which are directly applied by Cyprus courts, under Section 29 of the Courts of Justice Law. Administrative and constitutional law in particular is mostly influenced by Greek law. Cyprus's Contract Law (Chapter 149) and Sale of Goods Law (Chapter 267) were modelled after Indian law, whereas the Civil Wrongs Law (Chapter 148) is a codification of common law and the Criminal Procedure Law (Chapter 155) was based on English statutes.

The courts are bound by the doctrine of precedent, namely the superior courts' (second instance) decisions bind subordinate courts. Where there is no applicable Cypriot legislation, English common law and equity will be applied, and English authorities have

1 Eleana Christofi and Katerina Philippidou are advocates and senior associates at Patrikios Pavlou & Associates LLC.

persuasive force and in some cases may be considered binding law. Where, however, the common law has been interpreted by the Cyprus Supreme Court in a particular way, the subordinate courts will be bound by that interpretation. Cyprus's courts are divided into two tiers, the Supreme Court and the lower courts.

The Supreme Court has unlimited jurisdiction and its decisions when operating as an appeal court are final, unless overturned by the European Court of Human Rights or the European Court of Justice. It acts as appellate, admiralty and electoral court and has exclusive jurisdiction to issue prerogative orders (*habeas corpus*, *mandamus*, *certiorari*, *quo warranto* and prohibition). Appeals are usually heard by a panel of three judges except in cases where, because of the importance of the case, the hearing may take place before an enlarged panel. When the Supreme Court exercises its first instance jurisdiction (in all cases except when it acts as an appellate court), the case is heard by one judge.

The lower courts consist of courts of special jurisdiction: family law, rent control, industrial disputes and military courts. These courts try cases at first instance with a one-judge panel.

The assize courts try criminal cases at first instance with a panel of three judges.

District courts, which try all other civil cases at first instance and in specific circumstances criminal cases, have a one-judge panel. There are five district courts, one for each administrative district (i.e., Nicosia, Limassol, Larnaca, Paphos and Famagusta). District courts are made up of president judges with jurisdiction to try claims above €500,000, senior district judges with jurisdiction to try claims between €100,000–€500,000, and district judges with jurisdiction to try claims below €100,000.

All subordinate court judgments are subject to appeal at the Supreme Court.

There are no jury hearings in Cyprus and, unlike in England, there is no distinction within the legal profession between barristers and solicitors.

Although alternative methods of dispute resolution (ADR) are increasingly being used in Cyprus, the majority of disputes are adjudicated in courts.

II THE YEAR IN REVIEW

i Penderhill Holdings Limited a.o. v. I. Kloukina, Civil Appeal Nos. 319/11 and 320/11, dated 13 January 2014

In a high-profile case handled by our law firm, the Supreme Court (SC) in its judgment provided a detailed summary and analysis of the previous case law on the matter of *Norwich Pharmacal* orders, which allow for the disclosure of certain information and documents, provided that the legal requirements are met.

The SC reaffirmed the principles on the basis of which *Norwich Pharmacal* orders may be issued, and particularly reasserted that such orders may also be used to assist a party to initiate legal proceedings outside the jurisdiction.

It was further emphasised that the most significant factor to be taken into account is the necessity for disclosure of the requested information under the specific circumstances of each case.

In this case, our client filed an action against a number of defendants for committing various torts and fraudulent actions and five of the defendants were added as

necessary innocent parties, merely for the purposes of the *Norwich Pharmacal* orders, for the plaintiff to locate the property fraudulently transferred and the people responsible.

The SC agreed with the district court (DC) in its decision that there was a real possibility that the relevant evidence would be destroyed or otherwise disappear, and of further alienation of assets, and that the information and documents requested by the plaintiff in the particular case were necessary for him to identify the proper defendants to an action or to obtain information to plead a claim. It was argued by the defendants that the orders issued essentially demanded disclosure of communications among the defendants and third parties, thereby infringing Article 17 of the Cyprus Constitution for the protection of the correspondence and other communications of all persons. The SC also rejected this argument, noting that public interest prevails over the relationship of confidentiality between a bank and its client, or a client and a service provider, when the aim is the disclosure of information relating to fraudulent or criminal acts.

ii Recnex Trading Limited a.o. v. Piraeus Bank (Cyprus) Ltd Civil Appeal No. 71/11, dated 16 April 2014

In this case the plaintiff filed together with the action an *ex parte* application for interim orders. The DC granted the interim orders on an *ex parte* basis and, following an *inter partes* hearing, annulled them on the grounds of non-full and frank disclosure.

The plaintiff immediately filed, by summons, a fresh application for interim orders. The DC after having heard both parties' positions granted the interim orders requested. It held that in cases where the court annuls an interim order issued on an *ex parte* basis, because of non-full and frank disclosure, it has the power to preserve it or even issue a second one, where the facts – including those that were not disclosed – are set before it and, provided that those facts were innocently not disclosed, the applicant would be qualified to have the requested orders granted.

The SC agreed with and adopted the above DC decision. It further held that the interim judgments – save for exceptional cases – are not final even where a matter is finally determined and binding for the subsequent proceedings.

The SC confirmed that the dismissal of an interlocutory application does not prevent the filing of a fresh application on the grounds of *res judicata*. However, for the latter to succeed, additional evidence or a different argument should be put forward.

The reasoning behind this approach is the fact that the court during such proceedings does not decide any question finally.

This decision is considered very important, because it is now confirmed by the SC that an applicant for an interim order whose application is dismissed for failure to disclose all relevant facts, may in suitable cases have a 'second chance' to have the requested orders issued.

iii General Application No. 1692/13 in the Matter of the Application for the Issue of Interim Prohibitive Measures in Aid of an Arbitration To Be Initiated in Sweden between CFG Capital Partners Ltd v. Vanistelroy Holdings Ltd a.o.

The applicants applied to the District Court of Nicosia and obtained *ex parte* interim prohibitive orders and *Mareva* type orders against the respondents, in aid of arbitration proceedings that were alleged to be initiated by the applicants. They also requested the

issue of *Norwich Pharmacal* and tracing orders; however, their issue was not granted *ex parte*. The respondents, represented by our law firm, while opposing the application for issue of interim orders, raised various grounds of opposition, highlighting the omission of the applicants to initiate arbitration proceedings, that the Court had no jurisdiction to issue the orders and that the application was an abuse of court process.

The Court, following the *inter partes* hearing of the application, adopted the position of the respondent and decided that it was not established that arbitration proceedings had been initiated as the applicants had not even sent a proper notice for initiation of arbitration proceedings. The Court stated that where an applicant invokes the provisions of the International Arbitration Law L.101/87 to obtain the protection of the court pending the resolution of arbitration proceedings, the said proceedings have to be initiated within a 'reasonable time' of the filing of the application, otherwise such an application does not serve the purpose for which it has been filed and therefore constitutes an abuse of court process. In this particular case it was deemed that five and a half months since the filing of the application to the Court exceeded such a 'reasonable' period and since the arbitration proceedings had not yet been initiated, the provisions of the International Arbitration Law L.101/87 could not have been relied upon and the Court did not have jurisdiction on the basis of this Law to issue the requested orders. The application was also deemed as an abuse of court process since it was not promoted in aid of an arbitration proceeding to ensure the speedy resolution of the international dispute, but was used for clearly oppressive reasons against the respondents.

Although this case was issued by a president judge of the district court and therefore is not considered a precedent binding upon lower courts, it is the first case that discusses the provisions of the International Arbitration Law, which is modelled after the UNCITRAL Model Law, with regard to the sending of a proper notice of initiation of arbitration proceedings and the 'reasonable time' for initiation of such proceedings.

III COURT PROCEDURE

i Overview of court procedure

In Cyprus the courts follow and apply the procedural rules adopted for each type of court. The Civil Procedure Rules (CPR) apply to all district court civil procedures, in some instances *mutatis mutandis*. Additional procedural rules may be applicable depending on the type of the procedure, such as the Bankruptcy Rules or Companies Rules. Evidential matters are handled according to the Evidence Law.

ii Procedures and time frames

The first thing to be examined before a litigant commences legal proceedings in Cyprus courts is whether his or her right has been time-barred by reason of statutory-based limitation periods. These were set out in the Limitation of Actions Law, which was suspended in 1964 by the Law of Suspension of Limitation of Actions of 1964. Since 2002 a number of laws have 'revived' the limitation period, but in practice these have not come into force yet.

The law that currently regulates the matter of limitation periods is the Limitation of Actions Law 88(I)/2012, which came into force on 1 July 2012 with a transition period of one year. Recently its force was suspended until December 2015.

Legal proceedings in a district court are initiated when a writ of summons or an originating summons is filed and sealed thereat. The writ of summons may be generally endorsed, containing only a list of the remedies sought, or specially endorsed, containing a statement of claim, providing the factual background. Where a generally endorsed writ of summons is submitted, a statement of claim should be filed separately.

All actions filed by Cypriot plaintiffs must be accompanied by a retainer proving the appointment of the advocate. However, this is not a requirement in relation to foreign plaintiffs.

Copies of the writ of summons should be stamped by the court registrar as true copies and be served on the defendant. Service on a corporate entity must be effected either at its registered office on a person who is authorised to accept judicial documents or one of the company's directors or its secretary. Service is usually effected via a private bailiff, unless a leave for substituted service is obtained. A writ of summons shall not be in force for more than 12 months from the day of its issue without a relevant renewal court order.

Upon service of the writ of summons, the defendant has 10 days to file an appearance and then a defence should be filed within 14 days.

Should the defendant fail to file an appearance within the prescribed period, the plaintiff may apply for and obtain a default judgment. A defendant may file an appearance even outside the prescribed time limit and such a filing blocks the issue of a judgment in default.

If the defendant files an appearance but not a defence, the plaintiff may file an application for issuance of judgment without a full hearing being conducted.

Moreover, where the defendant files an appearance or a defence to a specially endorsed writ of summons, the plaintiff may – where appropriate – apply for a summary judgment on the grounds that there is no defence to the action and the court will decide following a hearing.

When a defence is filed, the plaintiff may file a reply to the defence within seven days from its service.

If the defendant submits a counterclaim, the plaintiff must file a reply to the defence and a defence to the counterclaim within seven days from its service.

However, quite often the parties do not follow the prescribed time limits; thus the process takes longer to be completed as the periods prescribed by the CPR may be and usually are prolonged by the court. The filing of the pleading out of time is considered an irregularity, but it is usually possible for a party to take steps to remedy such irregularities.

Once the pleadings are closed, the case will be set for directions before a judge, who will give directions to the parties for matters such as disclosure and discovery of documents, requests for further and better particulars, determination of facts agreed by the parties, etc.

There is wide range of other applications that may be made before the hearing of the action commences (e.g., for the consolidation of actions or amendment of the pleadings). Notably, applications for amendment may be allowed even after the hearing begins, but almost any other application should be filed or entertained before the hearing.

Once all interim procedures are concluded, the case will be set for hearing and, depending on the court schedule, it may take approximately three years from the date of its filing to be heard.

At the hearing the plaintiff must prove his or her case on the balance of probabilities by adducing sufficient and admissible evidence as regards all allegations that are not admitted by the defendant; the same applies for the counterclaimant. The hearings are public, but in particular cases where secrecy is required (e.g., to protect a minor) they are conducted privately. Following the conclusion of the hearing and the advocates' final addresses, a judgment is issued.

The plaintiff, if successful, will need to take steps to enforce the judgment against the defendant, such as enforcement against moveable and immoveable property and third-party enforcement orders against banks holding money or assets belonging to the judgment debtor.

Interim remedies

A plaintiff or a defendant who is raising a counterclaim may, if it is deemed necessary and appropriate, file an application for interlocutory relief (e.g., a *Mareva* injunction, *Anton Piller* order or the appointment of a receiver) either by summons or, in urgent circumstances, without notice. For a court to grant such relief the following requirements must be met:

a there is a serious question to be tried;
b the applicant's claim has some prospect of success; and
c it will otherwise be difficult or impossible to ensure complete justice at a later stage.

The court will further examine whether it is fair and just for such an order to be issued, according to all relevant circumstances. It is possible for the court to issue an interim order before a pleading has been filed on the basis of the evidential material in support of the application. When the application is made *ex parte*, the applicant must fully and frankly disclose all material facts to the court, even the respondent's possible defences.

iii Class actions

Class actions are permissible where the right of relief of the plaintiffs arises out of the same transaction, there is a common question of law or fact and it is advantageous or convenient to do so (e.g., to save costs and time).

iv Representation in proceedings

It is possible, although uncommon, for litigants to represent themselves in legal proceedings.

It is more common for this to happen in criminal proceedings for minor offences (e.g., minor road traffic offences) and, more rarely, in small claims cases.

In civil proceedings corporations may only be represented formally by a lawyer in court.

v Service out of the jurisdiction

Documents initiating judicial proceedings may be served outside the jurisdiction of Cyprus on any person (natural or legal) pursuant to the provisions of Rule 6 of the CPR.

Where the defendant is a foreigner, the plaintiff must apply *ex parte* to court for leave to seal the writ of summons and then to serve a notice of the writ of summons to the defendant outside the jurisdiction. To that effect, the plaintiff should satisfy the court that he or she has a *prima facie* case, state the country in which the defendant may be found and whether or not the defendant is a Cypriot citizen. Where there is also a Cypriot defendant to the action, no permission for the sealing of the writ of summons is required.

Cyprus has entered into a number of bilateral and multilateral treaties and conventions for legal assistance in civil and criminal matters, providing for legal assistance in serving documents in the contracting parties' jurisdiction. In such cases, the requirements of the relevant treaty and of Rule 6 of the CPR must be complied with. Bilateral treaties have been entered into with, *inter alia*, the Czech Republic, the Slovak Republic, Hungary, Germany, Bulgaria, Greece, Syria, Russia, Ukraine, Belarus, Georgia, Serbia, Slovenia and China. Furthermore Cyprus, together with 67 other contracting states, has entered into the Hague Convention of 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

Service of judicial documents within Member States of the European Union must be effected pursuant to the provisions of Council Regulation (EC) No. 1393/2007.

On occasion a plaintiff may be allowed by the court to serve in an alternative manner through a mode of substituted service (through a letter or a private carrier, publication, etc.).

vi Enforcement of foreign judgments

Foreign judgments issued by an EU Member State court can be recognised and enforced in Cyprus under the provisions of Council Regulation (EC) 44/2001 on the Jurisdiction, Recognition and Enforcement of Judgments in Civil and Commercial Matters, which provides for a simplified procedure, nearly automatic, entailing a typical check of the documents attached on the *ex parte* application for recognition. The party against whom enforcement is sought may appeal against the declaration of enforceability within a month's time (or two months if the said party resides abroad) from the service of the declaration of enforceability upon the said party. The procedure provided in the Regulation must be followed.

Enforcement of judgments can also be achieved via Council Regulation (EC) 805/2004, which creates a European enforcement order for uncontested claims, offering significant advantages when compared with the procedure provided by Regulation (EC) 44/2001.

If a foreign judgment is issued by a court of a state with which Cyprus has entered into a bilateral or multilateral agreement for this purpose the provisions of the treaty together with those of national law, namely the Foreign Judgments (Reciprocal Enforcement) Law 1935, must be followed.

The Cyprus courts cannot review a judgment as to its substance. The common denominators for refusing recognition and enforcement are, *inter alia*, jurisdictional

matters, issues of public policy issues and *lis alibis pendens* and if the judgment is inconsistent with previously issued judgments between the same parties.

Enforcement of a judgment in Cyprus may take several forms, such as a writ of execution for the sale of moveable property, the registration of an encumbrance order (memo) over immoveable property, an execution of a writ of attachment by which money held in a bank account may be used for the payment of a judgment debt or particular execution measures with regard to the freezing or attachment of shares belonging to a judgment debtor.

vii Assistance to foreign courts

Cypriot Courts can provide various types of assistance to foreign courts. Pursuant to bilateral treaties and multinational conventions that Cyprus has entered into with various countries, Cypriot courts can assist in the service of judicial and extrajudicial documents, provide information regarding the Cypriot law and legal procedures, assist in the taking of evidence by witnesses or experts within their jurisdiction upon the request of a foreign court, recognise and enforce court judgments or arbitral awards and extradite persons. Cyprus has also entered into the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters.

As a Member State of the European Union, Cyprus is also bound by Council Regulation (EC) 1206/2001 on Cooperation between the Courts of the Member States in the Taking of Evidence in Civil or Commercial Matters, which provides for a 90-day deadline for the execution of a request for the taking of evidence, hence facilitating expeditious assistance among Member State courts.

viii Access to court files

Although the court procedure is usually a public procedure and anyone can observe it, only the parties to an action or matter are entitled to inspect or obtain copies of pleadings or documents filed in the court file kept by the court registry within the framework of the particular procedure and always in the presence of a court official. Any other interested party could proceed to a general search or inspection of the book of filings or obtain copies of documents in a court file or inspect the same, following an application to the court explaining in detail the reasons for his application or (in most cases) only if they are allowed to intervene in the proceedings and be added as parties.

The public can access the judgments of the Cypriot courts – both interim and final – via public websites.

ix Litigation funding

The litigation is funded by the parties themselves and usually the losing party bears the costs of the winning party. There are instances where a party may request the provision of legal assistance from the state where he or she cannot afford to pay the litigation costs without limiting his or her basic needs and those of his or her family.

We are not aware of any instances of litigation funding by a disinterested third party.

IV LEGAL PRACTICE

i Conflicts of interest and Chinese walls

Lawyers who are members of the Cyprus Bar Association are subject to the Code of Conduct Regulations, setting out among other things the duties and obligations of lawyers towards clients. In particular, it is provided that lawyers must not act on behalf of two or more clients in the same matter if there is a conflict, or a significant risk of conflict, of the clients' interests. Lawyers should refrain from acting for a new client if there is a risk of breach of confidentiality. To this effect it is standard practice to conduct conflict checks before accepting to act for a client.

Non-compliance with any of the Code of Conduct Regulations may lead to disciplinary actions for breaches against them. Therefore, there is little need for the use of mechanisms employed by other companies such as Chinese walls within legal firms.

The Chinese walls concept in Cyprus applies to companies regulated by the Cyprus Securities and Exchange Commission (CySEC), which are required under the CySEC Laws and Regulations to establish policies and procedures throughout their business to effectively manage any conflicts of interest that may arise while carrying on their business. For example, investment companies should take adequate steps to ensure that there is a clear distinction between the activities of their different departments and ensure that no single person gathers conflicting information where the exchange of information may harm the interests of any client.

ii Money laundering, proceeds of crime and funds related to terrorism

Cyprus has enforced strict anti-money laundering regulations, ratifying international conventions and harmonising domestic legislation with EU directives. The Prevention and Suppression of Money Laundering Activities Law L.188(I)/2007, as amended, implements the provisions of the Third Money Laundering Directive (2005/60/EC) and regulates the activities and services of professionals who, by virtue of their business activities, are in an exceptional position to assist money laundering.

Some of the lawyers' responsibilities under the Law are:

a the identification and reporting of suspicious transactions;

b the adoption of client identification and record-keeping procedures and client due diligence in accordance with the Law;

c the retention of the relevant records for at least five years from the carrying out of the transaction or the end of the business relationship;

d the appointment of a money laundering compliance officer;

e the adoption of enhanced due diligence measures in relation to high-risk clients; and

f to adequately inform employees of the relevant principles and procedures for the prevention of money laundering and of the requirements provided by the Law as well as the ongoing training of employees.

The Cyprus Bar Association is the supervisory authority appointed for lawyers and, together with the Unit for Combating Money Laundering, is responsible for monitoring the compliance of members under their supervision and for taking measures against non-compliance.

V DOCUMENTS AND THE PROTECTION OF PRIVILEGE

i Privilege

Privileged documents cannot be used as evidence and their admissibility can be challenged by the party who can claim the privilege. Such documents include confidential communications between lawyers and clients for the purposes of litigation, documents that tend to self-incriminate and documents sent 'without prejudice'.

More specifically, communications between lawyers and clients are privileged where the lawyers' professional opinion or assistance is sought, whether it relates to court proceedings or not, and it is designed to protect the confidentiality of the lawyer–client relationship. Communications cover phone calls, face-to-face discussions, letters, emails, etc.

The legal professional privilege applies to practising but not in-house lawyers, given that in-house lawyers, under Cyprus law, are not members of the Cyprus Bar Association.

This privilege can be separated into two categories, namely legal advice privilege (communications between clients and lawyers for obtaining legal advice) and litigation privilege (see below). Although different in scope, the basic principles applicable are the same.

The litigation privilege only arises when litigation is in prospect or pending. Any communications between the client and lawyer, or between one of them and a third party, will be privileged if they are created for the sole or dominant purpose of either giving or getting legal advice with regard to the litigation, or collecting relevant evidence. The court will look at the purpose of the document objectively, taking into account all the circumstances.

The right to professional privilege can be waived only by the client or under certain circumstances in accordance with the Prevention and Suppression of Money Laundering Activities Law.

Documents of a 'without prejudice' nature are generally inadmissible in evidence on grounds of privilege. Nonetheless, in recent Cypriot case law 'without prejudice' communications were considered as probably being admissible within the framework of an interim proceeding.

ii Production of documents

Under Order 28 of the CPR any party to a proceeding may request an order of the court with a relevant application ordering another party to disclose under oath the documents that are or were in his or her possession and relate to the matters of the proceedings and to allow for their inspection. The court may order such a disclosure on its own initiative. Where a party who has been ordered to proceed to such a disclosure fails to do so, that party will not be allowed to submit such documents into evidence.

Documents referred to in pleadings or in affidavits must be produced or allowed for inspection where the other party requests it in writing. If a document that is requested to be produced is claimed to be privileged, the court after inspecting it will decide whether it should be produced.

The parties should disclose all documents relevant to the matters of the litigation and that they plan to use during the hearing.

VI ALTERNATIVES TO LITIGATION

i Overview

The most common means of dispute resolution in Cyprus is litigation. Negotiation can take place either before the initiation of judicial proceedings or during the proceeding. However, alternative means of dispute resolution have been gradually and increasingly used, such as arbitration, mediation and conciliation. Many professionals have been training in these fields to obtain relevant qualifications and be able to offer such services to their clients, thereby promoting these methods of dispute resolution that have various benefits against litigation.

ii Arbitration

Arbitration has long been used as a means of dispute resolution for construction or building contract disputes and its use is mandatory in cases of disputes relating to cooperative institutions. Arbitration clauses have increasingly been used in all forms of contracts as the means of resolving disputes arising out of such contracts. A dispute submitted to arbitration may be resolved quicker and more cost-effectively than one submitted to litigation.

Domestic arbitration is governed by the Arbitration Law (Chapter 4), which provides, *inter alia*, for the procedure to be followed and for the powers of the arbitrator. The court also has specific powers such as the power to appoint an arbitrator under the provisions of the Law or issue orders for the security of costs, disclosure of documents, the maintenance or sale of goods that are the subject matter of the arbitration, security of the amount in dispute or other interim orders such as the appointment of a receiver.

Where there has been misconduct on the part of the arbitrator or referee, or the proceedings or an arbitration or award has been improperly procured, the court may set aside the award.

Cyprus has ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, 1958) (the New York Convention) by Law 84/79, therefore arbitral awards issued in Cyprus may be registered in and enforced in other states signatory to the Convention and vice versa. Strict compliance with the provisions of the New York Convention is required for a foreign arbitral award to be registered and enforced in Cyprus.

iii International arbitration

International arbitration is governed by the International Commercial Arbitration Law L.101/87, which is modelled after the UNCITRAL Model Law. L.101/87 provides for the procedure to be followed, the duties and powers of the arbitrators and the circumstances

in which assistance from the national courts may be required, unless the above are not agreed by the parties. The national courts may issue interim orders in aid of arbitration.

If the parties have not agreed in their arbitration agreement the procedural law applicable to an international arbitration taking place in Cyprus, the procedural law will be L.101/87. Even if the parties have agreed to a different procedural law, L.101/87 may still come into play to fill gaps in the procedure or impose further duties or powers upon the arbitrators and the courts. Mandatory provisions of national law must always be followed irrespective of which substantial or procedural law is adopted by the parties.

iv Mediation

Mediation is an alternative to litigation. Unlike in some other jurisdictions, mediation in Cyprus is not a compulsory step prior to resorting to court. It is a non-binding, private, confidential and low-cost procedure. Cypriot law 159(I)/2012 was passed to implement the Directive 2008/52/EC on mediation in civil and commercial matters.

It is a rather new concept in Cyprus and, according to the Cyprus Mediation Association, 'there is strong opposition from legal circles, who loathe mediation because it bypasses legal proceedings'. This is one of the least preferred methods of ADR, since the parties may feel somewhat insecure about resorting to it as its outcome depends on the parties' personal and business interests, and common sense rather than the relevant law.

On the other hand, it may be argued that parties have little to lose by choosing mediation since, even if a settlement is not reached, the process facilitates the designation of the facts and issues of the dispute, thus preparing the ground for any potential court proceedings.

Mediation is particularly used in family and employment law cases and other small disputes.

v Other forms of alternative dispute resolution

Conciliation is a non-binding procedure, very similar to mediation. It is considered an 'extension' of mediation and when the parties are unable to agree the third party can provide them with a non-binding opinion regarding possible settlement terms. The conciliator's opinion is presented to the parties and, if not rejected, becomes a dispute resolution agreement.

VII OUTLOOK AND CONCLUSIONS

It is notable that because of the use of Cyprus companies in international corporate group structures there is a current trend involving actions regarding shareholder disputes and other corporate litigation matters. Court decisions on these matters may affect how corporate structures involving Cyprus companies operate, as well as how international investors may use a Cyprus entity in the future. Furthermore, litigation proceedings are often initiated in Cyprus in aid of arbitration proceedings, usually to obtain prohibitive or other interlocutory orders, again for the same reason as above.

Appendix 1

ABOUT THE AUTHORS

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Eleana Christofi is a senior associate in the litigation and dispute resolution department of Patrikios Pavlou & Associates LLC. Eleana received an LLB degree from Lancaster University in 2007, an LLM in international business law from the University of Manchester in 2008 and an MSc in management in 2009, again from Lancaster University. She was then admitted to the Cyprus Bar Association in 2010. Eleana is the co-author of the Cyprus chapter on money laundering in the *Cyprus Law Digest 2012* and is fluent in Greek and English. Eleana is involved in civil, commercial and corporate litigation cases, both domestic and international, shareholder disputes, injunctive reliefs, insolvency proceedings, recognition and enforcement of foreign judgments and arbitral awards and arbitration proceedings.

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Katerina Philippidou is a senior associate in the litigation and dispute resolution department of Patrikios Pavlou & Associates LLC. Katerina obtained her law degree from the University of Leicester in 2006 and then continued to become a barrister-at-law at Lincoln's Inn in 2007. After her studies in the United Kingdom, she returned to Cyprus and was admitted to the Cyprus Bar Association the following year. She subsequently returned to the United Kingdom and acquired an LLM in international financial law from King's College London in 2009. Katerina is the co-author of the Cyprus chapter on money laundering in the *Cyprus Law Digest 2012* and is fluent in Greek and English. She specialises in civil and commercial local and multi-jurisdictional litigation, including shareholder disputes, recognition and enforcement of foreign judgments and arbitral awards, injunctive reliefs and arbitration proceedings, as well as insolvency and receivership proceedings.

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