
THE DISPUTE RESOLUTION REVIEW

EIGHTH EDITION

EDITOR
JONATHAN COTTON

LAW BUSINESS RESEARCH

THE DISPUTE RESOLUTION REVIEW

The Dispute Resolution Review
Reproduced with permission from Law Business Research Ltd.

This article was first published in The Dispute Resolution Review - Edition 8
(published in February 2016 – editor Jonathan Cotton)

For further information please email
Nick.Barette@lbresearch.com

THE DISPUTE RESOLUTION REVIEW

Eighth Edition

Editor
JONATHAN COTTON

LAW BUSINESS RESEARCH LTD

PUBLISHER
Gideon Robertson

SENIOR BUSINESS DEVELOPMENT MANAGER
Nick Barette

SENIOR ACCOUNT MANAGERS
Thomas Lee, Felicity Bown, Joel Woods

ACCOUNT MANAGER
Jessica Parsons

MARKETING ASSISTANT
Rebecca Mogridge

EDITORIAL ASSISTANT
Sophie Arkell

HEAD OF PRODUCTION
Adam Myers

PRODUCTION EDITOR
Caroline Herbert

SUBEDITOR
Anna Andreoli

CHIEF EXECUTIVE OFFICER
Paul Howarth

Published in the United Kingdom
by Law Business Research Ltd, London
87 Lancaster Road, London, W11 1QQ, UK
© 2016 Law Business Research Ltd
www.TheLawReviews.co.uk

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients.

Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of February 2016, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to Law Business Research, at the address above. Enquiries concerning editorial content should be directed to the Publisher – gideon.roberton@lbresearch.com

ISBN 978-1-909830-83-7

Printed in Great Britain by
Encompass Print Solutions, Derbyshire
Tel: 0844 2480 112

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
TELECOMMUNICATIONS REVIEW

THE INWARD INVESTMENT AND
INTERNATIONAL TAXATION REVIEW

THE CORPORATE GOVERNANCE REVIEW

THE CORPORATE IMMIGRATION REVIEW

THE INTERNATIONAL INVESTIGATIONS REVIEW

THE PROJECTS AND CONSTRUCTION REVIEW

THE INTERNATIONAL CAPITAL MARKETS REVIEW

THE REAL ESTATE LAW REVIEW

THE PRIVATE EQUITY REVIEW

THE ENERGY REGULATION AND MARKETS REVIEW

THE INTELLECTUAL PROPERTY REVIEW

THE ASSET MANAGEMENT REVIEW

THE PRIVATE WEALTH AND PRIVATE CLIENT REVIEW

THE MINING LAW REVIEW

THE EXECUTIVE REMUNERATION REVIEW

THE ANTI-BRIBERY AND ANTI-CORRUPTION REVIEW

THE CARTELS AND LENIENCY REVIEW

THE TAX DISPUTES AND LITIGATION REVIEW

THE LIFE SCIENCES LAW REVIEW

THE INSURANCE AND REINSURANCE LAW REVIEW

THE GOVERNMENT PROCUREMENT REVIEW

THE DOMINANCE AND MONOPOLIES REVIEW

THE AVIATION LAW REVIEW

THE FOREIGN INVESTMENT REGULATION REVIEW

THE ASSET TRACING AND RECOVERY REVIEW

THE INTERNATIONAL INSOLVENCY REVIEW

THE OIL AND GAS LAW REVIEW

THE FRANCHISE LAW REVIEW

THE PRODUCT REGULATION AND LIABILITY REVIEW

THE SHIPPING LAW REVIEW

THE ACQUISITION AND LEVERAGED FINANCE REVIEW

THE PRIVACY, DATA PROTECTION AND CYBERSECURITY LAW REVIEW

THE PUBLIC-PRIVATE PARTNERSHIP LAW REVIEW

THE TRANSPORT FINANCE LAW REVIEW

THE SECURITIES LITIGATION REVIEW

THE LENDING AND SECURED FINANCE REVIEW

THE INTERNATIONAL TRADE LAW REVIEW

THE SPORTS LAW REVIEW

ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following law firms for their learned assistance throughout the preparation of this book:

ADAMS & ADAMS

ARTHUR COX

ATTIAS & LEVY

AZB & PARTNERS

BAKER & PARTNERS

BONELLIEREDE

BREDIN PRAT

BUFETE HERNÁNDEZ ROMO

CONSULEGIS ABOGADOS

CRAVATH, SWAINE & MOORE LLP

DITTMAR & INDRENIUS

HENGELER MUELLER

HERGÜNER BILGEN ÖZEKE ATTORNEY PARTNERSHIP

JUN HE LAW OFFICES

KBH KAAUNUN

KYRIAKIDES GEORGOPOULOS LAW FIRM

LS HORIZON LIMITED

MANNHEIMER SWARTLING ADVOKATBYRÅ AB

MAPLES AND CALDER

Acknowledgements

MOHAMMED AL-GHAMDI LAW FIRM IN ASSOCIATION WITH
NORTON ROSE FULBRIGHT US LLP

MOLITOR AVOCATS À LA COUR

MOTIEKA & AUDZEVIČIUS

NIEDERER KRAFT & FREY

OSLER, HOSKIN & HARCOURT LLP

PATRIKIOS PAVLOU & ASSOCIATES LLC

PINHEIRO NETO ADVOGADOS

PIPER ALDERMAN

SCHRECK LAW OFFICES

SHIN & KIM

SLAUGHTER AND MAY

SOFUNDE, OSAKWE, OGUNDIPE & BELGORE

STRELIA

SZECSKAY ATTORNEYS AT LAW

TSMP LAW CORPORATION

ȚUCA ZBÂRCEA & ASOCIAȚII

URÍA MENÉNDEZ

UTEEM CHAMBERS

WOLFF GSTOEHL BRUCKSCHWEIGER ADVOKATURBÜRO

WU & PARTNERS, ATTORNEYS-AT-LAW

YOUNG CONAWAY STARGATT & TAYLOR, LLP

CONTENTS

Editor's Prefacevii
	<i>Jonathan Cotton</i>
Chapter 1	AUSTRALIA..... 1
	<i>Malcolm Quirey and Gordon Grieve</i>
Chapter 2	BAHRAIN 49
	<i>Haifa Khunji and Natalia Kumar</i>
Chapter 3	BELGIUM..... 61
	<i>Jean-Pierre Fierens and Joanna Kolber</i>
Chapter 4	BRAZIL 74
	<i>Gilberto Giusti and Ricardo Dalmaso Marques</i>
Chapter 5	BRITISH VIRGIN ISLANDS 93
	<i>Arabella di Iorio and John MacDonald</i>
Chapter 6	CANADA 114
	<i>David Morrirt and Eric Morgan</i>
Chapter 7	CAYMAN ISLANDS..... 128
	<i>Aristos Galatopoulos and Luke Stockdale</i>
Chapter 8	CHINA..... 141
	<i>Xiao Wei, Zou Weining and Wang Lihua</i>
Chapter 9	CYPRUS 155
	<i>Eleana Christofi and Katerina Philippidou</i>
Chapter 10	ECUADOR 168
	<i>Xavier Castro-Muñoz and Fabrizio Peralta-Díaz</i>

Chapter 11	ENGLAND AND WALES.....	178
	<i>Jonathan Cotton and Damian Taylor</i>	
Chapter 12	FINLAND	202
	<i>Jussi Lehtinen and Heidi Yildiz</i>	
Chapter 13	FRANCE	215
	<i>Tim Portwood</i>	
Chapter 14	GERMANY	233
	<i>Henning Bälz and Carsten van de Sande</i>	
Chapter 15	GIBRALTAR.....	252
	<i>Stephen V Catania</i>	
Chapter 16	GREECE	263
	<i>John Kyriakides and Harry Karampelis</i>	
Chapter 17	HONG KONG	273
	<i>Mark Hughes</i>	
Chapter 18	HUNGARY	298
	<i>Dávid Kerpel</i>	
Chapter 19	INDIA	312
	<i>Zia Mody and Aditya Vikram Bhat</i>	
Chapter 20	IRELAND.....	329
	<i>Andy Lenny and Peter Woods</i>	
Chapter 21	ISRAEL.....	345
	<i>Shraga Schreck</i>	
Chapter 22	ITALY	376
	<i>Monica Iacoviello, Vittorio Allavena, Paolo Di Giovanni and Tommaso Faelli</i>	

Chapter 23	JERSEY.....	396
	<i>William Redgrave and James Sheedy</i>	
Chapter 24	KOREA.....	408
	<i>Hyun-Jeong Kang</i>	
Chapter 25	KUWAIT	421
	<i>Haifa Khunji and Diego Carmona</i>	
Chapter 26	LIECHTENSTEIN	432
	<i>Christoph Bruckschweiger</i>	
Chapter 27	LITHUANIA.....	442
	<i>Ramūnas Audzevičius and Mantas Juozaitis</i>	
Chapter 28	LUXEMBOURG	456
	<i>Michel Molitor</i>	
Chapter 29	MAURITIUS.....	468
	<i>Muhammad R C Uteem</i>	
Chapter 30	MEXICO	485
	<i>Miguel Angel Hernández-Romo Valencia</i>	
Chapter 31	NIGERIA.....	501
	<i>Babajide Oladipo Ogundipe and Lateef Omoyemi Akangbe</i>	
Chapter 32	PORTUGAL.....	516
	<i>Francisco Proença de Carvalho and Tatiana Lisboa Padrão</i>	
Chapter 33	ROMANIA	529
	<i>Levana Zigmund and Dan Cristea</i>	
Chapter 34	SAUDI ARABIA.....	542
	<i>Mohammed Al-Ghamdi and Paul J Neufeld</i>	

Chapter 35	SINGAPORE 563 <i>Thio Shen Yi, Freddie Lim and Niklas Wong</i>
Chapter 36	SOUTH AFRICA..... 578 <i>Grégor Wolter, Jac Marais, Andrew Molver and Renée Nienaber</i>
Chapter 37	SPAIN 597 <i>Ángel Pérez Pardo de Vera and Francisco Javier Rodríguez Ramos</i>
Chapter 38	SWEDEN 618 <i>Jakob Ragnvaldh and Niklas Åstenius</i>
Chapter 39	SWITZERLAND 631 <i>Daniel Eisele, Tamir Livschitz and Andreas Blattmann</i>
Chapter 40	TAIWAN 650 <i>Simon Hsiao</i>
Chapter 41	THAILAND 666 <i>Lersak Kancvalskul, Prechaya Ebrahim, Wanchai Yiamsamatha and Oranat Chantara-opakorn</i>
Chapter 42	TURKEY 677 <i>H Tolga Danişman</i>
Chapter 43	UNITED ARAB EMIRATES..... 697 <i>D K Singh and Bushra Ahmed</i>
Chapter 44	UNITED STATES 708 <i>Timothy G Cameron, Lauren R Kennedy and Daniel R Cellucci</i>
Chapter 45	UNITED STATES: DELAWARE 726 <i>Elena C Norman and Lakshmi A Muthu</i>
Appendix 1	ABOUT THE AUTHORS..... 747
Appendix 2	CONTRIBUTING LAW FIRMS' CONTACT DETAILS .. 777

EDITOR'S PREFACE

The Dispute Resolution Review provides an indispensable overview of the civil court systems of 45 jurisdictions. In a world where commercial disputes frequently cross international boundaries, it is inevitable that clients and practitioners across the globe will need to look for guidance beyond their home jurisdictions. *The Dispute Resolution Review* offers the first helping hand in navigating what can sometimes, at first sight, be an unknown and confusing landscape, but which on closer inspection often deals with familiar problems and adopts similar solutions to the courts closer to home.

This eighth edition follows the pattern of previous editions where leading practitioners in each jurisdiction set out an easily accessible guide to the key aspects of each jurisdiction's dispute resolution rules and practice, and developments over the past 12 months. *The Dispute Resolution Review* is also forward looking and the contributors offer their views on the likely future developments in each jurisdiction.

Collectively, the chapters illustrate the continually evolving legal landscape, responsive to both global and local developments. For instance, over the past year the EU has adopted a new regulation on jurisdiction which fortifies the freedom of parties of any nationality to choose to litigate in their preferred forum and grants Member State courts discretion to stay proceedings in favour of proceedings already on foot in non-Member State courts. At the other end of the spectrum, 2015 saw the Supreme Court in the United Kingdom clarify the law on penalty clauses 101 years after the seminal House of Lords' case on this issue (see the review of *ParkingEye Ltd v. Beavis* and *Cavendish Square Holding BV v. El Makdessi* [2015] UKSC 67 at page 181). But even seemingly local decisions such as this have a broad audience and can have far-reaching consequences in global commerce. It is always a pleasure – and instructive for my own practice – to observe the different ways in which jurisdictions across the globe tackle common problems – sometimes through concerted action under an umbrella international organisation and sometimes individually by adopting very different, but often equally effective, local solutions.

Over the lifetime of this review the world has plunged into deep recession and seen green shoots of recovery emerge as some economies begin to prosper again, albeit

uncertainly. One notable development over the course of 2015 has been the sharp and sustained fall in the oil price (along with commodities more generally). This has had, and will continue to have, far-reaching economic and geo-political effects which may take some time to manifest themselves fully. As many practitioners will recognise from previous global shocks, these pressures typically manifest themselves in an increased number of disputes; whether that is joint venture partners choosing to fight over the diminishing pot of profits, customers seeking to exit what have become hugely expensive long-term contracts, struggling states renegotiating or exiting their contracts (or simply expropriating commercial assets) or insolvency-related disputes as once-rich parties struggle to meet their obligations. The current economic climate and short to medium term outlook suggests that dispute resolution lawyers operating in at least the energy and commodities sectors will continue to be busy and tasked with resolving challenging multi-jurisdictional disputes for years to come.

Finally, 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 page 747 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 who have excelled in managing a project of this size and scope, in getting it delivered on time and in adding a professional look and finish to the contributions.

Jonathan Cotton
Slaughter and May
London
February 2016

Chapter 9

CYPRUS

Eleana Christofi and Katerina Philippidou¹

I INTRODUCTION TO THE 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

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

legislation, English common law and equity will be applied, and English authorities have 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 Civil Application No. 151/2015 In the Matter of the Application of Joint-Stock Commercial Bank 'Bank of Moscow' (OJSC) for Leave to Apply for a Certiorari Order and In the Matter of the Final Judgment of the District Court of Nicosia given within the framework of the General Application No. 228/2015

An application was filed at the District Court (DC) of Nicosia requesting the registration and enforcement of an international arbitral award issued by the International Commercial Arbitration Court at the Russian Federation Chamber of Commerce and Industry. The application was filed pursuant to the provisions of the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), which has been currently ratified by 156 states and aims at providing a simplified and uniform framework within which international arbitral awards may be recognised and enforced in all signatory states. The New York Convention provides

for specific requirements which must be met by the applicant in order for the relevant application to succeed and also provides for the specific grounds of oppositions which the respondent will have to prove in order to successfully oppose such an application.

Based on the criteria provided by the New York Convention, the applicants had to accompany their application with the original agreement in writing (the arbitration agreement) under which the parties undertook to submit to arbitration all or any differences that had arisen between them in respect of a defined legal relationship or a duly certified copy thereof together with a true translation of the same. The New York Convention, as well as the local law L.101/1987 on International Commercial Arbitration Law, provides that such an arbitration agreement may be an arbitral clause in a contract – in this case a loan agreement – or a separate arbitration agreement signed by the parties.

The DC held that the applicants complied with all the requirements of the New York Convention whereas none of the available grounds of opposition was proven by the respondents; hence the international arbitral award should be recognised and enforced. However, it ordered that since the loan agreement, which included the arbitration agreement, was submitted before the court in evidence and since, according to its opinion, that agreement was subject to stamp duty it should be presented to the Registrar of Stamp Duty and the relevant fee should be paid by the applicants.

The applicant proceeded and filed to the Supreme Court (SC) an application for leave to file an application for a certiorari order so as to quash the judgment of the DC related to the stamp duty, promoting, *inter alia*, the argument that the loan agreement was only presented before the court in order for it to examine the arbitration agreement and the court exceeded its jurisdiction by examining and deciding on the rest of the provisions of the loan agreement. The applicant argued further that the DC's judgment was based on a legal error apparent from the record since it misinterpreted the relevant law, that the arbitration agreement which legally is considered to be a separate agreement is not an agreement subjected to stamp duty, it does not regard any assets located in Cyprus or any actions which have to be carried in Cyprus and that this judgment will lead to the unequal treatment between applicants who either present a separate arbitration agreement or an arbitration agreement included in other agreements not subject to stamp duty or even in letters exchanged.

The SC, exercising its first instance jurisdiction concurred with the DC while stating that every document placed before the court as evidence will have to be stamped (if the document falls within the provisions of the law regarding stamp duty) and that it is irrelevant whether or not that particular document was actually used in order to prove a disputed matter of the case.

The SC judgment was issued by one SC judge exercising its first instance jurisdiction and the DC judgment was issued by a President Judge of the DC; hence neither of these judgments is considered a binding precedent upon lower courts and it should be very interesting to see whether such an approach will be treated by future case law. If, however, such an approach is adopted by the Cypriot courts, that would mean that an applicant presenting before the court an arbitration agreement which was concluded separately to the agreement defining the legal relationship of the parties would not have to pay stamp duty, whereas an applicant presenting an arbitration agreement included in another agreement will have to pay the stamp duty if of course the other agreement

is subject to such duty under the law. Such stamp duty may be as high as €20,000 plus penalties and therefore if such an approach is adopted, it will affect the manner in which even typical or common agreements that include arbitration agreements are drafted.

- ii **In relation to the Application of Zhong Lun Law Firm, Receiver of the property of the Chinese Company STX (Dalian) Shipbuilding Co Ltd. Stx Offshore Shipping Co Ltd, Civil Appl. No. 149/2014, 21 August 2014 (STX Offshore & Shipping Co Ltd) and In relation to the judgment of Eastern Caribbean Supreme Court in the High Court of Justice Virgin Island, Application No. 281/2015, 16 October 2015 (the Eastern Caribbean)**

In the *STX Offshore & Shipping Co Ltd* case, the SC in its first instance jurisdiction, interpreting the provisions of the Cyprus Law No. 121(I)/2000 regarding the Recognition, Enforcement and Execution of Foreign Judgments (Law 121(I)/2000), held that the absence of a connection between the parties with the DC of Nicosia indicates lack of jurisdiction and absence of competence on behalf of the court to hear the application for registration of a foreign judgment.

In this case the applicant, who applied for the recognition and execution of an arbitral award issued by the Arbitral Court of the Korean Commercial Arbitration Board, was a company registered with the Republic of Korea, and the respondent a company registered with the Republic of China.

Section 2 of Law 121(I)/2000, defines ‘court’ as the district court of the district where the respondent resides. If the respondent resides abroad, or in the event that there was no opponent in the proceedings within the framework of which a judgment was issued, ‘court’ means the district court of the district where the applicant resides.

According to the recent and current case law in Cyprus, which interpreted the meaning of the above provision, in cases where neither the applicant nor the respondent have a permanent or temporary residence in the Republic of Cyprus, the Cypriot courts have no jurisdiction to enforce a foreign judgment. However, none of the judgments on the issue constitute a binding precedent, as there are only first instance judgments on the matter. Therefore, this approach may be reversed if the SC in its appellate jurisdiction decides otherwise.

In the *Eastern Caribbean* case the applicants, who are foreign nationals residing outside the jurisdiction of the Republic of Cyprus, applied for the registration, enforcement and execution of a judgment issued by the SC of the British Virgin Islands (BVI) with the Cypriot courts in accordance with the provisions of the Mutual Execution of Certain Judgments of Courts of Commonwealth Countries, as amended by Law 130(I)/2000.

The President Judge of the DC of Nicosia concluded that the provisions of Law 130(I)/2000 applied in this case as it accepted that the BVI is an overseas territory of the United Kingdom within the meaning of Article 9 of Law 130(I)/2000 (according to the evidence provided by the applicant).

According to Section 2 of Law 130(I)/2000, ‘district court’ is the court within the district of which the judgment debtor resides or where the property relevant to the judgment is situated.

The SC in this case held that since the respondent is registered with the BVI and has its seat there and no evidence has been provided by the applicant showing that the respondent has property in Cyprus, the Cypriot courts have no jurisdiction to hear the matter.

iii Tlais Enterprises Ltd v. Her Majesty's Revenue & Customs (Ex Her Majesty's Customs and Excise) Civil Appeal No. 109/2009, 18 March 2015 and In the Matter of the Application of Alpha Bank Cyprus Ltd for the issue of a Certiorari Order, Civil Application No. 193/2014, 26 March 2015

Both of these cases regarded the matter of service of judicial documents outside the jurisdiction pursuant to the provisions of the Council Regulations (EC) No. 1348/2000 and 1393/2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters.

In the first case the relevant judicial documents initiating the judicial proceedings were served on a different address than the one stated in the relevant order of the DC which allowed for such service, and in the second case the judicial documents were served on the correct address but to a third party and not to the defendant personally, as again it was provided in the relevant order. In both instances certificates of service pursuant to Article 10 of the Council Regulations were issued and presented to the court.

It was held by the SC that since service was carried out pursuant to the provisions of the Council Regulations and a certificate of service was issued evidencing that service was made as per the law of the Member State addressed, then service was properly effected, even if the service was not effected as per the strict letter of the relevant orders. What mattered was that service was effected as per the Council Regulations, upholding the spirit of the Council Regulations for the need to improve and expedite the transmission of judicial documents as well as confirming the superiority of European law over domestic legislation.

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 and at the time of writing has not been suspended further.

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*, Belarus, Bulgaria, China, the Czech Republic, Georgia, Germany, Greece, Hungary, Russia, Serbia, the Slovak Republic, Slovenia, Syria and Ukraine. 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 Court Judgments (Recognition, Registration and Enforcement based on Convention) Law of 2000, must be followed. If the foreign judgment was issued by a court of a commonwealth country, the provisions of the Foreign Judgments (Reciprocal Enforcement) Law 1935, Chapter 10, will apply.

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 immovable 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 Cypriot 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 Cypriot companies operate, as well as how international investors may use a Cypriot 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. Lastly, the Cypriot courts usually promote a pro-enforcement approach to the registration and enforcement of foreign arbitral awards. Even so, and although the cases mentioned in the beginning of this chapter are not considered a binding precedent, it may be advisable for lawyers drafting a commercial agreement that will include an arbitration clause and may result in an arbitral award that may be requested to be recognised in Cyprus to draft the arbitration clause as a separate document instead of including it in the main agreement. This may assist in the prompt enforcement of the award and minimise potential costs.

Appendix 1

ABOUT THE AUTHORS

ELEANA CHRISTOFI

Patrikios Pavlou & Associates LLC

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.

KATERINA PHILIPPIDOU

Patrikios Pavlou & Associates LLC

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. In 2013 Katerina successfully undertook the Introductory Course in International Arbitration of the Cyprus Branch of the Chartered Institute of Arbitrators (CIArb). 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.

PATRIKIOS PAVLOU & ASSOCIATES LLC

Patrician Chambers

332 Agiou Andreou Str.

3035 Limassol

Cyprus

Tel: +357 25 871 599

Fax: +357 25 344 548

echristofi@pavlaw.com

kphilippidou@pavlaw.com

www.pavlaw.com