Arbitration procedures and practice in Cyprus: overview

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A Q&A guide to arbitration law and practice in Cyprus.

The country-specific Q&A guide provides a structured overview of the key practical issues concerning arbitration in this jurisdiction, including any mandatory provisions and default rules applicable under local law, confidentiality, local courts' willingness to assist arbitration, enforcement of awards and the available remedies, both final and interim.

To compare answers across multiple jurisdictions visit the *Arbitration procedures and practice Country Q&A tool*.

This Q&A is part of the multi-jurisdictional guide to arbitration. For a full list of jurisdictional Q&As visit *www.practicallaw.com/arbitration-guide*.

Use of arbitration and recent trends

1. How is commercial arbitration used and what are the recent trends?

Use of commercial arbitration and recent trends

Arbitration is usually used in Cyprus for construction disputes, banking disputes between debtors and co-op institutions and international commercial arbitration. It is difficult to evaluate and determine an increase or decrease in the use of arbitration due to the fact that arbitration proceedings are confidential.

Advantages/disadvantages

The advantages of using arbitration over litigation as a dispute resolution procedure include:

- Flexibility in terms of the procedure followed and freedom of the parties to agree on the procedural rules.
- Freedom of the parties to appoint specialists and/or other experts as arbitrators with expertise in the subject matter of the dispute.

- It is usually less time-consuming and more efficient than court proceedings, due to the increased workload of the local courts.
- Confidentiality.
- Arbitral awards issued in Cyprus can be registered and enforced in foreign jurisdictions as Cyprus is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (New York Convention) (*see Question 34 and Question 35*).
- There are fewer grounds for appeal than in litigation.

The disadvantages may include:

- It may be more costly, depending on the agreement for the appointment of arbitrators, the arbitrators' fees, the lawyers' fees, the fees needed for logistic matters such as reservation of venues for hearings, recording and transcription services etc.
- Due to the lack of relevant provisions in Arbitration rules, the parties may not be able to apply for the set aside or dismissal of an arbitration proceeding at an early stage due to the claim being frivolous or vexatious or without probability of success.
- Tribunals are less likely to impose sanctions for breach of timeframes by the parties in procedural matters, which may cause delay or abusive tactics.
- Limited grounds of appeal may increase the risk of not being able to overturn or challenge an incorrect or inadequate final judgment.

Legislative framework

Applicable legislation

> 2. What legislation applies to arbitration? To what extent has your jurisdiction adopted the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Law)?

Domestic arbitration is governed by the Arbitration Law 1944 (*Cap. 4*) (Arbitration Law) (*http://cylaw.org/nomoi/enop/non-ind/0_4/full.html*).

The International Arbitration in Commercial Matters Law (*101/1987*) (IACM Law) (*http://cylaw.org/nomoi/enop/non-ind/1987_1_101/full.html*) applies exclusively to international commercial disputes and is almost identical to the UNCITRAL Model Law. Except for some minor variations, the only addition to the IACM Law is the definition of the term "commercial arbitration". The IACM Law applies solely to arbitrations that are of both an international and commercial nature (*section 3(1), IACM Law*).

Cyprus is also a party to the New York Convention (ratified in Cyprus by the Ratification Law (*84/1979*)).

In addition, the Foreign Courts Judgments (Recognition, Registration and Enforcement) Law of 2000 (*Law 121(I)/2000*) provides for the procedure to be followed by a party wishing to have a foreign award recognised and enforced in Cyprus.

Mandatory legislative provisions

3. Are there any mandatory legislative provisions? What is their effect?

The IACM Law respects the freedom of the parties to the arbitration to agree on all matters relating to the conduct of the international arbitration. Mandatory rules are limited to issues relating to the:

- Court's powers.
- Immunity of arbitrators.
- Issue of the arbitral award, the challenge of its validity and its recognition and enforcement by the national courts.

4. Does the law prohibit any types of dispute from being resolved through arbitration?

In general, where there is an arbitration agreement between the parties, all commercial matters can be referred to and settled by arbitration.

Criminal matters, matrimonial and family matters, disputes concerning minors and disputes with public policy implications are non-arbitrable.

The Arbitration Law does not apply in relation to proceedings of an arbitral tribunal under the Trade Disputes (Conciliation, Arbitration and Inquiry) Law, or in relation to any award that this kind of tribunal issues. In addition, a tribunal has limited powers to make orders which affect the status of a Cyprus company, such as a winding-up order or rectification of a company's register of members, although the substantive dispute may be arbitrable.

Limitation

5. Does the law of limitation apply to arbitration proceedings?

The laws on limitation of actions applying to civil proceedings in the court also apply to commencing arbitrations, whether these are domestic or international commercial in nature (*Article 21, IACM Law* and *Article 24, Arbitration Law*).

Arbitration institutions

6. Which arbitration institutions are commonly used to resolve large commercial disputes?

The most prominent alternative dispute resolution centres established to administer arbitration proceedings in Cyprus are the:

- Cyprus Branch of the Chartered Institute of arbitrators (CIArb) (*www.ciarb.org*).
- Cyprus Eurasia Dispute Resolution and Arbitration Centre (CEDRAC).
- Cyprus Arbitration and Mediation Centre (CAMC).

Jurisdictional issues

7. What remedies are available where one party denies that the tribunal has jurisdiction to determine the dispute(s)? Does your jurisdiction recognise the concept of kompetenz-kompetenz? Does the tribunal or the local court determine issues of jurisdiction?

The doctrine of kompetenz-kompetenz allows appointed arbitrators to determine their own jurisdiction to hear and decide the dispute before them, and to examine any objections raised about the existence or the validity of an arbitration agreement.

In relation to international arbitrations, section 16 of the IACM Law explicitly provides that an arbitral tribunal has competence to rule on its own jurisdiction. No similar provision is contained in the Arbitration Law regarding domestic arbitrations, but case law recognises this doctrine and the courts apply it in any case.

Where a party objects to the arbitral tribunal's jurisdiction, the plea must be raised no later than the submission of the statement of defence (*section 16, IACM Law*). If the arbitral tribunal makes a preliminary ruling that it has jurisdiction to determine the dispute, any objecting party can request the Cypriot court to decide the issue of jurisdiction within 30 days of receiving the arbitral tribunal's notice on jurisdiction. The decision is final and is not subject to appeal. Further, the arbitral tribunal can continue the arbitration proceedings until the national court's determination on the issue.

Generally, in deciding on the validity of the arbitral tribunal's decision to seize jurisdiction, the court can do either of the following:

- Conduct a complete new review of the facts and circumstances of the dispute, the wording and validity of the arbitration agreement, the procedure for appointing the arbitral tribunal, and so on.
- Merely review the tribunal's decision, taking the presumption that the decision is correct.

The argument in favour of a complete review is that it is more likely to prevent a defective arbitration agreement from ultimately causing an award to be vacated, and therefore unnecessarily wasting the parties' time, effort and resources. Unfortunately, the issue has not yet been cleared by the Cypriot courts and there is no settled law on this point.

See also *Question 13, Arbitration in breach of a valid jurisdiction clause*.

There are also circumstances where jurisdiction of the arbitration tribunal can be questioned by the Cyprus courts, which also have the power to decide on the matter in the following cases:

- Where a respondent to arbitration proceedings omits to respond to the notice of arbitration, the initiating party must apply to the court for the appointment of an arbitrator, in which case the respondent party can oppose the application and challenge the jurisdiction of an arbitration tribunal to hear the dispute.
- A party to the arbitration agreement can choose to initiate litigation proceedings in breach of the arbitration agreement and the defendant can apply to the court for an order for stay of the proceedings in the light of the arbitration agreement. At the hearing of the application for stay, the court examines the arbitration agreement and decides on whether the specific dispute should be resolved through arbitration proceedings.
- After the award is issued, the courts can hear and decide an application to set aside or refuse to recognise an award on the ground that the tribunal lacked jurisdiction to hear the matter.

Arbitration agreements

Validity requirements

8. What are the requirements for an arbitration agreement to be enforceable?

Substantive/formal requirements

The only requirement under the main laws applicable to arbitration is that the arbitration agreement must be a written agreement to submit present or future disputes to arbitration and, under common law principles, must be clear and certain.

In writing

An "arbitration agreement" is defined as a written agreement to submit present or future disputes to arbitration (*section 2(1), Arbitration Law*). Similarly, section 7 of the IACM Law states that for an arbitration agreement to be valid, it must be in writing. An agreement is deemed to be in writing if it is contained in:

- A document signed by the parties.
- The exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement.
- An exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other.

An arbitration agreement can be in the form of an arbitration clause duly incorporated into a contract, or stand on its own as a separate agreement.

The requirement for the arbitration agreement to be in writing is also mirrored in the provisions of section 2 of the Ratification Law which states that the term includes an arbitral clause in a contract of an arbitration agreement, signed by the parties or contained in letters or telegrams.

There are no other formal requirements imposed by the law for the arbitration agreement to be enforceable.

Clear and certain

Common law principles require the terms of an arbitration agreement to be clear and certain to be valid. An arbitration agreement is void if its terms are uncertain or if there is no clear reference to arbitration. In *Finnegan v Sheffield City Council (1988) 43 B.L.R. 124*, the court held that a clause to the effect that the question whether disputes under the contract were to be referred to arbitration was to be a matter of further negotiation, could not be deemed as a valid arbitration clause and therefore was not enforceable. English judgments are persuasive precedents for Cypriot courts.

Unilateral or optional clauses

9. Are unilateral or optional clauses, where one party has the right to choose arbitration, enforceable?

Although there is no case law on the matter, unilateral or optional clauses appear to be enforceable in view of the approach of the courts to enforce arbitration clauses in general. When litigation is initiated while the beneficiary of the optional clause wishes to proceed to arbitration, then on an application from the beneficiary, the court must stay the litigation proceedings and refer the disputes to arbitration.

Third parties

10. In what circumstances can a party that is not a party to an arbitration agreement be joined to the arbitration proceedings?

Cypriot law does not allow an arbitral tribunal to assume jurisdiction over third parties who are not signatories and therefore not contractually bound by the arbitration agreement, without their consent.

However, third parties or non-signatories to an arbitration agreement can be bound by the agreement by operation of the group of companies doctrine. Under this doctrine, obligations and duties deriving from an arbitration agreement between two parties can also in some circumstances bind other members of the same group of companies or by operation of the general principles of private law, such as assignment of a contract, agency and succession.

Further, third parties can participate in domestic and international arbitrations as they can be summoned to appear before the tribunal for the purposes of testifying or producing documents. However, it is not possible to force someone to produce any documents in an arbitration proceeding which he/she would not be compelled to produce at trial.

11. In what circumstances can a party that is not a party to an arbitration agreement compel a party to the arbitration agreement to arbitrate disputes under the arbitration agreement?

Apart from the circumstances set out in *Question 10*, there are no legal methods for a third party to compel a party to the arbitration agreement to arbitrate disputes under that agreement.

Separability

12. Does the applicable law recognise the separability of arbitration agreements?

The doctrine of separability is codified in section 16(1) of the IACM Law, which states that an:

- Arbitration agreement which forms part of a contract is considered a separate agreement from the rest of the contract.
- Arbitral tribunal's decision that the contract is void at the outset (*ab initio*) does not necessarily affect the validity of the arbitration agreement.

It also means that the courts will uphold an agreement to arbitrate even when the contract of which it is a clause is breached by one of the parties or is declared invalid. Therefore, the arbitration clause will survive even when the contract is deemed invalid, non-existent or ineffective due to a mistake about the identities of the signatories, undue influence, *non est factum* (that is, where the contact is fundamentally different from what a party intended to execute), and so on. However, the arbitration agreement will not survive in cases where it is considered invalid or non-existent for the same reasons that the contract as a whole is invalid or non-existent. For example, an arbitration agreement will not survive when the whole contract containing the arbitration clause is a result of forgery, as the forgery will also nullify the arbitration agreement.

The court can order at its discretion that the arbitration agreement ceases to have effect when an issue of fraud on behalf of one of the parties is raised (*section 9(2), Arbitration Law*).

Breach of an arbitration agreement

13. What remedies are available where a party starts court proceedings in breach of an arbitration agreement or initiates arbitration in breach of a valid jurisdiction clause?

Court proceedings in breach of an arbitration agreement

If an action is brought before the Civil Court in a matter which is subject to an arbitration agreement, a party can apply to the court and request for the dispute to be referred for adjudication to arbitration (*section 8, IACM Law*). On such a request, the court will issue an order for stay and/or dismissal of the proceedings before it, unless it finds that the agreement is null and void, inoperative or incapable of being performed.

Similar provisions apply to domestic arbitrations under section 8 of the Arbitration Law.

Arbitration in breach of a valid jurisdiction clause

The arbitral tribunal can rule on its own jurisdiction (*section 11, IACM Law*) and therefore a party alleging that the arbitration proceedings were commenced in breach of a valid jurisdiction clause can file a relevant application before the tribunal and request a ruling that the latter has no jurisdiction to adjudicate the dispute. A plea that the arbitral tribunal does not have jurisdiction cannot be raised after the submission of the statement of defence (*see Question 7*).

The arbitral tribunal can rule on its own jurisdiction either as a preliminary question or in an award on the merits. If the arbitral tribunal rules as a preliminary question that it has jurisdiction, any party can request the court to decide the matter, within 30 days of having received notice of that ruling. This decision is not subject to appeal.

> 14. Will the local courts grant an injunction to restrain proceedings started overseas in breach of an arbitration agreement?

Cyprus courts have the power to issue anti-suit injunctions to restrain a person from pursuing proceedings, including arbitration proceedings, outside the jurisdiction of Cyprus. These orders are issued against the party and not against the foreign court/tribunal, but have the effect of restraining the continuation of the arbitration (as otherwise the party against whom the order is issued can be liable for breach of the court order and face contempt of court proceedings). Because anti-suit injunctions inevitably interfere with the process of a foreign court/tribunal, the courts are generally reluctant to grant them and do so very sparingly.

Arbitrators

Number and qualifications/characteristics

> 15. Are there any legal requirements relating to the number, qualifications and characteristics of arbitrators? Must an arbitrator be a national of, or licensed to practice in your jurisdiction to serve as an arbitrator there?

There are no provisions in the domestic legislation limiting the parties' autonomy to select arbitrators.

With regard to international commercial disputes, the parties are free to determine the procedure of appointment of the arbitrators and are free to select anyone as arbitrator, irrespective of his/her nationality (*section 11(1) and (2),*

IACM Law). Depending on the nature of the dispute's subject matter, the parties are able to select arbitrators who are knowledgeable in the subject matter and with an expertise relevant for deciding their dispute.

Independence/impartiality

16. Are there any requirements relating to arbitrators' independence and/or impartiality?

The Arbitration Law sets out the power of the court to remove an arbitrator on the application of either party if the arbitrator is shown not to be impartial.

The IACM Law provides that any person who is requested to be appointed as arbitrator must disclose any circumstances which are likely to give rise to justifiable doubts as to his/her impartiality or independence. Arbitrators remain under the same obligation following their appointment and until the completion of the arbitration proceeding.

Case law has entrenched the requirement that the arbitrator must be impartial and independent of the parties. Arbitrators, parties and counsel can refer to the IBA Guidelines on Conflicts of Interest in International Arbitration to assess the impartiality and independence of arbitrators.

Appointment/removal

17. Does the law contain default provisions relating to the appointment and/or removal of arbitrators?

Appointment of arbitrators

In the absence of a prior agreement by the parties, a default appointment procedure for international arbitrations is set out in section 11(3) of the IACM Law. This section provides that in an arbitration with three arbitrators:

- Each party must appoint one arbitrator.
- The two arbitrators who are appointed then appoint the third arbitrator.
- If a party fails to appoint the arbitrator within 30 days of the receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the appointment will be made by the court, at the request of a party.

Alternatively, in an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, the arbitrator will be appointed by the court at the request of a party.

The Cypriot courts have the authority to intervene in the appointment process at the request of a party, unless otherwise agreed by the parties, if:

- A party fails to act according to the arbitration agreement.
- The parties or the two appointed arbitrators are unable to proceed according to the procedure agreed.
- A third, natural or legal person including the arbitral institution fails to perform any function entrusted to it under the procedure.

(*Section 11(4), IACM Law*.)

Similar provisions for the power of the court to intervene in the appointment process of the arbitrators are found in section 10 of the Arbitration Law.

Removal of arbitrators

Challenge. A party can challenge the appointment of an arbitrator and seek his/her removal at the time the tribunal is constituted or later, if new facts come to light regarding his/her impartiality. In international arbitrations, an arbitrator can be challenged, where circumstances exist that give rise to justifiable doubts as to his/her impartiality or independence, or where the arbitrator does not possess the qualifications agreed by the parties (*Article 12, IACM Law*).

A party can challenge an arbitrator appointed by him/her, or in whose appointment he/she has participated, only for reasons of which he/she becomes aware after the appointment has been made.

The parties are free to agree on a procedure for challenging an arbitrator. If a challenge under any procedure agreed on by the parties is not successful, the challenging party can request, within 30 days of receiving notice of the decision rejecting the challenge, the court to decide on the challenge. Its decision is final and not subject to appeal. While such a request is pending before the court, the arbitral tribunal, including the challenged arbitrator, can continue the arbitral proceedings and make an award.

Removal. The parties can agree to remove an arbitrator when he/she becomes *de jure* or *de facto* unable to perform his/her functions or for other reasons fails to act without undue delay (*Article 14, IACM Law*). Otherwise, if disagreement remains concerning any of these grounds, any party can request the court to decide on the termination of the mandate, from which decision there is no appeal.

In relation to domestic arbitrations, a court can, on an application made by any party, remove an arbitrator or an umpire (an arbitrator with specific knowledge) who fails to act expediently in the proceedings and in issuing his/her decision (*section 13, Arbitration Law*).

Additionally, a court can remove an arbitrator or an umpire who has misconducted him/herself or the proceedings (*section 20, Arbitration Law*). In this case, any award made by him/her will be cancelled.

In *Bank of Cyprus Ltd v Dynacon Limited and Another (1990) 1 SCJ 717*, the court defined the term "misconduct" to encompass every type of behaviour which tends to destroy the trust that the litigants should have towards an arbitrator that he/she will reach a fair decision.

In *Solomou Neophitos v Laiki Cyprialife Ltd (2010) 1 SCJ 687*, the Supreme Court of Cyprus stated that the classic treatment of "misconduct" refers to the bribery of the arbitrator or to the existence of a secret interest on his/her behalf to the dispute before him/her.

However, the term when applied to "misconduct of the arbitration proceedings" extends to other issues as well, to include not only morally or ethically improper behaviour but also the wrongful admission or exclusion of evidence, or the acceptance of extrinsic evidence for the interpretation of the contract, but not the wrongful interpretation of such a contract.

Procedure

Commencement of arbitral proceedings

18. Does the law provide default rules governing the commencement of arbitral proceedings?

In international commercial arbitrations, unless otherwise agreed by the parties, the arbitral proceedings in a dispute commence on the date on which a request for that dispute to be referred to arbitration is received by the respondent (*section 21(1), IACM Law*).

Similarly, in domestic arbitrations, an arbitration is deemed to be commenced when one party to the arbitration agreement serves on the other party or parties a notice requiring them to appoint an arbitrator, or, where the arbitration agreement names or designates a person, requiring them to submit the dispute to that person (*section 24(3), Arbitration Law*).

Applicable rules and powers

19. What procedural rules are arbitrators bound by? Can the parties determine the procedural rules that apply? Does the law provide any default rules governing procedure?

Applicable procedural rules

There are no specific procedural rules which apply in international commercial arbitrations and parties are free to agree on the procedural rules which will be followed. Usually, the parties agree to adopt the rules of arbitral institutions, such as the ICC or the UNCITRAL Arbitration Rules, which provide an overall framework within which to operate. Failing such an agreement, the arbitral tribunal can conduct the arbitration in any manner as it considers appropriate.

In domestic arbitrations governed by the Arbitration Law, in the absence of any applicable rules on the matter, the current Civil Procedure Rules apply *mutatis mutandis*.

Evidence and disclosure

20. If there is no express agreement, can the arbitrator order disclosure of documents and attendance of witnesses (factual or expert)?

In line with the principle of party autonomy, the IACM Law provides a mechanism which enables the parties to agree and determine in advance the procedure of the arbitration process. It is clear that this procedure covers the rules on the submission and admissibility of evidence.

In the absence of an agreement, the tribunal is entitled to use its discretion and power to determine the rules and procedure on the admissibility, relevance and significance of any evidence brought before it (*section 19 (2), IACM Law*). These rules can include provisions empowering the tribunal to issue orders binding the parties to the arbitration for disclosure of documents, attendance of witnesses and so on.

In addition, the arbitral tribunal or a party (with the approval of the arbitral tribunal) can request the Cyprus court's assistance in taking evidence (*section 27, IACM Law*). The court can execute the request within its competence and according to its rules on taking evidence.

In the absence of an agreement between the parties, the arbitral tribunal can appoint one or more experts to report to it on specific issues put to them by the arbitral tribunal (*section 26, IACM Law*). In addition, the tribunal can require a party to give the expert any relevant information or to produce or provide access to any relevant documents, goods or other property for inspection.

In domestic arbitrations, the Civil Procedure Rules which apply in civil proceedings before the courts also apply *mutatis mutandis* to domestic arbitrations and these include rules of disclosure. In addition, any party to an arbitration can apply to the court for the issue of a summons requiring any person to attend for examination or to produce any document, provided that no person will be compelled under any such writ to produce any document which he/she could not be compelled to produce on the trial of an action (*section 17, Arbitration Law*).

Evidence

21. What documents must the parties disclose to the other parties and/or the arbitrator? How, in practice, does the scope of disclosure in arbitrations compare with disclosure in domestic court litigation? Can the parties set the rules on disclosure by agreement?

Scope of disclosure

Apart from the rules set out in *Question 20*, Cyprus law does not provide specific rules with respect to the scope of disclosure of evidence. However, where the arbitration is taking place in Cyprus, the general rules of evidence governing any court proceedings apply, since they form part of the procedural law of the place where arbitration is held. The tribunal can order the disclosure of any documents which are deemed to be relevant to the subject matter of the dispute between the parties.

In the case of *DH.MA.RO LTD v Lakis Construction Ltd (2010) 1 SCJ 223*, the Supreme Court affirmed the decision of the court of first instance in relation to the applicability of the rules of evidence as these apply in court proceedings. The statement that an arbitrator is bound by the rules of evidence applicable to court proceedings unless the parties have agreed otherwise was confirmed as correct.

Validity of parties' agreement as to rules of disclosure

Where, however, the parties have adopted the IBA Rules on the Taking of Evidence in International Arbitration, these rules will apply.

Confidentiality

22. Is arbitration confidential? If so, what is the scope of that confidentiality and who is subject to the obligation (parties, arbitrators, institutions and so on)?

Arbitration is based on the agreement of the parties and is therefore a private mechanism for dispute resolution. The general concept of confidentiality derives from the private character of the arbitration procedure and it imposes a duty on the arbitrators and the parties not to divulge, disclose or reveal information in relation to the proceedings, documents used in the proceedings or the award.

Neither the IACM Law or the Arbitration Law contains any express provisions governing the principle of confidentiality. This does not, however, mean that the principle has no application in Cyprus. Although case law on the confidentiality of arbitration proceedings is limited, confidentiality in arbitration has been examined in various English cases, which form persuasive precedents in Cyprus.

For example, in *Dolling-Baker v Merret [1990] 1 WLR 1205*, Parker LJ stated that although arbitration proceedings are consensual and wholly voluntary, their very nature implies an obligation on the parties not to disclose or use for any other purpose information used, disclosed or produced in the arbitration without the consent of the other party or under an order or leave of the court.

The duty of confidentiality is not an absolute one and disclosure may be permissible in the following circumstances:

- Where it is reasonably necessary for the protection of the arbitrating parties (*Hassneh Insurance Co. of Israel v Steuart J. Mew [1993] 2 Lloyd's Rep.243 QB*).
- For the purposes of invoking the supervisory roles of the court over arbitration awards and for enforcing the award itself (*Hassneh Insurance Co. of Israel v Steuart J. Mew [1993] 2 Lloyd's Rep.243 QB*).
- The public interest or the interests of justice require it (*Emmot v Michael Wilson & Partners [2008] EWCA (Civ) 184 CA*).
- There is express or implied consent of the parties **(***Emmot v Michael Wilson & Partners [2008] EWCA (Civ) 184 CA*).

Judgments issued by Cypriot courts, however, are published and therefore confidentiality may be lost in the event where a party requests the registration and enforcement of a national or international arbitration award and the other side opposes. An opposition will lead to a hearing of the relevant application which will therefore lead to the issue and publication of a judgment on the matter. The relevant judgment will undoubtedly state some of the facts of the dispute, the issue of the award and the challenges raised by the opposing party.

Courts and arbitration

23. Will the local courts intervene to assist arbitration proceedings seated in their jurisdiction?

Local courts can assist in various matters in arbitration proceedings at the request of a party to the proceedings.

The courts have the authority to intervene in the appointment process at the request of a party (*section 11(4), IACM Law*) (*see Question 17*). Similar provisions relating to domestic arbitrations are found in section 10 of the Arbitration Law.

The court can also assist in domestic and international arbitrations, at the request of the arbitral tribunal or of a party with the agreement of the tribunal, for the taking of evidence, in accordance with the rules governing evidence in court proceedings.

In international arbitrations, the court has the power under Article 9 of the IACM Law to order the issuance of protective measures at any time either before the initiation of the arbitration proceedings or during them, which are considered in support of and are issued in parallel with the arbitration proceedings. They usually relate to the

protection of the subject matter of the arbitration proceeding. Interim measures can also be issued under Article 35 of the Recast Brussels Regulation (*Regulation (EU) 1215 /2012*) in support of the arbitration proceedings, under particular circumstances and requirements.

In domestic arbitrations, the court has the power to issue various types of preliminary or interim relief while arbitration proceedings are pending, such as orders regarding:

- Security of costs.
- Discovery of documents and interrogatories.
- Taking and preserving evidence.
- Maintenance, storage or sale of any goods which are the subject matter of the arbitration.
- Securing the amount of the dispute.
- Detention, preservation or inspection of any property or thing which is the subject of the arbitration.
- Other interim relief or appointment of a receiver.

24. What is the risk of a local court intervening to frustrate an arbitration seated in its jurisdiction? Can a party delay proceedings by frequent court applications?

The main risk in requesting the local court to intervene is that the arbitration proceeding will be delayed. Depending on the type of application made to the court, the arbitration may be delayed for three to six months or even more if the parties follow delaying tactics, such as filing further interim applications and/or not conforming with timeframes set by the court.

However, this is rare in practice and there is no reported case law about such an intervention.

Insolvency

25. What is the effect on the arbitration of pending insolvency of one or more of the parties to the arbitration?

Where an arbitration term is included in an agreement to which one of the parties is bankrupt, the agreement is enforceable against that party if the trustee in bankruptcy adopts the agreement (*Article 5, Arbitration Law*), If the

above provision does not apply (for example, where the clause is included in a burdensome contract which relates to land), the trustee in bankruptcy or any other party to the agreement can apply to the court for an order referring any disputed matter covered by the agreement to arbitration in accordance with the arbitration agreement.

If while the arbitration is being carried out a party is declared insolvent, the trustee in bankruptcy or the Official Receiver (if a trustee in bankruptcy has not yet been appointed) must request permission from the Official Receiver to continue the arbitration in the name of the insolvent party.

Remedies

26. What interim remedies are available from the tribunal?

Interim remedies

In the absence of an agreement by the parties to the contrary, a tribunal has the power to order interim protective relief against any party with regard to the subject matter of the dispute and can request guarantees from any of the parties regarding such relief (*Article 17, IACM Law*). The tribunal does not need the assistance of the court to issue this kind of relief.

Ex parte/without notice applications

There is no provision in the Arbitration Law or the IACM Law specifically empowering the tribunal to grant interim relief on an ex parte basis, but Article 18 of the IACM Law obliges the tribunal to offer every possible opportunity to each party to appear and represent itself and its position.

Security

Neither the IACM Law nor the Arbitration Law provides for security for costs for the arbitration proceedings. The availability of this remedy will depend on the rules chosen and adopted by the parties.

27. What final remedies are available from the tribunal?

There are no limits on the types of remedies an arbitral tribunal can award, except where:

- The existence or dissolution of a Cyprus company or the rectification of any of its registers is involved.

- A remedy would affect the registration of rights over immovable property situated in Cyprus.
- Other public policy reasons dictate that the relevant remedy can only be granted by the court.

Appeals

28. Can arbitration proceedings and awards be appealed or challenged in the local courts? What are the grounds and procedure? Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitral clause itself)?

Rights of appeal/challenge

For domestic arbitrations governed by the Arbitration Law, the parties are entitled to appeal against the arbitral award to the District Courts of Cyprus where the arbitrator or the umpire has misconducted himself/herself or the proceedings or arbitration process, or the award has been improperly procured.

In international commercial arbitrations governed by the IACM Law, a party can file an application to annul the award when:

- One of the parties to the arbitration agreement lacked contractual capacity at the relevant time, or the arbitration agreement is invalid based on the applicable law that the parties chose or in the absence of a chosen applicable law, based on the laws of the Republic of Cyprus.
- The party was not notified in a timely manner and on a regular basis of the appointment of the arbitrator or the arbitral proceedings, or has by any other means been deprived of a chance to present his/her case.
- The arbitral award refers to matters irrelevant to the terms of the submission to arbitration or contains decisions beyond the scope of the arbitration.
- The composition of the tribunal or the procedure of arbitration was in breach of the agreement of the parties or contradicts the provisions of the IACM Law.
- The subject matter of the dispute is not arbitrable under Cypriot law.
- The award is in conflict with the public policy of Cyprus.

Grounds and procedure

A party wishing to challenge the arbitral award must file an application to the District Court requesting the annulment of the award. The other side has the right to oppose this application, and following the filing of Notice to Oppose, the application will proceed to a hearing. In international commercial arbitrations, the application must be filed within three months of the date of notification of the award.

Waiving rights of appeal

The IACM Law grants a statutory right to the parties to arbitration to appeal against an arbitral award. There is no provision allowing the parties to contract out of this right in the arbitration agreement and any contractual restriction on the right to appeal would not be valid and binding to the parties

This is further supported by section 28 of the Contracts Law, Cap.149, which provides that a party cannot contract out of the right of recourse to justice. However, according to case law, a contractual term restricting the period for which a party has the right of recourse to justice, constitutes a mutually agreed term, constituting a waiver of right and would not contravene the provisions of Article 28.

29. What is the limitation period applicable to actions to vacate or challenge an international arbitration award rendered inside your jurisdiction?

The application for annulment of an international arbitral award must be filed within three months from the date of notification of the award.

The Arbitration Law does not include a time restriction but it should be assumed that such an application must be filed within a reasonable time from the issue of the domestic arbitral award.

Costs

30. What legal fee structures can be used? Are fees fixed by law?

There are no fixed amounts provided by law for the carrying out of the arbitration proceeding.

31. Does the unsuccessful party have to pay the successful party's costs? How does the tribunal usually calculate any costs award and what factors does it consider?

Cost allocation

In domestic arbitrations, a party can request the tribunal, within 14 days from the issue of the award, to order which party will pay the costs of the arbitration. After the hearing of the application, the tribunal can amend the award and include provisions as to costs.

The IACM Law does not have any provisions on the allocation of costs. However, as per court actions, the losing party generally bears the costs of the winning party.

However, costs incurred for a specific part of the arbitration proceeding can be adjudicated against a specific party (even if the party is the winning party) if there are reasons supporting this, for example, if that party has caused unreasonable or intentional delay in the proceedings.

Cost calculation

The tribunal will ask the winning party to provide information and receipts for the costs it incurs in the arbitration, and can issue an award for costs on the basis of this information.

Factors considered

Factors considered include counsel fees, the fees for booking the venue for hearings and related costs, the costs for expert witnesses and so on.

Enforcement of an award

Domestic awards

32. To what extent is an arbitration award made in your jurisdiction enforceable in the local courts?

A domestic arbitration award can, following permission of the court, be enforced in the same way as a court judgment and in this case the judgment can be issued containing the content of the arbitral award.

An international arbitral award is recognised as binding between the parties, regardless of which country it was issued in and can be declared enforceable and be enforced as a Cypriot judgment, following a relevant application to the court.

Further, a party can enforce a domestic or international award by filing an action, on the basis of non-compliance with the arbitral award. Unless an application for summary judgment is made within the framework of such an action, this route will be more time-consuming.

Foreign awards

33. Is your jurisdiction party to international treaties relating to recognition and enforcement of foreign arbitration awards, such as the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention)?

Cyprus is a party to the New York Convention and has made a specific reservation of reciprocity so that Cyprus Courts must recognise arbitral awards which are issued in a state that is also a signatory to the New York Convention.

Cyprus is also a party to the Convention on the Settlement of Investment and Disputes between States and Nationals in Other States as well as a number of bilateral investment treaties with individual countries.

34. To what extent is a foreign arbitration award enforceable?

Under both the IACM Law and the New York Convention, Cyprus courts will recognise and enforce a foreign award subject only to some exceptions (*see Question 28*).

In addition, enforcement will not be effected if:

- The award has not become binding yet on the parties.
- It has been annulled.
- Its execution has been stayed by a competent court in the country where the award was issued or under the law on the basis of which the award has been issued.

35. What is the limitation period applicable to actions to enforce international arbitration awards rendered outside your jurisdiction?

There is no specific provision on the limitation of actionable rights resulting from an arbitral award or a time-bar to its registration in Cyprus. However, Article 10 of the Limitations of Causes of Action Law of 2012 (*66(I)/2012*) provides that no action based on or in relation to a court judgement can be initiated more than 15 years from the

date that the judgment is rendered final. Therefore, execution measures in relation to the enforcement of the arbitral award will have to be taken within 15 years from its registration in Cyprus.

Length of enforcement proceedings

36. How long do enforcement proceedings in the local court take, from the date of filing the application to the date when the first instance court makes its final order? Is there an expedited procedure?

The quickest route to obtain recognition and enforcement of an award is to file an application under the provisions of the IACM Law or the Arbitration Law. There is no expedited procedure and the time for the completion of this procedure depends on the court's schedule and the tactics employed by the parties. Depending on these factors, a judgment will usually be issued in between three months from the date of filing of the application to over a year. The same applies if the parties choose to enforce an award through a civil action. In this case, to achieve a quick resolution of the matter, a successful application for summary judgment must be made.

Reform

37. Are any changes to the law currently under consideration or being proposed?

Although professionals and lawyers have repeatedly asked for the amendment of the Arbitration Law, no plans to amend or reform the law have been initiated.

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Publications

- *Co-authored ICLG: International Arbitration – Cyprus, The Global Legal Group, 2016.*
- *Co-authored International Arbitration - Cyprus, Chambers and Partners Country Practice Guides, 2016.*
- *International Civil Fraud - Cyprus, European Lawyer Reference Series, 2014.*
- *Co-authored The Cyprus International Trust, 2012.*
- *Industry Opinion on Securities Lending and REPO agreements for Cyprus for the ICMA and for the Securities Lending and Repo Committee on Capital Adequacy (Bank of England) 2008-2016.*
- *Co-authored Product Liability - Cyprus, Global Legal Group, 2011.*
- *Asset Protection & Cyprus International Trusts – Update, 2011.*
- *Cyprus/Russia Double Tax Treaty – Update, 2010.*
- *Cyprus Tax Law, Corporate INTL, 2010.*

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- *Co-authored The Legal 500 & The In-House Lawyer Comparative Legal Guide Cyprus: Arbitration, 2017.*
- *Co-authored The Dispute Resolution Review - Cyprus Chapter, The Law Reviews, Law Business Research, 2014-2017.*
- *Co-authored The International Arbitration – Cyprus Chapter, The Global Legal Group, 2016. Co-authored Money Laundering - Cyprus, Cyprus Law Digest, 2012.*

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Publications

- *Co-authored 2nd Arbitration Comparative Guide – Cyprus 2017, The In House Lawyer – Legal Lease Ltd.*
- *Co-authored ICLG – International Arbitration – Cyprus (2016), The Global Legal Group.*

Co-authored International Arbitration – Cyprus (2016), Chambers Country Practice Guides.

Recent transactions

- Representing one of Russia's major banks in high-profile arbitration proceedings before a Cypriot tribunal in a claim involving bank guarantees worth about USD50 million.
- Advising one of India's largest real estate construction companies, relating to the enforcement and execution of an LCIA Arbitration Award worth about USD360 million.
- Advising the London office of the largest business litigation and arbitration law firm in the world representing the client in arbitration proceedings before the LCIA. The claim was worth USD800 million.
- Representing a group of companies which own an oil refinery in the Russian Federation, in a shareholders' dispute for more than USD200 million.
- Representing a Russian government-owned development bank involved in the funding of development projects in a litigation initiated in Cyprus against the bank and third parties for USD118 million.

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