

International trade and commercial transactions in Cyprus: overview

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RECENT TRENDS

1. What are the recent trends affecting the regulation of international trade in your jurisdiction? Is your jurisdiction a member of the World Trade Organization (WTO)?

Cyprus has been a member of the WTO since 1995, and had previously been a member of the General Agreement on Tariffs and Trade (GATT) since 1963. Cyprus has been a member of the European Union since 2004.

Recent trends

As a result of extensive reforms carried out over the past three years, Cyprus has successfully exited its financial assistance programme in March 2016, while at the same time achieving a GDP growth of 0.9% in the first quarter of the same year. Cyprus' score in the 2016 economic freedom index of the Heritage Foundation is 68.7, up 0.8 from 2015, making the Cypriot economy the 42nd freest globally.

The use of Cyprus as an EU jurisdiction for global tax planning purposes, corporate structuring and reorganisations, international trusts, investment funds and international trade is on the rise, solidifying the country's position as a regional transactional hub. Another strong pillar of the nation's economy is the shipping sector. Cyprus is the largest ship management hub in the EU, and the size of the Cypriot ship registry ranks tenth globally and third in the EU.

Cyprus' strategic position as an investment and asset management centre is enhanced by the double tax treaties it has concluded with other states (over 50), and the legal certainty of Cyprus' common law system. Many multinational corporations take advantage of the stable and sophisticated tax, legal and business environment.

More than half of Cyprus' trade in goods is with the EU. The main domestic export commodities are pharmaceuticals, photosensitive devices and food products.

The three leading import partners of Cyprus are Greece, Israel and the United Kingdom. Cyprus mainly imports machinery, chemicals, vehicles, iron and steel. The discovery of hydrocarbons in Cyprus' exclusive economic zone is expected to decrease the island's dependence on imports for its own energy requirements, and should also enable Cyprus to export natural gas, as exploration of its hydrocarbons reserves is underway.

Trade agreements

As a member state of the EU, Cyprus actively participates in EU's negotiations on free trade agreements with a number of third states. In addition, Cyprus itself is a party to a number of bilateral trade agreements with other states.

Reform

The country's return to international markets in June 2014, faster than any of the EU countries that required financial aid, was an early indication of the country's recovery from the economic crisis that unfolded in 2013. Cyprus raised EUR750 million from a five-year government bond, paying a yield of 4.85% and attracting around EUR2 billion of orders. The second return to the markets in April 2015 saw high investor demand for Cypriot bonds in the range of EUR1.9 billion, allowing the EUR1 billion target on which the issuing closed to be attained relatively easily.

As was widely publicised in 2013, two Cypriot banks suffered considerable losses following the substantial debt write-off on Greek bonds, forcing Cyprus into a financing programme of EUR10 billion from the EU and the International Monetary Fund (IMF). The banking sector crisis was followed by drastic reform measures, including public sector reforms and privatisations, which resulted in a remarkable recovery. The Cypriot banking sector is now fully recapitalised. Three Cypriot banks and the co-operative credit sector will come under the direct supervision of the European Central Bank, a regulatory change that can be viewed as ensuring long-term stability and increased assurance to traders, depositors and investors.

Since entering into the financial assistance programme, Cyprus has steadily reformed itself out of recession and has exceeded all expectations.

CONTRACTS FOR THE SALE OF GOODS

General

2. What is the legal system in your jurisdiction based on (for example, civil law (codified), common law or sharia law)?

On acquiring independence from the UK in 1960, Cyprus maintained the common law system and a number of English statutes in force at the time. The Cypriot legal order is based on the:

- Constitution of the Republic of Cyprus.
- Colonial-era statutes that remain in force under Article 188 of the Constitution.
- Principles of common law and equity.
- Statutes enacted by Parliament.

In addition, following Cyprus' accession to the EU in 2004, the Constitution was amended to provide for the supremacy of EU law over national law.

Cypriot Courts fully comply with the principle of *stare decisis* (that is, lower courts are bound by precedents set by the judgments of the Supreme Court). Although judgments of English courts are not

binding precedents, they still have a strong persuasive authority. English authorities are therefore often cited, adopted and applied by Cypriot courts.

A substantial part of the principles relating to contract law have been codified in the Contract Law, Cap. 149. This statutory codification, and the persuasive authority of English case law on the application of common law principles, allows Cyprus to provide a very high degree of legal certainty for traders and transacting parties in relation to contractual and commercial dispute resolution.

Formation

3. What domestic legislation and international rules apply to a sale of goods contract in your jurisdiction? Are standard international contractual terms commonly used?

Domestic legislation

The freedom to contract is protected under Article 26 of the Constitution. The Contract Law, Cap. 149 is the primary statute governing the formation, performance and other aspects of contracts in Cyprus. In addition, the principles of common law and equity are fully applicable, and Supreme Court judgments constitute binding precedents (drawing, in the majority of cases, from the persuasive authority of English judgments).

The Contract Law must be interpreted in accordance with the principles of legal interpretation under English law, and the expressions used in the law must be construed in accordance with English law, unless the law expressly provides otherwise (*section 2, Contract Law*).

Additionally, the Companies Law, Cap. 113 contains provisions regulating the conclusion of contracts between companies.

Extensive legislation regulates various aspects relating to international trade and commerce. The main statutes governing sale of goods contracts are the:

- Sale of Goods Law 1994 (Law 10(I)/1994), which aligns the Cypriot legal order with international norms.
- Defective Products (Civil Liability) Law of 1995 (Law 10(I)/95), under which the producer or manufacturer of defective goods is strictly liable for any damage caused by such products, in accordance with applicable EU law. The Safety of Consumer Products Law of 2004 (Law 41(I)/2004), as amended, transposed Directive 2001/95/EC on general product safety (General Product Safety Directive).
- Trade Description Law of 1987 (Law 5/87), as amended, which protects consumers from inaccurate or misleading trade descriptions. It prohibits any trader from applying an inaccurate description to goods, or from supplying or offering to supply goods to which an inaccurate trade description has been applied.
- Commercial Agents Law of 1986 (Law 76/1986), as amended, and subsidiary legislation issued under this law, which regulate sales through commercial agents.
- Inscription of the Sale Price and Unitary Price of Products Law of 2000 (Law 112(I)/2000), which sets out obligations to provide information to consumers, enabling them to compare prices of products. Any trader that sells or displays products for sale to consumers must ensure, through distinct and legible inscriptions, that customers are informed of the selling price and the price per unit.
- Consumer Rights Law of 2013 (Law 133(I)/2013), which transposed Directive 2011/83/EU on consumer rights (Consumer Rights Directive) into Cypriot law and repealed other statutes regulating distance consumer contracts.

- Law Regulating Consumer Protection in relation to Certain Aspects of the Sale of Consumer Products and Relevant Guarantees of 2000 (Law 7(I)/2000), which provides effective protection to consumers and require a seller to supply goods in accordance with the terms of the contract.
- Unfair Trade Practices of Businesses towards Consumers Law of 2007 (Law 103(I)/2007), as amended, which transposes Directive 2005/29/EC concerning unfair business-to-consumer commercial practices in the internal market (Unfair Commercial Practices Directive).
- Extrajudicial Resolution of Consumer Claims by Arbitration Law of 2011 (Law 78(I)/2011), as amended.

In addition, the *acquis communautaire* (that is, legislation, legal acts and court decisions that constitute the body of EU law) applies to sale of goods transactions. Regulation (EC) 593/2008 on the law applicable to contractual obligations (Rome I) is also applicable (*see Question 22*).

International rules

Cyprus is a party to the:

- United Nations Convention on Contracts for the International Sale of Goods.
- Customs Convention on the International Transport of Goods under Cover of TIR Carnets.
- Convention for the Unification of Certain Rules for International Carriage by Air.
- Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

EU legislation and other legal instruments are fully applicable in Cyprus.

Standard contractual terms

Cyprus adopted the UNCITRAL Model Law on International Commercial Arbitration through the International Commercial Arbitration Law of 1987 (L. 101/87) (ICA Law). The ICA Law defines "international arbitration" as arbitration between two parties that have their place of business in different states. The word "commercial" is defined as referring to matters "arising from relationships of a commercial nature". Therefore the ICA Law has a wide scope of application.

The International Chamber of Commerce (ICC) international commercial terms (Incoterms) 2010 can be used in Cyprus. The Cyprus Chamber of Commerce and Industry (which is a national member of the ICC), actively recommends the use of Incoterms.

4. What are the authority/capacity rules for entering contracts, for different commercial entities?

A valid and enforceable contract can only be concluded between parties that have the legal capacity to contract. As a general rule and in accordance with the constitutional principle of freedom to contract, persons are free to contract with another, subject to certain exceptions. For natural persons, these exceptions relate to age and sanity requirements.

Companies have a legal personality and can contract with third parties, provided that the person or persons concluding a contract on behalf of the company are duly authorised to do so and are not acting outside their authority (*ultra vires*). Even where the contract concerns matters that fall outside the objects of the company, as defined in the company's memorandum, the company is liable to third parties with which it has contracted, unless the company can establish that the third party was aware that the matter fell outside the company's objects (*section 33A, Companies Law*).

5. What are the essential requirements to create a legally enforceable contract?

Substantive requirements

In addition to capacity (see *Question 4*), the substantive requirements to create a legally binding and enforceable contract under Cyprus law are:

- Offer.
- Acceptance.
- Consideration.
- Intention to create legal relations.

Additionally, a contract that has an illegal object cannot be enforced.

An offer can be made to a particular person or persons, or to the public in general. The offer must be properly communicated, which is a question of fact. To become legally binding, an offer must be clear and unequivocal. The offeree must have knowledge of the offer at the time of acceptance.

Consideration must be real, but need not be adequate, and must come from the offeree. Generally, any act, or the promise to perform any act, can be valid consideration. "Past" consideration is not valid consideration.

Formal requirements

Contracts can be concluded in writing or orally, or partially in writing and orally, or their existence can be inferred from the conduct of the parties (*section 10, Contract Law; section 5(2), Sale of Goods Law*).

Formal requirements apply to specific types of contracts, including:

- Leases of immovable property for a period exceeding one year (*section 77(1), Contract Law*).
- Promissory notes (*section 78, Contract Law*).
- Bills of exchange, promissory notes, bonds, or share certificates or share warrants for shares in a company, issued as security for payment of a debt or performance of a promise (*section 138, Contract Law*).

A contract cannot be subject to specific performance unless it is in writing and signed by the person who is responsible for such performance (*section 76, Contract Law*).

Cypriot courts apply all the above provisions strictly (*Fotini Mouhtou v Katelou Himarou (2001) 1C CLR 1794, Papastratis v Economou (1970) 1 CLR 11*).

Formal requirements also apply to consumer contracts concluded outside of a commercial store and to distance consumer contracts. These contracts must include information concerning the contract and performance of the contract, and such information must be provided in a simple and comprehensible manner. (*sections 6 and 7, Consumer Rights Law*).

Price and payment

6. If price provisions are not agreed by the parties, does local law impose requirements in relation to price (for example, the time, method and place of payment)?

The price can be agreed in the contract, set in the manner agreed under the contract or during the course of the transaction (*section 9, Sale of Goods Law*). Where the price is not specified, the buyer must pay the seller a reasonable price. What constitutes a

reasonable price depends on the circumstances of each case (*section 9(2), Sale of Goods Law*).

Where the price is determined by a third party, the contract is void if the third party fails to make a valuation (*section 10, Sale of Goods Law*). However, where the goods or part of the goods have been delivered to the buyer, who has appropriated them, the buyer must pay a reasonable price for the goods.

Delivery

7. If delivery provisions are not agreed by the parties, does local law impose requirements in relation to delivery (for example, the time, method and place of delivery)?

General requirements

Delivery is defined as the voluntary transfer of ownership by one person to another (*section 2, Sale of Goods Law*). The seller must deliver the goods to the buyer, and the buyer must accept and pay for the goods under the terms of the contract (*section 31, Sale of Goods Law*).

Delivery of the goods can be made in any manner agreed by the parties or which places the goods in the possession of the buyer (or an authorised person on behalf of the buyer). Unless agreed otherwise, delivery of the goods and payment must be made concurrently. Consequently, the seller must be ready and willing to deliver the ownership of the goods to the buyer in exchange for the price, and the buyer must be ready and willing to pay the price in exchange for the ownership of the goods. Partial delivery of the goods with intent to separate them from the entire order of goods does not imply delivery of the whole order.

Section 36 of the Sale of Goods Law contains the rules on performance. The question of whether the buyer must take possession of the goods, or whether the seller must deliver the goods, is decided on a case-by-case basis and in accordance with the express or implied terms of the contract.

The goods must be delivered at their location at the time of conclusion of the sales contract, unless the contract provides otherwise. In absence of an agreement between the parties to this effect, the goods must be delivered at their location at the time of sale. Where the goods ordered under a sales contract do not exist at the time of the contract, they must be delivered at the place of manufacture or production.

Unless agreed otherwise, the seller is not obliged to deliver the goods until the buyer requests delivery (*section 35, Sale of Goods Law*). If the seller is under a contractual obligation to ship the goods to the buyer but no time has been agreed for such shipment, the seller must ship the goods within a reasonable time (*section 36(2), Sale of Goods Law*).

When a third party is in possession of the goods at the time of the sale, there can be no delivery unless and until the third party notifies the buyer that he holds the goods on the buyer's behalf (*section 36(3), Sale of Goods Law*).

A demand or offer to deliver does not have legal effect unless it is made at a reasonable hour, which is a factual issue (*section 36(4), Sale of Goods Law*). Unless otherwise agreed, the buyer bears the costs of putting the goods into a deliverable state (*section 36(5), Sale of Goods Law*).

Consumer contracts

In consumer sales (both in and out of a commercial store), the seller must provide the following information to the buyer before the conclusion of the contract (*sections 4 and 5, Consumer Rights Law*):

- Terms relating to payment, delivery and performance.
- Time of delivery.

- Any additional delivery charges or, where these cannot be reasonably calculated, the fact that such charges may be demanded.

In distance consumer contracts, the commercial website must clearly state whether there are any limitations to the seller's delivery obligations (*section 7, Consumer Rights Law*).

Unless otherwise agreed by the parties, the seller must deliver the goods and transfer natural possession or control of the goods to the consumer without undue delay, and absolutely within 30 days following the conclusion of the contract (*section 17, Consumer Rights Law*). Where the seller fails to comply with this obligation, the consumer can ask the seller to deliver the goods within a new period of time that is appropriate in the circumstances. If the seller fails to deliver within the new deadline, the consumer is entitled to terminate the contract.

However, the above provisions on the determination of a new delivery date do not apply in the following cases:

- The seller refuses to deliver the goods.
- Delivery within the agreed delivery deadline is important taking into account all the circumstances relating to the conclusion of the contract.
- The consumer has informed the seller, before the conclusion of the contract, that delivery must take place on or by a specific date.

In these cases, where the seller fails to deliver the goods as agreed with the consumer or within the deadline of 30 days, the consumer has the right to immediately terminate the contract. The seller must refund, without undue delay, all amounts paid under the contract.

Passing of title and risk

8. If not agreed by the parties, when does title to the goods pass to the buyer?

Title to the goods passes to the buyer at such time as the parties intend it to pass (*section 19, Sale of Goods Law*). The intention of the parties is determined taking into account all the terms of contract, the conduct of the parties and circumstances of the case. Unless a different intention can be inferred, the rules for identifying the intentions of the parties are as follows (*sections 20 to 24, Sale of Goods Law*):

- In a contract for the sale of specific goods in a deliverable state, ownership of the goods is transferred at the time of conclusion of the contract, regardless of whether the time of payment of the price or the time of delivery (or both) are postponed (*section 20, Sale of Goods Law*).
- In a contract for the sale of specific goods under which the seller must do something to the goods to put them into a deliverable state, ownership is not transferred until such act is carried out and the buyer is notified of that act (*section 21, Sale of Goods Law*).
- In a sale of specific goods in a deliverable state under which the seller must weigh, measure, test or carry out any other act over the goods in order to determine their price, ownership of the goods is not transferred to the buyer until such act is carried out by the seller and the buyer is notified of that act (*section 22, Sale of Goods Law*).
- In a contract for the sale of non-specified goods or future goods by description and in a deliverable state, under which such goods are appropriated unconditionally under the contract (whether by the seller with the consent of the buyer, or by the buyer with the consent of the seller, before or after appropriation of the goods to the contract), ownership is

deemed to be transferred at the time of appropriation (*section 23, Sale of Goods Law*).

- In the case of goods sent to the buyer for the purpose of approval, sale, return or other similar terms, ownership of the goods is transferred to the buyer on approval or acceptance or any other act under which the transaction is adhered to. Where the buyer does not approve or accept but keeps possession of the goods, without notice of refusal, ownership is transferred on the expiration of the time within which the goods should have been returned, or, absent such time, after a reasonable time (*section 24, Sale of Goods Law*).

The right of the buyer to dispose of the goods can be subject to certain conditions, in which case ownership is not transferred to the buyer until these conditions are fulfilled (*section 25, Sale of Goods Law*) (see *Question 9*).

9. Are retention of title clauses enforceable in your jurisdiction? If so, what are the requirements to create a legally enforceable retention of title clause?

Retention of title clauses are allowed under Cypriot law.

Under section 25 of the Sale of Goods Law, where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller can, through the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such a case, regardless of delivery of the goods to the buyer (or to a carrier, other bailee or custodian for the purpose of transmission to the buyer), title to the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

Where goods are shipped, and the goods are deliverable to the order of the seller or his/her agent under the bill of lading, the seller is prima facie to be taken to reserve the right of disposal.

Where the seller draws on the buyer for the price, and transmits the bill of exchange and bill of lading to the buyer together to secure acceptance or payment of the bill of exchange, the buyer must return the bill of lading if he/she does not honour the bill of exchange. Title to the goods does not pass to the buyer if he/she wrongfully retains the bill of lading.

In addition, Article 9 of Directive 2011/7/EU on combating late payment in commercial transactions regulates retention of title clauses. This directive allows the seller to retain title to the goods until they are fully paid, provided that a retention of title clause has been expressly agreed between the parties before delivery of the goods.

Under Article 10 of Regulation (EU) 2015/848 on insolvency proceedings (Recast Insolvency Proceedings Regulation), the opening of insolvency proceedings against the buyer does not affect the seller's rights that are based on a retention of title clause where, at the time of the opening of proceedings, the asset is located within the territory of a member state other than the state of the opening of proceedings. Insolvency proceedings against the seller after delivery of the goods do not constitute grounds for rescinding or terminating the contract. In addition, such insolvency proceedings cannot prevent the buyer from acquiring title where, at the time of the opening of proceedings, the goods sold are located within the territory of a member state other than the state of the opening of proceedings.

10. If not agreed by the parties, when does risk in relation to the goods pass to the buyer?

Unless otherwise agreed, risk in relation to the goods remains with the seller until ownership is transferred to the buyer. Once

ownership is transferred to the buyer, the risk is also transferred to the buyer, regardless of whether delivery has taken place (*section 26, Sale of Goods Law*).

In the case of delayed delivery (whether delay is due to a fault of the buyer or the seller), the party responsible for the fault bears the risk for any damage that would have not occurred had the fault not taken place.

Variation and assignment

11. What are the main ways and formalities to transfer contractual rights?

The Contract Law does not contain provisions on assignment of contractual rights. However, the Supreme Court recognises that assignment of contractual rights is possible under the principles of equity (*Chrysostomou v Chalkousi & Sons (1978) 1 CLR 10*, *Markidou v Kiliaris (1983) 1 CLR 392*, *Minas Petrou Mina v Androulla Stylianidou Himonidou (1999) 1 CLR 405*).

The assignee can therefore bring an action in his name and claim the contractual rights without the need for the assignor to join in the action (*Attorney General v Christopoulou (1994) 1 CLR 479*).

Assignment of contractual rights does not require consideration, provided that assignment is completed (that is, the right has been absolutely assigned). The rules of equity do not require service of a notice to the debtor, although notice is commonly served in practice.

Generally, the court must be satisfied that the parties had the intention to assign the rights absolutely, rather than to create any other legal relationship (for example, agency) (*Ayiomamitis Developments Ltd v Artemis Thomaidis (2000) 1A CLR 238*). The assignee acquires the contractual right with all the charges attached to such right.

12. What are the main rules relating to waiver of contractual rights?

Waiver of contractual rights can be made by contract or deed, or can be inferred from the conduct of the party. In the latter case, the conduct must indicate an unequivocal and unambiguous waiver.

Enforcement and remedies

13. What are the seller's obligations in relation to the description and quality of the goods?

Under section 16 of the Sale of Goods Law, quality of the goods refers to the condition of the goods. In addition, the following factors are relevant to assess the quality of goods:

- Suitability of the goods for all purposes for which goods of that kind are usually supplied.
- Appearance and finishing of the goods.
- Lack of minor defects.
- Safety and resistance of the goods.

When a seller sells goods in the course of business, there is an implied condition that the goods supplied under the contract are of acceptable quality, that is, the quality of the goods must be acceptable to a reasonable person, taking into account any description of the goods, the price (if relevant) and any other relevant circumstances. This implied condition does not extend to

any defect that makes the quality of the goods unacceptable if one of the following applies:

- The attention of the buyer was particularly drawn to the defect before the conclusion of the contract.
- An examination of the goods by the buyer before the conclusion of the contract should have revealed the defect.
- In the case of a sale contract by sample, the defect would have been obvious following a reasonable examination of the sample.

In a sale by sample, there is an implied condition that the goods will correspond to the sample and will be free of any defect that renders them of unacceptable quality, and which would not be apparent following a reasonable examination of the sample (*section 17, Sale of Goods Law*).

In a sale of goods by description, there is an implied condition that the goods will correspond to the description (*section 15, Sale of Goods Law*). Where goods are sold on the basis of a sample and a description, the goods must correspond to both the sample and the description.

When a seller sells goods in the course of business, and the buyer, explicitly or impliedly, notifies the seller of a particular purpose for which the goods are bought, there is an implied condition that the goods supplied under the contract are reasonably suitable for such purpose. This applies regardless of the purpose for which such goods are usually supplied, unless the buyer is not relying (or is not justified to rely) on the skill or judgement of the seller (*section 16, Sale of Goods Law*).

In addition, usual trade practices can infer an implied condition or warranty regarding the quality of the goods or their suitability for a particular purpose (*section 16, Sale of Goods Law*).

14. What are the different types and legal status of contractual terms in your jurisdiction?

The different types and categories of contractual terms are outlined below.

Representations and contractual terms

A statement made during the course of negotiations can be classified as either a:

- Contractual term.
- Representation that may have induced a party to enter into the contract but is not part of the contract.

Whether a statement constitutes a term or representation depends on both the conduct and authority of the person making the statement, and the reasonable expectations of the representee.

Breach of a contractual term gives rise to remedies available for breach of contract, while there are no remedies available for breach of a representation.

Conditions and warranties

Conditions are contractual terms that are essential to the achievement of the main purpose of the contract. A breach of condition gives the innocent party the right to terminate the contract and/or claim damages.

A warranty is a complementary term. A breach of warranty only gives the innocent party the right to claim damages.

The distinction between conditions and warranties is recognised in section 12 of the Sale of Goods Law. Whether a term is a condition or warranty depends on the specific contract (*Section 12(4), Sale of Goods Law*). However, a term can constitute a condition despite being defined as a warranty under the contract.

In addition, case law has recognised that certain terms are intermediate or innominate terms. The remedies available for breach of an innominate term depend on whether the breach is substantial and deprives (or is likely to deprive) the innocent party from the benefit of the contract (or a substantial part of it). If this is the case, the term will be treated as a condition and the innocent party will have the right to terminate the contract and/or claim damages, otherwise the innocent party will only be able to claim damages.

Express and implied terms

In addition to its express terms, a contract may include implied terms. Implied terms can derive from legislation and custom (such as a trade custom). Implied terms can also be inferred by the courts (although this is exceptional) where this is considered necessary for the implementation of the contract, and such terms must reflect the obvious and necessary intention of the parties (*Agisilaos Tsialis v Dora K. Hadjiandreou* (2000) 1B CLR 1250).

The Sale of Goods Law provides for a number of implied terms in relation to title to the goods (see *Question 8*), quality, suitability and sale by sample or description (see *Question 13*).

15. What are the key rules on privity of contract and third party rights?

The common law principle of privity of contract is fully applicable in Cyprus. Under this principle, only the parties to a contract can derive enforceable rights from the contract. The applicability of the principle has been confirmed in a series of judgments of the Supreme Court of Cyprus (for example, *Pirillos v Konnaris* (2000) 1B CLR 1153, *Lord Jeans Ltd v Orbit– Kazoulis Ltd* (2004) 1 CLR 1300).

However, there are exceptions to privity of contract. These exceptions derive from English case law (which has a persuasive authority in Cyprus) and are as follows:

- Where the claimant entered into the contract for himself and on behalf of other persons, the claimant can bring an action in both his own name and on behalf of third parties (*Jackson v Horizon Holidays Ltd* [1975] 1 WLR 1468).
- Where the contract was concluded for a third party beneficiary, the beneficiary can derive enforceable rights from the contract by operation of a trust (*Pirillos v Konnaris* (2000) 1B CLR 1153).
- Cases of agency, as a principal can bring an action in relation to a contract concluded between his/her agent and a third party.
- Cases of assignment of contractual rights (see *Question 11*).
- Where it is a clear intention of the parties that a third party will derive a relevant benefit from the contract, this third party can directly invoke a clause in the contract (see the decision of the Privy Council in *The Eurymedon* [1975] C 154).

16. What are the rules relating to invalidity, misrepresentation and mistake relating to contracts?

It is a founding principle of contract law that a legally valid, binding and enforceable contract is an agreement stemming from the free consent of the contracting parties. Consent is not freely given if it was induced by:

- Duress.
- Undue influence.
- Fraud.
- Misrepresentation.

- Mistake.

Duress

Duress is the commission or the threat to commit an act prohibited by the Penal Code or the unlawful retention of an asset, or the threat to retain an asset, to the detriment of any person, which is committed with the intention to force another to conclude an agreement (*section 15, Contract Law*).

Economic duress is not included in the definition above but is recognised under the principles of equity (*Georgios Koutas v Nicosia Municipality* [1989] 1E CLR 516).

Undue influence

There is undue influence where one of the parties is in a position of domination and can use such position to obtain illegitimate benefits (*section 16, Contract Law*).

Where there is a special relationship between the parties (for example parent and child), there is a presumption of undue influence. The presumption only applies if the transaction in question is unconscionable (*section 16(3), Contract Law*).

Where there is no special relationship between the parties, actual undue influence must be proven by the party alleging the influence.

Fraud

Fraud involves the commission of acts with the purpose of defrauding the other party or inducing such party to conclude a contract. Fraudulent acts include (*section 17, Contract Law*):

- The suggestion by a party of a false fact, where such party does not believe it to be true.
- The active concealment of a fact by one party with knowledge or belief of such fact.
- A promise made without the intention to perform it.
- Any other act taken to deceive.
- Any act or omission that is fraudulent under the law.

Misrepresentation

There is misrepresentation and a contract is voidable if the following conditions are satisfied:

- The representation is a material representation.
- The innocent party gave his consent as a result of the misrepresentation.
- The innocent party was not in a position to discover the truth by exercising due diligence.

Misrepresentation is defined as one of the following (*section 18, Contract Law*):

- A positive false statement of fact, even if the person making the statement believes it to be true.
- Any breach of duty that, without intent to deceive, misleads another person to his/her prejudice (or any person claiming under him) and procures an advantage to the person committing the breach.
- Causing, however innocently, a party to an agreement to make a mistake on the substance of the subject matter of the agreement.

A representation must be a statement of fact, rather than a statement of opinion, a promise or a reference to the law. However, an expression of opinion can include a statement of fact and can even constitute a statement of fact, if the person that makes the statement has a special knowledge, or expertise of the matter in question.

In addition, a statement relating to a future event or fact can be a misrepresentation, if the person making the statement believes it to be true. In that case, proof of special knowledge or expertise is required.

A statement consisting of both legal and actual facts is not necessarily excluded from the definition of representation, especially where statements concern specific legal rights rather than general statements about the law.

Representation can be inferred by conduct. Silence cannot generally constitute a representation. However, silence can amount to a representation where an earlier statement becomes untrue following a change of circumstances and the party who made the statement does not notify the other party.

Mistake

A contract is voidable where both parties are under a mistake regarding a matter of fact that is essential to the contract. An invalid opinion on the value of the subject matter of the contract is not a mistake of fact (*section 21, Contract Law*). However, a contract is not voidable if only one of the parties was mistaken (*section 22, Contract Law*).

A contract is not voidable if the mistake concerns any law in force in Cyprus. A mistake concerning a law that is not in force in Cyprus has the same effect as a mistake of fact (*section 21, Contract Law*).

17. What are the main performance and discharge rules relating to contracts?

Part V of the Contract Law regulates the performance of contracts. The general principle is that contractual obligations that have not been discharged must be performed. Where a party has made an offer to perform to the other party and the offer has not been accepted, the first party is not responsible for non-performance, and does not lose its rights under the contract (*section 38, Contract Law*).

Where one party refuses to perform its contractual obligations, the other party can terminate the contract and claim damages. In such a case, the contract is discharged following the exercise of the innocent party's right to terminate.

A contract can be discharged by mutual agreement of the parties, in which case consideration is not required.

Discharge, following the exercise of a party's right to terminate the contract, in the case of breach, must be distinguished from rescission. Where a party rescinds the contract, the contract does need to be performed. The party rescinding a voidable contract must, as far as possible, restore any benefit received from the other party under the contract.

Under the Sale of Goods Law, in a contract for the sale of goods that are to be delivered in agreed instalments, and the buyer neglects or refuses to take delivery, or pay for one or more instalments, whether the contract will be rescinded in its entirety, or whether the contract can be severed (which gives an additional right to damages) depends on the terms of the contract and the particular circumstances of the case.

Rescission of the original contract can be implied where both:

- The parties have subsequently entered into an agreement that is inconsistent with the original contract.
- Neither party insisted on the performance of the original contract for a long period after its conclusion.

An intention to discontinue the contract can be inferred where the parties have acted in a manner that is inconsistent with the continuance of the contract. In such a case, the contract is deemed

to have been rescinded, even in the absence of any express agreement to that effect.

A contract to do an act that becomes impossible or unlawful is void from the time such act becomes impossible or unlawful (frustration). Where a party promised to do something that he knew, or, with reasonable diligence, should have known to be impossible or unlawful, that party is liable to compensate the other party for any loss incurred as a result of non-performance (*section 56, Contract Law*).

18. What are the main remedies and rules for losses and damages for breach of a sale of goods contract?

Following a breach of contract, the innocent party can claim damages that (*section 73, Contract Law*):

- Arise naturally from the breach, in the usual course of things.
- Were in the contemplation of both parties as a probable consequence of a breach at the time of conclusion.

Compensation is not awarded for remote or indirect losses (*section 73, Contract Law*, which codifies the principle of *Hadley v Baxendale [1854] 9 Exch 341*).

The purpose of damages is to restore the innocent party in the position he/she would have been had the contract been performed (*Alpan (Taki Bros) Ltd et al v Thelma Tryfonidou (1966) 1A CLR 679*, reflecting the English judgment in *Johnson v Agnew [1979] 1 All ER 883*).

In assessing the loss or damage arising from a breach of contract, the means that existed to remedy the inconvenience caused by non-performance must be taken into account.

Under Cyprus' law, in accordance with traditional common law principles, breach of contract does not give rise to punitive damages. Punitive damages are only awarded in tort cases (that is, civil wrongs).

The court can order specific performance if the following conditions are satisfied:

- The contract is not void.
- Specific performance is contemplated in writing under the contract.
- The contract is signed by the party subject to the order of specific performance.
- The court considers, having regard to all the circumstances, that specific performance of the contract would not be unreasonable or otherwise inequitable or impracticable.

19. What are the buyer's remedies for breach of a sale of goods contract?

Following a breach of contract, the innocent party can claim damages that:

- Arise naturally from the breach, in the usual course of things.
- Were in the contemplation of both parties as a probable result of a breach at the time of conclusion.

Where there is a breach of warranty by the seller, the buyer cannot reject the goods or terminate the contract but can either:

- Sue the seller for damages.
- Request a reduction or extinction of the price.

Failure to deliver by the seller gives the buyer a right to claim damages (*section 58, Sale of Goods Law*).

A court can also order specific performance of the contract, where appropriate (*section 59, Sale of Goods Law*) (see *Question 18*).

20. What are the seller's remedies for non-payment or late payment?

If title to the goods has been transferred to the buyer under the sale contract and the buyer wrongfully neglects or refuses to pay the agreed price, the seller is entitled to sue for the price of the goods. Where payment is due on a specific date and the buyer wrongfully neglects or refuses to pay, the seller is entitled to sue the buyer for the price even if title to the goods has not passed to the buyer.

Part V of the Sale of Goods Law regulates the rights of an unpaid seller (including an agent of the seller). The seller is deemed to be an unpaid seller where:

- The entire price for the goods has not been paid or tendered.
- A bill of exchange or other negotiable document has been received as conditional payment and the condition on which it was received has not been performed.

An unpaid seller, regardless of whether title to the goods has passed to the buyer, has:

- A lien on the goods for the unpaid price, when the seller has possession of the goods.
- A right to stop the goods in transit, when the seller does not have possession of the goods.
- A right to re-sell the goods.

Where title to the goods has not passed to the buyer, the unpaid seller has the additional remedy of withholding delivery.

The unpaid seller's lien can arise in the following cases (*section 47, Sale of Goods Law*):

- Where the goods were sold unconditionally regarding the provision of credit.
- Where the goods were sold on credit, but the credit period has matured.
- Where the buyer is declared bankrupt.

The seller's lien can also be exercised over part of the goods that have not been delivered. The seller can exercise his right to a lien even where the seller holds the goods as an agent or trustee of the buyer. In addition, the unpaid seller does not lose its lien if it has obtained a judgment for the price of the goods.

Exclusion of liability

21. What are the main rules relating to excluding contractual liability? Are exclusion clauses enforceable in your jurisdiction? If so, what are the requirements to create a legally enforceable exclusion clause?

Exclusion and limitation clauses must be construed against the seller, and the seller bears the burden of proving that these clauses are enforceable.

Under the Unfair Contract Terms in Consumer Contracts Law of 1996 and 1999 (93(I)/1996), as amended, a contractual term in a consumer contract that was not individually negotiated must be regarded as unfair if, contrary to the requirement of good faith, it causes a significant imbalance to the rights and obligations of the parties, to the detriment of the consumer. A term must be regarded

as not individually negotiated where it is drafted in advance and the consumer has not been able to influence the substance of the term, particularly in the context of standard contracts.

A sale contract other than a consumer contract is voidable where it would be unfair or unreasonable to make use of a certain term.

An exclusion or limitation clause cannot be enforced if it is either (*Kypio (I.T.H.) Company v Kassapi (1980) 2 J.S.C. 259*):

- Unreasonable per se.
- Unreasonable in the specific circumstances of the case.

A party's liability cannot be limited for losses caused by either (*Defective Products Law*):

- A defective product.
- The act or omission of a third party (without limiting any right of recourse against such third party).

Liability can be limited or excluded where, in view of all the circumstances, the damage is caused by the defective product as well as the fault of the injured party, or any person acting under his/her responsibility (*Defective Products Law*). Any provision aiming to limit or exclude such liability is void and unenforceable.

Choice of law

22. Will local courts recognise a choice of foreign law in a sale of goods contract? Are there any mandatory local rules that apply, despite a choice of foreign law?

Cyprus courts apply the rules of private international law that form part of common law principles. Therefore, Cyprus courts generally follow English authorities and usually recognise and enforce choice of law clauses.

23. If the parties do not make a choice of law, what rules determine the law applicable to a sale of goods contract?

If the parties do not make a choice of law, the law applicable to a sale of goods contract is determined in accordance with Article 4 of Regulation (EC) 593/2008 on the law applicable to contractual obligations (Rome I). A sale of goods contracts will therefore be governed by the law of the country where the seller has his/her habitual residence.

Choice of jurisdiction

24. Will local courts recognise a choice of foreign jurisdiction in a sale of goods contract? Are there any mandatory local rules that apply, despite a choice of foreign jurisdiction?

Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast Brussels Regulation) governs matters of jurisdiction

Under the Recast Brussels Regulation, if one or more parties are domiciled in a member state, these parties are free to agree that the courts of a member state will have jurisdiction to settle any disputes in connection with a particular legal relationship. Any court of a member state that is first seised must stay proceedings as soon as the designated court under an exclusive jurisdiction clause has been seised. The first court will not be able to proceed at all unless and until the designated court declines jurisdiction.

The courts will generally recognise a choice of foreign jurisdiction, but can refuse to enforce such a choice if there are good and sufficient reasons.

Where the parties made a choice of jurisdiction, a party that seeks to seize the Cypriot courts must show that Cyprus is the appropriate forum (*forum conveniens*) to hear the case. A party claiming that Cyprus is not an appropriate forum (*forum non conveniens*) must establish why that is the case and seek a stay of proceedings on grounds of lack of jurisdiction. The Supreme Court has adopted the principles of *The Eleftheria* [1969] 2 All E.R. 641 on this matter (*Hampton Advisory Group SA v Bost AD και άλλων*, (2012) 1 CLR 549, *Cyprus Trading Corporation Ltd v Zim Israel Navigation Co Ltd* (1999) 1 CLR 1168, *Cyprus Potato Marketing Board v Primlaks (Pacific Violet)* (1990) 1 CLR 219).

When exercising its discretion on whether proceedings should be stayed on the above grounds, a Cyprus court must take into account all the circumstances of the case, including (*United Feeder Services Ltd v the ship 'Anna Elisabeth' flying the Austrian flag* (2010) 1C CLR 1946, *Cyprus Phassouri Plantations Co Ltd v Adriatica di Navigazione SPA* (1985) 1 CLR 290, *Economides v M/V 'Cometa-23'* (1986) 1 CLR 443):

- The country where the evidence on the matters in dispute is located or readily available.
- The relative benefits of each alternative jurisdiction for ensuring a better trial at less cost.
- The extent to which a foreign law applies to the matters in dispute and, if so, the extent to which it is materially different from Cyprus' law.
- The country to which each of the parties is connected and how close this connection is.
- Whether the defendant genuinely wishes the issue to be tried elsewhere or whether he/she is merely seeking a procedural advantage.
- The extent to which the claimant will be prejudiced by filing proceedings abroad.

25. If the parties do not make a choice of jurisdiction, what rules determine the jurisdiction applicable to a sale of goods contract?

Under Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast Brussels Regulation), if the parties do not make a choice of jurisdiction, the basic rule is that a defendant must be sued in the courts of his/her domicile, subject to various exceptions and restrictions. Companies can be sued in the place of their statutory seat, central administration or principal place of business (*Article 63, Recast Brussels Regulation*).

Under the Courts of Justice Law of 1960 (Law 14/1960), Cyprus' courts have jurisdiction over contractual disputes where either (*section 21*):

- The cause of action has arisen entirely or partially from the territorial boundaries of the district of the court.
- The defendant or any of the defendants resides or carries out a business in the district of the court at the time the action is brought.

Therefore, Cyprus' courts can have jurisdiction where either:

- The contract was concluded in Cyprus but was breached elsewhere.
- The contract was concluded elsewhere and was breached in Cyprus.

Arbitration

26. Are arbitration clauses commonly included in sales of goods contracts in your jurisdiction?

Cyprus' courts generally recognise arbitration clauses. In considering an application to stay judicial proceedings in favour of enforcing an arbitration clause, the courts take the following factors into account:

- The existence of a valid arbitration agreement.
- The initiation of proceedings before the court.
- The person filing the proceedings, its capacity and its connection with the arbitration agreement.
- Whether the application for a stay is filed by a party to the main proceedings.
- The applicant's readiness to do all that is necessary to properly conduct arbitration.

The courts must consider an application to stay judicial proceedings filing immediately after the filing of the notice of appearance and, in any case, before taking any further steps in the proceedings.

Foreign arbitral awards can be enforced in Cyprus under the International Commercial Arbitration Law and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (New York Convention), which Cyprus has ratified through Law No. 84/1979. Cyprus must therefore enforce awards made in foreign states that are signatories to the New York Convention.

Cyprus' courts have jurisdiction to grant interim orders in aid and/or in support of international commercial arbitration proceedings conducted or to be conducted in Cyprus or overseas, whether within the EU or in non-EU jurisdictions. An application for an interim order can be made without notice (*ex parte*), provided that the case meets the requirement of urgency.

STORAGE OF GOODS

27. How is title to goods in storage protected and evidenced? Are warehouse receipts recognised as documents of title in your jurisdiction?

Regulation (EU) 952/2013 laying down the Union Customs Code (Union Customs Code) came into force on 1 May 2016. In addition, the Customs Code Law of 2004 (Law 94(I)/2004) (Customs Code) regulates all aspects relating to the importation and storage of goods.

Cyprus' law distinguishes between public and private storage facilities. Goods stored in both facilities are treated in accordance with the actions taken by the "holder" of the goods. The term "holder" includes any owner, importer, exporter, shipping agent or carrier, or any other person that holds or has interest in the goods (*Customs Code*).

The following documents are documents of title (*section 2, Sale of Goods Law*):

- Bill of lading.
- Dock warrant.
- Warehouse-keeper's certificate
- Wharfingers' certificate.
- Railway receipt.

- Warrant or order for the delivery of goods.
- Any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods represented under the document.

In common law jurisdictions (such as Cyprus), negotiability is conferred either by statute or by the rules established through practices of a recognised market. Giving a document a particular name, or stating that it is negotiable, does not confer negotiability. A document that contains an order or undertaking to pay money is a negotiable instrument if it both:

- Is capable of being transferred from one person to another by delivery (or endorsement and delivery) so that the holder of the instrument can sue under the document in his/her own name. If the instrument is payable to a bearer, it can be transferred by delivery to the transferee. If the instrument is payable to a specified payee or to his/her order, it must be endorsed (that is, signed on the back by the transferor) and delivered to the transferee.
- Gives a bona fide purchaser for value legal title to the instrument free from any equities or defects of title, provided that the purchaser had no notice of any such equities or defects before the transfer.

Cyprus recognises negotiable documents as evidence of title. Some of these instruments are regulated under statute (for example, the Bills of Exchange Law, Cap 262, regulates the assignment of bills of exchange). The possession of a document of title (such as a bill of lading) is construed as a constructive possession of the goods represented by it. Case law confirms the view that the possession of a document of title is equivalent to physical possession of the goods represented by it (*Standard Fruit Company (Bermuda) Limited v Gold Seal Shipping Company Limited (1997) 1 CLR 464*).

A bill of lading is a typical negotiable document that evidences the contract of carriage and conveys title to the goods, meaning that the bearer of the bill of lading is the owner of the goods. A bill of lading is issued by the shipping company to the operating shipper, and confirms that the goods have been received on board. The bill of lading serves as proof of receipt of the goods by the carrier, obliging him to deliver the goods to the consignee. It contains details on the goods, the vessel and the port of destination.

28. What conditions and formalities must warehouse receipts comply with?

See *Question 27*.

29. Are other interests over goods in storage recognised?

Sections 48 to 50 of the Sale of Goods Law regulate the unpaid seller's lien over goods (see *Question 20*).

IMPORTS

Customs authority

30. What is the authority responsible for enforcing customs laws and regulations? Are certain goods subject to specific examination procedures?

The authority responsible for enforcing customs law and regulations is the Customs and Excise Department of the Ministry of Finance (Customs Department).

The powers of the Customs Department are primarily set out under section 4(1) of the Customs Code, as follows:

- Enforcing the provisions of the:
 - Customs Code;
 - Community Customs Code; and
 - domestic and EU legislation relating to taxes, the determination and recovery of duties, and other charges imposed in accordance with the above legislation.
- Implementing legislation specifically assigned to the Customs Department.

To protect public health and society, the Customs Department is also responsible for the control of persons, baggage, goods and means of transport at the points of entry into and exit from the customs territory in general, for the identification of any offences or criminal offences under EU and domestic legislation, and international conventions and agreements.

Additionally, the Customs Department is exclusively responsible for the areas defined in the Customs Code as:

- Custom enclosures.
- Temporary storage warehouses.
- Free zones or free warehouses.

In exercising its duties, the Customs Department has the powers to (*sections 75 to 87, Customs Code*):

- Enter and visit any place subject to customs supervision and conduct controls over the files, books or documents of any natural or legal person.
- Conduct controls over any goods related with the entry or import, exit or export, transportation or deposition in areas of business activity and over any files, books or documents of any natural or legal person.
- Request the provision of information and supply of documents for ensuring compliance with customs or other legislation.
- Enter and inspect a building, other than a residence, where there is reasonable suspicion that an offence under customs legislation or other legislation has been, is being or will be committed, or that the commission or possible commission of such an offence will be found to have been committed in such building. The Customs Department can also enter and inspect a residence under a relevant court order.
- Detain, confiscate or move any goods or files, books or documents found following the inspection of a building, if there are reasonable grounds to believe that they may be used as evidence for the purpose of any legal proceedings. It is also possible to inspect any person in the building if the authorised customs officer believes that such person is in possession of such goods, files, books or documents.
- Stop and inspect any vehicle or vessel to detain or confiscate goods subject to confiscation, to ensure compliance with customs or other legislation.
- Conduct personal inspections of natural persons in accordance with section 83 of the Customs Code.
- Request from a person who is reasonably suspected of being aware of facts or circumstances surrounding an offence, to present himself/herself, in any place for the purposes of examination relating to that particular offence.
- Arrest without a court warrant any person found to commit or to attempt to commit an offence that is subject to a penalty of imprisonment under customs or other legislation.

- Commence criminal proceedings for offences committed in breach of customs or other legislation and any other proceedings to recover duties, taxes or penalties or for the confiscation of vessels or other vehicles or goods. These proceedings must be initiated in accordance with the instructions of the Attorney General.
- Settle (through the Director of the Customs Department) an offence (except for criminal offences) committed, or for which there is a reasonable suspicion that it has been committed by a person in breach of customs or other legislation. The Director of the Customs Department has discretion to impose any condition and to accept any amounts not larger than the maximum penalty provided under the relevant customs or other legislation for the relevant offence.

The powers described in the fourth and fifth bullet points above also apply where there is reasonable suspicion that any goods under confiscation pursuant to customs or other legislation, or any other files, book or document related to the commission of an offence under customs or other legislation are stored or hidden in a building.

For goods subject to specific examination procedures, see *Question 32*.

Import duties, tariffs and rates

31. What are the main customs import tariffs and duties?

General tariffs and rates

Since its accession to the EU, Cyprus applies the European Community Common Customs Tariff (CCT). The CCT applies to imports of goods across the external borders of the EU. Applicable tariffs are common to all EU member states and depend on the common nomenclature (that is, the classification of goods under the CCT), their origin and economic sensitivity.

All EU customs tariff measures applied on the basis of the common nomenclature are set out in the integrated tariff of the European Union (TARIC) established under Regulation (EEC) 2658/87. TARIC contains the following main categories of tariff measures:

- Third country duty (that is, the duty applicable to all imports originating in a non-EU country).
- Tariff preferences.
- Autonomous suspension of duties.
- Tariff quotas.
- Customs unions tariffs.

In addition, TARIC provides for trade defence instruments such as anti-dumping and countervailing duties, as well as agricultural policy measures. TARIC also sets out certain prohibitions and restrictions on imports and exports.

Preferential tariffs

Preferential tariffs only apply on the basis of TARIC. Preferential tariffs apply either:

- Reciprocally, for both imports to and from the EU.
- Non-reciprocally, under the generalised system of preferences (GSP).

The main factor for establishing whether particular goods are subject to preferential tariffs is the country of origin, which can be determined on the basis of a series of criteria. Under the GSP, imports from a wide range of developing countries benefit from a reduced or zero rate of duty.

Information on the applicable tariffs relating to the importation and/or exportation of a particular good can be obtained through TARIC (http://ec.europa.eu/taxation_customs/dds2/taric/taric_consultation.jsp?Lang=en).

Non-tariff barriers to imports

32. Are there non-tariff barriers to imports into your jurisdiction?

In Cyprus, there are both import restrictions and prohibitions. Imports of the following products (among others) are prohibited:

- Firearms and weapons other than firearms, under the Firearms and Weapons other than Firearms Law of 2004.
- Counterfeit banknotes.
- Automatic tobacco vending machines.
- Certain goods used for illegal hunting.

Goods shipped or originating from countries or areas subject to an embargo in accordance with a decision of the United Nations Security Council and the EU (such as Crimea) cannot be imported into Cyprus.

Imports of certain goods are also subject to certain non-tariff barriers, including:

- Import licences from the relevant regulatory authorities.
- Other licences or certificates from the relevant regulatory authorities.
- Inspections by the relevant authorities.

33. Can customs decisions and import restrictions be challenged?

The Customs Code sets out an internal review procedure. A request for review of a decision of the Customs Department can be filed to the Director of the Department. An intra-department hierarchical review of a decision is also available under certain laws under which import prohibitions or restrictions can be imposed.

Decisions of Cyprus' public authorities are administrative executive acts subject to judicial review under Article 146 of the Constitution of the Republic of Cyprus. An aggrieved party having a legitimate interest and seeking to annul the decision of a public authority can file an administrative recourse to the Supreme Court.

TRADE REMEDIES

Regulatory framework

34. What are the main regulations and authorities responsible for investigating and deciding on trade remedies?

Regulatory framework

The imposition of anti-dumping and countervailing measures is possible in Cyprus under:

- Regulation (EC) 1225/2009 on protection against dumped imports from countries not members of the European Community.
- Regulation (EC) 597/2009 on protection against subsidised imports from countries not members of the European Community.

In addition, EU competition and merger control rules also apply to intra-Community commerce, including:

- Regulation (EC) 1/2003 on the implementation of the rules on competition laid down in Articles 101 and 102 of the TFEU (formerly Articles 81 and 82 of the EC Treaty).
- Regulation (EC) 139/2004 on the control of concentrations between undertakings.

The protection and regulation of free competition in Cyprus is also governed by the:

- Protection of Competition Law of 2008.
- Control of Concentrations between Undertakings Law of 2014.
- Secondary legislation issued under these laws.

Regulatory authority

The European Commission is the competent body for conducting anti-dumping and subsidy investigations and for the subsequent imposition of anti-dumping or countervailing measures, if required.

The European Commission is also responsible for enforcing EU competition and merger control rules. The Commission for the Protection of Competition of the Republic of Cyprus is responsible for the protection of free competition in Cyprus.

Investigations and enforcement

35. What are the requirements and procedure to start trade remedies investigations?

An investigation by the European Commission to determine the existence, degree and effect of any alleged dumping or subsidy requires a written complaint by any natural or legal person, or any association not having legal personality, acting on behalf of the Community industry. An investigation cannot be initiated unless the complaint is made by or on behalf of the Community industry, as defined under Article 4 of Regulation (EC) 1225/2009 and Article 9 of Regulation (EC) 597/2009.

A complaint can be addressed directly to the European Commission or can be submitted to the authorities of a member state, which will forward the complaint to the Commission. In Cyprus, the competent authority for filing investigations is the Ministry of Energy, Commerce, Industry and Tourism. Member states must also communicate to the Commission any evidence of dumping or subsidies in the absence of any complaint.

Any complaint must include evidence of:

- Dumped or subsidised imports.
- Injury.
- Causal link between the alleged dumped or subsidised imports and the alleged injury.

Such evidence is also required where the European Commission starts investigations on its own initiative. The evidence of both subsidies or dumping and injury must be considered simultaneously, and a complaint must be rejected where evidence is not sufficient.

Appeals

36. Is there a right of appeal against the authority's decision? What is the applicable procedure?

Both provisional and definitive anti-dumping or countervailing duties are imposed by the European Commission and collected by the member states under the EU regulations imposing these duties.

A regulation imposing trade remedies can be challenged before the EU General Court (former Court of First Instance) under Article 263 of the Treaty on the Functioning of the European Union.

EXPORTS

Regulatory framework

37. What are the main requirements to export goods from your jurisdiction?

The Union Customs Code, established under Regulation (EU) 952/2013, came into force on 1 May 2016. The export procedure under Article 269 of the Union Customs Code is mandatory (subject to few exceptions) for Community goods leaving the EC customs territory.

Union goods to be taken out of the customs territory of the Union must be placed under the export procedure. All goods intended to be placed under the export procedure must be covered by a customs declaration for the purpose of export. These goods must be subject to customs supervision from the time of acceptance of the declaration until such time as they are taken out of the customs territory of the Union, abandoned to the state concerned, destroyed or the customs declaration is invalidated.

In Cyprus, the competent customs offices are the custom offices of the districts of Nicosia, Limassol, Larnaca and Paphos.

38. Are certain categories of goods subject to specific export quotas, restraints or other controls?

Cyprus applies both export restrictions and prohibitions. Generally, goods subject to an import prohibition cannot be exported.

In addition, exports of certain goods are subject to specific restrictions or other controls, including export licences or other certifications, depending on the nature and use of the goods. These goods include, among others:

- Arms, military equipment and dual-use items that can be used for the production of weapons of mass destruction.
- Certain items that can be used for the imposition of capital punishment, torture or other cruel, inhuman or degrading treatment or punishment.
- Waste (dangerous and non-dangerous).
- Cultural property.

Penalties

39. What are the consequences of non-compliance with export regulations?

Sections 89 to 102 of the Customs Code of Cyprus set out a series of customs offences and the relevant penalties. Relevant offences include the following:

- Any person involved in a fraudulent evasion of customs duties whether on behalf of himself/herself or another person, is guilty of a criminal offence punishable by a fine not exceeding three times the value of the goods or by imprisonment not exceeding three years, or both.
- The provision of false information under customs legislation is a criminal offence punishable with a fine not exceeding EUR85,000 or imprisonment of up to three years, or both.
- Any person who omits, refuses or neglects to pay the Director of the Customs Department, within 20 days following receipt of a relevant notice, any amount of duty confirmed on the basis of

customs legislation or any charges or interest imposed in accordance with the Customs Code is guilty of a criminal offence punishable by a fine not exceeding EUR8,500 or imprisonment not exceeding one year, or both.

- A person acting in breach of prohibitions or restrictions under the customs or other legislation is guilty of a criminal offence punishable by a fine not exceeding EUR3,400 or imprisonment not exceeding three years, or both.
- Unless otherwise provided under the Customs Code, any person in breach of the provisions of customs regulations, is guilty of a criminal offence punishable by a fine not exceeding EUR8,500 or imprisonment not exceeding two years, or both.

The following sanctions apply to non-compliance with rules relating to controlled goods (that is, goods subject to export restrictions under the Imports and Exports of Controlled Goods and the Conduct of Controlled Activities Law of 2011 (Law 1(I)/2010)):

- A person is guilty of a criminal offence punishable with a fine not exceeding EUR100,000 or imprisonment not exceeding three years, or both, if such person:
 - exports or attempts to export a controlled good in breach of an existing export prohibition or restriction;
 - breaches the conditions of its licence, or presents false information to obtain a licence;
 - hides, destroys or forges information, data, or other documents or provides false or inaccurate information; or
 - refuses to provide information, data or other documents in the context of an investigation.
- A person omitting to present its licence obtained under Law 1(I)/2010 is guilty of a criminal offence punishable with a fine not exceeding EUR7,000 or imprisonment not exceeding one year, or both.

INTERNATIONAL TRADE RESTRICTIONS

Trade sanctions

40. Are there specific restrictions on trade with certain jurisdictions?

Cyprus is an EU member state and must comply with EU legislative instruments enacted under Article 215 of the Treaty on the Functioning of the EU (TFEU), and decisions adopted in the framework of the Common Foreign and Security Policy which impose trade restrictions on third states.

A decision of the European Council is binding in its entirety (*Article 288, TFEU*). Cyprus must also support EU's external and security policy actively and unreservedly in a spirit of loyalty and mutual solidarity and comply with EU's actions relating to its external and security policy (*Article 24, TFEU*).

Sanctions applicable under EU law and implemented by Cyprus are published in the Official Journal of the EU and can be accessed on the website of the EU's External Action Service (http://eeas.europa.eu/cfsp/sanctions/index_en.htm).

Sanctions of the UN Security Council adopted in resolutions passed under Chapter VII of the UN Charter to maintain international peace and security are binding on all UN member states and have immediate effect (*Article 25, UN Charter*). Cyprus implements binding UN Security Council resolutions through the relevant decisions and regulations of the European Council.

41. What is the authority responsible for imposing trade restrictions?

See *Question 40*.

42. What are the consequences of non-compliance with trade restrictions?

Non-compliance with trade restrictions imposed under EU law can constitute criminal offences under sections 136 and 137 of the Criminal Code, Cap. 154, punishable by either:

- A maximum of two years' imprisonment or a monetary fine, or both (*section 136, Criminal Code*).
- A maximum of two years' imprisonment (*section 137, Criminal Code*).

43. Are businesses subject to specific compliance requirements? What practical steps should a business take to ensure compliance with trade restrictions?

It is the responsibility of natural and legal persons to verify and ensure that their activities do not infringe and/or circumvent existing trade sanctions. Legal advice should be sought to ensure compliance with trade restrictions.

Foreign trade barriers

44. What is the procedure for local exporters to complain against foreign trade barriers contrary to the WTO or other trade agreements?

Cyprus has not been involved in WTO disputes on its own (but is represented by the EU in cases brought by the EU). Any trader can complain to the Government of Cyprus against foreign trade barriers that are contrary to the WTO or other trade agreements, whether concluded by Cyprus or the EU.

THE REGULATORY AUTHORITIES

Customs and Excise Department of the Ministry of Finance

W www.mof.gov.cy/mof/customs/customs.nsf/index_en/index_en

Principal responsibilities. The Customs and Excise Department is mainly responsible for the imposition and collection of duties and taxes on goods, the safeguarding of the supply chain of goods, the enforcement of restrictions and prohibitions on imports, exports and goods in transit, and the protection of consumers' health and safety.

ONLINE RESOURCES

Customs Code

W www.mof.gov.cy/mof/customs/customs.nsf/All/1EA7C409191E2871C225730F003B79C4?OpenDocument

Description. Official English translation of the Customs Code available on the Customs and Excise Department's website.

Cypriot Source of Legal Information (Cylaw)

W www.cylaw.org

Description. Cylaw provides access to the Greek versions of Cyprus laws, including the:

- Contract Law, Cap. 149.
- Companies Law, Cap. 113.
- Sale of Goods Law 1994 (Law 10(I)/1994).
- Defective Products (Civil Liability) Law of 1995 (Law 10(I)/95).
- Trade Description Law of 1987 (Law 5/87).
- Commercial Agents Law of 1986 (Law 76/1986).
- Inscription of the Sale Price and the Unitary Price of Products Law of 2000 (Law 112(I)/2000).
- Consumer Rights Law of 2013 (Law 133(I)/2013).
- Law Regulating Consumer Protection in relation to Certain Aspects of the Sale of Consumer Products and Relevant Guarantees of 2000 (Law 7(I)/2000).
- Unfair Trade Practices of Businesses towards Consumers Law of 2007 (Law 103(I)/2007).
- Unfair Contract Terms in Consumer Contracts Law of 1996 and 1999 (93(I)/1996).
- Extrajudicial Resolution of Consumer Claims by Arbitration Law of 2011 (Law 78(I)/2011).

Practical Law Contributor profile

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Areas of practice. Competition law; public and private international law; commercial litigation; international commercial and investment arbitration.

Recent transactions

- Acting for Gazprom in notification and clearance of cross-border acquisition.
- Acting for Unilever in notification and clearance of cross-border acquisition.
- Acting for Glencore in notification and clearance of cross-border acquisition.
- Advising Marathon Oil in relation to EU, commercial, dispute resolution and international law issues.
- Acting for International Lease Finance Corporation in dispute resolution matter.
- Advising CGG on competition law issues.
- Advising Transocean on public international law, maritime law and EU law matters.
- Acting for Henkel in notification and clearance of cross-border acquisition.
- Acting for the Bank of Cyprus in commercial litigation.
- Advising Fujitsu General on dispute resolution issues involving competition and distribution laws.
- Advising the Organization for Security and Co-operation in Europe (OSCE) on EU law.

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Professional associations/memberships. Cyprus Bar Association; European Competition Lawyers Forum; Association of International Petroleum Negotiators (AIPN); British Institute of Comparative and International Law.

Publications

- *Cyprus reporter, Oxford Competition Laws (OUP).*
- *Cyprus chapter, Merger Control, Getting the Deal Through.*
- *Cyprus chapter, Merger Control, ICLG.*