

Litigation and enforcement in Cyprus: overview

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MAIN DISPUTE RESOLUTION METHODS

1. What are the main dispute resolution methods used in your jurisdiction to settle large commercial disputes?

Cyprus serves as a forum for the resolution of high profile commercial, investment and corporate disputes. Cyprus courts are also increasingly becoming involved in issuing asset tracing and freezing orders.

The Constitution of the Republic of Cyprus (Constitution) is made up of a clear separation of executive, legislative and judicial powers. The latter is vested in the courts of the Constitution, comprising of the Supreme Court and the lower courts. The main lower courts for commercial disputes are the district courts, which have jurisdiction and competence over commercial disputes that lead to litigation. The independence of the judiciary in Cyprus is fully respected, both institutionally and functionally.

When Cyprus became an independent sovereign state in 1960, it maintained its common law system. However, it also retained a number of English laws in force at the time. The legal framework in Cyprus consists of the following:

- Constitution of the Republic of Cyprus.
- Laws retained in force by virtue of Article 188 of the Constitution.
- Laws retained in force by virtue of Article 188 of the Constitution.
- Laws enacted by the House of Representatives.

Following Cyprus's accession to the EU in 2004, the Constitution was amended by the Fifth Amendment to the Constitution Law 127(I)/2006, which inserted Article 1A into the Constitution, providing for the supremacy of EU law over national law. Arbitration is the most common form of extrajudicial dispute resolution (see *Question 30*).

COURT LITIGATION

Limitation periods

2. What limitation periods apply to bringing a claim and what triggers a limitation period?

General rules on limitation

The Limitation of Actionable Rights Law of 2012, Law 66 (I) of 2012 (Limitation Law) that repealed all previous relevant statutes, regulates limitation periods applicable to civil and commercial claims.

The limitation period for a claim is triggered on the day of completion of the cause of action. That is, all events giving rise to an actionable right (*section 2, Limitation Law*).

Unless otherwise provided by law, no proceedings can be issued ten years after the day on which the cause of action arose (*section 3, Limitation Law*). However, the time bar on actionable rights provided for under the Limitation Law is currently suspended until the 31 December 2015. It is the latest manifestation of legislation suspending the applicability of limitations. The suspension of limitation legislation dates back to the departure of the Turkish Cypriot community from the constitutional order of the Republic of Cyprus.

Secured loans

Claims for loans secured by a mortgage, charge or pledge are subject to a limitation period of 12 years (*section 5, Limitation Law*).

Civil wrongs

A limitation period of six years for civil wrongs is applicable in Cyprus (*section 6(1), Limitation Law*). However, there is a three-year limitation period for claims for damages arising out of the following torts (*section 6(2), Limitation Law*):

- Negligence
- Nuisance.
- Breach of a statutory duty.

A one year limitation period applies in relation to a claim for defamation or malicious falsehood (*section 6(4), Limitation Law*).

A competent court has discretion to disapply the limitation provisions for civil wrongs causing bodily harm or death, provided that not more than two years have passed since the limitation period elapsed. In exercising its discretion, the court must consider the:

- Length of the delay in issuing proceedings and the reasons for it.
- Duration of any inability on the part of the claimant to handle the case.
- Steps taken by the claimant to safeguard any relevant evidence.
- Behaviour of the defendant in relation to the application.
- Consequences of the delay in relation to the preservation and the reliability of the evidence.

Contracts

A limitation period of six years applies to actionable rights in contract (*section 7(1), Limitation Law*). However, for proceedings concerning a contract or a quasi-contract relating to an agreed or reasonable remuneration of a lawyer, doctor, dentist, architect, civil engineer, contractor or other independent professional, the limitation period is three years (*section 7(2), Limitation Law*).

The limitation period in relation to a loan agreement does not commence until a written demand for the debt concerned, by or on behalf of the creditor, is served on the debtor. However, this only applies if the loan agreement does not (*section 7(3), Limitation Law*):

- Provide for debt repayment at a fixed date or period.
- Require a warning notice to the debtor as a requirement towards settlement of the debt.

Succession

No action can be commenced by a successor in relation to a deceased person's estate or towards challenging the validity of a will, if eight years have passed since the person's death (*section 9, Limitation Law*). However, where a claimant does not reside in Cyprus, the limitation period can extend to an additional year from the date that the claimant:

- Returned to Cyprus.
- Became aware of the death.
- Reasonably could have become aware of the death.

Specific exceptions

The period of limitation does not commence or, if it has commenced is suspended, between (*section 12, Limitation Law*):

- Spouses during their marriage, even if the marriage is later annulled.
- Parents and children if the children are minors (that is, under 18 years old).
- Trustees and trust beneficiaries if the trust beneficiaries are minor or unborn.
- Executors of a will or administrators of the property of a deceased and heirs and legatees of the deceased if the heirs and legatees are minors.

Court structure

3. What is the structure of the court where large commercial disputes are usually brought? Are certain types of dispute allocated to particular divisions of this court?

The Cyprus judicial system consists of two tiers of courts, the Supreme Court and the subordinate courts, which consist of:

- District courts.
- Administrative court.
- Rent control tribunal.
- Industrial tribunal.
- Military court.
- Family court.

The courts fully abide by the principle of *stare decisis*, whereby the lower courts are bound by the precedent set by the judgments of the Supreme Court.

The district courts are the courts of first instance for civil matters and have jurisdiction and competence to hear cases arising within its jurisdictional district boundaries. The district court with jurisdiction is the court located in the district where the cause of action arose or the defendant(s) reside.

The Supreme Court has jurisdiction to hear and determine all appeals from all judgments of inferior courts in civil and criminal matters. The Supreme Court can uphold, vary and set aside any such judgment. It can also order the retrial of the case as it may think fit, and only hears evidence in exceptional circumstances.

Cases in the district courts are allocated to different ranks of judge, depending on the value of the claim. There are three ranks of judges:

- Presidents of district courts, typically hearing claims in excess of EUR500,000.
- Senior district judges.
- District judges

Rights of audience

4. Which types of lawyers have rights of audience to conduct cases in courts where large commercial disputes are usually brought? What requirements must they meet? Can foreign lawyers conduct cases in these courts?

Rights of audience/requirements

To conduct cases in the Cyprus courts, qualified Greek advocates (*δικηγόροι*) must be registered with the Chief Registrar of the Supreme Court and must be full members of the Cyprus Bar Association. In-house counsel cannot be members of the Cyprus Bar Association; therefore they cannot conduct cases in courts, even if they are registered as advocates.

Foreign lawyers

Directive 2005/36/EC on the recognition of professional qualifications enables EU qualified lawyers to register as EU lawyers in Cyprus.

In appearing before a court in Cyprus, EU lawyers must use their home jurisdiction title and present documents evidencing their legal qualification. However, they must act jointly with a local advocate in representing a party to the proceedings concerned. A foreign lawyer from a non-EU jurisdiction can be granted rights of audience before Cyprus courts on a temporary basis, provided that he obtains the requisite leave of the Bar Council. However, he must also be accompanied by a local advocate before the court.

If an EU-qualified lawyer wants to provide legal services on a permanent basis in Cyprus, he must register with the Cyprus Bar Council. After three years of practice in Cyprus, he can apply to the Bar Council for registration as an advocate.

FEES AND FUNDING

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

Legal fees in judicial proceedings generally depend on the complexity of the case, the value of the claim, the hours of work and the advocates retained.

Legal fees are charged in accordance with the Code of Conduct of Advocates (CBA). The CBA has also issued regulations that apply minimum charges for each stage in litigation, depending on the scale of the claim. The precise legal fees charged depend on the complexity of the case, the nature of the claim and the extent of the proceedings (for example, whether interim proceedings will also be filed and pursued). Contingency fees are not allowed in Cyprus.

6. How is litigation usually funded? Can third parties fund it? Is insurance available for litigation costs?

Funding

Commercial and civil proceedings are funded by the parties. Court orders relating to costs are usually made for or against a party to the proceedings. The court has the discretion to order that the

costs of executors, administrators or trustees are paid out of a particular estate or fund. However, this is unlikely to be ordered if they have unreasonably instituted or resisted legal proceedings.

The court can order that proceedings involving a party who is a mortgage debtor or involving a cause of action arising from human rights law can receive legal aid. However, certain conditions must be satisfied, relating to the financial standing of an applicant for legal aid.

Insurance

Insurance for litigation costs is not available in Cyprus.

COURT PROCEEDINGS

Confidentiality

7. Are court proceedings confidential or public? If public, are the proceedings or any information kept confidential in certain circumstances?

Court proceedings are usually public, except for special cases such as proceedings involving minors. Third parties and the public have no access to court records, unless specifically authorised by the court.

Pre-action conduct

8. Does the court impose any rules on the parties in relation to pre-action conduct? If yes, are there penalties for failing to comply?

There are no procedural rules pertaining to the pre-action conduct of the parties.

Main stages

9. What are the main stages of typical court proceedings?

Starting proceedings

Civil proceedings are commenced by filing a writ of summons or an originating petition with the competent district court's registry.

Under the Civil Procedure Rules (CPR), a writ of summons must be one of the following:

- Specially endorsed, containing the full statement of claim (*order 2, rule 6, CPR*).
- Generally endorsed, containing only the relief and remedies sought (*order 2, rule 1, CPR*).

Proceedings against defendants that all reside out of the jurisdiction can only be commenced following leave of the court to seal the writ of summons.

Notice to the defendant

Each defendant named on the writ of summons must be served with an official copy of the writ, in the manner prescribed under Order 5 of the CPR.

Service is effected on a defendant personally through a process server (bailiff). Service on a company must take place at its registered office address or at least be served upon one of the members of its board of directors.

A party can also apply to the court for any of the following orders:

- Substituted or other service.
- Service by letter, public advertisement or other means of bringing the matter to the attention of the defendant, provided

the court is satisfied that it is not possible to effect service in the ordinary manner.

Where originating summons are served within the EU, Regulation (EC) No 1393/2007 of the European Parliament and of the Council of 13 November 2007 on the service in the Member States of judicial and extrajudicial documents in civil or commercial matters (service of documents) applies. This instrument allows service of judicial documents from one member state to another without recourse to consular and diplomatic channels.

Irrespective of whether a defendant resides in the EU or not, a claimant must obtain leave of the court to serve the writ on the defendant outside Cyprus. Where all defendants reside outside Cyprus, leave of the court to seal the writ of summons must first be obtained. The order of the court granting leave stipulates the means under which service is to be effected.

A writ of summons remains in force for 12 months from the day of its issue. If a writ of summons is not served on a defendant within this period, the claimant must apply to the court to renew it. The application must be made prior to the expiration of the 12-month period.

Subsequent stages

The subsequent stages of the proceedings are generally as follows:

- A defendant must file a note of appearance within ten days of the date of service of the writ of summons. If the defendant intends to dispute the jurisdiction of the court, he must file a conditional note of appearance, stating his intention to do so.
- If the claimant commenced proceedings through a generally endorsed writ of summons (*see above, Starting proceedings*), he must file and serve a statement of claim within ten days of the filing of the defendant's note of appearance. The defendant must then file and serve his statement of defence within 14 days of the filing of the statement of claim.
- If the claimant commenced proceedings through a specially endorsed writ of summons, the defendant must file and serve his statement of defence within 14 days.
- A claimant can file and serve a response to the defence. If the defendant raises a counterclaim (filed and served with the defence), the claimant must file and serve a defence to the counterclaim within 14 days of the filing of the counterclaim.
- Within 30 days of the filing of all the pleadings, the claimant must issue a summons for instructions. This is fixed before the court at a time not less than 60 days after issue of the summons (*order 30, rule 1, form 25, CPR*). If the claimant does not issue the summons for instructions, the defendant can give notice to the claimant of its failure to do so. If the claimant fails to act on that notice, the proceedings can be dismissed.
- If the summons for instructions is duly issued and served by a claimant to a defendant, both parties must file with the court's registry, a document in the type prescribed under the CPR (*order 30, rule 2, annex to form 2, CPR*). Each party must provide:
 - the particulars of the claim;
 - any admitted facts;
 - any discovery and inspection of documents;
 - any joinder of actions sought;
 - any security of costs;
 - costs in the proceedings; and
 - any other issue.

Proceedings where the value of claim does not exceed EUR3,000 usually follows a "fast-track" procedure, where the hearing is

based on written evidence, unless otherwise ordered by the court (*order 30, rule 6, CPR*). In all other cases, the court gives relevant instructions to the parties in preparation of the hearing.

The hearing of the case is fixed for a later date, depending on the court's schedule and workload. On the completion of the hearing, the court usually reserves judgment, which it issues at a later stage in the presence of the advocates representing the parties.

INTERIM REMEDIES

10. What actions can a party bring for a case to be dismissed before a full trial? On what grounds must such a claim be brought? What is the applicable procedure?

Summary judgment

A claimant can make an application for summary judgment after the defendant has filed an appearance but before the defendant has filed its defence, where the defendant has no reasonable defence to the action. Once the formal requirements are met, the onus is on the defendant challenging the application for summary judgment to establish that it has an arguable defence, by providing relevant evidence in support of his opposition to the application.

Strike-out

A defendant can apply to the court to set aside the claimant's proceedings against them if one or more of the following conditions are met:

- The proceedings constitute an abuse of process.
- No reasonable cause of action is disclosed in the pleadings.
- The proceedings are frivolous or vexatious.
- The court lacks jurisdiction to hear the case and/or there is a more appropriate forum to hear the proceedings.

Application process

The application must be supported by an affidavit (with or without exhibits), setting out the facts and reasons why the application has been made. Reasonable time is allowed for the opposing party to file its notice of opposition, which is also supported by an affidavit (with or without exhibits). The application is fixed for a hearing, where all witnesses can be cross-examined on the contents of their affidavits.

11. Can a defendant apply for an order for the claimant to provide security for its costs? If yes, on what grounds?

A defendant can apply for security for costs. This application ensures that a successful defendant can recover costs from an unsuccessful claimant. Two conditions must be satisfied to obtain security for costs:

- The claimant must be domiciled outside the EU.
- The claimant must not have sufficient assets within the jurisdiction to satisfy any order that may be made against him to pay the defendant's costs.

The court has inherent jurisdiction to grant or refuse to grant an order for security for costs. The amount of security that can be ordered is equal to the amount of the costs expected to be incurred defending the action.

A claimant can also make an application for security for costs made on a foreign defendant's counterclaim.

12. What are the rules concerning interim injunctions granted before a full trial?

Availability and grounds

The courts can grant interim injunctions of a prohibitive or a mandatory nature.

A right to obtain an interim injunction is not a cause of action and it cannot stand on its own. It is ultimately at the discretion of the court whether to grant the injunction or not.

To obtain an injunction, the applicant must demonstrate, on the balance of probabilities, that (*section 32, Courts of Justice Law of 1960, Law 14/1960*):

- There is a serious question to be tried in the main proceedings within the context of which the injunction is pursued.
- There is a probability that the claimant is entitled to relief in the main proceedings.
- It will be difficult or impossible for justice to be served at a later stage, where the injunction sought is not issued.

An interim injunction usually requires an appropriate undertaking as to damages to be lodged with the court as a condition for the injunction being issued.

Prior notice/same-day

Interim injunctions can be obtained without prior notice to the defendant and if urgent, even on the same day. The court must consider whether it is just and equitable to grant the injunction in *ex parte* applications. It is of primary importance for the applicant to demonstrate that the case is of an urgent nature and that it has disclosed all material information to the court.

Mandatory injunctions

In principle, mandatory injunctions to compel a party to act in a certain manner are available, provided that the applicant can satisfy the court that the granting of such an injunction is necessary.

Rights of appeal

An appeal against an interim injunction can be made to the Supreme Court of Cyprus. The grounds of appeal can include:

- Legal arguments, such as, failure by the applicant to satisfy its duty for full and honest disclosure of all material facts pertaining to the case.
- Misdirection of the court, such as:
 - a mistake in the application of the law to the facts; or
 - erroneous findings and conclusions as to the satisfaction of the requirements that need to be met.

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13. What are the rules relating to interim attachment orders to preserve assets pending judgment or a final order (or equivalent)?

Availability and grounds

Interim attachment orders such as freezing orders, to preserve assets pending the full trial, are available if the conditions for an interim injunction are met (*see Question 12*). The standard of proof that an applicant must satisfy in such cases is also on the balance of probabilities.

The Cyprus legal order gives power to the courts to issue freezing orders towards protecting assets in risk of alienation or towards preserving a particular status quo pending the final and conclusive determination of the relevant proceedings. Freezing orders over assets in any part of the world can be issued on a successful application, including both tangible (immovable property only if situated in Cyprus) and intangible assets (such as, funds, deposits, shares and goods). The Supreme Court emphatically confirmed in 2007 that the Courts of Cyprus can issue freezing orders with worldwide effect (*Seamark Consultancy Services Limited v. Joseph P Lasala et al* (2007) 1 AAD 162).

Cyprus courts also asserted jurisdiction in issuing orders by way of a "chabra" injunction (*TSB Private Bank International v Chabra* [1992] 1 WLR 237). A "chabra" injunction is essentially a freezing order directed to a party against which the claimant does not have a substantive cause of action. It is made in order to enforce a judgment (or an anticipated judgment) against that third party.

Prior notice/same-day

Interim injunctions can be obtained without prior notice to the defendant and if urgent, even on the same day. In such circumstances the applicant must ensure that it has disclosed all material facts to the court and it must show to the court that the case is of an urgent nature.

Main proceedings

The main proceedings do not need to be in Cyprus. Cyprus courts have jurisdiction to grant interim orders in support of international commercial arbitration, which are conducted or to be conducted in Cyprus or overseas. This applies to proceedings within the EU or in non-EU jurisdictions. Applying for such orders can be pursued on an *ex parte* basis, provided that the element of urgency exists in the facts of the case.

Cyprus courts have jurisdiction to issue interim orders in support of the following proceedings:

- Judicial proceedings before Cyprus courts.
- Arbitration proceedings in Cyprus.
- Judicial proceedings before national courts of an EU member state (excluding Denmark). Under Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, Cyprus courts can issue an interim order at any time in aid or in support of court proceedings pending before the courts of an EU member state.
- International commercial arbitration proceedings in any State (EU and non-EU).

Preferential right or lien

The granting of interim injunctions does not create any lien or preferential rights over the seized assets in favour of the applicant.

Damages as a result

In principle, a defendant that has suffered loss due to the inappropriate granting of an interim injunction can raise an action for compensation. However, in practice, actions of this nature are rare.

Security

The applicant must lodge security with the court in the form of a bank guarantee or cash.

14. Are any other interim remedies commonly available and obtained?

The Courts of Justice Law of 1960, Law 14/1960 (Courts of Justice Law) gives Cyprus courts discretion to issue a wide variety of

provisional measures. In addition to *mareva* injunctions (asset freezing orders), parties can obtain:

- Disclosure orders.
- Search orders to obtain and prevent the destruction of evidence.
- Gaggling orders.
- Orders for the appointment of a receiver.
- Orders for specific performance.

Disclosure orders

A disclosure order enables a party to locate and recover assets that are the subject of a dispute with another party.

Cyprus courts can issue orders the following disclosure orders (Norwich pharmaceutical orders):

- An oath by a respondent providing the location and value of specified assets.
- An order for tracing purposes, leading to the disclosure of information and documents regarding assets deprived or stolen from the applicant. This enables the applicant to identify and pursue proceedings against the real defendant.

A court is likely to grant a disclosure order if one of the following conditions applies:

- It is just and convenient to do so.
- When the principles of equity apply (*section 29(1)(c), Courts of Justice Law*).

In addition to the above and to satisfying the requirements imposed to an applicant towards granting an injunction, a litigant applying to the court for the issuing of a discovery order must satisfy the court that all of the following conditions apply:

- A wrong has been carried out to the detriment of the applicant by an ultimate defendant.
- The applicant intends to commence proceedings against the ultimate defendant.
- There is a need for the issue of a discovery order to assist the applicant in:
 - pleading and proving his claim;
 - identifying other wrongdoers; and
 - tracing stolen assets.
- The person against whom the discovery order will be issued was, innocently or not, involved with the wrongdoing against the injured party and is able, or likely to be able, to provide the requested information, or documentation.
- There are no alternative means of obtaining the information or documentation sought by the applicant other than the issuing of the order.

Search orders

Search orders (*Anton Piller* orders) are interim orders issued by Cyprus courts. They order a party to admit another party into their premises for the purpose of preserving evidence or property that is or may become the subject matter of the main proceedings. Search orders can be pursued by a party in order to:

- Allow him to discover and preserve evidence against the defendant, which is in the possession of the defendant and it is likely to be concealed or destroyed by the defendant.
- Identify and obtain evidence against others who have been involved with the defendant in the tortious activities.

- Prevent the defendant from warning others to destroy or conceal evidence.
- Unveil further harm and damage to the applicant.

Interim receiver or administrator orders

Under the appropriate circumstances, Cyprus courts have jurisdiction to issue an order appointing an interim receiver or an administrator of assets. These orders are in the form of an ancillary relief in addition to the granting of interim orders such as freezing orders.

In issuing this order, the court can instruct the applicant to secure by way of a bank guarantee the fees of the receiver to be appointed. In addition, it is common for Cyprus court to order the applicant to give security in order to secure the losses of the respondent, if the order was wrongly granted. The court order also stipulates the powers, duties and rights of the interim receiver. On a number of occasions the receiver can exercise voting rights in holding companies in order to protect assets held by their subsidiaries.

FINAL REMEDIES

15. What remedies are available at the full trial stage? Are damages just compensatory or can they also be punitive?

The most frequently requested and awarded remedy is damages (general, special or both) to provide compensation for the loss suffered. In addition to damages, the courts can order specific performance of a contract. In contracts relating to the sale of goods, an unpaid seller can be entitled to:

- A lien on the goods, provided they remain in his possession.
- A right of stoppage of the goods in transit after the goods ceased to be in his possession.
- A right to resell the goods.

In general, a party can apply for most of the remedies usually available under common law and equitable principles.

General damages must be proved by the claimant on the balance of probabilities. Special damages must be specially pleaded and proven more rigorously, with clear and detailed particulars.

The courts have previously awarded punitive damages, but not frequently.

EVIDENCE

Disclosure

16. What documents must the parties disclose to the other parties and/or the court? Are there any detailed rules governing this procedure?

Any party can apply to the court for an order for discovery on oath as well as for inspection of documents that are or have been in the other party's possession or power relating to any matter in question in the action.

If a party ordered to make discovery of documents fails to do so, it may not subsequently put in evidence, on its behalf in the action, any document that it failed to discover or allow to be inspected, unless the court is satisfied that the party had sufficient excuse for not doing so (*order 28, rules 1 to 15, Civil Procedure Rules*).

Privileged documents

17. Are any documents privileged? If privilege is not recognised, are there any other rules allowing a party not to disclose a document?

Privileged documents

The following documents are privileged:

- Confidential documents.
- Self-incriminating documents.
- Documents covered by legal professional privilege.

Legal professional privilege is regarded as being of fundamental importance and must be protected by the court and any government and public authority. Therefore, a lawyer must keep confidential any information or document in his knowledge or possession that has been acquired in the course of his professional activity.

The following may be covered by this privilege:

- Communications between a lawyer and his client for the purpose of giving or obtaining legal advice.
- Communications and exchanges of documents between a client and a third party for the purposes of giving or obtaining legal advice, or in relation to litigation.

Legal professional privilege extends to foreign but not in-house lawyers. However, the Prevention and Suppression of Money Laundering Activities Law Number 61(I) of 1996, as amended, relaxes professional privilege in relation to lawyers offering services susceptible to money laundering or other similar activities.

Other non-disclosure situations

Privileged documents are protected from disclosure (*see above, Privileged documents*). Without prejudice documents are treated in the same way as in other common law jurisdictions (that is, communications that are genuinely part of a settlement attempt and are clearly marked "without prejudice" are protected from disclosure).

Examination of witnesses

18. Do witnesses of fact give oral evidence or do they just submit written evidence? Is there a right to cross-examine witnesses of fact?

Oral evidence

Witnesses of fact belong to the category of oral evidence and are examined at the hearing of the case. Until 2004, hearsay evidence was not admissible, but Law 132(I) of 2004 changed the law by providing that hearsay evidence must not be excluded from any procedure before the court merely because it is hearsay.

Following a recent amendment to section 25 of the Evidence Law (*Cap. 9*) the examination-in-chief of a witness can take the form of a written statement, the contents of which the witness must orally adopt.

Exceptionally, a number of interim applications are supported exclusively by affidavits, which are written evidence submitted by a witness. It falls in the inherent jurisdiction of the court to permit the cross-examination of a witness of fact in these circumstances.

In a limited number of other proceedings such as a petition concerning the winding-up of a company, a mixture of oral and written evidence is most common.

At the end of the trial, it is usual for judgment to be reserved for delivery at a later date. This allows time for the judge to consider all the evidence and witnesses in the light of the pleadings and draft his judgment. Judgments set out the reasoning by which the court arrived at its findings of facts and conclusions as well as the principles of law on which the court relied and their application to the particular case.

Right to cross-examine

The opposition party has the right to cross-examine the witness orally. Witnesses giving evidence on the merits can be cross-examined during the hearing of a case.

Third party experts

19. What are the rules in relation to third party experts?

Appointment procedure

Parties can present expert witnesses to support their claims. The opinion of an expert witness, based on facts that are proved by evidence that can be admitted by the court, is generally admissible when an issue in dispute is of a technical, scientific or professional nature.

There is no obligation to disclose expert witnesses at the disclosure stage.

Role of experts

The role of experts is generally to give their professional opinion and evidence on matters that have been raised and fall within their area of expertise. In principle, they must provide independent advice to the court.

Right of reply

Experts' reports can be exchanged before the trial. During the trial the experts can appear before the court to give evidence and be cross-examined on the contents of their report.

Fees

In principle, an expert's fees are paid by the party who requests his services.

APPEALS

20. What are the rules concerning appeals of first instance judgments in large commercial disputes?

Which courts

A party who is not satisfied with all or part of a first instance judgment can apply to the Supreme Court for review of the judgment. However, judgments relating to interim applications are not subject to an appeal unless they affect essential rights of the appellant.

After the notice of appeal has been filed (*see below, Time limit*) the appeal is scheduled for directions, which is when the Supreme Court usually gives instructions as to the filing of written submissions by the parties in a specified time frame. Following filing of the written submissions, ordinarily a hearing date is set for any clarifications the Supreme Court may require and then the matter is decided (judgment is usually reserved).

Grounds for appeal

The grounds for appeal against a first instance judgment can be any disputed interpretation of the case, legal or factual. The Supreme Court rarely interferes with matters in relation to which the judge at first instance exercised his discretion.

Time limit

A notice of appeal, setting out all the grounds of appeal and the reasons relied on, must be filed within:

- Six weeks from the date of a judgment on the merits of the case (unless the Supreme Court grants an extension).
- 14 days from the date of an interim judgment.

CLASS ACTIONS

21. Are there any mechanisms available for collective redress or class actions?

Class actions per se are not available under Cyprus law. Nevertheless, multiple actions can be consolidated under Order 14 of the Civil Procedure Rules.

If two or more actions pending in the same court (between the same or different claimant or defendants) involve a common question of law or fact of such importance in proportion to the rest of the matters, the court can order that the actions are consolidated on the application of one of the parties to the actions.

Once consolidated, the same funding and costs rules apply as in all other civil actions (*see Questions 6 and 22*).

COSTS

22. Does the unsuccessful party have to pay the successful party's costs and how does the court usually calculate any costs award? What factors does the court consider when awarding costs?

Any award of the costs is in the sole discretion of the court. The costs of the litigation are usually awarded to the successful party. The court, in its costs order, directs whether the costs are assessed or taxed by the registrar of the court in which the proceedings have taken place.

Pre-trial offers to settle do not have any effect on cost orders unless they are in the form of payment to the court.

23. Is interest awarded on costs? If yes, how is it calculated?

Legal costs awarded to a litigant by the court bear legal interest (currently 5.5% per year) from the date of their award.

ENFORCEMENT OF A LOCAL JUDGMENT

24. What are the procedures to enforce a local judgment in the local courts?

Any person against whom a judgment is given must comply with and fully satisfy it. If a party fails to obey a judgment made against him, measures can be taken for the execution and enforcement of the judgment to enable the successful party to obtain the remedy to which it is entitled. These measures are:

- A writ of execution for the sale of movables.
- Garnishee proceedings (requiring a third party who owes money to the judgment debtor to pay the money to the judgment creditor).
- The registration of a charging order over the immovable property or the chattels of the judgment debtor.
- A writ of delivery of goods, ordering those goods to be delivered to the judgment creditor.

- A writ of possession of land, ordering that land to be delivered to the judgment creditor.
- Committal for breach of an order or undertaking.
- A writ of sequestration ordering the seizure or attachment of property.
- Bankruptcy or liquidation proceedings against the judgment debtor.

CROSS-BORDER LITIGATION

25. Do local courts respect the choice of governing law in a contract? If yes, are there any areas of law in your jurisdiction that apply to the contract despite the choice of law?

In the majority of cases the law that governs most elements of the contract is the law which the parties intend to apply, (the proper law of the contract), (*lex causae*). The proper law is determined as follows:

- Where the parties have expressly chosen the law by which they wish their contract to be governed, this is the proper law.
- Where no express choice has been made, the intention is to be inferred from the terms of the contract and the surrounding circumstances.
- Where no express choice has been made and the intention cannot be inferred, the proper law is the law with which the transaction has its closest and most real connection.

One exception to the above principle concerns the matters of procedure relating to remedies under the contract. These matters are governed by the law of the forum or court in which the case is tried (*lex fori*), and not by the proper law.

Also, the Cyprus courts do not enforce contracts that are contrary to Cyprus public policy.

26. Do local courts respect the choice of jurisdiction in a contract? Do local courts claim jurisdiction over a dispute in some circumstances, despite the choice of jurisdiction?

Where the parties expressly agreed that disputes arising from their contract must be referred to arbitration or to a foreign tribunal, or be determined according to the law of a foreign country, the court generally insists that the parties honour their bargain. However, the court considers whether strong and convincing reasons have been put forward for displacing this presumption.

Since the accession of Cyprus to the EU, Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Regulation) gives the Cyprus courts exclusive jurisdiction over the following:

- An action *in rem* (that is, relating to a right that is enforceable against the asset itself) against:
 - immovable property (including ships) situated in Cyprus; and
 - tenancies of immovable property situated in Cyprus, of greater than six months' duration.
- Actions relating to the validity of the constitution or dissolution of Cyprus companies.
- The validity of entries in the public registries of Cyprus, except for the validity of European patents in relation to which the courts in all member states have jurisdiction.

- Proceedings relating to the enforcement of judgments if the Cyprus courts are the forum where the judgment has been, or is to be enforced.

The Brussels Regulation applies only if the parties are domiciled in countries that are bound by it.

27. If a foreign party obtains permission from its local courts to serve proceedings on a party in your jurisdiction, what is the procedure to effect service in your jurisdiction? Is your jurisdiction party to any international agreements affecting this process?

In relation to proceedings instituted within the EU, Regulation (EC) 1393/07 on the service in the member states of judicial and extrajudicial documents in civil and commercial matters (Regulation (EC) 1393/07) is applicable. (Regulation (EC) 1393/07) provides a number of different ways in which service can be effected.

One of the prescribed ways, which can also be used in relation to the service of proceedings that were initiated in a country not belonging to the EU, is by arranging for the service of the documents through an authorised private bailiff.

28. What is the procedure to take evidence from a witness in your jurisdiction for use in proceedings in another jurisdiction? Is your jurisdiction party to an international convention on this issue?

The taking of evidence from a witness in a jurisdiction other than that where the proceedings are initiated is governed by Regulation (EC) 1206/2001 on co-operation between the courts of the member states in the taking of evidence in civil or commercial matters.

Enforcement of a foreign judgment

29. What are the procedures to enforce a foreign judgment in the local courts?

Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Regulation) governs the recognition and enforcement in one EU member state of a judgment obtained in another member state. Generally, a judgment given in one member state must be recognised in another without the need for any special procedure (with the exception of Denmark). Under no circumstances can the substance of a judgment given in one member state be reviewed in another. In addition, if a judgment issued in a member state is enforceable in that state, it is also enforceable in another member state when, on application by any interested party, it has been declared enforceable. Judgments are declared enforceable immediately on the filing of both:

- A copy of the judgment.
- A certificate issued by the court in which the judgment originated.

Regulation (EC) 805/2004 creating a European Enforcement Order for uncontested claims (European Enforcement Order Regulation) (Regulation 805/2004) provides a parallel enforcement mechanism for uncontested claims in civil and commercial matters, allowing for the certification of a judgment on an uncontested claim as an EU enforcement order by the originating jurisdiction. It does not cover revenue, customs or administrative matters, or state liability. Regulation 805/2004 differs from the Brussels Regulation in that there is no need for the Cyprus court to approve the judgment issued in the other member state.

The following can also apply in relation to the enforcement of foreign judgments:

- **Statute.** A foreign judgment can be enforceable by direct registration, under the provisions of the Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10.
- Cyprus is also bound by bilateral treaties relating to the recognition and enforcement of foreign judgments with Bulgaria, China, Germany, Greece, Hungary, Poland, Russia, Serbia and Syria, and it is a signatory to various multilateral conventions relating to the recognition and enforcement of foreign judgments.
- For a judgment to be registered, it must comply with the following requirements:
 - the judgment is final and conclusive;
 - there is a sum of money payable under it that is not related to tax claims or similar charges, or a fine or penalty;
 - the application is made within six years of the judgment having been given or an appeal adjudicated;
 - the judgment is unsatisfied, at least in part; and
 - the judgment is capable of execution in the original foreign court.
- The application is made without notice and must be accompanied by an affidavit exhibiting a certified copy of the judgment, authenticated by its seal, and a translation into Greek certified as correct by a diplomatic or consular agent, a sworn translator or any other person so authorised.
- **Common law.** A judgment creditor can enforce a foreign judgment in Cyprus at common law by bringing a fresh action. As soon as he files a writ of summons (usually specially endorsed), he can apply by summons for summary judgment under Order 18 of the Civil Procedure Rules on the ground that the defendant has no defence to the claim. If his application is successful, the defendant is allowed to defend. Alternatively, instead of filing an action on the foreign judgment, the judgment creditor can file an action relying on the facts that created the cause of action in which the foreign judgment was given.

Cyprus is bound by bilateral treaties relating to the recognition and enforcement of foreign judgments with Bulgaria, China, Germany, Greece, Hungary, Poland, Russia, Serbia and Syria. It is also signatory to various multilateral conventions relating to the recognition and enforcement of foreign judgments.

Regulation (EC) 1346/2000 on insolvency proceedings is directly applicable in Cyprus. Under this regulation, a judgment initiating insolvency proceedings issued by a competent court of an EU member state will be recognised in Cyprus and vice versa. Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast) to insolvency proceedings commencing on or after 26 June 2017.

ALTERNATIVE DISPUTE RESOLUTION

30. What are the main alternative dispute resolution (ADR) methods used in your jurisdiction to settle large commercial disputes? Is ADR used more in certain industries? What proportion of large commercial disputes is settled through ADR?

There are three main ADR methods in Cyprus:

- **Mediation.** This is the least formal method of ADR. The parties voluntarily refer their dispute to an independent third party who must discuss the issues with both sides and help them discuss

and negotiate areas of conflict and identify and settle certain issues.

- **Conciliation.** This lies between informal mediation and formal arbitration. The process is very similar to mediation, but the third party can offer a non-binding opinion that can lead to a settlement.
- **Arbitration.** An arbitration agreement is irrevocable and, therefore, binding unless it contains a provision or a court order is issued to the contrary (*section 3, Arbitration Law 1944 (Cap. 4 (Arbitration Law))*). An arbitration agreement must be in writing (*section 2, Arbitration Law and section 7(2), International Commercial Arbitration Law L.101/87*).

ADR is most frequently used in the construction industry. Arbitration is also used to some degree in the shipping and energy related sectors. A third party can intervene in ADR processes in order to protect its interest once notified of the process taking place.

An agreement that is reached in the process of a mediation or conciliation process is binding as between the parties to the agreement. An arbitration award may be executed and thus recognised and registered as an equivalent court judgment or order once the court has granted leave to that effect.

31. Does ADR form part of court procedures or does it only apply if the parties agree? Can courts compel the use of ADR?

ADR is used when the parties mutually agree either orally or in writing to submit their dispute to ADR to avoid litigation. In addition, even in litigation, the court can (and frequently does) urge the parties to consider settling the case through ADR, with the court playing a consulting role in the process. However, in the absence of an express agreement by the parties to the use of a form of ADR, the court will not compel the parties to use ADR.

32. How is evidence given in ADR? Can documents produced or admissions made during (or for the purposes of) the ADR later be protected from disclosure by privilege? Is ADR confidential?

The answers to these questions depend on the form of ADR and the particular set of procedural rules that the parties have agreed to apply.

33. How are costs dealt with in ADR?

This also depends on the form of ADR and the particular set of procedural rules that the parties have agreed to apply.

34. What are the main bodies that offer ADR services in your jurisdiction?

There are no official bodies offering ADR services in Cyprus.

PROPOSALS FOR REFORM

35. Are there any proposals for dispute resolution reform? If yes, when are they likely to come into force?

The Civil Procedure Rules have been amended to allow for fast-track hearing of small claims (*see Question 9*).

ONLINE RESOURCES

Supreme Court of Cyprus

W www.supremecourt.gov.cy

Description. The website of the Supreme Court provides information on the judicial system and structure, as well as the jurisdiction and competence of each court in the Republic of Cyprus.

Office of the Attorney General

W www.law.gov.cy

Description. The website of the Attorney General's Office provides information on the duties and powers of the Attorney General.

Office of the Law Commissioner

W www.olc.gov.cy

Description. The website provides unofficial translations into English of a selection of laws. The Greek text, as published in the Cyprus Government Gazette, is the only definitive version.

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Areas of practice. Commercial law; competition law; maritime and shipping law; public and private international law; commercial litigation; international commercial and investment arbitration.

Non-professional qualifications. London School of Economics; Kingston University

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 a 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 Organisation for Security and Co-operation in Europe on EU law.

Languages. English, Spanish, Greek

Professional associations/memberships. Cyprus Bar Association; International Bar Association; European Competition Lawyers Forum; Chartered Institute of Arbitrators; Association of International Petroleum Negotiators; British Institute of Comparative and International Law; European Society of International Law.

Publications

- *Oxford Competition Laws, Cyprus contributor.*
- *Merger Control, Getting the Deal Through, 2015.*
- *Cyprus chapter, Merger Control, International Comparative Legal Guide, 2015.*
- *Cyprus chapter, Litigation & Dispute Resolution, Global Law Insight, 2015.*