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The jurisdiction of Cyprus courts to issue worldwide asset tracing, recovery and freezing orders

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Courts in Cyprus have jurisdiction to issue interim and injunctive relief in support and/or in aid of the following proceedings:

- Judicial proceedings pending before Cyprus courts.
- Arbitration proceedings pending in Cyprus.
- Judicial proceedings pending before national courts of any EU member state (excluding Denmark).
- International commercial arbitration proceedings to be filed or pending in any state (EU and non-EU).

Three requirements must be in place for an interim order to be issued:

- a serious matter arises which must be heard in trial
- there is a probability of success in the main proceedings
- it would be difficult or impossible to serve justice at a later stage, unless the interim order is issued

Specific requirements are attached to particular interim orders, while pursuing an ex parte issuing of an interim order must involve an element of urgency.

Freezing orders (Mareva injunctions)

The Cypriot legal order encapsulates the power of courts in issuing freezing orders with a view to protect assets in risk of alienation, or to preserve 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 (funds, deposits, shares, and goods). The Supreme Court emphatically confirmed in 2007 that the courts of Cyprus can issue freezing orders with worldwide effect.

Asset tracing and discovery (Norwich Pharmacal) orders

In the context of applications for discovery or tracing of assets, Cyprus courts can issue orders for:

- the disclosure by a respondent of the location and value of specified assets.
- tracing purposes, namely leading to the disclosure of information and documents regarding assets deprived or stolen from the applicant, to enable the person having suffered harm to identify and pursue proceedings against the real person committing the tort (tortfeasor).

A claimant applying to the court for a discovery or tracing order must, inter alia, satisfy the court that a wrong has been carried out to the detriment of the applicant by an ultimate tortfeasor. A discovery order is issued to assist the applicant in pleading and proving his claim, identifying other wrongdoers and tracing alienated or stolen assets.

For discovery or tracing orders to be issued against a party, the latter must have been, whether intentionally or not, involved with the wrongdoing against the claimant and is able, or likely to be able, to provide the requested information or documentation.

Conclusion

Cypriot courts afford litigants impartiality, equity and fairness, in carrying out an unbiased adjudication of disputes brought before them. The independence of the judiciary is enshrined as a fundamental aspect of the constitution and the prevalence of the rule of law is unquestionable.

Although the injunctive jurisdiction of Cypriot courts is available to litigants, applications for interim relief should not be pursued lightly. Strict satisfaction of the conditions for the issuing of interim orders should be in place, while a claimant considering to apply for interim relief must be ready for a full disclosure of all material facts.

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