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Getting the Deal Through: Cyprus Chapter for Dispute Resolution

November 28, 2016

Our firm has contributed the Cyprus Chapter for Getting the Deal Through to Dispute Resolution. The Cyprus Chapter is available at: https://gettingthedealthrough.com/area/9/dispute-resolution.

The full version of the publication is available below.

What is the structure of the civil court system?

Cyprus has a two-tier court system: the Supreme Court; and the subordinate courts (comprised of the district courts and the specialist courts). The district courts have jurisdiction to hear at first instance any civil action, unless the subject matter of the action falls within the exclusive jurisdiction of a specialist court, namely the Labour Court, the Family Court, the Rent Control Court and the Military Court. The newly formed Administrative Court, acts as the Administrative and Tax Court. The Supreme Court acts as the final appellate court, with jurisdiction to hear and determine appeals from the subordinate courts. Furthermore, it also has jurisdiction to act as the Supreme Constitutional Court and as the Admiralty Court. The Supreme Court is comprised of 13 members, one of whom acts as its president. The appeals, unless otherwise decided, are heard by three judges whereas first-instance civil proceedings are determined by a single judge.

What is the role of the judge and the jury in civil proceedings?

The Cypriot trial system is adversarial in nature and consequently judges act as umpires between the parties. There are no jury trials in Cyprus.

What are the time limits for bringing civil claims?

Unless otherwise provided by another specific statute, the time limits within which claims must be brought before a court are currently prescribed by the Limitation of Causes of Action of 2012 (Law 66(I)/2012), which entered into force on 1 July 2012. According to article 3 of the abovementioned instrument, the limitation period of a claim commences from the day of completion of the basis of the claim. Furthermore, according to article 4, unless otherwise provided in the law or any other law, no proceedings may be issued after 10 years have elapsed from that date. Nevertheless, according to specific articles of Law 66(I)/2012, the time limit may deviate from the above and will vary according to specific civil claims. The main such provisions are the following:

- torts: six-year limitation period from the date when the cause of action accrued except for cases of negligence, nuisance, breach of statutory duty, where there

is a three-year limitation period from the date when the injured person knew of the cause of action;

- contract: six-year limitation period from the date when the cause of action accrued;
- mortgage, pledge: 12 years limitation period from the date of the accrual of the cause of action; and
- bills of exchange, etc: six-year limitation period from the date of the accrual of the cause of action.

The above limitation periods may be extended by the courts by two years where the court considers this to be just and reasonable. Parties cannot agree to suspend the time limits. Nevertheless, the time limits will be suspended according to Law 66(I)/2012 if the parties fall within one of the categories provided by article 12 (eg, between cohabiting partners, between spouses during marriage, between parents and children if the children are minors).

The transitional provisions of law provides that all limitation periods will start counting from 1 January 2016.

Are there any pre-action considerations the parties should take into account?

Despite there not being any pre-action protocols or procedural formalities that must be followed prior to the initiation of the proceedings in Cyprus, parties must bear in mind that in certain specialist proceedings (eg, winding up proceedings, tenant evictions, etc) certain pre-action procedures are required to be followed.

How are civil proceedings commenced? How and when are the parties to the proceedings notified of their commencement?

Commencement of proceedings: Civil proceedings are commenced by filing a writ of summons with the Registrar of the competent district court with jurisdiction to adjudicate upon the case. The writ of summons may either be generally endorsed and thus include merely the relief sought, or specially endorsed and thus provide full particulars of both the relief sought and the basis upon which that relief is being sought.

Notification of commencement or service of claim: Notification of the commencement of the proceedings is done by service of the writ of summons which is effected by personal service; namely by leaving a copy with the person to be served, via a private bailiff. The writ of summons must be served within 12 months of its filing. The 12-month limit can, however, be extended for an additional six months by application to the court made by the plaintiff. If personal service is not feasible an application can be made to the court for an order for substituted or other service (such as service through public advertisement, placing a notice on the board of the court, etc). The deemed date of service is the date on which the private bailiff served the writ of summons to the defendant.

In circumstances whereby the party to be served is located outside Cyprus, such service shall only be made after leave to do so has been obtained by the court. The plaintiff must satisfy the court that the case is a proper one for service outside Cyprus, that the plaintiff has a prima facie good cause of action against the defendant and that the defendant may be found in a particular country and place outside Cyprus. It is noted that what is served outside the jurisdiction to a non-Cypriot defendant is not a writ of summons but a notice of a writ of summons.

What is the typical procedure and timetable for a civil claim?

As mentioned in the previous question, civil proceedings are initiated by filing a writ of summons that must subsequently be served on the defendants. Provided the defendant is within the jurisdiction of Cyprus, he or she is required to enter his or her appearance within 10 days from the date on which the writ of summons was served upon him. If the writ of summons is generally endorsed, the plaintiff must file and deliver to the defendant a statement of his or her claim, containing the relief or remedy which is sought, within 10 days from the defendant filing his or her appearance. Subsequently, the defence or the defence and counterclaim of the defendant must be filed and delivered within 14 days from the filing of the statement of claim. If the plaintiff files a writ of summons specially endorsed, then the defendant must file and deliver a defence and, if desired, a counterclaim within 14 days from the filing of an appearance. In both instances, the defendant may file a reply to the defendant's defence within seven days of delivery of the defence, or a reply to the defendant's counterclaim within 14 days from the delivery of the defendant's defence and counterclaim. During the main trial of a typical proceeding, each side is allowed to present its witnesses, who may be subject to cross-examination by the other side. Once all testimony is complete the parties will be invited to present their final submissions to the court in support of their arguments. During the proceedings various interlocutory applications may be filed by the parties, including applications for the discovery and inspection of documents prior to trial. If such applications are opposed to by the other party, a hearing will be conducted in order for the court to determine whether to issue the requested orders or allow the applications.

Can the parties control the procedure and the timetable?

The procedure and the timetable of the claim is dictated by the court and is not under the control of the parties. Nonetheless, depending on the number of interlocutory applications that may be made in the context of the proceedings and that may naturally have a delaying effect, the parties may potentially influence the timetable.

Is there a duty to preserve documents and other evidence pending trial? Must parties share relevant documents (including those unhelpful to their case)?

Any party may apply to the court for an order directing any other party to any cause or matter to make discovery on oath of the documents that are, or have been, in his or her possession or power relating to any matter in question therein. Such an application can be made at any time after the commencement of the proceedings. It must be stressed that pre-action disclosure is not available. There are no particular classes of documents that do not require disclosure but the discovery is subject to privilege and admissibility rules. If a party ordered to make discovery of documents fails to do so, he or she shall not afterwards be at liberty to put evidence in the action or allow any document he or she failed to discover to be inspected, unless the court is satisfied that he or she has a different excuse for not disclosing the said document..

Are any documents privileged? Would advice from an in-house lawyer (whether local or foreign) also be privileged?

A document may be covered by privilege, and as such one may refuse to produce it for inspection, on any one of the following grounds:

- litigation privilege
- legal professional privilege
- without prejudice communications;
- self-incrimination privilege
- public interest immunity
- confidential nature.

Do parties exchange written evidence from witnesses and experts prior to trial?

Usually, parties do not exchange evidence prior to trial except for situations whereby it is their intention to adopt written statements in the course of the direct examination of witnesses and the court has ordered that such statements are exchanged between the parties prior to the hearing. With regard to experts, the reports of such witnesses is usually exchanged prior to the trial since their cross examination is based on the content of their reports.

How is evidence presented at trial? Do witnesses and experts give oral evidence?

The general rule is that all evidence, whether oral, documentary or real, must be brought before the court during the hearing of an action. Such evidence must be the best possible evidence at hand, must be admissible (ie, it must not contravene any of the provisions of the Constitution of Cyprus and Cyprus laws) and must be relevant to the facts at issue. Witnesses, whether expert or of fact, are called to the court for examination or to produce a document. The witness is firstly examined by the party that has called him or her and may then be cross-examined by any other party in the

proceedings. The witness may then be re-examined by the party at whose instance he or she was called to give evidence. In order for an expert witness to give evidence to the court, it must be proved to the satisfaction of the court that expert evidence is necessary in order for the proceedings to be disposed of by the court and that the person in question has the necessary expert knowledge and skills. The expert may bring to court an expert report, which he or she then adopts under oath.

What interim remedies are available?

Parties to proceedings may file any interim applications for any order or relief. Inter alia, the following interim relief is available:

- freezing injunctions (with either local or worldwide application);
- prohibitory and mandatory injunctions;
- appointment of an interim receiver or liquidator;
- search orders; and
- for the discovery and inspection of documents.

Interim remedies in support of foreign proceedings are available, when such power is provided by a statute, a regulation or a relevant international or bilateral treaty. In particular interim relief can be sought in aid of foreign proceedings in the European Union, Norway and Switzerland, by virtue of the Judgment Regulations, and in aid of international arbitration proceedings.

What substantive remedies are available?

General or special damages as compensation for any losses or injuries caused; the ordering of restitution of any gains or benefits acquired by the defendant; injunctive relief, ordered at the discretion of the court when damages become inadequate due to the irreparability of the injuries or damages caused; and specific performance orders. Punitive damages may also be awarded at the discretion of the court. Interest is payable on money judgments.

What means of enforcement are available?

By a writ of moveables, namely the seizure and sale of moveable property; by sale of real or immoveable property; by registering the court's judgment on the real or immoveable property in the District Land Office; by a writ of attachment, namely the seizure of moveables or debts owed to the judgment debtor by a third party; by a charging order over shares and an order for the sale of the shares; or by an application for an order for repayment of the debt in question via monthly instalments. With regard to judgments that do not make an award of damages but rather order any one or more of the parties to act or refrain from acting in a particular manner, the party for the benefit of whom the order was issued may apply to the court for a writ of attachment

the effect of which is to commit the disobeying party to prison. The court may order that a person committed to prison for disobedience shall be detained in prison until he or she has obeyed such order in all things that are to be immediately performed and give security as the court thinks fit to obey the other parts of the order, if any, in the future. Where the respondent against whom the writ of attachment is issued is not and cannot be found, the court may make an order that a writ of sequestration is issued against his or her immoveable property. Two or more people shall be empowered by the court under a writ of sequestration to enter all the immoveable property of the contemnor, collect and take all rents, profits, goods, chattels and moveable property they find therein, and detain and keep them under sequestration until the contemnor appears before the court and purges his or her contempt or the court makes an order to the contrary. Additionally, a court may remove a defendants' right to be heard in the proceedings, if he or she is found to be in contempt of a court order.

Are court hearings held in public? Are court documents available to the public?

By virtue of article 30(2) of the Constitution court hearings are held in public. Nevertheless, court documents are only available to the parties to the proceedings.

Does the court have power to order costs?

The court has a wide discretion to make different awards as to costs, depending on the particular circumstances of the proceedings and the conduct of the parties; however, the general rule is that the losing party bears the costs of the proceedings. The costs involved in civil court proceedings vary, depending on how protracted the case proves to be and the time dedicated by the lawyer handling the case. There are court fixed-fee scale rules that are based on the value of the claim. They set out in detail the minimum and maximum charges for each particular step and describe the service provided throughout the proceedings. However, the costs recovered on the basis of the court rules only cover a very small portion of the actual costs, including legal fees, paid by the client for the purposes of the proceedings. This applies especially in commercial litigation where the value of the claim is very high. An application for security for costs can be made by a defendant against a claimant (and by a claimant against a defendant in respect of a counterclaim which is not merely in the nature of a set-off) at any stage of the action where:

- by a writ of moveables, namely the seizure and sale of moveable property;
- by sale of real or the respondent is ordinarily (even temporarily) resident outside of Cyprus or any other European member state, the respondent has no assets in Cyprus to satisfy any order as to costs that is made against him or her, the claimant is suing through a nominal plaintiff; and
- where the court orders security for costs to be given, it may stay the proceedings until such security is given and may dismiss the proceedings where the time period for providing such security has expired.

Are 'no win, no fee' agreements, or other types of contingency or conditional fee arrangements between lawyers and their clients, available to parties? May parties bring proceedings using third-party funding? If so, may the third party take a share of any proceeds of the claim? May a party to litigation share its risk with a third party?

Funding of the litigation proceedings is usually arranged by the parties. A lawyer may negotiate the legal fees of the litigation proceedings and can reach any special arrangement or retainer freely with his or her client, which can be filed with the court and in which case supersedes the court's fixed rates. The matter regarding conditional or contingency fee agreements has not been examined by the courts yet; however, we assume that these are not permissible owing to offending the equitable principle against champetry. Champetry is an agreement where a person who maintains an action takes, as a reward, a share in the property recovered in the action. Accordingly, lawyers involved in the conduct of litigation are precluded from taking a share in the property recovered in the action pursuant to a conditional fee agreement. Similarly, third-party funding is not available in Cyprus due to the application of the aforementioned principle of champetry that, coupled with the principle of 'maintenance', aims to restrict the selling and funding of litigation (the principle of 'maintenance' precludes a person from maintaining a case without just cause or excuse). On that basis, third-party funding and assignment of a cause of action are not permissible. However, it must be noted that the matter is not regulated and there is no case law or other precedent on the above.

What procedures exist for recognition and enforcement of foreign judgments?

A foreign judgment issued by a European court can be recognised and enforced in accordance with the provisions of European Judgment Regulations. As the Judgment Regulations do not require any special procedure for the recognition of foreign judgments, a mere application in accordance with the relevant local procedure suffices. A non-European judgment or order may be recognised and enforced by virtue of the bilateral or multilateral agreements which Cyprus has ratified. Alternatively, a fresh action may be brought regarding the same cause of action brought in the foreign jurisdiction.

Are there any procedures for obtaining oral or documentary evidence for use in civil proceedings in other jurisdictions?

Such procedures are not regulated domestically but may be provided for through bilateral or multilateral treaties with other states or through EU Regulations. According to EU Regulation 1206/2001 obtaining evidence from other member states may be done either through the direct taking of evidence by the court requesting it or through the direct transmission of such requests between the courts. According to article 2 of EU Regulation 1206/2001 'each Member State shall draw up a list of the courts competent for the performance of taking of evidence according to the Regulation.' The list shall also indicate the territorial and, where appropriate, the special jurisdiction of

those courts and any request shall be done by the use of the relevant forms annexed to the Regulation.

Is the arbitration law based on the UNCITRAL Model Law?

The law governing domestic arbitrations, Chapter 4, was enacted when Cyprus was a British colony and is, therefore, very similar to the English Arbitration Act 1950. The law governing international arbitration, Law No. 101/87, is almost identical to the UNCITRAL Model Law. Further, Law No. 101/87 adopts the Model Law's guiding footnote with respect to the meaning of the term 'commercial' in its articles 2(4) to 2(5).

What are the formal requirements for an enforceable arbitration agreement?

In international arbitrations in Cyprus, Law No. 101/87 applies only to arbitration agreements that are in writing (article 7(2)). Article 7(3) of Law No. 101/87 defines an agreement in writing as follows: An arbitration agreement is in writing if it is contained in a document signed by the parties or in an exchange of letters, telex, telegrams, or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other. The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement provided that the contract is in writing and the reference is such as to make that clause part of the contract. Accordingly, pursuant to article 7(3), oral arbitration agreements may fall outside the scope of Law No. 101/87. In domestic arbitrations, article 2(1) of Chapter 4 requires that arbitration agreements are in 'writing,' but does not define the term.

If the arbitration agreement and any relevant rules are silent on the matter, how many arbitrators will be appointed and how will they be appointed? Are there restrictions on the right to challenge the appointment of an arbitrator?

In international arbitrations, if the arbitration agreement fails to appoint an arbitrator or specify the composition of the arbitral tribunal then the default appointment procedure provided for under article 11(3) will apply. According to article 11(3): In an arbitration with three arbitrators, each party shall appoint one arbitrator, and the two arbitrators thus appointed shall appoint the third arbitrator; if a party fails to appoint the arbitrator within thirty days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within thirty days of their appointment, the appointment shall be made, upon request of a party, by the court. In an arbitration with a sole arbitrator, if the parties are unable to agree on the arbitrator, he or she shall be appointed, upon request of a party, by the court. Domestic arbitrations will be carried out by a single arbitrator if the arbitration agreement is silent on the matter. Furthermore, with regard to domestic arbitrations, article 10 of Chapter 4 provides that Cypriot courts will intervene in the appointment process if:

(a) the parties fail to agree on the appointment of an arbitrator where the arbitration agreement provides for the appointment of a single arbitrator; (b) the arbitration

agreement provides for the appointment of a single arbitrator; (c) the single arbitrator appointed by the parties refuses to act or is incapable of acting or passes away; (d) the parties or the two arbitrations fail to appoint the umpire; and (e) the appointed umpire refuses to act or is incapable of acting or passes away. Challenging the appointment of an arbitrator: In international arbitrations, articles 12 to 15 of Law No. 101/87 regulate the challenge and replacement of arbitrators. An arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his or her impartiality or independence, or if he or she does not possess qualifications agreed to by the parties (article 12(3)). In domestic arbitrations, the challenge and replacement procedure is regulated by articles 13 and 14 of Chapter 4.

Does the domestic law contain substantive requirements for the procedure to be followed?

Law No. 101/87 incorporates all of the mandatory provisions of the UNCITRAL Model law, for example: article 18 requiring that the parties are treated with equality and that each party is given an opportunity to present its case; article 24(1) providing a party with the right to request a hearing; and article 26 providing a party with a right to appoint and question an expert. Chapter 4 does not contain any mandatory provisions, but provides Cypriot courts with an extensive supervisory jurisdiction over domestic arbitrations.

On what grounds can the court intervene during an arbitration?

(a) orders for the production of documents; (b) orders for submitting evidence by affidavits; (c) orders for the examination on oath of any witness or the examination of a witness outside the jurisdiction; (d) orders for the inspection of a property which is the subject matter of an arbitration; and (e) orders of appearance before the tribunal or the presentation of documentary evidence (article 26, Chapter 4).

Do arbitrators have powers to grant interim relief?

Pursuant to article 17 of Law No. 101/87, an international arbitral tribunal may, upon the application of a party to an arbitration agreement, issue any type of interim measures which aim at securing the subject matter of the dispute. A tribunal in domestic arbitration, operating under article 4 does not have the power to issue interim measures.

When and in what form must the award be delivered?

There is no specific time limit for rendering an award under either Chapter 4 or Law No. 101/87. Nonetheless, it may be the case that there are contractual limits within which such awards have to be rendered. Form of an award: Pursuant to article 31 of Law No. 87/101, an international arbitration award must state the reasons upon which the award is based unless the parties have agreed otherwise or the award is an award on agreed terms. Furthermore, the award must be in writing, contain the date and

place of the arbitration and be signed by all arbitrators. Chapter 4 is silent on the form and content requirements of domestic arbitral awards.

On what grounds can an award be appealed to the court?

Grounds of appeal: In domestic arbitrations an award can be appealed to a court and be set aside usually on the following grounds: misconduct of arbitrator; misconduct of the arbitral proceedings; improper procurement of award; and if the award is ambiguous or without reasons (article 20, Chapter 4). In international arbitrations, the issue of setting aside an international award is governed by article 34 of Law No. 101/34. The setting aside grounds mirror those of the UNCITRAL Model lLaw and are: incapacity of the parties; invalidity of the arbitration agreements; lack of proper notice of denial of a party's right to present its case (due process); lack of jurisdiction of the tribunal; non-arbitrability under the laws of Cyprus; or if the award is contrary to the public policy of Cyprus. Levels of appeal: An award is only subject to appeal to the courts pursuant to article 20 of Chapter 4 or article 34 of Law No. 101/87. There is generally no right of appeal to the court's decision on the setting aside of an award.

What procedures exist for enforcement of foreign and domestic awards?

The recognition and enforcement of foreign arbitral awards is governed by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards which is incorporated in articles 35 and 36 of Law No. 101/87. The party seeking the recognition and enforcement of the foreign award must submit the original or a certified copy of the arbitral award and the arbitration agreement (article 35). Moreover, Cypriot courts generally follow a pro-arbitration approach in the enforcement of foreign awards. Nonetheless, Cypriot courts will usually not enforce an award that has been set aside by the courts at the place of arbitration for grounds that are identical or similar to those of article 24 of Law No. 101/87. In domestic arbitrations, an award may, with leave of the Cypriot courts, be enforced in the same manner as a judgment or order to the same effect and in such case judgment may be entered in terms of the award (article 21, Chapter 4).

Can a successful party recover its costs?

Overall cost allocation rests on the discretion of the tribunal unless the parties agree otherwise, even though the general rule is that costs follow the event and are usually dealt with by the arbitration award. Nonetheless, subject to the agreement of the parties to an arbitration agreement, the costs that are recoverable are: the fees and expenses of the tribunal; the fees and expenses of the arbitral institution; and the parties' legal and other costs including costs relating to witnesses and the hearing.

What types of ADR process are commonly used? Is a particular ADR process popular?

The methods of ADR that are available in Cyprus today are primarily arbitration and mediation. The most widely used method is arbitration, which is mainly tried by commercial parties in various commercial fields including construction, shipping, insurance and trade. The referral of an issue to arbitration depends upon the existence of a valid and binding arbitration agreement between the parties. The arbitration process is conducted in a rather formal but strictly confidential manner that resembles litigation. The arbitral tribunal issues a decision ('the arbitral award') which is binding upon the parties, after both parties have introduced evidence and presented their case before it.

Are there any particularly interesting features of the dispute resolution system not addressed in any of the previous questions?

As of 1 January 2015, Orders 30 and 25 of the Civil Procedure Rules were repealed and their effect is in relation to all actions filed post that date. By virtue of the new rules introduced by Order 30 of the CPR, within 30 days from the date the pleadings are 'closed', the claimant would have to issue a notice for directions that will be served on all other parties and be set before a judge after 60 days. Within 30 days from service of the notice for directions, the parties shall file an Appendix indicating the directions sought from the court. At the appearance before the judge the directions on the matters noted by the parties in their Appendices may be issued and the case will be set for directions regarding the evidence to be filed with the court. With respect to claims the value of which does not exceed €3,000, the judge will issue directions for filing written evidence and the case will be set for hearing on the basis of the written evidence with written or oral submissions. In those cases, it will only be in rare occasions that the judge will allow oral evidence to be adduced in addition. With respect to all other claims, the parties shall file with the court a list of their proposed witnesses at trial together with a summary of the evidence to be given by each and the judge will issue further directions for the preparation of the case prior to trial. The judge will make an order for written evidence to be filed upon the agreement of the parties and the hearing will take place on the basis of that evidence though the judge will allow the parties to examine, cross-examine and re-examine witnesses. The new provisions further provide for strict deadlines regarding the duration of examination, cross-examination and re-examination of witnesses. The new regime seeks to put strict deadlines with which parties and their lawyers shall adhere to for the purpose of preventing the case management stage becoming protracted and limiting the total time frame of proceedings. With regard to the amendments introduced by Order 25, it is now permissible for a claimant to amend his or her writ of summons after its issuing but prior to its service without the leave of the court. Any party may also amend its pleadings once after the exchange of the pleadings and prior to the issuing of the notice for directions (pursuant to Order 30) without the leave of the court. Any party may amend its pleadings at any time thereafter merely where a bona fide error was

made or where the court is satisfied that particular facts were not in existence when the document was first filed.