

Asset Recovery: Cyprus Chapter for Getting the Deal Through

January 11, 2017

Our firm has contributed the Cyprus Chapter for Getting the Deal Through to Asset Recovery. The Cyprus Chapter is available at:

<https://gettingthedealthrough.com/area/53/jurisdiction/74/asset-recovery-cyprus/>.

The full version of the publication is available below.

Civil asset recovery

1 Legislation

What are the key pieces of legislation in your jurisdiction to consider in a private investigation?

Anyone undertaking private investigations in Cyprus must take notice of and heed the following legislation regulating matters of personal data, confidentiality, privacy and criminal liability:

- the Processing of Personal Data (Protection of the Individual) Law of 2001 (138(I)/2001), which provides for criminal and administrative sanctions for the misuse of personal data;
- the Protection of the Confidentiality of Private Communications Law of 1996 (Monitoring of Conversations and Access in Recorded Content of Private Communication) (92(I)/ 1996), which provides for maintaining the confidentiality of private communications, the circumstances in which interception with private communications can be lawfully done and criminal sanctions in case of unlawful interception with private communications;
- the Regulation of Electronic Communications and Mail Services Law of 2004 (112(I)/ 2004), which regulates providers of electronic communication and mail services and provides for administrative and civil sanctions in case of infringement;
- the Prevention and Suppression of Money Laundering Law of 2007 (188(I)/ 2007), which inter alia provides for the submission to the competent authorities of information in relation to suspicion or knowledge of money laundering, by individuals carrying out financial activities; and
- sections 100–109 of the Penal Code Law in relation to the bribery of and abuse of powers by public officers.

2 Parallel proceedings

Is there any restriction on civil proceedings progressing in parallel with, or in advance of, criminal proceedings concerning the same subject matter?

In general, there is no restriction in furthering civil proceedings in parallel with, or in advance of, criminal proceedings in relation to the same subject matter. Civil proceedings are normally furthered by the victim for restitution purposes whereas criminal proceedings are primarily aimed at punishing the wrongdoer. However, and where parallel proceedings are promoted in order to exert undue pressure on the defendant for an ulterior purpose, such as achieving a settlement in the civil dispute, then the furthering of parallel proceedings may be deemed abusive of the courts' powers and processes. The courts may decline to entertain parallel proceedings for the same subject matter when such proceedings are found as abusive. It is to be noted that the promotion of parallel proceedings is not regarded per se as abusive or oppressive conduct.

3 Forum

In which court should proceedings be brought?

Civil actions, such as claims for the recovery of assets (irrespective of their value), are brought in district courts, which have jurisdiction to hear at first instance any civil action unless the subject matter of the action falls within the exclusive jurisdiction of a special court such as the Family Court or the Admiralty Court.

4 Limitation

What are the time limits for starting civil court proceedings?

The limitation periods for civil proceedings are mainly provided by the Limitation of Causes of Action Law of 2012 (Law 66(I)/12) and are as follows:

- torts: six years' limitation period from the date of accrual of the cause of action except for cases of negligence, nuisance or breach of statutory duty where there is a three-year limitation period from the date the injured person became aware of the cause of action;
- contract: six years' limitation period from the date of accrual of the cause of action;
- mortgage or pledge: 12 years' limitation period from the date of accrual of the cause of action;
- bills of exchange, etc: six years' limitation period from the date of accrual of the cause of action; and

- causes of action for which no particular provision is made: 10 years' limitation period from the date of accrual of the cause of action.

In the case of civil proceedings for fraud or where the defendant has intentionally concealed any fact relevant to the cause of action, the limitation period only commences when the plaintiff discovers or could, with reasonable diligence, have discovered the fraud or concealment.

5 Jurisdiction

In what circumstances does the civil court have jurisdiction? How can a defendant challenge jurisdiction?

In general, district courts have civil jurisdiction to hear and decide any action on a first-instance level, when:

- the subject matter of the action has wholly or partly arisen within the district of the court;
- the defendant, at the time of filing the action, resides or works within the district of the court;
- the subject matter of the action relates to immovable property within the district of the court; and
- there is a binding jurisdiction agreement between the parties.

Additionally, district courts may acquire civil jurisdiction from specific legislation, international treaties and conventions, including the EU Regulation 1215/2012 and the Brussels and Lugano Conventions, which supersede local laws. A defendant can dispute the court's jurisdiction by filing a conditional appearance followed by an application to dismiss and set aside the proceedings, before taking any fresh step in the proceedings. If the defendant fails to act as provided above, then he or she may be deemed to have submitted himself or herself to the jurisdiction of the court, thereby waiving his or her right to dispute the jurisdiction of the court.

6 Admissibility of evidence

What rules apply to the admissibility of evidence in civil proceedings?

As a general rule, any oral, real or documentary evidence is admissible at court, provided it is relevant or connected to the matters in issue in the case. Evidence that has been obtained by means contrary to the provisions of the Constitution of the Republic of Cyprus and evidence covered by privilege are not admissible. Evidence obtained by illegal means, but not in contravention of the Constitution, may be admissible. Opinion evidence is not admissible; however, expert evidence and expert opinions are admissible where such evidence is required to determine an issue of scientific or technical nature.

7 Publicly available information

What sources of information about assets are publicly available?

The primary sources of publicly available information about assets are the following: • The Companies Registry, which maintains registers of the officers, registered offices, registered shareholders and registered charges of limited liability companies and other legal entities. The identity of the ultimate beneficial owners of companies is not recorded and is not publicly available. • The Intellectual Property Branch of the Companies Registry, which registers Cypriot trademarks, patents and industrial designs. • The Land Registry, which maintains records of the holders of the legal title of real property as well as records of all registrable interests on real property including mortgages and charges. • The Department of Merchant Shipping, which maintains the Register of Cyprus Ships where details of vessels registered under the Cyprus flag are recorded. The register includes the registered owner, details of the vessel and any mortgages registered on the vessel. • The Department of Civil Aviation, which maintains the Cyprus Aircraft Register where aircraft with Cyprus nationality are registered. The publicly available information include the owner and operator of the aircraft and details of the aircraft. • The Road Transport Department, which holds details of the registered holders of licensed vehicles in Cyprus.

8 Cooperation with law enforcement agencies

Can information and evidence be obtained from law enforcement and regulatory agencies for use in civil proceedings?

There are no special rules or procedures for obtaining information and evidence from law enforcement and regulatory agencies for use in civil proceedings. However, such evidence may be obtained via the normal routes of obtaining evidence in civil proceedings, such as by compelling witnesses to produce evidence at trial or by pretrial disclosure orders.

9 Third-party disclosure

How can information be obtained from third parties not suspected of wrongdoing?

Third-party disclosure orders against innocent parties are available on the basis of the principle set out in the Norwich Pharmacal case. A third-party disclosure order may be issued by the court when the following conditions are met: • a wrong must have been carried out, or arguably carried out, by an ultimate wrongdoer; • there must be the need for an order to enable action to be brought against the ultimate wrongdoer; and • the person against whom the order is sought must: • be mixed up in so as to have facilitated the wrongdoing; and • be able or likely to be able to provide the information necessary to enable the ultimate wrongdoer to be sued.

Pre-action disclosure orders are not available in Cyprus, however, the Supreme Court of Cyprus has recognised a litigant's right to raise proceedings against an innocent party solely for the purpose of pursuing the issuance of a disclosure order. Innocent third parties may also be compelled to give evidence as witnesses at trial.

10 Interim relief

What interim relief is available pre-judgment to prevent the dissipation of assets by, and to obtain information from, those suspected of involvement in the fraud?

By virtue of section 32 of the Courts of Justice Law 14/1960, in exercising their civil jurisdiction, district courts have a wide discretion to issue any interim order or appoint a receiver when it is just and convenient to do so, provided that the following conditions are satisfied by the applicant or plaintiff:

- there is a serious question to be tried at the hearing of the main proceedings;
- it is probable that the applicant will obtain a favourable judgment in the main proceedings;
- there is a great risk that, if the order is not issued, it will be difficult or impossible to do justice at a later stage; and
- the balance of convenience is in favour of the applicant.

The unfettered discretion of the district court to issue any order deemed necessary has been acknowledged by the Supreme Court of Cyprus, although Cypriot law does not codify the particular types of orders that are available in Cyprus. The following types of interim orders preventing the dissipation of assets, pending the final hearing of the case, have been recognised and are frequently issued by the Cypriot courts: • worldwide freezing injunctions prohibiting the defendant from disposing of, dealing with or otherwise reducing the value of his or her assets, up to the value of the claim; • Chabra orders prohibiting third parties who hold property belonging to the defendant, but against whom there is no cause of action, from disposing of, dealing with or otherwise diminishing the value of the assets of the defendant that are in their control or custody; and • receivership orders for the appointment of a receiver to hold, protect and preserve the assets of the defendant where there is cogent evidence to suggest that this necessary under the circumstances.

As regards obtaining information from those suspected of involvement in fraud, the following types of orders have been recognised and are frequently issued by the courts: • Norwich Pharmacal orders for the disclosure of information that is necessary for instituting proceedings; and • Anton Piller orders ordering a person to allow the applicant's lawyers, a supervising lawyer, experts (if necessary) and other assisting personnel to enter premises, under his or her control, for the purpose of conducting a search in order to locate, collect and preserve evidence.

11 Right to silence

Do defendants in civil proceedings have a right to silence?

Defending a civil action is a matter of choice for the defendant. In civil proceedings there is no general right to silence. However, parties to civil proceedings enjoy the benefit of privilege against self-incrimination and may refuse to provide an answer to a question or produce a document that may expose them to criminal liability. It is noted that the privilege against self-incrimination applies only where a party is compelled to provide evidence or produce documents such as under a disclosure order or an Anton Piller order. The privilege against self-incrimination does not apply to real evidence.

12 Non-compliance with court orders

How do courts punish failure to comply with court orders?

Failure to comply with a court order constitutes contempt of court. The court, following a finding of contempt of court, may order the imprisonment of, the sequestration of the assets of, and or the payment of a fine by anyone who does not act in conformity with a court order, including an interim order. The courts have also been willing to issue debarring orders, known as 'unless orders', preventing a non-compliant defendant from defending himself or herself until he or she complies with a court order.

13 Obtaining evidence from other jurisdictions

How can information be obtained through courts in other jurisdictions to assist in the civil proceedings?

A request of a Cypriot court to a foreign court for assistance in gathering evidence in that jurisdiction for the purposes of civil proceedings pending in Cyprus may be made, through letters rogatory or other letter of request, pursuant to the framework provided for in the Taking of Evidence Regulation 1206/2001 (where the foreign court is a European Union member state court), the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (where the foreign state is a signatory) or any other relevant international treaty or bilateral convention ratified by Cyprus.

14 Assisting courts in other jurisdictions

What assistance will the civil court give in connection with civil asset recovery proceedings in other jurisdictions?

Civil courts in Cyprus may give assistance in connection with civil asset recovery proceedings in other jurisdictions by granting interim protective measures in Cyprus in aid of such proceedings. The courts have been willing to issue interim protective measures in aid of foreign proceedings on the basis of provisions found in local and European legislation, or other international treaties, expressly empowering the courts

to do so (ie, article 35 EU Regulation 1215/2012). The courts' power to grant interim protective measures in aid of foreign proceedings in circumstances when the court is not expressly empowered to do so by legislation or other treaty, has not yet been tested in Cyprus. Courts may also provide assistance in connection with foreign proceedings by assisting in the gathering of evidence in Cyprus for the purposes of the foreign proceedings, on the basis of letters rogatory or other letters of request sent by the foreign court. Additionally, it has been expressly recognised by the Supreme Court of Cyprus that pre-hearing disclosure orders (ie, Norwich Pharmacal orders) can be sought in Cyprus for the purpose of collecting information and evidence to be used in proceedings in other jurisdictions.

15 Causes of action

What are the main causes of action in civil asset recovery cases, and do they include proprietary claims?

Civil asset recovery cases are usually founded on causes of action in tort, contract and equity. The main causes of action in civil asset recovery cases are as follows:

- fraud: a cause of action founded in tort that covers statements and representations made fraudulently for the purpose of defrauding a plaintiff who was in fact defrauded and as a result has suffered damage (codified under section 36 of the Civil Wrongs Law Cap 148);
- conspiracy to defraud ('deceit'): a cause of action founded in tort that covers the situations when two or more persons have made an agreement, the real and predominant purpose of which was to injure the plaintiff and the execution of the agreement caused damage to the plaintiff by lawful means, or one of the purposes of the agreement was to injure the plaintiff and the execution of the agreement caused damage to the plaintiff through unlawful means (common law tort of deceit acknowledged in the *Christoforou v Barclays Bank Plc* (2009) 1 AAD 25);
- breach of contract: a cause of action founded in contract that covers substantial breaches of agreements as a result of which the plaintiff has suffered damage (codified by Contracts Law, Cap 149);
- fraudulent misrepresentation: a cause of action founded in contract that includes the presentation of an untrue fact as true, including the active negligent concealment of a fact (codified under section 18 of the Contracts Law, Cap 149);
- breach of fiduciary duty and trust: a cause of action founded in equity that involves the breach of a fiduciary relationship between the plaintiff and the fiduciary, whether a trustee or another professional, which caused damage to the plaintiff as a result (principle of equity codified under the Trustee Law, Cap 193); and

- action for unjust enrichment: where the defendant has enriched at the plaintiff's expense (usually failing a contract between the parties) and the enrichment is in all the circumstances unjust (principle of equity).

Equitable causes of action such as breach of trust or unjust enrichment may entitle the plaintiff to proprietary remedies.

16 Remedies

What remedies are available in a civil recovery action?

In a civil recovery action, the usual remedy is an award for damages for losses suffered. Punitive damages may also be awarded at the discretion of the court, depending on the facts of the case. Where damages are inadequate in all the circumstances, perpetual injunctive relief, prohibiting the defendant from engaging in certain practices, or mandatory and specific performance orders for the performance of an action, may be issued. Alternatively to the court awarding remedies to compensate the loss suffered by the plaintiff, the court may order the restitution of any gains, benefits and profits received by the defendant to the plaintiff, provided the court considers it suitable and fair in all the circumstances. Apart from the remedies granted in personam, the courts, pursuant to their proprietary jurisdiction, may make tracing orders for the recovery of property owned by the plaintiff or impose a constructive trust over property for the benefit of the plaintiff. In addition, declaratory judgments may be issued declaring the rights and interests of the plaintiff or obligations and liabilities of the defendant.

17 Judgment without full trial

Can a victim obtain a judgment without the need for a full trial?

Default judgments may be issued for failure to file an appearance or a statement of defence in an action. Prior to entering a default judgment, the claim of the plaintiff must be proved before the court, usually by the submission of an affidavit attaching all relevant exhibits. Summary judgments are generally available in civil actions when the defendant does not satisfy the court that he or she has an arguable defence to the action on the merits, or disclose such facts as may be deemed sufficient to entitle him or her to defend. Summary judgment is not available when fraud is alleged by the plaintiff.

18 Post-judgment relief

What post-judgment relief is available to successful claimants?

Cypriot courts have wide discretion to issue any order, pending the execution of the judgment, including freezing injunctions, disclosure orders and orders for the appointment of a receiver. The jurisdictional basis for issuing interim orders post-judgment is the same as for the issuance of interim orders pre-judgment. Accordingly,

the Cypriot courts need to be satisfied that the necessary conditions have been met and it is just and convenient in all the circumstances for the interim orders to be issued (for the conditions see question 10).

19 Enforcement

What methods of enforcement are available?

A money judgment may be enforced, directly after issuance, in one or more of the following ways: • Writ of moveables: permits the seizure of moveable property owned by the judgment debtor. The moveable property may then be sold to satisfy the judgment debt. Writ of attachment (garnishee proceedings): attaches funds or property held by a third party on behalf or for the benefit of the judgment debtor (eg, deposits in bank accounts, etc) and orders the third party to pay the same to the judgment creditor against the judgment debt. • Memo: registration in the Land Registry of the judgment as a charge on the legal title of immoveable property located in Cyprus and owned by the judgment debtor. The judgment debt shall be settled upon the sale of the property. • Writ of sale: orders the sale of immoveable property located in Cyprus and owned by the judgment debtor. The sale proceeds are applied towards the judgment debt. • Charging order: attaches shares owned by the judgment debtor in a Cyprus company. An order for the sale of shares is normally simultaneously for the sale of the shares in satisfaction of the judgment debt. • Order for the appointment of receiver by way of equitable execution: orders a receiver to hold, preserve and ultimately sell in satisfaction of the judgment debt property owned by the judgment debtor. This means of execution is available where the ordinary means of execution fail, such as in cases where the judgment debtor is not the legal but rather the beneficial owner of property. • Application for examination of judgment debtor: orders the judgment debtor to attend the court for examination for the purpose of ascertaining the amount he or she can pay per month in satisfaction of the judgment debt. Thereafter, an order for the repayment of the judgment debt via monthly instalments may be made.

A money judgment may be enforced outside the jurisdiction against property situated abroad pursuant to the provisions of EU Regulation 1215/12, by means of a European Enforcement Order pursuant to the provisions of EU Regulation 805/2004, by means of a European Order for Payment pursuant to the provisions of EU Regulation 1896/2006, or under the provisions of another international treaty or convention ratified by Cyprus.

20 Funding and costs

What funding arrangements are available to parties contemplating or involved in litigation and do the courts have any powers to manage the overall cost of that litigation?

Funding of litigation proceedings is normally undertaken by the parties. A lawyer may negotiate the legal fees of litigation proceedings and can reach any special

arrangement or retainer freely with his or her client. The permissibility of conditional or contingency fee agreements and damages-based agreements has not yet been examined by the courts; however, such arrangements are in general not permissible because of offending the equitable principle against champerty. Champerty 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 or a damages-based arrangement. Additionally, there is no regulated framework or availability of after-the-event insurance. Where a party is in financial difficulty as regards funding litigation proceedings, it may apply to the court for legal aid. However, such an application can only be made in criminal cases, family cases and cases on the infringement of human rights. The courts do not have any cost-management powers other than the power to make costs orders at the end of the proceedings or stages in the proceedings. The court has a wide discretion and power to make different awards; however, the general rule is that the losing party bears the costs of the proceedings. Costs orders are made on the basis of fixed-fee scale rules that are based on the value of the claim. The rules set out in detail the minimum and maximum charges for each particular step and describe the service provided throughout the proceedings. The costs recoverable under the court scales usually only cover a very small portion of the actual costs incurred in the litigation as legal fees. This applies especially in commercial litigation and civil assets tracing actions where the value of the claim is very high and the work to be undertaken substantial and complex.

Criminal asset recovery

21 Interim measures

Describe the legal framework in relation to interim measures in your jurisdiction.

The legal framework for the issuance of interim measures in criminal proceedings before Cypriot courts is founded in the Prevention and Suppression of Money Laundering Activities Law L 188(I)/2007 and the Criminal Procedure Law, Cap 155. The Prevention and Suppression of Money Laundering Activities Law L 188(I)/2007 sets the framework for the issuance of freezing and charging orders in relation to the realisable assets of a person where criminal proceedings for the commission of a primary offence (as defined in the legislation) have commenced or are about to commence against him or her, or MOKAS (Special Police Unit for Combating Money Laundering) has information that creates a reasonable suspicion that criminal proceedings for the commission of a money laundering offence can commence against him or her and in either case the court is satisfied that there is reasonable cause to believe that he or she has gained benefit from the commission of a primary offence. Freezing injunctions prohibit any transactions with the realisable property of the person against whom the order was issued. Charging orders create a charge over the interest of the person against whom the order was issued in real property, stocks in Cyprus, property under trust, units under trust in Cyprus or funds in court. At any time after the issuance of a freezing order, the court may appoint a receiver to take

possession, manage or otherwise deal with the property affected by the freezing order. The property may also be seized for the purpose of preventing its transportation or removal out of the Republic. Additionally, following an application from an interrogator, the court may issue a disclosure order for the provision of information in relation to an offence under investigation, including information relating to the recovery of proceeds of crime.

22 Proceeds of serious crime

Is an investigation to identify, trace and freeze proceeds automatically initiated when certain serious crimes are detected? If not, what triggers an investigation?

No investigation to identify, trace and freeze proceeds is initiated automatically. Following a complaint, an investigation may be triggered by the authorities if there is evidence that a crime has been committed.

23 Confiscation – legal framework

Describe the legal framework in relation to confiscation of the proceeds of crime, including how the benefit figure is calculated.

The Prevention and Suppression of Money Laundering Activities Law L 188(I)/2007 provides the legal framework regulating the confiscation of the proceeds of crime. A confiscation order may be made in relation to: • any financial advantage the defendant obtained, directly or indirectly, as a result of the commission of the criminal offence for which he or she was convicted; • the amount of proceeds the defendant obtained as a result of the commission of a primary offence (as defined in the legislation), whether committed by the defendant or another; and • any property used or intended to be used in any manner, wholly or in part, in the commission of a primary offence.

In ascertaining the amount of income obtained as a result of the commission of a primary offence, the court will assume, unless the contrary is proved or the court considers it unjust in all the circumstances, that any property obtained by the defendant after the commission of the said offence or obtained during the preceding six years before the commencement of the criminal proceedings against him or her constitutes income or payment or remuneration from the commission of the primary offence and any expenditure the defendant incurred during the said period of time was made from the income or payment or remuneration the defendant obtained from the commission of the primary offence.

However, in case the court considers that the amount of the defendant's property that can be realised is less than the amount that the court calculated as the amount of proceeds of the defendant from the commission of the primary criminal offence, then the amount to be confiscated shall be the amount that can be obtained from the defendant's realisable property. The value of property, other than monies, is calculated on the basis of the market price of the property after the amount corresponding to any charge on the property or any interest held by another in the property is deducted.

24 Confiscation procedure

Describe how confiscation works in practice.

A confiscation order under the aforementioned legal framework may be applied for by the office of the attorney general once the defendant is convicted for a criminal offence, either a primary offence (as defined in the legislation) or a money laundering offence, and prior to imposing any penalty for the said offence. Upon the application of the attorney general, the court shall examine whether the defendant has obtained any proceeds from the commission of a primary offence and where the court reaches the conclusion that the defendant has indeed obtained proceeds from the commission of a crime, it may issue a confiscation order against the defendant. Upon the issuance of an order for confiscation, the court shall specify whether the defendant shall need to pay the amount to be confiscated immediately, sometime in the future or via instalments. The court may also specify the period of imprisonment to which the defendant may be subjected in case timely payment is not effected.

25 Agencies

What agencies are responsible for tracing and confiscating the proceeds of crime in your jurisdiction?

The agency that is responsible for receiving, requesting and analysing suspicious transactions and other information relevant to money laundering in Cyprus is MOKAS. The powers conferred to MOKAS by the aforementioned legislation include conducting searches for locating and tracing proceeds of crime and other related property that may be the subject of a confiscation order, and executing confiscation orders pursuant to provisions of international conventions.

26 Secondary proceeds

Is confiscation of secondary proceeds possible?

The criminal confiscation regime in Cyprus is a value-based system, as a confiscation order does not attach particular assets or property received by the defendant. The process is rather that the court calculates the value of the benefit the defendant received as proceeds of crime, and issues a confiscation order for the confiscation of any available property of the defendant equalling the value of the benefit received as proceeds of crime. For the purposes of establishing the value of the benefit received by the defendant as proceeds of crime, the court will take into account any reinvestment or transformation of direct proceeds and any valuable benefit the defendant obtained as a result of the commission of crime.

27 Third-party ownership

Is it possible to confiscate property acquired by a third party or close relatives?

It is possible to confiscate any property of the defendant that is held by a third party or a member of his or her family where the same was unlawfully transferred to them by the defendant. Property is regarded as being unlawfully transferred where: • the defendant has transferred the property as a gift to a third party during the last six years before the commencement of the criminal proceedings against him or her or at any time after the commencement of the criminal proceedings against him or her; • the defendant has transferred as a gift to a third party property that the defendant has previously accepted as a gift for the commission of a primary criminal offence, which was committed by himself or herself or another; or • the defendant, has transferred property, directly or indirectly, to another who knows or ought to have known that the purpose of the transfer is to avoid the confiscation of the said property and this can be inferred from particular circumstances, including that the transfer was effected without consideration or with consideration that was significantly lower than the market price of the property.

In addition, in case no sufficient explanations have been provided for the manner in which members of the defendant's family acquired certain property during a summary inquiry process for ascertaining the benefit received by the defendant as proceeds of crime, the court is entitled to assume that any property owned by the defendant's family for which no sufficient explanations were provided, and which was transferred to members of the defendant's family during the preceding six years before the commencement of the criminal proceedings against the defendant, have been transferred to them from the defendant as gifts to avoid the law.

28 Expenses

Can the costs of tracing and confiscating assets be recovered by a relevant state agency?

The costs of MOKAS for receiving, requesting and analysing suspicious transactions and tracing proceeds of crime, inter alia, for the purposes of applying for confiscation orders are not recoverable. The costs of the court-appointed receiver for the purpose of executing a confiscation order in case the defendant does not comply with the same are paid with priority from the property confiscated by the receiver during the process of execution of the confiscation order.

29 Value-based confiscation

Is value-based confiscation allowed? If yes, how is the value assessment made?

The criminal confiscation regime in Cyprus is a value-based system, as a confiscation order does not attach particular assets or property received by the defendant. The process, as explained in question 26, is that the value of the benefit the defendant

received as a result of the commission of a criminal offence is estimated by the court and a confiscation order is then made for the confiscation of any available property of the defendant of that value.

30 Burden of proof

On whom is the burden of proof in a procedure to confiscate the proceeds of crime? Can the burden be reversed?

The burden of proof in a procedure to confiscate the proceeds of crime rests in general on the authorities applying for the order. However, and pursuant to article 7(2) of the Law 188(I)/2007, the applicant for the issuance of a confiscation order enjoys the benefit of the rebuttable presumption that any property obtained by the defendant after the commission of the primary offence or obtained during the preceding six years before the commencement of the criminal proceedings against him or her, constitutes income or payment or remuneration from the commission of the primary offence. The authorities, therefore, bear the burden of proving that property was obtained by the defendant after the commission of the primary offence or during the preceding six years before the commencement of the criminal proceedings against him or her; following which, the defendant bears the burden of proving that the property in question does not constitute proceeds from crime or that it would be unjust for the above presumption to apply in relation to the property in question, and that his or her realisable property is less than the proceeds he or she received from the commission of crime and thus that he or she does not have the necessary funds to satisfy the confiscation order.

31 Using confiscated property to settle claims

May confiscated property be used in satisfaction of civil claims for damages or compensation from a claim arising from the conviction?

The confiscated property cannot in general be used in satisfaction of civil claims for damages or compensation from a claim arising from the conviction. However, when imposing a sentence, a criminal court may order the payment of damages to a victim.

32 Confiscation of profits

Is it possible to recover the financial advantage or profit obtained through the commission of criminal offences?

Financial advantage or profit obtained as a result of the commission of the criminal offence for which the defendant was convicted may be subjected to confiscation.

33 Non-conviction based forfeiture

Can the proceeds of crime be confiscated without a conviction? Describe how the system works and any legal challenges to in rem confiscation.

A non-conviction confiscation order may only be made where the suspect is outside the jurisdiction or deceased. There is no other basis for non-conviction based confiscation and no legal framework for in rem confiscation.

34 Management of assets

After the seizure of the assets, how are they managed, and by whom? How does the managing authority deal with the hidden cost of management of the assets? Can the assets be utilised by the managing authority or a government agency as their own?

In case timely payment under the confiscation order is not effected by the defendant, the court may appoint a receiver to liquidate property owned by the defendant, take possession of the proceeds of the criminal offence, or execute a charging order by disposing, selling or liquidating the stocks and units of trust which are subject to the charging order. Accordingly, the property confiscated is under the management of the court-appointed receiver who holds, manages, sells and liquidates the same. After the conclusion of the liquidation process, the funds held by the receiver are applied against the amount payable under the confiscation order, provided the fees and expenses of the receiver are paid including the expenses for the management of the property. In case the liquidated proceeds of crime are not sufficient to satisfy the fees and expenses of the court-appointed receiver, the government pays the same.

35 Making requests for foreign legal assistance

Describe your jurisdiction's legal framework and procedure to request international legal assistance concerning provisional measures in relation to the recovery of assets.

By virtue of the Prevention and Suppression of Money Laundering Activities Law L 188(I)/2007, freezing, charging and confiscation orders issued by Cypriot courts in relation to property, located in a country outside Cyprus, are transmitted to the competent authorities of the said country for execution and service by MOKAS through the Ministry of Justice. Special procedures for the request of legal assistance may apply in accordance with bilateral or international conventions providing for mutual legal assistance between Cyprus and other states, which supersede the above-mentioned provisions of national law.

36 Complying with requests for foreign legal assistance

Describe your jurisdiction's legal framework and procedure to meet foreign requests for legal assistance concerning provisional measures in relation to the recovery of assets.

The Prevention and Suppression of Money Laundering Activities Law L 188(I)/2007 provides that a provisional order of a foreign court relating to the recovery of assets in the context of criminal proceedings may be enforced in Cyprus, following an

application for enforcement submitted by the state where the order was issued to the Ministry of Justice. The Ministry of Justice then forwards the application to MOKAS, who may then submit the order to a Cypriot court for recognition and registration if it deems that appropriate under the circumstances. Upon the registration of the order it becomes enforceable within the jurisdiction. Special procedures relating to the receipt of legal assistance requests may apply in accordance with bilateral or international conventions providing for mutual legal assistance between Cyprus and other states, which supersede the abovementioned provisions of national law.

37 Treaties

To which international conventions with provisions on asset recovery is your state a signatory?

The Republic of Cyprus is a signatory to the following international conventions: • United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988; • European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime 1990; • Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism 2005; • United Nations Convention against Transnational Organized Crime 2000; • United Nations Convention against Corruption 2003; and • European Criminal Law Convention on Corruption 1999.

38 Private prosecutions

Can criminal asset recovery powers be used by private prosecutors?

Criminal asset recovery powers cannot be used by private prosecutors. The Prevention and Suppression of Money Laundering Activities Law L 188(I)/2007 grants to MOKAS, which is a governmental agency headed by the attorney general, extensive powers for the purpose of receiving, requesting and analysing suspicious transactions and other information relevant to money laundering in Cyprus, including conducting investigations and exchanging information with governmental bodies and the police. Additionally, applications for the issuance of freezing, charging and confiscation orders may only be made by the attorney general, while asset disclosure orders may only be obtained following a public interrogator's request.

This content is solely for general information purposes. None of the information herein should be relied on or substituted for specific professional advice regarding a particular matter or situation and no person should act or refrain from acting on the basis of the information contained in this brochure without first obtaining advice from an attorney. A.G. Erotocritou LLC is not engaged in rendering legal services or advice by providing the information contained in this brochure. © A.G. Erotocritou LLC, a Cyprus lawyers' limited liability company regulated by the Cyprus Bar Association, with registration number HE 326006. Address: 1 Arch. Kyprianou and Ayiou Andreou Str, Loucaides Building, 6th floor, 3036 Limassol Cyprus