

ASSET RECOVERY

Cyprus



Asset Recovery

Consulting editors

Oren Warshavsky, Gonzalo Zeballos, Geoffrey North, Tatiana Markel, Michelle Usitalo

Baker & Hostetler LLP

Quick reference guide enabling side-by-side comparison of local insights into civil asset recovery (including jurisdictional issues, procedure, and remedies and relief); criminal asset recovery (including legal framework, cross-border considerations, and private prosecutions); and recent trends.

Generated 07 September 2023

The information contained in this report is indicative only. Law Business Research is not responsible for any actions (or lack thereof) taken as a result of relying on or in any way using information contained in this report and in no event shall be liable for any damages resulting from reliance on or use of this information. © Copyright 2006 - 2023 Law Business Research

Table of contents

CIVIL ASSET RECOVERY – JURISDICTIONAL ISSUES

Parallel proceedings

Forum

Limitation

Jurisdiction

CIVIL ASSET RECOVERY – PROCEDURE

Time frame

Admissibility of evidence

Witnesses

Publicly available information

Cooperation with law enforcement agencies

Third-party disclosure

CIVIL ASSET RECOVERY – REMEDIES AND RELIEF

Interim relief

Non-compliance with court orders

Obtaining evidence from other jurisdictions

Assisting courts in other jurisdictions

Causes of action

Remedies

Judgment without full trial

Post-judgment relief

Enforcement

Funding and costs

CRIMINAL ASSET RECOVERY – LEGAL FRAMEWORK

Interim measures

Proceeds of serious crime

Confiscation – legal framework

Confiscation procedure

Agencies

CRIMINAL ASSET RECOVERY – CONFISCATION

Secondary proceeds

Third-party ownership

Expenses

Value-based confiscation

Burden of proof

Using confiscated property to settle claims

Confiscation of profits

Non-conviction based forfeiture

Management of assets

CRIMINAL ASSET RECOVERY – CROSS-BORDER ISSUES

Making requests for foreign legal assistance

Complying with requests for foreign legal assistance

Treaties

CRIMINAL ASSET RECOVERY – PRIVATE PROSECUTIONS

Private prosecutions

UPDATE AND TRENDS

Emerging trends

Contributors

Cyprus



Andreas Erotocritou
andreas.erotocritou@erotocritou.com
AG Erotocritou LLC

EROTOCRITOU
ADVOCATES · LEGAL CONSULTANTS



Antreas Koualis
antreas.koualis@erotocritou.com
AG Erotocritou LLC



Irena Markitani
irena.markitani@erotocritou.com
AG Erotocritou LLC

CIVIL ASSET RECOVERY – JURISDICTIONAL ISSUES

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 on furthering civil proceedings in parallel with, or in advance of, criminal proceedings concerning 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, where parallel proceedings are promoted to exert undue pressure on a defendant for an ulterior purpose, such as achieving a settlement in a civil dispute, the furthering of parallel proceedings may be deemed abusive of the courts' powers and processes. Courts may refuse to entertain parallel proceedings with the same subject matter when those proceedings are found abusive.

It is important to clarify that the promotion of parallel proceedings is not regarded per se as abusive or oppressive conduct.

Law stated - 13 July 2023

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.

The Commercial Court, which has been established through the enactment of the relevant Law in May 2022 and is due to commence operating in the next months, will hear commercial disputes of high value, including cases with cross-border elements. Pursuant to the relevant Law, litigants may elect to confer jurisdiction to the Commercial Court even where the dispute has no connection to Cyprus while proceedings before the Commercial Court may be conducted in the English language.

Law stated - 13 July 2023

Limitation

What are the time limits for starting civil court proceedings?

Limitation periods for civil proceedings are mainly provided by the Limitation of Actions Law of 2012 (Law No. 66(I)/2012) and are as follows:

- tort: six-year 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-year limitation period from the date of accrual of the cause of action;
- mortgage or pledge: 12-year limitation period from the date of accrual of the cause of action;
- bill of exchange, etc: six-year limitation period from the date of accrual of the cause of action; and
- cause of action for which no particular provision is made: 10-year 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 claimant discovers or could, with reasonable diligence, have discovered the fraud or concealment.

Law stated - 13 July 2023

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

Also, district courts may acquire civil jurisdiction from specific legislation, international treaties and conventions, including Regulation (EU) No. 1215/2012 and the Brussels and Lugano Conventions, which supersede local laws.

The newly established Commercial Court will have jurisdiction over cases when:

- the cause of action occurred wholly or in part in Cyprus;
- the defendant resides or conducts business in Cyprus;
- the parties agree in writing to confer jurisdiction on the Commercial Court; or
- the jurisdiction of the Court is otherwise established by virtue of EU or international law.

The defendant can dispute a court's jurisdiction by filing a conditional appearance followed by an application to dismiss and set aside the proceedings, before taking any further substantive steps 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.

Law stated - 13 July 2023

CIVIL ASSET RECOVERY – PROCEDURE

Time frame

What is the usual time frame for a claim to reach trial?

A claim in a district court usually reaches trial within three to five years from the filing of the relevant action while delays have been caused as a result of the covid-19 pandemic.

The time that a case reaches trial depends on, inter alia, any interim proceedings, such as applications for interim orders, which may be pursued within the time frame of the main proceedings, and the procedural behaviour of the parties during the period leading up to trial.

A number of reforms have already been implemented or are underway in an effort to minimise the time required for a case to reach trial and ensure the efficient and fair disposal of cases.

In this context, a backlog initiative is currently in place that aims to prioritise the old cases that are yet to be heard.

Further, the Civil Procedure Rules have undergone a major revision in an effort to enable the courts to manage civil cases fairly and efficiently. The new Civil Procedure Rules, which are due to be implemented on 1 September 2023, are expected to reduce the amount of time it takes for a claim to reach trial.

In addition, the caseload of the district courts will be decreased once the new Commercial Court commences its operation, as the pending cases falling within its jurisdiction may be transferred to the Commercial Court upon the application of the parties.

Law stated - 13 July 2023

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 in court, provided it is relevant or connected to the matters at issue in the case.

Evidence that has been obtained by means contrary to the provisions of the Constitution of Cyprus and evidence covered by privilege is inadmissible. Evidence obtained by illegal means, but not in contravention of the Constitution, may be admissible.

Opinion evidence is inadmissible; however, expert evidence and expert opinions are admissible when they are required to determine an issue of a scientific or technical nature.

Law stated - 13 July 2023

Witnesses

What powers are available to compel witnesses to give evidence?

Any person within the jurisdiction of Cyprus may be compelled to appear in court to give oral evidence or furnish the court with documents, upon being served with a witness summons (namely, a written direction by the court to appear at a specified time and date to give evidence). The court may issue a witness summons on its own motion, or further to an application by any of the parties, at any stage of the proceedings.

Also, the court may order any person who is present in the courtroom to give evidence, irrespective of whether that person has any connection with the proceedings, and that person will thereafter be regarded as having been summoned before the court pursuant to a witness summons.

The above applies to compellable witnesses; the classes of persons not compellable are very few.

If a person who has been summoned to give evidence and has been given reasonable notice of the time and place where he or she should appear for this purpose, fails to appear before the court and does not give sufficient reason for his or her failure, he or she may be compelled to appear before the court pursuant to an arrest warrant. Also, that person will be liable to imprisonment or a fine and may be ordered to pay any expenses incurred as a result of his or her failure to appear in court.

If a person who appears before the court to give evidence, further to a witness summons or an arrest warrant, refuses to give evidence as requested and does not give sufficient reason for his or her refusal, he or she will be liable to imprisonment and a fine.

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 Registrar of Companies, which maintains records concerning limited liability companies and other legal entities registered in Cyprus, including details about their registered officers, registered address, shareholders and registered charges;
- the Intellectual and Industrial Property branch of the Registrar of Companies, 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 Cypriot flag are recorded, including 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 details of aircraft with Cypriot nationality are registered, including the owner and operator of the aircraft, and details of the aircraft; and
- the Road Transport Department, which holds details of the registered holders of licensed vehicles in Cyprus.

Law stated - 13 July 2023

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 through the normal routes of obtaining evidence in civil proceedings, such as by compelling witnesses to produce evidence at trial or through discovery proceedings pursuant to the Norwich Pharmacal jurisdiction.

Law stated - 13 July 2023

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 a court when the following conditions are met:

- wrongdoing was carried out, or arguably carried out, by an ultimate wrongdoer;
- the disclosure order is necessary to enable an action to be brought against the ultimate wrongdoer; and
- the person against whom the order is sought must:

- be involved to have facilitated the wrongdoing; and
- be able, or likely to be able, to provide the information necessary to allow the ultimate wrongdoer to be sued.

Pre-action disclosure orders are unavailable; however, the Supreme Court has recognised a litigant's right to raise proceedings against an innocent party solely to pursue the issuance of a disclosure order of the Norwich Pharmacal type.

Disclosure orders are normally sought together with gagging orders preventing the third party from notifying the ultimate wrongdoer of the disclosure proceedings and the prospective proceedings that may be brought against the ultimate wrongdoer.

Innocent third parties may also be compelled to give evidence as witnesses at trial.

Law stated - 13 July 2023

CIVIL ASSET RECOVERY – REMEDIES AND RELIEF

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?

Under section 32 of the Courts of Justice Law of 1960 (Law No. 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:

- there is a serious question to be tried at the hearing of the main proceedings;
- the applicant will probably 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 it deems necessary has been acknowledged by the Supreme Court.

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 courts:

- worldwide freezing injunctions prohibiting the respondent 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 respondent, but against whom there is no cause of action, from disposing of, dealing with or otherwise diminishing the value of the assets of the respondent 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 respondent where there is cogent evidence to suggest that this is necessary under the circumstances.

Regarding obtaining information from those suspected of involvement in fraud, the following types of orders have been recognised and are frequently issued by courts:

- ancillary disclosure orders for the disclosure of assets covered by freezing injunctions;
- Norwich Pharmacal orders for the disclosure of information that is necessary for instituting further 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 to search, locate, collect and preserve evidence.

Law stated - 13 July 2023

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 or the payment of a fine by anyone who does not conform to a court order, including an interim order.

Courts have also been willing to issue debarring orders, known as 'unless orders', preventing a non-compliant defendant from pursuing his or her defence until he or she complies with a court order.

Law stated - 13 July 2023

Obtaining evidence from other jurisdictions

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

A request by a Cypriot court to a foreign court for assistance in gathering evidence in that jurisdiction for civil proceedings pending in Cyprus may be made through letters rogatory or other letters of request, under the framework provided for in:

- Regulation (EU) 2020/1783 on cooperation between the courts of the member states in the taking of evidence in civil or commercial matters (where the foreign court is in an EU member state);
- the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (where the foreign court is in a state that is a signatory of the convention); or
- any other relevant international treaty or bilateral convention ratified by Cyprus.

Law stated - 13 July 2023

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 assist with civil asset recovery proceedings in other jurisdictions by granting interim protective measures in Cyprus in aid of those proceedings. Courts have been willing to issue interim protective measures in aid of foreign proceedings under provisions found in local and EU legislation, or other international treaties, expressly empowering the courts to do so (eg, article 35 of Regulation (EU) No. 1215/2012).

The courts' powers to grant interim protective measures in aid of foreign proceedings, in circumstances where the court is not expressly empowered to do so by legislation or an international treaty, has not yet been tested in Cyprus

but the Cyprus courts are known for following and adopting common law developments and, as such, may be willing to apply the recent Privy Council judgment on this *Convoy Collateral Limited v Broad Idea International Limited et al* [2021] UKPC 24 . Further, the new Civil Procedure Rules, which are due to be implemented on 1 September 2023, provide that interim protective measures may be issued in aid of foreign proceedings or in anticipation of foreign proceedings.

Courts may also assist with foreign proceedings by assisting in the gathering of evidence in Cyprus for the foreign proceedings, further to letters rogatory or other letters of request sent by the foreign court.

Also, it has been expressly recognised by the Supreme Court that disclosure orders under the Norwich Pharmacal jurisdiction can be sought in Cyprus to collect information to institute proceedings abroad.

Law stated - 13 July 2023

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 to defraud a claimant who was defrauded and as a result has suffered damage (codified under section 36 of the Civil Wrongs Law, Chapter 148);
- conspiracy to defraud (deceit): a cause of action founded in tort that covers situations where two or more persons have made an agreement, the real and predominant purpose of which was to injure the claimant and the execution of the agreement caused damage to the claimant by lawful means, or one of the purposes of the agreement was to injure the claimant and the execution of the agreement caused damage to the claimant through unlawful means (common law tort of deceit acknowledged in *Christoforou v Barclays Bank Plc* (2009) 1 AAD 25);
- breach of contract: a cause of action founded in contract law that covers substantial breaches of agreements as a result of which the claimant has suffered damage (codified by the Contracts Law, Chapter 149);
- fraudulent misrepresentation: a cause of action founded in contract law that covers situations where the defendant has presented an untrue fact as true that caused the claimant to conclude the contract (codified under section 18 of the Contracts Law, Chapter 149);
- breach of fiduciary duty and trust: a cause of action founded in equity that involves the breach of a fiduciary relationship between the claimant and the fiduciary, whether a trustee or another professional, which caused damage to the claimant as a result (codified under the Trustee Law, Chapter 193); and
- action for unjust enrichment: a cause of action that applies where the defendant has enriched himself or herself at the claimant's expense (usually failing a contract between the parties) and the enrichment is in all circumstances unjust (codified by sections 64–65 of the Contracts Law, Chapter 149; sections 68–72 of the Contracts Law, Chapter 149).

Equitable causes of action such as breach of trust may entitle the claimant to proprietary remedies.

Law stated - 13 July 2023

Remedies

What remedies are available in a civil recovery action?

In a civil recovery action, the usual remedy is an award for damages for the 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 circumstances, perpetual injunctive relief that prohibits the defendant from engaging in certain practices, or mandatory and specific performance orders for the performance of an action, may be issued.

As an alternative to the court awarding remedies to compensate the loss suffered by the claimant, the court may order the restitution of any gains, benefits and profits received by the defendant to the claimant, in an appropriate case where it deems this suitable and fair.

Apart from remedies granted in personam, courts, under their proprietary jurisdiction, may issue tracing orders for the recovery of property owned by the claimant, or impose a constructive trust over a property for his or her benefit.

Further, declaratory judgments may be issued on the rights and interests of the claimant, or obligations and liabilities of the defendant.

Law stated - 13 July 2023

Judgment without full trial

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

A default judgment may be issued against a defendant for failure to file an appearance or a statement of defence in an action. Before entering a default judgment, the claim shall normally be proved before the court, usually by the submission of an affidavit attaching all relevant exhibits.

Summary judgment is generally available in civil actions where the defendant does not satisfy the court that he or she has an arguable defence to the action on the merits or does not disclose facts that are deemed sufficient to entitle him or her to defend.

A summary judgment is unavailable where fraud is alleged by the claimant.

Law stated - 13 July 2023

Post-judgment relief

What post-judgment relief is available to successful claimants?

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, courts need to be satisfied that the necessary conditions have been met and that it is just and convenient in all circumstances for the interim orders to be issued.

Courts also have been willing, upon the issuance of a final judgment in proceedings, to extend pre-judgment interim orders (that would otherwise be automatically cancelled) post-judgment in aid of execution.

Law stated - 13 July 2023

Enforcement

What methods of enforcement are available?

A money judgment may be enforced in one or more of the following ways:

- writ of movables: permits the seizure of movable property owned by the judgment debtor, which 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), 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 legal charge on the title of immovable property located in Cyprus and owned by the judgment debtor that requires the settlement of the judgment debt upon the sale of the property;
- writ of sale: orders the sale of immovable property located in Cyprus and owned by the judgment debtor to apply the sale proceeds towards the judgment debt;
- charging order: attaches shares owned by the judgment debtor in a Cyprus company while an order for the sale of shares in satisfaction of the judgment debt is normally ordered simultaneously;
- order for the appointment of a 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, which 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 the property; and
- application for examination of judgment debtor: orders the judgment debtor to attend the court for examination to ascertain the amount he or she can pay per month in satisfaction of the judgment debt while an order for the repayment of the judgment debt through monthly instalments may be made thereafter.

A money judgment may be enforced outside the jurisdiction against property situated abroad under the provisions of Regulation (EU) No. 1215/12 , by way of a European Enforcement Order under the provisions of Regulation (EU) No. 805/2004 , by way of a European Order for Payment under the provisions of Regulation (EU) No. 1896/2006 , or under the provisions of another international treaty or convention ratified by Cyprus.

Law stated - 13 July 2023

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, those arrangements are in general not permissible because of offending the equitable principle against champerty (namely, 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 may be precluded from taking a share in the property recovered in the action under a conditional fee agreement or a damages-based arrangement.

Similarly, third-party funding is not available in Cyprus because of the application of the aforementioned principle of champerty, which, 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, the matter is not regulated and there is no case law or other precedent on the above.

Also, there is no regulated framework or availability of after-the-event insurance.

Where a party is in financial difficulty in 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.

Courts do not have any cost-management powers other than the power to make costs orders at the end of proceedings or stages in the proceedings. The court has wide discretion and power to grant different awards; however, the general rule is that the losing party bears the costs of the proceedings.

Costs orders are made based on fixed-fee scale rules that apply depending on the financial value of the claim. The rules set out in detail the minimum and maximum costs for each particular step and describe the service provided throughout the proceedings.

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 asset tracing actions where the value of the claim is very high and the work to be undertaken is substantial and complex.

Under the new Civil Procedure Rules, which are due to be implemented on 1 September 2023, the courts will have wider cost management powers to manage civil cases fairly and efficiently.

Law stated - 13 July 2023

CRIMINAL ASSET RECOVERY – LEGAL FRAMEWORK

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 courts is founded in the Prevention and Suppression of Money Laundering Activities Law of 2007 (Law No. 188(I)/2007) and the Criminal Procedure Law, Chapter 155 .

The Prevention and Suppression of Money Laundering Activities Law sets the framework for issuing interim freezing and charging orders concerning the realisable assets of a person where criminal proceedings for the commission of a primary offence or a money laundering offence (as defined in the legislation) have commenced or are about to commence against him or her in Cyprus; or the Unit for Combating Money Laundering and Unit of Financial Information (MOKAS) has information that creates a reasonable suspicion that criminal proceedings for the commission of a primary offence or a money laundering offence can commence or have commenced against him or her in Cyprus, an EU member state or in a foreign country, 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 or a money laundering offence.

Freezing injunctions prohibit any transactions with or any disposals of the realisable property or specified property, or both, 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 specified realisable property, comprising of 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 or a charging order, the court may appoint a receiver to take possession, manage or otherwise deal with the property affected by the freezing order.

Further, at any time after the issuance of a freezing order, the realisable property may be confiscated so that its transfer or moving outside Cyprus is prevented.

Also, following an application from a public interrogator, the court may issue a disclosure order for the provision of information concerning an offence under investigation, including information relating to the recovery of proceeds of crime.

Law stated - 13 July 2023

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?

A court that has convicted a person for a specified crime but that has not yet imposed a penalty for the conviction, further to a relevant application by the Office of the Attorney General, investigates whether the defendant has obtained any proceeds from illegal acts or the commission of a money laundering offence.

The Office of the Attorney General has the discretion to decide whether to apply for an investigation. The investigation is not triggered automatically for specified offences.

Law stated - 13 July 2023

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 provides the legal framework that regulates the confiscation of the proceeds of crime.

A confiscation order is issued regarding the product of a specified offence, which is in the possession of the defendant or a third party, or the defendant's proceeds from illegal acts or the commission of a money laundering offence, or both. The product of an offence is the financial advantage deriving directly or indirectly from a specified offence, including any investment or conversion of products and any major gain. Proceeds of the defendant from illegal acts or the commission of a money laundering offence are the total amount of payments or remuneration that have been paid towards him or her, or the product of the illegal acts or proceeds from illegal acts, including any investment or conversion of products and any major gain.

In ascertaining the amount of income obtained as a result of the commission of illegal acts or the commission of a money laundering offence, the court will assume, unless the contrary is proved or the court considers that there is a serious risk of injustice against the defendant to so assume, the following:

1. that any property obtained by the defendant after the commission of that offence, or obtained during the preceding six years before the commencement of the criminal proceedings against him or her, constitutes income, payment or remuneration from illegal acts or the commission of a money laundering offence;
2. that any property obtained by the defendant under (1) was obtained by him or her free of any charge or interest for the benefit of any other person; and
3. that any expenditure the defendant incurred during the period referred to in (1) was paid from the income, payment or remuneration the defendant obtained from illegal acts or the commission of a money laundering offence.

However, if the court considers that the amount of the defendant's property that can be realised is less than the amount that the court has calculated as proceeds from illegal acts or the commission of a money laundering offence, then the amount to be confiscated shall be the amount that can be obtained from the defendant's realisable property, including property in which the defendant has an interest or right and property of another person that the defendant has donated or transferred to that other person illegally.

Law stated - 13 July 2023

Confiscation procedure

Describe how confiscation works in practice.

Upon the conviction of a defendant, the Office of the Attorney General may apply to the court for an investigation of the defendant's proceeds from illegal acts or the commission of a money laundering offence, together with a report providing facts and evidence relevant to the defendant's proceeds, or the product of the illegal acts or the commission of a money laundering offence.

The defendant may dispute or admit the content of the report submitted by the Office of the Attorney General. If the defendant disputes the report, he or she will be required to submit a report in response, detailing the reasons for the dispute and presenting evidence relevant to the amount that may be confiscated from his or her realisable property.

The court may then fix a date to conduct the investigation.

Upon the conclusion of the investigation, the court issues a relevant judgment. If the court concludes that the defendant has obtained proceeds from the commission of illegal acts or a money laundering offence, it shall issue a confiscation order before imposing a penalty on the defendant.

Law stated - 13 July 2023

Agencies

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

The agency responsible for receiving, requesting and analysing suspicious transactions and other information relevant to money laundering is MOKAS. It provides the police and other governmental authorities with information whenever deemed necessary. Powers conferred to MOKAS by the Prevention and Suppression of Money Laundering Activities Law include conducting searches for locating and tracing the proceeds of crime and other property that may be the subject of a confiscation order.

If timely payment under the confiscation order is not effected by the defendant, the court may appoint a receiver, upon the application of the public prosecutor, to take possession of, or realise or liquidate the product of the illegal acts or the property subject to the confiscation order, or both.

Law stated - 13 July 2023

CRIMINAL ASSET RECOVERY – CONFISCATION

Secondary proceeds

Is confiscation of secondary proceeds possible?

The criminal confiscation regime 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 from illegal acts and issues a confiscation order to confiscate any available property of the defendant equalling the value of this benefit.

To establish the value of the benefit received by the defendant from illegal acts, the court will consider any reinvestment or conversion of proceeds and any valuable gain for the defendant as a result of the commission of a crime.

Law stated - 13 July 2023

Third-party ownership

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

Any property of the defendant that was unlawfully transferred or gifted to a third party or a member of the defendant's family is subject to confiscation.

Property is regarded as being unlawfully transferred or gifted as follows:

- where the defendant has transferred the property as a gift (or for consideration that is significantly less than the real value of the property) to a third party during the past 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;
- where the defendant has transferred as a gift (or for consideration that is significantly less than the real value of the property) to a third-party property that the defendant has previously accepted as a gift or otherwise for the commission of a primary criminal offence, which was committed by himself or herself or another; or
- where the defendant has transferred the product of crime, directly or indirectly, to another who knows or ought to have known that the purpose of the transfer was to avoid the confiscation of that 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.

Also, if no sufficient explanations have been provided for how 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 that 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.

Law stated - 13 July 2023

Expenses

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

The costs of the Unit for Combating Money Laundering and Unit of Financial Information for receiving, requesting and

analysing suspicious transactions and tracing proceeds of crime, inter alia, to apply for confiscation orders are not recoverable.

Costs of the court-appointed receiver to execute a confiscation order if the defendant does not comply with it are paid with priority from the property confiscated by the receiver during the execution of the confiscation order.

Law stated - 13 July 2023

Value-based confiscation

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

The criminal confiscation regime 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 from the illegal acts and issues a confiscation order for the confiscation of any available property of the defendant equalling the value of this benefit.

To establish the value of the benefit received by the defendant from the illegal acts, the court will consider any reinvestment or conversion of proceeds and any valuable gain the defendant obtained as a result of the commission of a crime.

Law stated - 13 July 2023

Burden of proof

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

Generally, the burden of proof in a procedure to confiscate the proceeds of crime rests on the Office of the Attorney General.

However, there is a rebuttable presumption that any property obtained by a defendant after the commission of an offence, or during the preceding six years before the commencement of the criminal proceedings against him or her, constitutes income, payment or remuneration from the commission of the offence. The Office of the Attorney General, therefore, bears the burden of proving that property was obtained by the defendant after the commission of the 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, that it would be unjust for the above presumption to apply or that his or her realisable property is less than the proceeds he or she received from the commission of the crime.

Law stated - 13 July 2023

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?

In general, confiscated property cannot be used in satisfaction of civil claims for damages or compensation from a claim arising from the conviction. At the same time, the issuance of a confiscation order does not preclude the victim or the complainant from raising a civil claim for damages against the defendant. However, the Office of the Attorney General may not apply for confiscation or proceed with the execution of a confiscation order where the victim or the

complainant has raised civil proceedings for damages against the defendant.

Law stated - 13 July 2023

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 a criminal offence for which the defendant was convicted may be subjected to confiscation.

Law stated - 13 July 2023

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 be made where the suspect cannot appear in court upon being charged with a specified crime by reason of fleeing or illness.

In addition, a non-conviction confiscation order may be made where a suspect is outside the jurisdiction or deceased and has not appeared in court further to a retention of property order being issued against him or her. A confiscation order is issued in that case provided that the prosecution has made reasonable efforts to find the suspect and opportunity has been given to any interested party to set out his or her views in court on the confiscation order to be issued.

It is noted that a retention of property order is issued against a suspect who is outside the jurisdiction or deceased, upon the application of the Attorney General, where the court is satisfied that there is prima facie proof against the suspect that he or she has committed a specified offence and his or her property may be converted or transferred or moved outside Cyprus to hide or cover up its illegal origin.

There is no legal framework for in rem confiscation.

Law stated - 13 July 2023

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?

The court may appoint a receiver, upon the application of the public prosecutor, to take possession of, or realise or liquidate the product of the illegal acts or the property subject to the confiscation order, or both, including to receive any realisable property of the defendant held by a third party and to execute a charging order by disposing of, selling or liquidating the property subject to the charging order. Accordingly, the property confiscated is under the management of the court-appointed receiver who holds, manages, sells and liquidates it.

Cyprus stocks may only be sold upon a relevant court order further to an application by the prosecution authority or the court-appointed receiver, by means of public auction (unless the court orders otherwise).

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. If the funds liquidated are not sufficient to satisfy the fees and expenses of the court-appointed receiver, the government pays the fees.

Law stated - 13 July 2023

CRIMINAL ASSET RECOVERY – CROSS-BORDER ISSUES

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.

Under the Prevention and Suppression of Money Laundering Activities Law of 2007 (Law No. 188(I)/2007), freezing, charging and confiscation orders issued by Cypriot courts concerning property located in a country outside Cyprus are transmitted to the competent authorities of that country for execution or service by the Unit for Combating Money Laundering and Unit of Financial Information (MOKAS) through the Ministry of Justice.

Regarding EU member states, the relevant order should be transmitted together with a prescribed form and can be transmitted directly by MOKAS to the relevant foreign authorities. In addition, freezing and confiscation orders falling within the scope of Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders are transmitted, recognised and enforced in a straightforward manner in accordance with the Regulations' detailed provisions.

Law stated - 13 July 2023

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 of 2007 (Law No. 188(I)/2007), provides that an order of a foreign court for confiscation, freezing or retention of assets may be enforced in Cyprus pursuant to international conventions in which Cyprus is a party, following an application for enforcement submitted by the requesting state to the Ministry of Justice. The Ministry of Justice then forwards the application to MOKAS, which may then submit the order to a Cypriot court for recognition and registration if it deems that all relevant conditions are met. Upon the registration of the order, it becomes enforceable within the jurisdiction as if it was issued by a Cyprus court.

Regarding EU member states, the relevant order of a foreign court should be transmitted together with a prescribed form and can be transmitted directly to MOKAS by the relevant foreign authorities. In addition, freezing and confiscation orders falling within the scope of Regulation (EU) 2018/1805 on the mutual recognition of freezing orders and confiscation orders are transmitted, recognised and enforced in straight forward manner in accordance with the Regulations' detailed provisions.

Special procedures for requests for legal assistance may apply to other specified states, following bilateral or international conventions, which supersede the provisions of national law.

Law stated - 13 July 2023

Treaties

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

Cyprus is a signatory to the following international conventions:

- the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances 1988;
- the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime 1990;
- the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism 2005;
- the United Nations Convention against Transnational Organized Crime 2000;
- the United Nations Convention against Corruption 2003;
- the treaty between the government of Cyprus and the government of the United States of America on Mutual Legal Assistance in Criminal Matters, 20 December 1999;
- the International Convention for the Suppression of the Financing of Terrorism, 9 December 1999;
- the European Criminal Law Convention on Corruption 1999; and
- the Trade and Cooperation Agreement between the European Union and the European Atomic Energy Community, of the one part, and the United Kingdom of Great Britain and Northern Ireland, of the other part, 30 December 2020 and specifically Part Three, Title XI.

Cyprus, as a member of the European Union, is also bound by a number of EU regulations and directives with provisions on asset recovery.

Law stated - 13 July 2023

CRIMINAL ASSET RECOVERY – PRIVATE PROSECUTIONS

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 of 2007 (Law No. 188(I)/2007) grants extensive powers to the Unit for Combating Money Laundering and the Unit of Financial Information to receive, request and analyse suspicious transactions and other information relevant to money laundering in Cyprus, including conducting investigations and exchanging information with government bodies and the police. Also, applications for the issuance of confiscation orders may only be made by the Office of the Attorney General, whereas asset disclosure orders may only be obtained following a public prosecutor's request.

Law stated - 13 July 2023

UPDATE AND TRENDS

Emerging trends

Are there any emerging trends or hot topics in civil and criminal asset recovery in your jurisdiction?

First, a Proposal for a Directive of the European Parliament and of the Council on Asset Recovery and Confiscation, which was published on 22 May 2023, aims to unify the rules on tracing, identification, freezing, confiscation and management of assets within the framework of proceedings in criminal matters across EU members states. This is currently being deliberated upon within the European Union.

Second, within the framework of the wider initiative for justice reform that is currently underway in Cyprus, a number of reforms have already been implemented or are underway that affect asset recovery exercises.

In that context, the Civil Procedure Rules have undergone a major revision in an effort to enable the courts to manage civil cases fairly and efficiently. The new Civil Procedure Rules were approved by the Supreme Court in May 2021 and are due to be implemented on 1 September 2023.

In addition, all civil proceedings filed from 1 February 2022 are filed through the i-justice platform while a permanent electronic platform, known as e-justice, is currently being developed and is expected to be put in operation for all cases in the near future.

Further, the two-tier court system has been replaced from 1 July 2023 by a three-tier court system, with the establishment of the new Court of Appeal and the division of the old Supreme Court to the Supreme Constitutional Court and the current Supreme Court. The new Court of Appeal acts as an appellate court with jurisdiction to hear and decide on appeals from first-instance courts while appeals from the Court of Appeal will be made either to the new Supreme Court or the new Supreme Constitutional Court, depending on the nature of the matter to be decided, provided an issue of public interest or importance arises or this is required in view of conflicting case law.

Also, the Commercial Court was established through the enactment of the Establishment and Operation of the Commercial Court and Maritime Court Law of 2022 (Law No. 69(I)/2022) in May 2022 and is due to commence operation in the next months.

The Commercial Court will hear commercial claims with a value of over €2 million, including disputes relating to, inter alia, the following:

- business contracts;
- the provision of services;
- the operation of capital markets;
- commercial agency; and
- disputes between regulated entities.


The Commercial Court will also have jurisdiction to try all cases relating to arbitration, competition and intellectual property, irrespective of the value of the claim.

Pursuant to the Establishment and Operation of the Commercial Court and Maritime Court Law of 2022 (Law No. 69(I)/2022) establishing the Commercial Court, litigants may elect to confer jurisdiction to the Commercial Court even where the dispute has no connection to Cyprus while proceedings before the Commercial Court may be conducted in the English language.

Hence, the Commercial Court is expected to take up a large volume of commercial cases with cross-border characteristics, within the framework of which applications for interim orders are usually pursued for asset recovery purposes.

Law stated - 13 July 2023

Jurisdictions

	Australia	Clayton Utz
	Cyprus	AG Erotocritou LLC
	Greece	ANAGNOSTOPOULOS
	Italy	Studio Legale Pisano
	Monaco	Donald Manasse Law Offices
	Portugal	Carlos Pinto de Abreu e Associados
	Singapore	Eugene Thuraisingam LLP
	Switzerland	LALIVE
	United Arab Emirates	Clyde & Co LLP
	United Kingdom	Stephenson Harwood LLP
	USA	Baker & Hostetler LLP