THE DISPUTE RESOLUTION REVIEW

Twelfth Edition

Editor
Damian Taylor

THE LAWREVIEWS

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TWELFTH EDITION

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PREFACE

The Dispute Resolution Review provides an indispensable overview of the civil court systems of 32 jurisdictions. It offers a guide to those who are faced with disputes that frequently cross international boundaries. As is often the way in law, difficult and complex problems can be solved in a number of ways, and this edition demonstrates that there are many different ways to organise and operate a legal system successfully, as well as overcoming challenges that life and politics throws up along the way. At the same time, common problems often submit to common solutions, and the curious practitioner is likely to discover that many of the solutions adopted abroad are not so different from those closer to home.

Sitting here in London at the start of 2020, we at least have a better idea of the immediate direction of travel for Brexit. The UK will have left the EU by the time this edition goes to print. The road has been long and twisting and it has thrown up novel problems of when politics and law clash head on. The Supreme Court in the UK – not so long ago having completed its metamorphosis from the old judicial committee of the House of Lords – confirmed that it was the ultimate check against the unlawful exercise of power by the Executive; declaring that Boris Johnson's advice to the Queen to prorogue Parliament was unlawful (see the case summary of *R (on the application of Miller) v. the Prime Minister* in the England and Wales chapter of this edition). Politicians cried foul. There was (and still is) talk of reassessing how Supreme Court judges are selected; talk of political appointments (as in the US) and a fundamental rewriting of the Constitution (except there cannot be, as no one has written it down in the first place). The same judiciary that is often praised for its independence and professional approach was at times along the tortuous road to Brexit branded in the media 'enemies of the people', part of the growing band of 'traitors' who allegedly opposed Brexit – that is despite all the judgments making clear that they were not deciding whether Brexit should happen or on what terms.

Looking back on events, far from the collapse of the Constitution, the year saw a reaffirmation of the constitutional balance of powers and the rule of law. The Supreme Court spoke and was respected. Parliament was recalled and took an October no-deal exit off the table.

But politics perhaps had the final say: an election was called later in the year, the people made their choice, and Mr Johnson's Conservative government was returned with a sufficient majority to 'get Brexit done'.

All this leaves me writing this preface five days before 'Brexit Day', after an exhausting 2019 in which clients have not known whether to plan for the 'May deal', 'No deal', 'Boris's deal', a referendum (on Brexit and/or Scottish independence), no Brexit, or the extensive nationalisation of private industries and tax rises outlined in Labour's manifesto. At least we now know at the end of it all that the UK will leave the EU on 31 January 2020.

That is not to say that everything will be plain sailing from now. The process of disentangling the UK from the EU legal and political framework will be long and complex. Fundamental questions remain. No doubt the Supreme Court will be called on to determine issues that no one had ever thought would need to be asked not so long ago. The transitional deal with the EU expires at the end of the year and the government's position is that it will not be extended. The same questions and uncertainties will surface as the clock ticks down if a deal is not apparent.

Whatever your views on Brexit, this is law in action. It happens every day of the year, but when the stakes are so large and politicised, the scrutiny so intense, it is hard not to see and feel it a little bit more. This edition therefore includes an updated Brexit chapter that charts the progress over the past year and what lies ahead.

There is of course much more to 2019 and beyond than Brexit – especially away from these shores (where it has occupied so much of Parliament's time, to the detriment of other legislative programmes). This 12th edition follows the pattern of previous editions where leading practitioners in each jurisdiction set out an easily accessible guide to the key aspects of each jurisdiction's dispute resolution rules and practice, and developments over the past 12 months. *The Dispute Resolution Review* is also forward-looking, and the contributors offer their views on the likely future developments in each jurisdiction. Collectively, the chapters illustrate the continually evolving legal landscape, responsive to both global and local developments.

Finally, I would like to express my gratitude to all of the contributors from all of the jurisdictions represented in *The Dispute Resolution Review*. Their biographies can be found in Appendix 1 and highlight the wealth of experience and learning from which we are fortunate enough to benefit. I would also like to thank the whole team at Law Business Research who have excelled in managing a project of this size and scope, in getting it delivered on time and in adding a professional look and finish to the contributions.

Damian Taylor
Slaughter and May
London
February 2020

Chapter 6

CYPRUS

Soteris Pittas and Kyriakos Pittas[1]

I INTRODUCTION TO THE DISPUTE RESOLUTION FRAMEWORK

Cyprus was a British colony until 1960 when the island became an independent republic. It was essentially the English legal system that applied to Cyprus whereby the applicable laws included the Constitution of Cyprus, the laws retained in force by virtue of Article 188 of the Constitution, the principles of common law and equity and the laws enacted by the House of Representatives. Following the accession of Cyprus to the European Union in 2004, the Constitution was amended so that EU law has supremacy over the Constitution and the domestic law of Cyprus. Moreover in 1960 the House of Representatives of Cyprus passed the Law referred to as the Courts of Justice No. 14/1960, which remains the backbone of the Cypriot legal system stating that 'the common law and the principles of equity shall apply, save where they do not coincide with or where they are in conflict with the Constitution of the Republic of Cyprus or where any law provides differently'.[2]

Like most legal systems, the judicial procedure in Cyprus can be divided into the criminal procedure, the civil procedure and the administrative procedure. As regards civil procedure the relevant applicable law is mainly the Civil Procedure Rules and the Supreme Court case law that is published online and accessible to everyone via the website www.cylaw.org. It is worth noting that the procedure with respect to the labour courts, rent control courts and the family courts is based on civil procedure.

There are two tiers of courts in Cyprus, the Supreme Court and the subordinate courts. In both civil and criminal proceedings there are no jury hearings. The Supreme Court, which comprises 13 members, one of whom is its president, is the highest court in the Republic of Cyprus. The Supreme Court acts as an admiralty court with jurisdiction to adjudicate on all admiralty matters both at first instance and on appeal, and has exclusive jurisdiction to issue the prerogative orders of certiorari, habeas corpus, mandamus, prohibition and quo warranto. It is also the final appellate court and has jurisdiction to hear and determine appeals in both civil and criminal cases from the other subordinate courts.

The five district courts, one for each geographical district, exercise initial criminal and civil jurisdiction. Assize courts are vested with unlimited jurisdiction to try all criminal offences and to impose punishment provided by the law. Family courts have jurisdiction in all family matters including divorce, custody disputes and any property divisions, while labour

1 Soteris Pittas is a managing director and Kyriakos Pittas is an associate lawyer at Soteris Pittas & Co LLC.

2 Section 29(i)(c) of Law 14/1960.

courts that are situated in Nicosia and Limassol exercise jurisdiction in claims concerning disputes between employers and employees. Besides the above, there are also three rent control courts exercising jurisdiction in claims relating to evictions, rent issues and premises.

II THE YEAR IN REVIEW

i Increasing the efficiency of the justice system

The great increase in the workload of the Cypriot courts in recent years, owing to, inter alia, the backlog of civil jurisdiction cases, coupled with limited use of information and communications technology in the Cypriot courts, has drastically influenced the efficiency of the Cypriot justice system.

Acknowledging the importance of having an efficient and effective justice system, the government has made the reform of the justice system a high priority and the following measures have been either implemented, or will be implemented, in 2020:

Filtering the right of appeal

Legislation was enacted providing for the filtering of the right to file an appeal in civil cases, as far as interlocutory decisions are concerned, during the proceedings; however, the parties are free to raise, at the stage of the appeal against the final decision, issues relating to any interim decision.

Administrative Court of International Protection

All cases involving international protection have been transferred from the Administrative Court to the recently established Administrative Court of International Protection, allowing the Administrative Court more time to deal with all other administrative cases. Decisions of the Administrative Court of International Protection are subject to appeals for exclusively legal grounds.

Commercial Court

It is expected that by 2020 a commercial court will be set up in Cyprus that shall have jurisdiction over matters including claims arising from contracts or disputes between companies, the purchase or sale of goods, the exploitation of oil or gas, the purchase or exchange of shares, intellectual property and insurance affairs. It shall deal with cases involving amounts exceeding €2 million. The seat shall be in Limassol and Nicosia, with five judges being appointed holding the title of District Court President. The commercial court will have a separate structure and will operate independently from the district courts.

The idea is to have a fast-track procedure that is completed within 18 months at first instance. The establishment of the commercial court is to increase the speed and efficiency of the system in Cyprus and is an attempt to attract further investment and companies to Cyprus as well as promoting Cyprus as an attractive and efficient dispute resolution centre. In October 2018, the bill aimed at the establishment of a commercial court was approved by the Cabinet and contains aspects relating to the court's defining structures, its jurisdiction, the qualifications required from judges who shall be appointed to conduct hearings, as well as the procedural guidelines and regulations of the court. This bill is expected to be presented before Parliament before the end of 2019.

E-Justice

E-Justice is one of the main and most important pending reforms of the judicial system. A tender was launched in March 2017 to purchase an electronic court administration system to digitise all the operations of the courts. The system is expected to be fully operational in mid 2020.

New code of conduct of Cypriot judges

The Cypriot Supreme Court has adopted a new code of conduct of Cypriot judges in its attempt to restrict issues of existence of conflicts of judges, in adjudicating cases raised before them. Pursuant to this new code of conduct, a judge is, inter alia, obliged to declare immediately the existence of any relationship he or she has with any of the parties to the dispute, including their lawyers, and to exempt him or herself from dealing with such case or dispute.

Training of judges and reform

A former judge of the Supreme Court has been appointed as the Director of Reform and Training. It is expected that a training school for judges within the Supreme Court will be established in 2020 and until its establishment, Cypriot judges are requested to attend seminars conducted by the Training Department of the Supreme Court.

Establishment of three tiers of courts

At this stage, Cyprus has two tiers of courts: the Supreme Court and the subordinate courts.

A bill has been prepared, which is expected to be adopted in 2020, for the creation of three tiers of courts: the Supreme Court, appellate courts and first instance courts.

The Supreme Court will consist of six judges and hear appeals on legal grounds filed against appellate decisions and it will act also as the Constitutional Court.

The appellate courts will consist of 15 judges who will create five appellate courts.

Reform of the Civil Procedure Rules

The Cyprus Civil Procedure Rules (CPR) have been reviewed by an expert group headed by former member of the English Supreme Court, Lord Dyson, and it is expected that in 2020 the existing CPR will be replaced and drastically changed by new rules of procedure, which will be similar to the existing English Civil Procedure Rules.

New Law for Certified Translation

Up to the end of June 2019, official translations in Cyprus were solely carried out by the Press and Information Office via its translators' associates, but things have changed since then.

The House of Representatives proceeded with the adoption of new legislation relating to certified translators, namely Law 45(I)/2019. The Law introduces the concept of a sworn translator, namely a private translator who performs certified translations as a sworn translator, particularly valid and accurate translations from a foreign language to Greek or Turkish, or vice versa. These translations are considered valid and accepted by the courts in Cyprus and the authorities of the Republic as they bear the seal of the Republic and are duly stamped. However, for a person to be considered as a sworn translator under the Law, he or she will need to be registered in the Registry of Sworn Translators and satisfy the conditions set out under Article 6 of the Law, which provide a clear description of the criteria that each

translator needs to fulfil and also hold. Responsibility for the maintenance of the Registry shall lie with the Council of Sworn Translators. Moreover, the procedure that needs to be followed to be successfully registered in the Registry of Sworn Translators is clearly set out by the law and will need to be followed.

Overall the introduction of the above law and the introduction of the Registry of Sworn Translators can be considered as a positive step in removing the need to obtain official translations solely by the Press and Information Office as was the case up until now.

ii Recent case law

The Supreme Court of Cyprus in *Re Finvision Holdings* granted a prerogative order of certiorari quashing an anti-suit injunction blocking a Cypriot company from filing any proceedings in any part of the world, except before the London Court of International Arbitration (LCIA).

The Supreme Court decided to quash and set aside the anti-suit injunction on the following grounds:

a The Cypriot courts do not have jurisdiction to grant an anti-suit injunction, pursuant to Section 9 of the International Commercial Arbitration Law (Law 101/87), which has adopted verbatim the UNCITRAL Model Law, in aid of LCIA proceedings filed by the respondent to the certiorari proceedings, because the term 'protective measures' contained in Section 9 of Law 101/87 does not include or cover an anti-suit injunction.

b The Cypriot courts did not have jurisdiction to grant any anti-suit injunction, because the competent courts were the English courts, in the jurisdiction of whom the arbitral proceedings filed by the respondents to the certiorari proceedings were conducted.

In *Iguasu Enterprises Ltd & Another v. Voice International Ltd & Another*, the District Court of Nicosia held that an arbitral award issued in an arbitration conducted in Cyprus, which was international and commercial, within the meaning of Article 2 of Law 101/87, was not a domestic award, but an international award, covered by the provisions of the New York Convention, and consequently capable of being recognised and enforced in Cyprus, as per the provisions of the New York Convention.

In a recent Supreme Court case, *Intersputnik International Organization of Space Communications v. Arlena Investments Ltd*, the Court examined whether the first instance judge, as was the allegation of the appellants, erroneously concluded that the requirements under Article IV(1)(a) were not fulfilled. In particular, the first instance court stated that a duly authenticated original award had not been submitted as the authenticity of the signatures and the seal of the arbitral tribunal had not been certified. In fact, what the appellants submitted was, as they argued, a duly authenticated original of the arbitral award since it bore the tribunal's seal and the signature of the arbitrators.

The Supreme Court, on the other hand, reversed the decision of the first instance court relying, inter alia, on the case of *Anthony Lombard-Knight v. Rainstorm Pictures Inc* (2014) EWCA Civ 356, in which the court held that an arbitral award is authentic when the document includes the original signatures of the arbitrators. Therefore, the conclusion of the Supreme Court was that since the document had the original signatures of the arbitrators and the official seal, no further certification was needed. Hence there was no room for challenging the validity of the award's authenticity.

This case serves as a relaxation from the stringent examination to be put on the requirements imposed by Article IV, which as stated in the well-known case of *Bristol Business Corporation v. Besuno Ltd* (2011) are imperative and substantial and need to be strictly satisfied.

In *OJSC Bank of Moscow v. Andrey Chernyakov and Others*, the District Court of Limassol dismissed an application for granting interim injunctions on the basis of Article 35 of EU Regulation 1215/12 in support of pending English proceedings filed by Bank of Moscow for the recognition and enforcement in UK of a Russian judgment issued against Mr Chernyakov, because the English proceedings for enforcement of a Russian judgment were not covered by the provisions of EU Regulation 1215/12 and the Cyprus court did not have jurisdiction to grant such interim relief.

The Cypriot district court decided that proceedings for enforcement of a foreign judgments filed before courts of Member States are not covered by the provisions of EU Regulation 1215/12.

III COURT PROCEDURE

i Overview of court procedure

The Civil Procedure Rules of Cyprus deal with all of the procedural steps for the trial of civil actions, and the relevant law with regard to evidentiary matters in the course of proceedings is the Evidence Law. Further to the above, different rules of procedure may also depend on whether, for example, Company Rules apply to a particular case or any other Rules.

ii Procedures and time frames

Before commencing proceedings one will need to examine the limitation or prescription periods for the filing of civil claims, a matter governed by the Limitation Law 66(I)/2012.[3] The said Law states the limitation period for civil wrongs,[4] contracts,[5] secured loans[6] and various other types of actions.

Once the above issue has been examined, then civil proceedings may either be commenced with the filing of an originating process that states the nature and extent of the claim made or the remedy or relief sought by the plaintiff. The forms of an originating process are the writ of summons, the application for originating summons and the petition. Most civil actions in Cyprus commence by a writ of summons having the form of either a writ with a general endorsement or a writ with a special endorsement. The difference is that the specially endorsed writ of summons has the statement of claim of the plaintiff providing a factual background whereas the generally endorsed writ has only a concise statement of the nature of the claim made and the relief sought. When a generally endorsed writ is filed, a statement of claim should be filed separately. With regard to originating summons, the body of the summons must include a statement of the questions on which the plaintiff seeks the court's determination of the relief or remedy claimed. Moreover, petitions are those related to the bankruptcy of individuals and winding up of companies.

3 Limitation Law 66(I)/2012.

4 Section 6 of the Limitation Law 66(I)/2012.

5 Section 7 of the Limitation Law 66(I)/2012.

6 Section 5 of the Limitation Law 66(I)/2012.

Following the determination of commencement for any action to be filed, legal proceedings in a district court are commenced when a writ of summons or an originating summons is filed and sealed. Actions filed by resident Cypriot plaintiffs must be accompanied by a retainer that demonstrates the appointment of the advocate, whereas this is not a requirement with regard to foreign resident plaintiffs. Following the above, the next step for the plaintiff is to serve the legal proceedings to the relevant parties to the action. Service nowadays under Order 5B of the Civil Procedure Rules is effected through private bailiffs approved by the Supreme Court of Cyprus for carrying out this type of service upon payment of a fee.[7] With regard to service upon foreign defendants to the action, the plaintiff is under an obligation to file an *ex parte* application in order to obtain the authorisation of the Court to serve the relevant party through methods that shall be included and supported by the plaintiff in the said application. The service of the writ of summons, or the notice thereof to the foreign defendants, is made in accordance with any multilateral or bilateral conventions concluded between the Republic of Cyprus and the country where such service is to be made. Customarily, this is effected through the Ministry of Justice of the Republic of Cyprus. In the absence of any such bilateral arrangement service may be effected by registered post, courier or any other method approved by court.

Copies of all of the relevant documents to be sent for service need to be stamped by the court registrar as true copies in order to be served accordingly and shall be accompanied by translations into the language of the country where the defendant resides. Particular importance lies in the service of a corporate entity whereby service must be effected either at its registered office to a person authorised to accept judicial documents or one of the company's directors or its secretary. Recently the Civil Procedure Rules, Order 5 Rules 9 and 10 have been amended, permitting substitute service via email, fax and other electronic means, methods that had not been permitted previously.[8]

Once service is effected, the defendant has to file a notice of appearance before the court within 10 days in cases of local defendants. Usually in cases of service out of jurisdiction orders, the court limits the time after such service or notice within which the defendant is to enter an appearance since in cases where the relevant parties fail to do so, an application for default judgment may be filed on behalf of the plaintiffs. In these circumstances the plaintiff proves his or her case before the judge in the absence of the defendant on an *ex parte* basis. If, however, the particular defendant disputes the jurisdiction of the court or wishes to apply to set aside of the service effected upon same, then the defendant may apply for leave to file a conditional appearance.

Where the writ of summons is specially indorsed the plaintiff may apply for summary judgment, meaning that upon appearance of the defendants, the plaintiff may apply to the court for judgment as per the amount claimed in the writ of summons unless the defendant satisfies the court that he or she has a good defence to the action. This procedure for summary judgment is normally used where it is obvious from the facts of the case and the evidence that the defendant has no real defence and has entered an appearance merely for the purposes of delaying the matter (i.e., claims under promissory notes, cheques, bill of exchange, etc.). In practice, if the defendant shows that he or she has some reasonable defence, summary judgment will not be entered and he or she will be allowed to file his or her defence.

7 Order 5B of the Civil Procedure Rules, Cap 6.

8 Order 5, Rules 9 and 10 of the Civil Procedure Rules, Cap 6.

Pleadings consist of the statement of claim, whether it be on special writ of summons or filed subsequently, the defence and counterclaim if any and the reply and defence to the counterclaim. In the statement of claim the plaintiff is required to set out the facts of the case on which he or she intends to rely upon in order to prove his or her cause of action. It is vital to note that evidence in such circumstances is never pleaded. The statement of defence must contain a reply to the various allegations contained in the statement of claim, setting the material facts on which the defendant relies for his or her defence. A counterclaim may also be filed together with the defendant's statement of defence. The next step is for the plaintiff to file its reply to the statement of defence answering any issues as a matter of response to the defence. Provided that the defendant's statement of defence also included a counterclaim then the plaintiff may also file the reply and defence to the counterclaim. The Civil Procedure Rules also provide for time frames upon which the parties need to abide in order to file their respective pleadings; however, in practice the parties do not follow the prescribed time limits. Usually each party may file an application before the court to obtain an order for extension of time to file the statement of defence, a practice commonly used in Cyprus courts and granted by the courts.

Once the pleadings have been closed, the case will be set for directions before the judge, who will give directions to the parties for, among others, matters such as the disclosure and discovery of documents and requests for further and better particulars. When all of the interim procedures have been concluded, the case shall be set for hearing and, depending on the availability of the court's schedule, usually it may take three to four years from the date of the filing of the action for the case to be adjudicated. During the hearing it is the duty of the plaintiff to prove his or her case on a balance of probabilities. The Civil Procedure Rules, particularly Order 33, provide for the procedure to be followed at trial.

Provided that the plaintiff's action is successful, he or she will need to take steps to enforce the judgment against the defendant, such as by the enforcement against movable or immovable property and third party enforcement orders against banks that hold the funds or the assets that belong to the particular judgment debtor. Orders 40–47 of the Civil Procedure Rules provide for the procedure and the method of effecting execution under a writ of movables or writ for the seizure and sale of movable property or for the issue of a writ of sale of immovable property. Provision is also made under Order 42A for the attachment and sequestration as well as Order 44 with regard to the power and duties of the bailiffs entrusted with execution and Order 45 with regard to receivers.

The issuance of interim orders before the Cyprus courts

The Courts of Justice Law 14/60, particularly Section 32, confers power on the Cyprus courts to grant an injunction 'in all cases in which it appears to the Court just or convenient so to do'.[9] The ability to grant interim orders secures satisfaction of any final court judgment or arbitral award, ensuring that for example property is not alienated or assets are not disposed of. The different types of interim orders include interim injunctions, freezing injunctions that may include ancillary disclosure orders, search order and disclosure or inspection orders, appointment of interim receiver, etc.

A plaintiff seeking to obtain the interim order will need to satisfy the court that there is (1) a serious question to be tried; (2) that there is a likelihood that the plaintiff will succeed

9 Section 32 of the Courts of Justice Law 14/1960.

in its claim; and that (3) it will otherwise be difficult or impossible to do justice at a later stage. The issuance of such an interim order lies within the discretion of the court taking into account all of the relevant conditions and by weighing the balance of convenience, whether damages are likely to be an adequate remedy to either party and the ability of the other party to pay as well as maintaining the status quo. Applications for such interim orders are filed usually on an *ex parte* basis; however, there are certain occasions when it is not adequate to file *ex parte* applications as there is no matter of urgency or exceptional circumstances that can be proved by the plaintiff and that gives jurisdiction to court to hear the application on *ex parte* basis. In such cases, the plaintiff opts to file an application by summons.

Generally under such interim order applications, the plaintiff needs to provide a strong affidavit supporting the said application because, besides the above three conditions to be proved, it also needs to illustrate and provide evidence regarding the risk of alienation or disposal of assets if the application relates to this aspect. Such evidence may be evidence that the defendant has already taken steps to remove or dissipate assets, past incidents of debt default by the defendant or even whether the evidence supporting the substantive cause of action discloses dishonesty or suspicion of dishonesty on the part of the defendant.

Cypriot courts have jurisdiction to issue interim injunctions in the context of civil proceedings pending in Cyprus or in aid and in support of international commercial arbitrations to be commenced or that are pending, either in Cyprus or abroad, as per Section 9 of Law 101/87 or in aid and in support of cases filed before courts of EU Member States (except Denmark), as per EU Regulation 1215/2012 or the Lugano Convention (i.e., Switzerland, Iceland, Norway and Denmark).

The Supreme Court of Cyprus (single judge) in a certiorari application decided to cancel an anti-suit injunction issued by a first instant court, pursuant to Section 9 of Law 101/87, in aid or in support of an international commercial arbitral case on the ground that such order does not constitute 'an interim measure of protection' within the meaning of Section 9 of the UNCITRAL Model Law.

iii Class actions

Class action lawsuits can be brought by a number of people, particularly where they share similar harm or the same issue in an action both in law and in fact, against another entity or person, as this is a form of collective redress. Cases involving class action lawsuits can include consumer fraud, or the haircut Cyprus cases by bank depositors or even cases where shareholders act on behalf of all other shareholders in an attempt to redress wrongs that have been committed against the company.

The English common law derivative action recognised and adopted by Cypriot law is one strong tool that minority shareholders can use to redress wrongs committed by the majority shareholders against their company.

iv Representation in proceedings

In Cyprus, physical persons may decide to either represent themselves in legal proceedings or opt to have an experienced lawyer act on their behalf. It very much depends on the financial ability of each litigant but also the type of case since, for example, for simple small claims cases many choose to represent themselves. Legal entities cannot be represented by their directors but only by lawyers.

v Service out of the jurisdiction

In Cyprus, the issue as to the service of proceedings is governed by the Civil Procedure Rules. Particularly, Order 5 deals with the service of the writ of summons and explains how service of the writ of summons is to be effected and thereafter considered as good service depending on the category of defendants in the particular action. Furthermore, Order 5B of the Civil Procedure Rules provides for service of court documents effected by private bailiffs approved by the Supreme Court of Cyprus. Besides the said Orders, Order 5A is also relevant when dealing with the service out of the jurisdiction of foreign defendants. Such an application must be supported by an affidavit or other evidence satisfying the court that the plaintiff has prima facie a good cause of action and showing in what place or country such defendant is or probably may be found, and whether such defendant is Cypriot or not, and the grounds upon which the application is made.

It is vital to note that there are mandatory methods of service depending on the country of residence of the defendant. For example, Cyprus has entered into bilateral treaties with, inter alia, Ukraine and Russia and hence the method of service provided by in the said Treaty or a Convention (such as the Hague Convention) will need to be followed. Usually service to Ukraine and Russia is completed via the Ministry of Justice. Moreover, service to EU Member States is governed via Council Regulation (EC) No. 1393/2007. Besides the above, on various occasions usually where the said defendant could not be found at the given address, the plaintiff is given the right as per the Civil Procedure Rules to file an *ex parte* application requesting an order of the court for the purpose to serve the said defendant by an alternative substitute service method such as by courier, email, Facebook messenger or even service via the local daily newspaper where the particular defendant is residing.

vi Enforcement of EU foreign judgments

All types of EU judgments issued by any EU Member State court are enforceable in Cyprus pursuant to the relevant EU Regulations. Of significance is the fact that the judgment creditor as the applicant is time barred based on actions to enforce a foreign judgment, which, pursuant to the Limitation of Actionable Rights Law of 2012, No. 66(I)/2012, become statute barred 15 years from the date on which the judgment became final.

For EU judgments that fall within the sphere of EU Regulation 44/2001 or the Brussels Recast Regulation 1215/2012, the judgment creditor must provide to the Cyprus courts, a certificate of authenticity for the judgment, issued by the court of origin, and a declaration of enforceability from the court of origin if filed pursuant to EU Regulation 44/2001 or the standard certificate issued by the court of origin pursuant to the applicable regulation pursuant to Article 53 of the Brussels Recast Regulation 1215/2012. As per the changes effected by the Brussels Recast Regulation 1215/2012 the judgment creditor will solely need to present a copy of the judgment and a standard form certificate and can then begin the enforcement process. It is worth noting that the procedure for the enforcement of judgments given in another Member State shall be governed by the law of the Member State addressed. As per Article 43 of the Brussels Recast Regulation 1215/2012, where enforcement is sought of a judgment given in another Member State, the certificate issued pursuant to Article 53

shall be served on the person against whom the enforcement is sought prior to the first enforcement measure.[10] The certificate shall be accompanied by the judgment, if not already served on that person.

Besides the above EU Regulations, EU judgments may also fall within the ambit of the European Enforcement Order Regulation No. 805/2004 creating a European enforcement order for uncontested claims. For applications filed pursuant to this EU Regulation, the judgment creditor must provide the European enforcement order issued by the competent authority in the country of origin. Automatic recognition and enforcement is allowed once a certificate is issued by the court of origin, following an application to the court of origin. Other EU Regulations include the EU Regulation No. 1896/2006 whereby the creditors have the choice to apply for a European order for payment. Such European order is recognised and enforced in all EU Member States (except Denmark) without the need for any intermediary proceedings in the EU country of enforcement or a declaration of enforceability, prior to its recognition and enforcement. EU Regulation No. 861/2007 is also applicable for the small claims procedure in cross-border litigation to civil and commercial matters for monetary claims of under €2,000.

Provided that the judgment creditor applies before the Cyprus courts for the enforcement of a foreign judgment, it will need to comply with certain formal requirements including providing:

a a complete and certified copy of the foreign judgment;

b if the foreign judgment was rendered by default, the originals or true copies of the documents required to establish that the summons was duly served to the judgment debtor;

c all documents required to establish that the foreign judgment is no longer subject to ordinary forms of review in the country of origin and, where appropriate, that the judgment is enforceable in the country of origin, unless indicated in the judgment itself; and

d unless otherwise provided for in a convention or treaty between Cyprus and a third country, all documents referred to above must be accompanied by a certified translation into Greek.

Cyprus is bound by bilateral treaties relating to the recognition and enforcement of foreign judgments with the Czech Republic,[11] Serbia,[12] Slovenia,[13] Slovakia, Ukraine,[14] Russia,[15] Bulgaria,[16] China, Greece,[17] Hungary, Poland,[18] Syria and Egypt. Further to the above, Cyprus is also a signatory to various multilateral conventions including the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters and

10 Article 43 of the Brussels Recast Regulation 1215/2012.
11 Ratifying Law 68/82.
12 Ratifying Law 179/86.
13 Ratifying Law 179/86.
14 Ratifying Laws 172/86 and 8/2005.
15 Ratifying Law 172/86.
16 Ratifying Law 18/84.
17 Ratifying Law 55/84.
18 Ratifying Law 10/97.

Supplementary Protocol of the European Convention on the Recognition and Enforcement of Foreign Arbitral Awards, and the New York Convention for enforcement of international arbitral awards.

In Cyprus, the rules that relate to the procedure for the recognition, enforcement and the execution of foreign judgments are contained in Law 121(I)/2000, a law that applies where the judgment issued is by a non-EU Member State or a country with whom Cyprus has concluded an agreement for mutual recognition and enforcement of both judicial judgments and arbitral awards. With regard to non-EU judgments from countries with which Cyprus has no bilateral treaty, the foreign judgment has no direct operation in Cyprus but it may be enforced by an action or counterclaim at common law. In such circumstances a judgment creditor has the option of bringing an action on the foreign judgment. The creditor may, in the meantime, also apply for interim relief (i.e., freezing orders) blocking assets held by the judgment debtor, etc.

vii Assistance to foreign courts

Assistance can be provided to foreign courts for among others the service of judicial and extrajudicial documents, the taking of evidence by witnesses or experts, the extradition of persons and the recognition and enforcement of court judgments or arbitral awards. Cyprus has entered into the Hague Convention on the Taking of Evidence Abroad in Civil and Commercial Matters as well as Council Regulation EC 1206/2001 on Cooperation between the Courts of the Member States in the Taking of Evidence in Civil and Commercial Matters.

viii Access to court files

Parties to an action are permitted to inspect or obtain copies of the pleadings that are filed before the court and kept in the court file. In order to do so, the relevant party who wishes to inspect or obtain copies will need to pay a small fee and fill in the details in the certification form which is located at the Registrar of the District Court the case is before. Thereafter the Registrar will hand the case file to the relevant party who will inspect and possibly obtain copies of any pleadings in the said case file.

Besides the parties to the action, any other interested party can obtain access to court files only provided that they file an *ex parte* application before the court explaining the reasons why they require access to the court file and what their interests are. In most cases permission is granted where such parties are allowed to intervene in the proceedings and added as parties or for collection of evidence to be used in pending or new cases to be filed.

ix Litigation funding

With regard to litigation matters the winning party is usually awarded an order for costs, and usually the losing party bears the costs of the winning party. The litigation is funded by the parties themselves while there is also the possibility of a party to request legal assistance from the state depending on his or her financial abilities. Another issue is also the third-party litigation funding whose legality has not yet been examined by the Cypriot courts but if it is examined, Cyprus courts will look for guidance from English and other common-law case law. In the context of litigation funded by third parties, the English courts have taken an increasingly liberal approach to the principles of champerty and maintenance.

IV LEGAL PRACTICE

i Conflicts of interest and Chinese walls

Qualified practising lawyers and trainees are subject to the Code of Conduct Regulations, which set out their legal duties with respect to their clients and the profession in general. As stated expressly under Article 21 of the Code of Conduct Regulations, advocates must not 'act as counsellors or representatives or advocates of more than one client in the same case, if there is a conflict of interests among the said clients or significant risk of such a conflict arising'.[19] Furthermore, even in cases where there is an issue as to conflict of interest, advocates must abstain from handling the cases of all concerned clients, since there is the risk of violation of secrecy or of prejudice to their independence.[20] The practical approach is for law firms who are approached by new clients to undergo a conflict of interest check before accepting and moving forward to any engagement agreement between the said client. If this is not complied with, then disciplinary actions can be initiated against the particular law firm. The Cyprus Securities and Exchange Commission regulates companies and includes Cysec Rules and Regulations establishing policies and procedures to manage conflict of interest that may arise.

ii Money laundering, proceeds of crime and funds related to terrorism

In an effort to combat money laundering and the financing of terrorists' activities and to increase transparency the European Commission issued the Fourth AML Directive 2015/849, which should have been fully implemented by all EU Member States including Cyprus by 26 June 2017. One of the main issues under the Fourth AML Directive is the identification of the beneficial owner, a matter that still has no place in Cyprus. Under the existing regime applicable in Cyprus banks, lawyers, accountants and other professionals are obliged to know the ultimate beneficial owners of entities they are dealing with, but with the register supervision will be made faster and simpler, if ultimately implemented by Cyprus.

Other issues covered by the Fourth AML Directive include:

a The creation of a national central register whereby Member States will be required to hold satisfactory, precise and up-to-date information on the beneficial owners of all corporate and other legal entities incorporated within their territory in a National Central Register. No such national central register has yet been created in Cyprus.

b The widening of the scope of obliged entities that is achieved by submitting gambling services to the Directive beyond casinos. Member States, having carried out a risk assessment, may exempt certain gambling services from some or all of the requirements laid down in this Directive but must provide justification for doing so and also notify accordingly the Commission.

c Introduction of provisions to facilitate cooperation between financial intelligence units.

d Enabling the financial intelligence units to identify holders of bank and payment accounts. The Commission proposes to require Member States to set up automated centralised mechanisms so as to swiftly identify holders of bank and payment accounts.

MOKAS is a unit for combating money laundering and its tasks include receiving, requesting, analysing and disseminating disclosures of suspicious transactions reports and other relevant information concerning suspected money laundering and terrorist financing. Furthermore,

19 Article 21(1) of the Code of Conduct Regulations.

20 Article 21(2) of the Code of Conduct Regulations.

the Central Bank of Cyprus is the main body that cooperates with MOKAS on any such issues. Other bodies that work with MOKAS include the Cyprus Bar Association, which is the supervisory authority of lawyers, and the Cyprus Association of Certified Public Accounts, which supervises all auditors and accountants licensed to practise in Cyprus. They cooperate with MOKAS in order to monitor the compliance of their members. The relevant law on the above matters in Cyprus is Law No. 58(I)/2010, which has replaced the Prevention and Suppression of Money Laundering Activities Law 2007 No. 188 (I) 2007.

V DOCUMENTS AND THE PROTECTION OF PRIVILEGE

i Privilege

Privileged documents are those that cannot be used as evidence and their admissibility may be challenged by the party who claims privilege. Documents considered as being privileged include a confidential document, a self-incriminating document or documents protected by legal professional privilege. There are two types of legal professional privilege, namely legal advice privilege and litigation privilege. Legal advice privilege protects communications between client and lawyer while litigation privilege protects communications between client and lawyer and even third parties in the context of reasonably contemplated or actual litigation. It is vital to stress that as a matter of Cyprus law, in-house lawyers are not members of the legal profession for the purposes of legal advice privilege and this position is very different from the United Kingdom where in-house lawyers enjoy the same privilege as external lawyers. Furthermore, documents holding the title of 'without prejudice' have in some cases been adjudicated before the Cyprus courts and been held admissible in evidence while the general rule is for them to be inadmissible.

ii Production of documents

Order 28 of the Civil Procedure Rules provides that a party to the proceedings may apply to the court for an order directing the other party to make discovery on oath of the documents that are or have been in his possession or power.[21] If a party ordered to make discovery of documents fails so to do, he or she shall not afterwards be at liberty to put in evidence on his or her behalf in the action any document he or she failed to discover or to allow to be inspected, unless the court is satisfied that he or she had sufficient excuse for so failing, in which case the court may allow such document to be put in evidence on such terms as it may think fit.[22] Additionally, documents that are referred to in pleadings need to be produced or if required admissible for inspection.

VI ALTERNATIVES TO LITIGATION

i Overview of alternatives to litigation

Litigation is the predominant method for resolving disputes in Cyprus; however, there is also an increased trend of the use of arbitration particularly relating to cross-border transactions and commercial matters and disputes relating to construction, insurance, shipping and trade.

21 Order 28(1) of the Civil Procedure Rules.

22 Order 28(3) of the Civil Procedure Rules.

Moreover, negotiation and mediation are methods used either before legal proceedings are initiated or during the period when proceedings are commenced for an amicable out of court settlement of a dispute.

ii Arbitration

Arbitration is progressively considered a more popular choice within the business community of Cyprus predominantly where the disputes involve complex technical issues or foreign parties since arbitration offers confidentiality, efficiency, less expense, faster adjudication of disputes, etc., and is conducted in an informal way that avoids the adversarial litigation system in Cyprus.

In Cyprus, arbitration proceedings are governed by two separate legal regimes. Domestic arbitration is governed by the 1944 Arbitration Law, which provides for the procedure to be followed. International arbitration is governed by Cypriot International Arbitration in Commercial Matters Law of 1987 (Law 101/87), which is identical to the United Nations Convention on International Trade Law Model Law on International Commercial Arbitration. It is vital to note that the route to arbitration lies with the parties who via their written agreement, choose and submit their disputes, and which gives discretionary powers to an impartial person specialising in the subject matter of the dispute to be resolved. The arbitral tribunal's decision on the given matter is final and binding and also enforceable. In particular, Cyprus has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards by Law 84/79 and therefore arbitral awards issued in Cyprus may be registered in and enforced in other states that are signatories to the New York Convention and vice versa.

Cyprus has satisfied the Washington Convention of 1965 concerning awards issued by the International Centre of Settlement of Investment Disputes.

The most prominent alternative dispute resolution centres in Cyprus are the Cyprus Eurasia Dispute Resolution Centre, the Cyprus Chamber of Commerce and Industry and the Cyprus Arbitration and Mediation Centre.

Cyprus courts have jurisdiction to issue interim measures of petition (e.g., freezing injunctions, etc.) in aid or in support of international commercial arbitration cases before the filing of the requests for arbitration or during the arbitral proceedings.

iii Mediation

Besides arbitration another commonly used method of alternative dispute resolution in Cyprus is mediation and is a method that is increasingly becoming popular. Mediation is a flexible, non-binding, private and confidential procedure that helps the parties to find common ground and work towards resolving their dispute by agreement. Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters has arguably given a boost to mediation and Cyprus has implemented this directive via Law 159(I)/2012. In Cyprus there is the Cyprus Mediation Association with its seat in Nicosia, which is an established society of experienced professionals who have been specially trained to provide high-quality mediation services in a variety of fields.

iv Other forms of alternative dispute resolution

Besides mediation and arbitration, there are also various other methods of dispute resolution available to parties including conciliation that is a non-binding procedure, similar to mediation that is considered as an extension of mediation in that it provides a non-binding opinion to the parties in cases where they are unable to agree with the third party.

VII OUTLOOK AND CONCLUSIONS

i EU General Data Protection Regulation

Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data took effect on 25 May 2018, being directly applicable in all Member States without the need for implementing national legislation.[23] The main amendments relating to personal data include:

a higher standards for obtaining the data subject's consent;
b profiling;
c broadening the meaning of personal data;
d significant sanctions;
e the duty to designate a data protection officer; and
f the obligation to notify the supervisory authority in the event of a personal data security breach.

ii Cyprus arbitration forum

A Cyprus arbitration forum – in the form of a limited by guarantee company – has been established. Its main aim is the promotion of the development of arbitration, as well as mediation in Cyprus. Furthermore, it will organise annual conferences and seminars both in Cyprus and abroad for the promotion of the use of Cyprus as a preferred venue for hosting international arbitrations, whether in ad hoc proceedings, or in proceedings administered under the rules of Cypriot arbitration institutions, as well as leading international arbitration institutions. It will also serve as a forum for carrying out educational work for use in arbitration and mediation as the best method and mechanism of dispute resolution. A Cyprus chapter of the European Court of Arbitration was recently launched – it aims to provide opportunities to Cypriot and foreign entrepreneurs to amicably resolve their differences in a fast and efficient way through specialised and experienced arbitrators. Its success will, without a doubt, attract citizens from other countries and in particular from neighbouring countries who choose Cyprus to resolve their commercial disputes. In this way, Cyprus will become well known as a reliable international centre of arbitration and mediation.

23 Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016.

Appendix 1

ABOUT THE AUTHORS

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Soteris Pittas & Co LLC

Mr Soteris Pittas graduated from Athens University in 1984, obtained his LLM (in commercial and corporate law) from the London School of Economics in 1988 and was admitted to the Cyprus Bar in 1989. From 1989 until 1994 he was an associate in the law firm of Andreas Neocleous & Co and from 1994 until March 2002 he was a partner and the leading litigation lawyer of the said law firm dealing with international trade law, trusts and equity, company and partnership disputes and all insurance and admiralty claims. Mr Soteris Pittas joined the firm of Patrikios Pavlou & Co Associates in April 2002 as a partner and was in charge of the commercial litigation and arbitration department of the firm until November 2009.

In December 2009, Mr Soteris Pittas established the boutique law firm Soteris Pittas & Co LLC and since then has been acting as the managing partner. His main fields of expertise include international trade law, trusts and equity banking and finance, company, corporate and commercial law (local and international), stock exchange, capital markets, mergers and acquisitions, commercial and criminal litigation, commercial litigation, arbitration, international tax planning, insurance law, admiralty and European law. Furthermore, Mr Soteris Pittas has been involved in numerous complex commercial litigation and arbitration cases, and in large cross-border litigation disputes.

KYRIAKOS PITTAS

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Mr Kyriakos Pittas obtained his LLB in 2017 from the University of Newcastle, United Kingdom. Subsequently, he completed in 2018 his LLM from Queen Mary University of London with a Distinction, specialising in the area of corporate and commercial law.

Kyriakos Pittas started his career by undertaking his training at the law firm of Soteris Pittas & Co LLC and upon completing the Bar exams in Cyprus in 2019, he continues as an advocate in the litigation department of the above law firm.

Kyriakos is an author of various articles on dispute resolution and corporate matters and he is a member of the Cyprus Bar Association.

His main areas of practice are in the field of corporate and commercial litigation, as well as international commercial arbitration, trust law, conflict of laws, mergers and acquisitions and insolvency law.

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