The Dispute Resolution Review

Sixth Edition

Editor
Jonathan Cotton

Law Business Research

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THE LAW REVIEWS

THE MERGERS AND ACQUISITIONS REVIEW

THE RESTRUCTURING REVIEW

THE PRIVATE COMPETITION ENFORCEMENT REVIEW

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EDITOR'S PREFACE

Building on the previous five editions under the editorship of my partner Richard Clark, I am delighted to have taken on the role of editor from him. *The Dispute Resolution Review* has grown to now cover 54 countries and territories. It is an excellent resource for those, both in-house and in private practice, whose working lives include involvement in disputes in jurisdictions around the world.

The Dispute Resolution Review was first published in 2009 at a time when the global financial crisis was in full swing. Against that background, a feature of some of the prefaces in previous editions has been the effects that the turbulent economic times were having on the world of dispute resolution. Although at the time of writing the worst of the recession that gripped many of the world's economies has passed, challenges and risks remain in many parts of the world.

The significance of recession for disputes lawyers around the world has been mixed. Tougher times tend to generate more and longer-running disputes as businesses scrap for every penny or cent. Business conduct that was entrenched is uncovered and gives rise to major disputes and governmental investigation. As a result of this, dispute resolution lawyers have been busy over the last few years and that seems to be continuing as we now head towards the seventh anniversary of the credit crunch that heralded the global financial crisis. Cases are finally reaching court or settlement in many jurisdictions that have their roots in that crisis or subsequent 'scandals' such as *LIBOR*.

The other effect of tougher times and increased disputes is, rightly, a renewed focus from clients and courts on the speed and cost of resolving those disputes, with the aim of doing things more quickly and for less, particularly in smaller cases. The Jackson Reforms in my home jurisdiction, the United Kingdom, are an example of a system seeking to bring greater rigour and discipline to the process of litigation, with a view to controlling costs. Whether such reforms here and in other countries have the desired effect will have to be assessed in future editions of this valuable publication.

Jonathan Cotton
Slaughter and May
London
February 2014

Chapter 11

CYPRUS

Eleana Christofi and Katerina Philippidou[1]

I INTRODUCTION TO DISPUTE RESOLUTION FRAMEWORK

Cyprus became an independent and sovereign republic on 16 August 1960. Before that it was a British colony and many features of the British legal system have remained embedded in the judicial system of Cyprus.

Prior to Cyprus's accession to the European Union in 2004, its Constitution was the supreme law of Cyprus, which provides, *inter alia*, for the separation of powers – with the judiciary being independent from the other branches of the government – and for the full protection of human rights and fundamental freedoms. Following Cyprus's accession to the European Union, European law is the supreme law of the Republic and the Constitution takes second place, and where inconsistencies exist between EU law and the Cyprus Constitution, the former will prevail. The supremacy of EU law has been recognised by the Constitution itself through an amendment effected for that purpose.

Cyprus is a common law jurisdiction and operates on an adversarial system. Most Cypriot law has been modelled after English common law, the basic principles of which are directly applicable by Cyprus courts, under Section 29 of the Courts of Justice Law. Administrative and constitutional law in particular is mostly influenced by Greek law. Cyprus's Contract Law and Sale of Goods Law were modelled after Indian law, whereas the Civil Wrongs Law is a codification of common law and the Criminal Procedure Law was based on English statutes.

The courts are bound by the doctrine of precedent, namely the superior courts' (second instance) decisions bind subordinate courts. Where there is no applicable Cypriot legislation, English common law and equity will be applied, and English authorities have persuasive force and in some cases may be considered binding law. Where, however, the

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common law has been interpreted by the Cyprus Supreme Court in a particular way, the subordinate courts will be bound by such interpretation. Cyprus's courts are divided into two tiers, the Supreme Court and the lower courts.

The Supreme Court has unlimited jurisdiction and its decisions when operating as an appeal court are final, unless overturned by the European Court of Human Rights and the European Court of Justice. It acts as appellate, admiralty and electoral court and has exclusive jurisdiction to issue prerogative orders (*habeas corpus*, *mandamus*, *certiorari*, *quo warranto* and prohibition). Appeals are usually heard by a panel of three judges except in cases where, due to the importance of the case, the hearing may take place before an enlarged panel. When the Supreme Court exercises its first instance jurisdiction (in all cases except when it acts as an appellate court), the case is heard by one judge.

The lower courts consist of courts of special jurisdictions: family law, rent control, industrial disputes and military courts. These courts try cases at first instance with a panel of one judge.

The assize courts try criminal cases at first instance with a panel of three judges.

District courts, which try all other civil cases at first instance and in specific circumstances criminal cases, have a panel of one judge. There are five district courts, one for each administrative district (i.e., Nicosia, Limassol, Larnaca, Paphos and Famagusta). District courts are made up of presidents judges with jurisdiction to try claims above €500,000, senior district judges with jurisdiction to try claims between €100,000–€500,000 and district judges with jurisdiction to try claims below €100,000.

All subordinate courts' judgments are subject to appeal at the Supreme Court.

There are no jury hearings in Cyprus and, unlike England, there is no distinction within the legal profession between barristers and solicitors.

Although alternative methods of dispute resolution (ADR) are increasingly being used in Cyprus for the adjudication of disputes, the majority of disputes are adjudicated in courts.

II THE YEAR IN REVIEW

i Christodoulou v. Central Bank of Cyprus a.o., Case No. 551/2013 (and other consolidated cases), Supreme Court judgment of 7 June 2013

The Supreme Court in its administrative jurisdiction issued its decision as to the preliminary objections raised by the Central Bank of Cyprus and the Cyprus Republic regarding a number of recourses filed before it by depositors who had lost their deposits within the context of the resolution of Laiki Bank and Bank of Cyprus, following the Eurogroup's March decision for rescue by means of the 'bail-in' method.

Interestingly, the Supreme Court rejected the depositors' position that the administrative orders were acts of government and decided that even if they were, the government would be held liable if proved that the depositors were placed in a worse position than they would be if the orders had not been issued.

It was further decided that the depositors had no *locus standi* to file recourses and should instead file actions before the district courts for damages; giving the green light to all suffering depositors, even those who failed or omitted to challenge the orders before the Supreme Court, to do so before the district courts. The Supreme Court stated that

the government cannot advance the defence of 'act of government' before the district courts.

Particularly, the Supreme Court held that:

> *The material rights of depositors of Laiki and BOC are not in the least affected by the view that they do not have locus standi to challenge the administrative actions and that their complains fall within the realm of the private rather than the public law. To the contrary, while an administrative review of the legality [of an administrative action] has a restricted scope, the civil procedures are particularly suitable for the examination of every aspect that may be relevant to the substantial matter. The question of jurisdiction should not, obviously be confused with the substance of the rights.*

Furthermore, the Supreme Court held that the depositors' rights derive from the contractual relationship between them and their Bank and that:

> *Where the debt/obligations of the bank towards its depositors are affected, the depositor should primarily turn towards the bank in any civil action, for its contractual default in repaying the deposit, with a possible claim against the Republic as having caused the breach of the contractual obligation by means of the Decree.*

Lastly, the Supreme Court recognised that the law itself created a legal right directly actionable at the district court level for a claim of damages arising out of the resolution of the banks. Such claim, while nominally also including the banks themselves, will be primarily a claim against the Central Bank of Cyprus, as the resolution authority and the Republic itself.

ii Application for certiorari 172/13, in relation to the application filed by Urals Energy Public Company Ltd

The Supreme Court, ruling as a court of first instance, clarified that since the enactment of Law 121(I)/2000 for the Recognition, Enforcement and Execution of Foreign Judgments, there is no room for doubt that an application for the enforcement and recognition of a foreign arbitral award must be made by summons, and not *ex parte*.

The Supreme Court judge in her reasoning referred to the provisions of Article III of Law No. 84/79, which ratifies the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, according to which 'each Contracting State shall recognise arbitration awards […] and enforce them in accordance with the rules of procedure of the territory where the award is relied upon…'. It was stated that in Cyprus, the relevant applicable law as to the Civil Procedure Rules (CPR) regulating applications launched for recognition of arbitration awards under the Convention, is Law 121(I)/2000: Section 5 of the said Law provides that an application by summons accompanied by an affidavit must be filed at the district court in accordance with the CPR. However, it was further stated that in cases where a judgment was issued and there was no opponent, the procedure may begin with an *ex parte* application.

iii In the Matter of the Application between Prime International Alliance Inc v. Erin Resources SA a.o. No. 799/12

The applicant and respondent 1 were shareholders of respondent 2 and parties to a shareholders' agreement in relation to the exercise of their rights in the company (SHA). On an alleged breach of the SHA and pursuant to the arbitration clause contained therein, respondent 1 proceeded with the initiation of arbitration proceedings to the LCIA against the applicants. Pending the proceedings, respondent 1 attempted to replace the existing directors of the company and applicant filed an application at the district court seeking interim orders in order to prevent the respondents from the above and to mandate them to adhere to the SHA's provisions until the full adjudication of the arbitration.

The court held that Article 9 of International Arbitration Law (L.101/87) allows any party of an arbitration procedure to apply to the court for an interim order at any time before or during the arbitration proceedings. However, the court held that the provisions of Article 9 of L.101/87 are required to be read in conjunction with the provisions of Article 32 of the Courts of Justice Law (L.14/60), which sets the requirements for when an interim order can be issued, *inter alia*, the existence of an actionable right and of a serious matter to be tried. The actionable right of the applicant would emanate from a counterclaim or a cross-action.

In the above case the applicant had not filed a counterclaim or a cross-action and the court held that they failed to demonstrate the existence of an actionable claim. The court interpreted the law so that the jurisdiction conferred upon it via Article 9 of L.101/87 should be exercised only when the requirements of Article 9 of L.14/60 were met.

It should be noted that this case is a district court case, and although it was decided by a president judge it does not bind the subordinate judges.

III COURT PROCEDURE

i Overview of court procedure

In Cyprus the courts follow and apply the procedural rules adopted for each type of court. The CPR apply to all district courts' civil procedures, in some instances *mutatis mutandis*. Additional procedural rules may be applicable depending on the type of the procedure, such as the Bankruptcy Rules or Companies' Rules. Evidential matters are handled according to the Evidence Law.

ii Procedures and time frames

The first thing to be examined before a litigant commences legal proceedings in Cyprus courts is whether his or her right has been time-barred by reason of statutory-based limitation periods. These were set out in the Limitation of Actions Law, which was suspended in 1964 by the Law of Suspension of Limitation of Actions of 1964. Since 2002 a number of laws 'revived' the limitation period but in practice they have not come into force yet.

The law that currently regulates the matter of limitation period is the Limitation of Actions Law 88(I)/2012, which came into force on 1 July 2012 with a transition period of one year. Recently its force has been suspended until December 2014.

Legal proceedings in a district court are initiated when a writ of summons or an originating summons is filed and sealed thereat. The writ of summons may be generally endorsed, containing only a list of the remedies sought, or specially endorsed, containing a statement of claim, providing the factual background. Where a generally endorsed writ of summons is submitted, a statement of claim should be filed separately.

All actions filed by Cypriot plaintiffs must be accompanied by a retainer proving the appointment of the advocate. However, this is not a requirement in relation to foreign plaintiffs.

Copies of the writ of summons should be stamped by the court registrar as true copies and be served on the defendant. Service on a corporate entity must be effected either at its registered office on a person who is authorised to accept judicial documents or one of the company's directors or secretary. Service is usually effected via a private bailiff, unless a leave for substituted service is obtained. A writ of summons shall not be in force for more than 12 months from the day of its issue, without a relevant renewal court order.

Upon service of the writ of summons, the defendant has 10 days to file an appearance and then a defence should be filed within 14 days.

Should the defendant fail to file an appearance within the prescribed time period, the plaintiff may apply for and obtain a default judgment. It is important to note that a defendant may file an appearance even outside the prescribed time period and that such filing blocks the issue of a judgment in default.

If the defendant files an appearance but not a defence, the plaintiff may file an application for issuance of judgment without conducting a full hearing.

Moreover, where the defendant files an appearance or a defence to a specially endorsed writ of summons, the plaintiff may – where appropriate – apply for a summary judgment on the ground that there is no defence to the action and the court will decide following a hearing.

When a defence is filed, the plaintiff may file a reply to the defence within seven days from its service.

If the defendant submits a counterclaim, the plaintiff must file a reply to the defence and a defence to the counterclaim within seven days from its service.

However, quite often the parties do not follow the prescribed time limits; thus the process takes longer to be completed as the time periods prescribed by the CPR may be and usually are prolonged by the court. The filing of the pleading out of time is considered an irregularity, but it is usually possible for a party to take steps to remedy such irregularities.

Once the pleadings are closed, the case will be set for directions before a judge, who will give directions to the parties for matters such as disclosure and discovery of documents, requests for further and better particulars, determination of facts agreed by the parties etc.

There is wide range of other applications that may be made before the hearing of the action commences (e.g., for the consolidation of actions, amendment of the pleadings

etc.). Notably, applications for amendment may be allowed even after the hearing begins, but almost any other application should be filed or entertained before the hearing.

Once all interim procedures are concluded, the case will be set for hearing and, depending on the court schedule, it may take approximately three years from the date of its filing to be heard.

At the hearing the plaintiff must prove his or her case on the balance of probabilities by adducing sufficient and admissible evidence as regards all allegations that are not admitted by the defendant; the same applies for the counterclaimant. The hearings are public, but in particular cases where secrecy is required (e.g., for protecting a minor) they are conducted privately. Following the conclusion of the hearing and the final addresses of the advocates, a judgment is issued.

The plaintiff, if successful, will need to take steps for enforcing the judgment against the defendant; such as enforcement against the moveable and immoveable property and third-party enforcement orders against banks holding money or assets belonging to the judgment debtor.

Interim remedies

A plaintiff or a defendant who is raising a counterclaim may, if it is deemed necessary and appropriate, file an application for interlocutory relief (e.g., a *Mareva* injunction, *Anton Piller* order, appointment of a receiver) either by summons or, in urgent circumstances, without notice. For a court to grant such a relief the following requirements must be met:

a there is a serious question to be tried;
b the applicant's claim has some prospect of success; and
c it will otherwise be difficult or impossible to ensure complete justice at a later stage;

The court will further examine whether it is fair and just for such an order to be issued, according to all surrounding circumstances. It is possible for the court to issue an interim order before a pleading has been filed on the basis of the evidential material in support of the application. When the application is made *ex parte*, the applicant must fully and frankly disclose all material facts to the court, even the respondent's possible defences.

iv Class actions

Class actions are permissible where the right of relief of the plaintiffs arises out of the same transaction, there is a common question of law or fact and it is advantageous or convenient to do so (e.g., for saving costs and time).

A current example of class actions are the recourses that were filed recently by numerous suffering depositors against the government, the Central Bank of Cyprus and the implicated banks, following the Eurogroup's decision for rescue by means of the 'bail-in' method.

v Representation in proceedings

It is possible, although uncommon, for litigants to represent themselves in legal proceedings.

It is more common for this to happen in criminal proceedings for minor offences (e.g., minor road traffic offences) and, more rarely, on a small claims scale.

In civil proceedings corporations may only be represented formally by a lawyer in court.

vi Service out of the jurisdiction

Documents initiating judicial proceedings may be served outside the jurisdiction of Cyprus on any person (natural or legal) pursuant to the provisions of Rule 6 of the CPR.

Where the defendant is a foreigner, the plaintiff must apply *ex parte* to court for leave to seal the writ of summons and then to serve a notice of the writ of summons to the defendant outside the jurisdiction. To that effect, the plaintiff should satisfy the court that he or she has a *prima facie* case, state the country in which the defendant may be found and whether or not the defendant is a Cypriot citizen. Where there is also a Cypriot defendant to the action, no permission for the sealing of the writ of summons is required.

Cyprus has entered into a number of bilateral and multilateral treaties and conventions for legal assistance in civil and criminal matters, providing for legal assistance in serving documents in the contracting parties' jurisdiction. In such cases, the requirements of the relevant treaty and of Rule 6 of the CPR must be complied with. Bilateral treaties have been entered into with, *inter alia*, the Czech Republic, the Slovak Republic, Hungary, Germany, Bulgaria, Greece, Syria, Russia, Ukraine, Belarus, Georgia, Serbia, Slovenia and China. Furthermore Cyprus, together with 67 other contracting states, has entered into the Hague Convention of 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

Service of judicial documents within Member States of the European Union must be effected pursuant to the provisions of Council Regulation (EC) No. 1393/2007.

In occasions where this is allowed, a plaintiff may be allowed by the Court to serve in an alternative manner through a mode of substituted service (through a letter or a private carrier, publication etc.).

vii Enforcement of foreign judgments

Foreign judgments issued by an EU Member State's Court can be recognised and enforced in Cyprus under the provisions of Council Regulation (EC) 44/2001 on the Jurisdiction, Recognition and Enforcement of Judgments in Civil and Commercial Matters, which provides for a simplified procedure, nearly automatic, entailing a typical check of the documents attached on the *ex parte* application for recognition. The party against whom enforcement is sought may appeal against the declaration of enforceability within a month's time (or two months if the said party resides abroad) from the service of the declaration of enforceability upon the said party. The procedure provided in the Regulation must be followed.

Enforcement of judgments can also be achieved via Council Regulation (EC) 805/2004, which creates a European enforcement order (EEO) for uncontested claims, offering significant advantages when compared with the procedure provided by Council Regulation 44/2001.

If a foreign judgment is issued by a court of a state with which Cyprus has entered into a bilateral or multilateral agreement for this purpose the provisions of the Treaty together with those of national law, namely the Foreign Judgments (Reciprocal Enforcement) Law 1935, must be followed.

The Cyprus courts cannot review a judgment as to its substance. The common denominators for refusing recognition and enforcement are, *inter alia*, jurisdictional matters, issues of public policy issues and *lis alibis pendens* and if the judgment is inconsistent with previously issued judgments between the same parties.

Enforcement of a judgment in Cyprus may take several forms, such as a writ of execution for the sale of moveable property, the registration of an encumbrance order (memo) over immoveable property, an execution of a writ of attachment by which money held in a bank account may be used for the payment of a judgment debt or particular execution measures with regard to the freezing or attachment of shares belonging to a judgment debtor.

viii Assistance to foreign courts

Cypriot Courts can provide various types of assistance to foreign Courts. Pursuant to Bilateral Treaties and Multinational Conventions which Cyprus has entered into with various countries, Cypriot Courts can assist in the service of judicial and extrajudicial documents, provide information regarding the Cypriot law and legal procedures, assist in the taking of evidence by witnesses or experts within their jurisdiction upon the request of a foreign court, recognise and enforce court judgments or arbitral awards and extradite persons. Cyprus has also entered into the Hague Convention of 15/03/1970 on the Taking of Evidence Abroad in Civil or Commercial Matters.

As a Member State of the European Union, Cyprus is also bound by Council Regulation (EC) 1206/2001 on Cooperation Between the Courts of the Member States in the Taking of Evidence in Civil or Commercial matters, which provides for a 90-day deadline for the execution of a request for the taking of evidence, hence facilitating the expeditiously assistance among Member States' courts.

ix Access to court files

Although the court procedure is usually a public procedure and anyone can observe it, only the parties to an action or matter are entitled to inspect or obtain copies of pleadings or documents filed in the court file kept by the court registry within the framework of the particular procedure and always in the presence of a court official. Any other interested party could proceed to a general search or inspection of the book of filings or obtain copies of documents in a court file or inspect the same, following an application to the court explaining in detail the reasons for his application or (in most cases) only if they are allowed to intervene in the proceedings and be added as parties.

The public can have access to the judgments of the Cypriot courts – both interim and final – via public websites.

x Litigation funding

The litigation is funded by the parties themselves and usually the losing party bears the costs of the winning party. There are instances where a party may request the provision of

legal assistance from the state where he cannot afford to pay the litigation costs without limiting the basic needs of himself and his family.

We are not aware of any instances of litigation funding by a disinterested third party.

IV LEGAL PRACTICE

i Conflicts of interest and Chinese walls

Lawyers who are members of the Cyprus Bar Association are subject to the Code of Conduct Regulations, setting out among other things the duties and obligations of lawyers towards clients. In particular, it is provided that lawyers must not act on behalf of two or more clients in the same matter if there is a conflict, or a significant risk of conflict, of the clients' interests. Lawyers should refrain from acting for a new client if there is a risk of breach of confidentiality. To this effect it is standard practice to conduct conflict checks before accepting to act for a client.

Non-compliance with any of the Code of Conduct Regulations, may lead to disciplinary actions for breaches against them. Therefore, there is little need for the use of mechanisms, employed by other companies, such as Chinese walls within legal firms.

The Chinese walls concept in Cyprus applies to companies regulated by the Cyprus Securities and Exchange Commission (CySec), which are required under the Laws and Regulations of the CySec to establish policies and procedures throughout their business to effectively manage any conflicts of interest that may arise while carrying on their business. For example, investment companies should take adequate steps to ensure that there is a clear distinction between the activities of different departments therein and ensure that no single person gathers conflicting information where the exchange of information may harm the interests of any client.

ii Money laundering

Cyprus enforced strict Anti-Money Laundering Regulations, ratifying International Conventions and harmonising domestic legislation with EU directives. The Prevention and Suppression of Money Laundering Activities Law L.188(I)/2007, as amended, implements the provisions of the Third Money Laundering Directive (2005/60/EC) and regulates the activities and services of professionals who, by virtue of their business activities, are in an exceptional position to assist money laundering.

Some of the lawyers' responsibilities under the Law are:

a the identification and reporting of suspicious transactions;

b the adoption of client identification and record keeping procedures and client due diligence in accordance with the Law;

c the retention of the relevant records for at least five years from the carrying out of the transaction or the end of the business relationship;

d the appointment of a money laundering compliance officer;

e the adoption of enhanced due diligence measures in relation to high-risk clients; and

f the adequate informing of the employees of the relevant principles and procedures for the prevention of money laundering and of the requirements provided by the Law as well as the ongoing training of employees.

The Cyprus Bar Association is the Supervisory Authority appointed for lawyers and, together with the Unit for Combating Money Laundering, is responsible for monitoring the compliance of the members under their supervision and taking measures against non-compliance.

V DOCUMENTS AND THE PROTECTION OF PRIVILEGE

i Privilege

Privileged documents cannot be used as evidence and their admissibility can be challenged by the party who can claim the privilege. Such documents include confidential communications between lawyers and clients for the purposes of litigation, documents that tend to self-incriminate and documents sent 'without prejudice'.

More specifically, communications between lawyers and clients are privileged where the lawyers' professional opinion or assistance is sought, whether it relates to court proceedings or not, and it is designed to protect the confidentiality of the lawyer–client relationship. Communications cover phone calls, face-to-face discussions, letters, e-mails etc.

The legal professional privilege applies to practising but not in-house lawyers, given that in-house lawyers, under Cyprus law, are not members of the Cyprus Bar Association.

This privilege can be separated into two categories, namely legal advice privilege (communications between clients and lawyers for obtaining legal advice) and litigation privilege (see below). Although different in scope, the basic principles applicable are the same.

The litigation privilege only arises when litigation is in prospect or pending. Any communications between the client and his lawyer, or between one of them and a third party, will be privileged if they are created for the sole or dominant purpose of either giving or getting legal advice with regard to the litigation or collecting of relevant evidence. The court will look at the purpose of the document objectively, taking into account all the circumstances.

The right to professional privilege can be waived only by the client or under certain circumstances in accordance with the Prevention and Suppression of Money Laundering Activities Law.

Documents of 'without prejudice' nature are generally inadmissible in evidence on grounds of privilege. Nonetheless, in recent Cypriot case law 'without prejudice' communications were considered as probably being admissible within the framework of an interim proceeding.

ii Production of documents

Under Order 28 of the CPR any party to a proceeding may request an order of the court with a relevant application ordering another party to disclose under oath the documents

that are or were in his or her possession and relate to the matters of the proceedings and to allow for their inspection. The court may order such disclosure on its own initiative. Where a party who has been ordered to proceed to such disclosure fails to do so, it will not be allowed to submit such documents into evidence.

Documents referred to in pleadings or in affidavits must be produced or allowed for inspection where the other party requests it in writing. If a document that is requested to be produced is claimed to be privileged, the court after inspecting it will decide whether it should be produced.

The parties should disclose all documents relevant to the matters of the litigation and that they plan to use during the hearing.

VI ALTERNATIVES TO LITIGATION

i Overview

The most common means of dispute resolution in Cyprus is litigation. Negotiation can take place either before the initiation of judicial proceedings or during the proceeding. However, alternative means of dispute resolution have been gradually and increasingly used, such as arbitration, mediation and conciliation. Many professionals have been training in these fields in order to obtain relevant qualifications and be able to offer such services to their clients, thereby promoting these methods of dispute resolution that have various benefits against litigation.

ii Arbitration

Arbitration has long been used as a means of dispute resolution for construction or building contract disputes and its use is mandatory in cases of disputes relating to cooperative institutes. Arbitration clauses have increasingly been used in all forms of contracts as the means of resolving disputes arising out of the contract. A dispute submitted to arbitration may be resolved quicker and more cost-effectively than one submitted to litigation.

Domestic arbitration is governed by the Arbitration Law, which provides, *inter alia*, for the procedure to be followed and for the powers of the arbitrator. The court also has specific powers such as the power to appoint an arbitrator under the provisions of the Law or issue orders for the security of costs, disclosure of documents, the maintenance or sale of goods that are the subject matter of the arbitration, security of the amount in dispute or other interim orders such as the appointment of a receiver.

Where there has been misconduct on the part of the arbitrator or referee, or the proceedings or an arbitration or award has been improperly procured, the Court may set aside the award.

Cyprus has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 by Law 84/79 therefore arbitral awards issued in Cyprus may be registered in and enforced in other states also signatories to the Convention and vice versa. Strict compliance with the provisions set by the New York Convention is required in order for a foreign arbitral award to be registered and enforced in Cyprus.

iii International arbitration

International arbitration is governed by the International Commercial Arbitration Law L.101/87, which is modelled after the UNCITRAL Model Law. L.101/87 provides for the procedure to be followed, the duties and powers of the arbitrator(s) and the circumstances where assistance from the national courts may be required, unless the above are not agreed by the parties. The national courts may issue interim orders in aid of arbitration.

If the parties have not agreed in their arbitration agreement the procedural law applicable to an international arbitration taking place in Cyprus, the procedural law will be L.101/87. Even if the parties have agreed to a different procedural law, L.101/87 may still come into play to fill gaps to the procedure or impose further duties or powers upon the arbitrators and the courts. Mandatory provisions of the national law must always be followed irrespective of which substantial or procedural law is adopted by the parties.

iv Mediation

Mediation is an ADR method to litigation. Unlike some other jurisdictions, mediation in Cyprus is not a compulsory step prior to resorting to court. It is a non-binding, private, confidential and low-cost procedure. Cypriot law 159(I)/2012 was passed to implement the Directive 2008/52/EC on mediation in civil and commercial matters.

It is a rather new concept in Cyprus and, according to the Cyprus Mediation Association 'there is strong opposition from legal circles who loathe mediation because it bypasses legal proceedings'. This is one of the least preferred methods of ADR, since the parties may feel somewhat insecure about resorting to it as its outcome depends on the parties' personal and business interests and common sense rather than the relevant law.

On the other hand, it may be argued that parties have little to lose by choosing mediation since, even if a settlement is not reached, the process facilitates the designation of the facts and issues of the dispute, thus preparing the ground for any potential court proceedings.

Mediation is particularly used in family and employment law cases and other small disputes.

v Other forms of alternative dispute resolution

Conciliation is a non-binding, very similar procedure to mediation. It is considered an 'extension' of mediation and when the parties are unable to agree, the third party can provide them with a non-binding opinion regarding the possible settlement terms. The conciliator's opinion is presented to the parties and, if not rejected, becomes a dispute resolution agreement.

VII OUTLOOK & CONCLUSIONS

It is important to see how the Cypriot courts will treat the civil actions now pending before them filed against, *inter alia*, the Republic of Cyprus, the Central Bank of Cyprus and the Bank of Cyprus (ex-Laiki Bank) regarding damages that occurred in the loss of the deposits following the 'bail-in' in March 2013, especially as regards the protection of constitutional rights, such as the right to property.

Furthermore due to the use of Cyprus companies in international corporate group structures there is a current trend involving actions regarding shareholder disputes and other corporate litigation matters. Court decisions on these matters may affect how corporate structures involving Cyprus companies operate, as well as how international investors may use a Cyprus entity in the future. Also, litigation is initiated in Cyprus in aid of arbitration proceedings, usually to obtain prohibitive or other interlocutory orders, again for the same reason as above.

Appendix 1

ABOUT THE AUTHORS

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Eleana Christofi is an advocate in the litigation and dispute resolution department of Patrikios Pavlou & Associates LLC. Eleana received an LLB degree from Lancaster University in 2007 and she continued her studies to obtain an LLM in International Business Law from the University of Manchester in 2008. Then she returned to Lancaster University for a postgraduate degree in management and graduated with an MSc in 2009. When she finished her studies she came to Cyprus and was admitted to the Cyprus Bar Association in 2010. Eleana is the co-author of the Cyprus chapter on money laundering in the *Cyprus Law Digest 2012*. Eleana is fluent in Greek and English.

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