ICLG

The International Comparative Legal Guide to:

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Cyprus

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1 Arbitration Agreements

1.1 What, if any, are the legal requirements of an arbitration agreement under the laws of your jurisdiction?

The only requirement under the main laws applicable to arbitration (see below) is that the arbitration agreement has to be a written agreement to submit present or future disputes to arbitration and, under common law principles, this agreement has to be clear and certain. An agreement is deemed to be in writing if it is contained in a document signed by the parties, or in the exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other. An arbitration agreement may be in the form of an arbitration clause duly incorporated into a contract, or standing on its own as a separate agreement. The same requirement for a written arbitration clause can be found in section 2(2) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (hereafter "**NYC**") which has been ratified in Cyprus by the Ratification Law 84/1979 (hereafter "**Ratification Law**").

1.2 What other elements ought to be incorporated in an arbitration agreement?

Under common law and case law principles, the arbitration agreement has to be clear and certain as to the intention of the parties to submit all or any present or future disputes to arbitration. Other than that, the parties are free to include the seat and language of the arbitration, the number and powers of arbitrators and the procedure for their appointment, the applicable law, and any Rules or Regulations the parties wish to apply to the arbitration. Failure to agree any of these elements will only allow default provisions to operate and will not invalidate the agreement.

1.3 What has been the approach of the national courts to the enforcement of arbitration agreements?

The Courts are inclined to enforce an arbitration agreement where it is clear and certain that the intention of the parties was to submit their disputes to arbitration. The Courts also have the power to stay a civil action upon the request of a party, where the dispute it relates to is covered by an arbitration agreement and the power to refer such a claim to arbitration, unless sufficient reason is shown as to why the matter should not be referred to arbitration. Regarding domestic arbitrations, such requests may be refused if the action relates to allegations of one party being guilty of fraud or where the arbitrator named in the arbitration agreement is not impartial.

2 Governing Legislation

2.1 What legislation governs the enforcement of arbitration proceedings in your jurisdiction?

The enforcement of arbitration proceedings in Cyprus is governed by the 1944 Arbitration Law, Cap.4 (hereafter "**Cap.4**") and the International Arbitration in Commercial Matters Law 101/1987 (hereinafter "**ICA Law**").

Cyprus is also a party to the NYC (see question 1.1 above) which was ratified by the Ratification Law. In addition, the Foreign Courts Judgments (Recognition, Registration and Enforcement) Law of 2000 (Law 121(I)/2000) provides for the procedural steps to be followed by a party wishing to have a foreign award recognised and enforced in Cyprus.

2.2 Does the same arbitration law govern both domestic and international arbitration proceedings? If not, how do they differ?

Cap.4 applies to domestic disputes which the parties agreed to refer to arbitration, while the ICA Law applies exclusively to international commercial disputes and gives the national Courts extensive powers when dealing with domestic arbitration issues.

An arbitration is considered "international" if the parties had their place of business or relevant commercial relations in different countries when they entered into the contract and "commercial" if it relates to matters that arise from relationships of a commercial nature, whether contractual or not. The ICA Law has been modelled after the UNCITRAL Model Law and gives a greater emphasis on party autonomy whilst only allowing judicial intervention in the particular circumstances provided for in the ICA Law.

2.3 Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?

The ICA Law has adopted the UNCITRAL Model Law of 1985 in its entirety except for the fact that the ICA Law contains a definition as to which arbitration is deemed to be "international" and "commercial".

2.4 To what extent are there mandatory rules governing international arbitration proceedings sited in your jurisdiction?

Generally, the ICA Law is drafted in a way which respects the freedom of the parties to the arbitration to agree on matters relating to the conduct of the international arbitration. Mandatory rules are limited to issues relating to the issue of the arbitral award, the challenge of its validity and its recognition and enforcement by the national Courts.

3 Jurisdiction

3.1 Are there any subject matters that may not be referred to arbitration under the governing law of your jurisdiction? What is the general approach used in determining whether or not a dispute is "arbitrable"?

Criminal matters, matrimonial and family matters, disputes concerning minors and disputes with public policy implications are non-arbitrable in Cyprus. In addition, a Tribunal will have limited powers to make orders which affect the status of a Cyprus Company such as a winding up order or rectification of a company's register of members, though the substantive dispute may be arbitrable.

3.2 Is an arbitrator permitted to rule on the question of his or her own jurisdiction?

Under Article 16 of the ICA Law, the Tribunal is competent to determine its own jurisdiction and to rule on matters regarding the validity or existence of the arbitration agreement. There is no similar provision in Cap.4; however, case law recognises the competence of the Tribunal to rule on its own jurisdiction.

3.3 What is the approach of the national courts in your jurisdiction towards a party who commences court proceedings in apparent breach of an arbitration agreement?

Under Cap.4, such court proceedings may be stayed and referred to arbitration by the Court upon the application of a party, if the Court is satisfied that there is no sufficient reason why the dispute should not be referred to arbitration and that the applicant was, at the time of commencement of the proceedings and still remains ready and willing to do all things necessary for the proper conduct of the arbitration.

Under the ICA Law, the Court is obliged to refer such proceedings to arbitration upon the request of either party which is made before the submission of its pleadings, unless the arbitration agreement is found to be null, void or incapable of being enforced.

3.4 Under what circumstances can a court address the issue of the jurisdiction and competence of the national arbitral tribunal? What is the standard of review in respect of a tribunal's decision as to its own jurisdiction?

Under the ICA Law, the Tribunal has the power to decide on its own jurisdiction, it can do so either via an interim judgment or via the arbitral award. In the first instance, within 30 days from the issue of the interim judgment, a party may appeal such judgment before the Court and the judgment of the Court will be final. In the second instance, the matter of jurisdiction will be reviewed at the stage of the request for recognition and enforcement, under the exhaustive list of possible objections to the recognition of the award.

The review which is made from the Court is supervisory and will not proceed to an in-depth examination or contemplate the merits of the dispute.

Under Cap.4, the review of the jurisdiction of the Tribunal may fall under the reasons provided in Article 20(2) for the annulment of the arbitral award due to the fact that the proceedings were conducted or the award was issued irregularly.

3.5 Under what, if any, circumstances does the national law of your jurisdiction allow an arbitral tribunal to assume jurisdiction over individuals or entities which are not themselves party to an agreement to arbitrate?

The Tribunal does not have jurisdiction over individuals or entities who are not parties to the arbitration agreement and who do not submit themselves to the arbitration proceeding with the consent of the other parties.

Third parties, however, can be summoned to appear before a Tribunal for the purposes of testifying or producing documents. Third parties cannot be compelled to produce any documents that they would not be compelled to produce at trial.

3.6 What laws or rules prescribe limitation periods for the commencement of arbitrations in your jurisdiction and what is the typical length of such periods? Do the national courts of your jurisdiction consider such rules procedural or substantive, i.e., what choice of law rules govern the application of limitation periods?

Under both laws, the limitation acts applicable to litigation also apply to arbitral proceedings. For example, a dispute for breach of contract must be raised within six years from the date of the alleged breach.

Any term in an arbitration agreement to the effect that no cause of action shall accrue in respect of any matter required by the agreement to be referred to arbitration until an award is made under the agreement, will be disregarded for the purposes of the law regarding limitation periods and a cause of action will be deemed to have accrued at the time when it would have accrued, but for that term in the agreement.

Rules on limitation periods are considered procedural rules and must be raised and pleaded by the parties.

3.7 What is the effect in your jurisdiction of pending insolvency proceedings affecting one or more of the parties to ongoing arbitration proceedings?

Cap.4 provides that where a term for the submission of disputes to arbitration is included in an agreement to which one of the parties is bankrupt, such an agreement is enforceable against him if the trustee in bankruptcy adopts the agreement. Furthermore, if the above provision does not apply, the trustee in bankruptcy or any other party to the agreement may apply to the court for an order directing that any disputed matter covered by the agreement should be referred to arbitration in accordance with the arbitration agreement.

4 Choice of Law Rules

4.1 How is the law applicable to the substance of a dispute determined?

The parties to an international commercial arbitration are free to choose for themselves the law applicable to the substance of the dispute. In the case that no choice of law has been made by the parties, the Tribunal will apply the law determined by the conflict of laws rules which it considers applicable.

4.2 In what circumstances will mandatory laws (of the seat or of another jurisdiction) prevail over the law chosen by the parties?

There is no developed Cypriot case law on this matter yet; however, there is a decision of the ECJ which suggests that matters of European competition law would need to be taken into account even if the substantive law chosen by the parties were not a European national law. In addition, mandatory Cyprus Company Law provisions will prevail in cases dealing with the existence, winding up and administration of a Cyprus Company.

4.3 What choice of law rules govern the formation, validity, and legality of arbitration agreements?

If the parties made an express choice of law to govern the arbitration agreement, that would be effective. In the absence of an express choice of law, the Courts will examine whether the parties have made an implied choice of law, and, if not, the Courts will apply the law with the "*closest and most real connection*" with the arbitration agreement. This will often be the law of the seat of arbitration.

5 Selection of Arbitral Tribunal

5.1 Are there any limits to the parties' autonomy to select arbitrators?

No, there are no such limits.

5.2 If the parties' chosen method for selecting arbitrators fails, is there a default procedure?

There is a default procedure for the selection of arbitrators in Cap.4, and the Court will make the relevant appointment in the case that the parties' fail to agree.

A default procedure is also set out in ICA Law regarding international arbitrations where the appointment of either one or three arbitrators is provided for in the arbitration agreement but where the parties do not reach an agreement regarding the appointment, the Court may proceed with the appointment following an application by either party.

5.3 Can a court intervene in the selection of arbitrators? If so, how?

Regarding Cap.4, where the parties do not agree for the appointment of a single arbitrator or two arbitrators do not agree for the appointment of an umpire or third arbitrator, or where an appointed arbitrator or umpire refuses or is incapable of acting or dies and a replacement has to be appointed, any of the parties may serve to the other party or to the arbitrators depending on the case, a written notice for the appointment of arbitrator, umpire or third arbitrator and where such an appointment does not occur within the next seven working days, then upon the application of the party serving the notice, the Court may appoint an arbitrator, umpire or third arbitrator.

The Court also has the power to remove the arbitrator(s) or umpire upon an application by a party and appoint another person to act as arbitrator(s) or umpire if the arbitrator or umpire fail to use all reasonable dispatch in entering on and proceeding with the arbitration proceeding or on grounds of misconduct.

Regarding international arbitrations, the Court can intervene in the manner set out in question 5.2 above.

5.4 What are the requirements (if any) as to arbitrator independence, neutrality and/or impartiality and for disclosure of potential conflicts of interest for arbitrators imposed by law or issued by arbitration institutions within your jurisdiction?

Cap.4 does not provide any requirements in this respect but it sets outs the power of the Court to remove an arbitrator upon an application of either party if it is shown that the said arbitrator is not impartial.

The ICA Law provides that any person who is requested to be appointed as arbitrator has to disclose any circumstances which are likely to give rise to justifiable doubts as to his impartiality or independence. The arbitrator is under the same obligation following his appointment and until the completion of the arbitration proceeding.

Case-law has entrenched the requirement that the arbitrator must be impartial and independent of the parties.

6 Procedural Rules

6.1 Are there laws or rules governing the procedure of arbitration in your jurisdiction? If so, do those laws or rules apply to all arbitral proceedings sited in your jurisdiction?

There are no specific procedural rules which apply in international commercial arbitrations and parties are free to agree on the procedural rules which will be followed. Usually, the parties will agree to adopt the rules of arbitral institutions, such as the ICC or the UNCITRAL Arbitration Rules, which provide an overall framework within which to operate.

Regarding domestic arbitrations governed by Cap.4, in the absence of any applicable rules on the matter, the current Civil Procedure Rules apply *mutatis mutandis*.

6.2 In arbitration proceedings conducted in your jurisdiction, are there any particular procedural steps that are required by law?

No; see the answer to question 6.1 above.

6.3 Are there any particular rules that govern the conduct of counsel from your jurisdiction in arbitral proceedings sited in your jurisdiction? If so: (i) do those same rules also govern the conduct of counsel from your jurisdiction in arbitral proceedings sited elsewhere; and (ii) do those same rules also govern the conduct of counsel from countries other than your jurisdiction in arbitral proceedings sited in your jurisdiction?

All Advocates practising in Cyprus, including those from other EU member states, are bound by the Advocates' Law, Cap.2 and the Advocates' Code of Conduct Regulations of 2002, which set out various rules of professional conduct and ethics.

These rules also govern the conduct of Cyprus Advocates in proceedings anywhere in the world.

6.4 What powers and duties does the national law of your jurisdiction impose upon arbitrators?

In international commercial arbitrations, the ICA Law imposes a duty to arbitrators to remain impartial and independent throughout the arbitration proceedings. Parties must be granted equal rights and obligations as well as opportunities to present their case. Article 14 provides that an arbitrator may be replaced if he becomes *de jure* or *de facto* unable to perform his functions or in the event that he fails to act without undue delay. Article 17 provides that, in the absence of an agreement of the parties, the Tribunal has the power to issue interim protective measures relating to the subject matter of the dispute. Article 26 also gives the arbitrators powers to call experts to provide evidence relating to the dispute and Article 31 sets outs certain legal requirements as to the form and substance of the arbitral award.

Similarly, in domestic arbitrations, arbitrators have a duty to conduct the arbitration and issue the award with impartiality, due diligence and expedition. Cap.4 gives power to the arbitrators to administer oaths, to appoint expert witnesses, to request the production of documents for inspection, to apply to the Court to resolve any legal issues that may arise during the arbitration and to correct errors made in the wording of the arbitral award.

6.5 Are there rules restricting the appearance of lawyers from other jurisdictions in legal matters in your jurisdiction and, if so, is it clear that such restrictions do not apply to arbitration proceedings sited in your jurisdiction?

The Advocates Law, Cap.2, allows EU nationals who meet the requirements stated therein to offer their services within the Republic of Cyprus with the same rights and duties as a Cypriot lawyer. Non-EU nationals may appear in such arbitration proceedings upon obtaining a special work permit from the Ministry of Labour.

6.6 To what extent are there laws or rules in your jurisdiction providing for arbitrator immunity?

There are no laws or rules which provide for arbitrator immunity.

6.7 Do the national courts have jurisdiction to deal with procedural issues arising during an arbitration?

In international commercial arbitrations, procedural matters are determined by the procedural rules chosen by the parties. The Courts may only intervene in situations expressly provided for in the ICA Law (e.g. for the replacement of an arbitrator, assistance in taking evidence, etc.).

For domestic arbitrations, Cap.4 provides for certain circumstances where the Courts have jurisdiction to deal with procedural issues as set out in question 7.2 below.

7 Preliminary Relief and Interim Measures

7.1 Is an arbitrator in your jurisdiction permitted to award preliminary or interim relief? If so, what types of relief? Must an arbitrator seek the assistance of a court to do so?

Under the ICA Law, in the absence of an agreement by the parties to the contrary, a Tribunal has the power to order interim protective relief against any of the parties with regard to the subject matter of the dispute and can request guarantees from any of the parties regarding such relief. The Tribunal does not need the assistance of the Court to issue such protective interim relief.

7.2 Is a court entitled to grant preliminary or interim relief in proceedings subject to arbitration? In what circumstances? Can a party's request to a court for relief have any effect on the jurisdiction of the arbitration tribunal?

In international arbitrations, the Court has the power under Article 9 of the ICA Law, to order the issuance of protective measures at any time either before the initiation of the arbitration proceeding or during, which are considered in support of and are issued in parallel with the arbitration proceedings. They usually relate to the protection of the subject matter of the arbitration proceeding. Such interim measures can also be issued under Article 35 of the EU Regulation 1215/2012 in support of the arbitration proceedings, under particular circumstances and requirements.

In domestic arbitrations, the Court has the power to issue various types of preliminary or interim relief whilst arbitration proceedings are pending, such as orders regarding (i) security of costs, (ii) discovery of documents and interrogatories, (iii) the taking and preservation of evidence, (iv) the maintenance, temporary keep or sale of any of the goods which are the subject matter of the arbitration, (v) securing the amount of the dispute, (vi) the detention, preservation or inspection of any property or thing which is the subject of the arbitration, and (vii) other interim relief or appointment of a receiver.

The above do not affect the jurisdiction of the Arbitral Tribunal.

7.3 In practice, what is the approach of the national courts to requests for interim relief by parties to arbitration agreements?

The Courts do issue interim relief in aid of arbitration proceedings, if the rest of the requirements provided by the applicable laws regarding the granting of interim relief are satisfied.

7.4 Under what circumstances will a national court of your jurisdiction issue an anti-suit injunction in aid of an arbitration?

A national court, following EU case law, cannot issue an anti-suit injunction restraining court proceedings commenced in another EU Member State, but could issue such an injunction regarding proceedings commenced in a non-Member State.

7.5 Does the national law allow for the national court and/or arbitral tribunal to order security for costs?

In domestic arbitrations, the Court has the power to order security for costs. The laws do not specifically provide for such a power regarding the Tribunal, but it may be provided to them by the Rules applicable to the arbitration.

7.6 What is the approach of national courts to the enforcement of preliminary relief and interim measures ordered by arbitral tribunals in your jurisdiction and in other jurisdictions?

Since preliminary relief ordered by Tribunals are not final in the sense that they do not adjudicate on the rights of the parties to the dispute and are not enforceable by themselves. However, a party may apply to the national court for the issue of an interim relief or injunction, mirroring the provisions of the relief issued by the Tribunal, if the rest of the requirements set out by the applicable laws for the issue of interim relief are satisfied.

8 Evidentiary Matters

8.1 What rules of evidence (if any) apply to arbitral proceedings in your jurisdiction?

The only provision found in the ICA Law regarding evidence is Article 19(2) which provides that, in the absence of an express agreement of the parties, the Tribunal is free to determine the admissibility, relevance, materiality and weight of any evidence brought before it.

Regarding domestic arbitrations governed by Cap.4, in the absence of any applicable rules on the matter, the current Civil Procedure Rules apply *mutatis mutandis*.

8.2 Are there limits on the scope of an arbitrator's authority to order the disclosure of documents and other disclosure (including third party disclosure)?

The Tribunal may order the disclosure of any documents which are deemed to be relevant to the subject matter of the dispute between the parties. As to third party disclosure, see question 3.5 above.

8.3 Under what circumstances, if any, is a court able to intervene in matters of disclosure/discovery?

Regarding international commercial arbitrations, Article 27 of the ICA Law provides that the Tribunal or a party with the approval of the Tribunal may request the Court's assistance in taking evidence. The Court may execute the request within its competence and according to the rules governing the production of evidence.

Additionally, Article 26 gives power to the Tribunal to appoint experts to report to it on specific issues to be determined by the Tribunal.

Regarding domestic arbitrations, article 17 of Cap.4 provides that any party to the arbitration agreement may apply to the Court requesting the issue of witness summons requiring third parties to appear for examination or to produce any documents which they would normally be compelled to produce for the purposes of a trial in a civil action.

8.4 What, if any, laws, regulations or professional rules apply to the production of written and/or oral witness testimony? For example, must witnesses be sworn in before the tribunal or is cross-examination allowed?

The ICA Law gives wide freedom to the parties to agree on the rules as to the production of evidence and the conduct of the hearings within the framework of the arbitration. Hearings may either be oral or document-based. In the absence of an agreement of the parties as to the conduct of the hearing or the production of the evidence, the Tribunal is free to decide on these matters as it thinks fit.

Pursuant to the provisions of Cap.4, an arbitrator in domestic arbitration has the power to administer oaths or to take the affirmation of the parties and witnesses of the arbitration proceedings.

8.5 What is the scope of the privilege rules under the law of your jurisdiction? For example, do all communications with outside counsel and/or in-house counsel attract privilege? In what circumstances is privilege deemed to have been waived?

All communications between professional legal advisers and their clients related to the dispute are covered by professional privilege and may not be used as evidence within the framework of litigation or arbitration proceedings. Moreover, communications between an advocate and a third person are also privileged if they are conducted for the purposes of pending or anticipated litigation or arbitration proceedings.

Such privilege is only waived with the consent of the client or in certain circumstances where the advocate-client relationship aims at committing an illegal act or offence or where the provisions of Prevention of Money-Laundering Activities Law 61(1)/1996 apply.

9 Making an Award

9.1 What, if any, are the legal requirements of an arbitral award? For example, is there any requirement under the law of your jurisdiction that the Award contain reasons or that the arbitrators sign every page?

Cap.4 does not provide for any legal requirements other than that the award has to be in writing.

The ICA Law provides that the arbitral award has to be issued in writing and be signed by the members of the Tribunal. If it is a multi-member Tribunal, having the award signed by the majority of members will suffice; however, the omission to sign by the other members has to be justified in the award. The arbitral award has to be duly reasoned, unless it is an award which sets out a settlement of the dispute by the parties. The arbitral award has to state the date of its issue and the seat of arbitration.

9.2 What powers (if any) do arbitrators have to clarify, correct or amend an arbitral award?

Under Cap.4, unless the parties have agreed otherwise, the arbitrator has the power to correct any typing mistake or error to the arbitral award which was the result of an oversight or omission.

Under the ICA Law, within 30 days from the notification of the arbitral award to the parties or within another agreed deadline, any of the parties with a relevant application can: (a) call the Tribunal to proceed to the correction of errors of calculation, typing errors or

other errors of similar nature; or (b) if there is a relevant agreement of the parties, call the Tribunal to interpret or clarify the interpretation of a particular point or part of the arbitral award. If the Tribunal deems the application justified, it will proceed to the relevant correction or interpretation within 30 days from the notification of the application. The interpretation will form an integral part of the award. The Tribunal can also proceed by its own volition to the amendment of the mistakes mentioned in (a) above.

Also, upon an application by a party made within 30 days from the notification of the award and if the Tribunal deems such an application justified, the Tribunal may issue a supplementary award regarding the claims submitted to arbitration.

10 Challenge of an Award

10.1 On what bases, if any, are parties entitled to challenge an arbitral award made in your jurisdiction?

Regarding domestic arbitrations governed by Cap.4, the parties are entitled to appeal against the arbitral award to the District Courts of Cyprus where the arbitrator or the umpire has misconducted himself or the proceedings or the arbitration process or the award has been improperly procured.

In international commercial arbitrations governed by the ICA Law, a party may appeal against the arbitral award when:

a) one of the parties to the arbitration agreement was deprived of contractual capacity; or the arbitration agreement is invalid based on the applicable law that the parties chose, or in the absence of a chosen applicable law, based on the laws of the Republic of Cyprus;

b) the party was not notified in a timely manner and on a regular basis of the appointment of the arbitrator or the arbitral proceedings, or has by any other means been deprived from his chance to present his case;

c) the arbitral award refers to matters irrelevant to the terms of the submission to arbitration or contains decisions beyond the scope of the arbitration;

d) the composition of the Tribunal or the procedure of arbitration was in breach of the agreement of the parties or contradicts the provisions of the ICA Law;

e) the subject matter of the dispute is not arbitrable under Cypriot law; and

f) the award is in conflict with the public policy of Cyprus.

10.2 Can parties agree to exclude any basis of challenge against an arbitral award that would otherwise apply as a matter of law?

There is no relevant case law in Cyprus yet on the matter.

10.3 Can parties agree to expand the scope of appeal of an arbitral award beyond the grounds available in relevant national laws?

No; the grounds set out in Cap.4 and ICA Law are exhaustive.

10.4 What is the procedure for appealing an arbitral award in your jurisdiction?

A party wishing to challenge the arbitral award has to file an application to the District Court requesting the annulment of the award. In international commercial arbitrations, the application has to be filed within a period of three months from the date of notification of the award.

11 Enforcement of an Award

11.1 Has your jurisdiction signed and/or ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards? Has it entered any reservations? What is the relevant national legislation?

Yes, Cyprus has ratified the NYC by the relevant Ratification Law (see question 1.1 above). Cyprus applies the Convention on the basis of reciprocity, to the recognition and enforcement of awards made only in the territory of another Contracting State and only to differences arising out of legal relationships which are considered as commercial under its national law.

11.2 Has your jurisdiction signed and/or ratified any regional Conventions concerning the recognition and enforcement of arbitral awards?

Cyprus has ratified the Washington Convention of 1965 regarding awards issued by the International Centre for Settlement of Investment Disputes and has signed the Convention on Conciliation and Arbitration within the Conference on Security and Cooperation in Europe of 1992.

11.3 What is the approach of the national courts in your jurisdiction towards the recognition and enforcement of arbitration awards in practice? What steps are parties required to take?

Both Cap.4 and the ICA Law provide for the recognition and enforcement of an arbitral award. The former provides for the enforcement of the arbitral award as if it was a judicial judgment, upon a relevant application.

The ICA Law sets out provisions for enforcement which resemble those found in the NYC. The party requesting the recognition and enforcement of an arbitral award has to submit to the Court an application accompanied by the duly authenticated original award or a duly certified copy thereof, together with an official certified translation by the Press and Information Office if the award is not written in the Greek language, and the original or duly certified copy of the arbitration agreement. The national Courts will pay particular attention to the proper certification of the documents submitted before them and will only refuse to register an arbitral award in the specific circumstances as provided in the ICA Law which again resemble the reasons for refusal of recognition found in the NYC.

11.4 What is the effect of an arbitration award in terms of *res judicata* in your jurisdiction? Does the fact that certain issues have been finally determined by an arbitral tribunal preclude those issues from being re-heard in a national court and, if so, in what circumstances?

An Arbitral Award which is final and binding upon the parties will preclude the promotion of a civil claim on the same facts/dispute/claim.

11.5 What is the standard for refusing enforcement of an arbitral award on the grounds of public policy?

The review by the Courts of the arbitral award, in this respect, is supervisory and, although it reviews the content of the arbitral award, the review is limited only to the ascertainment of whether the award is against public policy and does not involve a review on the merits of the case. The Courts' discretion to refuse enforcement on the grounds of public policy is sparingly exercised and only in clear cases.

12 Confidentiality

12.1 Are arbitral proceedings sited in your jurisdiction confidential? In what circumstances, if any, are proceedings not protected by confidentiality? What, if any, law governs confidentiality?

As provided by common law principles, arbitration proceedings in Cyprus are private and confidential. The duty of confidentiality is not an absolute one as Courts have accepted that disclosure may be permissible under the following circumstances:

a) where it is reasonably necessary for the protection of the parties to the arbitration;

b) for the purposes of invoking the supervisory roles of the Court over arbitration awards for the purpose of enforcing the award itself;

c) where the public interest or the interests of justice require such disclosure; and

d) where there is an express or implied consent of the parties.

12.2 Can information disclosed in arbitral proceedings be referred to and/or relied on in subsequent proceedings?

Such information is confidential and may not be used for the purposes of other subsequent proceedings without the consent of the parties to the arbitration. However, the Court in subsequent proceedings may give leave for such information to be used if deemed just and equitable in the interests of justice or for public policy reasons.

13 Remedies / Interests / Costs

13.1 Are there limits on the types of remedies (including damages) that are available in arbitration (e.g., punitive damages)?

There are no limits on the types of remedies an Arbitral Tribunal can award, save where the existence or dissolution of a Cyprus Company or the rectification of any of its registers is involved or where a remedy would affect the registration of rights over immovable property situated in Cyprus or where other public policy reasons dictate that the relevant remedy can only be granted by the Court.

13.2 What, if any, interest is available, and how is the rate of interest determined?

Unless a domestic arbitral award states otherwise, the amount awarded under the award bears interest from the date of issuance of the award at the same rate as a judgment debt.

The ICA Law does not contain a relevant provision and the matter is one for the general discretion of the Tribunal. Where Cyprus Law applies, the awarding of interest is recognised as a suitable remedy to compensate non-payment of pecuniary claims.

13.3 Are parties entitled to recover fees and/or costs and, if so, on what basis? What is the general practice with regard to shifting fees and costs between the parties?

Under Cap.4, the Tribunal will decide the payment of the costs. If the parties included a relevant provision in the arbitration agreement, such a provision is void. The costs of the arbitration are at the discretion of the Tribunal or the umpire.

The ICA Law does not contain a relevant provision and the matter is one of general discretion. Under Cyprus Law, the general rule is that costs follow the result.

13.4 Is an award subject to tax? If so, in what circumstances and on what basis?

Both laws are silent on the matter; however, there is no rule excluding from taxation any award that would include any taxable item.

13.5 Are there any restrictions on third parties, including lawyers, funding claims under the law of your jurisdiction? Are contingency fees legal under the law of your jurisdiction? Are there any "professional" funders active in the market, either for litigation or arbitration?

Contingency fees are generally not allowed in Cyprus. Third party funding is permissible; however, it is rarely used. In general, each party funds its claim and any orders as to costs in the proceedings will be made for or against a party to the proceedings.

14 Investor State Arbitrations

14.1 Has your jurisdiction signed and ratified the Washington Convention on the Settlement of Investment Disputes Between States and Nationals of Other States (1965) (otherwise known as "ICSID")?

Cyprus signed the ICSID on 9 March 1966. The ICSID was ratified on 25 November 1966 and entered into force 25 December 1966.

14.2 How many Bilateral Investment Treaties (BITs) or other multi-party investment treaties (such as the Energy Charter Treaty) is your jurisdiction party to?

Cyprus is a party to 28 Bilateral Investment Treaties (five of those are not in force yet). Moreover, being part of the European Union, Cyprus is also a party to 73 Other Investment Agreements and 21 Investment Related Instruments including the Energy Charter Treaty.

14.3 Does your jurisdiction have any noteworthy language that it uses in its investment treaties (for example in relation to "most favoured nation" or exhaustion of local remedies provisions)? If so, what is the intended significance of that language?

No such language is used.

14.4 What is the approach of the national courts in your jurisdiction towards the defence of state immunity regarding jurisdiction and execution?

Cyprus Courts have recognised the defence of state immunity but have clarified that it does not extend to the actions of foreign states which are of a financial and commercial nature that could also be conducted by a natural person (*jure gestionis*). In this respect, national Courts will generally recognise and enforce arbitral awards issued against another State.

15 General

15.1 Are there noteworthy trends in or current issues affecting the use of arbitration in your jurisdiction (such as pending or proposed legislation)? Are there any trends regarding the type of disputes commonly being referred to arbitration?

There is an effort being made for arbitration to be used more frequently in resolving disputes, instead of the Courts which involve a more time consuming procedure. The most common types of disputes referred to arbitration are construction and banking disputes.

15.2 What, if any, recent steps have institutions in your jurisdiction taken to address current issues in arbitration (such as time and costs)?

There are a few alternative dispute resolution centres in Cyprus, including the Cyprus Arbitration and Mediation Centre, the Cyprus Eurasia Dispute Resolution and Arbitration Centre and the Cyprus Arbitration and Mediation Centre. However, the use of such centres is currently limited.

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