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## **District Court Upholds Shareholder's Right to Petition for Winding-Up**

Contributed by **Soteris Pittas**

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In two recent cases the Limassol District Court has held that the statutory right of a shareholder to petition for the winding-up of the company in which it is a member cannot be excluded and/or waived by shareholders' agreement.

In both cases two shareholders held equal shares and a deadlock occurred. The relationships between the shareholders were regulated by the companies' articles of association and shareholders' agreements executed after the incorporation of the companies. The shareholders' agreements stated that English law was the applicable law and that any dispute or claim arising out of and/or in connection with the shareholders' agreements should be referred to arbitration in the United Kingdom. In both cases all shareholders were overseas companies. Under Law 101/87, which adopted the United Nations Commission on International Trade Law Model Law on International Commercial Arbitration, the relevant arbitration clauses were within the ambit of the model law; consequently, a stay of the court proceedings was mandatory subject to the provisions of Article 8 of the model law.

As a result of the deadlock one of the shareholders lodged with the Limassol District Court (the district where the companies' registered office was located) a petition for the winding-up of the companies. During the *ex parte* hearing of the application for leave to serve the winding-up petitions to the foreign respondent shareholders, the court held that:

- the arbitration clauses contained in the shareholders' agreements were null and void insofar as they purported to exclude or restrict the statutory rights of the petitioner shareholders to petition for the winding-up of the companies;
- by the execution of the shareholders' agreements containing the arbitration clauses, the shareholders of the companies did not waive their statutory rights to petition for the winding-up of their companies; and
- the petitioners were legally entitled to lodge the petition for winding-up as a matter of statutory right and the court had jurisdiction to issue the requested leave to serve on the respondent shareholders outside the jurisdiction that issued the winding-up petition.

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In reaching its decision the court followed two UK decisions - *Re Peverill Gold Mines Ltd* ((1898) 1 CH 122) and *Exeter City Association Football Club Ltd v Football Conference Ltd* ((2004) 4 ER 1179) - and an Australian decision - *A Best Floor Sanding Pty Ltd v Skyer Australia Pty Ltd* ((1999) VSC 2916).

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