The Legal 500 Country Comparative Guides

Cyprus: International Arbitration

This country-specific Q&A provides an overview to international arbitration laws and regulations that may occur in Cyprus.

For a full list of jurisdictional Q&As visit here
1. **Is your country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?**

   (a) Yes. Cyprus became a signatory to the New York Convention on 29 December 1980.

   (b) One of the reservations to the general obligations of the Convention is reciprocity whereby an award made by an international arbitration tribunal in Cyprus can be enforced in the countries which have also ratified the Convention. The second reservation permits a Contracting State to narrow the application of the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under national law.

2. **What other arbitration-related treaties and conventions is your country a party to?**

   Cyprus is also a contracting state to the Convention on the Settlement of Investment and Disputes between States and Nationals in other States. Also in a number of bilateral and multilateral investment treaties for reciprocal recognition and enforcement concluded with other countries as different between them as Germany, China and Syria.

3. **Is the law governing international arbitration in your country based on the UNCITRAL Model Law? Are there significant differences between the two?**

   (a) Law 101/1987 applies exclusively to international commercial disputes and it is almost identical to the UNCITRAL Model Law of 1985.

   (b) The only addition to the Law 101/1987 is the definition of “commercial arbitration” and the definitions of “international” and “commercial” disputes. Even though Law 101/1987 incorporates fully the UNCITRAL Model Law, it does not incorporate the amendments which have been made in 2006.

4. **Are there any impending plans to reform the arbitration laws in your country?**

   There have been many discussions to reform the framework of Arbitration in Cyprus, however nothing concrete has been initiated.

5. **What are the validity requirements for an arbitration agreement under the laws of your country?**

   The validity requirements are the New York Convention validity requirements. Therefore, there are four requirements for an Arbitration Agreement to be valid. The Arbitration Agreement must (a) include certain number of essential points, (b) the agreement must be valid as to substance, (c) in writing and (d) the subject matter of the dispute must be arbitrable.
New York Convention aside, as per Cap. 4, the arbitration agreement can include a named arbitrator. Also, as per Law 101/1987, the arbitration agreement must bear the signatures of the parties. Note that an arbitration agreement may also be in the form of an arbitration clause which is incorporated within the contract -which is the most popular way- or it may stand on its own as a complete separate agreement.

6. Are arbitration clauses considered separable from the main contract?

Law 101/1987 stipulates that an arbitration clause which is an integral part of a contract shall be regarded as an agreement separate from the other terms of the contract. Notwithstanding the above, an arbitral tribunal’s decision which declares the contract void from the outset shall not automatically give rise to the nullity of the arbitration clause.

7. Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?

Nothing except than to say they permitted. No statutory provisions constraining parties from entering into multi-party or multi-contract arbitration exist.

8. How is the law applicable to the substance determined? Is there a specific set of choice of law rules in your country?

(a) According to Section 28 (1) of Law 101/1987, the parties to an international commercial arbitration will have the freedom to decide themselves the law which will apply to the substance of their dispute. Failing this, the Arbitral Tribunal will have the discretion to apply the law which it considers applicable to a particular dispute.

(b) In the absence of a choice of law of the parties, the Cyprus arbitration tribunal will apply by default Cyprus law.

9. Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?

(a) The types of disputes which are considered non-arbitrable are criminal, matrimonial and family matters and disputes concerning minors and disputes of public policy.

(b) There hasn’t been any evolution in recent years.

10. In your country, are there any restrictions in the appointment of arbitrators?

Arbitration Law in Cyprus does not have any restrictions as to who may act as an arbitrator. The parties can appoint anyone they deem fit depending on the nature of the dispute referred for arbitration. The arbitrator may be a retired judge, a lawyer or any other professional.
11. **Are there any default requirements as to the selection of a tribunal?**

If there is no prior agreement between the parties Law 101/1987 sets out a default appointment procedure for International Arbitrations. It provides that in case arbitration involves three arbitrators, each party will appoint one arbitrator and the two arbitrators will appoint a third arbitrator. Alternatively, if the arbitration is handled by a sole arbitrator and the parties fail to come to an agreement as to this appointment, the Court itself shall appoint an arbitrator upon request by one of the parties.

12. **Can the local courts intervene in the selection of arbitrators? If so, how?**

Local Courts may intervene in the selection of arbitrators according to Law 101/1987, in case:

1. one of the parties fails to act according to the agreement, or
2. the parties or the two arbitrators fail to come to an agreement, or
3. a third party, natural or legal person including the arbitral tribunal fail to act according to the expected procedure agreed.

In either case, following a request by one of the parties, the court will have the power to take the necessary steps unless the parties agree otherwise for the appointment of arbitrator(s). Further, local Courts can assist in domestic and international arbitrations at the request of an Arbitral Tribunal or a party following agreement of the tribunal. In addition, Cap. 4 provides power to the Court to intervene in the appointment process of Arbitrators.

13. **Are arbitrators immune from liability?**

Arbitrator immunity is not included in any laws or rules of Cyprus.

14. **What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?**

The courts tend to stay the court procedure provided the breach is raised early on and there’s no apparent reason not to have the dispute arbitrated instead of adjudicated.

15. **How are arbitral proceedings commenced in your country? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?**

(a) According to Cap. 4 arbitration proceedings commence when one of the parties to the arbitration agreement serves notice to the other party(ies) which calls for them to appoint an arbitrator or when the arbitration agreement acknowledges that the referral will be made to a person who is named or referred to in the arbitration agreement and calls him or them to report the dispute to that person.
(b) there are no special time bars or limitation periods. However the doctrine of “laches” would probably apply. The parties should be aware that once the notice -under (a) above- is given, the appointment of an arbitrator must take place within seven working days from the day that the notice was served, otherwise the Court may appoint an arbitrator following request by the party who had given notice which has powers to take part in the referral and give a decision as if it was appointed with the consent of all the parties.

16. **In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?**

The New York Convention prescribes that a state is not entitled to plead immunity from jurisdiction once it has agreed to submit a dispute to arbitration. By agreeing to arbitrate a dispute, the state essentially waives the immunity from jurisdiction offence. However, it is not common in Cyprus for the Cyprus government to concede to arbitration clauses.

17. **What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?**

(a) The same interim measures pertinent to court proceedings. Freezing orders, disclosure orders, Chabra orders, Norwich Pharmacal etc.

(b) Yes, if is an international arbitration (provided, that is, that Law 101/87 is applicable) interim measures are available in anticipation of the constitution of the tribunal.

18. **What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings in your country?**

Under the Code of Conduct Regulations of the Cyprus Bar Association, Article 34 provides that, the regulation applies to the relations between advocates and judges, also applies to their relations with arbitrators, experts or any other persons occasionally called to assist the Judge or the arbitrator.

19. **Can pre- and post-award interest be included on the principal claim and costs incurred?**

Arbitration Law allows the tribunals to direct accordingly on interest rates. Where the law does not provide express provisions as to interest, the Tribunal can make an award based on simple or compound interest. Unless the arbitral award decided otherwise, under Article 22, Cap. 4, the amount of such award bears statutory interest, from the date of judgement.

20. **Does the arbitration law of your country provide a different standard of review for recognition and enforcement of a foreign award compared with a domestic award?**

Under the 101/1987 Law, Article 35(1), the arbitral award, irrespective of the county in which
it was issued, is declared binding. The only difference is that if the context of the award is not in the official language of the Republic of Cyprus, the Tribunal must be furnished with a duly certified translation of the award in the official language of the Republic.

21. **Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?**

The Arbitration Law (Cap. 4), imposes no limits to the types of remedies that the Tribunal can award. Annex I, section 8 is the only reference made in the Law regarding remedies. It provides that, an arbitrator shall have the same authority as courts to order the specific execution of any contract except for a contract relating to land or any interest in land. Punitive Damages is an example of remedy that must be examined by the Tribunal based on each jurisdiction. The tribunal must examine whether punitive damages can be awarded under the law applicable to the substance of the dispute and the provisions of the arbitration agreement. It is prudent for a Tribunal to ensure that a punitive remedy is severable in the event of refusal to enforce the arbitral award on a claim that it contradicts the public policy of the country which does not itself recognise punitive remedies. Cypriot case-law emphasises that punitive damages are prohibited in contractual actions.

22. **To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?**

As a general rule, a state cannot plead state immunity once it has agreed to have a dispute be solved by arbitration. When a Party, after having lost the arbitration proceedings, raises a question of State immunity regarding the enforcement of the award, it is necessary to examine the national law of the State that sought enforcement.

23. **Is emergency arbitrator relief available in your country? Is this frequently used?**

No, it is not.

24. **Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted in your country? If so, how?**

The organisations that support arbitrators in Cyprus such as CEDRAC or CIArbs Cyprus Branch, are of different racial, social, age and origin backgrounds, but other than that there is no actively promoted diversification.

25. **Have there been any recent court decisions in your country considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?**

Not an award already recognised/enforced in the Courts of another jurisdiction.

But in 2011, an arbitral tribunal -of the International Commercial Arbitration Court at the
Russian Federation Chamber of Commerce and Industry handed down an award which the Applicants sought to have it recognised and enforced in Cyprus. The First Instance Court - the District Court of Limassol - denied the recognition and enforcement of the award. However, the Court of Appeal in 2017 overturned the First Instance Court decision and permitted the enforcement.

26. Have there been any recent court decisions in your country considering the definition and application of “public policy” in the context of enforcing or setting aside an arbitral award?

Not with the Court of Appeal, not recently. The definitive precedent on the issue is still the 20 years old Republic of Kenya v. Bank Fur Arbeit Und Wirtschaft AG (1999) 1 A.A.D. 585. There it was decided that, the term ‘public policy’ encompasses the fundamental values that are recognized by a society in a given period, that governs the transactions and events of its members’ lives. However, in the First Instance Courts around the country the defence of “public policy” merges every now and again. The most recent case on “public policy” is probably - first instance courts decisions are not exhaustively listed - an application for enforcement of a London Court of International Arbitration award tried by the District Court of Limassol in which the Defendants put forward the “public policy” defence on the grounds that under Cyprus law the notion of “reflecting loss” is not recognised and therefore the award should not be recognised as contrary to “public policy”. The District Court of Limassol held that the award was not a “reflecting loss” award but it rather awarded damages on the grounds of breach of contract and therefore “public policy” rule was not infringed. The District Court of Limassol judgment was given on 18 July 2018. It is unclear at this stage whether an appeal was filed.