

Project Finance 2020

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Milbank LLP

Lexology Getting The Deal Through is delighted to publish the thirteenth edition of *Project Finance*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on China, Cyprus and Turkey.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Alec Borisoff and Aled Davies of Milbank LLP, for their continued assistance with this volume.



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CREATING COLLATERAL SECURITY PACKAGES

Types of collateral

1 | What types of collateral and security interests are available?

A wide range of types of collateral and security are available pursuant to Cypriot law. Collateral and security arrangements can be given over movable or immovable property. Such types include, among others, security over immovable property, whose main type is a mortgage, pledges over shares or share certificates, bank account pledges, fixed and floating charges over any assets belonging to a person and security assignments.

Collateral perfecting

2 | How is a security interest in each type of collateral perfected and how is its priority established? Are any fees, taxes or other charges payable to perfect a security interest and, if so, are there lawful techniques to minimise them? May a corporate entity, in the capacity of agent or trustee, hold collateral on behalf of the project lenders as the secured party? Is it necessary for the security agent and trustee to hold any licences to hold or enforce such security?

A security agreement creating a charge is registrable with the Cyprus Registrar of Companies (ROC) against the Cypriot company chargor, pursuant to section 90 of the Cyprus Companies Law, Cap. 113 (the Companies Law) to be valid against such company's liquidator or any creditor thereof. It must be registered within 21 calendar days (if executed in Cyprus) or within 21 days after the date on which the same could have been received in Cyprus (if executed abroad). The ROC has as a rule of practice allowed the registration of charges created abroad to take place within 42 days from their execution. Furthermore section 99 of the Companies Law provides that a security agreement must be entered into the register of charges or mortgages of the company, accordingly.

A mortgage must be registered with the land registry department of the district where the land is located to be valid. The mortgagee should also be registered with the land registry for the purposes of accepting a mortgage. If a mortgage is given by a Cypriot company, it must also be filed with the ROC for registration and be entered into the company's register of mortgages.

The Companies Law specifically exempts from registration pledges of shares in Cypriot companies given by Cypriot company pledgors. Nevertheless, a pledge over shares in a Cypriot company must be perfected in accordance with the provisions of the Cyprus Contract Law, Cap. 149. The formalities to be fulfilled include the following:

- the pledge must be evidenced by a written contract, signed by the pledgor and the pledgee in the presence of two witnesses;

- notice of the pledge must be given by the pledgee to the company whose shares are being pledged;
- a memorandum of pledge must be entered into the register of members of the company whose shares are being pledged; and
- the company secretary must issue and deliver to the pledgee a certificate confirming that a memorandum of pledge has been entered in the register of members in favour of the pledgee.

Cypriot Stamp Duty Law subjects to *ad valorem* stamp duty all documents (including contracts) concerning property situated in Cyprus or concerning matters to be executed or take place in Cyprus, subject to certain exceptions, irrespective of where the same are signed.

For contracts valued between €5,001–170,000, the current rate of stamp duty is €1.50 for each €1,000 or part thereof; for contracts valued over €170,000, the current rate of stamp duty is €2 for every €1,000 or part thereof, with a ceiling of €20,000. This maximum amount of stamp duty is payable on any document or on any transaction that has several documents; in a transaction having several documents, the parties may designate the main document, which will be subject to the full stamp duty; the other transaction documents may be stamped as secondary documents, in the amount of €2 each, provided they are dated the same day as, or very close to, the main transaction document. Paying the stamp duty late will result in penalties, which range according to the period that elapsed between the date the stamp duty arose and the date of submitting the documents for stamping.

To determine whether a document is subject to stamp duty in Cyprus, the documents can be submitted to the Stamp Duty Commissioner for a ruling.

The Stamp Duty Law also provides that any document drafted outside Cyprus and that is subject to stamp duty pursuant to the provisions of the Stamp Duty Law will not be considered as being drafted or having effect in Cyprus until the applicable stamp duty is paid. However, any document that was signed abroad and is subject to stamp duty in Cyprus will be considered as having being signed in Cyprus on the date on which it was received in Cyprus and in such case, the document may be stamped within 30 days from its receipt in Cyprus. Therefore, if a document that attracts stamp duty under Cyprus Law is signed and kept abroad, the stamp duty will not need to be paid until the same is brought into Cyprus.

Not paying the stamp duty is a regulatory penal offence, which does not render a document void but merely requires in the future that the applicable stamp duty plus a penalty be paid; further, in the case of court proceedings, the court will not recognise the document as evidence unless it is stamped. Therefore, even if the document is not stamped because of executing it outside Cyprus and keeping it there, if proceedings need to be issued in Cyprus it will need to be stamped to be recognised.

The registration of a charge with the ROC is subject to the payment of a nominal fee, while the fees for registration of a mortgage on

immovable property are calculated on the secured amount and constitute 1 per cent thereof.

In Cyprus, it is possible for a security trustee or agent to be used for the purposes of enforcing security. In such cases the relevant security is granted to the security trustee or agent in favour of all or some of the lenders. The underlying documents would usually specify the powers of such security trustee or agent. Where a security trustee is involved, the relevant security agreement is registered with the ROC as a charge over the assets of the Cypriot company (chargor) in favour of such security trustee or agent.

No licences are required for the purposes of holding or enforcing security.

Assuring absence of liens

3 | How can a creditor assure itself as to the absence of liens with priority to the creditor's lien?

In relation to charges against a Cypriot company an electronic search can be performed through the webpage of the ROC, which will indicate whether any charges or mortgages have been registered against such company. With regards to immovable property a possibility of a search through the land registry department with which the immovable property in registered exists; however legitimate interest should be evidenced for the purposes of carrying out such search. Moreover, it is possible to carry out an inspection of the internal registers of a Cypriot company (namely, the registers of charges, mortgages and members thereof), usually maintained at the registered office, for the purposes of ensuring absence of liens.

Enforcing collateral rights

4 | Outside the context of a bankruptcy proceeding, what steps should a project lender take to enforce its rights as a secured party over the collateral?

Out-of-court enforcement is possible in some occasions. Assets may be seized with out-of-court pledge enforcement, where the company is obliged to deliver the pledged assets to the pledgor in the event of default, as prescribed by the terms of the relevant security document. An alternate process whereby assets of a company may be seized out-of-court is when a receiver is appointed in a company under a contractual obligation, to seize assets and then resign once these assets have been sold for the benefit of the security holder. Following receivership, a company may continue its business operation. A judicial sale is not necessary and there are no requirements for a public auction following enforcement of security. A public or private sale is permissible provided that this is included in the security documentation. Project lenders may participate as buyers and they may even appropriate the secured property (subject to the terms of the agreement). The consideration of such sales may be in foreign currency.

Enforcing collateral rights following bankruptcy

5 | How does a bankruptcy proceeding in respect of the project company affect the ability of a project lender to enforce its rights as a secured party over the collateral? Are there any preference periods, clawback rights or other preferential creditors' rights with respect to the collateral? What entities are excluded from bankruptcy proceedings and what legislation applies to them? What processes other than court proceedings are available to seize the assets of the project company in an enforcement?

Certain transactions can be declared void due to fraudulent preference if entered within six months of the commencement of the winding-up.

Any floating charges created within 12 months of the commencement of the winding-up may be considered invalid.

As already mentioned, for a charge or security to be valid against the liquidator of a Cypriot company it must be duly registered with the ROC. Therefore, a project lender will be able to enforce its rights if the security has been properly registered or perfected.

Where there is a fixed charge, the net proceeds from the sale of the secured assets will primarily be used for the settlement of amounts secured thereby. Preferential creditors, will not have any right or priority with respect to the proceeds from the sale of secured assets that will be used for the settlement of the amounts secured by the charge, they will nevertheless have a right of priority with respect to any balance thereto. If there is a surplus from the sale of such secured assets subject to the charge, the surplus becomes part of the general pool of assets and is distributed as set out below. If, however, there is a shortfall, namely the proceeds from the sale are not sufficient to cover the secured amount, then the secured creditor concerned will be deemed to be an unsecured creditor only with respect to such shortfall and will thus rank after the costs of the winding up, preferential debts and any floating charge holders, (ie, *pari passu* with all the other unsecured creditors).

The preferential debts are as follows:

- the costs and expenses of the winding-up; and
- the following preferential debts:
 - rates and taxes, including all local rates and all government taxes, due from the company at the relevant date, and having become due and payable within 12 months immediately before that date; in the case of assessed taxes, not exceeding in the whole one year's assessment;
 - any salary owed to an employee and any sum withheld by the employer from the employee's salary for the payment of any obligations of the employee or otherwise that the employer has not paid; and any other sum or benefit of the employee that arises as a result of an agreement or employment relationship, including any sum owed to a recognised union that arises from the employment relationship between the employer and the employee or otherwise that the employer has not paid;
 - every amount of compensation that the company is obliged to pay to an employee, on account of bodily harm suffered by him or her as a result of an accident caused by his or her employment and during his or her employment. An employee of a private company who is a shareholder thereof is exempted, unless the company is voluntarily wound up or wound up for reconstruction or merger purposes; and
 - every amount due to the employee, excluding an employee of a private company who is a shareholder thereof, concerning the leave that such employee is entitled to from his or her employment in the company for an employment period of only one year.

The above shall rank equally among themselves and be paid in full, unless the assets are insufficient to meet them, in which case they shall abate in equal proportions; and so far as the assets of the company available for payment of general creditors are insufficient to meet them, have priority over the claims of holders of debentures under any floating charge created by the company, and be paid accordingly out of any property comprised in or subject to that charge. If any amounts remain available, they will be used to cover any amount secured by floating charges and finally the unsecured creditors.

Any transaction made by a company (including payments, deliveries of goods, mortgages and conveyancing, as well as executions or other acts relating to property) made or done by or against a company within six months before the commencement of its winding-up may be

considered to be a fraudulent preference against its creditors and be rendered void. On the question of fraudulent preference, the court will look into the intentions behind the transaction. The onus is on those who claim to avoid the transaction (whether creditors or liquidator) to establish that the actual intention was to make a preference among creditors.

Floating charges are valid up to the extent of any cash paid to the company at the time of the creation of the charge. In any case where a company is being wound up, a floating charge on the undertaking or the property of the company created within 12 months of the commencement of the winding up shall be invalid, unless it is proven that the charge was made while the company was solvent.

Under the laws of Cyprus, there is no exclusion of any entity, corporate or personal, from insolvency proceedings, other than the Central Bank of Cyprus, which is constitutionally established.

As already mentioned, assets may be seized with out-of-court pledge enforcement. An alternate process whereby assets of a company may be seized out-of-court is when a receiver is appointed in a company under a contractual obligation.

FOREIGN EXCHANGE AND WITHHOLDING TAX ISSUES

Restrictions, controls, fees and taxes

- 6 | What are the restrictions, controls, fees, taxes or other charges on foreign currency exchange?

There are currently no capital restrictions in Cyprus. As with other EU countries, travellers to Cyprus must declare cash sums greater than €10,000 upon arrival.

Investment returns

- 7 | What are the restrictions, controls, fees and taxes on remittances of investment returns (dividends and capital) or payments of principal, interest or premiums on loans or bonds to parties in other jurisdictions?

There are no restrictions on payment of dividends or interest to parties in other jurisdictions. However, distribution of dividends of a Cypriot company should be made only out of realised profits. Cyprus does not apply any withholding tax on dividends or interest paid to non-residents. A 10 per cent withholding tax is only applied on royalties earned on rights used within Cyprus. Also in relation to dividend, interest and royalty payments in entities incorporated in another EU member states the provisions of the relevant European directives apply.

Foreign earnings

- 8 | Must project companies repatriate foreign earnings? If so, must they be converted to local currency and what further restrictions exist over their use?

There are no restrictions in relation to the repatriation of foreign earnings.

- 9 | May project companies establish and maintain foreign currency accounts in other jurisdictions and locally?

There are no restrictions on maintaining foreign currency accounts in Cyprus or operating through offshore accounts based in other jurisdictions provided that the relevant anti-money laundering requirements and know-your-client procedures set out by the Central Bank of Cyprus are fulfilled.

FOREIGN INVESTMENT ISSUES

Investment restrictions

- 10 | What restrictions, fees and taxes exist on foreign investment in or ownership of a project and related companies? Do the restrictions also apply to foreign investors or creditors in the event of foreclosure on the project and related companies? Are there any bilateral investment treaties with key nation states or other international treaties that may afford relief from such restrictions? Would such activities require registration with any government authority?

Generally, there are no restrictions on foreign ownership of the shares of a Cypriot company. On the contrary non-Cypriot residents shareholders (or non-domiciled) enjoy certain tax exemptions. In relation to property investment, there are no restrictions on Cypriot and EU nationals. However, nationals of non-EU countries must first seek the approval of the Council of Ministers before real-estate can be registered onto their names. A company whose majority of directors and shareholders is comprised of EU nationals is not considered to be a foreign company for the purposes of owning immovable property in Cyprus. Cyprus has entered into a number of bilateral investment treaties with more than 27 countries, which offer protection for investor rights.

Insurance restrictions

- 11 | What restrictions, fees and taxes exist on insurance policies over project assets provided or guaranteed by foreign insurance companies? May such policies be payable to foreign secured creditors?

There are no restrictions, controls, fees or taxes for foreign insurance companies operating in Cyprus as long as they have obtained proper licencing from the Insurance Companies Control Service, the local regulator. EU member state companies must comply with the general good requirements that are issued by the local regulator to freely offer services in other member states. Such policies may be payable to foreign secured creditors, provided that such creditors are insured by the insurance company.

Worker restrictions

- 12 | What restrictions exist on bringing in foreign workers, technicians or executives to work on a project?

As per EU law, there is no restriction on the freedom of movement of individuals to Cyprus from all EU and EEA member states. There are no restrictions on third country nationals, however, the appropriate work permits or business visas will need to be obtained by the project company.

Equipment restrictions

- 13 | What restrictions exist on the importation of project equipment?

There are no special restrictions, controls, fees or taxes on importing any equipment used by construction contractors other than customs fees and import taxes that would be incurred from importing goods. Any goods imported from EU and EEA countries are imported within the EU customs union and no taxes or custom fees apply. All machinery and equipment imported into the EU need to comply with minimum EU certifications and guidelines for health and safety.

Nationalisation laws

- 14 What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected (from nationalisation or expropriation)?

Cyprus is a full EU member and therefore nationalisation, expropriation, transfer and currency restrictions are regulated under EU law and EU policy. Furthermore, article 23 of the Constitution of Cyprus safeguards the right to acquire, own, possess, enjoy or dispose of any movable or immovable property. No deprivation or restriction or limitation is allowed, except for restriction or limitations that are absolutely necessary in the interest of public safety, public health or public morals, the town and country planning, or the development and utilisation of any property to the promotion of the public benefit, or the protection of the rights of others, and only if imposed by law. Just compensation must be paid for any such restrictions, or limitations that materially decrease the economic value of such property. Such compensation, if not agreed, is determined by the courts. In certain cases, nationalisations of financial institutions such as the Cyprus Central Cooperative Bank have been pursued by the government as a form of state intervention to assist with stability and liquidity.

FISCAL TREATMENT OF FOREIGN INVESTMENT

Incentives

- 15 What tax incentives or other incentives are provided preferentially to foreign investors or creditors? What taxes apply to foreign investments, loans, mortgages or other security documents, either for the purposes of effectiveness or registration?

All Cypriot tax residents are taxed on their worldwide income. Individuals who are not tax residents of Cyprus are taxed on certain income accrued or derived from sources in Cyprus. The applicable corporate tax rate is 12.5 per cent. For non-domiciled individuals residing in Cyprus or for non-Cypriot tax residents, there is a range of tax benefits. Namely, there is no withholding tax on dividends, and no tax on interest income or gains arising from disposal of investments (including shares and securities). The Special Defence Contribution tax is not applicable to non-domiciled residents or non-tax residents.

Moreover, a foreign individual relocating to Cyprus and taking employment there enjoys a 50 per cent tax exemption on the emoluments arising out of employment exercised in Cyprus. The exemption applies for a period of 10 years beginning from the first year of employment, provided that the employment income exceeds €100,000 per year. Also, a 20 per cent exemption applies if the emoluments are lower than €100,000 per year; however, this exemption is only available until 2020.

For taxes and fees relating to finance and security documentation and their registration, please refer to the relevant paragraphs above. In relation to project financing, a 5 per cent withholding tax on gross income derived from within Cyprus (by non-residents without a Cypriot permanent establishment) relating to the extraction, exploration or use of the continental shelf, subsoil or natural resources, as well as the installation and exploitation of pipelines and other installations on the ground, seabed and on the surface of the sea is levied.

GOVERNMENT AUTHORITIES

Relevant authorities

- 16 What are the relevant government agencies or departments with authority over projects in the typical project sectors? What is the nature and extent of their authority? What is the history of state ownership in these sectors?

Depending on the project, there are several government agencies that might exercise authority or supervise operations. For example, in matters relating to the exploration, prospection and exploration of hydrocarbons, the Hydrocarbon Service of the Ministry of Energy, Commerce, Industry and Tourism will be licensing the participating entities. Any construction project should be licensed by the Town Planning Service and possibly by the local authority that may request environmental impact assessments. Tourism sector projects will require licensing by the Cyprus Tourism Organisation (recently reorganised into the Deputy Ministry of Tourism) while specialised large-scale projects like the integrated casino resort currently under construction will be regulated by the National Betting Authority (in matters relating to its casino operations). Construction projects will also need to comply with the Department of Labour Inspection guidelines for health and safety requirements.

Certain typical project infrastructure sectors such as electricity are dominated by the state owned Electricity Authority of Cyprus (EAC), which owns both the powers plants and the supply network. The Cyprus Energy Regulatory Authority currently aims to licence additional electricity suppliers under the Regulation of the Electricity Market Laws. To provide an example, EAC was set up by the British colonial government of Cyprus and following the establishment of the Republic of Cyprus, it has the status of a semi-state owned government entity by special legislation and the majority of its share capital is owned by the state. Most utilities follow this model such as the Cyprus Telecommunications Authority. Under EU regulation, these entities now provide access to the free market to new entities that are privately owned to create competition.

REGULATION OF NATURAL RESOURCES

Titles

- 17 Who has title to natural resources? What rights may private parties acquire to these resources and what obligations does the holder have? May foreign parties acquire such rights?

In relation to natural resources, specific legislation exists for each type thereof. For example, in relation to mining, which historically has been a major industry in Cyprus, the Mining Service of Cyprus will need to license any exploration and exploitation of minerals as per the Mines and Quarries Law Cap. 270 (as amended). A more recent addition, due to the recent offshore hydrocarbon findings, is the Hydrocarbon (Prospection, Exploration and Exploitation) Laws of 2007 to 2015. The provisions of the EU Directive on the conditions for granting and using authorisations for the prospection, exploration and production of hydrocarbons have been incorporated into Cypriot law. Typically, such exploitation and exploration agreements will grant licences to entities to exploit natural resources and share revenues with the Republic of Cyprus.

Depending on the project or industry, legislation requires a number of conditions to be met prior to commencing operations. For example, the Town and Country Planning Law 90/72 (as amended) and the more recently enacted Estimation of Repercussions on the Environment for Specific Construction Work Law, require the issue of certain licences relating to town planning. Construction methods and environmental impact of the project will need to be met. This applies to larger projects

that may have an adverse environmental impact (ie, hotel resorts, golf courses, marinas). There are no restrictions on foreign entities applying for such licences. No specially recognised indigenous groups exist in Cyprus that may be affected by the exercise of the above rights.

Royalties and taxes

18 | What royalties and taxes are payable on the extraction of natural resources, and are they revenue- or profit-based?

As discussed in question 17, hydrocarbon exploration and exploitation activities in Cyprus and its exclusive economic zone (EEZ) are governed by the Hydrocarbon (Prospection, Exploration and Production) Law (4(I)/2007), which transposed into national law Directive 94/22/EC on the conditions for using authorisations for the prospection, exploration and production of hydrocarbons. The Hydrocarbon Law and the Hydrocarbon (Prospection, Exploration and Production) Regulations together set out the licensing framework for prospecting, exploration and extraction activities. Successful applicants for a licence are required to enter into an Exploration and Production Sharing Contract (EPSC), with the Ministry of Energy, Commerce, Industry and Tourism, which is the relevant authority.

The model EPSC includes a tax clause requiring the contractor to comply with the applicable tax laws and regulations of Cyprus and the EU but there is no specific taxation regime in relation to oil and gas companies operating in Cyprus.

Export restrictions

19 | What restrictions, fees or taxes exist on the export of natural resources?

A 5 per cent withholding tax on gross income derived from within Cyprus (by non-residents without a Cyprus permanent establishment) relating to the extraction, exploration or use of the continental shelf, subsoil or natural resources, as well as the installation and exploitation of pipelines and other installations on the ground, seabed and on the surface of the sea is levied.

LEGAL ISSUES OF GENERAL APPLICATION

Government permission

20 | What government approvals are required for typical project finance transactions? What fees and other charges apply?

Depending on the project, there are various government departments that might exercise authority or supervise operations. As already mentioned, in relation to the exploration, prospection and exploration of hydrocarbons, the Hydrocarbon Service of the Ministry of Energy, Commerce, Industry and Tourism will be responsible for licensing. Construction projects are licensed by the Town Planning Service and sometimes by the local authority who may request environmental impact assessments. The Cyprus Tourism Organisation is involved with tourist industry projects while the National Betting Authority acted as the licensing authority in relation to matters relating to the casino operations of the integrated casino resort.

Registration of financing

21 | Must any of the financing or project documents be registered or filed with any government authority or otherwise comply with legal formalities to be valid or enforceable?

There are no formal registration requirements with any governmental authority, except those that pertain to the issuing of government licences relating to the operations of the project (ie, environmental, health and

safety). Finance documents might be subject to stamp duty. Security documents may also need to be registered with the ROC, as already explained.

Arbitration awards

22 | How are international arbitration contractual provisions and awards recognised by local courts? Is the jurisdiction a member of the ICSID Convention or other prominent dispute resolution conventions? Are any types of disputes not arbitrable? Are any types of disputes subject to automatic domestic arbitration?

Cypriot courts do recognise contractual provisions requiring submission of disputes to international arbitration, as well as awards by arbitration bodies. Domestic arbitration is governed by the Arbitration Law, Cap. 4; while international commercial disputes are governed by the International Arbitration in Commercial Matters Law of 1987. All the mandatory provisions contained in the UNICTRAL Model Law were adopted by the local legislation, regulating only international commercial arbitrations.

Cyprus is a signatory to the Convention on Recognition and Enforcement of Foreign Arbitral Awards of 1958 (the New York Convention), which has been ratified and implemented in Cyprus. Cyprus is also a party to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States.

Matters relating to criminal law, family law or that may have public policy implications are considered to be non-arbitrable. Public policy issues may include foreign commercial contracts that would otherwise be considered illegal under Cyprus law. Also, Cap. 4 provides that when fraud is raised by one of the parties, Cypriot courts have the competence to decide on such matters and to terminate the effects of any arbitration clause included in the agreement of the parties.

There are no types of disputes subject to mandatory domestic arbitration proceedings.

Law governing agreements

23 | Which jurisdiction's law typically governs project agreements? Which jurisdiction's law typically governs financing agreements? Which matters are governed by domestic law?

This will mostly depend on the jurisdiction of the lender. Usually international banking institutions prefer for the law of their jurisdiction to govern the relevant financing agreements.

There are no specific rules that subject agreements to any particular choice of law. The parties are free to agree upon governing law. Even when a security agreement is governed by a foreign law, mandatory Cyprus law provisions will in any case apply, for example, in relation to the registration of charges or perfection of pledges. Typically, security agreements over assets situated in Cyprus are governed by domestic law.

Submission to foreign jurisdiction

24 | Is a submission to a foreign jurisdiction and a waiver of immunity effective and enforceable?

A foreign party's submission to the jurisdiction of Cypriot courts, either through a contractual agreement or by the party's appearance in court proceedings, will be binding and enforceable. Generally, state immunity is recognised and respected by Cypriot courts, provided that such immunity is not consensually waived and that a state is not acting under private or commercial capacity.

A judgment obtained as a result of a party's submission to a foreign jurisdiction will be legally binding and enforceable in Cyprus, provided that the conditions for the recognition and enforcement of judgments are fulfilled. In particular, civil and commercial judgments of EU member states' courts are enforceable under the Brussels Regulations (EU Regulation 44/2001 in relation to proceedings instituted before 10 January 2015, EU Recast 1215/2012 in relation to proceedings instated on or after 10 January 2015). Civil and commercial judgments of Iceland, Norway and Switzerland will be enforceable pursuant to the Lugano Convention. Foreign judgments from uncontested claims can also be enforceable pursuant to the provisions of Regulation 805/2004. If a bilateral treaty on recognition and enforcement has been concluded between Cyprus and another state, then the procedure of the Law on Foreign Courts Judgments must be followed in seeking recognition and enforcement of a foreign judgment. Foreign judgments issued by courts of a commonwealth country will be enforceable under the Foreign Judgments Law 1935, Cap.10.

ENVIRONMENTAL, HEALTH AND SAFETY LAWS

Applicable regulations

- 25 | What laws or regulations apply to typical project sectors?
What regulatory bodies administer those laws?

There are a number of local regulations and laws that may affect the total cost, operating overheads and by extent the financing and sustainability of certain projects. For example, the Safety and Health at Work Law of 1996 affects any construction works relating to any building constructed in Cyprus. Similar provisions apply for factories, heavy industry installations as well as any workplace (where minimum safety requirements must be met).

PROJECT COMPANIES

Principal business structures

- 26 | What are the principal business structures of project companies? What are the principal sources of financing available to project companies?

The principal business structure usually followed for projects in Cyprus, is that a consortium of contractors, investors, plant and system operators, will form a private company to act as a special purpose vehicle (SPV) that will construct the project, operate it for a fixed amount of years and then transfer it back to the sponsoring authority. Financing usually comes from multilateral or bilateral agencies as well as guarantees. In most cases, the sponsoring authority will retain ownership of the land and lease it to the parties for a fixed number of years (this is common with the Ayia Napa and Limassol Marina projects).

PUBLIC-PRIVATE PARTNERSHIP LEGISLATION

Applicable legislation

- 27 | Has PPP-enabling legislation been enacted and, if so, at what level of government and is the legislation industry-specific?

Although PPP has been widely in use in Cyprus since 1996 with the development of the first desalination plants in Cyprus, there is no specific PPP-enabling legislation currently in force. The Fiscal Responsibility and Public Finances Framework Law of 2014 (Law 20(I)/2014) was enacted for the purpose of setting minimum public sector standards when procuring PPP projects. For example, it defines what constitutes a significant project (where PPP may be applicable), evaluation principles and other applicable standards and tests that the public sector must

conduct when evaluating PPP offers. Despite the relatively recent legislation, major projects such as the airports of Larnaca and Paphos have already been operating under a PPP since 2006, while several government buildings and the Limassol Port cargo and passenger operations are also PPP projects.

Given the importance of PPP for the Cypriot economy, the Cyprus National Reform Programme, issued on April 2018 by the Presidency's Unit for Administrative Reform, mentions that a specific PPP unit will be set up within the Public Works Department within 2018, but this has not been completed yet. The Law on Public Procurement 73(I)/2006 (as amended) is the principal legislation governing public procurement contracts in Cyprus. It transposes EU Procurement Directives 17/2004 and 18/2004 into Cypriot legislation, and provides for the coordination of procedures for the award of public works contracts, public supply contracts, public service contracts and related matters.

PPP – LIMITATIONS

Legal limitations

- 28 | What, if any, are the practical and legal limitations on PPP transactions?

As mentioned in question 27, there is no specific PPP-enabling legislation in force yet other than the fiscal responsibility framework and any limitations may depend on the industry and the appropriate regulators relevant to the project. However, in line with the EU, Cyprus is a free market economy and, therefore, there are practically no legal restrictions in contracting out certain services or utilities to private entities.

PPP – TRANSACTIONS

Significant transactions

- 29 | What have been the most significant PPP transactions completed to date in your jurisdiction?

The Limassol Marina, a €350 million waterfront development able to accommodate 800 vessels is currently being developed, with the first residential, commercial and retail establishments already in operation. This is a notable build-operate-transfer (BOT) example whereby the project will be transferred to the Republic of Cyprus after a fixed time period.

Also, the Ayia Napa Marina, a €220 million project able to accommodate 600 vessels, commenced construction in 2016, following the Limassol Marina model. Similar projects are currently in the design and licensing stage in Paralimni, Larnaca and Paphos as the government is keen on using the privatisation and BOT models to attract more investment in the yachting, tourism and real estate sectors.

Both the Larnaca and Paphos International Airports are operated by Hermes Airports Ltd under a 25-year BOT concession agreement with Cyprus. Hermes – a Cyprus SPV – is an international consortium, representing a mix of Cypriot and international partners, including major French construction groups as well as international airport operators. The construction contract is the biggest ever undertaken in Cyprus. Together, the two airports handle over 7 million passengers annually.

An integrated casino resort is currently being developed in Limassol by a consortium formed between Melco International and Cyprus Phasouri (Zakaki) Limited, which has successfully obtained a 30-year licence agreement to develop and operate an integrated resort. The overall investment will exceed €500 million as it is expected to be the biggest casino resort in Europe. The casino licence will be valid for 30 years, while for the first 15 years it will be an exclusive concession and will allow for the licensee to operate satellite casinos in other areas in Cyprus.

Also, the discovery of gas fields in the Cyprus EEZ, has initiated the government's planning for an LNG plant that will enable international exports. Aimed at the management and utilisation of the findings, and recent private investments in a major Oil Terminal by VTTI in the Vasilikos area, the government's goal is to create a master plan for the area that will involve most hydrocarbon-related infrastructure.

UPDATE AND TRENDS

Key developments of the past year

30 | In addition to the above, are there any emerging trends or 'hot topics' in project finance in your jurisdiction?

The discovery of natural gas and potential oil deposits in Cyprus's EEZ in the Mediterranean Sea has confirmed substantial natural gas reserves. This has attracted international energy heavyweights, such as Total, Eni, Kogas, Qatar Petroleum and Exxon Mobil who have obtained licences and are planning infrastructure projects to commercially exploit the findings. These discoveries have initiated government planning for a liquefied conversion (LNG) plant, along with neighbouring countries, that will enable international exports.

In addition to the above, increased tourist interest, a traditional driving force of the Cypriot economy has boosted projects focused on tourism, retail and leisure. As mentioned above several marina destinations in Limassol, Ayia Napa and Paphos are currently in the pipeline with a number of them either being completed or constructed while the integrated casino resort is currently developed in Limassol (with the first temporary casino in Limassol and certain satellite casinos open within the past year). We see that PPP is a major driving force in the economy as it has been in use since 1996 with most projects being considered as successful and therefore the government seeks to formalise the procedures and legislation concerning PPP as so far it has been in use ad hoc.

Apart from the domestic aspect, a number of international finance projects are structured, negotiated and documented through Cyprus, although the underlying project is located elsewhere. Corporate structures in project financing including Cypriot SPVs are also being increasingly used by leading airlines to finance or lease commercial aircrafts, or both.



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