CYPRUS

Law and Practice

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CONTENTS

1. General p.3
1.1 Prevalence of Arbitration p.3
1.2 Impact of COVID-19 p.3
1.3 Key Industries p.3
1.4 Arbitral Institutions p.3
1.5 National Courts p.3

2. Governing Legislation p.4
2.1 Governing Law p.4
2.2 Changes to National Law p.4

3. The Arbitration Agreement p.4
3.1 Enforceability p.4
3.2 Arbitrability p.5
3.3 National Courts' Approach p.5
3.4 Validity p.6

4. The Arbitral Tribunal p.6
4.1 Limits on Selection p.6
4.2 Default Procedures p.6
4.3 Court Intervention p.7
4.4 Challenge and Removal of Arbitrators p.7
4.5 Arbitrator Requirements p.8

5. Jurisdiction p.8
5.1 Matters Excluded From Arbitration p.8
5.2 Challenges to Jurisdiction p.8
5.3 Circumstances for Court Intervention p.8
5.4 Timing of Challenge p.9
5.5 Standard of Judicial Review for Jurisdiction/ Admissibility p.9
5.6 Breach of Arbitration Agreement p.9
5.7 Jurisdiction Over Third Parties p.9

6. Preliminary and Interim Relief p.9
6.1 Types of Relief p.9
6.2 Role of Courts p.10
6.3 Security for Costs p.10

7. Procedure p.10
7.1 Governing Rules p.10
7.2 Procedural Steps p.11
7.3 Powers and Duties of Arbitrators p.11
7.4 Legal Representatives p.11

8. Evidence p.12
8.1 Collection and Submission of Evidence p.12
8.2 Rules of Evidence p.12
8.3 Powers of Compulsion p.13

9. Confidentiality p.13
9.1 Extent of Confidentiality p.13

10. The Award p.13
10.1 Legal Requirements p.13
10.2 Types of Remedies p.14
10.3 Recovering Interest and Legal Costs p.14

11. Review of an Award p.14
11.1 Grounds for Appeal p.14
11.2 Excluding/Expanding the Scope of Appeal p.15
11.3 Standard of Judicial Review p.15

12. Enforcement of an Award p.15
12.1 New York Convention p.15
12.2 Enforcement Procedure p.15
12.3 Approach of the Courts p.17

13. Miscellaneous p.18
13.1 Class Action or Group Arbitration p.18

13.2 Ethical Codes p.18
13.3 Third-Party Funding p.18
13.4 Consolidation p.18
13.5 Binding of Third Parties p.18

1. GENERAL

1.1 Prevalence of Arbitration

Arbitration is usually used in Cyprus for construction disputes, shareholder disputes, banking disputes between debtors and co-op institutions, and commercial disputes. Despite the fact that international arbitration has become increasingly popular over the last few years, litigation is clearly the most favoured method of resolving disputes in Cyprus. However, there is a growing trend to resort to arbitration, given the inefficiency of the court system to resolve disputes quickly.

As companies and residents in Cyprus often act within the context of international corporate structures and participate in international business transactions, international arbitration is most used as a method of dispute resolution for those transactions.

1.2 Impact of COVID-19

It is difficult to evaluate whether the use of arbitration has increased or decreased in Cyprus, mainly because parties maintain confidentiality in arbitrations. Nevertheless, the current court system of administration of justice in Cyprus is at an impasse because of the large number of cases, and therefore, the only immediately available escape route is to embrace arbitration and implement a new arbitration law.

Unequivocally, the COVID-19 pandemic has had negative consequences for international arbitration proceedings in Cyprus. For instance, meetings of arbitrators had to take place online, the closure of Cyprus airports prevented parties from travelling to Cyprus and providing oral testimonies where necessary, and parties faced difficulties in paying arbitration fees due to the global economic crisis caused by the pandemic.

1.3 Key Industries

As mentioned in **1.1 Prevalence of Arbitration**, construction disputes, shareholder disputes, banking disputes between debtors and co-op institutions, and commercial disputes constitute the main areas that are currently experiencing international arbitration activity in Cyprus. The reason is that Cyprus has emerged as an international business centre providing services for a wide spectrum of business transactions, including real estate investments and the setting-up of companies for joint ventures and specific large projects abroad.

1.4 Arbitral Institutions

The most established arbitral institutions in Cyprus are the following:

- Cyprus Branch of the Chartered Institute of Arbitrators (CIArb);
- Cyprus Eurasia Dispute Resolution and Arbitration Center (CEDRAC); and
- Cyprus Arbitration and Mediation Centre (CAMC).

Also, the Cyprus Chamber of Commerce and Industry (CCCI) acts regularly as an appointing authority, on the basis of pertinent contractual arbitration clauses, which appoints ad hoc arbitral tribunals but does not act as an arbitration body itself.

However, the use of arbitral institutions is limited in Cyprus. The reason might be that these arbitral institutions are not as well known in the arbitration community worldwide as the ICC or the LCIA.

1.5 National Courts

There are no specific courts in Cyprus that are designated to hear disputes related to international or domestic arbitrations. However, on 12 May 2022, the Cyprus Parliament enacted a law (the Establishment and Operation of Commer-

cial Court and Admiralty Court Law 2022 – Law 69(I)/2022), establishing a Commercial Court and an Admiralty Court in Cyprus. The Commercial Court will have jurisdiction to hear and determine at first instance all commercial disputes where the amount or value in dispute is not less than EUR2 million, albeit with some exceptions where the Commercial Court will have jurisdiction to hear cases where the amount or value in dispute is less than EUR2 million. The exceptions are set out in paragraphs (i), (l) and (m) of the definition of the term "commercial dispute" that is provided in Article 2 of Law 69(I)/2022 and includes disputes where the subject matter relates to infringement of competition issues, intellectual property issues and arbitration issues. It is also worth noting that prior to the commencement of Law 69(I)/2022, the Cyprus Parliament approved the amendment of Article 3 of the Constitution of the Republic of Cyprus to allow the use of the English language in the newly established Commercial Court.

2. GOVERNING LEGISLATION

2.1 Governing Law

Domestic arbitration is governed by the Arbitration Law (Cap 4), which is based on the English Arbitration Act 1950, now largely superseded in England and Wales by the Arbitration Act 1996.

The International Commercial Arbitration Law (101/1987) (ICAL) applies exclusively to international commercial disputes and is almost identical to the UNCITRAL Model Law of 1985. There are no significant variations, with the exception of Article 2(4) of the ICAL, which sets forth the definition of the term "commercial arbitration". The 2006 amendments to the UNCITRAL Model Law have not been adopted by the Cyprus legislature.

Cyprus is also a party to the New York Convention (ratified in Cyprus by the Ratification Law L84/1979), and an award issued in Cyprus can easily be recognised and enforced both locally and in all the other contracting states. Furthermore, the procedure for recognition and enforcement of a foreign award in Cyprus is laid down by the Foreign Courts Judgments (Recognition, Registration and Enforcement) Law of 2000 (Law 121(I)/2000).

2.2 Changes to National Law

No significant amendments have been made to the arbitration laws in the past year.

However, the amendment of the arbitration laws is fundamental to the promotion and development of arbitration in Cyprus, and an initiative has been established, under the auspices of the Ministry of Justice and the commissioner of legislation, to amend the arbitration laws. The aim is to provide the commissioner of legislation with a draft of a brand-new arbitration law. The suggestion is that Cap 4 and the ICAL should be abolished and a new arbitration law adopted. This new arbitration law should be based on the UNCITRAL Model Law, but it should apply in relation to all types of arbitrations (ie, domestic arbitrations, international arbitrations, energy arbitrations, and arbitrations based on bilateral investment treaties).

3. THE ARBITRATION AGREEMENT

3.1 Enforceability

The only requirement pursuant to the arbitration laws is that the arbitration agreement must be in writing in order to be enforceable. Despite the fact that there are no other formal statutory requirements, pursuant to the common law principles, the arbitration agreement must be clear and certain in order to be enforceable, it should

deal with matters that are arbitrable under the laws of Cyprus and it should be valid under the general law of contract.

In Writing

Under Section 2(1) of Cap 4, an "arbitration agreement" is defined as a written agreement to submit present or future disputes to arbitration. Likewise, Section 7 of the ICAL determines that for an arbitration agreement to be valid, it must be in writing. An agreement is considered to be in writing if it is contained in:

- a document signed by the parties;
- an exchange of letters, telexes, telegrams or other means of telecommunication which provide a record of the agreement; or
- 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 can be in the form of an arbitration clause duly incorporated into a contract or in the form of a separate agreement.

Clear and Certain

An arbitration agreement is void if its terms are uncertain or if it does not include a clear reference to arbitration. The relevant English judgment that constitutes a persuasive precedent for Cyprus courts is Finnegan v Sheffield City Council (1988) 43 BLR 124.

3.2 Arbitrability

While the ICAL, like the UNCITRAL Model Law, determines that it applies only to disputes that may be settled by arbitration, Cap 4 does not include any provision regarding arbitrability. Nevertheless, pursuant to Article 9(2) of Cap 4, Cyprus courts have the discretion to invalidate an arbitration agreement and refer the dispute to adjudication by the courts if any of the parties involved in a dispute is guilty of fraud.

Although most matters are arbitrable in Cyprus, some matters that affect the public interest cannot be referred to arbitration. For instance, matrimonial and family disputes, disputes involving minors, criminal matters and disputes involving a matter of public policy belong exclusively to the domain of the Cyprus courts. Disputes directly affecting the existence or validity of a registered intellectual property right are not arbitrable, and the same applies to competition or antitrust matters. Furthermore, an arbitral tribunal cannot issue orders which affect the status of a Cyprus company such as a winding-up order or amendment of a company's register of members, even though the underlying dispute could potentially be resolved by arbitration.

3.3 National Courts' Approach

Cyprus courts are generally inclined to enforce arbitration agreements.

Under Article 36(1)(a) of the ICAL and Article V(1)(a) of the New York Convention, the invalidity of an arbitration agreement shall be decided by the law chosen by the parties and in the absence of such a choice, the applicable law shall be the law of the country where the award was issued. There is no case law on the matter similar to that of other jurisdictions analysing whether the law chosen by the parties to govern the main agreement or the law chosen by the parties governing the arbitral procedure can be considered as an implicit choice of law governing the arbitration agreement.

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

According to the ICAL, the court must refer the parties to arbitration upon the request of a party which is made before the submission of its pleadings, unless the court finds that the arbitration agreement is null, void or incapable of being enforced. When there are allegations of fraud, the court may be reluctant to enforce an arbitration agreement, however, each case is decided on the basis of its facts.

3.4 Validity

The doctrine of separability is codified in Section 16(1) of the ICAL, which stipulates that:

- an arbitration agreement which forms part of a contract is considered a separate agreement from the rest of the contract; and
- an arbitral tribunal's decision that the contract is void at the outset (ab initio) does not necessarily affect the validity of the arbitration agreement.

Separability ensures that, if a clause of the contract is breached by one of the parties or the contract itself is deemed invalid, non-existent or ineffective due to a mistake concerning the identities of the signatories, undue influence or non est factum, the arbitration agreement will survive.

Nevertheless, when the arbitration agreement is deemed non-existent or invalid for the same reasons that the whole contract is non-existent or invalid, it will not stand. An example is a case in which the whole contract including the arbitration agreement is invalid because of forgery and thus, the invalidity of the contract shall entail the invalidity of the arbitration clause as well.

4. THE ARBITRAL TRIBUNAL

4.1 Limits on Selection

Neither the ICAL nor Cap 4 imposes any limits on the parties' autonomy to select arbitrators in Cyprus.

Pursuant to the ICAL, the parties are free to determine the number of arbitrators and the procedure of appointment of the arbitrators, as well as to select anyone as arbitrator, irrespective of their nationality (Sections 10 and 11(1) and (2), ICAL). If the parties do not determine the number of arbitrators, the arbitration will be carried out by three arbitrators.

4.2 Default Procedures

Where there is no agreement between the parties, a default appointment procedure for international commercial arbitrations is laid down in Section 11(3) of the ICAL, which stipulates as follows.

In an arbitration with three arbitrators:

- each party must appoint one arbitrator;
- the two arbitrators who are appointed by the parties will then appoint the third arbitrator; and
- if a party fails to appoint an arbitrator within 30 days of receipt of a request to do so from the other party, or if the two arbitrators fail to agree on the third arbitrator within 30 days of their appointment, the appointment will be made, upon request of a party, by the court.

In an arbitration with a sole arbitrator (Section 11(3)(b), ICAL), if the parties are unable to agree on the arbitrator, the arbitrator will be appointed, upon request of a party, by the court.

With regard to multi-party arbitrations, there is no default procedure, but where the parties have

not agreed on the number of arbitrators (Section 10(2)), the procedure for a three-arbitrator tribunal would apply. There is a gap in the law, as there is in the UNCITRAL Model Law, in a case where the parties have reached an agreement on a number of arbitrators other than one or three but have not determined the appointment procedure. This would again inevitably lead to the court assuming jurisdiction to fill the void.

Similarly, under Section 10(2) of Cap 4, the Cyprus courts have the power to appoint an arbitrator, umpire or third arbitrator in a situation where the appointment is not made within seven clear days after notice has been served.

4.3 Court Intervention

As mentioned in **4.2 Default Procedures**, the Cyprus courts can intervene in the selection of arbitrators at the request of a party (Section 11(4), ICAL), unless there is an agreement between the parties, if:

- a party fails to act in accordance with the arbitration agreement;
- the parties or the two appointed arbitrators are unable to reach an agreement expected of them under the procedure; or
- a third natural or legal person including the arbitral institution fails to perform any function entrusted to it under the procedure.

In addition, the court may set aside any appointment made pursuant to Section 11 of Cap 4, which sets out that where an arbitration agreement provides for a two-arbitrator tribunal, each party appoints one arbitrator and unless the arbitration agreement expresses a contrary intention:

- if either of the appointed arbitrators refuses to act, is incapable of acting or dies, the party that appointed him or her may appoint a replacement; or
- if, on such a reference, one party fails to appoint an arbitrator, the party that has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator.

4.4 Challenge and Removal of Arbitrators

Challenge

In international commercial arbitrations, an arbitrator can be challenged, where circumstances exist that give rise to justifiable doubts as to their impartiality or independence, or where the arbitrator does not have the qualifications agreed by the parties (Article 12, ICAL). A party can challenge an arbitrator appointed by it, or in whose appointment it has participated, only for reasons of which it becomes aware after the appointment has been made and within 15 days of acquiring the relevant knowledge.

The parties are free to agree on a procedure for challenging an arbitrator. If a challenge under any procedure agreed on by the parties is not successful, the challenging party can, within 30 days of receiving notice of the decision rejecting the challenge, request that the court decide on the challenge. The court's decision is final and not subject to appeal. While such a request is pending before the court, the arbitral tribunal, including the challenged arbitrator, can continue the arbitral proceedings and issue an award.

Removal

The parties can agree to remove an arbitrator when they become de jure or de facto unable to perform their functions or if, for other reasons, they fail to act without undue delay (Article 14, ICAL). Otherwise, if a disagreement remains regarding any of these grounds, any party can ask the court to decide on the termination of the mandate, and this decision cannot be appealed.

In domestic arbitrations, a party can apply to the court in order to remove an arbitrator or an

umpire who fails to act expediently in the proceedings or in issuing an award (Section 13, Cap 4).

Moreover, in a case where an arbitrator or an umpire has misconducted themselves or the proceedings, the court can remove the arbitrator or umpire (Section 20, Cap 4). Any award issued by them may be set aside.

In Bank of Cyprus Ltd v Dynacon Limited and Another (1990) 1 SCJ 717, the court defined the term "misconduct" to include every type of behaviour which tends to destroy the trust that the litigants should have towards an arbitrator that the arbitrator will issue a just award.

In Solomou Neophitos v Laiki Cyprialife Ltd (2010) 1 SCJ 687, the Supreme Court of Cyprus mentioned that the classic approach to "misconduct" refers to bribery of the arbitrator or to the existence of a secret interest on their behalf in the dispute before them.

Nevertheless, the term when applied to "misconduct of the arbitration proceedings" expands to other matters as well, to include morally or ethically improper behaviour or the wrongful admission or exclusion of evidence, or the acceptance of extrinsic evidence for the construction of the contract.

4.5 Arbitrator Requirements

The ICAL prescribes that any person who is asked to be an arbitrator has to disclose any circumstances which are likely to give rise to justifiable doubts as to their impartiality or independence. The arbitrator is obliged to disclose such circumstances following their appointment and until the completion of the arbitration proceeding.

Although such requirements are not included in Cap 4, if it is revealed that an arbitrator is not impartial, the court has the power to remove the arbitrator at the request of a party.

The approach that independence and impartiality of arbitrators constitute a fundamental principle in arbitration has been followed by Cyprus courts.

5. JURISDICTION

5.1 Matters Excluded From Arbitration

See **3.2 Arbitrability**.

5.2 Challenges to Jurisdiction

With respect to international commercial arbitrations, Section 16 of the ICAL sets forth that an arbitral tribunal has competence to rule on its own jurisdiction. Despite the absence of a similar rule in Cap 4, the Cyprus courts apply this doctrine in domestic arbitrations as well.

5.3 Circumstances for Court Intervention

A plea that the arbitral tribunal lacks jurisdiction must be raised no later than the submission of the statement of defence (Section 16(2), ICAL). If the arbitral tribunal issues a preliminary award that it has jurisdiction, any objecting party can request, within 30 days after having received notice of that award, that the Cyprus court decide the question of jurisdiction. The decision of the court is final and is not subject to appeal. Moreover, while the court proceedings on the matter are pending, the arbitration proceedings can be continued by the arbitral tribunal.

The issue of jurisdiction can also be decided by the Cyprus courts in the following circumstances:

- if a respondent to arbitration proceedings fails to respond to the notice of arbitration, the claimant will apply to the court for the

appointment of an arbitrator. In this case, the issue of jurisdiction can be raised by the respondent through its objection to such an application;
- where a party to the arbitration agreement files an action before the Cyprus courts in breach of the arbitration agreement, the defendant can file an application to request an order to stay proceedings and refer the parties to arbitration because of the existence of the arbitration agreement and the court may consider any allegation that the arbitral tribunal lacks jurisdiction to take the case; and

- the lack of jurisdiction of the arbitral tribunal to hear the dispute may be decided by the courts even after the issuance of the award, and more precisely in the context of an application to set aside or to recognise and enforce an arbitral award.

The arbitration laws do not include provisions for the review of negative rulings on jurisdiction by arbitral tribunals.

5.4 Timing of Challenge
See **5.3 Circumstances for Court Intervention**.

In Government of the Republic of Yemen through the Ministry of Legal Affairs of the Republic of Yemen v Compagnie D'Enterprises CFE, SA (2002) 1 SCJ 945, the Supreme Court of Cyprus held that since the party had not requested review by the court of the preliminary ruling concerning jurisdiction within 30 days after having received notice of the issue of the preliminary ruling, as provided by Section 16(3) of the ICAL, the decision was final and could not be reviewed.

5.5 Standard of Judicial Review for Jurisdiction/Admissibility
The Cyprus courts have not yet adopted a clear approach to the standard of judicial review for questions of admissibility and jurisdiction, and there are no explicit statutory provisions governing this. The following two approaches can be followed by the court:

- pursuant to de novo review, the court will proceed with a completely new review of the facts of the case, the validity of the arbitration agreement, the appointment procedure, etc; and
- according to deferential review, the court will assume that the tribunal's award is correct and the latter will simply be reviewed.

5.6 Breach of Arbitration Agreement
Where an action is brought before the Civil Court in a matter which is subject to an arbitration agreement, a party can apply to the court and request that the dispute be referred to arbitration (Section 8, ICAL). In this case, an order for stay and/or dismissal of the proceedings will be issued by the court, unless it finds that the agreement is null and void, inoperative or incapable of being performed.

Section 8 of Cap 4 contains similar provisions in relation to domestic arbitrations.

National courts will generally enforce an arbitration agreement and refer the dispute to arbitration, unless matters of fraud are alleged or unless the arbitration agreement is found to be null, void or incapable of being enforced.

5.7 Jurisdiction Over Third Parties
See **13.5 Binding of Third Parties**.

6. PRELIMINARY AND INTERIM RELIEF

6.1 Types of Relief
Unless the parties have an agreement to the contrary, an arbitral tribunal has the power to

grant interim protective relief against any party with respect to the subject matter of the dispute and can demand guarantees from any of the parties concerning such relief (Article 17, ICAL). The assistance of the court is not needed in this case.

While neither Cap 4 nor the ICAL contains any provision which empowers the arbitral tribunal to issue ex parte interim orders, Article 18 of the ICAL provides that every possible opportunity must be offered to each party to appear and represent itself and its position.

In this context, an arbitral tribunal can grant interlocutory injunctions, usually on a by-summons application, of a prohibitory or protective nature and disclosure orders.

6.2 Role of Courts

According to Section 9 of the ICAL, the court is empowered to issue protective measures either before or during arbitration proceedings, which are deemed in aid of and granted in parallel with the arbitration proceedings. Their aim is mostly to protect the subject matter of the arbitration, but in general there are no limitations as to the types of orders which may be issued by a court, which may include Mareva-type orders or other mandatory or prohibitive orders. Section 3 explicitly states that Section 9 of the ICAL applies to foreign-seated arbitrations.

Article 35 of the Recast Brussels Regulation (Regulation (EU) 1215 /2012) provides a legal basis for the issuance of interim measures in support of the arbitration proceedings, in specific circumstances.

As far as domestic arbitrations are concerned, while arbitration proceedings are pending, the court can grant different kinds of preliminary or interim relief in relation to the following:

- discovery of documents and interrogatories;
- taking and preserving of evidence;
- securing the amount of the dispute;
- maintenance, storage or sale of any goods which are the subject matter of the arbitration;
- other forms of interim relief or appointment of a receiver; and
- detention, preservation or inspection of any property or thing which is the subject matter of the arbitration.

The use of emergency arbitrators is not provided for by the arbitration laws.

6.3 Security for Costs

There is no provision in the ICAL entitling the arbitral tribunal to order security for costs. Such an order may be available, however, under the rules selected and adopted by the parties. In the absence of an agreement of the parties giving it such power, a tribunal is generally reluctant to order security for costs.

In domestic arbitrations, the issuance of an order for security for costs by the court is available pursuant to the provisions of Cap 4.

7. PROCEDURE

7.1 Governing Rules

There are no specific procedural rules governing international commercial arbitrations and the parties are free to agree on the procedure to be followed by the arbitral tribunal. The ICC arbitration rules, the UNCITRAL arbitration rules and the LCIA rules are most commonly chosen by parties so as to have a framework regarding the conduct of the proceedings. In the absence of such agreement, the arbitral tribunal may conduct the arbitration in any manner it deems appropriate. If the seat of arbitration is in Cyprus, the ICAL will govern some aspects of the arbi-

tration, such as the appointment of arbitrators if this is not already agreed upon by the parties, the replacement of arbitrators, when the arbitration is considered to have been initiated and other matters.

In relation to domestic arbitrations, the First Schedule of Cap 4 includes implied terms, which are considered part of the arbitration agreement, unless the arbitration agreement explicitly provides otherwise.

7.2 Procedural Steps

The ICAL provides that an international commercial arbitration is initiated on the day on which the respondent receives the notice of arbitration. There are also provisions for the constitution of the arbitral tribunal within certain time frames. Other than that, there are no further specific procedural steps required by law, and the parties may to a large extent determine the procedure by agreeing on the applicable rules or by drafting their own procedural road map with the help of the tribunal.

7.3 Powers and Duties of Arbitrators

With respect to international commercial arbitrations, the impartiality and independence of the arbitration proceedings constitute a fundamental duty of the arbitrators which is imposed by the ICAL. The arbitral tribunal is obliged to grant equal rights and obligations, as well as opportunities, to all parties to present their case. Under Section 14 of the ICAL, an arbitrator can be replaced if they become, de jure or de facto, unable to perform their functions or in the event that they fail to act without undue delay.

Section 17 of the ICAL specifies that, unless otherwise agreed by the parties, the arbitral tribunal has the power to issue interim protective measures concerning the subject matter of the dispute. In addition, pursuant to Section 26 of the ICAL, experts can be called by the arbitrators so as to provide evidence in relation to the dispute. Lastly, Section 31 of the ICAL lays down that the form and contents of the arbitral award must meet particular legal requirements.

In domestic arbitrations, arbitrators have a general duty to conduct the arbitration proceedings and issue the arbitral award with impartiality, due diligence and expedition.

In accordance with the provisions of Cap 4, arbitrators have the power to administer oaths, appoint expert witnesses, request the production of documents for inspection, apply to the court to settle any legal issues that may arise throughout the arbitration proceedings, and correct errors that may have been made in the wording of the arbitral award.

7.4 Legal Representatives

All advocates who practise the profession in Cyprus, including those from other EU member states, must comply with the provisions of the Advocates' Law, Cap 2 and the Advocates' Code of Conduct Regulations of 2002. The latter prescribes rules of professional conduct and ethics. Cyprus advocates are bound by these rules even when they participate in proceedings abroad. No persons other than those licensed to practise in Cyprus may provide legal services, including legal advice, to any person. There are no specific provisions excluding foreign lawyers from appearing in arbitrations in Cyprus, if they are from the EU. If they are from other countries, then immigration rules would be applicable, prohibiting the exercise of a profession in Cyprus without a special permit.

8. EVIDENCE

8.1 Collection and Submission of Evidence

In international commercial arbitrations, where there is no agreement on the matter between the parties, the arbitral tribunal has wide discretion to determine the rules applicable to the production of evidence and the conduct of the hearings. Particularly, the arbitral tribunal can specify the procedure on the admissibility, relevance and significance of any evidence brought before it (Section 19(2), IACL). Orders for disclosure of documents, attendance of witnesses and so on can be issued by the arbitral tribunal based on these rules. Hearings can either be oral or document-based. Moreover, pursuant to Section 26 of the ICAL, in the absence of an agreement between the parties, the arbitral tribunal can appoint one or more experts to report to it on specific issues, or require a party to give an expert any relevant information or to produce or provide access to any relevant documents, goods or other property for inspection.

In domestic arbitrations, in the absence of any applicable rules, the Civil Procedure Rules that apply in court proceedings apply mutatis mutandis. Furthermore, Section 17 of Cap 4 states that any party to an arbitration can apply to the court for the issue of a summons requiring any person to attend for examination or to produce any document, but no person will be compelled under any such writ to produce any document which they could not be compelled to produce on the trial of an action.

With regard to privilege, all correspondence between professional legal consultants and their clients regarding the dispute are covered by professional privilege and may not be presented as evidence in court or arbitration proceedings. Additionally, all correspondence between an advocate and a third person is also covered by professional privilege if it takes place while expecting court or arbitration proceedings. If the client consents or the advocate-client relationship purposes perpetrating illegal acts or offences, such a privilege can be waived.

8.2 Rules of Evidence

In relation to international arbitration, the ICAL does not specify any rules of evidence other than in 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. The parties may opt to adopt other rules on evidence, such as the IBA Rules on Evidence, in order to have clarity on the procedure to be followed.

Cap 4 does not specify any rules of evidence that apply to domestic arbitral proceedings. Nevertheless, the general rules of evidence that govern court proceedings apply, unless otherwise agreed by the parties.

The above is especially the case where the arbitration is initiated by reference to the subject matter thereof to a specialist arbitrator for determination within the parameters of an ongoing case pending before a court.

Apart from the analysis mentioned in **8.1 Collection and Submission of Evidence**, Cyprus law does not specify any rules of evidence applying to arbitral proceedings seated in Cyprus. Nevertheless, where the seat of arbitration is in Cyprus, the general rules of evidence that govern court proceedings apply. The reason is that these rules constitute part of the procedural law of the place where the arbitration is taking place, ie, Cyprus, and thus, they are applicable unless otherwise agreed by the parties. For instance, under the general rules of evidence, an arbitral tribunal can order the disclosure of any docu-

ments which are considered to be relevant to the dispute before it.

In the case of DH.MA.RO LTD v Lakis Construction Ltd (2010) 1 SCJ 223, the Supreme Court followed the approach that unless the parties have agreed otherwise, an arbitrator is obliged to apply the rules of evidence that are applicable to court proceedings.

8.3 Powers of Compulsion

The arbitral tribunal or a party (with the approval of the arbitral tribunal) can request the Cyprus court's assistance in taking evidence (Section 27, ICAL). Pursuant to its rules on taking evidence, the court can execute such a request within its competence.

See **8.1 Collection and Submission of Evidence** in relation to Section 26 of the ICAL and Section 17 of Cap 4.

9. CONFIDENTIALITY

9.1 Extent of Confidentiality

Arbitration is a private method of alternative dispute resolution on the basis of the consent of the parties. This private nature of arbitration proceedings entails an obligation on the part of the arbitrators not to reveal or disclose information with regard to the arbitral proceedings, documents or award.

The principle of confidentiality is not expressly included in the arbitration laws of Cyprus and there is little case law on the matter. Nevertheless, English case law on the confidentiality of arbitration proceedings constitutes persuasive precedent in Cyprus. For instance, in Dolling-Baker v Merret [1990] 1 WLR 1205, Parker LJ mentioned that the very nature of arbitration proceedings imposes a duty on the parties not to disclose or use, for any other aim, information used, disclosed or produced in the arbitration without the agreement of the other party or unless it is pursuant to an order or leave of the court.

The obligation of confidentiality is not unconditional. The following are cases in which disclosure may be allowed:

- when it is reasonably necessary for the protection of the parties to the arbitration (Hassneh Insurance Co of Israel v Steuart J Mew [1993] 2 Lloyd's Rep243 QB);
- for the purposes of invoking the supervisory roles of the court over arbitration awards and for enforcing the award itself (Hassneh Insurance Co of Israel v Steuart J Mew [1993] 2 Lloyd's Rep243 QB);
- when the public interest or the interests of justice require it (Emmot v Michael Wilson & Partners [2008] EWCA (Civ) 184 CA); and
- if there is express or implied consent by the parties (Emmot v Michael Wilson & Partners [2008] EWCA (Civ) 184 CA).

Nevertheless, where a party applies for the recognition and enforcement of an arbitral award and the respondent files an objection, the case will proceed to a hearing, and the judgment of a Cyprus court will be published; thus, the basic elements of the dispute will inevitably be disclosed to publicly available resources and hence confidentiality will be lost.

10. THE AWARD

10.1 Legal Requirements

Under the ICAL, the issued award should be in writing, be signed by the tribunal, contain the reasons behind it – unless the parties have agreed otherwise – and mention the seat of arbitration and the date of issue. Where the arbitral award is issued by multiple appointed arbitrators, the

award is not required to be unanimous and it is sufficient to have the award signed by the majority of arbitrators provided that this omission is justified in the award.

There are no specific time limits on delivery of an award, either in international commercial arbitrations or in domestic arbitrations, but Cap 4 provides that an arbitrator must use all reasonable dispatch in entering into and proceeding with the reference and making an award.

10.2 Types of Remedies

All types of general remedies can be awarded by an arbitral tribunal, provided that the parties have not agreed otherwise. Following on from what is discussed in **3.2 Arbitrability**, there cannot be any order to dissolve a company or a marriage, or to rectify the register of members of a company, or to determine marital matters 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.

10.3 Recovering Interest and Legal Costs

The ICAL does not include a relevant provision on recovering interest and legal costs, and the matter is one of general discretion. As a general rule, pursuant to Cyprus law, costs are awarded in favour of the winning party.

According to Cap 4, the payment of the costs will be decided by the arbitral tribunal. If a relevant provision is included in the arbitration agreement, such a provision is void. The cost of the arbitration is at the discretion of the arbitral tribunal or the umpire. Where Cyprus law applies, the awarding of interest is recognised as a suitable remedy to compensate for non-payment of pecuniary claims.

With regard to the interest, it will be added to the sum of the award as from the date of issue of the award, except if the arbitral tribunal decides otherwise. In the absence of any other basis, the tribunal will award interest equal to the legal interest ordered by the courts, which is currently fixed at 2% per annum. A greater interest may be awarded by way of damages, and the percentage thereof will depend either on the existence of a contractual provision for interest or on proof of special circumstances. Such interest may be awarded from the breach if the tribunal considers it an appropriate remedy.

11. REVIEW OF AN AWARD

11.1 Grounds for Appeal

As far as international commercial arbitrations are concerned, under Section 34(2) of the ICAL, the parties are entitled to file an application for annulment of an arbitral award when:

- a party to the arbitration agreement lacked contractual capacity; or the arbitration agreement is not valid pursuant to the applicable law that the parties have subjected it to, or failing such agreement, under the laws of the Republic of Cyprus;
- the party was not given timely and proper notice of the appointment of the arbitrator or of the arbitral proceedings, or was by any other means deprived of the chance to present its case;
- the award deals with a dispute not contemplated by, or not falling within, the terms of submission to arbitration, or contains decisions on matters beyond the scope of the submission to arbitration;
- the composition of the arbitral tribunal or the arbitration proceedings was in breach of the agreement of the parties, unless such agreement was in conflict with a provision of the ICAL from which the parties cannot derogate

or, failing such agreement, was not in accordance with the ICAL;
- the subject matter of the dispute is not capable of being resolved by arbitration under the laws of the Republic of Cyprus; or
- the award is in conflict with the public policy of Cyprus.

In domestic arbitrations governed by Cap 4, the parties are entitled to request the annulment of an arbitral award from the district courts of Cyprus where the arbitrator or the umpire has misconducted themselves or the proceedings or the arbitration process or the award has been improperly issued (Section 20(2), Cap 4). The latter ground is very wide and includes matters of jurisdiction and whatever else would render an award invalid or unenforceable.

In both cases, either in international commercial arbitrations or in domestic arbitrations, a party can request the annulment of an arbitral award by way of an application, which has to be filed to the competent district court. It should be mentioned that there is a time limit regarding international commercial arbitrations and, more precisely, an application for setting aside may not be made more than three months from the date of notification of the award.

The judgment issued by the district court concerning an application to set aside an arbitral award can be appealed before the Supreme Court of Cyprus.

11.2 Excluding/Expanding the Scope of Appeal

In relation to excluding the scope of appeal, Cyprus courts have not developed case law on this matter yet. With regard to expanding the scope of appeal, the parties cannot agree to expand the scope of appeal or challenge, since the grounds contained in the ICAL and Cap 4 are exhaustive.

11.3 Standard of Judicial Review

Judicial review of the merits of a case is not allowed under the arbitration laws of the Republic of Cyprus.

12. ENFORCEMENT OF AN AWARD

12.1 New York Convention

The 1958 New York Convention (NYC) was adopted in Cyprus by Ratification Law 84/1979. With respect to reservations, the NYC is applied by Cyprus courts on the basis of reciprocity, in recognition and enforcement of awards issued only in the territory of another contracting state and only in relation to disputes arising out of legal relationships which are considered as commercial under its national law.

In addition, Cyprus ratified the Washington Convention of 1965 concerning awards issued by the International Centre for Settlement of Investment Disputes and the Convention on Conciliation and Arbitration within the Conference on Security and Co-operation in Europe of 1992. In addition, Cyprus is party to several bilateral investment treaties dealing with protection of investors.

12.2 Enforcement Procedure

The provisions for recognition and enforcement laid down in the ICAL are similar to those set out in the UNCITRAL Model Law and in the NYC.

An application, accompanied by the duly authenticated original award or a duly certified copy thereof, along with an official certified translation in Greek, and the original or duly certified copy of the arbitration agreement, has to be filed with the competent district court by the party wishing to have the arbitral award recognised and enforced. 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 provided in the ICAL, which again resemble the reasons for refusal of recognition found in the NYC.

These grounds are set out in Section 36 of the ICAL and are as follows:

- the parties to the arbitration agreement were, under the law applicable to them, under contractual incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing such agreement, under the law of the country where the award was issued;
- the party against which the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present its case;
- the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced;
- the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;
- the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made;
- the subject matter of the difference is not capable of settlement by arbitration under the law of the Republic of Cyprus;
- the recognition or enforcement of the award would be contrary to the public policy of the Republic of Cyprus.

Enforcement of Awards That Have Been Set Aside

With regard to enforcement of awards set aside by the courts in the seat of arbitration, there is as yet no relevant case law in Cyprus on the matter. If a Cyprus court has to deal with this matter, it is most likely to follow the territorial approach of recognising the primary jurisdiction of the courts of the seat. The territorial approach has been supported by English judgments such as Dardana Ltd v Yukos Oil Co [2002] EWCA Civ 543, [2002] 2 Lloyd's Rep 326 and Dallah Estate and Tourism Holding Company v The Ministry of Religious Affairs, Government of Pakistan [2009] EWCA Civ 755, par 58–63 and 75–76, which constitute persuasive precedents for Cyprus courts. In any case, a judgment setting aside an arbitral award can be recognised and enforced in Cyprus under the regime of the European Regulation (EU) 44/2001 or 1215/2012, depending on the case, where the seat of arbitration is another EU member state, or the Lugano Convention, the Judgment of Foreign Courts (Recognition, Registration and Enforcement pursuant to Treaty) Law of 2000, Law No 121(I)/2000, if there is a bilateral treaty between Cyprus and the seat of arbitration or based on common law provisions.

In domestic arbitrations, according to Cap 4, the arbitral award can be recognised and enforced as if it was a judicial judgment following the submission of an application.

An Award Which is Subject to Ongoing Set-Aside Proceedings at the Seat

The Cyprus courts have discretion when an award is subject to ongoing set-aside proceed-

ings at the seat (eg, no impact, suspension of enforcement proceedings pending a resolution of the proceedings at the seat) and the approach to be adopted depends on the judge hearing the case.

In SUEK AG v LARCHER TRADING LIMITED, No Foreign Decision: 5/2018,30/1/2019 the Cyprus court highlighted that under Article VI of the NYC, the court has a wide discretion in deciding whether to suspend the registration process until the conclusion of the proceedings in the country where the arbitral award was issued. However, the NYC does not provide that the registration process should be automatically suspended when an application to set aside is filed.

As the suggestion of the Travaux préparatoires, in appropriate circumstances, an arbitral award may be registered even though an application to set aside the same is pending (Travaux preparatoires, Summary Records of the United Nations Conference on International Commercial Arbitration, 17th meeting [E/CONF.26/SR.17–E/2704 and Corr.1,E/CONF.26/L.31, L.37/Rev.1, L.43 and L.45]).

Sovereign Immunity

There is no legal provision for sovereign immunity in Cyprus but the defence of state immunity has been recognised by Cyprus courts. Despite this recognition, where the actions of foreign states are of a financial and commercial nature that could also be conducted by a natural person (jure gestionis), the defence of state immunity cannot be applied. In such cases, arbitral awards, which were issued against another state, will be recognised and enforced by the Cyprus courts.

12.3 Approach of the Courts

The general approach of Cyprus courts is the recognition and enforcement of arbitral awards issued in international commercial arbitrations or in domestic arbitrations, except where there is a ground for refusing recognition and enforcement as analysed in **12.2 Enforcement Procedure**.

It should be noted that the Cyprus courts carefully examine whether the certification and translation of the documents meet the requirements prescribed by the law and case law. Furthermore, the Cyprus courts will reject an application for registration and enforcement of an arbitral award only if one of the reasons prescribed in the ICAL, which resemble the reasons for refusal of recognition and enforcement laid down in the NYC, exists. The Cyprus courts do not review the merits of the case. Cyprus courts will most likely reject an application for recognition, in the event that neither the applicant nor the respondent resides in Cyprus.

In the absence of a statutory provision to define the concept of public policy, the Cyprus courts have adopted a restricted definition of public policy. More precisely, the term “public policy” includes any fundamental principle or value or rule which is necessary for the social, legal, economic and political functioning of the Republic of Cyprus. The review by the courts of the arbitral award is supervisory and includes examination of whether the arbitral award is in conflict with public policy, but the Cyprus courts will not review the merits of the case. The Cyprus courts accept public policy as a ground for sparingly resisting enforcement and when the circumstances of the case are clear. The term “public policy” has been judicially recognised to include the fundamental governing principles which society in general recognises at the specific time and which permeate the established legal order (Charalampides v Westacre Investments Inc (2008) 1 (B) JSC 1217).

Also, it is worth noting that an arbitral award that is final and binding upon the parties will preclude the promotion of a civil claim on the same facts/

dispute/claim. The fact that the arbitral award creates res judicata between the parties has been recognised in the very recent Supreme Court judgment of Civil Appeal No. 117/2018 Bitonic Ltd v Bank of Moscow-Bank Joint Stock Company, former Joint Stock Commercial Bank "Bank of Moscow" (Open Joint-Stock Company), dated 16 March 2022.

13. MISCELLANEOUS

13.1 Class Action or Group Arbitration

There is no provision for class-action arbitration or group arbitration in the arbitration laws. However, by virtue of Section 30 of Cap 4 in relation to domestic arbitrations, the Civil Procedural Rules are applicable, and under Order 9, all persons may be joined in one action as plaintiffs, in whom any right to relief in respect of or arising out of the same transaction or series of transactions is alleged to exist, whether jointly, severally, or alternatively, where if such persons brought separate actions any common question of law or fact would arise.

13.2 Ethical Codes

All advocates practising in Cyprus are bound by the Advocates' Law, Cap 2 and the Advocates' Code of Conduct Regulations of 2002. This code specifies rules of professional conduct and ethics, such as a duty to act with honour, dignity, due care and independence and a duty to respect the court, clients and colleagues.

As explained in **4. The Arbitral Tribunal**, arbitrators must be impartial and independent and disclose any potential conflict of interest. The IBA Guidelines on Conflicts of Interest in International Arbitration (2014) are not binding, but they are taken into account when arbitral tribunals or the Cyprus courts face challenges to international arbitrators.

13.3 Third-Party Funding

Third-party funding is not governed by the laws of Cyprus, and the Cyprus courts have not examined this matter. Third-party funding is not common and may not be available in Cyprus from a practical perspective. The concept of public policy and the equitable principles of champerty and maintenance may constitute impediments to the availability of third-party funding.

13.4 Consolidation

Although the consolidation of arbitral proceedings is not regulated by the arbitration laws, pursuant to Section 30 of Cap 4, which establishes the applicability of civil procedure rules, consolidation is available in domestic arbitrations. When two or more actions are pending in the same court, whether by the same or different plaintiffs against the same or different defendants, and the claims of such actions involve a common question of law or fact of such importance in proportion to the rest of the matters involved in such actions as to render it desirable that the actions should be consolidated, the court or a judge may order that they be consolidated.

13.5 Binding of Third Parties

Generally, the rule is that arbitration is "a creature of contract" and the parties to arbitration are those that have signed an arbitration agreement or a main contract including an arbitration agreement. The rule of privity is found in Article II (2) of the NYC, Section 7 of the ICAL and Section 2 of Cap 4. However, arbitral tribunals and courts occasionally enforce an arbitration agreement or award on non-signatories to that arbitration agreement.

Jurisdiction of National Courts

The Cyprus courts have not clearly determined the circumstances in which an arbitration agreement is extended to third parties. Such circumstances can be the concepts of third-party beneficiary, piercing the corporate veil, succession,

subrogation, agency, assignment, estoppel and the "group of companies" doctrine. Even if the Cyprus courts apply one of these exceptions to the rule of privity in order to extend the arbitration agreement to non-signatories, consent will remain the central point in addressing this issue. For instance, in Cooresby v Astroplus, Application No 377/17 District Court of Nicosia, the court decided that since the company and the subsidiary were not parties to the shareholders' agreement and had not agreed to the arbitration procedure, the arbitration could not be conducted against them.

English Judgments

In addition, English judgments on the matter, such as Peterson Farms v C&M Farming [2004] EWHC 121 (Comm), can provide persuasive guidance to Cyprus courts. In this case, the arbitral tribunal had awarded damages in favour of other companies within the claimant's group of companies which had not executed the arbitration agreement, and the English Commercial Court set aside the arbitral award. In relation to the "group of companies" doctrine, the court highlighted that the matter is governed by the applicable law of the arbitration agreement and that this doctrine is not recognised by English law. The court also rejected the concepts of estoppel, agency and ad hoc jurisdiction for this specific case, and the principle of privity prevailed.

With respect to interim orders, Chabra orders can be issued in the context of interim proceedings in aid of arbitration proceedings.

Patrikios Pavlou & Associates LLC is a multi-award-winning, leading law firm based in Cyprus. With nearly 60 years of experience in the local and international legal market, the firm has developed distinguished expertise in dispute resolution and ADR, and has a renowned legal consulting department. The litigation practice, the largest and most experienced department of the firm, consists of 24 professional associates who handle a wide range of claims and disputes, both locally and internationally, with a focus on corporate and commercial disputes, fraud and conspiracy claims, injunctive reliefs, registration and enforcement of foreign judgments and arbitral awards as well as insolvency proceedings. Additionally, the dispute resolution team handles general civil, banking and criminal litigation, as well as administrative recourses to the Administrative Court of Cyprus.

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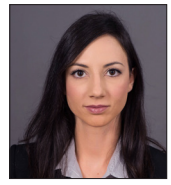

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