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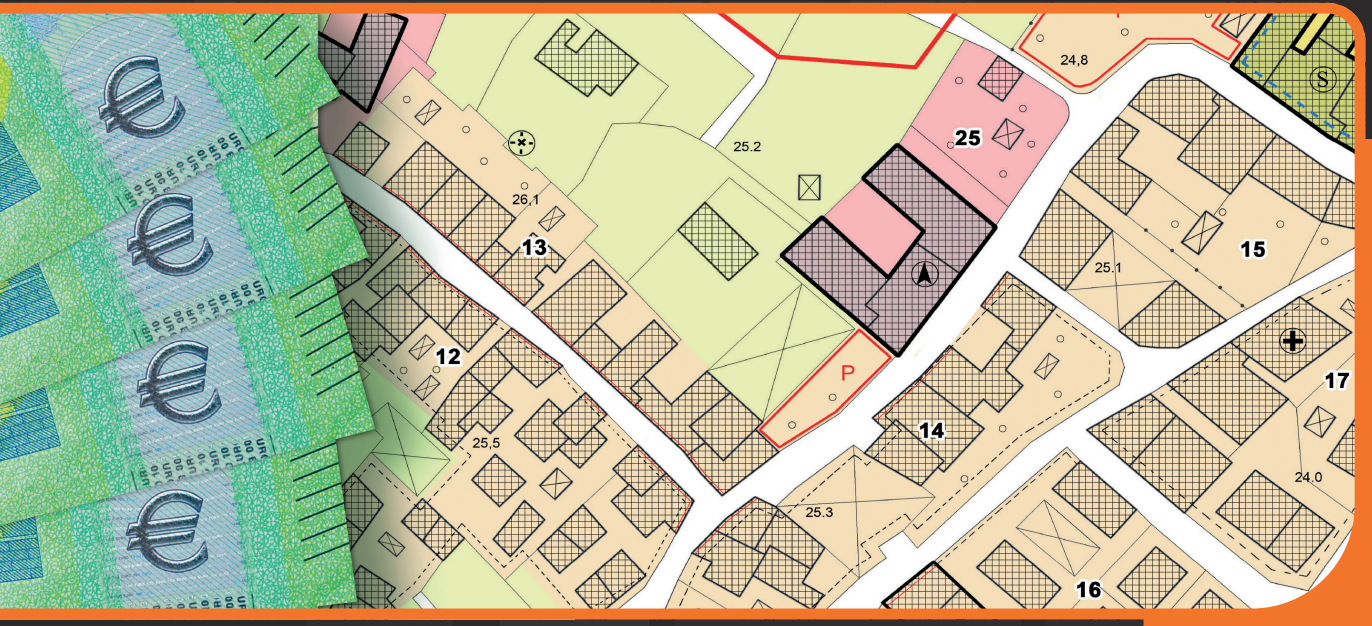

Practical cross-border insights into project finance

Project Finance 2022

11th Edition

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IPFA
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1 Overview

1.1 What are the main trends/significant developments in the project finance market in your jurisdiction?

The majority of lenders in Cyprus continue to be credit and finance institutions for locally-based projects, whilst international banks commonly finance larger projects and/or international projects where the underlying assets are based abroad.

The financial market has also recently flourished, as many investment funds have relocated or established their base in Cyprus, commonly falling under the alternative investment funds category. The local regulator, the Cyprus Securities and Exchange Commission, has provided a reliable and modern framework for such funds to operate, although financing is still largely managed by banks and credit institutions.

Inevitably, in line with the EU's long-term aims and sustainability efforts, the European commission has granted millions of pre-financing to Cyprus under the Recovery and Resilience Facility (RRF) to help the implementation of crucial reforms and investments outlined in Cyprus' recovery and resilience plan.

The RRF in Cyprus finances investments and reforms that are expected to have a deeply transformative effect on Cyprus' economy and society, including a transition to 'green' technologies and a digital transformation of public services, as well as additional economic and social resilience.

1.2 What are the most significant project financings that have taken place in your jurisdiction in recent years?

Certain large-scale hospitality and tourism projects have been financed in Cyprus, such as the Limassol, Ayia Napa and Larnaca marinas, as well as the Limassol integrated casino resort, which is expected to be the largest in Europe. Certain projects are financed on a public-private partnership, where the land is leased from the government to a private operator for a pre-agreed number of years.

Also, the discovery of gas fields in the Cyprus Exclusive Economic Zone has initiated the government's planning for a liquefied natural gas (LNG) conversion plant that will enable international exports in the future. Aiming 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 hydrocarbon-related infrastructure.

Apart from the domestic aspect, an increasing number of international finance projects are structured, negotiated and documented through Cyprus holding entities although the underlying project is located elsewhere, as Cyprus has proven to be a reliable and efficient jurisdiction when it comes to enforcement and asset recovery. Corporate structures in project financing, including Cyprus special purpose vehicles, are also being increasingly used by leading airlines to finance and/or lease commercial aircrafts.

2 Security

2.1 Is it possible to give asset security by means of a general security agreement or is an agreement required in relation to each type of asset? Briefly, what is the procedure?

As per standard practice, a separate agreement is entered into in relation to each type of asset. This is due to the fact that different registration or perfection requirements may exist for different types of security. A security agreement creating a charge is registrable with the Cyprus Registrar of Companies (ROC) against the Cyprus company chargor, pursuant to s.90 of the Cyprus Companies Law, Cap. 113 (the Companies Law) in order to be valid against such company's liquidator or any creditor thereof. The security agreement must be registered within 21 calendar days (if executed in Cyprus) or within 21 days from the date on which the same could, in due course of post, and if dispatched with due diligence, have been received in Cyprus (if executed abroad). In the latter case, the ROC has as a rule of practice allowed the registration of charges created abroad to take place within 42 days of the execution thereof. Also, s.99 of the Companies Law provides that a security agreement must be entered into the register of charges or mortgages of the company, accordingly. Mortgages are also subject to registration while other perfection requirements apply for Cyprus pledges.

2.2 Can security be taken over real property (land), plant, machinery and equipment (e.g. pipeline, whether underground or overground)? Briefly, what is the procedure?

The most common form of security taken over real property is a legal mortgage. Mortgages give the mortgagee a contractual first priority right on the immovable property and a right to apply to the land registry department (LRD) for the sale of the same on a default in the repayment of the loan.

A legal mortgage is only constituted when registered, and any dealings relating to the mortgaged immovable property are impossible save with the consent of the mortgagee. Immovable property may be charged with a second or further mortgage(s), only with the express written consent of all previous mortgagees. The mortgagee should also be registered with the LRD.

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A mortgage over immovable property is created by an instrument in writing signed by the mortgagor and the mortgagee, and both them must attend the district LRD where the immovable property is situated to declare the mortgage to a qualified officer by presenting the signed instrument.

If the mortgagor is a legal entity, it must also register the mortgage with the ROC in the prescribed form and within the prescribed time limit.

Failure to register the mortgage with the LRD will render the mortgage void against all persons, including the mortgagor, mortgagee, liquidator and any creditor of the company or third party.

Equipment, machinery and other goods are most commonly secured by a floating charge.

2.3 Can security be taken over receivables where the chargor is free to collect the receivables in the absence of a default and the debtors are not notified of the security? Briefly, what is the procedure?

Usually, security is taken over receivables through a security assignment. Receivables may be assigned by an assignment agreement and, if such agreement creates a charge, this is registrable with the ROC pursuant to s.90 of the Companies Law and is entered into the register of charges of the chargor, as s.99 dictates.

2.4 Can security be taken over cash deposited in bank accounts? Briefly, what is the procedure?

Security can be taken over bank accounts, and such security is usually a pledge. If such bank account pledge is entered by a Cyprus company, the security is registrable with the ROC pursuant to s.90 of the Companies Law, and in the register of charges of the pledgor pursuant to s.99 of the same Law.

2.5 Can security be taken over shares in companies incorporated in your jurisdiction? Are the shares in certificated form? Briefly, what is the procedure?

Yes, it is possible to pledge the shares of a Cyprus company. A pledge of shares in a Cyprus company held by a corporate shareholder/pledgor (whether or not a Cyprus company) is exempt from registration with the ROC. For a pledge over shares of a Cyprus company to be valid and enforceable, the formalities of s.138 of the Contract Law, Cap. 149 must be observed, namely: (a) the pledge must be made in writing, signed by the pledgor and pledgee and witnessed by at least two witnesses; (b) notice of the pledge must be given by the pledgee to the company whose shares are being pledged; (c) a memorandum of the pledge must be entered in the register of members of the company whose shares are being pledged; and (d) the company must issue and deliver to the pledgee a certificate executed by the appropriate officer of the company confirming the fact of the registration of the pledge in favour of the pledgee.

2.6 What are the notarisation, registration, stamp duty and other fees (whether related to property value or otherwise) in relation to security over different types of assets (in particular, shares, real estate, receivables and chattels)?

The Cyprus Stamp Duty Law No. 19/1963 (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 to take place in Cyprus, subject to certain exceptions, irrespective of where the same are signed.

For contracts the value of which ranges between EUR 5.001–EUR 170,000, the current rate of stamp duty is EUR 1.50 for each EUR 1,000 or part thereof; for contracts the value of which is over EUR 170,000, the current rate of stamp duty is EUR 2 for every EUR 1,000 or part thereof, with a ceiling of EUR 20,000. This maximum amount of stamp duty is payable on any document or on any transaction which 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 EUR 2 each, provided they are dated the same day as, or very close to, the main transaction document. Late payment of stamp duty 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.

In order to determine whether a document is subject to stamp duty in Cyprus, the documents may be sent to the Stamp Duty Commissioner for a ruling under s.31 of the Stamp Duty Law.

S.21 of the Stamp Duty Law provides that any document drafted outside Cyprus, and which 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 signed abroad and which 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 of its receipt in Cyprus. Therefore, if a document which 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.

Failure to pay 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 as it was executed outside Cyprus and kept there, if proceedings need to be issued in Cyprus, it will need to be stamped in order to be recognised.

The registration of a charge with the ROC pursuant to s.90 of the Companies Law 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% thereof.

2.7 Do the filing, notification or registration requirements in relation to security over different types of assets involve a significant amount of time or expense?

Registrations take place under established procedures either in the LRD or with the ROC, depending on the nature of the security granted and if such registration is necessary. As mentioned above, the registration of an agreement creating a charge must be effected within 21 calendar days (if executed in Cyprus) and within 42 calendar days (if executed abroad). For the registration of a charge with the ROC, a copy of the executed agreement is required along with a duly completed prescribed form. If the relevant agreement is drafted in a language other than Greek or English, a certified true translated copy of the same is also submitted. The submission of the relevant form can be effected within a business day, while the ROC usually requires up to three weeks to issue the corresponding certificate of registration of charge. The entry of a security agreement into the

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register of charges or mortgages of a Cyprus company can be made within a day. Similarly, the registration of a mortgage with the relevant LRD is quite straightforward, and the submission of a prescribed form together with the payment of the relevant fee is required.

2.8 Are any regulatory or similar consents required with respect to the creation of security over real property (land), plant, machinery and equipment (e.g. pipeline, whether underground or overground), etc.?

No consents are usually required for the creation of security over immovable property. Certain industrial plots and/or property situated in industrial zones or other specific areas (e.g. residential property in the marinas) are held under a leasehold agreement entered into with the Cyprus government. In these cases, consent from the Cyprus Ministry of Energy, Commerce, Industry and Tourism is required before mortgaging the relevant leasehold property and registering the relevant mortgage with the competent LRD.

3 Security Trustee

3.1 Regardless of whether your jurisdiction recognises the concept of a "trust", will it recognise the role of a security trustee or agent and allow the security trustee or agent (rather than each lender acting separately) to enforce the security and to apply the proceeds from the security to the claims of all the lenders?

In general, Cyprus recognises the concept of a trust. Also, 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/charges. 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 Cyprus company (chargor) in favour of such security trustee or agent.

3.2 If a security trust is not recognised in your jurisdiction, is an alternative mechanism available (such as a parallel debt or joint and several creditor status) to achieve the effect referred to above which would allow one party (either the security trustee or the facility agent) to enforce claims on behalf of all the lenders so that individual lenders do not need to enforce their security separately?

As mentioned above, Cyprus recognises the role of a security trustee.

4 Enforcement of Security

4.1 Are there any significant restrictions which may impact the timing and value of enforcement, such as (a) a requirement for a public auction or the availability of court blocking procedures to other creditors/the company (or its trustee in bankruptcy/liquidator), or (b) (in respect of regulated assets) regulatory consents?

There is no requirement for a public auction following enforcement of security. It is generally possible for a security agreement to be enforced judicially and a judgment for the sale or the secured assets to be obtained.

Certain security agreements may be enforced out of court and in accordance with their terms, namely: (a) a floating charge over the assets of a company may be enforced out of court, by the appointment of a receiver over the relevant assets; (b) a pledge over shares in a Cyprus company, provided that the relevant mechanism allowing out-of-court enforcement has been incorporated into the pledge agreement (i.e. documents allowing the transfer of the shares on the name of the pledgee have been exchanged); and (c) a mortgage over immovable property.

4.2 Do restrictions apply to foreign investors or creditors in the event of foreclosure on the project and related companies?

Foreclosure is regulated by the Transfer and Mortgage of Immovable Properties Law 1965 (as amended) by which the mortgagor's rights in a secured asset are extinguished either via an auction or sale and the secured asset is transferred to the buyer. The proceeds of sale are applied against the secured amount and any remaining amount is paid to the mortgagor. A creditor enjoys the right of foreclosure only when the mortgage has been registered in the relevant LRD, and such right cannot be exercised where there are pending court proceedings for the secured amount. Foreign investors and creditors, provided the exercise of the statutory foreclosure right is in compliance with the applicable procedure, will not be treated differently from local creditors.

5 Bankruptcy and Restructuring Proceedings

5.1 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 security?

Certain transactions can be declared void due to fraudulent preference if entered within six months of the commencement of the winding-up (as explained below). Also, floating charges created within 12 months of the commencement of the winding-up may be considered invalid.

For a charge/security to be valid against the liquidator of a Cyprus company (in case of its winding-up), 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 which will be used for the settlement of the amounts secured by the charge; nevertheless, they will 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 in question 5.2 below. If, on the other hand, 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 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 and thus will rank at least *pari passu* with all the other unsecured creditors.

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5.2 Are there any preference periods, clawback rights or other preferential creditors' rights (e.g. tax debts, employees' claims) with respect to the security?

In accordance with the provisions of the Companies Law, the preferential debts are the following:

(a) The costs and expenses of the winding-up.

(b) The following preferential debts:

(i) 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 the whole one year's assessment.

(ii) 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.

(iii) Every amount of compensation which the company is obliged to pay to an employee on account of bodily harm suffered by him/her as a result of an accident caused by his/her employment and during his/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.

(iv) Every amount due to the employee, excluding an employee of a private company who is a shareholder thereof, concerning the leave to which such employee is entitled from his/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, they shall 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 (a wide-ranging concept that includes payments, deliveries of goods, mortgages and conveyancing, as well as executions or other acts relating to property) made or carried out by or against a company within six months before the commencement of its winding-up may be considered a fraudulent preference against its creditors and rendered void. On the question of fraudulent preference, the court will examine 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.

Also, 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.

5.3 Are there any entities that are excluded from bankruptcy proceedings and, if so, what is the applicable legislation?

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.

5.4 Are there any processes other than court proceedings that are available to a creditor to seize the assets of the project company in an enforcement?

Assets may be seized with an out-of-court pledge enforcement, where the company is obliged to deliver the pledged assets to the pledgor in the event of default. 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, in order to seize assets and then resign once these assets have been sold for the benefit of the other party. Following receivership, a company may continue its business operation.

5.5 Are there any processes other than formal insolvency proceedings that are available to a project company to achieve a restructuring of its debts and/or cramdown of dissenting creditors?

Examinership is such a process. It provides for the financial reorganisation of a viable company with liquidity problems that aims to keep the business alive and pay back creditors over time. It also seeks to provide relief from actions of creditors of the company so that the company has the time to reorganise its financial affairs.

The court may appoint an examiner in the event that: the company is open to claims or will be unable to service its debts; no liquidation against the company has been approved and published in the official gazette; and no court order has been issued for the liquidation thereof.

The court will only issue an order for examinership if the company is found to be a 'going concern' and has a reasonable prospect of survival. This is determined by a report that is prepared by an independent adviser.

Applications for examinership may be made, jointly or severally, by the company itself, any creditor or future creditor, including a company employee, members of the company who, at the time of the application, hold no less than 10% of the paid up capital of the company that has voting rights attached to it and a guarantor thereof.

With the submission of the relevant application, the company is under court protection for a period of four months. During this period, a receiver cannot be appointed and the company cannot be placed under liquidation. In addition, no actions can be made against its assets without the consent of the examiner (this includes mortgages, confiscations and lease agreements).

5.6 Please briefly describe the liabilities of directors (if any) for continuing to trade whilst a company is in financial difficulties in your jurisdiction.

Where the company continues trading while insolvent, the directors face the risk of incurring personal liability for fraudulent trading; however, such claims are rare in Cyprus. The Companies Law provides that any person who knowingly takes part in trading with the intention to defraud creditors or for any

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other fraudulent purpose will be guilty of an offence. Similar provisions exist as regards interested persons who were involved in performing activities with the intention of defrauding creditors or for any other fraudulent purpose, and had knowledge of this fact. The general provisions of fraudulent trading allow for the court to pursue directors personally, in order to pay creditors who have been defrauded due to the directors' misconduct. Although such sanctions are usually brought in the civil courts, it is possible, given the circumstances, for criminal charges to be brought.

6 Foreign Investment and Ownership Restrictions

6.1 Are there any restrictions, controls, fees and/or taxes on foreign ownership of a project company?

Generally, there are no restrictions on foreign ownership of the shares of a Cyprus company. On the contrary, non-Cyprus-resident (or non-domiciled) shareholders enjoy certain tax exemptions. In relation to property investment, there are no restrictions on Cyprus 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 comprise EU nationals is not considered to be a foreign company for the purposes of owning immovable property in Cyprus.

6.2 Are there any bilateral investment treaties (or other international treaties) that would provide protection from such restrictions?

Cyprus has entered into a number of bilateral investment treaties with more than 27 countries, which offer protection for investor rights.

6.3 What laws exist regarding the nationalisation or expropriation of project companies and assets? Are any forms of investment specially protected?

Cyprus is a full EU member and therefore nationalisation, expropriation, transfer and currency restrictions are regulated under EU law and 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 which are absolutely necessary in the interest of public safety, public health, public morals, town and country planning, 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 limitation which materially decrease the economic value of such property. Such compensation, if not agreed, is determined by the courts. In certain cases, nationalisation 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. Recently, the Cyprus Grains Commission, a previous state monopoly company that was forced to operate under free-market conditions and is now ailing, may be nationalised in order to safeguard its strategic role.

7 Government Approvals/Restrictions

7.1 What are the relevant government agencies or departments with authority over projects in the typical project sectors?

Depending on the project, there are several government agencies that may 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 license the participating entities. Any construction project should be licensed by the Town Planning Service and possibly the local authority, who may request environmental impact assessments. Tourism sector projects will require licensing by the Cyprus Tourism Organisation whilst specialised large-scale projects, such as 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.

7.2 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 (i.e. environmental, health and safety, etc). Finance documents may be subject to stamp duty. Security documents may also need to be registered with the ROC, as already explained.

7.3 Does ownership of land, natural resources or a pipeline, or undertaking the business of ownership or operation of such assets, require a licence (and if so, can such a licence be held by a foreign entity)?

Depending on the project/business, the relevant legislation requires a number of conditions to be met prior to commencing work thereon. 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 140(I)/2005, require the issue of certain licences relating to town planning. Construction methods and environmental impact assessments of the project will need to be outlined. The latter Law 140(I)/2005 applies to larger projects that may have an adverse environmental impact (i.e. hotel resorts, golf courses, marinas). There are no restrictions on foreign entities applying for such licences.

In relation to natural resources, specific legislation exists for each type thereof. For example, in relation to mining, 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 discoveries of offshore hydrocarbon, is the Hydrocarbon (Prospection, Exploration and Exploitation) Laws of 2007 to 2015. The provisions of EU Directive 94/22/EC on the conditions for granting and using authorizations for the prospection, exploration and production of hydrocarbons have been incorporated into Cyprus law through the abovementioned legislation.

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7.4 Are there any royalties, restrictions, fees and/or taxes payable on the extraction or export of natural resources?

A 5% 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.

7.5 Are there any restrictions, controls, fees and/or taxes 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 EUR 10,000 upon arrival.

7.6 Are there any restrictions, controls, fees and/or taxes on the remittance and repatriation of investment returns or loan payments to parties in other jurisdictions?

There are no restrictions on the remittance and repatriation of investment returns or loan payments to parties in other jurisdictions.

7.7 Can project companies establish and maintain onshore foreign currency accounts and/or offshore accounts in other jurisdictions?

There are no restrictions on maintaining foreign currency accounts in Cyprus and/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.

7.8 Is there any restriction (under corporate law, exchange control, other law or binding governmental practice or binding contract) on the payment of dividends from a project company to its parent company where the parent is incorporated in your jurisdiction or abroad?

There are no restrictions on payment of dividends from a project company to its parent company, irrespective of where it is incorporated. There are generally no withholding taxes on the payments of dividends, which are only distributed out of realised profits. Furthermore, a Cyprus tax resident company is deemed to distribute as a dividend 70% of its accounting profits two years from the end of the tax year in which the profits were generated. However, this only applies to profits attributable to Cyprus tax residents.

7.9 Are there any material environmental, health and safety laws or regulations that would impact upon a project financing and which governmental authorities administer those laws or regulations?

There are a number of local regulations and laws that may affect the total cost, operating overheads and, by extension, the financing and sustainability of certain projects. For example, the Safety and Health at Work Law of 1996 (L.89(I)/1996) affects any construction works relating to any building being built in Cyprus. Similar provisions apply for factories, heavy industry installations as well as any workplace (where minimum safety requirements must be met).

Environmental factors may also impact project financing as (where applicable and/or necessary depending on the type of project) obtaining environmental licence approvals may significantly alter and/or affect the viability of a project, as discussed in more detail above under question 7.1.

7.10 Is there any specific legal/statutory framework for procurement by project companies?

The Law on Public Procurement 73(I)/2016 (as amended) is the principal legislation governing public procurement contracts in Cyprus. It transposes EU Procurement Directives 2004/17 and 2004/18 into Cyprus legislation and provides for the coordination of procedures for the award of public works contracts, public supply contracts, public service contracts and related matters.

8 Foreign Insurance

8.1 Are there any restrictions, controls, fees and/or taxes on insurance policies over project assets provided or guaranteed by foreign insurance companies?

There are no restrictions, controls, fees and/or taxes on foreign insurance companies operating in Cyprus, as long as they have obtained proper licensing from the Insurance Companies Control Service, the local regulator. EU Member State companies must comply with the General Good Requirements issued by the local regulator in order to freely offer services in other Member States.

8.2 Are insurance policies over project assets payable to foreign (secured) creditors?

Yes, provided that such foreign (secured) creditors are insured by the insurance company.

9 Foreign Employee Restrictions

9.1 Are there any restrictions on foreign workers, technicians, engineers or executives being employed by a project company?

There are no special restrictions on foreign workers employed by a Cyprus company in Cyprus, provided that the necessary permits are obtained by the Labour Office and Immigration authorities in accordance with the local legislation. In general, foreign workers can be employed in Cyprus provided that they have been offered employment by a local company that cannot fill a vacancy with local personnel, or that has been designated an international business company and thus can employ third-country personnel under certain conditions. Also, there are no restrictions on EU/EEA citizens exercising their EU treaty freedoms of establishment and entering into employment in Cyprus.

10 Equipment Import Restrictions

10.1 Are there any restrictions, controls, fees and/or taxes on importing project equipment or equipment used by construction contractors?

There are no special restrictions, controls, fees and/or taxes on importing any equipment used by construction contractors,

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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 and/or custom fees apply. All machinery and equipment imported into the EU must comply with minimum EU certifications and guidelines for health and safety.

10.2 If so, what import duties are payable and are exceptions available?

Customs fees and import taxes vary in accordance with the type of equipment and the country of origin.

11 *Force Majeure*

11.1 Are *force majeure* exclusions available and enforceable?

Force majeure clauses are commonly encountered in a great number of documents. Such clauses are enforceable under Cyprus law provided that they have been clearly defined and properly incorporated in the relevant agreement.

12 Corrupt Practices

12.1 Are there any rules prohibiting corrupt business practices and bribery (particularly any rules targeting the projects sector)? What are the applicable civil or criminal penalties?

The Attorney General examines police findings and decides whether a case should be heard by a court. The main body entrusted with investigating bribery and corruption allegations and complaints is the Cyprus police, which cooperates with specialist financial intelligence units such as the Unit for Combating Money Laundering. The Audit Office of the Republic may also refer incidents of bribery. The legal framework against bribery and corruption includes: the Prevention of Corruption Law, Cap. 161; the Civil Servants Law, L.1/1990; the Criminal Code, Cap. 154; the Law Ratifying the Criminal Law Convention on Corruption, L.23(III)/2000; the Political Parties Law, L.175(I)/2012; and the Law on the Illicit Enrichment of Public Officials and Officers, L.51(I)/2004. A range of monetary penalties (according to the nature and severity of the offence) as well as imprisonment is applicable for corruption offences.

13 Applicable Law

13.1 What law typically governs project agreements?

There are no specific rules which 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.

13.2 What law typically governs financing agreements?

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.

13.3 What matters are typically governed by domestic law?

Typically, security agreements over assets situated in Cyprus are governed by domestic law.

14 Jurisdiction and Waiver of Immunity

14.1 Is a party's submission to a foreign jurisdiction and waiver of immunity legally binding and enforceable?

A foreign party's submission to the jurisdiction of Cyprus 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 Cyprus courts, provided that such immunity is not consensually waived and that a state is not acting under private or commercial capacity.

15 International Arbitration

15.1 Are contractual provisions requiring submission of disputes to international arbitration and arbitral awards recognised by local courts?

Cyprus courts 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 (Cap. 4), whilst 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.

15.2 Is your jurisdiction a contracting state to the New York Convention or other prominent dispute resolution conventions?

Cyprus is a signatory to the Convention on Recognition and Enforcement of Foreign Arbitral Awards of 1958 (known as 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.

15.3 Are any types of disputes not arbitrable under local law?

Matters relating to criminal law or family law or which may have public policy implications are considered 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, Cyprus 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.

15.4 Are any types of disputes subject to mandatory domestic arbitration proceedings?

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

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16 Change of Law / Political Risk

16.1 Has there been any call for political risk protections such as direct agreements with central government or political risk guarantees?

Cyprus has been a signatory of the Multilateral Investment Guarantee Agency (World Bank Group) since 1988. However, it has never sought any political risk insurance for any of its projects. Cyprus has been a full EU member since 2004 and therefore nationalisation, expropriation, transfer and currency restrictions are regulated under EU law and policy.

17 Tax

17.1 Are there any requirements to deduct or withhold tax from (a) interest payable on loans made to domestic or foreign lenders, or (b) the proceeds of a claim under a guarantee or the proceeds of enforcing security?

Please note the following:

(a) There are no restrictions on payment of interest to parties in other jurisdictions. Cyprus does not apply any withholding tax on interest paid to non-residents. Any interest received by local tax residents is subject to the Special Defence Contribution (SDC), currently 30%.

(b) There are no requirements to deduct or withhold tax from the proceeds of a claim under a guarantee or the proceeds of enforcing security.

17.2 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 Cyprus 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 current applicable corporate tax rate is 12.5%. For non-domiciled individuals residing in Cyprus or for non-Cyprus tax residents, there is a range of tax benefits, for example: no withholding tax on dividends; and no tax on interest income and on gains arising from disposal of investments (including shares and securities). The SDC is not applicable to 'non-doms' or non-tax residents. For taxes and fees relating to finance and security documentation and their registration, please refer to the relevant paragraphs above. It is important to highlight that, in relation to project financing, a 5% 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.

18 Other Matters

18.1 Are there any other material considerations which should be taken into account by either equity investors or lenders when participating in project financings in your jurisdiction?

EU restrictive measures and UN sanctions should be taken into account especially if a project involves dealing with a sanctioned entity.

18.2 Are there any legal impositions to project companies issuing bonds or similar capital market instruments? Please briefly describe the local legal and regulatory requirements for the issuance of capital market instruments.

There are no legal requirements that apply exclusively to project companies. The use of construction surety bonds is fairly common in Cyprus, especially in projects with considerable construction works. In public tender contracts, surety bonds are usually obligatory.

Surety bonds are issued by a bank/credit institution, and cash equalling the limit guarantee amount is paid in the event of default of the project company (or other guarantor) to uphold its obligations.

A wide range of Cyprus laws, including the Companies Law, provide for the issuance of capital market instruments, the extensive analysis of which is outside the scope of this chapter.

19 Islamic Finance

19.1 Explain how *Istina'a*, *Ijarah*, *Wakala* and *Murabaha* instruments might be used in the structuring of an Islamic project financing in your jurisdiction.

Such instruments are not used in Cyprus. However, over the last few years the Cyprus Stock Exchange has made certain efforts towards the possible development of Islamic financial instruments complying with *Shari'ah* Law, also known as *Sukuk*.

19.2 In what circumstances may *Shari'ah* law become the governing law of a contract or a dispute? Have there been any recent notable cases on jurisdictional issues, the applicability of *Shari'ah* or the conflict of *Shari'ah* and local law relevant to the finance sector?

There have been no cases concerning the applicability of *Shari'ah* law and the conflict of *Shari'ah* and local law relevant to the finance sector.

19.3 Could the inclusion of an interest payment obligation in a loan agreement affect its validity and/or enforceability in your jurisdiction? If so, what steps could be taken to mitigate this risk?

In general, the inclusion of an interest payment in documentation would not affect validity and/or enforceability unless the interest payment rate is considered to be illegal and/or excessive under local legislation and/or the common law principles applied by the courts. Courts will consider the commercial aspects of an agreement and the negotiations that took place between the parties before rendering any interest payment invalid.

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