INTERIM RELIEF IN LITIGATION

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PRESENTATION BY

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There is an inevitable and pressing question that litigators entrusted with promoting an action have to answer, right after they receive their initial instructions:
"Is there a need for Interim Relief?"
An Interim Order obtained for a Plaintiff, is just the first shot fired. Sometimes before the official declaration of "war" and with the use of a silencer. But its importance, cannot be overstated...
It is not merely a useful tool that can be shaped to serve a specific purpose. It is also a powerful weapon that can reverse or prevent an injustice. And very often, the sole mean by which the rights and interests of a Claimant may be effectively protected, prior to the adjudication or resolution of the claim and until the execution of any judgment obtained.

Cyprus Courts in particular, have today a nearly unlimited discretion, to issue a wide range of prohibitive, mandatory and receivership Interim Orders. As long as of course, the pre requisites of the laws empowering them to do so, are fulfilled.
Such Orders (that may be of worldwide application) may be issued within the framework of actions filed or to be filed in Cyprus and this includes general applications to register foreign judgments. But they can also be issued in aid of Actions pending or to be initiated outside Cyprus.
As far awards are concerned and as GCC Countries are signatories to the New York Convention, it was always possible to seek interim measures in aid of pending or anticipated International Arbitration involving GCC related parties.
With regard to litigation, since the end of 2023, through amendments effected on the legislation (mainly on Article 32 of the Courts of Justice Law) and the Civil Procedure Rules, the jurisdiction of the Cyprus Courts has been broadened and their powers to issue all types of Orders, became almost boundless.

In the past it was required in general that a potential Defendant resided in Cyprus, to establish jurisdiction in personam. And very few Orders could be issued as stand alone injunctions, before the filing of an Action.

Many of us had been advocating or lobbying even, for years, for the need to arm the Cyprus Courts better, by following the example of the seminal BVI judgment in Black Swan especially after the judgment in the Broad Idea case issued by the Privy Council. It was imperative to introduce the power to issue stand alone injunctions, even if no action had been filed yet and even if none of the parties to a dispute resided in Cyprus, as long as there are assets on which a claimant can potentially execute a judgment issued abroad.
After all, there is no reason in principle to provide a safe haven for debtors who kept assets in Cyprus or hold assets through Cyprus entities, just because they reside elsewhere.

The recent amendments in our legislation have met if not surpassed our expectations. It is today possible to issue all types of stand alone Orders with regard to any pending or anticipated Court proceedings either in Cyprus or abroad, irrespective of the whereabouts of the potential defendant.

Cyprus Courts now have the power to grant Interim Relief if there is property in Cyprus that may become the subject of execution or if there exists some "other" connection to Cyprus justifying the grant of the requested Order.
The wording of the Law is very broad and allows litigants to seek Orders in all occasions where this appears to be necessary and practically useful.
Such Orders may be issued with regard to any pending or anticipated Court proceedings in any GCC Country, provided sufficient connection to Cyprus may be established. Whenever, for example, a company against which a claim is pending or will be brought, holds directly or indirectly shares in one of the Myriads of Cyprus holding Companies controlling assets abroad.

It is worthy of note that a Judgment issued in a GCC country could potentially be enforced in Cyprus, even if no bilateral treaty exists between the two countries regulating such matters, on the basis of common law principles.

There is no case law to speak of, about registration of judgments from the GCC in Cyprus yet, but we are willing to create some! After all, recent developments have revealed the willingness of the UK Courts to enforce UAE Judgments and the readiness of UAE Courts to follow suit. The Judgment in "Lenkor" where a Dubai Court Judgment was enforced in the UK and the direction of the Ministry of Justice of UAE that this precedent is to be considered as evidence of Reciprocity, can support the position that Cyprus Courts that follow the same Common Law Principles, will more likely than not, be ready to enforce a UAE Judgment.

An Interim Order may be issued by the Cyprus Courts, if it can be shown that a Claimant has a serious claim that has some visible prospect of success and that unless an Order is issued, it will be difficult or impossible for justice to be done at a later stage. This means that the Claimant must show that the status quo ante must be preserved or reinstated, otherwise any final judgment he may obtain by a Cyprus or a Foreign Court will not in practice lead to adequate compensation. Like for instance, if in the meantime the Defendant is allowed to dissipate assets or to cause by some wrongdoing some non-monetary damage that may be difficult to assess.
The Court should ask itself before deciding where to lean, who is likely to suffer the most damage.The Defendant if the Order is issued? Or the Plaintiff if it is not?
The types of Orders that the Court can issue are many and in some occasions quite drastic. And an Order can be addressed not only against the Defendant or a potential Defendant, but also against third parties in many occasions. Whenever for example, a person or entity holds property in trust or in favour of a Defendant. The range of available Orders includes worldwide freezing Orders, Anton Piller Orders, Receivership Orders and if needed and justified, Gagging Orders and Anti Suit Injunctions.
It is also possible to issue Norwich Pharmacal Orders and other mandatory disclosure Orders and the Court can even order directly a Defendant to disclose any property that may become the subject of receivership and execution.

All Orders may be issued very fast, without notice to the other party or the persons against whom they are directed, provided urgency or special circumstances are demonstrated. And our Courts can issue them at any stage, even after a judgment has been issued.

What remains to be addressed, is the issue of the implementation of Cyprus Interim Orders outside the Jurisdiction. Cyprus Orders are in general directly applicable in all EU countries.

Beyond that, Cyprus is a party to multilateral conventions and bilateral treaties that regulate how judgments and Interim Orders may be recognized, enforced or "mirrored" in the countries that are co signatories to such treaties.
Where no such treaties exist, which is currently the case with regard to the GCC Countries, it is up to the local practitioner to advise how and to what extend a Cyprus Interim Order may be used in the particular country.

I should finally emphasise, that Orders from Cyprus Courts may be formed and used effectively, even when the assets targeted are not in Cyprus and the Order is not directly enforceable in a particular country. One should be "creative" and have in mind that any person or entity who has been served with a Court Order or is aware of the provisions of the Order, has the obligation to obey it and not participate in any breach of the same. An act or omission can constitute contempt of the Court Order even if such an Order relates to assets outside the jurisdiction. And in Cyprus you could go to jail for disobeying a Court Order.

In the past for example, we have used mandatory Interim Orders to force holding companies situated in Cyprus to exercise in a certain manner their voting powers, as shareholders in subsidiary companies, situated abroad. In some occasions, we actually caused the replacement of directors in foreign companies who were acting in a fraudulent manner and managed to block unwanted dissipations and get control of assets that would otherwise be out of Reach.

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