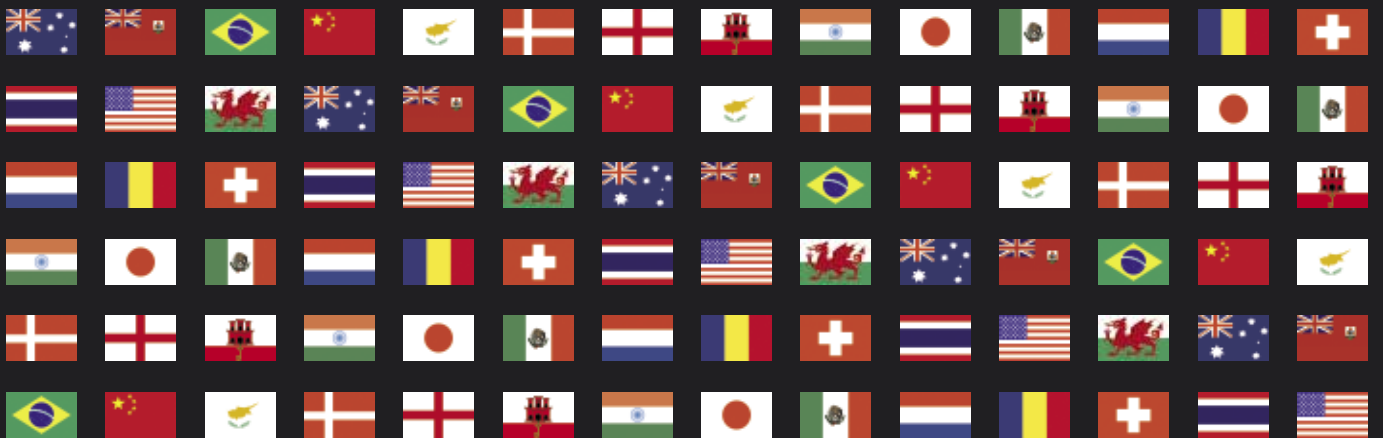


Complex Commercial Litigation 2022

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Complex Commercial Litigation 2022

Contributing editor**Simon Bushell**

Seladore Legal

Lexology Getting The Deal Through is delighted to publish the fifth edition of *Complex Commercial Litigation*, which is available in print and online at www.lexology.com/gtdt.

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

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

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

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

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Simon Bushell of Seladore Legal, for his continued assistance with this volume.



London

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BACKGROUND

Frequency of use

- 1 | How common is commercial litigation as a method of resolving high-value, complex disputes?

Commercial litigation remains the most common method of resolving high-value disputes in Cyprus. Currently, high-value commercial disputes are adjudicated by the presidents of the district courts of Cyprus. However, court procedures are still very lengthy and alternative dispute resolution methods, such as arbitration and mediation, have become more popular in recent years.

Litigation market

- 2 | Please describe the culture and 'market' for litigation. Do international parties regularly participate in disputes in the court system in your jurisdiction, or do the disputes typically tend to be regional?

Cyprus is a very popular location for investment, due to its excellent regulatory structure, attractive and transparent tax regime, strong business support services and relatively low cost of doing business. As a result, it is very common for international parties to participate in disputes in the Cyprus court system and most high-value commercial disputes before Cyprus courts have cross-border elements. Furthermore, it is very common for parties in proceedings pending before foreign courts or foreign arbitration tribunals, to seek interim relief from Cyprus courts in aid of the foreign proceedings. Given the above, Cyprus judges are quite familiar with the legal principles applicable in multi-jurisdictional disputes, from both an EU and common law perspective.

Legal framework

- 3 | What is the legal framework governing commercial litigation? Is your jurisdiction subject to civil code or common law? What practical implications does this have?

The Cyprus legal system was, until Cyprus independence, based on the English legal system. The laws enacted for the British colonies applied to Cyprus, as well as the principles of common law and equity. After Cyprus independence in 1960, the principles of common law and equity are still applicable in Cyprus.

In cases where the law of Cyprus is unclear or underdeveloped, the courts of Cyprus will interpret provisions of Cyprus law in accordance with English law. Even though judgments of English courts are not binding on the courts of the Republic per se, Cypriot courts are still guided by English law, and judgments of English courts are of high persuasive authority.

This unique position of English law is specifically provided for in a number of statutes and it is also supported by the provisions of the Courts of Justice Law.

Given the above, the parties to a commercial dispute that are familiar with other common law jurisdictions can benefit from the consistency and transparency provided by the Cypriot legal system.

BRINGING A CLAIM - INITIAL CONSIDERATIONS

Key issues to consider

- 4 | What key issues should a party consider before bringing a claim?

Before bringing a claim before the Cyprus courts, a claimant should consider the following:

- whether the Cyprus courts have jurisdiction over the dispute;
- the applicable law to the dispute;
- the statutory limitation period;
- the chances of success of the claim;
- the costs that the parties will have to bear during the litigation;
- the chances of settlement before a final hearing;
- the time it will take for the claim to be adjudicated;
- the chances of obtaining interim relief by the Cyprus court and whether such relief can be sought on an ex parte basis; and
- the location of the assets of the defendants and the availability of effective enforcement tools, if they are located outside the EU or Commonwealth.

Establishing jurisdiction

- 5 | How is jurisdiction established?

Jurisdiction in civil and commercial claims is established on the basis of Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Recast Regulation) and, if the Regulation is not applicable, on the basis of the Courts of Justice Law (Law No. 14/1960).

In both regimes, the main connecting factor adopted for establishing jurisdiction is the domicile of the defendant. As per article 4(1) of the Recast Regulation, the general jurisdiction rule is that persons domiciled in a member state shall, whatever their nationality, be sued in the courts of that Member State. The Recast Regulation provides for other grounds for a court of a member state to assume jurisdiction on a dispute depending on the subject matter of the claim (see articles 7 to 26 of the Regulation). Section 21 of Law No. 14/1960 provides that Cyprus courts have jurisdiction to hear any action provided that certain conditions apply, such as that the cause of action has arisen wholly or in part in Cyprus or that any of the defendants resides or carries on business in Cyprus.

A defendant can challenge the jurisdiction of the Cyprus courts by submitting a conditional appearance to the claim and applying to set aside the writ of summons. In such case the defendant or applicant must convince the court that the requirements provided by the Recast Regulation and/or Law No. 14/1960 are not met.

If a defendant initiates proceedings in another EU member state in a case where an exclusive jurisdiction clause in favour of Cyprus is applicable, such as disputes related to rights in rem in immovable property situated in Cyprus, then as per the Recast Regulation the court of the other member state must declare of its own motion that it has no jurisdiction. If the proceedings in breach of an exclusive jurisdiction clause are initiated in a non-EU jurisdiction, an anti-suit injunction can be issued by the Cyprus courts.

Preclusion

6 | Res judicata: is preclusion applicable, and if so how?

The doctrine of res judicata is recognised under Cyprus law and prohibits the parties to an action from relitigating a matter for which a court judgment has already been issued between the parties. The doctrine is not confined to the issues which the court was actually asked to decide but it also covers issues or facts that were clearly part of the subject-matter of the issued judgment and as a result with a reasonable degree of diligence could have been raised by the parties before the court that issued the judgment.

Applicability of foreign laws

7 | In what circumstances will the courts apply foreign laws to determine issues being litigated before them?

It is rather common for Cyprus courts to determine disputes that are governed by foreign law. Foreign law is treated by Cyprus courts as a matter of fact that must be pleaded and proven by the party that relies upon it in its claim or defence. If no or insufficient evidence of the foreign law is adduced, the court will consider foreign law to be the same as Cyprus law. The rules for determining the applicable law are provided in Regulation (EC) No. 593/2008 on the law applicable to contractual obligations (Rome I) and Regulation (EC) No. 864/2007 on the law applicable to non-contractual obligations (Rome II).

The application of foreign law may be beneficial for one of the parties in cases where foreign law will allow for a better outcome to the dispute than the applicable Cyprus law.

Initial steps

8 | What initial steps should a claimant consider to ensure that any eventual judgment is satisfied? Can a defendant take steps to make themselves 'judgment proof'?

A claimant should always take into account the value of the assets of the defendants and whether they are sufficient to for the satisfaction of a potential judgment.

Furthermore, to make sure that the assets will be preserved and not alienated or dissipated by the defendants pending final determination of the case, a claimant should seek interim relief in the form of freezing injunctions and ancillary disclosure orders.

A breach of an interim injunction would result in contempt procedures against the defendant that may, if proven guilty, result in imprisonment.

If no interim injunction is issued, the defendants may try to make themselves 'judgment proof' by alienating or dissipating all their assets before the final adjudication of the action. However, any transfers or transactions during the period that the action is pending can be annulled as fraudulent after the issue of a judgment in favour of the claimants, if they were not made in good faith and at arm's length.

Freezing assets

9 | When is it appropriate for a claimant to consider obtaining an order freezing a defendant's assets? What are the preconditions and other considerations?

It is always advisable to a claimant in high-value commercial disputes to consider seeking interim relief in the form of a freezing injunction, if it is possible that the defendants will try to alienate their assets to avoid the execution of a judgment against them. Freezing orders are most commonly sought at the outset of the proceedings, but, on appropriate circumstances, they can also be granted at any stage of the proceedings, even after a judgment has been given.

Pursuant to section 32 of Law No. 14/1960 the courts in Cyprus have the discretion to issue interim injunctions if they are satisfied that: (1) there is a serious issue to be tried (2) there is a probability that the applicant is entitled to relief in his or her claim and (3) it will be difficult or impossible to do complete justice at a later stage if interim relief is not granted.

Further, the court will assess whether it is just and convenient to issue the order on the basis of all the pertaining facts. The claimant can apply for the issue of a freezing order on an ex parte basis if urgency is proven. If a claimant decides to proceed without notice, he or she must be very careful to make a full and frank disclosure of all relevant facts of the dispute to the court, because, if they fail to fulfil this very strict obligation, the order will be cancelled.

Pre-action conduct requirements

10 | Are there requirements for pre-action conduct and what are the consequences of non-compliance?

There is no formal requirement or binding protocol for the pre-action conduct of the parties before the filing of their claim. In certain proceedings, for example a petition for the winding up of a Cypriot company the law prescribes specific deadlines and procedures that must be followed before initiating court proceedings.

Other interim relief

11 | What other forms of interim relief can be sought?

Cyprus courts can provide a wide range of interim relief the form of which will depend on the facts of each case. Interim orders may be categorised as follows:

- freezing orders;
- gagging orders;
- disclosure orders;
- anti-suit orders;
- anti-enforcement orders;
- tracing orders;
- security of costs orders;
- search orders; and
- orders for the appointment of interim receivers and administrators of companies.

Alternative dispute resolution

12 | Does the court require or expect parties to engage in ADR at the pre-action stage or later in the case? What are the consequences of failing to engage in ADR at these stages?

There is no formal requirement or binding protocol for pre-action ADR.

Claims against natural persons versus corporations

13 | Are there different considerations for claims against natural persons as opposed to corporations?

In high-value disputes, especially fraud or conspiracy cases involving complex corporate structures that were allegedly used for the alienation of assets of the beneficial owners, claimants often try to pierce the corporate veil and include as defendants, the directors, shareholders or beneficial owners of the legal entities.

Even though legal entities can be sued on their own name and have their own property and assets, the claimants will very often seek to include the directors of the companies involved, or include other natural persons involved in the wrongdoings, particularly in cases where the entities used in the alleged fraud do not have enough assets for the satisfaction of a judgment against them.

Class actions

14 | Are any of the considerations different for class actions, multiparty or group litigations?

Class actions are not available under Cyprus law.

However, pursuant to Order 14 of the Civil Procedure Rules (CPR), 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, upon the application of one of the parties to the said actions, the court may order that they be consolidated.

Furthermore, pursuant to Order 9 Rule 9(1) of the CPR, where there are numerous persons having the same interest in one cause or matter, one or more of such persons may be authorised by the court to sue or defend in such cause or matter, on behalf or for the benefit of all persons so interested (representative action). Where any such order is made, the persons represented shall be bound by the judgment of the court in the representative action, and the judgment may be enforced against them in all respects as if they were parties to the action.

Third-party funding

15 | What restrictions are there on third parties funding the costs of the litigation or agreeing to pay adverse costs?

There is no statutory provision enacted in Cyprus that would regulate and allow litigation funding. As a result, litigation funding still falls within the ambit of the common law torts of maintenance and champerty. Any agreement between a party and a third person for the funding of litigation in return for a share in the proceeds could be deemed illegal and, thus, void.

Contingency fee arrangements

16 | Can lawyers act on a contingency fee basis? What options are available? What issues should be considered before entering into an arrangement of this nature?

An agreement for a lawyer to act on a contingency fee basis only, would be unenforceable and void under Cyprus law.

THE CLAIM

Launching claims

17 | How are claims launched? How are the written pleadings structured, and how long do they tend to be? What documents need to be appended to the pleading?

A court action commences with the submission of a writ of summons. A generally endorsed writ of summons will only include the remedies sought by the claimant, while a specially endorsed writ will also include a statement of claim that provides a summary of the material facts on which the claim is based. The defendant will have to file an appearance within 10 days from the service of the writ.

If a specially endorsed writ was submitted by the claimant (or a statement of claim following a generally endorsed writ), the defendant must then submit a statement of defence including the facts that he or she will rely upon to defend the claim and also a possible counterclaim against the claimant. Then, the claimant will submit a reply to the defence and a defence to the counterclaim. Finally, the defendant will submit a reply to the defence to the counterclaim and the pleadings will be considered closed.

Since, the pleadings do not include arguments or analysis of legal points but only a summary of the material facts, they should not be very lengthy.

No documents or evidence are appended to the pleadings.

Serving claims on foreign parties

18 | How are claims served on foreign parties?

If a defendant does not reside in Cyprus, leave of the court must be granted before the claim is served on him or her. The issue of an order for leave to serve out of the jurisdiction is not only a procedural matter. To issue the order for service abroad, the court will have to assess whether the dispute falls within the jurisdiction of the Cyprus courts. The method of service is governed by the relevant bilateral treaties and international conventions and regulations to which the Republic of Cyprus is a party. In member states of the European Union, service of a claim can be effected pursuant to Council Regulation (EC) No. 1393/2007 on the service in the member states of judicial and extrajudicial documents in civil or commercial matters. In non-EU member states, service of a claim can be effected pursuant to the Hague Convention of 1965 on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, to which Cyprus has acceded. Cyprus has also entered into treaties that regulate and facilitate service of court documents with the following countries: Belarus, Bulgaria, China, the Czech Republic, Georgia, Germany, Greece, Hungary, Russia, Serbia, Slovakia, Slovenia, Syria and Ukraine.

Key causes of action

19 | What are the key causes of action that typically arise in commercial litigation?

The most common causes of action would be fraud, conspiracy, breach of fiduciary duty, breach of trust and breach of contract, misrepresentation, procuring a breach of contract and/or unlawful interference.

Claim amendments

20 | Under what circumstances can amendments to claims be made?

Before any claim filed after 1 January 2016 is served to the defendants, claimants may amend their pleadings without the leave of the court. After the exchange of pleadings and before the first summons for

directions is issued, one more amendment of pleadings can take place, without the leave of the Court. Following the issuance of the aforesaid summons for directions, no amendment to a pleading is allowed unless the court is satisfied that such amendment is necessary due to a bona fide mistake or that such amendment is necessary because the applicants became aware of new facts that were not available to them at the time of the drafting of the pleadings. In relation to all claims filed before the 1 January 2015 (value of the dispute is irrelevant) and claims that were filed within 2015 (where the value of the dispute exceeds the amount of €10,000), an amendment of pleadings can take place at any time, but only with the prior leave of the court.

Remedies

21 | What remedies are available to a claimant in your jurisdiction?

The courts of Cyprus have a very wide discretion and may issue any remedy or relief they deem necessary under the circumstances. These remedies include:

- the payment of damages;
- specific performance;
- account of profits;
- appointment of a receiver;
- declaratory judgments;
- summary judgments;
- judgments in default;
- judgments in relation to interest and costs; and
- winding-up orders.

Recoverable damages

22 | What damages are recoverable? Are there any particular rules on damages that might make this jurisdiction more favourable than others?

The type and quantum of damages that are awarded in the context of civil proceedings rests with the court's discretion and Cypriot courts generally enjoy a very wide discretion to order the payment of compensation by way of general, special and even punitive or exemplary damages.

Special damages compensate a plaintiff for the quantifiable monetary losses suffered thereby as a result of the defendant's conduct and must be, therefore, specifically pleaded (with detailed particulars) and proved by the plaintiff to be awarded by the court.

General damages are awarded to compensate a plaintiff for non-quantifiable loss suffered as a result of the defendant's wrongdoing, such as future pain and suffering, loss of amenity, loss of earnings or damage to reputation.

Punitive or exemplary damages are very rarely awarded by the courts of Cyprus and only in cases where the court deems that the defendant's conduct was egregiously insidious or accompanied by elements of arrogance, insolence or malice that it is necessary to punish the defendant in an exemplary manner, so as to either reform him or her or deter him or her and other parties from pursuing a similar course of action as that which damaged the plaintiff in the future.

RESPONDING TO THE CLAIM

Early steps available

23 | What steps are open to a defendant in the early part of a case?

A defendant may choose to challenge the jurisdiction of the court by submitting a conditional appearance and an application to set aside the writ of summons and the order allowing service out of the jurisdiction.

Jurisdiction can be challenged for several reasons, such as that the requirements set by Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (the Recast Regulation) are not met or that the dispute falls within the exclusive jurisdiction of another member state.

The defendant can also choose to dispute the service made upon him or her by submitting a conditional appearance and an application to set aside the service.

If a normal appearance is submitted the defendant must submit a statement of defence and even a counterclaim against the claimant.

A defendant may request the leave of the court to issue a third-party notice and claim against such third-party on the following grounds:

- that he or she is entitled to contribution or indemnity;
- that he or she is entitled to any relief or remedy relating to or connected with the original subject matter of the action and substantially the same as some relief or remedy claimed by the plaintiff; or
- that any question or issue relating to or connected with the said subject matter is substantially the same as some question or issue arising between the plaintiff and the defendant and should properly be determined not only as between the plaintiff and the defendant but as between the plaintiff and defendant and the third party or between any or either of them.

Defence structure

24 | How are defences structured, and must they be served within any time limits? What documents need to be appended to the defence?

A statement of defence will only include a summary of the material facts on which the defence will be based. No documents or evidence will be appended. The statement of defence must be delivered by the defendant within 14 days of the submission of a memorandum of appearance or, if a generally endorsed writ was submitted by the claimant, 14 days after the delivery of the statement of claim.

Changing defence

25 | Under what circumstances may a defendant change a defence at a later stage in the proceedings?

A statement of defence can be amended without the leave of the court at any time before the first summons for directions is issued. Following the issuance of the aforesaid summons for directions, no amendment to a pleading is allowed unless the court is satisfied that such amendment is necessary due to a bona fide mistake or that such amendment is necessary because the applicants became aware of new facts that were not available to them at the time of the drafting of the pleadings. In relation to all claims filed before 1 January 2015 (value of the dispute is irrelevant) and claims that were filed within 2015 (where the value of the dispute exceeds the amount of €10,000), an amendment of pleadings can take place at any time, but only with the prior leave of the court.

Sharing liability

26 | How can a defendant establish the passing on or sharing of liability?

A defendant may claim against a third party by following the third-party procedure provided in Order 10 of the Civil Procedure Rules (CPR). Furthermore, a defendant may bring a claim against another defendant by following the procedure for the exchange of pleadings between co-defendants.

Avoiding trial

27 | How can a defendant avoid trial?

A defendant may apply for the set aside of the writ of summons at an early stage for lack of jurisdiction of the Cypriot court. Furthermore, pursuant to Order 27 r. 3 of the CPR a defendant may request a court's order ordering the claim to be struck out on the ground that it discloses no reasonable cause of action or that the claim is frivolous or vexatious. In such cases, the court may order the claim to be stayed or dismissed.

Case of no defence

28 | What happens in the case of a no-show or if no defence is offered?

If a defendant does not submit a memorandum of appearance or a statement of defence, the claimant is entitled to apply for the issue of judgment in default.

Claiming security

29 | Can a defendant claim security for costs? If so, what form of security can be provided?

Pursuant to Order 60 of the CPR defendants may apply for security for costs in order to ensure that they will be able to recover the litigation costs from an unsuccessful claimant. The conditions that must be satisfied for a security for costs order to be made are the following:

- the claimant or the counterclaimant must be domiciled in a non-EU state;
- the claimant or the counterclaimant must not have sufficient assets within the jurisdiction to satisfy any order that may be made against him or her in relation to the defendant's litigation costs; and
- the defendant must satisfy the court that they have a good defence on the merits.

The amount of the security will be equal to the amount of the costs expected to be incurred. Where the court orders security for costs to be given it may stay the proceedings until such security is given, and in the event of the security not being given within the specified timeframe, the court may dismiss the action. The form of security (eg, signing of a bond, bank guarantee or, more rarely, payment of money into court), will be determined by the court, on the basis of the particular facts of the case.

PROGRESSING THE CASE

Typical procedural steps

30 | What is the typical sequence of procedural steps in commercial litigation in this country?

Civil proceedings are commenced by filing a writ of summons or an originating petition with the competent district court's registry. Under the Civil Procedure Rules (CPR), a writ of summons must be either:

- specially indorsed, containing the full statement of claim (Order 2, Rule 6, CPR); or
- generally indorsed, containing only the relief and remedies sought (Order 2, rule 1, CPR).

Where the writ is generally endorsed, the statement of claim must be filed separately.

It is common for parties who will seek interim relief to submit a generally endorsed writ together with the application for injunctions.

Unlike the rules in other common law jurisdictions, the writ of summons does not contain statements under oath and no other documents are appended.

Proceedings against defendants who all reside out of the jurisdiction can only be commenced following leave of the court to seal the writ of summons and leave to serve to it out of the jurisdiction of the Cypriot court. The defendant must first submit a memorandum of appearance and then a statement of defence or a counterclaim, or both. After that, the claimant must submit a reply to the statement of defence and a defence to the counterclaim. Finally, the defendant submits a reply to the defence to the counterclaim and the pleadings are considered closed.

The claimant will then proceed with a summons for directions with an appended schedule which states the case management directions that will be sought, such as discovery and inspection of documents, security for costs, better and further particulars or admitted facts.

The parties will then have to submit a list of witnesses and a summary of their testimonies.

After the above are concluded, the court will set the case for hearing.

Bringing in additional parties

31 | Can additional parties be brought into a case after commencement?

The CPR (Order 9) contains provisions for the joinder of claimants or defendants as parties to the claim, provided there is a cause of action by or against the additional parties and that such joinder will facilitate the adjudication of all disputed issues and is in the interests of justice. The leave of the court is necessary for adding additional parties and the court preserves the discretionary power to order separate trials to ensure the efficient conduct of the proceedings and that such joinder will not delay the main trial. Furthermore, the defendant may issue a third-party notice pursuant to Order 10 of CPR.

Consolidating proceedings

32 | Can proceedings be consolidated or split?

Under Order 14 of the CPR, 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 may order consolidation upon the application of one of the parties to the said actions.

Court decision making

33 | How does a court decide if the claims or allegations are proven? What are the elements required to find in favour, and what is the burden of proof?

The claimant bears the burden to prove his or her claim. The standard of proof applied in civil procedure is the balance of probabilities.

34 | How does a court decide what judgments, remedies and orders it will issue?

The claimant must explicitly state the remedies sought in the writ of summons or the statement of claim and the court may grant them if it is satisfied that the remedies are available under Cyprus law and are justified on the facts proved by the claimant. The court has discretion to grant any remedy deemed appropriate under the circumstances. However, relief that is not specifically requested by the claimant in the writ of summons or an interim application is very rarely granted.

Evidence

35 | How is witness, documentary and expert evidence dealt with?

During the disclosure procedure the parties will have to state all the documentary evidence which they will use to prove their claim or defence. Furthermore, the parties must submit a list of the witnesses, including their experts, that will appear before the court and a brief summary of their testimonies.

The examination in chief of a witness may be done orally or with the submission of a pre-prepared written statement. All witnesses are then available for cross-examination by the lawyers of the other side.

It is a good practice to rely as much as possible on documentary evidence since documentary evidence is more persuasive and the credibility of oral evidence heavily relies on the performance of the witnesses during their cross-examination.

36 | How does the court deal with large volumes of commercial or technical evidence?

High-value commercial disputes are usually put before presidents of district courts, who are judges with many years of experience and can handle the large volume of evidence provided. However, the parties should make sure that the very complicated commercial and technical issues on which they rely to prove their position are carefully and clearly explained to the judge by expert witnesses in the respective fields.

37 | Can a witness in your jurisdiction be compelled to give evidence in or to a foreign court? And can a court in your jurisdiction compel a foreign witness to give evidence?

With regard to procedures pending in courts of EU member states witnesses can be compelled to give evidence on the basis of Regulation (EC) No. 1206/2001 of 28 May 2001 on cooperation between the courts of the member states in the taking of evidence in civil or commercial matters. With regard to non-EU states, the Hague Convention on the Taking of Evidence Abroad in Civil or Commercial Matters, which has been ratified by Cyprus, or bilateral treaties on mutual assistance in legal matters are applicable.

38 | How is witness and documentary evidence tested up to and during trial? Is cross-examination permitted?

Each party is responsible to adduce the evidence required to prove the claim or the points of defence, on the balance of probabilities. Parties have the right to cross-examine the witnesses of the other side to diminish their credibility.

Time frame

39 | How long do the proceedings typically last, and in what circumstances can they be expedited?

Civil proceedings last on average four to six years. The claimant may apply for a summary judgment in cases where the defence to the claim has no real chances of success.

Gaining an advantage

40 | What other steps can a party take during proceedings to achieve tactical advantage in a case?

Applying for interim relief is a very effective method of gaining a significant tactical advantage in any commercial dispute. Furthermore, the

claimant may apply for judgment in default of appearance or in default of defence, if the defendant fails to submit an appearance or statement of defence.

The claimant may also apply for a summary judgment in cases that the defence to the claim has no real chances of success.

The court may order any pleading to be struck out on the ground that it discloses no reasonable cause of action or answer, and in any such case or if the action or defence being shown by the pleadings to be frivolous or vexatious, the court may order the action to be stayed or dismissed, or judgment to be entered accordingly as may be just.

Impact of third-party funding

41 | If third parties are able to fund the costs of the litigation and pay adverse costs, what impact can this have on the case?

Litigation funding still falls within the ambit of the common law torts or crimes of maintenance and champerty. Any agreement between a party and a third person for the funding of litigation in return for a share in the proceeds could be deemed illegal and, thus, void.

Impact of technology

42 | What impact is technology having on complex commercial litigation in your jurisdiction?

Currently, the impact of technology is very limited. This year, for the first time, the courts allowed court documents to be filed electronically. However, electronic submission still remains the exception rather than the rule.

Under the laws of Cyprus it is still not possible for the whole hearing to take place through teleconference. Our Evidence Law provides only for witnesses' testimonies through teleconference in exceptional cases. Giving evidence via video conference is regulated by section 36A of the Evidence Law, Cap. 9, which states that such facilities may be available for a witness located outside the Republic in any civil or criminal proceedings, provided that such arrangements are to the best interests of justice. The decisions of the courts on the matter suggest that leave to such request will be granted in exceptional cases by way of derogation to the established rule or norm that requires witnesses to be physically present before the court as live presence of witnesses is considered as aiding credibility assessment.

It is expected that the procedure before the new Commercial Court will take advantage of all modern technological developments in the field that are currently used in other jurisdictions.

Parallel proceedings

43 | How are parallel proceedings dealt with? What steps can a party take to gain a tactical advantage in these circumstances, and may a party bring private prosecutions?

Parallel criminal or administrative proceedings may prove beneficial since they may be the source of findings or evidence that can potentially be used against the other side in the civil proceedings. Furthermore, if a judgment of a criminal court is issued against the defendant, the judgment can be adduced as evidence before the civil court, if it is relevant to the dispute. A person whose rights were directly affected by the crime has the right to bring private prosecution against the alleged wrongdoer.

TRIAL**Trial conduct**

44 | How is the trial conducted for common types of commercial litigation? How long does the trial typically last?

The trial is conducted like any other civil case before the district courts. It lasts on average four to six years from submission until a judgment is issued at first instance.

Use of juries

45 | Are jury trials the norm, and can they be denied?

The Cyprus legal system does not provide for any jury trials.

Confidentiality

46 | How is confidentiality treated? Can all evidence be publicly accessed? How can sensitive commercial information be protected? Is public access granted to the courts?

The hearing is open to the public. However, it is rarely the case that anyone other than the lawyers, witnesses or parties attends civil or commercial dispute hearings.

The contents of the court files are available only to the parties. Any third party may access the court file only with the leave of the court. The judgments of the courts are published in public databases but the first names and sensitive data of the parties are redacted before the publication.

Media interest

47 | How is media interest dealt with? Is the media ever ordered not to report on certain information?

The hearing can be made in camera if the court considers that an open hearing would be detrimental to the 'morals, public order or national security in a democratic society, or where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice' as per article 6.1 of the European Convention on Human Rights.

Proving claims

48 | How are monetary claims valued and proved?

The aim of damages in contract disputes, is to put the claimant in the position it would have been in had the contract been performed. In the case of a tort, the aim of damages is to restore the claimant to the position it would have been in had the tort not occurred. The claimant must prove a causal link between the breach of contract or alleged wrongdoing and the loss suffered and any loss to be recoverable must not be too remote. Finally, in all cases, the claimant has a duty to mitigate its loss.

In Cyprus, the assessment of the damages takes place at the same time as the trial of the merits.

POST-TRIAL**Costs**

49 | How does the court deal with costs? What is the typical structure and length of judgments in complex commercial cases, and are they publicly accessible?

Any award of the costs is at the sole discretion of the court. However, the general rule is that the costs are awarded to the successful party. The court, in its costs order, directs whether the costs are to be assessed or taxed by the registrar and, in cases of interim applications, whether the costs will be payable immediately or upon the conclusion of the main proceedings.

A judgment will usually begin with a summary of the pleadings and the evidence of each party. Then, it will proceed with an analysis of the evidence provided and explain the reasons evidence is or not acceptable or convincing, or both. It will then proceed with stating the applicable legal principles and provide a summary of the legal arguments of the parties. Finally, it will apply the legal principles to the facts of the case and provide the verdict. All judgments are available electronically in publicly accessible databases.

Appeals

50 | When can judgments be appealed? How many stages of appeal are there and how long do appeals tend to last?

As per the provisions of article 25 of the Courts of Justice Law (Law No. 14/1960), an appeal before the Supreme Court of Cyprus may be brought in relation to:

- any final judgment or order of a court exercising civil jurisdiction;
- any order of a prohibitory or imperative nature, or order for the appointment of a receiver;
- interlocutory judgments having a determinative effect on the rights of parties; or
- any judgment issued by a court exercising criminal jurisdiction.

The appellant may, by his appeal notice, appeal against the whole or any part of the judgment. The appeal notice must state all the grounds of appeal and set forth fully the reasons relied upon for the support or justification of the grounds stated. Appeals against final judgments will be heard within three to four years, while appeals against interim judgments are typically heard within one to three years.

Enforceability

51 | How enforceable internationally are judgments from the courts in your jurisdiction?

Judgments of Cypriot courts are enforceable in other member states on the basis of EU Regulations 1215/2012 and Regulation 44/2001 (where still applicable).

Judgments of Cypriot courts are also enforceable in non-EU countries on the basis of bilateral treaties for the reciprocal recognition and enforcement of judgments. Cyprus has entered into such treaties with Russia, Belarus, Georgia, Ukraine, China, Syria, Egypt, the Czech Republic, Slovakia, Hungary, Greece, Germany, Bulgaria, Serbia, Slovenia, Montenegro and Poland.

52 | How do the courts in your jurisdiction support the process of enforcing foreign judgments?

Judgments issued in other EU member states are directly enforceable in Cyprus on the basis of Regulation 1215/2012 without any further procedure.

Judgments issued in other EU member states in legal proceedings instituted before 10 January 2015 (for which Regulation 44/2001 applies), can be recognised and declared enforceable in Cyprus on the application of any interested party.

In the case of a judgment issued by a non-EU member state, then the applicable law and procedure pertaining to the recognition and enforcement of such a foreign judgment shall stem from a number of sources, such as:

- Multilateral treaties, which Cyprus is a part of, such as the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.
- Bilateral treaties with other states. Or
- Domestic laws, such as the Judgments of Foreign Courts (Recognition, Registration and Enforcement by Convention) Law of 2000, Law No. 121(I)2000, which provides for the mutual recognition of court judgments issued in countries with which Cyprus has concluded agreements, or the Foreign Judgments' Law, CA. 10, for judgments issued by a Commonwealth country, on the basis of the reciprocity principle.

In any of the above-mentioned cases, an application shall need to be filed before the appropriate District Court seeking the recognition and subsequent enforcement of the issued foreign judgment.

- Common law principles: if no multilateral or bilateral agreement between the state of origin and Cyprus exists, then a new civil action will need to be filed in the Republic of Cyprus based on the provisions of the foreign judgment in question.

OTHER CONSIDERATIONS

Interesting features

- 53 | Are there any particularly interesting features or tactical advantages of litigating in this country not addressed in any of the previous questions?

Cyprus is an EU member state country, with all the benefits of EU membership, such as the ease of execution and enforcement of judgments. Furthermore, Cyprus has a common law legal system that provides a significant degree of foreseeability for foreign clients. Moreover, litigating in Cyprus has significantly lower cost than other jurisdictions for similar-value disputes.

Special considerations

- 54 | Are there special considerations to be taken into account when defending a claim in your jurisdiction, that have not been addressed in the previous questions?

It is important for a party who wishes to dispute the jurisdiction to do it immediately, since appearing before the court without reservation may be considered as a submission to the jurisdiction of the courts of Cyprus. Furthermore, it is important for the defendant, given the length of the main proceedings, to defend effectively any interim relief sought against it.

Jurisdictional disadvantages

- 55 | Are there any particular disadvantages of litigating in your jurisdiction, whether procedural or pragmatic?

As explained above, it currently takes four to six years for a final judgment to be issued in an action submitted before the district courts. Although Cyprus courts have the necessary expertise and experience to handle complex commercial litigation and are particularly swift to provide interim relief to the parties, the delay in the issue of a final enforceable judgment is a disadvantage.



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However, it is expected that after the new Commercial Court is established this will no longer be an issue.

UPDATE AND TRENDS

Key developments of the past year

- 56 | What were the key cases, decisions, judgments and policy and legislative developments of the past year?

A key development is a high-profile and very important *Norwich Pharmacal*/disclosure order case, related to a multi-million cross-border dispute involving professional service providers acting as trustees of Cypriot international trusts.

The Cyprus court rejected the claimants' application for disclosure orders against Cypriot companies which had acted in the past as trustees or advisors of several Cypriot international trusts. The analysis of the court in this case is instructive in regard to the murky area of disclosure requests against service providers in aid of the enforcement of a judgment issued abroad and while cross-border litigation proceedings involving the trust structures are pending.

The decision of the Cyprus court provides significant insight and guidance regarding the relevant principles, and it should be taken into account by professionals providing trustee and fiduciary services.

The Cyprus court dismissed the application and held that:

- The *Norwich Pharmacal* relief is not available simply because a foreign judgment has been entered. Instead, the court clarified that the claimant must establish that the respondent professional service providers were mixed up in dishonest attempts to defeat execution of the judgment.
- In cases involving trust structures, the claimant must show that the professional trustees were parties to a dishonest arrangement. The 'shamming intent' must be shared by both the third party/settlor and the trustees, who must be parties to the dishonest arrangement at the time that the trusts were created.
- The purpose of a *Norwich Pharmacal* order is not for it to be used for wide-ranging discovery, or for gathering of evidence, but to be strictly limited to necessary information. The provision of oral or documentary evidence in assistance of foreign judicial proceedings has always been exclusively statutory. Even though the boundaries between information and evidence are not always clear, since information can be converted to evidence, the courts must

refuse to issue a *Norwich Pharmacal* order for obtaining evidence that will be used in foreign proceedings, and the applicants must proceed in accordance with the provisions of the available statutory framework.

- Where the requested information can be obtained by other means either abroad or in Cyprus, applications for *Norwich Pharmacal*/disclosure orders may be considered abusive.

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