The Legal 500 & The In-House Lawyer

Comparative Legal Guide

Cyprus: Arbitration

This country-specific Q&A provides an overview of the legal framework and key issues surrounding arbitration law in Cyprus.

This Q&A is part of the global guide to Arbitration.

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1. **What legislation applies to arbitration? Are there any mandatory laws?**

   Domestic arbitration proceedings in Cyprus are governed by the Arbitration Law of 1944, Cap. 4 (hereafter “Cap.4”) and international arbitration proceedings are governed by the International Commercial Arbitration Law 101/1987 (hereafter “ICA Law”) which is a

translation into Greek of the UNCITRAL Model Law. Mandatory rules are limited to issues relating to the issue of the arbitral award, the challenge of its validity and its recognition and enforcement by the national courts.

2. **Is the country a signatory to the New York Convention? Are there any reservations to the general obligations of the Convention?**

   Cyprus is a party to the New York Convention which has been ratified by the Ratification Law 84/1979.

   Cyprus as a signatory to the New York Convention has made a specific reservation of reciprocity i.e. Cyprus Courts recognize arbitral awards which are issued in a state which is also a signatory to the New York Convention.

3. **What other arbitration-related treaties and conventions is the country a party to?**

   Cyprus is also a party to the Convention on the Settlement of Investment and Disputes between States and Nationals in Other States as well as a number of Bilateral Investment Treaties with individual countries.

4. **Is the law governing international arbitration based on the UNCITRAL Model Law? Are there significant differences between the two?**

   The ICA Law has adopted the UNCINTRAL Model Law of 1985 in its entirety except the fact that the ICA Law contains a definition as to which types of arbitration are considered to be “international” and “commercial”. It should be noted that the ICA Law does not incorporate any amendments made to the UNCINTRAL Model Law since 1985.

5. **Are there any impending plans to reform the arbitration laws?**

   We are aware of efforts to modernize the local arbitration law by replacing Cap 4 but we are unable to provide a timeframe for this to happen.

6. **What arbitral institutions (if any) exist? Have there been any**

amendments to their rules or are there any being considered?

The most prominent arbitral institutions in Cyprus are the Cyprus Arbitration and Mediation Centre and the Cyprus Eurasia Dispute Resolution and Arbitration Centre ("CEDRAC"). These centres provide their own set of arbitration rules, however, their use is currently limited.

The Chartered Institute of Arbitrators – Cyprus Branch (CIArb) has also adopted its own Arbitration Rules which may be applied in domestic and international arbitrations.

7. **What are the validity requirements for an arbitration agreement?**

Pursuant to section 2(1) of Cap.4, "an arbitration agreement" is defined as a written agreement to submit present or future disputes to arbitration. Similarly, section 7 of the ICA Law states that in order for an arbitration agreement to be valid it must be in writing. An agreement is deemed to be in writing if it is contained in a document signed by the parties, or in an exchange of letters, telex, telegrams or other means of telecommunication which provide a record of the agreement, or in an exchange of statements of claim and defence in which the existence of an agreement is alleged by one party and not denied by the other. An arbitration agreement may be in the form of an arbitration clause duly incorporated into a contract, or stand on its own as a separate agreement.

Other than the requirement for the arbitration agreement to be in writing, there are no other formal statutory requirements in order for the arbitration agreement to be enforceable. However, according to the common law principles which are applied by the Cyprus Courts, in order for an arbitration agreement to be valid, its terms must be clear and certain. An arbitration agreement is void if its terms are uncertain or if there is no clear reference to arbitration.

8. **Are arbitration clauses considered separable from the main contract?**

Section 16(1) of the ICA Law states that an arbitration agreement which forms part of a contract is to be considered as a separate agreement from the rest of the contract and that an Arbitral Tribunal's decision that the contract is void ab initio does not necessarily affect the validity of the arbitration agreement. Note however that section 9(2) of the Cap.4 allows the Cypriot Court to order at its discretion that the arbitration agreement

shall cease to have effect when an issue of fraud on behalf of one of the parties is raised. This of course must go to the substance of the arbitration agreement itself.

9. **Is there anything particular to note in your jurisdiction with regard to multi-party or multi-contract arbitration?**

   There are no statutory provisions constraining parties from entering into multi-contract arbitration and the same provisions apply as with two-party arbitration.

10. **How is the law applicable to the substance determined?**

    The parties to an international commercial arbitration are free to choose for themselves the law applicable to the substance of the dispute. In the case that no choice of law has been made by the parties, then the Tribunal will apply the law determined by the conflict of laws rules which it considers applicable. Nevertheless, in certain circumstances mandatory Cyprus law provisions will prevail over the choice of law of the parties e.g. in cases dealing with the existence, winding up and administration of a Cyprus Company or related to immovable property situated in Cyprus.

11. **Are any types of dispute considered non-arbitrable? Has there been any evolution in this regard in recent years?**

    Criminal matters, matrimonial and family matters, disputes concerning minors and disputes with public policy implications are non-arbitrable in Cyprus. In addition, recent Cypriot caselaw has adopted the existing common law approach that a Tribunal will have limited powers to make orders which affect the status of a Cyprus Company such as a winding up order or rectification of a company's register of members, though the substantive dispute may be arbitrable regarding its disputed facts.

12. **Are there any restrictions in the appointment of arbitrators?**

    There are no provisions in the domestic legislation limiting the parties' autonomy to select Arbitrators. With regard to international commercial disputes, pursuant to the provisions of section 11(1) and (2) of the ICA Law, the parties are free to determine the procedure of appointment of the Arbitrators and are free to select anyone as Arbitrator, irrespective of nationality. Depending on the nature of the dispute's subject matter, the parties are able to select Arbitrators who are knowledgeable in the subject matter and

with an expertise relevant to the dispute. However, the ICA Law provides that the appointement of an Arbitrator may be challenged if there are circumstances that give rise to justifiable doubts as to his/her impartiality and independence.

13. **Are there any default requirements as to the selection of a tribunal?**

In the absence of a prior agreement by the parties, a default appointment procedure for international arbitrations is set out in section 11(3) of the ICA Law. This section provides that in an arbitration with three Arbitrators, each party shall appoint one Arbitrator, and the two Arbitrators who are appointed shall then appoint the third Arbitrator. If a party fails to appoint the Arbitrator within thirty days of the receipt of a request to do so from the other party, or in the event that the two Arbitrators fail to agree on the third Arbitrator within thirty days of their appointment, the appointment shall be made by the Court, upon the request of a party. Alternatively, in an arbitration with a sole Arbitrator, if the parties are unable to agree on the Arbitrator, the Arbitrator shall be appointed by the Court upon request of a party.

14. **Can the local courts intervene in the selection of arbitrators? If so, how?**

Section 11(4) of the ICA Law provides that the Cypriot Courts have the authority to intervene in the appointment process upon request of a party, unless otherwise agreed by the parties, if a party fails to act according to the arbitration agreement or when the parties or the two appointed Arbitrators are unable to proceed to the expected procedure agreed or where a third, natural or legal person including the arbitral tribunal fails to act according to what is expected in the procedure. Similar provisions as to the power of the Court to intervene in the appointment process of the Arbitrators are found in section 10 of Cap. 4.

15. **Can the appointment of an arbitrator be challenged? What is the procedure for such challenge? Has there been an increase in number of challenges in your jurisdiction?**

A party may challenge the appointment of an Arbitrator and seek his removal at the time the Tribunal is constituted or later, if new facts come to light regarding his impartiality or independence. In accordance with the provisions of section 12 of the ICA Law, in international arbitrations, an Arbitrator may be challenged, where circumstances exist

that give rise to justifiable doubts as to his impartiality or independence, or where the Arbitrator does not possess the qualifications agreed by the parties. A party may challenge an Arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

Pursuant to section 13 of the ICA Law, the parties are free to agree on the procedure for challenging an Arbitrator, and in the event where no such procedure is agreed, the section provides that a party shall within fifteen days after becoming aware of any circumstances that give rise to justifiable doubts as to his impartiality or independence, or if he fails to possess the qualifications agreed by the parties, make a proposal for challenging the Arbitrator to the arbitral tribunal. The arbitral tribunal shall decide on the challenge unless the challenged Arbitrator withdraws from his position or the other party agrees to the challenge. In the event that the challenging procedure agreed by the parties or the abovementioned default procedure is not successful, the challenging party may request that the national court decide on the challenge. This decision will be final.

Furthermore on the basis of section 14 of the ICA Law, the reference of an arbitrator is terminated either by his own request or with an agreement of the parties or with the leave of the Court, where it has been determined that the arbitrator became de jure or de facto unable to perform his functions as an arbitrator or in the event that he fails to act without undue delay.

In relation to domestic arbitrations, section 13 of Cap.4 provides that a Court may, upon an application made by any party, remove an Arbitrator or an umpire who fails to act with the appropriate promptitude in the entering into and the continuance of the reference and the issuance of his decision. Additionally, section 20 allows a Court to remove an Arbitrator or an umpire where he has misconducted himself or the proceedings.

We are not aware of any statistical data portraying an increase in the number of challenges of the appointment of arbitrators in Cyprus.

16. **What happens in the case of a truncated tribunal? Is the tribunal able to continue with the proceedings?**

In the event where a challenging procedure pursuant to section 13 of Cap.4 Law as

described above, is pending before the Cypriot Court, the arbitral proceeding continues with the participation of the arbitrator who is being challenged, even up to the issue of the arbitral award. If an arbitrator's reference is terminated pursuant to sections 13 or 14 of the Cap.4, then the parties may appoint a replacement pursuant to the provisions of section 11. If the parties fail to agree on a replacement, then the Cypriot Court will decide on the matter.

17. **Are arbitrators immune from liability?**

There are no laws or rules which provide for arbitrator immunity but the Common Law principles will apply by virtue of the provisions of our Courts Of Justice Law 14/1960.

18. **Is the principle of competence-competence recognised? What is the approach of local courts towards a party commencing litigation in apparent breach of an arbitration agreement?**

Yes, pursuant to section 16 of the ICA Law, the Tribunal is competent to determine its own jurisdiction and to rule on matters regarding the validity or existence of the arbitration agreement. In cases where a party commences court proceedings, in breach if an international commercial arbitration agreement, the Court is obliged to refer such proceedings to arbitration upon a relevant application by either party as long as this is made prior to the submission of its pleadings. The Court will not refer a matter to arbitration if the arbitration agreement is found to be null, void or incapable of being enforced.

19. **How are arbitral proceedings commenced? Are there any key provisions under the arbitration laws relating to limitation periods or time bars of which the parties should be aware?**

Unless otherwise agreed by the parties, arbitral proceedings are initiated on the day when the Reference to Arbitration is notified to the person to whom it refers to.

The limitation periods which are applicable to actionable rights before the Courts, are applicable to arbitration as well. The limitation period relevant to the actionable right, ceases to run once the arbitration proceeding is initiated. In the event where an arbitral award is set aside or the arbitration agreement ceases to exist in relation to the dispute

referred to in arbitration, the Court may order that the period between the initiation of the arbitration proceeding until the issue of the order for the setting aside of the award, is excluded from the limitation period.

20. **What happens when a respondent fails to participate in the arbitration? Can the local courts compel parties to arbitrate? Can they order third parties to participate in arbitration proceedings?**

Pursuant to ICA Law, where a respondent fails to file its Defence, the arbitral tribunal continues the arbitral proceeding without considering the omission as an admission of the allegations contained in the Statement of Claim. If any of the parties fails to appear in order to participate in the proceedings or to submit evidence or documents, the arbitral tribunal may continue the proceeding and issue a judgment on the substance of the disputed based on the rest of the evidence submitted before it. There are no provisions relating to third parties in the ICA Law.

Cap.4 does not contain provisions relevant to a default of a party. However, on the basis of section 17, upon an application of a party to the arbitration, the Court may issue a summons which may obligate any person to appear for examination or to present any document, within the framework of the arbitration proceeding.

21. **In what circumstances is it possible for a state or state entity to invoke state immunity in connection with the commencement of arbitration proceedings?**

Cyprus Courts have recognised the defence of state immunity but have clarified that it does not extend to the actions of foreign states which are of a financial and commercial nature that could also be conducted by a natural person (jure gestionis). A state may invoke such immunity via its Defence to the proceedings, and the Tribunal shall decide accordingly.

22. **In what instances can third parties or non-signatories be bound by an arbitration agreement or award?**

Third parties or non-signatories are in general not bound by an arbitration agreement or award. In general, a body of jurisprudence has developed internationally which concerns

when a non-signatory can be required to arbitrate, such as in cases of agency, implied consent or group of companies, however these circumstances have not been examined or applied by Cypriot Courts yet.

23. **What interim measures are available? Will local courts issue interim measures pending the constitution of the tribunal?**

Based on Section 9 of the ICA Law, Cypriot Courts will issue preservative measures upon an application of a party to the arbitration, any time before or during the initiation of the arbitral proceedings. Therefore such measures can be issued even before the constitution of the tribunal however evidence thereafter will be required to be presented to the Court which shows that the arbitration proceedings has indeed been initiated. Usually such measures will relate to the preservation of the subject matter of the dispute or to the preservation of evidence.

Under Cap. 4, the Court may issue interim measures related to security for costs, disclosure of documents, the taking of evidence under oath, the preservation or temporary keep or sale of goods which are the subject matter of the arbitration, the securing of the amount of the dispute, the preservation or inspection of property which is the subject matter of the arbitration, other interim orders or even the appointment of a receiver.

24. **Are there particular rules governing evidentiary matters in arbitration? Will the local courts in your jurisdiction play any role in the obtaining of evidence?**

As described above in questions number (23) and (20), under Cap.4 the Courts have powers and a role to play in relation to evidentiary matters in domestic arbitrations. The Courts may, inter alia, order to disclosure of documents, preserve evidence, obtain evidence under oath to be used during arbitration proceedings, and order a third party to to appear for examination or to present any document.

Under section 18 of the ICA Law, the arbitral tribunal has to treat the parties equally and provide them with every possible opportunity to appear and present their case. Unless otherwise agreed between the parties, the tribunal can decide as it sees fit, the way the arbitral proceeding will be conducted and anything else relevant to the evidence

submitted before it. The arbitral tribunal or the parties may also request from the Court its assistance in obtaining evidence, and the Court may assist within the framework of its jurisdiction and on the basis of the rules which govern the obtaining of evidence.

25. **What ethical codes and other professional standards, if any, apply to counsel and arbitrators conducting proceedings?**

Both Cap. 4 and ICA Law provide that an arbitrator has to proceed with speed in relation to the arbitration proceedings and must be unbiased and act accordingly. In the event the counsels are lawyers, then they are bound by the Advocates' Law, Cap. 2 and the Advocates' Code of Conduct Regulations of 2002 which set out various rules of professional conduct and ethics.

26. **How are the costs of arbitration proceedings estimated and allocated?**

The ICA Law does not provide for the estimation and allocation of costs of the arbitration – it will be a matter up to the tribunal.

Cap. 4 also appears to give the power for estimation and allocation of costs to the tribunal and also states that an agreement of the parties, concluded before the relevant dispute arose, which provides that each side will bear its costs, or that one side shall bear the costs of the arbitration, is invalid. However such agreement is valid if it was reached after the dispute arose and it regards the particular dispute.

27. **Can pre- and post-award interest be included on the principal claim and costs incurred?**

Pre-award interest may be included in the award if the Tribunal deems it appropriate to do so, usually pursuant to relevant provisions of the contract on the basis of which the dispute arose. Unless otherwise provided in the arbitral award, an award issued on the basis of Cap.4 shall bear the same legal interest as the one relevant to judicial judgments, from the day of the issue of the award until final repayment. Currently the legal interest is at 3,5% per annum.

28. **What legal requirements are there for the recognition of an award?**

The party requesting the recognition and enforcement of an arbitral award has to submit to the Court an application accompanied by the duly authenticated original award or a duly certified copy thereof, together with an official certified translation by the Press and Information Office if the award is not written in the Greek language, and the original or duly certified copy of the arbitration agreement. The national Courts will pay particular attention to the proper certification of the documents submitted before them and may only refuse to register an arbitral award in the specific circumstances as provided in the New York Convention and repeated in the ICA Law.

29. **Does the law impose limits on the available remedies? Are some remedies not enforceable by the local courts?**

ICA Law does not limit the types of remedies an arbitral tribunal can award, save where the existence or dissolution of a Cyprus Company or the rectification of any of its registers is involved or where a remedy would affect the registration of rights over immovable property situated in Cyprus or where other public policy reasons dictate that the relevant remedy can only be granted by the Court.

30. **Can arbitration proceedings and awards be appealed or challenged in local courts? What are the grounds and procedure?**

In international commercial arbitrations governed by the ICA Law, a party may appeal against the arbitral award when:

a) one of the parties to the arbitration agreement lacked contractual capacity at the relevant time; or the arbitration agreement is invalid based on the applicable law that the parties chose or in the absence of a chosen applicable law, based on the laws of the Republic of Cyprus;

b) the party was not notified in a timely manner and on a regular basis of the appointment of the arbitrator or the arbitral proceedings; or has by any other means been deprived from his chance to present his case;

c) the arbitral award refers to matters irrelevant to the terms of the submission to arbitration or contains decisions beyond the scope of the arbitration;

d) the composition of the tribunal or the procedure of arbitration was in breach of the agreement of the parties or contradicts the provisions of the ICA Law;

e) the subject matter of the dispute is not arbitrable under Cypriot law; and

f) the award is in conflict with the public policy of Cyprus.

A party wishing to challenge the arbitral award has to file an application to the District Court requesting the annulment of the award. The application has to be filed within a period of three months from the date of notification of the award.

31. **Can the parties waive any rights of appeal or challenge to an award by agreement before the dispute arises (such as in the arbitration clause)?**

The ICA Law grants a statutory right to the parties to arbitration to appeal against an arbitral award. Since the Law does not expressly state, as it often does, that, if they so wish, the parties may contract out of this right in the arbitration agreement, it appears that such restriction would not be valid and binding to the parties. This is further supported by section 28 of the Contracts Law, Cap.149, which provides that a party cannot contract out of the right to recourse to justice. However, according to caselaw, a contractual term restricting the period of time that the innocent party has a right of recourse to Justice, constitutes a mutually agreed term, entailing waiver of right and would not contravene the provisions of article 28.

32. **To what extent might a state or state entity successfully raise a defence of state or sovereign immunity at the enforcement stage?**

Cyprus Courts have recognised the defence of state immunity but have clarified that it does not extend to the actions of foreign states which are of a financial and commercial nature that could also be conducted by a natural person (jure gestionis). In this respect, national Courts will generally recognise and enforce arbitral awards issued against another State.

To what extent might a third party challenge the recognition of an award?

As a matter of procedure, third parties are not normally included as parties to the court proceedings for the recognition of an award since the award is not addressed to them and therefore they are not affected by the procedure so as to be entitled to oppose its recognition.

Nevertheless, in certain circumstances, third parties might be purposefully inserted as Respondents on the title of the court application for recognition of the award by the party wishing to have the award recognised and are served with the relevant application. In such cases, they are free to oppose the said application and raise grounds why they award shall not be recognised within the jurisdiction.

In addition, if the third-parties can show that the recognition of the award would affect their interests, they can in principle apply to the Court and request leave to intervene in the proceedings. However, we are not aware of any caselaw where a third-party managed to intervene in the proceedings and successfully challenged the recognition of an arbitral award in Cyprus.

34. **Have there been any significant developments with regard to third party funding recently?**

Third party funding is not known in or specifically permitted in Cyprus.

35. **Is emergency arbitrator relief available? Is this frequently used?**

No such relief is available under the applicable laws or under the Rules of arbitration centers currently being active in Cyprus.

36. **Are there arbitral laws or arbitration institutional rules providing for simplified or expedited procedures for claims under a certain value? Are they often used?**

33. The CEDRAC Arbitration Rules provide for an expedited procedure if the parties so agree or where the aggregate amount of the claim and the counterclaim do not exceed EUR

10,000,000. Such expedited procedure is achieved via, inter alia, having only one hearing date for the examination of witness and oral arguments, imposing a time limit for the issue of the award and issuing the award with the reasons in summary form.

Similarly the CIArb Rules provide for an expedited procedure along similar lines.

37. **Have measures been taken by arbitral institutions to promote transparency in arbitration?**

We are not aware of such measures.

38. **Is diversity in the choice of arbitrators and counsel (e.g. gender, age, origin) actively promoted? If so, how?**

Currently arbitration is being promoted as a preferred dispute resolution mechanism with Centers, for example the CEDRAC, having as its member professionals from a diverse background.

39. **Have there been any developments regarding mediation?**

Mediation is becoming increasingly popular in Cyprus as an alternative dispute resolution mechanism. The Law 159(I)/2012 has been enacted transposing the requirements of EU Directive 2008/52/EC on 'certain aspects of mediation in civil and commercial matters'. This law applies to civil disputes and cross-border disputes and attempts to regulate the mediation process by providing for the creation of a register for mediators, mediators' duties, procedural maters as well as the role of the Court in such a process and in the enforcement of any settlement agreements that the parties may reach.

40. **Have there been any recent court decisions considering the setting aside of an award that has been enforced in another jurisdiction or vice versa?**

This matter has not concerned the Courts recently.