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International Arbitration

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CYPRUS

Law & Practice

Contributed by Patrikios Pavlou & Associates LLC

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The **Patrikios Pavlou & Associates LLC** arbitration team consists of eight lawyers. The practice covers commercial cross-border transactions, corporate finance disputes, shareholder disputes and trade and construction industry related disputes. The team is well-known for its broad experience and expertise including among others arbitration of international and domestic disputes and mediation. Lawyers regularly obtain ancillary relief in aid of foreign litigation and arbitration and successfully handle numerous difficult shareholder disputes in major multinational companies.

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1. General

1.1 Prevalence of Arbitration

With the emergence of Cyprus as a thriving international business centre and as the preferred place of establishment of many companies of foreign interests, Cyprus has seen a large increase in the use of arbitration as a commercial dispute resolution mechanism. There has also been an increase in the initiation of litigation proceedings seeking interim relief in aid of foreign arbitration procedures.

The flexibility, cost efficiency and rapidity of the arbitration procedure combined with the well-developed legal framework of Cyprus – following the common law system and the status of Cyprus as a member of the European Union and a signatory of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10/06/1958 (hereafter "**the New York Convention**") – constitute Cyprus an ideal seat for international arbitration.

1.2 Trends

As much as Cyprus has progressed in meeting the needs of the increasing globalisation of trade, there is still a need to update and consolidate the statutory provisions governing arbitration proceedings and by doing so resolve certain grey areas which arose through case-law. In this article we intend to set out in detail the legal framework of arbitration in Cyprus, the remedies available to the parties involved, the capability and procedure of enforcing the arbitral awards in Cyprus as well as any recent legal developments which may affect parties intending to use the forum of Cyprus within the framework of arbitration related disputes.

1.3 Arbitral Institutions

The most prominent alternative dispute resolution centres established to administer arbitration proceedings in Cyprus are the Cyprus Chamber of Commerce and Industry ("**CCCI**"), the Cyprus Eurasia Dispute Resolution and Arbitration Centre ("**CEDRAC**") and the Cyprus Arbitration and Mediation Centre ("**CAMC**"). In addition, recent developments in Cypriot case-law which widened the powers of the Courts to issue interim relief in aid of arbitration proceedings illustrate the commercial attitude of the Cypriot Courts in extending their jurisdiction to cover modern commercial needs. Arbitration is used extensively for the resolution of commercial cross-border transactions and corporate finance disputes as well as in industries such as insurance and trade and construction.

2. Governing Law

2.1 International Legislation

Domestic arbitration in Cyprus is governed by the 1944 Arbitration Law, Cap. 4 (hereafter "**Arbitration Law**"). The International Arbitration in Commercial Matters Law 101/1987 (hereafter "**IACM Law**") applies exclusively to international commercial disputes and is almost identical to the UNCITRAL Model Law of 1985 (hereafter "**the UNCITRAL Model Law**"). Save some minor variations, the only addition to the IACM Law is the definition of the term "commercial arbitration". Pursuant to section 3(1) of the IACM Law, the IACM Law applies solely to arbitrations that are of both an international and commercial nature.

Section 2 of the IACM Law sets out detailed definitions of when a dispute is considered "international" and "commercial": a dispute is considered "international" if the parties had their place of business or relevant commercial relations in different countries when they entered into the contract; and a dispute is considered "commercial" if it relates to matters that arise from relationships of commercial nature, whether contractual or not. Section 2(5) of the IACM Law sets out a non-exhaustive list of examples of commercial relationships to which the IACM Law applies.

Cyprus is also a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958 (hereafter "**the New York Convention**") which was ratified and implemented in Cyprus with the Law on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Ratification) 84/1979 (hereafter "**Ratification Law**"). It should be noted that the main provisions of the New York Convention are also incorporated in the IACM Law. The Ratification Law applies in regards to the recognition and enforcement of arbitral awards issued in a country other than the country where enforcement and recognition is sought as well as to arbitral awards not considered as domestic awards in the country where their recognition and enforcement is sought.

2.2 Changes to National Law

The laws governing arbitration in Cyprus are old, they have never been amended since their enactment and they need to be modernised and consolidated. For example, the grounds on which an award may be set aside under the Arbitration Law are wider than those provided for under the IACM Law or the Ratification Law. In addition, while the IACM Law fully incorporates the UNCITRAL Model Law, it fails to incorporate the amendments made thereto in 2006. Nevertheless, Parliament has not so far implemented statutory reform and consolidation of the Cypriot arbitration laws. Recently, it has been made public that the Government is drafting a legislative proposal which intends to clarify certain aspects of the arbitration law as well as modernise the provisions regarding the procedure to be followed.

3. The Arbitration Agreement

3.1 Enforceability

A valid arbitration agreement has the effect of excluding the jurisdiction of the national courts to hear the dispute and means that any dispute between the parties must be resolved by a private method of dispute resolution, i.e. arbitration. Pursuant to section 2(1) of the Arbitration Law, "an arbitration agreement" is defined as a written agreement to submit present or future disputes to arbitration. Similarly, section 7 of the IACM 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 the 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. The requirement for the arbitration agreement to be "in writing" is also mirrored in the provisions of section 2 of the Ratification Law. Section 2(2) states that "*the term "agreement in writing" shall include an arbitral clause in a contract of an arbitration agreement, signed by the parties or contained in an exchange of letters or telegrams*".

Other than the requirement for the arbitration agreement to be in writing, there are no other formal requirements imposed by the law 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. In the case of **Finnegan v. Sheffield City Council (1988) 43 B.L.R. 124** the Court held that a clause to the effect that the question whether disputes under the contract were to be referred to arbitration, was to be a matter of further negotiation, could not be deemed as a valid arbitration clause and therefore was not enforceable.

3.2 Approach of National Courts

Generally, Cypriot Courts respect the parties' freedom to enter into arbitration agreements and once satisfied that the parties intended for the dispute in question to be resolved via arbitration, will strive to interpret the arbitration clause in a manner which will allow it to be valid and enforceable. A significant example of the willingness of the Courts to uphold the intention of the parties to arbitrate is the application of the "doctrine of separability". According to this doctrine, the Courts will uphold an agreement to arbitrate even when the contract of which it is a clause is breached by one of the parties. So the arbitration clause will survive even when the contract is deemed invalid, non-existent or ineffective due to mistake about the identities of the signatories, threat, *non est factum* etc. (see **Fiona Trust & Holding Corp. v. Yuri Privalor** [2007] EWCA Civ 20). However, the arbitration agreement will not survive in cases where it is considered invalid or non-existent for the same reasons that the contract as a whole is invalid or non-existent. For example, an arbitration agreement will not survive when the whole contract containing the arbitration clause is a result of forgery, as the forgery will also nullify the arbitration agreement.

3.3 Validity of Arbitral Clause

The "doctrine of separability" has been codified in section 16(1) of the IACM Law which 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 Arbitration Law 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.

4. The Arbitral Tribunal

4.1 Selecting an Arbitrator

Parties to arbitration are given significant freedom in designing the arbitral process and thus making arbitration in Cyprus particularly attractive. This freedom extends to the choice of Arbitrators and the composition of the Arbitral Tribunal. 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 IACM Law, the parties are free to determine the procedure of appointment of the Arbitrators and are free to select anyone as Arbitrator, irrespective of his/her 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 for deciding their dispute.

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 IACM Law. This section provides that in 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. Section 11(4) of the IACM 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 the Arbitration Law.

It is vital to the success of the international arbitration that both sides are able to have confidence in the Arbitral Tribunal's ability to act independently and impartially. An Arbitrator has the obligation to remain impartial and independent at all times. An impartial Arbitrator is one who is not biased in favour of, or prejudiced against a particular party because of any preconceived notions about the issues whilst an independent Arbitrator generally means one who has no close financial, professional, or personal relationship with a party. In the case of **AT & T Corp v. Saudi Cable Co** [2000] 2 All ER 625 the standard is stated to be that of a 'real danger of bias' and an Arbitrator will be deemed impartial, if he acts in a way that shows real danger of bias in the arbitral process.

4.2 Challenging or Removing an Arbitrator

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. In accordance with the provisions of section 12 of the IACM 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 IACM 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 who intends to challenge an Arbitrator, 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 above-mentioned default procedure is not successful, the challenging party may request that the national court decide on the challenge. This decision will be final.

Furthermore, section 14 of the IACM Law provides that an Arbitrator may be replaced if he becomes de jure or de facto unable to perform his functions or in the event that he fails to act without undue delay. Where there is a dispute on the issue of the replacement, the national courts will settle the issue upon a request of a party and the decision shall be final.

In relation to domestic arbitrations, section 13 of the Arbitration Law 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. In the latter case any award made by him will be cancelled. In **Bank of Cyprus Ltd v. Dynacon Limited and Another** (1990) 1 AAD 717, the court defined the term "misconduct" so as to encompass every kind of behaviour which tends to destroy the trust that the litigants should have towards an Arbitrator that he will reach a fair decision. In **Solomou Neophitos v. Laiki Cyprialife Ltd** (2010) 1 AAD 687, the Supreme Court of Cyprus explained that the classic treatment of the meaning "misconduct" refers to the bribery of the Arbitrator or to the existence of a secret interest on his behalf to

the dispute before him. Nonetheless, the term when applied to "misconduct of the arbitration proceedings" extends to other issues as well, so as to include not only moral or ethically improper behaviour but to include as well cases with the wrongful admission or exclusion of evidence or the acceptance of extrinsic evidence for the interpretation of the contract, but not the wrongful interpretation of such a contract.

4.3 Independence, Impartiality and Conflicts of Interest

The domestic legislation on arbitration does not contain any express requirements as to the independence and/or impartiality of an Arbitrator, but the aforementioned requirements are indirectly covered by the provisions of the IACM Law, since section 12 expressly provides that the appointment of an Arbitrator may be challenged if there are circumstances that give rise to justifiable doubts as to his impartiality or independence. In addition, section 12 of the IACM Law replicates the disclosure requirement of article 12(1) of the UNCITRAL Model Law and requires a person who is approached in connection with his possible appointment as an Arbitrator, to disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence. An Arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties.

5. Jurisdiction

5.1 Matters Excluded from Arbitration

In general, in Cyprus where there is an arbitration agreement between the parties all commercial matters are capable of being referred to and settled by arbitration. It is worth noting however that disputes concerning criminal matters, matrimonial and family matters, disputes concerning minors and disputes with public policy implications, etc. are non-arbitrable in Cyprus. In addition, the Arbitration Law provides that it does not apply in relation to proceedings of an arbitral tribunal which operates on the basis of the Trade Disputes (Conciliation, Arbitration and Inquiry) Law, or in relation to any award that such tribunal may issue.

5.2 Challenges to Jurisidiction

The doctrine of "competence-competence" provides that appointed Arbitrators are competent to determine their own competence, meaning that they are empowered to determine their own jurisdiction to hear and decide the dispute before them and to examine any objections raised as to the existence or the validity of an arbitration agreement. In relation to international arbitrations, the abovementioned doctrine is embedded in section 16 of the IACM Law which explicitly provides that an arbitral tribunal has competence to rule on its own jurisdiction. No similar provision is contained in the Arbitration Law regarding domestic arbitrations but case law recognises this doctrine and the Courts would apply it nevertheless.

5.3 Timing of Challenge

Pursuant to section 16 of the IACM Law, where a party objects to the arbitral tribunal's jurisdiction, such a plea must be raised no later than the submission of the statement of defence. In the event that the arbitral tribunal rules as a preliminary decision that it does indeed have jurisdiction to determine the dispute, any objecting party may request the Cypriot Court to decide the issue of jurisdiction within thirty days of receiving the arbitral tribunal's notice on jurisdiction. The decision shall be final and will not be subject to appeal. Further, the arbitral tribunal may continue the arbitration proceedings until the national court's determination on the issue.

5.4 Standard of Judicial Review for Jurisdiction/Admissibility

Generally, in deciding on the validity of the arbitral tribunal's decision to seize jurisdiction, the Court will conduct either a complete review afresh of the facts and circumstances of the dispute, the wording and validity of the arbitration agreement, the procedure for appointing the arbitral tribunal etc. or the court may merely review the tribunal's decision, taking the presumption that the decision is correct. The argument in favour of a complete review is that it is more likely to prevent a defective arbitration agreement from ultimately causing an award to be vacated, and thus unnecessarily wasting time, effort and resources of the parties. Unfortunately, so far the issue has not been cleared by the Cypriot Courts and there is no settled law on this point.

Apart from the instances where the arbitration tribunal rules on its own jurisdiction to hear a specific dispute, there are circumstances where the jurisdic-

tion of the arbitration tribunal may be raised by the Cyprus Courts which also have the power to decide on the matter and depending on their decision, stay the litigation proceedings and refer the matter to arbitration:

a) where a respondent to arbitration proceedings omits to respond to the notice of arbitration, the initiating party will need to apply to the Court for the appointment of an Arbitrator in which case the respondent party may oppose the application and challenge the jurisdiction of an arbitration tribunal to hear the dispute;

b) a party to the arbitration agreement may choose to initiate litigation proceedings in breach of the arbitration tribunal and the defendant may apply to the Court for an order for stay of the proceedings in light of the arbitration agreement. At the hearing of the application for stay, the Court will examine the arbitration agreement and decide on whether the specific dispute should be resolved through arbitration proceedings. Section 8 of the Arbitration Law reads as follows:

"If any party to an arbitration, or any person claiming through or under him, commences any legal proceedings in any Court against any other party to the arbitration agreement […] any party to such legal proceedings may at any time after appearance and before delivering any pleadings or taking any other steps in the proceedings, apply to that Court to stay the proceedings, and that Court […] may make an order staying the proceedings."

5.5 Right of Tribunal to Assume Jurisdiction

It is worth noting that Cypriot Law does not empower an Arbitral Tribunal to assume jurisdiction over third parties who are not signatories and therefore not contractually bound by the arbitration agreement. Nonetheless, third parties or non-signatories to an arbitration agreement may be bound by the agreement by operation of the group of companies' doctrine whereby obligations and duties deriving from an arbitration agreement between two parties may also in some circumstances bound other members of the same group of companies or by operation of the general principles of private law such as assignment of a contract, agency and succession. Furthermore, third parties may participate in domestic and international arbitrations as they may be summoned to appear before the tribunal for the purposes of testing or producing documents. However, it is not possible to force someone to produce any documents in an arbitration proceeding which he would not be compelled to produce at trial.

6. Preliminary and Interim Relief

6.1 Types of Relief

Under section 9 of the IACM Law the Court may issue interim orders in support of arbitration proceedings which may take place in Cyprus and outside Cyprus. These often include orders for the preservation of assets which constitute the subject matter of the arbitration proceedings and which are situated in Cyprus or against which execution may be levied.

A strict interpretation of the term "*conservative measures*" would imply that the Courts have the power to issue interim measures for the purpose of the preservation of the status quo or the protection of the assets until the final adjudication of the case. Nevertheless, taking into account the modern commercial needs arising from the globalisation of trade, the Cypriot Courts have adopted a much more liberal interpretation of the term and have held that section 9 grants wide powers to the Courts to issue interim orders in support of arbitration proceedings taking place in Cyprus or abroad. For example, the Courts may even issue disclosure orders when this can be deemed as ancillary to the issue of the interim order for the preservation of the assets (see **Vetabet v. Kythreotis,** General Application 9/2010, dated 08/09/2010 and **Re Starport Nominees Ltd** (2010) 1 A.A.D. 1271). The Courts may also issue interim orders against third parties which are not parties to the arbitration agreement especially in cases of subsidiaries where the parent company or the ultimate beneficial owner is a party to the arbitration agreement. It is established case law that there must be a real connecting link with the subject matter of the measures sought and the jurisdiction of Cyprus, for the Courts to exercise their jurisdiction and grant conservative measures (see **Joint-Stock Commercial Bank – Bank of Moscow v. AD Net Limited,** General Application 339/09, decision dated 21/07/2009). In this respect, even though the Courts may issue interim orders related to assets located in Cyprus, they will not issue orders directed personally against

a non-national who is not residing in Cyprus since this would infringe the principle of sovereignty of States (see **Sberbank of Russia v. JFC Group Holdings (BVI) Ltd a.o.,** General Application 1599/2012, decision dated 20/12/2013). The IACM Law does not expressly provide for the power of the Court to order security for costs even though this could arguably fall under the provisions of section 9. In the District Court case of **Tavielio Ventures Ltd v. Heroten Holdings Ltd,** Application 2321/13 dated 12/11/2013, which does not constitute binding precedent, the Cyprus Court has issued an interim order for security for costs in aid of the international commercial arbitration proceedings based on domestic legal provisions other than section 9.

With regard to domestic disputes, section 26 of the Arbitration Law empowers the Courts to issue interim orders in support of arbitration proceedings. An exhaustive list of the interim measures which may be issued by the Court include an order for security for costs, orders providing security for the amount in dispute, order for the appointment of receivers and others is found in Schedule 2 of the Law.

Under section 32 of the Courts of Justice Law (Law 14/60) which should be read in conjunction with section 9 of the IACM Law or section 26 of the Arbitration Law accordingly, in order to obtain interim relief, the applicant needs to satisfy the Court that: a) there is a serious issue to be tried; b) a possibility that the applicant is entitled to a remedy; and c) unless the requested order is granted, it will be difficult or impossible to achieve full justice at a later stage. The Court must also exercise its discretion to issue the requested interim relief based on the balance of convenience and by examining whether it is overall just and convenient to issue the order (see **Odysseos v. Pieris Estates Limited** (1982) 1 C.L.R. 557). In the event that the applicant wishes to apply to the Court ex parte, i.e. without notifying the other party, the Court may issue an interim order as long as it is satisfied that such issue is urgent and that the applicant has set out the whole factual background of the dispute and has thus made a full and frank disclosure.

6.2 Role of Courts

In Cyprus, there is a concurrent jurisdiction of the courts and the arbitration tribunals to grant interim measures in support of arbitration proceedings. In light of the evolution of Cyprus as an international commercial centre, there has been a significant increase in the amount of the interim orders sought before the Cyprus Courts in aid of arbitration proceedings; especially in circumstances where assets or evidence related to foreign arbitration proceedings are located in Cyprus.

With regard to international commercial disputes, section 9 of the IACM Law provides:

"The Court has power, on the application of one of the parties, to order conservative measures at any time before the commencement of or during the arbitral proceedings".

6.3 Security for Costs

Arbitral Tribunals may also issue interim orders of any nature as long as this is permitted by the rules chosen by the parties to govern the arbitration procedure. In the absence of such provisions in the governing rules of the arbitration, the provisions of section 17 of the IACM Law apply which state that:

"In the absence of an agreement to the contrary between the parties, the arbitral tribunal may, on the application of one of the parties, issue any necessary provisional injunctions relating to the subject matter of the dispute, as well as to order any of the parties to provide security with regards to such orders".

It is noteworthy that neither the Arbitration Law nor the IACM Law provide for the possibility of the appointment of an emergency Arbitrator to issue interim or provisional measures prior to the constitution of the Arbitral Tribunal.

7. Procedure

7.1 Governing Rules

There are no compulsory rules governing the procedure of international commercial arbitration and the parties to arbitration proceedings are free to agree on the procedural rules which will govern the specific arbitration. According to the IACM Law, the parties are free to agree on the procedure to be followed by the Arbitral Tribunal in conducting the proceedings. In other words, in arbitration the procedure can be tailored to the specific needs of the parties to the dispute. Various Arbitration Centres have published

their own arbitration rules which may be chosen by the parties to govern the arbitration procedure. For instance, the Cyprus Eurasia Dispute Resolution and Arbitration Centre ("**CEDRAC**") has published the CEDRAC Rules, effective from 01/01/2012, which are applicable subject to the agreement of the parties. The Arbitration Law, which applies in domestic arbitrations, follows a somewhat firmer approach by stipulating that in the absence of such rules the procedure followed is governed by the Civil Procedure Rules.

7.2 Legal Representatives

In regards to the representation of the parties in arbitration proceedings, neither the Advocates Law Cap.2 nor any other relevant law contains any express provision regarding the arbitration process and no reference is made therein to any qualifications or other requirements necessary in order to appear before the Arbitral Tribunal. With regard to foreign nationals who wish to appear or participate in any particular arbitral proceeding in the jurisdiction of Cyprus, special work permit must be given by the Ministry of Labour, unless such a permit is not required, as in the case of EU nationals.

8. Evidence

8.1 Collection and Submission of Evidence

IACM Law based on the principle of party autonomy provides a mechanism which enables the parties to agree and determine the procedure of the arbitration process beforehand. It is clear that such procedure covers the rules in relation to the submission and admissibility of evidence. According to section 19 (2) of the IACM Law in the absence of such an agreement the Tribunal is entitled to use its discretion and power to determine the rules and procedure with respect to the admissibility, relevance and significance of any evidence brought before it.

Section 26 of the IACM Law has specific rules in relation to the appointment of experts "*to report to it on specific issues to be determined by the arbitral tribunal.*"

IACM Law also provides specific rules with regard to the role of the Courts in assisting with the process of submission and examination of evidence. Section 27 of the IACM Law provides that the Arbitral Tribunal or a party with the approval of the Arbitral Tribunal may request from the Cyprus Court's assistance in taking evidence. The Court may execute the request within its competence and according to its rules on taking evidence.

However, the Arbitration Law does not provide specific rules with respect to the submission and admissibility of evidence, but it is understood that the general rules of evidence governing any court proceedings apply. In relation to the summoning of witnesses, section 17 of the Arbitration Law provides that any party to the arbitration agreement may apply to the Court requesting the issuing of summons to witness requiring any person attend for examination or to produce any document which he would normally be compelled to produce on the trial of an action.

8.2 Rules of Evidence

Before discussing the general approach with respect to the collection and submission of evidence in Arbitration proceedings in Cyprus, it is important to state that Cyprus has relatively flexible rules of evidence, as almost every type of evidence (including hearsay evidence) is admissible before the Cypriot Courts.

Neither the Arbitration Law nor the IACM Law provides for rules relating to the burden of proof of the parties or the evidence required and/or allowed during the arbitration proceedings.

8.3 Powers of Compulsion

It is important to note that both Laws contain provisions with regard to the role of the Court in assisting the arbitration at the stage of submission and examination of evidence, therefore illustrating that the effectiveness of the arbitration proceedings depends on the assistance of the Courts. The Laws do not draw a line between parties and non-parties and the rules applying in relation to witness attendance do not seem to differ. Article 27 of the IACM Law gives wide discretion to the Arbitral Tribunal to seek the assistance of the Court in taking evidence. In doing so, the Court will apply the Cyprus law of Evidence found in the provisions of Cap.9 and will apply the restrictions found therein with regard to the attendance and production of documents by third parties. In other words, the Tribunal will be able, with the assistance of the Court, to summon third party wit-

nesses and order the production of documents by third parties as long as this would be permissible in court proceedings. Article 17 of the Arbitration Law specifically refers to 'any person', hence applying to both parties and non-parties.

Similar provisions can be found in the arbitration rules provided by Arbitration Institutions such as CEDRAC.

9. Confidentiality

Arbitration is based on the fundamental aspect of the agreement of the parties and is therefore a private mechanism for dispute resolution. The general concept of confidentiality derives from the private nature and character of the arbitration procedure and it imposes a duty on the Arbitrators and the parties not to divulge, disclose or reveal information in relation to the proceedings, documents used in the proceedings and the award.

Neither the Arbitration Law nor the IACM Law contains any express provisions governing the principle of confidentiality. However, the fact that the Laws governing international and domestic arbitrations in Cyprus do not make express reference to this principle does not mean that the principle has no application in Cyprus.

Even though Cyprus case law with regard to the confidentiality of arbitration proceedings is limited, the concept of confidentiality has been the subject of discussion in various English cases which have examined the relationship between Arbitration and confidentiality, which form persuasive precedents in Cyprus. In the English case of **Dolling-Baker v. Merrett** [1990] 1 WLR 1205 Parker LJ examined the issue of confidentiality of documents and stated the following:

"*As between parties to an Arbitration, although the proceedings are consensual and may, thus be regarded as wholly voluntary, their very nature is such that there must, in my judgment be some implied obligation on the parties not to disclose or use for any other purpose any documents prepared for and used in the arbitration, or disclosed or produced in the arbitration, or transcripts or notes of evidence in the arbitration or award - and indeed any not to disclose in any other way what evidence had been given by any witness in the Arbitration-save with the consent of the other party or pursuant to an order or leave of the court.*"

The duty of confidentiality is not an absolute one and disclosure may be permissible under the following circumstances:

a) where it is reasonably necessary for the protection of the arbitrating parties (**Hassneh Insurance Co. of Israel v. Steuart J. Mew** [1993] 2 Lloyd's Rep.243 QB);
b) for the purposes of invoking the supervisory roles of the court over arbitration awards and for the purpose of enforcing the award itself (**Hassneh Insurance Co. of Israel v. Steuart J. Mew** [1993] 2 Lloyd's Rep.243 QB);
c) where the public interest or the interests of justice require disclosure *(***Emmot v. Michael Wilson & Partners** [2008] EWCA (Civ) 184 CA); and
d) where there is express or implied consent of the parties **(Emmot v. Michael Wilson & Partners** [2008] EWCA (Civ) 184 CA)

However, it must not be forgotten that based on the principle of party autonomy, as explained above, the parties are free to agree the extent to which arbitral proceedings and their constituent parts are confidential.

10. The Award

10.1 Legal Requirements

With regard to domestic arbitration, the Civil Procedure Rules of Cyprus provide that the award, by a special arbitrator on a specific issue, within the course of a civil action shall be: in writing and signed by the Arbitrator; sent to the Registrar in a sealed cover together with the copy of the order of reference; the copies of the notes of the proceedings before the Court furnished to him and the Arbitrator's own notes on the proceedings set before him. Also, any documents and exhibits put in evidence before him shall be sent at the same time in a separate sealed cover with a distinguishing label. The day and time of receipt by the Registrar shall be noted on the envelopes. Other than this provision, in the Arbitration Law there are no express statutory requirements for the form or content of an arbitral award, save section

19(1) which requires that where an award is remitted, the Arbitrator or Umpire must issue the award within three months from the date of the Order, unless the Order directs otherwise.

In relation to international commercial arbitration, IACM sets out a number of legal requirements that must be met. Firstly, it is provided by section 31 that the award must be in writing and signed by the members of the Tribunal. Where there is a multiparty Tribunal, signature by the majority suffices only if the omission of the rest of the members is justified in the arbitral award. Each party receives notice with a copy of the award signed as aforementioned. In principle the award must always be fully justified (i.e. stating the reasons for arriving at the particular decision) except where the parties agreed otherwise or where the award is issued on agreed terms within the meaning of section 30. Secondly, under section 29, when the arbitration is conducted by a multiparty Tribunal the award may be decided on a majority basis except when the arbitration agreement provides otherwise. However, a procedural issue can be decided only by a presiding Arbitrator, if authorised by the parties or all members of the Arbitral Tribunal. Thirdly, under section 30, where the parties reach a settlement the Tribunal terminates its procedure and if the parties request so and the Tribunal agrees, the settlement is recorded as an award under the same legal requirements.

10.2 Types of Remedies

There are no limits in the Arbitration Law or IACM to the types of remedies the Tribunal may award. The only statutory reference to remedies is in Annex I par.8 Arbitration Law which provides that the Arbitrator has the power to order specific performance of any contract, except where the contract relates to land or an interest in land. Generally, remedies may include monetary compensation, specific performance, restitution, injunctions, declaratory relief, rectification, rectification of contracts, interest and costs. Regarding the award of punitive damages, the question depends on the *lex arbitri* (law of the place of the arbitration) and the terms of the arbitration agreement. The Tribunal must therefore examine whether or not punitive damages can be awarded under the law applicable to the substance of the dispute and the provisions of the arbitration agreement. It is prudent for a Tribunal to ensure that a punitive remedy is severable in the event of refusal to enforce the arbitral award on a claim that it contradicts the public policy of the country which does not itself recognise punitive remedies. Cypriot case-law emphasises that punitive damages are prohibited in contractual actions (e.g. **Erotokritou v. Theodorou** (1997) 1 AAD 1800) and Contracts Law Cap. 149 provides that where the agreement itself contains a penalty damages clause, it operates as the maximum amount the injured party is allowed to claim before the Court. In relation to tortious actions penal remedies are awarded rarely when the nature of the tort demands so (for example libel) since the primary aim of the remedy is the restitution of the injured party.

10.3 Recovering Interest and Legal Costs

In relation to domestic arbitrations, where the Arbitration Law applies, the interest recoverable is that imposed by a Court judgment for a debt (which since 01/01/2015 is at the rate of 4% from the date of the award), unless the award directs otherwise. Although section 22 of the Arbitration Law allows the Tribunal to direct otherwise as to interest, in the case **DI.MA.RO v. Georgiou Construction Ltd** (2010) 1 AAD 223 the Supreme Court of Cyprus set aside the severable provision as to interest because the Tribunal did not justify its decision to deviate from the rule on interest on the Court's statutory rate.

In relation to interest, where the rules of the arbitration do not contain express provisions the Tribunal has power to make an award of simple or compound interest.

As to legal costs, section 23 of the Arbitration Law provides that any provision in the arbitration agreement to the effect that the parties, or any party thereto, will bear their or his, own costs of the reference or award or any part thereof, shall be void. However, such a provision shall not be void if it is part of an agreement to submit to arbitration a dispute which has already arisen. Section 23 of the Arbitration Law further provides that if an arbitral award does not contain a provision as to costs, any party, may within 14 days from the publication of the award or within such further time as the Court may direct, apply to the Arbitrator for such an order and the Arbitrator after hearing any party who may be heard shall amend his award by adding thereto such directions as to costs as he may think appropriate. Annex I par-

agraph 7 of the Arbitration Law provides that the matter of the costs of the arbitration and the award (e.g. who and how will pay them) is in the discretion of the Arbitrator or the Umpire.

In relation to international commercial arbitration, IACM Law is silent as to the apportionment of costs and interest giving thus a wide discretion to the Arbitrator. In international commercial arbitration the rule that the unsuccessful party bears the whole costs is not followed with consistency because firstly it is rare to have a winning party on all issues and secondly the Tribunal is bound to respect the Rules adopted by each arbitration agreement, which might contain provisions as to costs. The generally recognised rule however, is that the successful litigant will get all or most of his costs from the losing side.

11. Review of an Award

11.1 Grounds for Appeal

As regards domestic arbitrations governed by the Arbitration Law, the parties are entitled to appeal the arbitral award by submitting an application with the appropriate District Court in the limited circumstances provided in section 20(2):

(i) Where the Arbitrator or the Umpire has misconducted himself or the proceedings (e.g. **Solomou** v. **Laiki Cyprialife Ltd** (2010) 1 AAD 687, a classic example of misconduct is bribery/personal interest of the Arbitrator or unethical behaviour, and also includes wrongful inclusion or exclusion of evidence but does not include a wrong interpretation of any agreement as this would allow the court to review the merits of the case);
(ii) the arbitration was conducted irregularly; and
(iii) the arbitral award was issued irregularly (e.g. without stating reasons).

11.2 Excluding/Expanding the Scope of Appeal

The Court after hearing the case may annul the arbitral award. Despite the Arbitration Law allowing excessive Court intervention, Cypriot Courts demonstrate a pro-arbitration attitude in interpreting and applying section 20(2). For instance in **Stavrou v. Trilli** (2007) 1 AAD 1172 the Supreme Court reversed a first instance decision setting aside the arbitral award, because it held that misconduct includes *"a form of behaviour which tends to compromise and destroy the confidence that parties must have in the Arbitrators"* and the conduct of the Arbitrators to render an award solely on written submissions did not amount to such misconduct. Moreover in **Galatis v. Savvides** (1966) 1 CLR 87 the Court declared that it is a well-established principle that where matters in the award are severable the whole award need not be set aside, but only the part which is bad.

Where the arbitration is governed by the IACM Law an application under section 34, to set aside the arbitral award can be submitted to the District Court. As stated in **Dansk Moller Industry AS. v. Bentex Minerals Ltd** (2007) 1 SCJ 692 the application can only be made against the 'arbitral award' which decides the merits of the arbitrated dispute. Thus the District Court in Dansk case did not have the jurisdiction under section 34 to adjudicate on an appeal from the Tribunal's decision to terminate its proceedings after a party failed to submit a statement of claim.

An application under section 34 will be successful if the party submitting it proves one of the following reasons:

(i) one of the parties to the arbitration agreement was deprived of contractual capacity; 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; or
(ii) one party was not notified in a timely manner and on a regular basis, of the appointment of the Arbitrator or of the arbitral proceedings; or has by any other means been deprived from his chance to present his case; or
(iii) the arbitral award refers to matters irrelevant to the terms of the arbitration agreement or contains decisions on matters outside the scope of the arbitration agreement (if the decision on matters within the scope of the arbitration agreement is severable from decisions on unrelated matters, the court can annul only the part of the award that was made in excess of the powers of the Tribunal based on the arbitration agreement); or
(iv) the composition of the Tribunal or the conducting of the arbitration proceeding was in breach

of the relevant parties agreement, unless such agreement contradicts any provision of IACM; or in the absence of an agreement was made in breach of the provisions of IACM.

The application will also be successful if the Court finds that:

(i) the subject matter of the dispute is not arbitrable based on the laws of the Republic of Cyprus; or
(ii) the arbitral award contradicts the public policy of the Republic of Cyprus. In **A-G of Kenya v. Bank für Arbeit und Wirtschaft** (1999) 1AAD 585 the term public policy was given the same interpretation as under Article V of the New York Convention and it includes the *"fundamental values at the relevant time which govern the daily lives and transactions of citizens in order maintain an ordered society"*. The definition covers both substantive and procedural public policy.

An application based on IACM Law can only be submitted within three months of the notice of the arbitral award. The Court hearing the application enjoys discretion to stay its proceedings for setting aside the award, after a relevant application of any party, in order to allow the Tribunal to repeat the arbitration process or adopt remedial measures to constitute the award unsusceptible to annulment. Lastly, under section 26(3) IACM after an application for setting aside the award has been submitted, the Court can order any payment envisioned by the arbitral award to be deposited in Court or otherwise secured until the issuance of a judgment on the application.

11.3 Standard of Judicial Review

It is also noted that, although there is no statutory provision as to the capacity of parties to exclude or expand the scope of appeal under the national law, the approach followed by the Cyprus Courts with regard to applications to set aside arbitral awards, shows that an expansion of the appeal's scope would not be welcomed, since the Courts have emphasised that the statutory grounds of appeal are exhaustive. For example, in **A-G of Kenya v Bank für Arbeit und Wirtschaft** (1999) 1AAD 585 the Supreme Court held that *"an application for setting aside an arbitral award is possible only in the circumstances enumerated exhaustively in section 34 of the IACM"*. The parties, however, may, if they wish, include a clause in the arbitration agreement whereby they waive their right to any form of appeal against the award, but such a waiver will depend on the applicable law.

As seen from the above statutory provisions, a judicial review of the arbitral award is limited to the circumstances prescribed therein and does not entail a *de novo* review of the merits of the case. In the case of **A-G Kenya v. Bank für Arbeit und Wirtschaft** (1999) 1 AAD 585 the Court referring to the English case of **Quintette Coal Ltd v. Nippon Steel Corporation** held:

"*The concerns of international comity, respect for the capacities of tribunals, and sensitivity to the need of the international commercial system for predictability in the resolution of disputes compel us as a matter of policy, to adopt a standard which seeks to preserve the autonomy of the forum selected by the parties and to minimize judicial intervention when reviewing international commercial arbitral awards*."

12. Enforcement of an Award

12.1 New York Convention

Enforcement of an arbitral award in Cyprus is primarily governed by the New York Convention which has been ratified by the Ratification Law. Sections 35 and 36 of IACM Law are similar to the New York Convention's provisions on recognition and enforcement. Foreign arbitral awards may be enforced by virtue of the provisions of the New York Convention and of the IACM, if they relate to international commercial matters. It is noted that Cyprus is also a party to bilateral agreements relating to arbitration in certain cases involving foreign investors with the following countries: Armenia 1996, Bulgaria 1997, Egypt 1999, Belgo-Luxemburg 1999, Hungary 2002, Czech Republic 2002, Lebanon 2003, Israel 2003, India 2004, Serbia-Montenegro 2005 as well as other multilateral treaties such as the Energy Charter, which provide for the resolution of disputes by arbitration in cases of appropriation of foreign investment.

12.2 Enforcement Procedure

An arbitral award under the Arbitration Law is enforceable and binding as if it was a Court's judgment.

An arbitral award under IACM Law is enforceable by submitting a written application to the Court (see section 35) provided that the grounds of refusal to enforce the award in section 36, which are identical to Article V of the New York Convention, do not apply. The party seeking to enforce the arbitral award must supply the Court with the documents as requested under Article IV of the New York Convention. Under the Ratification, Law Article IV the party applying for recognition and enforcement must supply the Court with:

a) duly authenticated original award or duly certified copy;
b) the original agreement or a duly certified copy; and
c) a certified translation by an official/ diplomatic agent/sworn translator of these documents in the Greek language.

Once the applicant satisfies the necessary requirements in Article IV, the burden of proof shifts to the party resisting enforcement. Under Article V, a party seeking to resist enforcement has the burden of proving either that:

(i) The parties to the arbitration agreement are under some incapacity, or the agreement is invalid under the law to which the parties have subjected it or failing any indication under the law of the country where the award is made; or
(ii) The party against whom the award is invoked was not given proper notice of the appointment of Arbitrator/arbitration proceedings or was otherwise unable to present his case; or
(iii) The award deals with a difference not contemplated or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decision on matters submitted to arbitration can be separated from those not submitted, the part of the award which contains decision on matters submitted to arbitration may be recognised and enforced; or
(iv) The composition of the Tribunal or the arbitral procedure was not in accordance with the agreement of the parties, or failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
(v) The award has not yet become binding on the parties, or has been set aside/suspended by a competent authority of the country in which or under the law of which the award was made.

Under Article V the Court can also refuse enforcement if:

(i) The subject matter of the difference is not arbitrable under the law of that country
(ii) It is contrary to the public policy of that country

12.3 Approach of the Courts

Despite the lack of specific procedural rules for applications relating to arbitration, the Supreme Court determining the nature of such application stated in **Andreas Xatzigeorgioy v. Cooperative Credit Co Aglatzias** (2012) 1 AAD 707 that an originating application by summons is submitted to the District Court so that the other party is allowed to present its allegations relating to enforcement. A different opinion was maintained by the Supreme Court in **Udruzena Beogradska Banka v. Westacre Investment** (1999) 1 AAD 124 where the application was held to be ex parte, with the possibility of the opposing side submitting an originating application based on Article V.

In the very recent and controversial case of **Application of Zhong Lun Law Firm No.152/2014** dated 17/2/2015, the Supreme Court exercising its first instance jurisdiction, held that when neither party to the application is related with or has its registered office in the Republic of Cyprus, Cypriot Courts do not have jurisdiction to hear an application for recognition and enforcement of the arbitral award. Although the case was examined on the basis of the provisions of the Law 121(I)/2000 Foreign Courts Judgments (Recognition, Registration and Enforcement based on Convention), the case appears to be creating a requirement of residency in Cyprus by at least one of the parties. Section 4 of the Law 121(I)/2000 states that it is applicable in all applications requesting recognition, registration and enforcement of a foreign judgment (including arbitration awards), despite the provisions of any other law. It should be emphasised that this case does not create precedent and therefore is not binding on the Courts even though it will certainly be used as guidance on future judgments on the matter.

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The approach followed by the Courts of Cyprus is in favour of the recognition and enforcement of arbitral awards. In **Re Beogradska Banka** (1995) 1 AAD 737, the Court stated that:

'*The judicial examination of the arbitral award which is made in accordance with articles IV and V of the New York Convention is in my view supervisory, it has a procedural character and does not encroach examine the substance of the Arbitrators judgment.*' , and

'*……the court does not enter into the substance of the case or the wisdom of the arbitral award. The Court does not determine the rights of the parties and no rights of action arise out of the recognition and enforcement*'.

Courts are also very reluctant to refuse enforcement on the grounds of public policy. In the case of **Beogradska Banka v. Westacre Investments** (2008) 1 AAD 1217, the Supreme Court held that since the Tribunal had already examined and rejected allegations of bribery, the Court could not re-examine the merits of the case at the post-award stage. Additionally, if an award is refused enforcement in another country purely for reasons of public policy, the Cypriot Courts are not bound to refuse enforcement, on the contrary, if an objection is raised based on public policy, the Cypriot Court will review anew the issue.

Finally, it should be noted that an important development is expected within 2015 in relation to the enforcement of foreign arbitral awards, since a draft legislative proposal is being prepared and will be submitted to the Parliament, which among others is expected to resolve the grey area created by case-law on the matter of enforcement of an arbitral award where neither of the parties reside in Cyprus and to introduce provisions allowing an application for enforcement to be made on an ex-parte basis.

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