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Expert Analysis Chapter

Q&A Chapters

Cyprus

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1 Documentation and Formalities

1.1 Please provide an overview of the documentation (or framework of documentation) on which derivatives transactions are typically entered into in your jurisdiction. Please note whether there are variances in the documentation for certain types of derivatives transactions or counterparties; for example, differences between over-the-counter ("OTC") and exchange-traded derivatives ("ETD") or for particular asset classes.

OTC derivatives transactions are typically documented under a set of streamlined standard documentation developed by the International Swaps and Derivatives Association, Inc. ("**ISDA**"), a leading trade association for participants in the OTC derivatives markets and particularly under its most commonly used versions, namely the 1992 ISDA Master Agreement and the 2002 ISDA Master Agreement. These are often entered into in conjunction with relevant ISDA Schedules, which allow parties to tailor the terms of the ISDA Master Agreement, such as the termination provisions, the tax representations, administrative matters and the inclusion of any additional provisions. Where necessary, an ISDA Credit Support Annex/Credit Support Deed is usually entered into, which reduces credit exposure via, for example, the granting of security interests or title transfer of collateral.

The economic and commercial terms of each individual OTC derivatives transaction are documented in an ISDA Confirmation, which supplements the ISDA Master Agreement and forms a single agreement between the parties.

Further mechanisms can be introduced via ISDA Protocols, which are developed by ISDA to deal with a variety of legal developments and which allow the parties to amend the ISDA Master Agreements via an adherence procedure.

ETDs are documented in standard documents to which minimal amendments are made. The terms of such documents are determined by the exchange through which they are entered into.

Our responses to this chapter will focus on OTC derivatives transactions.

1.2 Are there any particular documentary or execution requirements in your jurisdiction? For example, requirements as to notaries, number of signatories, or corporate authorisations.

There are no particular documentary or execution requirements in Cyprus for derivatives arrangements. Usually, the suite of documents of a derivatives transaction is governed by the laws of another country (usually English law); to that effect, any formalities of the relevant jurisdiction will need to be observed.

Where the collateral consists of a pledge/charge over shares of Cypriot companies, the formalities set out in the Contracts Law, Cap. 149 will need to be complied with.

The requisite corporate approvals must be passed for the Cypriot company in accordance with the articles of association of the company, approving the entry into the transaction and authorising a representative to sign the agreement on its behalf. Typically, a resolution of the board of directors will suffice unless there are special provisions in the articles of association also requiring shareholder approval.

In addition, it is customary for a mini due diligence to be conducted on the Cypriot company and for an opinion to be provided by independent Cypriot counsel verifying the capacity and authority of the company to enter into the transaction.

1.3 Which governing law is most often specified in ISDA documentation in your jurisdiction? Will the courts in your jurisdiction give effect to any choice of foreign law in the parties' derivatives documentation? If the parties do not specify a choice of law in their derivatives contracts, what are the main principles in your jurisdiction that will determine the governing law of the contract?

The ISDA documentation is customarily governed by English law. The choice of English law is usually recognised as a valid choice of law by Cypriot courts and will generally be upheld, recognised and enforced by the courts of Cyprus except for those laws or specific provisions (i) that the Cyprus courts would consider to be procedural in nature, (ii) that are of a penal or revenue nature, or (iii) the application of which would be inconsistent with public policy.

More specifically, Regulation (EC) No. 593/2008 of the European Parliament and of the Council of 17 June 2008 on the law applicable to contractual obligations ("**Rome I**") is directly applicable in Cyprus; thus, Cypriot courts must respect a choice of law even where the chosen law is that of a non-Member State.

If the choice of law is not specified, the applicable law will be determined in accordance with the provisions of Rome I.

2 Credit Support

2.1 What forms of credit support are typically provided for derivatives transactions in your jurisdiction? How is this typically documented? For example, under an ISDA Credit Support Annex or Credit Support Deed.

Credit support can be in the form of, *inter alia*, the following:

(a) Guarantees via a guarantee agreement.
(b) Fixed and floating charges via a debenture agreement.
(c) Pledge/charge over shares via a share pledge agreement.

(d) Charges.
(e) Security assignments via a security assignment agreement.
(f) Margin collateral arrangements via ISDA standard credit support documents.

The ISDA Credit Support Annex is also used by Cypriot counterparties.

2.2 Where transactions are collateralised, would this typically be by way of title transfer, by way of security, or a mixture of both methods?

We have seen collateralisation in the form of both a title transfer and security. The Financial Collateral Arrangements Law No. 43(I)/2004 (the "**Financial Collateral Arrangements Law**"), which transposes the provisions of Directive 2002/47/EC of the European Parliament and of the Council of 6 June 2002 on financial collateral arrangements (the "**Financial Collateral Directive**"), recognises both: (a) a title transfer financial collateral arrangement where the collateral provider transfers full ownership of, or full entitlement to, financial collateral to a collateral taker for the purpose of securing or otherwise covering the performance of relevant financial obligations; and (b) a security financial collateral arrangement by which a collateral provider provides financial collateral by way of security to or in favour of a collateral taker, retaining the full or qualified ownership of, or full entitlement to, the financial collateral when the security right is established.

2.3 What types of assets are acceptable in your jurisdiction as credit support for obligations under derivatives documentation?

The parties are free to elect the type of assets. Commonly, these comprise cash or securities. Where the assets are required for risk mitigation purposes in accordance with the margining rules applicable to uncleared OTC derivatives, as analysed in question 2.4 below, regulatory technical standards specify the classes of assets that can be used as collateral. Some examples of such assets include the following:

- Cash.
- Gold.
- Debt securities issued by central governments or central banks of Member States.
- Debt securities issued by Member States' regional governments or local authorities whose exposures are treated as exposures to the central government of that Member State.
- Debt securities issued by specified multilateral development banks or by specified international organisations.
- Debt securities issued by third countries' governments or central banks.
- Debt securities issued by credit institutions or investment firms (provided these are not issued by the collateral provider or members of its group).
- Corporate bonds (provided these are not issued by the collateral provider or members of its group).

2.4 Are there specific margining requirements in your jurisdiction to collateralise all or certain classes of derivatives transactions? For example, are there requirements as to the posting of initial margin or variation margin between counterparties?

On the basis of the European Market Infrastructure Regulation No. 648/2012 ("**EMIR**") and the relevant regulatory technical standards, counterparties to non-centrally cleared OTC derivative contracts are required to exchange margin for the purposes of limiting credit exposure if their aggregate average notional amount ("**AANA**") of uncleared derivatives exceeds the regulatory threshold. The margin rules require participants to exchange collateral in the form of segregated initial margin ("**IM**" – defined as the collateral collected by a counterparty to cover its current and potential future exposure in the interval between the last collection of margin and the liquidation of positions or hedging of market risk following a default of the other counterparty) and variation margin ("**VM**" – defined as the collateral collected by a counterparty to reflect the results of the daily marking-to-market or marking-to-model of outstanding contracts). The counterparties obligated to comply with the margining requirements are FCs, NFCs (as explained in question 3.1 below) above the clearing thresholds ("**NFC+s**") and non-EEA entities that would qualify as FCs or NFC+s if they were established in the EU.

ISDA has developed relevant protocols, Credit Support Annexes and a standard margin model to facilitate compliance with the aforementioned.

2.5 Does your jurisdiction recognise the role of an agent or trustee to enter into relevant agreements or appropriate collateral/enforce security (as applicable)? Does your jurisdiction recognise trusts?

As a common law jurisdiction, Cyprus has historically inherited key principles on trusts from the English legal system. There are different forms of trusts that are recognised and formed under Cyprus law (bare trusts, private trusts, constructive trusts, resulting trusts, implied trusts, charitable trusts, discretionary trusts, etc.). The key legislation regulating trusts in Cyprus is the Trustees Law, Cap. 193, as amended, and the International Trusts Law No. 69(I)/1992, as amended. The formalities that must be fulfilled for the proper construction of a trust are the "Three Certainties", namely: certainty of intention; certainty of subject matter; and certainty of object.

It is not uncommon in financing transactions for a security trustee to be appointed to hold the benefit of the security on behalf of certain beneficiaries. The security trustee in such a case is made a party to the security documents.

The typical arrangement when it comes to derivatives is for the assets to be held by custodians on trust for the beneficiaries.

It is also not uncommon under Cyprus law to use a security agent rather than a security trustee. The role of the agent in such a case will be determined by the documents appointing the agent.

Provided the security trustee or security agent has been validly appointed, there is no issue under Cyprus law to involve such parties in a transaction.

2.6 What are the required formalities to create and/or perfect a valid security over an asset? Are there any regulatory or similar consents required with respect to the enforcement of security?

Generally, a charge as well as every amendment, assignment or other change to it granted by a Cypriot company constitutes a registrable charge pursuant to the provisions of the Cyprus Companies Law, Cap. 113 and is required to be registered with the Cyprus Registrar of Companies. The relevant form for the registration of the charge must be filed within 21 days from the date of the signing thereof in the event that the signing has taken place in Cyprus or within 21 days after the date on which the

relevant agreement creating the charge could, in due course of post, and if dispatched with due diligence, have been received in Cyprus. In the latter case, the Registrar of Companies has, as a rule of practice, allowed the registration of charges created abroad to take place within 42 days from the execution thereof. Failure to register such charge will render the same void as against the liquidator and any creditor of the company so far as any security on the company's property or undertaking is conferred.

Where the charge constitutes a financial collateral arrangement within the ambit of the Financial Collateral Arrangements Law, the above registration requirement is not applicable. The Financial Collateral Arrangements Law itself provides that the provision of financial collateral under a financial collateral arrangement should not be made dependent on the performance of any formal act, including the filing with an official body or registration in a public register.

In any case, where the collateral is transferred as an outright transfer, the above registration requirement is arguably not applicable since the immovable property is no longer in the possession of the collateral giver. Nevertheless, registration is customary for added certainty in case of re-characterisation.

In terms of enforcement, where the collateral is a pledge over the shares of a Cypriot entity, immediate out-of-court enforcement can be achieved provided the mechanism of the pledge agreement is drafted in a manner that facilitates it.

3 Regulatory Issues

3.1 Please provide an overview of the key derivatives regulation(s) applicable in your jurisdiction and the regulatory authorities with principal oversight.

The key derivatives regulations applicable in Cyprus are the following:

(a) EMIR.

(b) Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments ("**MiFID II**") and the respective Law on the Provision of Investment Services, the Exercise of Investment Activities, the Operation of Regulated Markets and Other Related Matters No. 87(I)/2017 ("**MiFID Law**") transposing the same.

EMIR

EMIR lays down requirements for the clearing of OTC derivatives through authorised central counterparties ("**CCPs**"), bilateral risk-management requirements for OTC derivative contracts that are not cleared through CCPs (margining requirements mentioned in question 2.4 above), reporting requirements for derivative contracts and uniform requirements for the performance of activities of CCPs and trade repositories. The aim of EMIR is to increase transparency in the OTC derivatives markets, mitigate credit risk and reduce operational risk.

The EMIR requirements must be observed by and are applicable to both financial counterparties ("**FCs**") and non-financial counterparties ("**NFCs**").

FCs include:

(a) investment firms;

(b) credit institutions;

(c) insurance undertakings or reinsurance undertakings;

(d) UCITS and, where relevant, its management company;

(e) institutions for occupational retirement provisions;

(f) alternative investment funds; and

(g) central securities depositories.

An NFC is an undertaking established in the EU in a form other than an FC.

Certain clearing thresholds must be surpassed in order for the clearing requirement to be applicable. The clearing thresholds are as follows:

(a) EUR 1 billion in gross notional value for OTC credit derivative contracts;

(b) EUR 1 billion in gross notional value for OTC equity derivative contracts;

(c) EUR 3 billion in gross notional value for OTC interest rate derivative contracts;

(d) EUR 3 billion in gross notional value for OTC foreign exchange derivative contracts; and

(e) EUR 3 billion in gross notional value for OTC commodity derivative contracts and other OTC derivative contracts not provided for under points (a) to (d).

The thresholds are calculated on the basis of the aggregate month-end average positions in OTC derivatives for the previous 12 months.

MiFID Law

The MiFID Law transposes the provisions of MiFID II. In accordance with the MiFID Law, entities providing investment services or investment activities in connection with transferable securities, which include most derivatives, must be licensed and authorised by the Cyprus Securities and Exchange Commission ("**CySEC**") in order to do so; there are heightened regulatory protections when such services and activities are provided to retail clients.

The regulatory authorities with principal oversight are CySEC and the European Securities and Markets Authority ("**ESMA**").

3.2 Are there any regulatory changes anticipated, or incoming, in your jurisdiction that are likely to have an impact on entry into derivatives transactions and/or counterparties to derivatives transactions? If so, what are these key changes and their timeline for implementation?

There are no anticipated regulatory changes.

3.3 Are there any further practical or regulatory requirements for counterparties wishing to enter into derivatives transactions in your jurisdiction? For example, obtaining and/or maintaining certain licences, consents or authorisations (governmental, regulatory, shareholder or otherwise) or the delegating of certain regulatory responsibilities to an entity with broader regulatory permissions.

As mentioned above, entities that provide investment services and activities in connection with derivatives require licensing and authorisation from CySEC in order to provide such services, on the basis of the MiFID Law. The scope of the licensing (that is, types of services and activities as well as the type of financial instruments dealt with) will appear in the public register maintained by CySEC.

If the entity providing the service is a credit institution, it will have dual regulation both from the Central Bank of Cyprus and CySEC.

As mentioned in our response to question 1.2 above, corporate approvals are typically passed by the Cypriot counterparty approving the entry by the same into the derivatives transaction and authorising a representative to sign the relevant agreements.

3.4 Does your jurisdiction provide any exemptions from regulatory requirements and/or for special treatment for certain types of counterparties (such as pension funds or public bodies)?

With the exception of certain reporting obligations, EMIR does not apply to the following entities:

- multilateral development banks, as listed under Section 4.2 of Part 1 of Annex VI to Directive 2006/48/EC relating to the taking up and pursuit of the business of credit institutions (recast);
- public sector entities within the meaning of point (18) of Article 4 of Directive 2006/48/EC where they are owned by central governments and have explicit guarantee arrangements provided by central governments; or
- the European Financial Stability Facility and the European Stability Mechanism.

As mentioned above, NFCs whose trades fall below the clearing threshold are excluded from the clearing requirement, and the risk mitigation requirements for uncleared trades are also significantly reduced.

Without prejudice to certain risk mitigation techniques, OTC derivative contracts that are intragroup transactions as described in Article 3 of EMIR are not subject to the clearing obligation.

In addition, the MiFID Law does not apply to, *inter alia*, the following:

- insurance undertakings or undertakings carrying out the reinsurance and retrocession activities referred to in the Insurance, Reinsurance and Other Related Matters Law, when carrying out the activities referred to in that law;
- persons providing investment services exclusively to their parent undertakings, to their subsidiaries or to other subsidiaries of their parent undertakings;
- persons providing an investment service where that service is provided in an incidental manner in the course of a professional activity and that activity is regulated by legal or regulatory provisions or a code of ethics governing the profession that do not exclude the provision of that service;
- persons dealing on own account in financial instruments other than commodity derivatives or emission allowances or derivatives thereof and not providing any other investment services or performing any other investment activities in financial instruments other than commodity derivatives or emission allowances or derivatives thereof, unless such persons:
  - are market makers;
  - are members of or participants in a regulated market or a multilateral trading facility, on the one hand, or have direct electronic access to a trading venue, on the other hand, excluding non-financial entities that execute transactions on a trading venue that, in an objectively measurable way, reduce the risks directly relating to the commercial activities or treasury financing activities of those non-financial entities or their group;
  - apply a high-frequency algorithmic trading technique; or
  - deal on own account when executing client orders;
- persons providing investment services consisting exclusively in the administration of employee participation schemes; or
- where the services are provided on the basis of reverse solicitation.

4 Insolvency / Bankruptcy

4.1 In what circumstances of distress would a default and/or termination right (each as applicable) arise in your jurisdiction?

Bankruptcy is an event of default trigger under the ISDA standard documentation. This is defined in clause 5(a)(vii) of the master agreement and is triggered when a party, any credit support provider of such party or any applicable specified entity of such party:

(i) is dissolved (other than pursuant to a consolidation, amalgamation or merger);
(ii) becomes insolvent or is unable to pay its debts or fails or admits in writing its inability generally to pay its debts as they become due;
(iii) makes a general assignment, arrangement or composition with or for the benefit of its creditors;
(iv) institutes, or has instituted against it, a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law affecting creditors' rights, or a petition is presented for its winding-up or liquidation;
(v) has a resolution passed for its winding-up, official management or liquidation (other than pursuant to a consolidation, amalgamation or merger);
(vi) seeks or becomes subject to the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official for it or for all or substantially all of its assets;
(vii) has a secured party take possession of all or substantially all of its assets or has a distress, execution, attachment, sequestration or other legal process levied, enforced or sued on or against all or substantially all of its assets and such secured party maintains possession, or any such process is not dismissed, discharged, stayed or restrained, in each case within 15 days thereafter;
(viii) causes or is subject to any event with respect to it that, under the applicable laws of any jurisdiction, has an analogous effect on any of the events specified above; or
(ix) takes any action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the foregoing acts.

An event of default/termination may, in addition to the above, be triggered by other factors such as, *inter alia*, the following:

- failure to pay or deliver the relevant payments under the agreement;
- failure to perform any obligations;
- misrepresentation;
- cross-default;
- consolidation, amalgamation, merger, transfer, reorganisation, reincorporation or reconstitution;
- illegality; or
- a *force majeure* event.

4.2 Are there any automatic stay of creditor action or regulatory intervention regimes in your jurisdiction that may protect the insolvent/bankrupt counterparty or impact the recovery of the close-out amount from an insolvent/bankrupt counterparty? If so, what is the length of such stay of action?

On 18 March 2016, the Law on the Resolution of Credit Institutions and Investment Companies of 2016 No. 22(I)/2016 (the "**Resolution Law**"), as amended, came into force in Cyprus,

implementing the provisions of Directive 2014/59/EC establishing a framework for the recovery and resolution of credit institutions and investment firms (the "**BRRD**"), which aims at harmonising the procedures for the recovery and resolution of credit institutions and investment firms at EU level.

The resolution authorities were given the power to, *inter alia*, prohibit the trigger of an enforcement event or the termination, suspension, modification, netting or set-off rights under an agreement by reason of a resolution measure if the substantive obligations, including the payment and delivery obligations, or provision of collateral continue to be performed.

In addition, the resolution authorities have the right to temporarily suspend payment and delivery of certain obligations or to restrict the enforcement of security interests for a limited period of time.

In mid-2015, the examinership procedure was also introduced, which aims to rescue a viable company with liquidity problems through reorganisation in an effort to prevent or avoid the liquidation of the company. With a successful submission of an application for the appointment of an examiner, a court protection period of four months is applicable, during which the following are prohibited:

(a) the commencement of winding-up procedures against the company;
(b) the appointment of a receiver and the placement of a company under liquidation;
(c) the confiscation by third parties including sequestration proceedings or enforcement against the assets or property of the company without the consent of the examiner; and
(d) taking any action to enforce the whole or any part of a security that is granted by a company to secure a claim (including a mortgage, charge, lien or other charge or pledge over the whole or any part of the assets, property, or income of the company).

In addition, no payments can be made by the company during the period in which the company is under the protection of the court for settlement or repayment of the whole or part of an obligation that was created against the company at a date prior to the submission of an application for examinership, unless authorised by the examiner or included in the report of the independent expert.

It must be noted, however, that where the transaction amounts to a financial collateral arrangement as per the provisions of the Financial Collateral Arrangements Law, the provisions with respect to examinership will not affect the terms of the financial collateral arrangement.

The abovementioned examinership procedure is expected to be amended in order to be brought in line with the Preventative Restructuring Directive, which has similar elements, including moratorium requirements; however, this has yet to be harmonised.

4.3 In what circumstances (if any) could an insolvency/bankruptcy official render derivatives transactions void or voidable in your jurisdiction?

There are a number of circumstances that can render a derivatives transaction (including the security/collateral elements) void or voidable and these include the following:

- if the charge constitutes a registrable charge and the registration has not been effected, the charge is void as against the liquidator and any creditor of the company;
- a floating charge created within 12 months from the commencement of the winding-up;
- any conveyance, charge, mortgage, delivery of goods, payment, execution or other act relating to property that took place within six months before the commencement of the winding-up of a company may be considered a fraudulent preference and be set aside (see response to question 4.4 below);
- where a gift, sale, pledge, mortgage or other transfer or disposal of any movable or immovable property is made by any person with the intent to hinder or delay the recovery of debts by creditors, this will be considered fraudulent; and
- where any part of the property of a company that is being wound up consists of immovable property burdened with onerous covenants, of shares or stocks in companies, of unprofitable contracts, or of any other property that is unsaleable, or not readily saleable, by reason of its binding the possessor thereof to the performance of any onerous act or to the payment of any sum of money, the liquidator may, with the leave of the court, be allowed to disclaim the property.

4.4 Are there clawback provisions specified in the legislation of your jurisdiction that could apply to derivatives transactions? If so, in what circumstances could such clawback provisions apply?

Section 301 of the Cyprus Companies Law, Cap. 113 specifically provides that in the event of any liquidation of a company, any conveyance, charge, mortgage, delivery of goods, payment, execution or other act relating to property, that took place within a period of six months from the commencement of the winding-up of the company may be considered fraudulent.

A preference is considered fraudulent if it is intended to put a creditor in a better position on liquidation of the company than they would have otherwise enjoyed. Creditors who benefit from a fraudulent preference must repay any benefit obtained.

If a transaction constitutes a financial collateral arrangement within the meaning of the Financial Collateral Arrangements Law, the arrangement is not deemed void on the sole basis that a financial collateral arrangement has come into existence, or the financial collateral has been provided, on the day of the commencement of the winding-up proceedings or reorganisation measures, or within a prescribed period before then. However, where such a transaction is considered a fraudulent preference of its creditors, it can still be set aside.

4.5 In your jurisdiction, could an insolvency/bankruptcy-related close-out of derivatives transactions be deemed to take effect prior to an insolvency/bankruptcy taking effect?

If Automatic Early Termination triggering close-out of the derivatives transaction is agreed, it could be deemed to take effect immediately prior to the insolvency/bankruptcy taking effect. We believe that it is likely that the courts would uphold the same; however, we do not exclude the possibility of Cypriot courts not giving effect to the same in certain circumstances.

4.6 Would a court in your jurisdiction give effect to contractual provisions in a contract (even if such contract is governed by the laws of another country) that have the effect of distributing payments to parties in the order specified in the contract?

Cypriot courts will generally lean towards giving effect to contractual provisions unless the same are contrary to mandatory Cyprus law provisions.

5 Close-out Netting

5.1 Has an industry-standard legal opinion been produced in your jurisdiction in respect of the enforceability of close-out netting and/or set-off provisions in derivatives documentation? What are the key legal considerations for parties wishing to net their exposures when closing out derivatives transactions in your jurisdiction?

Yes, an industry-standard legal opinion was produced for 2022 and updated for 2023.

Generally, it is expected that the close-out netting and/or set-off provisions in derivatives documentation will be valid and enforceable in Cyprus. Different legislation under Cyprus law has express protections to set-off arrangements for particular entities and transactions as follows:

(1) If the transaction constitutes a financial collateral arrangement within the meaning of the Financial Collateral Arrangements Law, certain protections are afforded to set-off and netting clauses.

(2) Within the framework of a winding-up of a credit institution, it is specified that the governing law of netting agreements and repurchase agreements will be respected and that the opening of winding-up proceedings shall not affect the right of creditors to demand the set-off of their claims against the claims of the credit institution, where such a set-off is permitted by the contract entered into by the creditor and the credit institution.

(3) Insolvency set-off is possible on the basis of the Cyprus Companies Law, Cap. 113 in relation to mutual debts, mutual claims and other mutual transactions existing between the insolvent company and any other person. In such case, an account is taken of all the claims on either side in relation to these mutual transactions and the same are set off one against the other and only the difference is payable by the net debtor to the net creditor.

As regards credit institutions, the power of the resolution authority pursuant to the Resolution Law implementing the BRRD to stay and suspend certain suspension, termination and netting or set-off provisions must be kept in mind.

5.2 Are there any restrictions in your jurisdiction on close-out netting in respect of all derivatives transactions under a single master agreement, including in the event of an early termination of transactions?

Generally, close-out netting provisions in respect of derivatives transactions documented under a single master agreement are expected to be respected by Cypriot courts and to be valid and enforceable.

5.3 Is Automatic Early Termination ("AET") typically applied/disapplied in your jurisdiction and/or in respect of entities established in your jurisdiction?

AET is usually disapplied for ISDA agreements between counterparties incorporated in Cyprus.

5.4 Is it possible for the termination currency to be denominated in a currency other than your domestic currency? Can judgment debts be applied in a currency other than your domestic currency?

Cyprus does not have currency or exchange controls and there are no restrictions on payments being made in other currencies other than domestic currencies. Judgments may be expressed in a foreign currency or its Euro equivalent.

6 Taxation

6.1 Are derivatives transactions taxed as income or capital in your jurisdiction? Does your answer depend on the asset class?

Profits realised on the disposal of securities including derivatives are not subject to taxation in Cyprus. However, the nature of each derivative must be examined in detail in order to determine the correct tax treatment.

Gains from property derivatives may be subject to capital gains tax.

Forex differences arising from trading in foreign currencies (and related derivatives) are subject to corporation tax, which is currently set at 12.5%.

6.2 Would part of any payment in respect of derivatives transactions be subject to withholding taxes in your jurisdiction? Does your answer depend on the asset class? If so, what are the typical methods for reducing or limiting exposure to withholding taxes?

Special defence contribution at the rate of 17% is imposed on deemed dividend distributions. This withholding tax is only applicable to natural persons who are Cyprus tax residents and who are domiciled in Cyprus. Further, in accordance with the General Health System Law (89/2001) of Cyprus, a tax rate of 2.65% is applicable on dividend income and interest (amounts obtained under the derivatives transactions could be considered as interest receivable) received by Cypriot residents who are natural persons irrespective of their domicile.

6.3 Are there any relevant taxation exclusions or exceptions for certain classes of derivatives?

There are no special tax rules in Cyprus applying to derivatives transactions.

7 Bespoke Jurisdictional Matters

7.1 Are there any material considerations that should be considered by market participants wishing to enter into derivatives transactions in your jurisdiction? Please include any cross-border issues that apply when posting or receiving collateral with foreign counterparties (e.g. restrictions on foreign currencies) or restrictions on transferability (e.g. assignment and novation, including notice mechanics, timings, etc.).

There are no material considerations.

When it comes to derivatives on virtual currency, CySEC has issued a circular (C268, dated 15 May 2018) that sets out its guidance on the matter. CySEC considers such contracts for difference to fall within the MiFID Law, and specific authorisation is required to be obtained from CySEC when such derivatives are created, designed and distributed.

Agreements governing the OTC derivatives transaction may provide that disputes will be resolved in English courts. Following Brexit, recognition of judgments issued by English courts will be effected via Cypriot national rules and more specifically the Judgments of Courts of Commonwealth Countries (Reciprocal Enforcement Law), Cap. 10, which provides

for substantial reciprocity of treatment in connection with the enforcement of judgments given in the superior courts of any foreign country, which includes judgments given in the supreme court or in the district court in the colony and judgments given in any courts on appeals against judgments so given. It is noted, however, that the judgments must be final and conclusive and a sum of money is payable on the basis of the order (not being an amount relating to taxes and charges of a similar nature or in relation to a fine or other penalty). It is further specified that the aforementioned is applicable also with respect to orders that do not relate to the adjudication or payment of a sum of money.

Furthermore, it must be kept in mind that where the forum is the New York courts, the judgment from a New York court cannot be recognised and enforced by the courts of Cyprus since there is no bilateral treaty to that effect. A final and conclusive judgment on the merits for the payment of money rendered by the New York court will, however, constitute evidence of the debt contained in the judgment provided certain requirements are met, and the Cypriot courts may consider the same as conclusive evidence of the existence of the debt and issue a corresponding judgment.

If an arbitration forum is chosen, an arbitral award can be enforced through the mechanism of the New York Convention, to which the Republic of Cyprus is a signatory, provided the award is issued by an arbitration tribunal of a jurisdiction that is also a signatory. Of course, certain applicable procedural requirements must be fulfilled.

8 Market Trends

8.1 What has been the most significant change(s), if any, to the way in which derivatives are transacted and/or documented in recent years?

The regulation of the derivatives market is becoming increasingly more robust, and there is a constant and ongoing development of protocols in order to encompass the provisions of various legislations and regulations that are constantly being developed, introduced and updated (*e.g.* the BRRD II Omnibus Jurisdictional Module to the ISDA Resolution Stay Jurisdictional Modular Protocol). The procedure for amending the terms via protocol adherence is being streamlined.

Heightened market volatility and uncertainty is resulting in an increased number of companies utilising the hedging benefits of derivatives transactions. It is noted that the entry into derivatives transactions is generally on the rise in Cyprus.

Investors and corporates are increasingly becoming conscious of environmental, social and governance ("**ESG**"). There is thus a notable push towards ESG-driven investment flows. ESG concern has resulted in an increased use of traditional and new derivatives in managing risks associated with economic activities related with ESG.

8.2 What, if any, ongoing or upcoming legal, commercial or technological developments do you see as having the greatest impact on the market for derivatives transactions in your jurisdiction? For example, developments that might have an impact on commercial terms, the volume of trades and/or the main types of products traded, smart contracts or other technological solutions.

The most notable effect on the economy at the moment is the continuing disruption caused by the conflict between the Russian Federation and Ukraine, which is ongoing. The economic and financial effects of this conflict are significant and are expected to escalate since the end of this conflict is not yet on the horizon. The sanctions imposed on companies and individuals have a direct effect on the counterparties to ISDA Agreements as well as derivatives linked to sanctioned activities and markets that are now closed. ISDA has provided guidance to tackle the disruption caused as a result of the conflict; however, it is expected that further developments will be made as a result.

The Cyprus government and CySEC are proactively working on developing the island as a technology hub. Traditionally, Cyprus has a strong presence of gaming companies, tech companies, payment institutions and forex companies, which integrate and constantly keep up with fintech developments. That, in combination with excellent financial services experts, government incentives and legislative and regulatory developments, has significantly contributed to the development of a lucrative environment for the fintech market to thrive. Cyprus is currently a preferred destination for start-ups.

Angeliki Epaminonda is the Financial, Corporate and M&A Partner of the firm. Angeliki has extensive expertise in financing transactions and in particular the setting up of security packages for major European and other international banks and financial institutions. She has undertaken numerous out-of-court security enforcements for leading banks and has worked on a large array of financing transactions. She is considered an expert in corporate law matters (for both private and public companies) and in particular corporate governance, shareholder stake structuring, corporate restructurings, negotiation of shareholder rights, advising on employment participation schemes, MTOs, and also undertaking complex cross-border acquisitions and acquisition finance, having been involved in numerous complex corporate sale/purchase transactions with bank financing aspects requiring extensive negotiation and planning.

Angeliki has undertaken numerous local and cross-border mergers and reorganisations and is an expert in providing group structuring advice and solutions. She has produced the ICMA/SLRC Industry opinion for Cyprus every year for the last 12 years with respect to GMRA/GMSLA/OSLA/MESLA agreements and has been involved in a number of securities lending, repurchase and derivatives transactions. She advises major credit institutions on securities lending and derivatives transactions (including ISDA-based OTC derivatives) and the regulatory requirement in connection thereto. She provides advice to investment firms, funds and fund managers in terms of set-up and compliance and was recognised in the latest edition of *The Legal 500* as a "Key Lawyer" in the Banking and Finance and Commercial, Corporate and M&A areas. She is a leading partner the Financial Services department of the firm. She has also been certified as a blockchain expert.

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Patrikios Legal is one of the largest law firms in Cyprus, highly recommended for its professional legal services and exceptional client service. With 60 years of experience in the local and international legal market, Patrikios Legal is renowned for its involvement in some of the largest cross-border transactions, complex litigation, arbitration and regulatory matters.

The team is highly qualified and experienced in offering legal advice in any sphere, while the corporate finance and commercial departments maintain leading positions in Cyprus for their expertise in advising multinational corporations, banks, financial institutions and HNWIs on their business matters. The firm's lawyers are engaged in challenging corporate finance transactions in Cyprus and abroad, they handle project and asset finance matters and they offer a wide range of legal services in the financial services sector. The firm's international profile comprises strong alliances with reputable law firms, particularly in Europe, UAE, USA and Asia, with memberships in various organisations globally and a loyal clientele worldwide.

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