

## CHAPTER 7                      Cyprus

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### §7.01        Introduction

As a result of the British rule in Cyprus from 1878 until 1960, the country's legal system has been strongly influenced by the English common law tradition.<sup>1</sup> Cypriot private law and criminal law is mostly based on English common law. Procedural law is also based on common law, whereas, public law derives from the continental tradition.<sup>2</sup>

Article 188 of the Constitution of Cyprus provides that the laws that applied in Cyprus in 1960 shall remain in force, to the extent that they do not contravene the Constitution, until they are replaced by new laws. Some branches of Cypriot law were codified in 1959, e.g., the Civil Wrongs Law (Cap. 148), the Contracts Law (Cap. 149), the Criminal Code (Cap. 154), etc.<sup>3</sup> To avoid gaps in the Cypriot legal system, Law no. 14 of 1960 stipulates, *inter alia* that when not otherwise provided by applicable statutes, the courts of Cyprus would continue to apply English common law and the principles of equity. This provision constitutes the formal gateway of common law into the legal system of Cyprus.

More than half a century after the independence of Cyprus, Cypriot law has developed autonomously, and in recent years under the heavy influence of the EU, which Cyprus became a member of in 2004.<sup>4</sup>

Cyprus presently maintains a two-tier judicial system. The primary trial court, i.e., the court of general jurisdiction, is the District Court whose jurisdiction extends over most civil and criminal matters. At the apex of the administration of the country's justice system sits the Supreme Court of Cyprus, which serves *inter alia* as an appellate court in civil and criminal matters, as an administrative Court of First Instance, and as a constitutional court.<sup>5</sup>

In a number of cases, judges of the Cyprus District Courts have – simultaneously with the granting of freezing orders – imposed a requirement on respondents to disclose the value and location of their assets. This issue is described in further detail below under section §7.02.

The freezing of assets in civil proceedings can be based on a variety of provisions of Cypriot law, depending on the circumstances of each case. We will take a closer look at this issue under

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1. Symeon C. Symeonides, *The Mixed Legal System of the Republic of Cyprus*, 78 *Tulane Law Review* 441, 441 (2003).

2. Nikitas E. Hatzimichael, *Cyprus as a Mixed Legal System*, 6 *Journal of Civil Law Studies* 38, 38 (2013).

3. Andreas Neocleous & Co, *Introduction to Cyprus Law*, 12 (Dennis Campbell, Yorkhill Law Publishing 2000).

4. Nikitas E. Hatzimichael, *Cyprus as a Mixed Legal System*, 6 *Journal of Civil Law Studies* 38, 71 (2013).

5. Nikitas E. Hatzimichael, *Cyprus as a Mixed Legal System*, 6 *Journal of Civil Law Studies* 38, 61 (2013).

section §7.03 below where we will also examine the European Account Preservation Order Regulation, which will enter into force in 2017 in Cyprus.

In relation to the enforcement of foreign judgments and arbitral awards, the Brussels Regulation (recast) and the New York Convention both apply in Cyprus. We will address the issue of enforcement in section §7.04 of this chapter.

Finally, under section §7.05, we will describe under which circumstances the board of directors, company officers, and/or owners of a company incorporated in Cyprus may be held liable if they attempt to hide company assets prior to or pending a lawsuit or arbitration proceedings to which the company is a party.

## §7.02 Identifying Assets in Cyprus

On the basis of a long line of English case law, Cypriot courts may order a defendant to disclose, under oath, information about the value and location of its assets, provided that this is done in the context of proceedings for the granting of a freezing order.<sup>6</sup> For example, in a case before the Limassol District Court,<sup>7</sup> the court made reference to the decision in *Ashianti v. Kashi*<sup>8</sup> where the English court said:

*In the present case we are concerned not only with a Mareva injunction but also with an order for discovery which was made ancillary to the injunction. [...]. It seems to me that in the present state of the law the only basis for such an order is that it is made in aid of and ancillary to an injunction in the Mareva form. The power to order discovery exists, but it is a power which exists to make the injunction effective.*

However, since an order to disclose information about assets will usually be a significant burden on the respondent, Cypriot courts have been reluctant to grant this type of relief. Courts have referred *inter alia* to the English case *Bekhor & Company Ltd v. Bilton* where it was said that ‘the power to order discovery in support of a Mareva injunction should be sparingly exercised and if too readily resorted to could easily become a most oppressive procedure’.<sup>9</sup>

An alternative way of obtaining information about a defendant’s assets is through public registers and databases, which contain information about different types of assets belonging to

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6. Costas Stamatiou and Panayiotis Neocleous, *Cyprus: Freezing Orders, Ship Arrest Warrants, Anti-suit Injunctions, Disclosure Orders and Norwich Pharmacal Relief in Aid of Court or Arbitration Proceedings in Cyprus and Overseas*, 21(2) *International Company and Commercial Law Review* 54, 56 (2010).

7. *Divino Distribution LLP v. CP Media (Cyprus) Ltd*, 4250/2013 (Limassol District Court).

8. *Ashianti v. Kashi* [1987] QB 888 (CA).

9. *Bekhor & Company Ltd v. Bilton* [1981] QB 923 (CA).

corporations and private individuals. In the following, we will provide a brief overview of some of the main public asset registers in Cyprus.

## **[A] Real Property**

Real property in Cyprus is registered with the Department of Lands and Surveys of Cyprus. According to the law, the land registry must be up to date at all times. A plaintiff may apply to the Department of Land and Surveys enquiring whether a defendant has any real estate in Cyprus registered on his name.<sup>10</sup> Moreover, the website: <http://parcel.dls.moi.gov.cy> gives access to a public database in English and in Greek, which contains information about real estate located in Cyprus. Users are able to search for a specific property using a street address or a digital map. The database contains among other things a valuation of the property.

## **[B] Vessels and Aircrafts**

The Register of Cypriot Ships and the Cypriot Aircraft Register contain information about owners of Cypriot vessels and aircrafts respectively.

The Register of Cyprus Ships is not available online. Information about the Department of Merchant Shipping, which administers the register may be found at [http://www.mcw.gov.cy/mcw/dms/dms.nsf/registerhips\\_en/registerhips\\_en?OpenDocument](http://www.mcw.gov.cy/mcw/dms/dms.nsf/registerhips_en/registerhips_en?OpenDocument).

The Cypriot Aircraft Register can be found here: [http://www.mcw.gov.cy/mcw/dca/dca.nsf/DMLregister\\_en/DMLregister\\_en?OpenDocument](http://www.mcw.gov.cy/mcw/dca/dca.nsf/DMLregister_en/DMLregister_en?OpenDocument).

## **[C] Intellectual Property Rights**

In relation to disputes against corporations with ties to Cyprus, a pre-trial asset search should in most cases include an investigation into the corporation's trademarks, patents, copyrights, domain names and other intellectual rights.

The Office of the Registrar of Industrial Designs (which is a division of the Cyprus Registrar of Companies' Office and Official Receiver) administers the Cypriot trademarks, patents, copyrights and industrial rights.<sup>11</sup>

The University of Cyprus is the Official Registrar for the '.cy' top level domain and handles such domain name applications.<sup>12</sup>

## **[D] Company Information**

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10. The website of the Department of Land and Surveys is [www.moi.gov.cy/dls](http://www.moi.gov.cy/dls).

11. The relevant register is not available online.

12. The database to look up .cy domains may be accessed at [http://www.nic.cy/nslookup/online\\_database.htm](http://www.nic.cy/nslookup/online_database.htm).

Another useful source of information related to a defendant's financial situation is the Department of Registrar of Companies and Official Receiver, which can provide information regarding the ownership of a legal entity.<sup>13</sup>

## **[E] 'Bad Debtors'**

Finally, there are two registers in Cyprus with details about 'bad debtors'.

One is the Central Information Register (CIR) for the Issuers of Dishonoured Cheques (CIR), where all issues of cheques that have not been honoured are registered. Interested parties, wishing to examine the possibility to establish economic relations with other parties can subscribe for access to the data of the CIR via the First Cyprus Credit Bureau Ltd (FCCB), which will forward the application to the CIR Managing Committee for approval.<sup>14</sup>

The second register is called 'Artemis', which has been created and is administered by banks in Cyprus. This register is not accessible by the public, only by financial institutions.<sup>15</sup>

## **§7.03 Interim Measures**

As already indicated above, Cypriot law offers litigants the possibility of obtaining a freezing order under different circumstances, which we will take a closer look at in the following section of this chapter.

First, it should be mentioned that the Cyprus District Courts have *general* jurisdiction to grant in personam freezing orders (also called 'Mareva injunctions') in the context of proceedings, which are pending before Cyprus courts; or in relation to an arbitration,<sup>16</sup> which takes place in Cyprus. According to well established case law, such freezing orders are not restricted to assets in Cyprus but may also embrace assets located *outside* the jurisdiction.

Second, provisional and protective measures can also be issued pursuant to Regulation (EU) 1215/2012 ('Brussels Regulation (recast)') in aid of *foreign* proceedings pending before the courts of another EU Member State; or in aid of *international* arbitration proceedings taking place in another EU Member State.

Third and finally, provisional and protective measures can be issued by a court in Cyprus pursuant to bilateral or multilateral conventions in aid of foreign proceedings pending before the

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13. One may search online for a registered organisation at <https://efiling.drcor.mcit.gov.cy/DrcorPublic/SearchForm.aspx?sc=0&lang=EN>.

14. More details about the CIR can be found at [http://www.centralbank.gov.cy/nqcontent.cfm?a\\_id=11371&lang=en](http://www.centralbank.gov.cy/nqcontent.cfm?a_id=11371&lang=en).

15. More details about Artemis can be found at [https://www.artemis.com.cy/company\\_en.aspx](https://www.artemis.com.cy/company_en.aspx).

16. This includes both a domestic arbitration conducted under Cap. 4 and an international commercial arbitration conducted pursuant to Law 101/1987.

courts of another country, or in aid of international arbitration proceedings taking place in another country.

## **[A] Freezing Orders in the Context of Judicial or Arbitration Proceedings Pending in Cyprus**

The Supreme Court of Cyprus has recognised that the Cyprus District Courts have power to grant Mareva injunctions, identical to those granted in England on the basis of the principles laid down in the famous judgment in *Mareva Compania Naviera SA v. International Bulkcarriers SA*<sup>17</sup> in 1975. As is the case under English law, a Cypriot Mareva injunction allows for the freezing of a respondent's assets that may be at risk of dissipation pending the final determination of judicial proceedings.

The first decision, which established the power of the Cypriot courts to grant interim relief in the form of a Mareva Injunction was *Nemitsas Industries Ltd v. S & S Maritime Lines Ltd*.<sup>18</sup> In this case, the court stated that the legal basis for granting a freezing order of this type is section 32 of the Courts of Justice Law (Law 14/1960), which empowers the court to grant an injunction 'in all cases in which it appears to the court just or convenient so to do'. According to the same provision, there are three key conditions that must be met before the court can grant interim relief:

- (1) there must be a serious matter to be heard;
- (2) there must be a probability that the applicant is entitled to relief; and
- (3) it will be difficult or impossible to do complete justice at a later stage without granting the order.

A Mareva Injunction, however, is not granted automatically where the above three conditions are met. The issue of whether or not to grant the injunction is left entirely to the discretion of the court. The court will assess whether it is just and convenient to grant the order in light of all the facts and circumstances of the matter.<sup>19</sup>

It should be noted that a party pursuing a freezing order must not necessarily demonstrate that the respondent is likely to dispose of the assets. It is enough to show that if the assets are removed or dissipated, a later court decision will most likely not be fulfilled.<sup>20</sup> Accordingly, where the respondent proves that he is able to fulfil a judgment, a freezing order will usually not be issued.<sup>21</sup>

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17. *Mareva Compania Naviera SA v. International Bulkcarriers SA* [1980] 1 All ER 213 (CA).

18. *Nemitsas Industries Ltd v. S & S Maritime Lines Ltd* [1976] 1 CLR 302.

19. *Odysseos v. Pieris* [1982] 1 CLR 557.

20. See e.g., *Potlava Petroleum Company v. Mexana Oil Limited* [2001] 1 CLR 1301.

21. *Marketrends v. Georgiou* [2002] 1 CLR 1759.

Cypriot courts enjoy a wide degree of discretion with respect to the type of assets that can be frozen. However, an applicant may find it easier to establish the risk that he will be deprived of future relief where the asset that might be disposed of by the respondent is in a bank account rather than in the form of for example real estate.<sup>22</sup>

Finally, it must be stressed that the affidavit to support an application for a freezing order must be filed after filing proceedings on the merits.<sup>23</sup>

Another legal basis for obtaining a freezing order under Cypriot law is found in section 5<sup>24</sup> of the Cypriot Code of Civil Procedure (Cap. 6), relating to the freezing of immovable assets. By virtue of this provision, the court may issue an interim order, in a case where the recovery of a debt or damages are claimed, restraining the dissipation of immovable property registered in the name of the defendant.

An order pursuant to section 5 may be granted, provided that the plaintiff shows a good cause of action, and demonstrates that it is probable that the plaintiff will be prevented from enforcing a judgment in his favour in the case of a sale or a transfer of the defendant's property.

It is possible to apply to the court for a freezing order on an ex parte basis pursuant to section 9 of the Cypriot Code of Civil Procedure (Cap. 6). The courts will allow an ex parte application only if there is an element of extreme urgency.

In most cases, an ex parte *order* will be conditional upon the applicant providing an undertaking for any damages, which the respondent can show to have suffered as a result of the freezing order, if the freezing order later turns out to be unwarranted.

Moreover, there is a duty of full and frank disclosure in ex parte applications.<sup>25</sup> When the order is issued ex parte, a return date is given on which the respondent will be given the chance to appear before the court and oppose the order. The case law shows that a reasonable amount of time must be given for the order to be served.<sup>26</sup>

Upon the granting of injunctive relief any party for which the injunction is intended is (obviously) under a legal obligation to comply with the order, compare Article 42 of the Courts of Justice Law 14/1960. Any violation of the order constitutes contempt of court, which is punishable by imprisonment, a fine or a sequestration of assets. Any person inciting or facilitating a violation of the injunction may also be held in contempt of court.

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22. *Potlava Petroleum Company v. Mexana Oil Limited* [2001] 1 CLR 1301.

23. See *Re Stavros Hotel Apartments* [1994] 1 CLR 836.

24. In the case *Lakatamitis v. Theodorou*, the Court said that it is possible pursuant to section 32 of the Courts of Justice Law (Law 14/1960) to make an order as envisaged by section 5 of Cap. 6, but, in making such an order under section 32, the specific criteria laid down in section 5 should also be taken into account insofar as they do not coincide with the criteria set out in the said section 32.

25. *Zachariades v. Liveras* [1989] 1 CLR 437.

26. *Re Henry Chalhouh* [1999] 1 CLR 1333.

Cypriot courts also have power to grant so-called Chabra orders designed to block assets in the hands of a co-defendant as ancillary and incidental to a claim raised against the principal defendant. Such an order does not require any direct cause of action against the co-defendant.<sup>27</sup> Based on the English decision in *T.S.B Private Bank International S.A. v. Chabra*,<sup>28</sup> these orders are available where there are reasons to believe that a co-defendant is in possession or control of assets to which the principal defendant is beneficially entitled.

As already mentioned, Cypriot courts have extended the reach of Mareva-type injunctions to include assets that are located outside Cyprus, following the example of the English courts, which have a long tradition of granting Worldwide Freezing Orders. In the case of *Seamark Consultancy Services Ltd v. Joseph Lasala*,<sup>29</sup> the Supreme Court said that taking into account the modern changes to the way commercial transactions are conducted, the Court of First Instance had the power to grant the orders in question pursuant to which the assets of the respondents outside the jurisdiction were frozen.

Cypriot courts may also issue freezing orders in aid of arbitration proceedings pending in Cyprus, which are not ‘international’ and ‘commercial’.<sup>30</sup> Such orders may be based on section 26 and Schedule B of the Arbitration Law (Cap. 4), which relate to the granting of security for costs, the disclosure of documents and interrogatories, the taking and preservation of evidence, the issuance of provisional or protective relief, etc. In practice, however, the courts of Cyprus are generally reluctant to intervene in local arbitral proceedings, and there is therefore no recorded Supreme Court case law showing how the mentioned rules are applied in practice.

## **[B] Freezing Orders in Aid of Judicial or Arbitration Proceedings Pending in EU Member States**

The Brussels Regulation (recast), which is directly applicable in Cyprus, provides in Article 35 that a party may apply to the courts of a Member State for such provisional measures as may be available under the law of that Member State, even if the courts of another Member State have jurisdiction as to the substance of the matter.

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27. *Re Hellington Commodities Ltd* [2009] 1 CLR 926.

28. *T.S.B Private Bank International S.A. v. Chabra* [1992] 1 WLR 231 (Ch).

29. *Seamark Consultancy Services Ltd v. Joseph Lasala* [2007] 1 CLR 162.

30. When arbitration proceedings pending in Cyprus are ‘international’ and ‘commercial’, Law no. 101/1987 applies. See below.

The Court of Justice of the EU (the ‘CJEU’) decided in *Van Uden Maritime BV t/a Van Uden Africa Line v. Kommanditgesellschaft in Firma Deco-Line*<sup>31</sup> that provisional measures can be ordered on the basis of Article 31 of Regulation (EC) 44/2001 (‘Brussels I Regulation’), which is identical to Article 35 of the Brussels Regulation (recast)), irrespective of whether the main proceedings in the other Member State are in the form of arbitration or a court action.

Moreover, in *Van Uden*,<sup>32</sup> the CJEU also stated that there must be a real connecting link between the subject-matter of the measures sought under Article 31 of the Brussels Convention and the territorial jurisdiction of the state of the court before which those measures are sought. In other words, there must be a reason that a litigant is applying in another Member State instead of the Member State where the proceedings are taking place. In this respect, the litigant may, for example, point to the fact that the assets are located in the other Member State or that the respondent resides there.

As stated in Article 73 of the Brussels Regulation (recast), the Regulation does not affect the 2007 Lugano Convention,<sup>33</sup> which has an identical provision in Article 31.

## **[C] European Account Preservation Orders**

Regulation (EU) No 655/2014 has established a new regime of rules regarding the so-called European Account Preservation Order (EAPO). The rules will apply in Cyprus from 18 January 2017. The EAPO rules allow a plaintiff to obtain an order preserving a defendant’s bank account if there is proof that the defendant is likely to thwart the enforcement of a future judgment. Banks throughout the EU are thus under an obligation to enforce orders issued pursuant to the EAPO rules.

An EAPO is only available in the context of pecuniary claims in civil and commercial matters and only in cross-border cases. Article 3 of the regulation defines a cross-border case as one in which the bank account to be preserved is maintained either: (i) in a Member State other than the Member State of the court where the plaintiff has commenced proceedings, or (ii) in the Member State in which the plaintiff is domiciled.

The Regulation’s recitals state that an EAPO is available only to applicants who are domiciled in a Member State, bound by the Regulation, and that orders issued under the regulation should relate only to the preservation of accounts, which are held by banks in such a Member State. All

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31. Case C-391/95 *Van Uden Maritime BV t/a Van Uden Africa Line v. Kommanditgesellschaft in Firma Deco-Line* [1998] ECR I-7091, paragraphs 33–34.

32. Case C-391/95 *Van Uden Maritime BV t/a Van Uden Africa Line v. Kommanditgesellschaft in Firma Deco-Line* [1998] ECR I-7091, paragraph 40.

33. Non-EU contracting states to the Lugano Convention are Switzerland, Iceland and Norway.

EU Member States, apart from the United Kingdom and Denmark, have adopted the EAPO regulation. Consequently, litigants will be able to obtain an EAPO from a court in Cyprus, freezing bank accounts in other Member States, while bank accounts held in *Cyprus* may be preserved by virtue of an EAPO granted by a court in another Member State *or* on the basis of the above-described Cypriot rules on freezing orders.

## **[D] Freezing Orders in Aid of Judicial or Arbitration Proceedings Pending in Non-EU Member States**

There is no specific legal basis similar to Article 35 of the Brussels Regulation (recast) upon which provisional and protective measures in aid of court actions in countries outside the Brussels or Lugano area may be requested. As a consequence, the ability of courts in Cyprus to issue freezing orders in aid of such judicial proceedings is questionable. However, in our opinion this should not necessarily be interpreted as meaning that they will not devise a way to exercise their discretionary powers to issue such orders when justice requires. Nevertheless, this has not been affirmed so far by the Supreme Court of Cyprus.<sup>34</sup>

As regards arbitration proceedings, section 9 of the Cypriot International Commercial Arbitration Law (Law no. 101/1987) provides the legal basis upon which Cypriot courts may grant provisional and protective measures in aid of international commercial arbitration. The Law applies exclusively to international, commercial arbitrations and contains a very wide definition of what is deemed to be ‘commercial’. Specifically, it provides that commercial is the arbitration which refers to matters that arise out of relations of a commercial nature, contractual or otherwise. Moreover, the requirement that the arbitration must be ‘international’ is satisfied when the parties are located in different countries. An arbitration may also be considered as international if a substantial part of the obligation that constitutes the subject-matter of the dispute was to be performed in a different country, or if the parties have expressly agreed that the arbitration will take place overseas, or if the subject-matter of their dispute is related to more than one country. Finally, the arbitration must derive from a *written* arbitration agreement or clause in order to fall under the scope of the statute.

Section 9 of the Cypriot International Commercial Arbitration Law provides that Cypriot courts have the power to order protective measures before or during arbitral proceedings. The text of this provision is almost identical to Article 9 of the UNCITRAL Model Law on

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34. Costas Stamatiou and Panayiotis Neocleous, *Cyprus: Freezing Orders, Ship Arrest Warrants, Anti-suit Injunctions, Disclosure Orders and Norwich Pharmacal Relief in Aid of Court or Arbitration Proceedings in Cyprus and Overseas*, 21(2) *International Company and Commercial Law Review* 54, 59 (2010).

International Commercial Arbitration of 1985 amended in 2006, which states that it is not incompatible with an arbitration agreement for a party to seek and obtain, before or during arbitral proceedings, an interim measure of protection from a court.

## §7.04 Enforcement Issues

### [A] Enforcement of Foreign Judgments

Under the Brussels I Regulation, a judgment creditor, seeking to enforce a judgment from one Member State before the courts in another Member State, was required to file an application for a declaration of enforceability (*exequatur*). The Brussels Regulation (recast) (the ‘Recast Regulation’) has abolished the *exequatur* and has introduced a simplified mechanism for the mutual recognition and enforcement of Member State judgments.

Now, a judgment creditor simply has to present a copy of the judgment and a standard form certificate (found in Annex I to the Recast Regulation), and can then begin the enforcement process (cf. Article 39 of the Recast Regulation). The judgment and the certificate, issued by the court of origin must be served on the judgment debtor before enforcement (cf. Article 43 of the Recast Regulation).

However, orders granted *ex parte* in one Member State may not be recognised and enforced in another Member State. This was decided in the case *Denilauler v. Couchet Frères*<sup>35</sup> where the CJEU ruled that an order, which is made without the defendant having been summoned to appear and is intended to be enforced without prior service on him is not enforceable in other Member States. The principles established by this decision are now reflected in Article 42 of the Recast Regulation.

In relation to judgments granted in jurisdictions governed by the Lugano Convention, formalities for the recognition and declaration of enforceability of a judgment are still necessary. A party seeking enforcement under the Lugano rules must thus file an application by summons at the court where enforcement is sought and produce a copy of the judgment together with a certification that the judgment is enforceable in the Member State of issue. The court of the Member State where the judgment was given will then issue, at the request of any interested party, a certificate using the standard form in Annex V to the Convention. The applicant must also give an address for service of process on the respondent within the area of jurisdiction of the court applied to.

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35. Case C-125/79 *Denilauler v. Couchet Frères* [1980] ECR 1553.

Regarding countries outside the Brussels and Lugano area, Cyprus is party to a number of bilateral treaties in relation to the recognition and enforcement of foreign judgments. Specifically, it has signed and ratified such treaties with Syria (Rat. Law 160/86, 13/97), Russia (Rat. Law 172/86), Ukraine (Rat. Law 172/86 and 8/2005), Georgia (Rat. Law 172/86), Serbia (Rat. Law 179/86), China (Rat. Law 19/95, and others.

Cyprus is also a signatory to a number of multilateral conventions relating to the recognition and enforcement of foreign judgments including the Hague Convention on Foreign Judgments in Civil and Commercial Matters. With regards to the Hague Convention, it is important to note that even though Cyprus has signed the Convention, the Convention has no practical effect on its own because according to Article 21 decisions rendered in a contracting state shall not be recognised or enforced in another contracting state unless the two states, being parties to the Convention, have signed a *supplementary* agreement to this effect.

In order to simplify procedures for the enforcement and execution of foreign judgments in Cyprus, the Foreign Judgments Law (Law no. 121(I)/2000) has been introduced. As the title indicates, the procedures laid down in this Law apply to foreign judgments (but obviously not to judgments rendered by courts in Brussels or Lugano Member States).

According to Article 5 of the Law, an application for enforcement may be filed together with an affidavit with the District Court in accordance with the applicable Rules of Civil Procedure.

The application, which must be served on the respondent, is subject to an oral hearing. The respondent is given the opportunity to contest the application by filing a written objection accompanied by an affidavit at least two days before the date of the hearing.

## **[B] Enforcement of Foreign Arbitral Awards**

The Recast Regulation applies to court judgments or orders but not to arbitral awards (cf. Article 1(2)(d) of the Recast Regulation).

Foreign arbitral awards can, however, be enforced in Cyprus by virtue of the provisions set out in the Cyprus International Commercial Arbitration Law (Law no. 101/1987) and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, which was ratified by Law no. 84/1979 in Cyprus.

A party seeking enforcement of a foreign award must file an application by summons accompanied by an affidavit according to the Foreign Judgments Law mentioned above. Such application must be served on the other party, and pursuant to Article 35 of Law no. 101/1987 and Article IV of the New York Convention the application must also be accompanied by the

duly authenticated original award or a duly certified copy hereof and by the original arbitration agreement or a duly certified copy hereof.

If the award is not drafted in Greek, the party applying for recognition must also produce an official translation of the aforementioned documents in Greek. Again, according to the Foreign Judgments Act, once the application is served upon the other party, he is given the opportunity to appear before the court and oppose the registration of the award. The application will be fixed for a hearing within four weeks from the filing of the application, and the respondent will be given the opportunity to contest the application by filing a written objection.

Recognition and enforcement of an arbitral award may be refused for the reasons stated in Article 36 and Article V of the New York Convention.

## §7.05 D&O Liability in Relation to Asset Protection Schemes

### **[A] Provisions That May Apply in Cases Where an Interim Injunction Is in Place**

Freezing injunctions serve the purpose of prohibiting asset dissipation pending proceedings in order to protect a creditor against the phenomenon of ‘emptying’ a company in order to avoid enforcement of a potential judgment or award.

Once an injunction has been issued and has been served on the officials or employees of a company, any dissipation in breach of the injunction would constitute contempt of court, and consequently lead to a sanctioning of the officers and/or directors of the company.

In addition, a Cypriot court may, pursuant to a complaint of an aggrieved party, punish any person who acts as an aider and abettor in violating the injunction. This offence requires some form of active participation in the breach.

### **[B] Provisions That Can Be Applied in the Absence of a Freezing Injunction**

In the absence of a freezing order, it is easier for companies, especially during the course of dispute resolution proceedings, to attempt to remove valuable assets from the corporate entity involved in the dispute.

Asset shielding tactics can take many different forms: from the straightforward transfer of assets and business activities to an affiliated entity to sophisticated schemes involving offshore entities, sham creditors, the creation of fictitious losses, etc.

The ability to pierce the corporate veil is theoretically existent but it is rarely successful in practical life, since Cypriot courts are very reluctant to undermine the principle that a company is a separate legal entity whose owners' liability is limited to value of their shares.

Importantly, under Cypriot law, board members are not personally liable to any third party, and creditors do not have a direct right to claim damages from a director. Nevertheless, there are some mechanisms which can be used by aggrieved parties, compare right below.

### **[1] Provisions Establishing Civil and Criminal Liability under the Cyprus Companies Act (Cap. 113)**

The Cyprus Companies Act (Cap. 113) includes certain provisions that guard creditors against fraudulent or preferential transfers to third parties prior to a company being wound up.<sup>36</sup>

Any conveyance, charge, mortgage or other act relating to an asset belonging to a company, within six months before the commencement of its winding up,<sup>37</sup> may be deemed invalid if considered fraudulent or preferential. Similarly, any conveyance or assignment by a company of *all* of its property to a trustee may also be voidable if considered fraudulent or preferential.

It is worth noting that any third party who benefits from the preferential payment may become directly liable towards the disgruntled creditors of the debtor.

In addition, criminal provisions may be applied to penalise company officials who have taken actions for the purpose of defrauding the creditors of a company.

Finally, if in the course of a winding up of a company it appears that the directors continued to allow the company to incur debts when they already knew or ought to have known that the company had no reasonable prospect of repaying the debt, then they may become *personally* liable for that debt under sections 307 and 312 of the Companies Act. Such liability may be avoided if the said directors can show that they have taken 'every step with a view to minimising the potential loss to the company's creditors as they ought to have taken'.

### **[2] Provisions under Other Laws or Principles**

As noted, Cypriot law generally does not consider directors or board members to be *personally* liable towards any third party (other than the company itself), and creditors do generally not have a direct right to claim damages from a director or a board member.

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36. See sections 301–303 of the Cyprus Companies Act.

37. For the purposes of this provision, the commencement of the winding up is deemed to occur on the date of filing of the petition, not on the date when the order is eventually made by the court. See section 218(2) of the Cyprus Companies Act. Even under this interpretation, the timeframe covered by this section is rather small.

Nevertheless, the officials of a Cypriot company may become liable personally as a result of transactions made against the best interests of the company, if such transactions amount to a violation of their fiduciary duties.<sup>38</sup> The fiduciary duty of a Cypriot company official involves an obligation towards the company to act in good faith and in the best interests of the company at all times. It is a breach of this duty if assets of the company are sold at sub-value or channelised away from the company via transactions, which are not concluded or performed on arm's length terms.

There are also provisions in individual legislative instruments, which could be invoked for the purpose of clawing back assets wrongfully removed from a Cypriot company in an effort to defraud creditors. Cap. 62 on fraudulent transfers thus provides for the ability to claw back movable or immovable assets transferred with the purpose of defrauding creditors.

Further, civil and criminal liability may also be attracted by Cypriot company directors or officials on the basis of Law no. 60(I)/2008 on defrauding judgment creditors, although the major drawback of this law is that it only applies to acts or omissions, which have taken place after the date when the judgment was rendered.

Finally, it should be mentioned that the wrongful dissipation of assets could give rise to a trust being created, whereby the company could eventually seek the recovery of the asset.<sup>39</sup>

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38. Such a claim can be brought only by the company and not directly by an affected creditor. Given that usually the company is controlled by the persons who have made or authorised this transfer, this avenue presupposes that the company enters into liquidation, so that the relevant decision is taken by the liquidator.

39. This usually would apply when the company enters into liquidation, all powers of control are vested in the liquidator and the liquidator, acting in the best interests of the creditors and in an effort to maximise the liquidation dividend, initiates proceedings against third parties which benefited from wrongful transactions prior to the company being placed in liquidation.