

Market
Intelligence

DISPUTE RESOLUTION 2022

Global interview panel led by Simon Bushell of
Seladore Legal

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Getting the Deal Through



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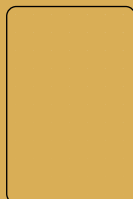
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Cyprus

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Nicos regularly advises on complex cases involving shareholder disputes, corporate fraud, breaches of trust and fiduciary duty and a wide variety of general commercial disputes. He has advised the Cyprus Securities and Exchange Commission in relation to its most complex investigation, into the affairs of a public company listed on the Cyprus Stock Exchange.

Nicos Georgiades is a barrister of the Middle Temple and is a co-author of the Cyprus chapter of *International Fraud & Asset Tracing*, published by Thompson Reuters (third edition, 2015) and various Lexology publications.

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He has significant experience in high-value and multi-jurisdictional litigation often involving difficult questions of private international law and is regularly instructed to act in urgent applications for interim relief, such as worldwide freezing orders, disclosure orders and search and seizure orders.

Sotos studied law at the Queen Mary University of London, is a member of the Cyprus and Nicosia Bar Associations and is an accredited mediator and conciliator.

- 1 | What are the most popular dispute resolution methods for clients in your jurisdiction? Is there a clear preference for a particular method in commercial disputes? What is the balance between litigation and arbitration? What are the advantages and disadvantages of the most popular dispute resolution methods?

Litigation is the most popular dispute resolution method used in Cyprus, especially for high-value commercial and corporate claims. ADR is used mainly for lower value claims, for example in consumer claims or in banking disputes falling within the ambit of the Financial Ombudsman's mediation procedure, for disputes requiring an arbitrator with special knowledge and expertise (eg, in construction-related claims) and for disputes where the parties have a genuine intention to find a compromise while maintaining their business relations.

Litigation offers the advantage of direct enforceability of judgments and right of appeal. On the other hand, it is slower and less flexible than ADR.

- 2 | Are there any recent trends in the formulation of applicable law clauses and dispute resolution clauses in your jurisdiction? What is contributing to those trends? How is the legal profession in your jurisdiction keeping up with these trends and clients' preferences? What effect has Brexit had on choice of law and jurisdiction clauses?

Enforceability and practical consequences of choice of law clauses has been a subject of controversy this past year, following an important judgment given by the Cypriot Supreme Court in April 2021. The judgment has greatly limited the scope for applying the 'presumption of similarity' in Cyprus (ie, the presumption that the content of the applicable foreign law is materially similar to the Cypriot law on the matter in question). In particular, the Supreme Court has now excluded the application of the presumption of similarity entirely where foreign law applies pursuant to the Rome I or Rome II Regulations (the classic example being where foreign law had been chosen by the parties).

The presumption of similarity can be really beneficial in many cases as it may help reduce costs substantially and can also be invoked so as to fill possible legal gaps in the evidence. As the Cypriot courts will now not have the benefit of relying on the presumption during trial, parties will be required to assert at the outset that the claim is governed by foreign law, to plead foreign law in detail and then to adduce sufficient evidence of foreign law to prove it. Accordingly, contracting parties now ought to be mindful before choosing a foreign law to govern their commercial relations for disputes potentially referred for adjudication in Cyprus.



Interestingly enough, a few months after the above judgment of the Supreme Court of Cyprus, the UK Supreme Court was faced with the same question and came to the exact opposite conclusion, namely that the presumption of similarity should not be affected by the Rome I and Rome II Regulations. It remains to be seen whether Cypriot case law will eventually align with UK case law on this matter. Until then, a choice of foreign law for potential Cypriot proceedings should be less attractive to contracting parties.

As regards jurisdiction clauses, Brexit has affected the enforceability of English jurisdiction clauses. In particular, following the end of the transition period on 31 December 2020, the Brussels Regulation (Recast) ceased to apply in the UK. As a result, in proceedings initiated following the transition period, Cypriot courts will not be bound to uphold an English jurisdiction clause pursuant to article 25 of the Brussels Regulation (Recast). Rather, the Cypriot courts will retain discretion to uphold the English jurisdiction clause or not, depending on all the circumstances of the case, with the burden of proof being, however, on the claimant, who will need to establish a strong case before being allowed to break the English jurisdiction clause. Notwithstanding, in certain circumstances, Cypriot courts will still be bound

“The Cypriot legal market is becoming increasingly competitive in commercial contentious matters as a result of global accounting firms and other emerging boutique law firms seeking to establish a commercial litigation presence.”

to uphold an English jurisdiction clause pursuant to the 2005 Hague Convention on Choice of Court Agreements, provided that they confer exclusive jurisdiction to the English courts. It is, however, still unclear whether the Convention can apply for exclusive English jurisdiction clauses entered into before 1 January 2021.

3 | How competitive is the legal market in commercial contentious matters in your jurisdiction? Have there been recent changes affecting disputes lawyers in your jurisdiction? How is the trend towards 'niche' or specialist litigation firms reflected in your jurisdiction?

The Cypriot legal market is becoming increasingly competitive in commercial contentious matters as a result of global accounting firms and other emerging boutique law firms seeking to establish a commercial litigation presence. At the same time, there has been a great increase in the number of lawyers entering the profession. The Cyprus Bar Association, recognising the need to maintain a high degree of specialism and competence among lawyers, has organised various legal seminars and conferences and has made it mandatory for all registered lawyers to attend them on a regular basis. Also, a radical and much-anticipated Justice Reform is expected to take place in the following months, which will, among other things, establish a specialised commercial court that will exclusively hear commercial and high-value claims, a specialised admiralty court and a new court of appeal with specialised chambers.

While most litigation firms in Cyprus are highly versatile as opposed to specialist or niche, the forthcoming judicial specialisation, together with increased competition and the new issues emerging from technology advances and other evolving business practices, will undoubtedly promote and enhance specialisation among litigators as well.

4 | What have been the most significant recent court cases and litigation topics in your jurisdiction?

An interesting recent judgment of the Supreme Court in the area of family law has now made it authoritatively possible for a surviving spouse to bring a claim for his or her contribution to the increase of the deceased spouse's property, even if the wedding had not been previously dissolved or annulled. The common understanding prior to this judgment was that a spouse's claim for contribution was only possible when a wedding was dissolved or annulled while the married couple was alive. This understanding proved to be wrong, and as a result surviving spouses now have an opportunity to potentially receive a greater share of their deceased spouse's

property than what would have been possible under normal laws of inheritance and succession.

Another interesting recent Supreme Court judgment has helped to clarify a number of controversial issues often arising in out-of-court receiverships, for instance who has the authority to pursue or defend court cases on behalf of the company. The Supreme Court held that where the outcome of a case might affect assets falling within the scope of the receivership, then the receiver and manager will have the exclusive right to represent the company.

There have also been a number of interesting judgments in the context of interim relief proceedings, which have reinforced the Supreme Court's wide discretionary powers and overall flexibility to grant the remedy that is deemed to be appropriate and necessary under the circumstances. For instance, a modified version of the conventional freezing order was sought and issued: the 'notification injunction' previously issued by the High Court of Justice in England. This kind of injunction requires a defendant to notify the claimant before disposing of or dealing with its assets. It is generally considered to be less intrusive than the conventional freezing order, a factor that is highly relevant when considering the overall justice and convenience of granting an injunction. Also, a global anti-enforcement injunction has been granted restraining a party from commencing judgment enforcement proceedings anywhere in the world. Moreover, the courts have been eager to emphasise the need for keeping pace with rapid technological advancements especially in the field of complex financial transactions, and for adopting a flexible and responsive approach when considering what is the appropriate and most effective remedy under the circumstances. This approach has proved to be particularly important in the context of disclosure orders.

- 5 | What are clients' attitudes towards litigation in your national courts? How do clients perceive the cost, duration and the certainty of the legal process? How does this compare with attitudes to arbitral proceedings in your jurisdiction?

Clients' attitudes towards litigation before Cypriot courts vary depending on the nature of the case and the precise procedures it is likely to trigger. For example, while most cases will face excessive delays before being concluded, Cypriot courts are always swift in hearing and determining applications for urgent relief, such as freezing orders, ancillary disclosure orders and search and seizure orders.

The quick determination of interim applications provides a significant advantage to claimants and has proved to be particularly attractive for commercial clients, particularly those who seek to trace and preserve their debtors' assets.



Importantly, Cypriot courts have wide powers to grant any interim relief deemed to be appropriate and necessary under the circumstances. For instance, an interim relief may be made both in the form of a mandatory order and in the form of an injunction; it may seek to restrain wrongful acts even if they have not yet commenced; it may extend to assets outside the jurisdiction as well as to third parties; it may be granted in aid of foreign proceedings; and it may be combined with any ancillary order deemed appropriate (for example a freezing order may be issued together with a disclosure order, or a disclosure order may be issued together with a gagging order).

The possibility to obtain effective relief swiftly provides an important practical tool for claimants who seek to ensure enforcement of a potential judgment, who seek critical information pertaining to the identity of wrongdoers or to the location of a debtor's assets, who seek to safeguard their interests by restraining threatened or imminent wrongful acts, or who simply seek for an early out-of-court settlement of a dispute.

In addition to the above, parties to commercial litigation in Cyprus benefit from relatively low costs and a high degree of certainty and consistency as a result of an

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extensively codified legal system, the application of common law and equity and the fundamental principle of precedence, as well as pretrial procedures that confine claims to those already pleaded and evidence to those already produced in pretrial discovery.

- 6 | Discuss any notable recent or upcoming reforms or initiatives affecting court proceedings in your jurisdiction (including any changes as a result of the covid-19 pandemic).

The Cypriot justice system has been under considerable scrutiny in the past years, largely due to major delays in the hearing of civil cases and their final resolution. In order to solve this problem, a radical and much-anticipated Justice Reform is expected to take place in the following months with a view to enhancing judicial specialisation, increasing efficiency and expediting the process. To that end, a new, specialised commercial court will be established that will deal exclusively with high-value commercial disputes, as well as an admiralty court and a new court of appeal with specialised chambers. Further, all backlog cases have been assigned to specific judges whose exclusive task is to handle those cases.

Perhaps most importantly, a fundamental review and rewrite of the Civil Procedure Rules has already taken place and the new Civil Procedure Rules will come into effect on 1 September 2023, with a view to delivering more efficient case management, stricter deadlines and more standardised procedures.

In addition to the above and as a result of the covid-19 pandemic, many court conferences are now being conducted via email, thus allowing the judges to spend more time on hearings, while an electronic justice system has been introduced allowing for electronic submissions.

- 7 | What have been the most significant recent trends in arbitral proceedings in your jurisdiction?

Arbitration proceedings in Cyprus are primarily governed by the detailed provisions of the Arbitration Law [Cap 4] and Law 101/1987 on international commercial arbitration, which reflects the UNCITRAL Model Law with some minor amendments. While professionals and lawyers have repeatedly asked for the amendment of the Arbitration Law, no plans to amend or reform the law have been initiated and there have been no significant recent trends in respect of these provisions.

8 | What are the most significant recent developments in arbitration in your jurisdiction?

Recent amendments of the Civil Procedure Rules have placed a lot of emphasis on pretrial proceedings in an attempt to facilitate effective and substantial case management at an early stage. During this stage, a party may now request from the court that the claim is referred to arbitration or mediation, in this way promoting ADR, which is not well developed in Cyprus.

However, this amendment has not produced any positive results so far since parties generally prefer litigation while the judiciary rarely encourages ADR mechanisms, and no sanctions are placed for failure (or for unreasonable failure) to use ADR.

It is expected that the anticipated fundamental reform of the Civil Procedure Rules discussed earlier will be much more effective in promoting ADR mechanisms.

9 | How popular is ADR as an alternative to litigation and arbitration in your jurisdiction? What are the current ADR trends? Do particular commercial sectors prefer or avoid ADR? Why?

Notwithstanding the establishment of a framework for the use of ADR pursuant to the Certain Aspects of Mediation in Civil Matters Law of 2012, the registration of hundreds of mediators with the Department of Justice and Public Order and the recent amendments to the Civil Procedure Rules seeking to promote ADR, litigation remains the primary mechanism for settling legal disputes in Cyprus.

The local legal culture exhibits resistance to embracing the full benefits of ADR. This is reinforced by the consensual character of ADR and the absence of any sanctions if a party unreasonably refuses to refer a case to ADR mechanisms. Thus, the use of ADR mechanisms is subject to the absolute volition of the parties, who may in some cases benefit from the delays and expenses that litigation entails and who commonly suffer from a misinformation gap regarding the potential benefits ADR may confer over the litigation process.

Notwithstanding, ADR mechanisms are used for particular kinds of disputes, for example in cases requiring an arbitrator with special knowledge and expertise (eg, in construction disputes), in cases where the parties have a genuine intention to find a compromise while maintaining their business relations, in consumer disputes and in restructuring of credit facilities through the Financial Ombudsman's mediation procedure.



ADR is expected to become more popular once the fundamental reform of the Civil Procedure Rules discussed earlier comes into effect, especially in cases where speed, confidentiality and flexibility is mutually desired.

10 | What is the position in relation to litigation funding in your jurisdiction? Is funding available? Have there been any significant developments in this area in your jurisdiction?

Cyprus is currently unfamiliar with third-party litigation funding and there is no special framework regulating this type of matter. Under these circumstances, the conventional assumption has been that the common law rules against maintenance and champerty will most likely apply with the result that an agreement by one person to finance another's litigation in return for a share in the proceeds without having any genuine or substantial interest in the outcome of that litigation will be deemed unenforceable and void.

However, a different approach was adopted in a very recent first instance judgment issued by the District Court of Larnaka, which is the first Cypriot decision addressing

this issue. In particular, the Court held that litigation funding is not contrary to the public policy of Cyprus and expressed the view that the common law doctrine of maintenance and champerty was based on notions that existed several centuries ago and which have long since passed away. It must be stressed, however, that this is not a binding decision and that in any event the Court's view was based on the particular circumstances of that case, especially the fact that the Cypriot proceedings were in aid of English proceedings, in which the litigation funding agreement had been approved and accepted by the English court, while the litigation funder had adopted the Code of Conduct for Litigation Funders of England and Wales.

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The Inside Track

What is the most interesting dispute you have worked on recently and why?

In 2021, we had the privilege of appearing before the Arbitration Institute of the Stockholm Chamber of Commerce alongside colleagues from Sweden, Greece and Russia, for a multi-million claim governed by Cypriot law. This afforded us the opportunity to collaborate with distinguished colleagues from different legal backgrounds and to take part in a hearing conducted under a different procedural system. The dispute itself was noteworthy, as it involved powerful and lengthy cross-examinations and raised complex and novel questions of contract law that attracted extensive expert opinions from prominent legal experts.

What do you consider to have been the most significant legal development or change in your jurisdiction of the past 10 years?

One significant development has been the establishment of a specialised administrative court and a specialised international protection administrative court. The former has exclusive jurisdiction to hear all administrative recourse, while the latter has exclusive jurisdiction to hear recourse brought by asylum seekers against decisions, acts or omissions relating to the provisions of the Refugee Law.

Perhaps the most significant development has been the introduction of the electronic justice system together with the complete rewrite of the Civil Procedure Rules, which will be replaced by the new Civil Procedure Rules on 1 September 2023.

What key changes do you foresee in relation to dispute resolution in the near future arising out of technological changes?

Contrary to many expectations, the vast majority of lawyers, judges and judicial personnel have embraced the electronic justice system that was recently introduced. It allowed judges to spend less time on trivial, housekeeping court sessions and to spend more time on hearings, thus speeding up the process and reducing the level of backlogs. The positive beginning of the electronic justice system and the forthcoming holistic reform of the Civil Procedure Rules are promising signs that the court process in Cyprus will soon be revolutionised and that the courts will be able to take full advantage of what technology has to offer.

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Litigation versus arbitration

ADR trends

The client experience

Litigation funding