

# Making the Most of Measures in Support of International Arbitration or Foreign Court Proceedings

MICHAEL KYPRIANOU & CO. LLC  
ADVOCATES LEGAL CONSULTANTS

Menelaos Kyprianou  
Partner  
Michael Kyprianou & Co. LLC

---

# Introduction

---

Cyprus as a centre for registration of Russian companies and relations between Cyprus and Russia in general:

*“The largest investments in the Russian Federation originate from Russian investors based in Cyprus, taking advantage of that country’s financial facilities and favourable tax conditions.”* (United Nations Conference on Trade and Development World Investment Report 2013: “Global Value Chains: Investment and Trade for Development”, page 64)

---

## II. HOW CYPRUS COURTS CAN ISSUE ORDERS REQUIRING PARTIES TO DISCLOSE DOCUMENTS AND INFORMATION TO BE USED IN PROCEEDINGS IN RUSSIA

---

- On the basis of the Treaty Between the Republic of Cyprus and the Union of Soviet Socialist Republics on Legal Assistance in Civil and Criminal Matters and The Convention on the Taking of Evidence Abroad in Civil or Commercial Matters.
- Vladimir Guryevitch Smirnov v Natalia Alexandrovna Smirnova - Application No. 68/2002 dated 7/7/2009
- In re the application of a District Court of the USA for the taking of evidence from Evangelos Empedoklis (No. 2) (2009) 1B C.L.R 986

---

## II. HOW CYPRUS COURTS CAN ISSUE ORDERS REQUIRING PARTIES TO DISCLOSE DOCUMENTS AND INFORMATION TO BE USED IN PROCEEDINGS IN RUSSIA

---

- 2. On the basis of The International Commercial Arbitration Law (Law 101/87) where the orders are sought to support an ‘international arbitration’ filed or to be filed in Russia.
  - **Section 3 of the International Arbitration Law** – states that this law applies only to international commercial arbitrations
  - **Section 2(2) of the International Arbitration Law** - defines ‘international arbitration’ as being one in which:
    - (a) the parties to an arbitration agreement have, at the time of the conclusion of that agreement, their places of business in different States; or
    - (b) one of the following places is situated outside the State in which the parties have their places of business:
      - i. the place of arbitration if determined in, or pursuant to, the arbitration agreement;
      - ii. any place where a substantial part of the obligations of the commercial relationship is to be performed or the place with which the subject-matter of the dispute is most closely connected; or
      - iii. the parties have expressly agreed that the subject-matter of the arbitration agreement relates to more than one country.

This section of the law further provides that if a party has more than one place of business, the place of business is that which has the closest relationship to the arbitration agreement, and where a party does not have a place of business, its place of habitual residence will be deemed its place of business for these purposes.”

- **Section 2(4) of the International Arbitration Law** - provides that an arbitration is “commercial” if it refers to matters that stem from relations of a commercial nature, whether contractual or not.

---

## II. HOW CYPRUS COURTS CAN ISSUE ORDERS REQUIRING PARTIES TO DISCLOSE DOCUMENTS AND INFORMATION TO BE USED IN PROCEEDINGS IN RUSSIA

---

- **Section 9 of the International Arbitration Law** - provides that:

“The Court has the power, after an application by one of the parties, to order the issuance of conservative measures, at any time before the commencement or during the duration of the arbitration procedure.”

  - **In re Starport Nominees Ltd. and others (2010) 1B C.L.R 1271**: an injunction ordering the disclosure of documents is arguably covered by the above provision.
- **Section 32 of the Courts of Justice Law** - provides that the court can issue the conservative measures mentioned above on an ex-parte basis if it is satisfied that:
  1. there is a serious issue to be tried;
  2. there is a possibility that the party seeking the injunction has a right to the relief claimed with the main action; and
  3. unless the interim injunction is issued, it will be difficult or impossible for complete justice to be delivered at a later stage.

---

## II. HOW CYPRUS COURTS CAN ISSUE ORDERS REQUIRING PARTIES TO DISCLOSE DOCUMENTS AND INFORMATION TO BE USED IN PROCEEDINGS IN RUSSIA

---

- On the basis of the common law principles propounded in the Norwich Pharmacal case empowering courts to issue disclosure orders against third parties (not parties to the pending or contemplated action)
  - Norwich Pharmacal v Commissioners of Customs and Excise [1974] A.C. 133

---

### III. HOW DOCUMENTS CAN BE SERVED FROM CYPRUS TO RUSSIA AND VICE VERSA: THE BILATERAL TREATY BETWEEN CYPRUS AND RUSSIA AND THE HAGUE CONVENTION ON THE SERVICE OF DOCUMENTS ABROAD

---

- The Treaty Between the Republic of Cyprus and the Union of Soviet Socialist Republics on Legal Assistance in Civil and Criminal Matters
  - Article 4 – A request for service under the treaty is communicated through diplomatic channels
  - Article 7 – A translation of the document in the language of the requested state must be included otherwise the documents will only be served if the addressee is willing to accept them
- The Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters done at the Hague on 15th November 1965
  - Both Cyprus and Russia are parties
    - Article 2 - every party state to the Hague Service Convention must designate a “Central Authority” which will undertake to receive requests for service coming from other contracting States. The Central Authority for Russia is the Ministry of Justice of the Russian Federation while the Central Authority for Cyprus is the Ministry of Justice and Public Order

---

### III. HOW DOCUMENTS CAN BE SERVED FROM CYPRUS TO RUSSIA AND VICE VERSA: THE BILATERAL TREATY BETWEEN CYPRUS AND RUSSIA AND THE HAGUE CONVENTION ON THE SERVICE OF DOCUMENTS ABROAD

---

- The Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters done at the Hague on 15th November 1965  
[continued]
  - - Article 5 - This Central Authority then carries out service according to its own domestic law or by a particular method requested by the applicant
    - Article 5 - The Central Authority may require the document to be written in, or translated into, the official language or one of the official languages of the State addressed (Russia requires that all documents to be served under the Hague Convention be translated into Russian. Cyprus will serve documents that are not written in Greek provided that the addressee does not refuse to accept such document. If the addressee refuses to accept the document then the Cyprus Central Authority will request that the document be translated or accompanied by a translation into the official language of Cyprus by the arrangement and at the expense of the requesting party.
  - Article 9 - each contracting State shall be free, in addition, to use consular channels to forward documents, for the purpose of service, to those authorities of another contracting State which are designated by the latter for this purpose. Diplomatic channels (the mode of communication provided for under the Cyprus Russia Legal Assistance Treaty) may be used if exceptional circumstances so require.



---

### III. HOW DOCUMENTS CAN BE SERVED FROM CYPRUS TO RUSSIA AND VICE VERSA: THE BILATERAL TREATY BETWEEN CYPRUS AND RUSSIA AND THE HAGUE CONVENTION ON THE SERVICE OF DOCUMENTS ABROAD

---

- The Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters done at the Hague on 15th November 1965  
[continued]
  - Article 10 - the Hague Service Convention does not interfere with the freedom to send judicial documents by postal channels directly to persons abroad, or the freedom of judicial officers, officials or other competent persons of the State of origin or any person interested in a judicial proceeding to effect service of judicial documents directly through the judicial officers, officials or other competent persons of the State of destination.
  - Article 11 - the Hague Service Convention “shall not prevent two or more contracting States from agreeing to permit, for the purpose of service of judicial documents, channels of transmission other than those provided for in the preceding articles and, in particular, direct communication between their respective authorities.”

---

## IV. HOW CYPRUS COURTS CAN ISSUE ANTI-SUIT INJUNCTIONS RESTRAINING COURT PROCEEDINGS IN RUSSIA

---

- Cyprus courts have the power to issue anti-suit injunctions restraining court proceedings in Russia on the basis of the common law.  
The common law is one of the sources of law applied in Cyprus on the basis of section 29(c) of the Courts of Justice Law.
- Furthermore, on the basis of section 32 of the Courts of Justice Law (discussed above) such injunctions can be issued on an ex-parte basis if the urgency and other pre-requisites discussed above are met.
- An anti – suit injunction can be issued:
  - a) where the conduct of the party to be restrained is unconscionable
  - b) where the bringing of the proceedings abroad is in breach of agreement
- Side note on Council Regulation 44/2001 of 22/12/00 and case of Allianz SpA and Generali Assicurazioni Generali SpA v. est Tankers Inc., Case C.185/07

---

## V. ENFORCEMENT IN CYPRUS OF JUDGMENTS ISSUED BY RUSSIAN COURTS AND OF ARBITRAL AWARDS ISSUED IN RUSSIA

---

- The enforcement in Cyprus of judgments issued by Russian courts  
Chapter V of the Cyprus Russia Legal Assistance Treaty - provides for the mutual recognition and enforcement of Court judgments.
  - Article 23 - Such judgments include amicable settlements that have been approved by the Court.
  - Article 24 - Conditions must be met for a judgment to be recognized and enforced:
    1. It must be final and enforceable under the law of the Contracting Party in whose territory it was given.
    2. A Party who failed to appear and take part in the proceedings and against whom the judgment in question was given must have been duly notified and in sufficient time, under the law of the Contracting Party in whose territory the judgments was given.
    3. The case must not fall within the exclusive competence of an authority of the Contracting Party in whose territory the judgment is to be recognized and enforced.
    4. There is no previous final judgment in the same subject-matter between the same parties in the territory of the Contracting Party where the judgment is to be recognized or enforced.
    5. There are no pending proceedings that were the first to be instituted, between the same parties on the same subject-matter before a judicial authority of the requested Contracting Party.

---

## V. ENFORCEMENT IN CYPRUS OF JUDGMENTS ISSUED BY RUSSIAN COURTS AND OF ARBITRAL AWARDS ISSUED IN RUSSIA

---

- The enforcement in Cyprus of judgments issued by Russian courts [continued]  
Chapter V of the Cyprus Russia Legal Assistance Treaty - provides for the mutual recognition and enforcement of Court judgments.
  - Article 27 - provides that an application for the enforcement of a judgment shall be submitted to a judicial authority at the place where the judgment was given. This authority shall transmit the application to the competent court of the other Contracting Party. If a person applying for enforcement has his permanent or temporary residence in the territory of the Contracting Party where the judgment is to be enforced, the application may also be submitted directly to the competent court of this Contracting Party.”

### The Law in Relation to Foreign Court Judgments (Recognition, Registration and Enforcement on the Basis of Treaty) of 2000 (Law 121(I)/2000).

- Section 5 provides that the procedure begins by filing a by summons application in court accompanied by an affidavit where, in the said application, the applicant is the person in favour of which the foreign court’s judgment was issued and the respondent is the person against which recognition, registration or enforcement of the foreign court’s judgment is sought.
- Case of OAO Baltiyskiy Bank v Artur Vladimirovich Kirilenko (Application No. 1340)

---

## V. ENFORCEMENT IN CYPRUS OF JUDGMENTS ISSUED BY RUSSIAN COURTS AND OF ARBITRAL AWARDS ISSUED IN RUSSIA

---

- Enforcement in Cyprus of arbitral awards issued in Russia

- As far as foreign arbitral awards are concerned, their recognition and enforcement is governed by the Law Ratifying the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Law 84/1979).

This law ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards that was done at New York on 10 June 1958 (hereafter the 1958 Convention). The Russian Federation is a party to this Convention.

- Article III of the 1958 Convention - establishes the obligation of member states to recognize the validity and allow the recognition and enforcement of foreign arbitral awards and provides that this procedure shall be carried out in accordance with the rules of procedure followed in the country of the examining Judge.
- The case of Beogradska Bank D.D. (1999) 1 C.L.R. 737

---

## V. ENFORCEMENT IN CYPRUS OF JUDGMENTS ISSUED BY RUSSIAN COURTS AND OF ARBITRAL AWARDS ISSUED IN RUSSIA

---

- Enforcement in Cyprus of arbitral awards issued in Russia  
[continued]
  - The International Commercial Arbitration (Law 101/1987)
    - Section 35 - provides that an arbitral award, irrespective of the country in which it was issued, is recognized by the Court as binding. The Court, following an application in writing by any of the parties and provided that all necessary documents have been provided and all procedures have been followed will issue an enforcement order of the arbitral award.
    - Section 36 - the Court may reject an application to register and enforce an arbitral award if it finds that:
      - i. the subject-matter of the dispute is not capable of settlement by arbitration under the law of Cyprus; or
      - ii. the recognition or enforcement of the award would be contrary to public policy of Cyprus.

---

## V. ENFORCEMENT IN CYPRUS OF JUDGMENTS ISSUED BY RUSSIAN COURTS AND OF ARBITRAL AWARDS ISSUED IN RUSSIA

---

- Enforcement in Cyprus of arbitral awards issued in Russia [continued]

- The International Commercial Arbitration (Law 101/1987)

- Also according to section 36, a respondent may successfully object to such an application if he can prove:

1. that one of the parties that concluded the arbitration agreement lacked legal capacity or that the agreement is not valid under the law to which the parties have subjected it or, in the absence of such agreement, under the law of the country in which the arbitral award was issued, or
2. that he was not given proper and timely notice of the fact of the appointment of an arbitrator or of the arbitral proceedings or that he was in any manner deprived of the opportunity to appear and present his case, or
3. that the award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration. If the decisions on matters that have been referred to arbitration can be separated from the decisions on matters that have not been separated, it is possible to recognize and enforce only that part of the arbitral award that refers to matters so referred, or
4. that the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or if no such agreement exists, was carried out in breach of the law of the country in which the arbitration took place, or
5. that the arbitral award has not yet been rendered binding on the parties or that it was annulled or suspended by a competent court of the country in which it was issued or according to the law of which it was issued.

Thank you for your attention.

**Menelaos Kyprianou**  
Partner

**Michael Kyprianou & Co. LLC**  
2 Agias Elenis Street, Stasinou Building, 6<sup>th</sup> Floor  
1060 Nicosia, Cyprus  
Tel: +357.22.44.77.77  
Fax: +357.22.76.78.80  
Email: [menelaos@kyprianou.com.cy](mailto:menelaos@kyprianou.com.cy)  
Website: [www.kyprianou.com.cy](http://www.kyprianou.com.cy)