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Project Finance 2021

Cyprus:Law & Practics
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Law and Practice

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1. PROJECT FINANCE PANORAMA

1.1 Sponsors and Lenders

Following the 2013 Cyprus financial crisis and the consequent bailout, the banking sector in Cyprus has witnessed a considerable reduction in its size and lending exposure. Nevertheless, the vast majority of lenders in the Cyprus finance market continue to be credit and finance institutions, duly authorised by the Central Bank of Cyprus to carry out such credit activity. The financial market has also seen the establishment of a number of investment funds, mainly falling under the alternative investment fund category regulated by the Cyprus Securities and Exchange Commission, which have in cases funded (through alternative structures) certain projects in the booming real estate industry on the island.

With new investors now risk averse or experiencing losses of their own due to the COVID-19 pandemic, it remains to be seen whether these property companies, which have been involved in the majority of recent high-profile projects in Cyprus, will eventually return to their over-leveraged past and expose both traditional credit institutions and other investment funds to uncalculated risks.

1.2 Public-Private Partnership Transactions

Public-private partnership (PPP) transactions in Cyprus are commonly project finance structures based on the build, operate and transfer (BOT) and design, build, finance and operate (DBFO) models.

A proposed PPP project is carefully evaluated by the public sector, which examines the project's costs and value for implementation with the PPP method, following such evaluation and pre-selection procedure. The set of rules regu-

lating the evaluation and selection of PPP projects is established through the Cyprus Fiscal Responsibility and Budget System Law (N 20 (I) 2014). This set of regulations is based on the methodology used in the manual prepared by The World Bank, and on any instructions issued by the Minister of Finance in Cyprus.

Generally, three types of projects can fall under the PPP category – ie, where the private sector revenue comes from:

- user payments (eg, airports);
- the state (from a service purchase) – eg, hospitals, schools and prisons; or
- a combination of the two.

Other than the above-mentioned legislation, there are no further rules governing the roles and responsibilities of each governmental authority in the planning, negotiation and conclusion of PPPs. Therefore, any procedures for such PPPs are carried out at this stage on an ad hoc basis for each specific project.

1.3 Structuring the Deal

The offer of banking activities and credit operations on a professional basis in Cyprus is only permitted for credit institutions that are authorised by the Central Bank of Cyprus or that operate through a branch registered in Cyprus. Financial institutions established in another EU member state may also notify the Central Bank of Cyprus that, based on their existing licence, they intend to offer banking activities in the Republic.

This does not prohibit legal entities from entering into finance transactions where such provision of finance is an isolated transaction and not the ordinary course of business of such entity.

1.4 Active Industries and Sectors

The COVID-19 pandemic has shifted most of the financing deals towards the technology and pharmaceutical sectors. These industries have been growing significantly under these specific circumstances, attracting a number of new projects, including the most high-profile ones. Of course, the current circumstances have also created the need for many financing deals to be restructured and/or refinanced.

2. GUARANTEES AND SECURITY

2.1 Assets Available as Collateral to Lenders

In general, there are no restrictions on the type of assets that can be charged by way of security to the lenders. However, the most common assets that are available as collateral are:

- immovable property;
- financial instruments (ie, shares, securities);
- cash instruments; and
- intellectual property.

The most common forms of security are:

- general lien;
- fixed or floating charge;
- assignment;
- pledge; and
- mortgage.

In terms of the perfection requirements, a security document is registrable with the Registrar of Companies, in accordance with Section 90 of the Cyprus' Companies Law Cap 113, and in the internal Register of Charges of the Company, as per Section 99 of the Cyprus Companies Law Cap 113, or its register of members in accordance with the provisions of Section 138 of the Cyprus Contracts Law Cap 149. When

the security is over immovable property, then the mortgage is registrable to the Land Registry, in addition to the registrations mentioned above.

2.2 Charges or Interest over All Present and Future Assets of a Company

A floating charge over all present and future assets of a company is permissible under Cyprus laws without any specific restrictions. In order to be valid against the liquidator of the company, the floating charge needs to be registered with the Registrar of Companies as per the provision of the Cyprus Companies Law.

Other universal or similar security interests over all present and future assets of a company that are permissible under the laws of the Republic of Cyprus are:

- a common law lien, which gives the right to retain the possession of a property that belongs to another person until the debt is paid;
- corporate guarantees;
- a fixed charge restricting the charger's methods of dealing with their property, requiring the creditor's consent;
- a pledge, which is a type of fixed charge; and
- a security assignment, which is widely used among corporations and banks as the assignor can transfer their rights and benefits to a receivable to the assignee, which may be enforced by the assignee to cover the debt.

2.3 Registering Collateral Security Interests

A security agreement should be submitted with the Registrar of Companies along with the HE24E form and a certified true copy of the executed security document.

The corresponding fees are as follows, and are calculated based on the amount of the charge

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and should be paid upon the submission of the HE24E form:

- EUR140 (EUR0–17,086.01);
- EUR240 (EUR17,086.01–34,172.03);
- EUR380 (EUR34,172.03–85,430.07);
- EUR540 (EUR85,430.07–170,860.14); and
- EUR640 (EUR170,860.14 and above).

The payment of the applicable fees is necessary for the registration of a mortgage over an immovable property in the land registry.

2.4 Granting a Valid Security Interest

There is neither a requirement in nor a restriction from the provisions of the legislation for collateral to be individually identified in the security document in order to grant a valid security interest for that item. However, the main distinction between the individual identification of the collateral in the security document and the general description of the types of collateral is that the latter will be considered as a floating charge instead of a fixed charge over collateral. A prerequisite for the fixed charge is the identification and indication of the asset in the security agreement.

2.5 Restrictions on the Grant of Security or Guarantees

In general, there are no restrictions in the law that govern the granting of securities or guarantees, and the assets can be charged or encumbered in accordance with the agreements made between the parties. However, each company retains the option to include any restriction in their Memorandum and Articles regarding the encumbering of any specific assets, and/or any other restrictions they may wish.

2.6 Absence of Other Liens

Liens can be searched electronically through the webpage of the Registrar of Companies, which indicates if there are any registered charges or mortgages against the assets of any specific

Cyprus company. A search concerning immovable property can be done at the land registry department. The internal registers of a Cyprus company, which are usually kept at the registered office, are also helpful for inspection as regards charges, mortgages and pledges over the share capital of such company.

2.7 Releasing Forms of Security

The execution of a release agreement between the parties to a security agreement is the most common form for the release of the asset and termination of a security agreement. It is typical for such release agreements to be shared with any other authority/entity that has registered the security in question.

In order to release a security agreement from the Registrar of Companies, the lender executes a discharge letter, addressed to both the company and the Registrar of Companies, informing them of the termination of the security agreement and the release of the security asset. The discharge letter is submitted along with the HE28 or HE29 forms to the Registrar of Companies in order to enable the Registrar of Companies to remove the registered security over the assets of the company.

3. ENFORCEMENT

3.1 Enforcement of Collateral by Secured Lender

The legal framework of Cyprus allows the enforcement of collateral following the occurrence of a default, in accordance with the terms of the specific agreement. While in most cases a court decision will be required for the lender to proceed with the enforcement of collateral, there are specific collaterals that commonly permit out-of-court enforcement or the appointment of receivers.

Out-of-Court Enforcement

This is typically permitted under pledge agreements over shares in Cyprus companies. The agreement itself provides for the delivery to the pledgee upon the signing of a number of documents, including but not limited to original share certificates and undated instruments of transfer for the pledged shares, which, upon the occurrence of an event of default, may be put into place and give effect to the transfer of shares from the pledgor to the pledgee. Such enforcement of the collateral, through the transfer of shares, can be completed without the need for a court order, provided all necessary documents are in the pledgee's possession and can be put into effect instantly.

Appointment of Receiver

Any collateral granted by a company registered in Cyprus can provide the chargee with the power to appoint any other person as its agent, trustee or nominee in order to deal with the charged assets in the interest of the chargee, in the event of defaults. The appointment of the receiver is filed with the Registrar of Companies in Cyprus, and any changes submitted to the authority after such appointment should be accompanied by the approval of the receiver as well. The receiver has the power to manage the company's charged assets and ensure that the interests of the chargee are represented.

The right of the chargee to appoint a receiver over a company's property is commonly included in debentures/floating charges issued by Cyprus companies over the entirety of their assets, although this right can also be provided in other types of collateral.

Court Proceedings

Loan agreements and guarantees governed by Cyprus law are enforced through court proceedings. While the above methods provide the lenders with quick and drastic enforcement tools,

this last method of enforcement constitutes a time-consuming and costly procedure.

3.2 Foreign Law

Party autonomy and the right to choose the governing law of a contract are recognised in Cyprus. However, even if the parties to a contract have rightfully and duly chosen the governing law of said contract, a Cyprus court will not apply such foreign law if:

- the foreign law is not pleaded and proved; or
- to do so would be contrary to Cyprus public policy or the mandatory rules of Cyprus law.

The submission to a foreign jurisdiction expressly made in a contract by the parties thereto will be upheld in Cyprus. Submission to a foreign jurisdiction will be subject to the qualifications of EU Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (in the case of EU jurisdiction) or the bilateral agreement between Cyprus and such other foreign country for the submission.

3.3 Judgments of Foreign Courts

A foreign court judgment or arbitral award has no direct operation in Cyprus. It is essential for the party who is looking to enforce the court judgment or arbitral award to file an application seeking the recognition of such foreign judgment or arbitral award, before this can be enforced against any assets of the other party in Cyprus, without a retrial of the merits of the case. The Decisions of Foreign Courts (Recognition, Registration and Enforcement) Law of 2000 regulates the procedure in relation to the recognition of foreign judgments and foreign arbitral awards in Cyprus. Pursuant to Section 3(1) of this law, the "decision of a foreign court" is defined as the decision of a court or an arbitral body of a foreign country with which the Republic of Cyprus is connected through a treaty for the mutual rec-

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ognition and enforcement of court judgments and arbitral awards, which is enforceable in the foreign country issuing such decision.

As Cyprus is a fully fledged EU member, a judgment obtained from any EU member state can be enforced in Cyprus without having to commence separate proceedings, through Regulation (EC) No 1215/2012 of 12 December 2012 and Regulation (EC) 44/2001. Foreign judgments originating from Switzerland, Norway and Iceland may be recognised and enforced pursuant to the framework provided under the Lugano Convention of 30 October 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, while any judgments issued by the courts of the UK, following Brexit, will be recognised and enforced in Cyprus on the basis of the Foreign Judgments (Reciprocal Enforcement) Law Cap 10. In addition, Cyprus has concluded numerous bilateral treaties with several other countries for the recognition and enforcement of judgments, which enable the recognition of foreign judgments in Cyprus without a re-examination of the merits of the case.

Cyprus acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958, in 1980. Foreign arbitral awards issued by foreign contracting states that have acceded to the New York Convention, as Cyprus did, can be recognised and enforced in Cyprus pursuant to the provisions of the Cyprus Law on International Commercial Arbitration, Law No 101/1987, and the New York Convention.

3.4 A Foreign Lender's Ability to Enforce

The grounds under which a judgment issued by a foreign court shall not be recognised in Cyprus are included in each piece of legislation regulating the procedure for such recognition, and commonly include public policy considerations

and mandatory provisions of Cyprus law, as well as lack of jurisdiction of the foreign court.

A Cyprus court will not recognise an arbitration award as binding on the basis of any of the following grounds:

- the parties to the arbitration agreement were under some incapacity, or the arbitration agreement is deemed void;
- the parties failed to give proper notice of the appointment of the arbitrator or of the arbitration proceedings to the party against whom the award is invoked, or that party was otherwise unable to present their case;
- the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters that are beyond the scope of the submission to arbitration;
- the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;
- the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made;
- the subject matter of the difference is not capable of settlement by arbitration under the law of Cyprus; or
- the recognition or enforcement of the award would be contrary to Cyprus public policy.

4. FOREIGN INVESTMENT

4.1 Restrictions on Foreign Lenders Granting Loans

Other than the restrictions on the offer of banking activities in Cyprus (including lending) (see

1.3 Structuring the Deal), there is nothing in Cyprus' legislation that restricts the granting of loans by foreign lenders when such funding is not deemed to be an offer to Cyprus residents. Nevertheless, a company may restrict the granting of loans by including a specific provision in its memorandum and articles of association, although this is very rare in Cyprus.

4.2 Restrictions on the Granting of Security or Guarantees to Foreign Lenders

The granting of security or guarantees to foreign lenders for the granting of loans is not restricted in Cyprus. As per the granting of loans by a foreign lender, a company may restrict the granting of security or guarantees to foreign lenders by implementing a specific provision in its memorandum and articles of association.

4.3 Foreign Investment Regime

Cyprus has a very commercial tax regime, which makes it one of the most attractive commercial centres in Europe. The 12.5% corporate tax rate is the main reason of attraction, supplemented by the absence of any withholding taxes for payments made to foreign lenders. Additionally, there are no specific restrictions on foreign lenders granting loans in Cypriot entities nor on the granting of security or guarantees on foreign lenders.

In general, the attractiveness of the Cyprus limited liability company impacts foreign lenders, which tend to provide financing to the Cyprus-based companies of foreign interests.

4.4 Restrictions on Payments Abroad or Repatriation of Capital

There are no applicable restrictions in Cypriot legislation regarding payments abroad or the repatriation of capital.

4.5 Offshore Foreign Currency Accounts

There are no applicable restrictions in Cypriot legislation relating to the maintenance of offshore foreign currency accounts; a project company can freely maintain such accounts. However, this is subject to the procedures and obligations implemented from time to time by the Central Bank of Cyprus, which mainly relate to anti-money laundering requirements and know-your-client procedures. Project companies involved in PPPs may be subject to additional restrictions and requirements set by the ad hoc committees overseeing the implementation of the PPP in question.

5. STRUCTURING AND DOCUMENTATION CONSIDERATIONS

5.1 Registering or Filing Financing of Project Agreements

Any encumbrance created by a Cyprus company over its assets must be registered with the Registrar of Companies in Cyprus within 21 days of its creation. The prescribed period is extended to 42 days in the case of a charge created by a Cyprus company outside of Cyprus, comprising property situated outside Cyprus. Any encumbrance over shares in a Cyprus company or an agreement for the provision of financial collateral within the meaning of the Financial Collateral Arrangements Law, which implements EU Directive 2002/47/EC on financial collateral arrangements into Cyprus law, is exempted from the above registration requirement. Failure to comply with said registration requirement, where applicable, will render the security agreement void against the Cyprus company's liquidator or other creditors.

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Legal mortgages over immovable property must also be registered with the District Lands Office Land.

Stamp duty is charged on “documents” relating to assets located in Cyprus and/or matters or things taking place in Cyprus. Stamp duty is calculated on the value of the agreement and is capped at a maximum of EUR20,000 on the principal document. Any ancillary documents relating to the same transaction will each incur stamp duty at a nominal rate of EUR2.

The stamp duty rates on the value of each agreement are as follows:

- EUR0–5,000 – nil;
- EUR5,001–170,000 – 0.15%; and
- over EUR170,000 – 0.20%.

In order to avoid any penalties, stamp duty must be paid within 30 days of signing the relevant document (if it has been executed in Cyprus) or within 30 calendar days from the date it is received in Cyprus (if it has been signed outside Cyprus). An unstamped document may not be adduced as evidence in Cyprus court enforcement proceedings, unless stamp duty fees have been settled (including penalties for late payment).

5.2 Licence Requirements

Legislation regulates the ownership, use and exploitation of natural resources, depending on the type thereof. Regarding mining, for example, according to the Mines and Quarries Law Cap 270 (as amended from time to time), one needs to obtain a licence for the exploration and exploitation of minerals. The recent discovery of offshore hydrocarbon led to the enactment of the Hydrocarbon (Prospection, Exploration and Exploitation) Laws of 2007. The EU Directive also includes provisions that are incorporated

into Cyprus law for the use, exploration and production of hydrocarbons.

The Town and Country Planning Law 90/72 (as amended from time to time) and the more recently enacted Estimation of Repercussions on the Environment for Specific Construction Work Law provide that certain licences need to be obtained in connection with real estate projects for the purposes of town planning. If larger projects are to be constructed, then the construction methods and the environmental impact of the projects will have to be checked and evaluated and are subject to approval. Foreign corporations can apply for such licences without any restrictions. Foreign entities will also need to obtain the prior permission of the Council of Ministers, for the acquisition of land in Cyprus. The governmental policy with regard to such permission is that a foreign entity will receive such grant in the case of intended personal or company use and not for commercial exploitation, except for cases where the specific investment project has been pre-approved.

5.3 Agent and Trust Concepts

As a common law jurisdiction, Cyprus recognises both the agent and trust concepts, and such structures are commonly used under the local law regime.

There are two basic pieces of legislation that govern the trust concept in Cyprus:

- the Trustees Law of Cyprus Cap 193, which is modelled on the English Trustee Act 1925; and
- the Cyprus International Trusts Law 69(I)/1992 (as amended from time to time).

A trust is understood as the legal relationship that is created between the settlor (also known as the grantor, trustor or trust maker) that assigns assets to a particular individual (the trustee) and

said individual, who is responsible for the assets and controls them for the benefit of some other individual or individuals. Furthermore, according to Cyprus law, a security trustee or agent can be used in a syndicated finance transaction and, in that case, the relevant security is granted to them in favour of all or some of the lenders.

5.4 Competing Security Interests

Under Cyprus law, there are no specific terms under which the lenders under a finance transaction or other creditors of a Cyprus company may subordinate their claims. It is common practice for such creditors to enter into subordination or intercreditor agreements, for the purpose of regulating their competing claims.

Assuming that the relevant subordination or intercreditor agreement has been validly entered into by the parties thereto and has been duly executed, the provisions of such agreement will contractually bind such creditors and there would be no reason for the liquidator of the Cyprus borrower not to give effect to the provisions of such agreement.

5.5 Local Law Requirements

Although there is no clear requirement for project companies to be organised under the laws of Cyprus, there are various legislative rules that would render the registration of a local company more practical for the purpose of carrying out a project in Cyprus – eg, immovable property regulations, VAT rules or labour regulations. For example, a project company will have to register with the migration department and obtain the appropriate work permits or business visas if it plans to employ third country nationals in Cyprus.

The most typical legal form taken by a project company is the private company limited by shares, under which the shareholders' liability is

limited to the nominal value of the shares subscribed by them.

6. BANKRUPTCY AND INSOLVENCY

6.1 Company Reorganisation Procedures

The reorganisation of companies is very common in Cyprus and is used by companies for their financial restructure and/or for solving liquidity issues of the group or company in question. A company reorganisation can also occur as a result of an arrangement between the company and its creditors, or in order for the company to benefit from the favourable tax treatment of reorganisations in Cyprus. The following types of reorganisations are provided for by the Cyprus tax legislation:

- merger;
- division;
- partial division;
- transfer of assets;
- exchange of shares; and
- transfer of registered office.

The company will control the procedure and a court order should be obtained in order for the reorganisation to be approved. The creditors of any company can challenge or oppose the reorganisation if they consider that it will affect their rights. The company must keep its creditors informed, as they are not granted any protection during this procedure. According to the Cyprus Companies Law Cap 113, the court order that approved the reorganisation must be delivered to the Registrar of Companies for registration.

6.2 Impact of Insolvency Process

Once insolvency procedures have commenced against a Cyprus company, no action or proceedings can proceed or be commenced against

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the company, except with leave of the court and subject to such terms as the court may impose.

The general rule is that secured creditors may enforce their security. The extent to which secured creditors can enforce their security is dependent upon the value of their security. If the value of the security covers the debt that is owed to the creditor, they will be fully satisfied and any remaining balance will be credited to the assets of the company and be used by the liquidator to satisfy the other liabilities of the company. However, if the security does not cover the full amount of the debt, then they will join the ranks of the unsecured creditors for the part of the debt that is not settled.

A secured creditor must submit a preliminary valuation of the asset given for security within ten days of the publication of the liquidation order. Once this valuation is submitted, the liquidator (and the guarantor, if any) either agrees on the valuation, appoints an independent valuator or requests the Insolvency Service to appoint a valuator.

6.3 Priority of Creditors

The claims of creditors are satisfied in accordance with a priority ranking determined by law. The order of distribution of assets in a winding-up, whether through a court judgment or voluntarily, is as follows:

- the costs of the winding-up;
- preferential debts, ranking equally, which comprise:
 - (a) all government and local taxes and duties due at the date of liquidation and having become due and payable within 12 months before that date and, in the case of assessed taxes, not exceeding one year's assessment;
 - (b) all sums due to employees including wages, up to one year's accrued holiday

pay, deductions from wages (such as provident fund contributions) and compensation for injury (claims of employees who are shareholders or directors may not rank as preferential depending on the nature of the shareholding or directorship);

- secured creditors;
- unsecured creditors;
- sums due to members in respect of dividends declared but not paid; and
- any share capital of the company.

All claims in a particular ranking must be satisfied in full before payments can be made to creditors of a lower priority ranking. If the company's assets are insufficient to satisfy all the creditors of a specific ranking, payments to such creditors shall be made on a pro rata basis.

6.4 Risk Areas for Lenders

A lender should ensure that any security document is registered as per the provisions of the local legislation in Cyprus. Otherwise, in the case of the insolvency of the borrower or security provider, and if a charge is not registered as prescribed by Section 90 of the Companies Law Cap 113, the document will be considered void against the liquidator and any creditor of the company, and the security created by the security agreements will not be recognised by the liquidator of the company.

6.5 Entities Excluded from Bankruptcy Proceedings

No entities or types of entities are excluded from bankruptcy proceedings under the Bankruptcy Law in Cyprus.

7. INSURANCES

7.1 Restrictions, Controls, Fees and/or Taxes on Insurance Policies

There are no restrictions, controls, fees or taxes on insurance policies for companies operating in Cyprus, provided that the proper licensing from the local regulator has been obtained.

7.2 Foreign Creditors

There are no restrictions on the payment of insurance policies over project assets payable to foreign creditors, and the insurance policies are freely payable to the foreign creditors if such creditors are insured by the insurance company.

8. TAX

8.1 Withholding Tax

Cyprus does not levy a withholding tax on interest or other payments under a loan agreement made to non-residents without a Cyprus permanent establishment. Payments of dividends and royalties granted for use outside of Cyprus are also free from withholding tax in Cyprus, according to the Cyprus tax legislation.

8.2 Other Taxes, Duties, Charges

Other than the stamp duty fees and registration costs on the finance agreements, as mentioned in **5.1 Registering or Filing Financing of Project Agreements**, there are no further duties or charges that are relevant to loans made by foreign lenders to entities incorporated in Cyprus.

The situation differs when both parties – borrowers and lenders – are resident in Cyprus. Interest paid under these types of loan agreements will be subject to deductions for the General Healthcare System (GESY) in Cyprus, and to a special contribution for defence.

The following persons will be considered resident in Cyprus for the purposes of the above deductions:

- a legal entity whose management and control is exercised in Cyprus; and
- physical persons who:
 - (a) have a domicile of origin in Cyprus and reside in Cyprus for one or more periods exceeding 183 days during a tax year; or
 - (b) despite their domicile of origin, have been a tax resident of Cyprus for at least 17 of the last 20 years before the current tax year.

There are certain exceptions to physical persons, which relate mainly to persons who were non-tax residents of Cyprus for a period of at least 20 consecutive years before the current tax year (provided that they have a domicile of choice not in Cyprus) or immediately before 17 July 2015 (effective date of the relevant law).

8.3 Limits to the Amount of Interest Charged

Cyprus law protects borrowers and consumers from the charge of excessive interest rates, by applying the relevant usury laws included in the Cyprus Criminal Code, which provides that it is a criminal offence for lenders to charge interest that exceeds the maximum permissible rate. Such offence will be punishable by up to five years' imprisonment or a fine of up to EUR30,000, or both. The Central Bank of Cyprus sets the maximum permissible rate, known as the reference interest rate, quarterly. The reference interest rate is calculated on the basis of the average interest rates charged by credit institutions in Cyprus, increased by 50%.

The above-mentioned usury laws shall not apply to:

- authorised credit institutions;

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- loans between related parties, as determined under the Cyprus Income Tax Law;
- cases where the loan capital derives directly or indirectly from abroad and the loan amount is over EUR1 million, with the minimum disbursement being EUR500,000; or
- cases where the loan capital is disbursed overseas and the loan amount is over EUR1 million, with the minimum disbursement being EUR500,000.

9. APPLICABLE LAW

9.1 Project Agreements

As mentioned in **3.2 Foreign Law**, party autonomy and the right to choose the governing law of a contract are recognised in Cyprus. Therefore, on the basis of various considerations, including but not limited to the jurisdiction of the actual project, the collateral or the obligor in question, the parties will choose the law to govern each project agreement.

Experience has demonstrated that large-scale projects undertaken by international group of companies typically include numerous agreements governed by different legal regimes, connected to the location of the contracting parties, the subject matter of the contract or even the law of the forum in which disputes are to be resolved. Having said that, agreements on projects located in Cyprus are commonly governed by the local law.

9.2 Financing Agreements

Other than the considerations relating to the choice of law for a project agreement, parties to a finance agreement may also choose the governing law of such agreement, and it is possible for this law to have no connections with the jurisdiction of parties, the location where the obligations will be carried out or the subject matter of the agreement.

Nevertheless, the principal finance documents are commonly governed by the jurisdiction of the financial institution in each case, while the security agreements are governed by the law of the country in which the relevant collateral is located.

9.3 Domestic Laws

In addition to any agreements over projects located in Cyprus, the local law commonly governs security agreements over Cyprus assets, be it shares in a Cyprus company, a Cyprus bank account or real estate located in the island. Domestic laws will also regulate issues relating to a local consumer and insurant, as well as labour matters.

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Michael Kyprianou & Co. LLC*

Michael Kyprianou & Co. LLC has developed a strong practice in banking and finance, with a dedicated team of 16 advocates dealing with international and local financing transactions. The team is spread across the firm's offices in Cyprus, Greece, Malta, Ukraine and the UAE. It advises lenders, borrowers and sponsors on a wide variety of domestic and cross-border project financings, and works closely with the firm's litigation team, which is especially known for its experience in complex cross-border and local

commercial litigation. Clients come from several industries, including real estate, private equity, energy, healthcare, shipping, technology, financial services and financial institutions. The firm has acted as the Cypriot counsel in many international high-profile project financings, such as the EUR1.09 billion financing of Russia's key LNG project owned by Novatek, and the financing of a joint venture with O1 Properties, relating to the White Square complex in Moscow, for the total value of USD800 million.

AUTHORS



Lorena Charalambous has been at Michael Kyprianou & Co. since 2011 and was promoted to partner in January 2020. She works from the firm's Limassol office and has

extensive experience in banking and finance transactions, representing clients in international leveraged acquisition financings, asset-based financings, ship and project finance and general bank lending, often instructed by magic circle firms. Lorena is a member of the Cyprus Bar Association, the Limassol Bar Association and the International Bar Association.



Kyriakos Constantinou specialises in corporate and commercial law and in banking and finance-related issues. He is a member of the Cyprus Bar Association, the Nicosia Bar

Association and the International Sports Lawyer Association (ISLA). The majority of Kyriakos's clientele comes from overseas. He specialises in cross-border financing transactions and shipping financing transactions, and his clients include international financial institutions and corporations as well as investors and high net worth individuals. Kyriakos is also greatly involved in corporate law matters, including corporate restructurings, M&A and cross-border mergers.

Contributed by: Lorena Charalambous, Kyriakos Constantinou and Maria Georgiou, Michael Kyprianou & Co. LLC



Maria Georgiou is a member of both the Cyprus Bar Association and the Limassol Bar Association, and has been a qualified lawyer since 2020. She is currently an associate in the

banking and finance department in Michael Kyprianou & Co's Limassol office and advises local and international clients on matters such as corporate and project finance, security agreements and regulatory requirements. She is also involved in corporate restructurings and M&A, which enables her to advise on any local corporate matters that may arise in a project financing deal.

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