# THE ASSET TRACING AND RECOVERY REVIEW

NINTH EDITION

**Editor**
Robert Hunter

THE LAWREVIEWS

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# PREFACE

'Fraud' is a word that people find easier to use than to define. Partly for this reason, it is difficult for lawyers to summarise the way in which their particular jurisdictions deal with it. Some of the sources of their laws will be domestic and will have evolved over time. Others will be recent international conventions, where regard must be had to the decisions of other jurisdictions.

But these difficulties aside, the problems that fraud generates pose unique challenges for the legal system of any country. First, there will be forensic issues: to what lengths should the court go to discover what actually happened? Here different jurisdictions place different priorities on what their courts are for. Some treat the court process as an almost sacrosanct search for truth. The courts of my own jurisdiction tend towards this end of the spectrum. Others regard it as a means of resolving disputes efficiently and providing certainty for the litigants. Often courts in this category allow no witness evidence and no procedure for disclosure of documents, regarding both as disproportionately burdensome for any benefit they might provide.

Second, there is the question of whether the court should mark conduct that is 'fraudulent' as particularly abhorrent, in civil proceedings. All will criminalise fraudulent behaviour, but not all will penalise fraudulent conduct by enhancing the victim's compensation or by depriving the fraudsters of arguments that might have been available to them if they had been careless rather than dishonest.

Third, there is the question of innocent parties: to what extent should victims of fraud be given enhanced rights over victims of ordinary commercial default? In some jurisdictions, it is said that victims of fraud part with their assets – at least to some extent – involuntarily while commercial counterparties take risks with their eyes open. Hence, victims of fraud can, in some circumstances, be allowed to retrieve assets from an insolvency before ordinary trade counterparties or general creditors do so.

Lawyers have been mulling over the rights and wrongs of solutions to the problems that fraud presents for centuries. They will never stop doing so. The internationalisation of fraud in the past 40 years or so, however, has meant that they argue about these problems not only with lawyers of their own country, but also with lawyers from other jurisdictions. Rarely nowadays will a fraudster leave the proceeds of fraud in the jurisdiction in which they were stolen. The 1980s and early 1990s saw quite pronounced attempts by fraudsters to 'arbitrage' the various attitudes and priorities of different jurisdictions to retain what they had taken. Perhaps the highest-profile example of this was the use of jurisdictions in which banking secrecy was a priority as a conduit to which the proceeds of fraud would be transmitted. Another well-known strategy was the use of corporate devices and trusts as a means of sheltering assets from those who deserved to retrieve them.

A number of factors have served to make this more difficult. The growth of international conventions for the harmonisation of laws and enforcement of judgments is clearly one factor. Perhaps more notable, however, has been the international impetus to curb money laundering through criminal sanctions. These have, however, been first steps, albeit comparatively successful ones. There is still a huge amount to be done.

I have specialised in fraud litigation – virtually exclusively – since the late 1980s. My chosen area has brought me into contact with talented lawyers all over the world. I remain as fascinated as I was at the outset by the different solutions that different countries have to the problems fraud creates. I am sometimes jealous and sometimes frustrated when I hear of the remedies for fraud that other jurisdictions offer or lack. When I talk to lawyers who enquire about my own jurisdiction, I frequently see them experiencing the same reactions. The comparison is more than a matter of mere academic interest. Every month brings some study by the government or private sector tolling the cost of fraud to the taxpayer or to society in general. My own interest goes beyond ordinary 'balance-sheet' issues. When I deal with fraudsters, particularly habitual or predatory ones, I still retain the same appalled fascination that I experienced when I encountered my first fraudster, and I share none of the sneaking admiration for them that I sometimes see in the media; they are selfish, cruel and immature people who not only steal from their victims, but also humiliate them.

Modern times pose fresh challenges for everyone involved in fraud, from those who commit it to those who suffer from it. As Warren Buffet famously said, 'only when the tide goes out do you discover who has been swimming naked'. The coronavirus pandemic has offered the global economy another opportunity to prove him right. Not only are new frauds being discovered, but the growing recession will challenge the budgets of victims, regulators and criminal enforcement bodies to bring those responsible to justice and to retrieve the proceeds. Remote interpersonal dealings are increasing the distance between business counterparties in a way that the internet did, and the growth of cryptocurrency transactions continues to do.

It is not possible to predict the trajectory of these developments. While it is now a cliché to speak of the 'new normal', nobody can be actually sure what that normal will be. Some even dispute that it is useful to speak of a normal at all. Nassim Taleb has argued that the financial world is more frequently and radically affected by extreme and unpredictable occurrences (which he calls 'Sigma' or 'Black Swan' events) than we acknowledge. According to Taleb, we live in 'extremistan' and not 'mediocristan'. He has suggested that it is part of our makeup to blind ourselves to the influence of what we cannot predict.

Taleb may be right. For my part, I rather think that he is. But amid all the unpredictability, there are nevertheless some certainties. Society depends upon trust, and there will always be some people who abuse it. So some people will always commit fraud. Globalisation has ensured that major fraud will usually have an international element. Fraud lawyers will therefore have to be internationally minded.

Perhaps the growing international and technical complexity of fraud will continue to outstrip the ability of any one person to understand or remedy it. One of the heartening things about the legal profession over the past 25 years or so, however, is the growth of an international community of lawyers specialising in fraud and asset tracing work who share knowledge and experience with each other about the events in their fields. This book continues to be a useful contribution to that community.

No book sufficiently brief to be useful could ever contain all the laws of any one jurisdiction relating to fraud. The challenge, unfortunately, for a contributor to a book like

this lies as much in what to exclude as in what to say. This review contains contributions from eminent practitioners the world over, who have, on the basis of their experience, set out what they regard as critical within their own jurisdictions. Each chapter is similarly structured for ease of reference with similar headings to enable the reader to compare remedies with those in other jurisdictions, and each contributor has been subject to a strict word limit. Despite there being a huge amount more that each would have been perfectly justified in including, I still believe this book to be an enormous achievement.

Once again, we have some of the foremost experts in the area from an impressive array of jurisdictions contributing. I have often thought that true expertise was not in explaining a mass of details but in summarising them in a meaningful and useful way. That is exactly the skill that a work like this requires and I believe that this edition will continue the high standard of the previous six. I have come across a number of the authors in practice, and they are unquestionably the leaders in their fields. I hope that other readers will find the work as useful and impressive as I do.

**Robert Hunter**
Robert Hunter Consultants
August 2021

**Chapter 8**

# CYPRUS

*Menelaos Kyprianou*[1]

## I OVERVIEW

Although Cyprus has a relatively low level of domestic fraud cases, such cases are increasingly arising from the international business activities that are carried out here. The island has developed into a regional business and financial centre mainly because it has a wide network of treaties with other countries for the avoidance of double taxation. Cyprus international business commonly involves setting up a range of complex corporate structures with different layers of entities situated in multiple jurisdictions, and cross-border transactions involving counterparties spread across different parts of the world. The courts and the relevant state authorities are, therefore, now often called upon to offer assistance and remedies to foreign victims of fraud whose assets have ended up in Cyprus.

Victims of dishonesty can seek redress in Cyprus through the civil or criminal jurisdiction of the courts or with the assistance of state authorities. As regards the legal system, the principles of common law and of equity are followed very closely by the Cyprus courts, and all of the means available to a victim of fraud in England and other common law countries are also available in Cyprus.

In the Supreme Court of Cyprus judgment in *Avila Management Services Limited and another v. Stepanek and others*,[2] which concerned a disclosure application in the context of an international fraud case, it was stated that:

> *The common law, dynamic and flexible as it is, aided always by the principles of equity, has never stopped evolving, falling back and adapting itself to the current demands of the economic and social nature of society. Through the judgments of outstanding lawyers, the base that provides the armoury or the shield against the rapidly developing local and worldwide situations has continuously developed, slowly, carefully and steadily.*

The common law and the principles of equity are expressly stated in Section 29 of the Courts of Justice Law[3] as sources of law to be applied by the Cyprus courts in the exercise of their civil and criminal jurisdiction, and the above excerpt shows the respect with which Cyprus courts follow these principles in practice.

1 Menelaos Kyprianou is a partner at Michael Kyprianou & Co LLC.

2 Civil Appeal 54/2012, dated 27 June 2012.

3 Law 14/60.

Moreover, as a member of the EU, Cyprus has adopted into its legal system legislation aimed at the prevention and investigation of criminal fraud offences and that provides for the exchange of information with other countries. Cyprus has also entered into a number of relevant international conventions and bilateral treaties.

## II LEGAL RIGHTS AND REMEDIES

### i Civil and criminal remedies

Beyond the obvious personal actions that are available for damages sustained as a result of fraudulent activities or for unjust enrichment, the Cyprus courts, in their civil jurisdiction, also recognise proprietary principles. Restitution can, therefore, be ordered of assets that are identifiable as proceeds of a crime. Trust principles are also recognised and applied by the Cyprus courts. A person may, therefore, be deemed to hold assets as a constructive trustee for the victim of a fraud. In the Supreme Court of Cyprus judgment in *Pirillos v. Konnari*,[4] it was stated, citing English authorities on the point, that: 'The principle is that where a person holds property in circumstances in which in equity and good conscience it should be held or enjoyed by another, he will be compelled to hold the property in trust for that other.' In the subsequent case of *Tsaggaris v. Gavriilides and others*,[5] the Supreme Court, citing *Pirillos*, confirmed that a plaintiff can rely on the principles relating to the creation of a constructive trust to recover assets that are in the form of immovable property.

As will be seen in more detail below, the civil courts also have the power to issue freezing injunctions over assets situated in Cyprus and abroad. They can also issue disclosure orders against defendants and against innocent third parties in order for wrongdoers to be revealed and for assets to be traced. Under certain circumstances, these freezing and disclosure orders can be issued to support proceedings that have been filed or will be filed abroad.

In the field of criminal law, the Unit for Combating Money Laundering (MOKAS) is a multidisciplinary unit established within the structure of the Law Office of the Republic and is composed of officials from the Attorney General's office, the police and the Customs and Excise Department, as well as of financial experts. It has been set up and given powers on the basis of the Prevention and Suppression of Money Laundering and Terrorist Financing Law 2007[6] and its amendments[7] (AML Law). The AML Law is in accordance with Council Directive 91/308/EEC of 10 June 1991 and Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 on prevention of the use of the financial system for the purpose of money laundering.

The AML Law criminalises the laundering of illegal funds that derive from criminal activities that are punishable with terms of imprisonment exceeding one year (described in the AML Law as prescribed offences), and requires all financial institutions, investment companies, insurance companies, lawyers, accountants and estate agents to apply strict procedures so that their services are not used for money laundering purposes.

On the basis of the AML Law, MOKAS has the power, in the context of any investigation that it is conducting, to ask the courts for the issuance of a disclosure order that can be addressed to any person, including banks, that may have in its possession information related

4 (2001) 1B CLR 1153.

5 (2003) 1A CLR 472.

6 Law 188(I)/2007.

7 Law 58(I)/2010, Law 80(I)/2012, Law 192(I)/2012, Law 101(I)/2013 and Law 184(I)/2014.

to the investigation. It can also ask the courts, on an *ex parte* basis, for an order freezing assets that may have derived from money laundering. This includes the issuance of freezing orders against suspects outside the jurisdiction.

Moreover, the AML Law gives MOKAS the power to confiscate the proceeds from the commission of prescribed offences and, prior to this, to issue restraint or charging orders in relation to them.

The AML Law also provides for the enforcement of foreign orders under certain circumstances, and the cooperation of Cyprus with countries with which it has entered into conventions or bilateral agreements and with Member States of the European Union.

### ii Defences to fraud claims

Under Cyprus law, a plaintiff's equitable title to property is defeated and the right to trace is lost in the following circumstances: if the property reaches the hands of a bona fide purchaser; or if it would be inequitable to allow the plaintiff to trace the assets. The usual example here is where a person, after receiving the assets, changes his or her position in a way that would make it unjust for him or her to be ordered to return these; and if the claimant's property disappears or is mixed up with that of the defendant, thereby forming a new product.

As regards time limits, a claim based on a tort must be filed within six years from when the cause of action arose. Where there is fraud, however, time starts to run from the moment that the plaintiff became aware of the relevant facts or could, with reasonable diligence, have become aware of these.

## III SEIZURE AND EVIDENCE

### i Securing assets and proceeds

As one would expect given the common law influence on the Cyprus legal order described above, the means that are available to a victim of dishonesty in England and other common law countries to secure assets and proceeds and to obtain evidence are available in Cyprus, too. Indeed, if in its evolving nature the common law made available new means to these victims, it is likely that the Cyprus courts would soon follow suit.

#### *Injunctions freezing the assets of a defendant*

Injunctions freezing the assets of a defendant until the conclusion of main proceedings that have been filed against him or her can be issued *ex parte* on the combined basis of Section 32 of the Courts of Justice Law[8] and Section 9 of the Civil Procedure Law. Essentially, for a court to issue such an injunction it must be satisfied that the matter is urgent, that the applicant has a strong prima facie case against the defendant and that, if the injunction is not issued, it will be difficult or impossible for justice to be delivered at a later stage.

For many years, the Cyprus courts declined to issue freezing injunctions in relation to assets that were situated abroad. This changed with the issuance of the Supreme Court of Cyprus' judgment in the case of *Seamark Consultancy Services Limited v. Joseph P Lasala and Others*.[9] Here, the Supreme Court confirmed as correct the first instance judgment whereby a freezing injunction over assets situated outside the jurisdiction was issued. The Supreme

8 Law 14/60.

9 (2007) 1 CLR 162.

Court noted that the English courts had adopted the same approach (starting with the case of *Derby & Co Ltd and Others v. Weldon and Others*),[10] and that the injunction had an in personam effect, meaning that if it was breached, sanctions can be imposed on persons within the jurisdiction who are responsible for this breach.

Recently, in assessing the broad powers conferred on the courts pursuant to Section 32, the Supreme Court cited *Seamark Consultancy Services Limited v. Joseph P Lasala and Others*[11] and added that:

> *The Cyprus courts, following the English Courts, held that they should adopt a line of judgments in order to meet the rapid changes in technology and the communication sector as well as . . . modern change in the ways people trade. The transactions concluded in all parts of the world within minimum time through the electronic system and the transfer of money from one account to another, from one country to another, in almost minimum time require new approaches in relation to the issuance of interim orders so that they provide an effective weapon in the hands of the parties until the conclusion of the dispute.*[12]

Injunctions freezing assets until the conclusion of proceedings filed or to be filed abroad can also be issued on the basis of the following:

The International Arbitrations Law: on the basis of this Law,[13] a Cyprus court can issue an injunction freezing the assets of a defendant in Cyprus until the conclusion of international arbitration proceedings filed or to be filed against the defendant either in Cyprus or abroad. An international arbitration is defined by this law as one where:

*a* at the time of conclusion of an agreement providing for arbitration, the parties to this agreement had their business seat in different countries; or

*b* the place where an arbitration will take place or to which the subject matter of the agreement is more closely connected is outside the country where the parties have their seat of business; and

*c* Article 35 of Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012: on the basis of this provision, a Cyprus court can issue freezing injunctions over assets in Cyprus in aid of proceedings that have been filed or are to be filed in the courts of another EU Member State.

In the now-leading case of *Commerzbank Auslandsbanken Holding AG and another v. Adeona Holdings Limited*,[14] the Supreme Court of Cyprus (reversing the first instance judgment) issued freezing injunctions and disclosure of information injunctions in support of foreign arbitration proceedings before the International Chamber of Commerce.

The Supreme Court of Cyprus examined the conditions for the issuance of interim injunctions on the basis of this EU Regulation in a recent judgment in the case of *Trafalgar*

10 (No. 2) [1989] 1 All ER 1002.

11 See footnote 9.

12 *Penderhill Holdings Limited and others v. Ioanni Kloukina*, Civil Appeals 319/2011 and 320/2011, dated 13 January 2014.

13 Law 101/87.

14 Civil Appeal E6/2014 dated 27 February 2015; 16 Civil Appeal 331/2017 dated 21 February 2019.

*Developments Limited and others v. Uralchem Holdings PLC and others*. The case concerned an application for freezing injunctions and disclosure orders in support of a civil action pending in the High Court of Ireland.

The above-mentioned provisions of the International Arbitrations Law and of Regulation EU No. 1215/2012 are both very regularly applied by the Cyprus courts.

### ii Obtaining evidence

There are various ways in which a claimant may obtain documentary evidence or information. On the basis of the civil procedure rules, a defendant can be ordered to disclose under oath the documents in his or her possession that are relevant to a pending case, while witnesses can also be summoned to adduce relevant documents in their possession.

Perhaps more importantly, the courts also have the power to issue what are known as *Norwich Pharmacal* disclosure orders.[15] On this basis, a third party not necessarily involved in any wrongdoing may be ordered to produce relevant documents and information. These documents can be requested on the basis that they are needed to discover the wrongdoers or because information is needed for a case to be filed and pleaded. In the *Avila* case (see Section I), the Supreme Court confirmed that disclosure orders on this basis can be issued in order for proceedings to be filed abroad.

Disclosure orders on this basis are very commonly issued against banks by the Cyprus courts. In a recent case, a major international pharmaceutical company discovered, through the use of private investigators, that certain individuals were selling counterfeit copies of its products through a website. It was also discovered that proceeds from these sales were being paid into bank accounts in a Cyprus bank. A disclosure order was issued against the bank, ordering the bank to disclose the beneficial owners of these bank accounts and also details of the movement of the bank accounts. Such orders are also issued very commonly in tracing actions where the victims of fraud need to find out where their money has been transferred.

A person who, in breach of a disclosure order, refuses to make disclosure is liable to face contempt proceedings, which are of a quasi-criminal nature.

In the context of an application for the freezing of the assets of a defendant, it is also possible to seek, again on an ex-parte basis, an injunction obliging the defendant to reveal his or her worldwide assets. The rationale is that the plaintiff needs to know the assets of the defendant to be able to police compliance with the freezing of assets injunction. In the case of *Re the Application of Bitzios*, Civil Application 81/2020 dated 30 July 2020, the Supreme Court of Cyprus, in the context of a certiorari application, set out the principles relating to the issuance of such a disclosure order. In the same case the Supreme Court held, with reference to the English Court of Appeal judgment in *Motorola Credit Corporation v. Cem Cegiz Uzan a.o.* [2002] EWCA Civ. 989 that the Court can oblige the defendant to comply with a disclosure order of this nature even before he or she is given the opportunity to be heard on the matter.

As noted above, disclosure orders can also be issued in the context of the AML Law. Section 46 of the AML Law provides that the disclosure order may be granted if the court is satisfied that:

*a* there is a reasonable ground to suspect that a specified person has committed or has benefited from the commission of a prescribed offence;

15 Based on the judgment issued in the English case of *Norwich Pharmacal Co and others v. Commissioners of Customs and Excise* [1973] 2 All ER 943.

*b* the information is likely of itself or together with other information to be of substantial value to an investigation;
*c* the information is not privileged; and
*d* it is in the public interest for the information to be disclosed.

The provisions of Section 46 of the AML Law were considered by the Supreme Court of Cyprus in the case of *Edrinotio Ltd and others*.[16] Here, MOKAS obtained a court injunction ordering four local banks to disclose information in relation to the bank accounts of 59 companies. MOKAS applied for this injunction following a request for legal assistance made towards it by the Russian Federation. This was in the context of investigations carried out by the Russian police against a number of ex-officials of the Bank of Moscow who were suspected of defrauding the bank and illegally transferring funds to bank accounts held in Cyprus by these 59 companies.

After the issuance of the above injunction, the 59 companies filed a certiorari application at the Supreme Court seeking its annulment. They based their claim on certain provisions of the Cyprus Constitution that safeguard the inviolability of correspondence and the right to privacy.

On the correspondence point, the Supreme Court held that the bank documents that were ordered to be disclosed could not be classified as correspondence and rejected the relevant submission. On the right to privacy issue, the Supreme Court held that the bank documents in question could not be considered as being of a private nature; and that, in any event, the case was covered by the exception provided for by the Constitution that permits an infringement of the right to privacy for reasons pertaining to the public interest and the protection of the rights of other persons.

The Supreme Court, therefore, rejected the certiorari application and held that the disclosure orders had been issued lawfully by the court.[17]

***Preserving evidence***

This can be achieved through the issuance, in the context of a civil case, of an *Anton Piller* order,[18] which can be issued on an *ex parte* basis.

In its judgment in the *Stepanek* case,[19] the Supreme Court laid out the conditions for the issuance of such an order, which it described as a 'nuclear weapon' in the hands of a plaintiff:

*a* the plaintiff must be able to demonstrate that it has a strong prima facie case;
*b* the activities of the defendant are causing very serious damage to the plaintiff;
*c* there is reliable evidence that the defendant does possess incriminating documents or other evidence; and
*d* there is a real danger that the defendant may destroy the relevant documents or evidence if it becomes aware that court proceedings will be filed against it.

16 Certiorari Application No. 60/2012.

17 The aforesaid was recently reiterated in *Melouskia Commercial Ltd and others v. Chumachenco Alisa and others*, Civil Appeal E71/2013, dated 30 September 2014.

18 From the English case of *Anton Piller KG v. Manufacturing Processes Ltd and Ors* [1976] 1 All ER 779.

19 Certiorari Application No. 10/2011.

## IV FRAUD IN SPECIFIC CONTEXTS

### i Banking and money laundering

Substantial international business, which as mentioned above is mainly tax-driven, is conducted in and through the Cypriot banking sector. This international business involves various features such as complex corporate structures, cross-border transactions with counterparties in various jurisdictions and introduced business, and the use of nominee shareholders or directors and trusts.

Relevant in this context, MOKAS applies the AML Law; as we have seen, it has powers to obtain disclosure orders, as well as orders to freeze and confiscate assets.

### ii Arbitration

As noted above, Cyprus courts, on the basis of the International Arbitrations Law,[20] can issue injunctions in aid of international arbitration proceedings that have been filed or are to be filed abroad.

### iii Fraud's effect on evidentiary rules and legal privilege

Under Cypriot law, secrecy and confidentiality provisions are not generally a bar to the issuance of disclosure orders in the event that fraud has been established. The Banking Law[21] specifically provides for the lifting of secrecy in respect of banking information in the course of an investigation by any authority, including requests by a foreign authority. The Cyprus courts have also consistently held that the public interest in the prevention and detection of crime supersedes the obligation of secrecy and confidentiality that a bank owes to its customers.

In the context of the AML Law, Section 46(3) provides that an order for disclosure shall have effect despite any obligation for secrecy or other restriction upon the disclosure of information imposed by law or otherwise. The only exception to this is if the information is considered to be privileged. Privileged information is defined as:

> *[a] communication between an advocate and a client for the purposes of obtaining professional legal advice or professional legal services in relation to legal proceedings whether these have started or not, which would in any legal proceedings be protected from disclosure by virtue of the privilege of confidentiality under the law in force at the relevant time; Provided that a communication between an advocate and a client for the purposes of committing a prescribed offence shall not constitute privileged information.*

## V INTERNATIONAL ASPECTS

### i Conflict of law and choice of law in fraud claims

As regards the criminal jurisdiction of the Cyprus courts to try fraud cases, this is determined by Section 5 of the Criminal Code. To the extent that is relevant for our purposes, the criminal courts of Cyprus have jurisdiction to try all offences committed:

20 Law 101/87.

21 Law 66(I)/97.

*a* within the territory of the Republic; in any foreign country by a citizen of the Republic if the offence is one punishable in the Republic with imprisonment exceeding two years, and the act or omission constituting the offence is also punishable by the law of the country where it was committed; and

*b* in any foreign country by any person if the offence is one to which, under any international treaty or convention binding on the Republic, the law of the Republic is applicable.

As regards civil jurisdiction to try fraud cases, Section 21 of the Courts of Justice Law provides that the district courts have jurisdiction over claims where the cause of action has arisen within the boundaries of the district wherein the court is situated, or where any one of the defendants reside or have their place of business within these boundaries.

Applying the common law principles of private international law, the Cyprus courts will also, under certain circumstances, assume jurisdiction in relation to torts that have been committed abroad. In the Supreme Court of Cyprus judgment in the case of *Jupiter Electrical (Overseas) Limited and Anor v. Savvas Costa Christides*,[22] the following was stated:

> *In the light of all pertinent considerations we are inclined to hold – (and no argument to the contrary has been advanced before us) – that in the present case the trial court has jurisdiction to examine whether the respondent would be entitled to sue the appellants in respect of a civil wrong committed abroad; in accordance with the earlier referred to principle of Private International Law the respondent can do so only if he does establish that the event which caused him the injuries is actionable as a civil wrong according to Cyprus law and it is also actionable according to the law of Libya (see Dicey & Morris on The Conflict of Laws, 9th ed., p. 938); in this respect the said principle has been stated in a slightly different way than that in which it has been stated in the Georghiades case, supra, because since that case was decided such principle has been modified by the decision of the House of Lords in Boys v. Chaplin [1971] AC 356.*

Mention must again be made of Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 in relation to conflicts of law within the EU context. The starting point here, on the basis of Article 4, is that subject to the provisions of the Regulation, 'persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State'.

The Regulation then sets out the limited number of circumstances under which persons domiciled in one Member State may be sued in the courts of another Member State. Article 5(3) and (4) are relevant, providing that a person domiciled in a Member State may, in another Member State, be sued:

> *(3) in matters relating to tort, delict or quasi-delict, in the courts for the place where the harmful event occurred or may occur.*
>
> *(4) as regards a civil claim for damages or restitution which is based on an act giving rise to criminal proceedings, in the court seized of those proceedings, to the extent that that court has jurisdiction under its own law to entertain civil proceedings.*

22 [1975] 1 CLR 144.

### ii Collection of evidence in support of proceedings abroad

In the field of criminal law, the relevant domestic legislation concerning the provision of mutual legal assistance is the Law on International Cooperation in Criminal Matters (Law).[23] This Law provides, inter alia, that a Cypriot court before which there are pending proceedings can, on its own motion or on the application of the prosecution or the defence, issue a written request to foreign authorities for assistance in the provision of evidence to be used in Cypriot court proceedings. In addition, at the stage of the investigation of an offence, the prosecuting authority can issue a request for the assistance of a foreign authority to obtain evidence.

The Law likewise provides that a foreign court or authority can submit a written request for assistance to obtain evidence to be used in foreign court proceedings or in relation to a criminal investigation that is taking place in that country. The Law prescribes a certain procedure involving the courts to be followed for the information requested to be obtained.

The Law provides that it applies to all of the countries of the European Union, to specified Commonwealth countries, and to all countries with which Cyprus has signed a bilateral convention or is committed by a multilateral international convention for cooperation in matters of criminal procedure.

In the context of civil proceedings (see Section III), the *Norwich Pharmacal* procedure can also be used to obtain evidence to be used in foreign court proceedings.

### iii Enforcement of judgments granted abroad in relation to fraud claims

The rules concerning the procedure on the recognition, enforcement and execution of foreign judgments are contained in the Law Providing for the Recognition, Registration and Enforcement of Judgments of Foreign Courts.[24] This Law applies to all cases in which the recognition, registration and enforcement of decisions of foreign courts are requested.

Under Section 3(1) of this Law, the decision of a foreign court is the decision of the court or arbitral organ or organ of a foreign country with which the Republic of Cyprus has concluded or is connected with an agreement for mutual recognition and enforcement of judicial decisions and arbitral awards and that is enforceable in the country issuing such a decision.

On the basis of the above, judgments can be registered and enforced in Cyprus as follows:

*a* under the provisions of Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 in relation to judgments that have been issued in other EU Member States;

*b* under the provisions of Regulation (EC) No. 805/2004 creating a European enforcement order for uncontested claims in the context of the EU;

*c* under the provisions of the Law on International Arbitration in Commercial Matters[25] and the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). As a signatory to the New York Convention, Cyprus enforces awards made in foreign states that are signatories to the Convention; and

*d* under the provisions of any bilateral agreement that Cyprus has entered into for the mutual recognition and registration of judgments.

23 Law 23(I)/2001.

24 Law 121(I)/2000.

25 Law 101/1987.

In the case of *Smagin v. Kalken Holdings and another*, General Application 601/17 of the District Court of Nicosia dated 5 May 2020,[26] the applicant sought to have recognised, registered and enforced in Cyprus an award that had been issued by the London Court of International Arbitration. The application was based on the New York Convention and the above-mentioned local Law on International Arbitration in Commercial Matters. The Court followed here a trend that has recently developed in Cyprus cases wherein the strict requirements provided for by the New York Convention in relation to the production of the necessary documents can in certain instances be relaxed. In this case, the original agreements on the basis of which the parties had referred their dispute to arbitration were in the possession of the Russian police, who were carrying out a criminal investigation in relation to the matter. Given the circumstances, the Court was prepared to allow extrinsic and circumstantial evidence to prove the existence of these agreements.

In the very recent case of *Coral Group Finance S.A n Numitora Holdings GMBH and others* General Application 283/2017 dated 8 February 2021, the District Court of Nicosia held that the registration of a foreign arbitral award can be allowed in Cyprus on the basis of the New York Convention even in cases where neither the applicant nor the respondent are Cyprus-registered entities.

## VI CURRENT DEVELOPMENTS

During the course of the negotiations regarding the financial support to be given to Cyprus in the first quarter of 2013, the financial system of Cyprus came under extensive scrutiny. One aspect that was examined was the anti-money laundering procedures in force, as well as their application.

Moneyval was commissioned by the Cyprus authorities and the providers of international financial support to carry out an in-depth review of the effectiveness of Cyprus's anti-money laundering regime. The report[27] concludes that 'in general, the banks interviewed demonstrated high standards of knowledge and experience of AML/CFT issues, an intelligent awareness of the reputational risks they face and a broad commitment to implementing the customer due diligence requirements set out in the law and in subsidiary regulations issued by the Central Bank of Cyprus'. Certain concerns were expressed in relation to features associated with international banking business, for which certain recommendations were proposed for implementation.[28]

26 *Smagin v. Kalken Holdings and another*, General Application 601/17 of the District Court of Nicosia dated 5 May 2020,

27 Special Assessment of the Effectiveness of Customer Due Diligence Measures in the Banking Sector in Cyprus, published on 24 April 2013.

28 ibid., pp. 5–7 and 51–31.

**Appendix 1**

# ABOUT THE AUTHORS

**MENELAOS KYPRIANOU**

*Michael Kyprianou & Co LLC*

Menelaos Kyprianou studied law at the University of Nottingham, where he obtained an LLB (Hons) degree in 1993. As a student at Nottingham University he was awarded two prizes: the JC Smith prize in the law of evidence, awarded to the student who obtained the highest mark in the subject of evidence; and the Law Graduates Association moot prize, awarded to the student who won the moot competition. Mr Kyprianou was adjudged the winner in the final round of the competition by Sir Igor Judge, former Lord Chief Justice of England and Wales. He then followed the bar vocational course and became a barrister-at-law of the Middle Temple in 1994.

In 1994, he returned to Cyprus and has practised law there ever since, focusing increasingly on dispute resolution cases of a corporate and commercial nature. *The Legal 500: Europe, Middle East & Africa* (2005 edition) described him as 'a reputable litigator who has handled complex international cases'. Mr Kyprianou has been consistently recommended by the major law directories ever since. The 2014 edition described him as 'an outstanding lawyer', while according to the *Chambers Europe* 2014 directory, Mr Kyprianou is 'relied on by clients for his excellent support in corporate disputes'.

In April 2007, he was appointed by the Council of Ministers as a member of the board of the Cyprus Securities and Exchange Commission, a position that he held until September 2011.

In 2014, Mr Kyprianou was appointed by the President of the Republic of Cyprus as a member of the team advising the negotiator of the Greek Cypriot side in relation to the talks with the Turkish Cypriot community, which have as an aim the reunification of Cyprus. Specifically, he has been appointed to the team that will advise on issues of European Union law.

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