[LITIGATION ADR QUESTIONNAIRE – CYPRUS]

CIVIL LITIGATION

1. **In what language(s) may court proceedings be conducted? What arrangements can be made for translation/interpreter services?**

   Court proceedings may be conducted in Greek or Turkish, both of which are the official languages of the Republic of Cyprus based on s.3 of the Constitution. However, the parties in the proceedings are entitled to act before a court in their mother language, and the Republic will, on its own expense, provide a translator/interpreter to any party/parties not understanding Greek or Turkish. Translation and/or interpretation may be effected by a professional translator and/or interpreter or by any person evidenced to be apt in both the original and the translated language who gives a written and/or oral oath, depending on the requirements of the case, to that effect.

2. **What types of pre-action measures are available and what are their limitations? Must you send a warning letter before issuing any proceedings?**

   Under Cyprus Laws there are no compulsory pre-action measures requiring the parties to attempt to settle or negotiate the case before going to court.

   Following s. 32 of the Courts of Justice Law (Law.14/60), the Courts of the Republic of Cyprus have the power to issue an interim injunction, if the court considers it to be necessary in order to protect assets which may be at risk of alienation, or in order to preserve a particular *status quo* pending the final determination of a civil action, thus providing for enforcement of the decision *in rem* in cases where there is a concern that such an enforcement would be impaired.

   The power of the court to issue an interim injunction is available "in all the cases which it appears to the court that it is just and convenient to do so". Nevertheless, the justice and convenience of the case is not the only consideration which the court will take into consideration. The court will not grant such an injunction, unless all of the following conditions of the law are satisfied:

   a. a serious question arises to be tried at the hearing,
   b. there appears to be a probability that the claimant is entitled to relief and lastly,
   c. unless it shall be difficult or impossible to do complete justice at a later stage without granting an interlocutory injunction.

   At this point, it should be noted that an application for interim measures may be effected without notice to the respondent, following an ex-parte application. However, the practice of the courts is that they will only consider an ex-parte application for interim measures if there is an element of extreme urgency. The Courts in this case must be satisfied that hearing an ex-parte application for interim measures is in the best interests of justice.

   Similarly, on the same legal basis as above, any party, prior to the commencement of the proceedings, may apply to the Court to secure any evidence, if there is a concern that the evidence would not be available at a later stage.

   As it regards warning letters, prior to the initiation of any proceedings, it is not in general compulsory to send a warning letter. The only case in which such an action is compulsory is where it is prescribed by law, e.g. by s.212(g) of the Companies Law (Cap.113), before filing an application for the dissolution of a company or before filing an action for libel.

3. **What are the costs of civil and commercial proceedings? Who bears the costs?**

   As between lawyer and client, costs are determined by the type of retainer signed by the client to the lawyer, which can take any of the following forms:

   1. As prescribed be a regulation issued by the Supreme Court from time to time as to the fees which provide for minimum and maximum charges for each specific service provided in the course of a court case.
      There are also prescribed fees in the same format for out-of-court advising, legal drafting, legal work pertaining to conveyancy etc., issued by the Cyprus Bar Association.

   2. On the basis of any other agreement made between lawyer and client, such as by retainer, hourly rate etc.

As it regards the costs between the parties in a civil case, the general rule is that the unsuccessful party bears the litigation costs of the other party, as these are determined by the Court's Registrar. Such an assessment can be objected to, but this is rare and it usually takes place if there are special circumstances.

4. What are the basic rules of disclosure of documents in civil and commercial proceedings? Which documents do not require disclosure? Is electronic disclosure of documents normal?

The term disclosure does not exist in the Cypriot legal order. The terms used are discovery and inspection of documents based on the Cyprus Civil Procedure rules which are identical to the English CPR of 1957.

As a result disclosure is not obligatory or overly extensive. The general rule is that any party in the proceedings may apply to the Court by an ex-parte application, to issue an order for the discovery and/or inspection of any documents, that he has/or had in his possession or in his control, in relation to the issues in dispute. Under the CPR rules, discovery of the documents must be on oath, and the inspection can take place anywhere the parties agree to do so. Making documents available by electronic means for the purpose of Court proceedings is sometimes used by the parties. However, such documents should always be submitted to the Court in paper.

It should be noted that should a discovery and/or inspection order be made by any court, the party to which it is addressed must comply and any documents not disclosed cannot be presented or relied upon by that party in the hearing of the claim.

5. What is the process for witness evidence (namely, is it deposition based in advance, or witness statement, or examination or cross-examination)? Can a witness be compelled to attend to give evidence?

Any person, who is requested by summons, issued either by the Court or by the party requiring such evidence, to appear before the court to give evidence, is obliged to appear at Court and make a witness testimony. The witness, prior to the giving of the evidence should give an oath that he/ she will testify the truth or make a written declaration to the same effect.

A witness can be compelled by the court to give evidence and/or produce documents, after a summons for witness has been issued either by the court itself or by the party requiring such evidence or documents and the summons has been duly served on the intended witness and the latter did not appear. If the witness does not appear, and gives no satisfactory explanation for not doing so, the court has the power to take legal measures against him.

According to the CPR rules, as a general rule, the witnesses at the trial of any action shall be examined orally and in open Court. The procedure by which evidence is given before the court by a witness is the three-stage procedure of examination in-chief, cross-examination by the opposite party, and re-examination.

Although, the general rule is that evidence by a witness is given orally, the Court may at any time for sufficient reason order that any particular fact may be proved by affidavit, or that the affidavit of any witness may be read at the hearing or trial. Moreover, according to the Law of Evidence (Cap. 9), the examination of a witness may be in the form of a written statement, which the witness shall read in the court on oath.

6. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties/counsel privileged (i.e: may not be disclosed to the court)?

Negotiations can take place both by correspondence and/or orally in the form of personal meetings, depending on the circumstances of the case. However, in general the choice of the negotiation means is left to the parties and their respective lawyers. In a case where the parties are represented by their lawyers, it is usual that any negotiation is conducted between the lawyers. It should be noted that any direct communication with the other's lawyer's client, without that lawyer's consent, is against the lawyers' rules of ethics and thus must be avoided. Nevertheless, the parties should inform the court of the outcome of the negotiations.

As a general rule, any correspondence exchanged in the course of negotiations for reaching a settlement is privileged and cannot be presented in court as evidence supporting or denying the allegations of either party, since the lawyers are bound by a duty of confidentiality in relation to any facts relating to their clients.

7. How can foreign judgments be enforced?

It should be noted that EC Regulation 44/2001 on Jurisdiction, recognition and enforcement of judgments in civil and commercial matters ("Brussels I"), has direct effect in the Republic of Cyprus. Therefore, judgments of courts of another EU Member State on civil and commercial matters can be enforced by the Courts of the Republic of Cyprus. However, it should be noted that the application of the above EC Regulation has only recently started to be enforced and much case law is anticipated on its interpretation in relation to domestic law.

As it regards foreign judgments from courts of a non-EU Member State, enforcement by the Courts of the Republic of Cyprus may be effected through the provisions of the Recognition , Registration and Enforcement of Foreign Judgments Law of 2000 (L. 121(I)/2000). This Law however, is only applicable if the foreign judgment is from a state which has signed a bilateral agreement with the Republic of Cyprus to that effect.

[LITIGATION ADR QUESTIONNAIRE – CYPRUS]

ARBITRATION

1. Are mediation clauses in commercial contracts binding and enforceable?

It is not common practice in Cyprus to insert mediation clauses in contracts. Arbitration clauses are much more common. At the moment, there is no legal framework in Cyprus regarding mediation in civil and commercial matters.

However, in case a mediation clause is inserted into a contract, it is of course binding as between the parties according to its terms.

2. What is the procedure for mediation? Is it a popular method for resolving commercial disputes?

Due to the absence of a legal framework regarding mediation as mentioned above, resolving by mediation is not yet common practice.

However, as a Member State of the EUROCY, Cyprus should transpose into its domestic legal order Directive 2008/52/EC, which is designed to facilitate the voluntary use of mediation in cross-border (as defined) civil or commercial disputes. It calls on the Member States to encourage and facilitate recourse to mediation (and development of such procedures at the national level if they do not already exist) and to put codes of conduct in place to ensure the quality thereof.

Such law, as already mentioned, has not yet been put into effect.

3. Are arbitration clauses in commercial contracts binding and enforceable?

According to the Arbitration Law (Cap.4), arbitration clauses in commercial contracts are binding and enforceable between the parties. Therefore, if the arbitration clause in a contract is clear and unequivocal and either party goes to court bypassing the arbitration clause, the court on the application of the opposing party may order a stay of proceedings and refer the matter to arbitration, in accordance with the provisions of the Arbitration Law Cap. 4.

The only exception to the rule that arbitration clauses are binding and enforceable is when allegations of fraud are made by either side, in which case the court may order that it hears the dispute, or the part of it, that relates to fraud.

4. What type of arbitration is commonly used for resolving commercial disputes: ad hoc arbitration or institutional arbitration?

For the resolution of commercial disputes ad hoc arbitration is commonly used, since there is no body in Cyprus for institutional arbitrations.

The Arbitration Law, Cap. 4, and the International Commercial Arbitration Law (L. 101/87), provide for one or two or three arbitrators or two arbitrators and one umpire, according to the wishes of the parties.

5. Which arbitration institutes are most popular?

Cyprus has a branch of the Chartered Institute of Arbitrators and a number of international arbitration centres which are less well known. However, commercial contracts signed in Cyprus or by a Cypriot party / parties may refer to institutional arbitration abroad, such as the London Court of International Arbitration (LCIA) of the International Chamber of Commerce (ICC). The largest number of local arbitrations are however contractual and governed by the local arbitration law Cap 4.

6. What influence can the parties have on the identity of the arbitrator(s)?

The parties decide the arbitrator(s)' identity. In case that the parties cannot decide on the identity of the arbitrator(s), the court may, on the application of either party, appoint an arbitrator(s).

7. In what language is an arbitration proceedings conducted?

Arbitration proceedings are conducted in whatever language it is agreed between the parties. It is usually Greek, but not necessarily so.

8. What types of pre-arbitration measures are available and what are their limitations?

Interim measures are available. Since arbitration is mostly ad hoc, even if there is an arbitration clause between the parties, and a dispute arises, the parties would have not yet agreed upon an arbitrator's identity and therefore may resolve to court for interim pre-arbitration measures. As mentioned above, however, a court case initiated by one party may be stayed on the application of the other party and referred to arbitration.

9. What are the costs of arbitration proceedings and who bears these costs?

The costs of the arbitrator(s) and who is to bear them are agreed in the arbitration agreement. However, the contract containing the arbitration clause or the agreement to refer disputes to arbitration must not contain a provision that each party shall pay its own costs; as such a provision is considered void by law. However, it shall not be considered void if it is contained in a separate agreement as to costs.

Most of the time, each party does pay its own arbitration costs.

10. What are the basic rules of document disclosure in arbitration? Which documents do not require disclosure?

Disclosure of documents and its extent is for the parties to decide.

11. What is the procedure for witness evidence in arbitration (namely, is it deposition based or witness examination or cross-examination)?

The choice of witness evidence is with the parties. They may decide between:

- Filing pleadings, in which case witness evidence will follow the examination – cross-examination – re-examination path.
- Filing a statement of case complete with evidence, in which case witness evidence will again follow the examination – cross-examination – re-examination path, if necessary.
- Conducting a documents only arbitration (more popular with construction disputes) in which case the parties forgo their rights for witness calling.

12. How are settlement discussions usually conducted (namely whether oral or written and whether between the parties direct or their representatives)? Is the settlement correspondence between the parties and/or counsel privileged (i.e., may not be disclosed to the Arbitrator)?

The choice of negotiation means is left to the parties and their respective lawyers.

Correspondence exchanged in the course of negotiations for settlement is, as a general rule, privileged and cannot be presented as evidence supporting or denying the allegations of either party.

13. Under what circumstances can an Arbitration Award be enforced, challenged or annulled?

An arbitration award becomes binding and enforceable as a court order once it is registered with the court according to the provisions of Cap. 4, and any other relevant law.

An arbitration award may be annulled if the arbitrator(s) or umpire show misconducts either himself or the proceedings or the award has been issued improperly.