

# Cyprus

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### 1 Formation of Contract of Sale

1.1 What are the formalities for the formation of a contract of sale under the laws of your country? Can a contract be made by exchange of emails/faxes? Is a signed or sealed contract needed? Can a contract made orally be enforced?

The formation of a contract of sale is like that of any other contract and adopts the same principles, which are:

- an offer and an acceptance;
- an intention to create legal relations;
- consideration;
- capacity to contract; and
- genuineness of consent by the parties to the terms of the contract.

The Sale of Goods Law No. 10(I)/1994, as amended, being the law which consolidates the principles relating to the sale of goods in Cyprus (the "Law"), expressly provides that subject to the provisions of any other law for the time being in force in Cyprus, a contract of sale of goods may be made in writing or orally, or partly in writing and partly orally or may be implied from the conduct of the parties.

A contract can also be made by exchange of emails/faxes. Therefore, unless expressly required by law, a signed or sealed contract is not needed.

1.2 Are there any limitations on the capacity of a party to enter into a contract of sale as seller or buyer? Are there any special limitations for signing a contract? Is the position different if the contract incorporates an arbitration agreement?

Although the Law does not specifically provide for limitations on the capacity of a party to enter into a contract of sale as seller or buyer, the Contract Law, Cap.149, as amended (the provisions of which apply to contracts for the sale of goods save in so far as they are inconsistent with the express provisions of the Law) provides that "contracts should be made, inter alia, by the free consent of parties **competent to contract**".

Every person is **competent to contract** who (a) is of sound mind and (b) is not disqualified from contracting by any law. The law in force in England for the time being relating to contracts to which an infant is a party, shall apply to

contracts to which a person who has not attained the age of eighteen years is a party.

A person is **said to be of sound mind** for the purposes of making a contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interests.

The capacity of a company is restricted to activities which are within the objects of the company contained in its Memorandum of Association. Thus, where the directors of the company (or any other person representing or having authority to bind the company) enter into a contract in relation to a matter which is not within the objects of the company, the said contract may be open to challenge.

There are no special limitations for signing a contract for the sale of goods. Neither the position is different if the contract incorporates an arbitration agreement.

1.3 Are there any sources that a party is advised to check to ensure that a contract of sale is authorised by the company?

It is always advisable for a party to check whether the company has the corporate power to enter into contracts of sale and whether the person who is to sign the contract on behalf of such company has the authority to bind it.

The objects/powers of a Cyprus company are set out in the objects clauses of such company's Memorandum of Association. Assuming that a company does have the power to enter into contracts of sale, then it is advisable for a party to be provided with the latest certificate of the directors of the company and/or to make a company search with the Registrar of Companies in Cyprus which will reveal (inter alia) the names the directors of the Company. It can therefore be ascertained whether the person who is to sign the contract has the power to bind the company. If the person signing the contract is not a director, it would be advisable to request for a written confirmation of authority signed by a director of the company or, if such a contract does not form part of the ordinary course of business of the company, for relevant directors' resolutions and power of attorney resolving and authorising the entry into and execution of such contract.

#### 1.4 How far are the principles of "freedom of contract" applicable? Should the parties to a contract of sale check restrictions under local law? Should they do so even if the sale contract is expressly subject to another legal system?

It is one of the fundamental rights under the Constitution of the Republic of Cyprus, that every person has the right to enter freely into any contract subject to such conditions, limitations or restrictions as are laid down by the general principles of the law of the contract. Such limitations could be, inter alia, factors such as incapacity, misrepresentation or illegality. Additionally, section 63 of the Law restricts, and in some instances negatives altogether, the freedom of parties to exclude or vary the terms implied into a contract of sale of goods in respect of title, quality, description, fitness of the goods etc. The parties to a contract of sale should check any restrictions under Cyprus law when the contract is subject to that law. It is advisable for the parties to do so, even if the sale contract is expressly subject to another legal system, because in case of court proceedings in Cyprus, Cyprus law will be applied if the parties fail by way of expert evidence to prove the applicable law under such other legal system.

## 2 Classification of Terms

### 2.1 How are the sale contract terms classified (i.e. important/less important terms) and what is the consequence of such classification?

The sale contract terms are divided into conditions, warranties and innominate (or intermediate) terms.

In general, a condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated and to claim damages. A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated. Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract and the intention of the parties. A stipulation may be a condition, but it may be called a warranty in the contract.

Innominate (or intermediate) terms are terms which the parties may have called conditions or warranties. The effect of these on the contract depends on how serious the breach has proved to be. If the breach was a serious one, the court will treat the term as a condition. If the breach was not so serious, the court may treat it as a breach of a warranty and the parties should proceed with the performance of the contract.

## 3 Validity of a Contract of Sale

### 3.1 Can misrepresentation affect the validity of a contract of sale?

Under Cyprus law, a contract should be made, inter alia, by the free consent of the parties. "Consent" is said to be "free" when it is not caused by, inter alia, misrepresentation.

Therefore when consent to an agreement is caused by

misrepresentation, the agreement is a contract, which is voidable at the option of the party whose consent was so caused. A party to a contract whose consent was caused by misrepresentation, may, if he thinks fit, insist that the contract should be performed and that he should be put in the position he would have been if the representations made had been true.

If such consent was caused by misrepresentation, the contract is nevertheless not voidable if the party whose consent was so caused had the means of discovering the truth by exercising ordinary diligence. A misrepresentation which did not cause the consent to a contract of the party, on which such misrepresentation was made, does not render a contract voidable.

### 3.2 Can illegality affect the validity of a contract of sale in your country?

Yes, where the element of illegality exists in a contract the Cyprus courts will intervene to prevent the enforcement of such an agreement even if, on its face, it has all the characteristics of a valid and binding contract.

Illegality can affect a contract in two ways, namely:

- illegality relating to the formation of the contract, i.e. where the contract is illegal at the moment of its creation. Such contracts are not enforceable by either party thereto, even if acting in good faith, because the parties are presumed to know the law and ought therefore to be aware that their acts would be unlawful; and
- illegality in the performance of an otherwise valid and enforceable contract, i.e. that the contract is valid at the time of formation but is rendered void when it is effected by the occurrence of illegality during its performance. If one of the parties was not aware that the contract was to be performed by the other in an unlawful manner or for an unlawful purpose (that is, if he was unaware of the facts constituting the illegality) then so far as he is concerned the contract is lawful and he is entitled to enforce rights accrued due up to the time when he discovers the illegality.

Section 10(1) of the Cyprus Contract Law Cap.149 (as amended), inter alia, provides that all agreements are contracts enforceable by law if they are made with the free consent of parties who are competent to enter into such agreement for **a lawful consideration and with a lawful object** and are not expressly declared to be void.

The consideration or object of an agreement is lawful, unless it (a) is forbidden by law; (b) is of such a nature that, if permitted, it would defeat the provisions of any law; (c) is fraudulent; (d) involves or implies injury to the person or property of another; or (e) the court regards it as immoral or opposed to public policy. In each of these cases, the consideration or object of an agreement is said to be unlawful.

Therefore, an agreement is void if its consideration, object and/or performance is unlawful.

### 3.3 What is the effect of bankruptcy or insolvency of a party on the validity of a contract of sale? Does a liquidator or other duly appointed insolvency officer have the power to set aside the contract?

Neither the subsequent bankruptcy nor insolvency of a party can cause the termination of a contract already made by the said party. A liquidator or other duly appointed insolvency officer has no power to set aside the contract.

An already bankrupt or insolvent party does not have the capacity to contract.

## 4 Passing of Property and Risk

### 4.1 What are the factors that determine whether and when title in goods passes from the seller to the buyer?

Where there is a contract for the sale of specific or ascertained goods, the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred. To discover the intention of the parties, one must look at the terms of the contract, the parties' conduct and the circumstances of the case. The Law contains a number of rules for ascertaining the intention of the parties as to the time at which the property is to pass to the buyer.

However, where there is a contract for the sale of unascertained goods, no property is transferred to the buyer unless and until the goods are ascertained.

### 4.2 Will the courts in your country apply local law or the law of the contract of sale to determine the issue as to which party has property over goods? Does the answer change if third parties (i.e. not parties to the contract of sale) are involved?

Generally as regards proprietary rights, the law governing particular transfers of title to goods, whether by sale, assignment or otherwise, is the law of the country in which the goods are situated at the time of the alleged passing of property, i.e. the *lex situs*.

However, it would seem that the *lex situs* rule may not be applicable in all circumstances; for example, where the goods are in transit and their situs is casual or not known.

As regards the position when third parties are involved, there are cases in which a third party has rights to sue in a contract of sale to which he is not a party, however whether the local law or the law of the contract will be applied depends on the circumstances of each case.

### 4.3 What are the factors that determine whether and when risk in respect of goods passes from the seller to the buyer? What (if any) is the relationship between the passing of risk of loss/damage in the goods and the passing of property?

Section 26 of the Law provides that unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not. But where delivery has been delayed through the fault of either the buyer or seller, the goods are at the risk of the party in fault as regards

any loss which might have occurred because of such fault. The ownership of the goods passes to the buyer before, at or after the time of their delivery.

Therefore, it is necessary to identify the precise time of the passing of the property in order to locate the risks in the goods.

Prima-facie the risk passes with the property. However, this is subject to several qualifications. First, it is displaced by contrary agreement between the parties. Secondly, even where risk is prima facie on one party, it may be shifted, wholly or partly, as the result of a fault by the other. Thirdly, where the seller is authorised to send the goods, the Law provides special rules for the risks of transit. Finally, section 26 of the Law does not in terms distinguish specific or ascertained goods from unascertained or quasi-specific goods. But the distinctions are material for they influence the passing of the property, which in turn affects the incidence of risk.

### 4.4 In what circumstances will the courts in your country give effect to a provision in the contract of sale that reserves or purports to reserve title or other rights over goods once the seller has parted with possession of the goods?

Section 25(1) of the Law, expressly provides that where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or of the appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled.

In such case, notwithstanding the delivery of the goods to a buyer or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

### 4.5 Is a provision that reserves title over the goods sufficient for legal title to the goods to remain vested in the seller notwithstanding the passing of risk on shipment?

The seller can reserve the legal title to the goods, until certain conditions stated in the contract of sale are met, notwithstanding that the goods are ascertained and have been appropriated to the contract.

### 4.6 In contracts for the sale of goods that form part of an identified bulk, can property be passed before the goods are separated from the bulk?

Yes, provided, inter alia, that the goods are ascertained. No ownership passes to the buyer unless and until the goods are ascertained.

## 5 Performance of the Contract of Sale

### 5.1 What is the place of delivery of the goods in the absence of any agreement, express or implied, between the parties?

In the absence of any agreement, express or implied,

regarding the place of delivery of the goods, goods sold are to be delivered at the place at which they are at the time of the sale, and goods agreed to be sold are to be delivered from the place at which they are at the time of the agreement to sell or if not then in existence, at the place at which they are manufactured or produced.

### 5.2 What is the time of delivery of the goods in the absence of any agreement, express or implied, between the parties?

Where under the contract of sale the seller is bound to send the goods to the buyer but no time for sending them is fixed, the seller is bound to send them within a reasonable time. Demand or tender of delivery may be treated as ineffectual unless made at a reasonable hour. What is a reasonable hour is a question of fact.

### 5.3 What is the place of payment of the price for the goods where no place of payment is specified in the contract?

Where no place of payment is specified in the contract or can be implied from the terms of the contract and from the intention of the parties, it has been said to be a general rule that the place of payment of the price of the goods is usually made at the seller's place of business, if he has one, or if not, his residence.

### 5.4 If no time of payment is specified in the contract of sale, what is the time at which payment is to be made?

Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

### 5.5 In determining the duties of the parties in C&F, FOB, CPT and similar contracts, will the "INCOTERMS" publication by ICC be followed in determining which party does what?

Generally, the "INCOTERMS" will be followed if the parties to a contract of sale make the contract subject to "INCOTERMS" by expressly incorporated them into the contract. However, "INCOTERMS" still give a useful guide as to what the parties intended by incorporation of the "CIF"/"FOB" etc. label to their contract.

## 6 Frustration of the Contract of Sale / Force Majeure

### 6.1 Is there a doctrine of force majeure or a similar doctrine under local law? In what circumstances may a contract of sale be frustrated or be subject to force majeure?

The Law, in addition to preserving the general rules of the English Common Law principles (where there is no Cypriot legislation if force) including rules as to frustration, contains

two specific provisions - sections 7 and 8 - dealing in particular with the perishing of specific goods before the property in them has passed to the buyer.

Section 7 provides as follows: "Where there is a contract for the sale of specific goods, the contract is **void** if the goods without the knowledge of the seller have at the time when the contract was made, perished or become so damaged as no longer to answer to their description in the contract".

Section 8 provides that where there is an agreement to sell specific goods and subsequently the goods without any fault on the part of the seller or buyer, perish or become so damaged as to no longer answer to their description in the agreement before the risk passes to the buyer, the agreement is **thereby avoided**.

Where sections 7 and 8 do not apply and the risk has not passed to the buyer, the common rules of frustration are free to assert themselves; and these may come into play not merely because the goods perish but because of some other unforeseeable event undermining the basis of the contract.

Under Cyprus law, although the common rules of frustration of contracts are applicable, there is no legal doctrine of *force majeure* which can be applied without an appropriately worded *force majeure* clause in the contract of sale.

### 6.2 What are the consequences of frustration or force majeure on a contract of sale?

As stated in above under question 6.1, if section 7 of the Law applies the contract is **void**. If section 8 of the Law applies, then the contract of sale is **avoided**. The word "avoided" may be interpreted as "terminated" so that when the goods perish, the contract comes to an end, discharging the parties from performance of future obligations without disturbing accrued liabilities.

The effect of the doctrine of frustration in Common Law is the immediate end of the contract. The frustrating event in a contract brings it to an automatic end and discharges both parties from their obligations. Nevertheless, frustration does not render a contract void *ab initio*; all the obligations arising from the contract prior to the frustrating event remain unaffected.

As regards '*force majeure*', the effect depends on the terms of the force majeure clause in the contract.

## 7 Remedies of the Parties

### 7.1 What are the remedies of the buyer against the seller in respect of goods delivered in breach of a contractual term as to (a) quality (b) condition (c) quantity or (d) description?

The remedies of the buyer depends on whether statements made in relation to the quality, condition, quantity and description of the goods, are either (a) conditions, the breach of which could give rise to the right of termination of the contract and of rejection of the goods; or (b) warranties, the breach of which could give rise to a claim for damages.

Where there is a breach of warranty by the seller or where the buyer elects or is compelled to treat any breach of a condition on the part of the seller as a breach of warranty, the buyer is not by reason only of such breach of warranty entitled to reject the goods; but he may:

- (a) set up against the seller the breach of warranty in diminution or extinction of the price; or
- (b) sue the seller for damages for breach of warranty.

Additionally as regards the quantity of the goods, where the seller delivers to the buyer a quantity of goods less than he contracted to sell, the buyer may reject them but if the buyer accepts the goods so delivered he shall pay for them at the contract rate. Where the seller delivers to the buyer a quantity of goods larger than he contracted to sell, the buyer may accept the goods included in the contract and reject the rest or he may reject the whole. If the buyer accepts the whole of the goods so delivered, he shall pay for them at the contract rate. Where the seller delivers to the buyer the goods he contracted to sell mixed with goods of a different description not included in the contract, the buyer may accept the goods which are in accordance with the contract and reject the rest, or may reject the whole.

In addition to the above remedies, the buyer has the right to recover interest or special damages in any case where by law interest or special damages may be recoverable or to recover the money paid where the consideration for the payment of it has failed.

#### 7.2 What remedies does the buyer have against the seller for non-delivery of the goods?

Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery.

The measure of the buyer's damages is the estimated loss directly and naturally resulting, in the ordinary course of events, from the seller's breach of contract, although the buyer has a duty to take reasonable steps to mitigate his losses.

#### 7.3 Does the buyer have any remedies against the seller for delay in delivery of the goods?

If the contract expressly provides a term for the time for delivery and this term is considered to be a condition, a late delivery of the goods may give the right to the buyer to reject the goods and claim damages.

If the term for the time of delivery is or is treated as a "warranty", the buyer is entitled to bring a claim against the seller for damages for delay in delivery. The buyer should be put into the financial position he would have been in if the seller had fulfilled his contractual obligation with regard to the time for delivery of the goods.

#### 7.4 What are the main remedies of an unpaid seller against the buyer? Does the unpaid seller have any rights over the goods themselves?

Section 47 of the Law provides that notwithstanding that the property in the goods may have passed to the buyer, the unpaid seller of goods has the following remedies against the goods:

- a lien on the goods for their price while they are still in his possession;
- in case of insolvency of the buyer, a right to stop the goods in transit after the goods ceased to be in his possession; and

- a right to resell the goods in accordance with the provisions of the Law.

Where the property in goods has not passed to the buyer, the unpaid seller has, in addition to his other remedies, a right of withholding delivery similar to and co-extensive with his rights of lien and stoppage in transit where the property has passed to the buyer.

The above remedies are available to the seller in addition to his right to sue the buyer for the price and for damages for non acceptance as a form of security for payment of the price and as a form of preference of the seller over the general creditors of a bankrupt buyer.

## 8 Assessment of Damages

### 8.1 Are there any general rules which are used to decide what types of losses caused by a breach of contract may be recovered by the innocent party by way of damages?

Generally, every breach of a valid and enforceable contract provides the innocent party with a right to recover damages in relation to the loss he has suffered as a result of the breach. The aim of an award of damages is to put the plaintiff in the position which he would have been in had the contract been performed according to its terms.

Damages cannot be recovered where the loss which the plaintiff has suffered is too remote as a consequence of the defendant's breach of contract. The general rule is that a loss is not too remote if it was within the reasonable contemplation of both parties at the time of entry into the contract.

Additionally, a plaintiff will not be in a position to recover damages relating to loss suffered if he cannot establish a causal link between his loss and the defendant's breach of contract. It is not essential that the defendant's breach is the only cause of loss, but it must be one which causes loss to the plaintiff.

In calculating the damages, the court will take into account whether the plaintiff took all reasonable steps to mitigate or minimise his losses. The normal rule for the assessment of damages assumes that the innocent party should act immediately upon the breach and buy or sell in the market if there is an available market.

### 8.2 What is the relevant date for the assessment of damages?

The court will award and assess damages as at the date of the breach of the contract. If the breach was not known to the plaintiff, damages will be assessed as at the date on which the plaintiff could, by exercising due diligence, have discovered the breach.

### 8.3 Is the innocent party under any duty to mitigate its losses consequent on a breach of the contract of sale? If so, what is the extent of that duty?

The innocent party is under a 'duty' to mitigate his loss. There are two aspects to the mitigation doctrine: (i) the injured party must take all reasonable steps to mitigate his loss; the injured party is not required to take any steps which

a reasonable and prudent man would not ordinarily take in the course of his business; he is only obliged to take reasonable steps to minimise his loss; and (ii) the injured party must not unreasonably incur expense subsequent to the breach of contract.

## 9 Instalment Contracts

### 9.1 Can a breach of one or more instalments entitle the innocent party to terminate the balance of the contract of sale?

Where there is a contract for the sale of goods to be delivered by stated instalments which are to be separately paid for and the seller makes no delivery or makes defective delivery in respect of one or more instalments or the buyer neglects or refuses to take delivery or pay for one or more instalments, it is a question in each case depending on the terms of the contract and the circumstances of the case, whether the breach of contract is a repudiation of the whole contract, or whether it is a severable breach giving rise to a claim for compensation but not to a right to treat the whole contract as repudiated.

### 9.2 Can the innocent party legitimately demand some guarantee of future correct performance?

Unless both parties agree on the granting of some form of guarantee of future correct performance, the innocent party cannot demand such guarantee.

## 10 Assignment

### 10.1 Can a contract of sale be assigned by one party without the permission of the other? If so, is notice required?

Unless expressly prohibited or restricted under the relevant contract of sale, the rights of either party thereunder are in general capable of being assigned to third parties.

However, as a general rule, obligations of a party to a contract of sale cannot be transferred except with the consent of all of the contracting parties.

## 11 Sources of Law Relating to Sale of Goods

### 11.1 What is the main source of the law relating to the sale of goods?

As already stated, the Sale of Goods Law of 1994, as amended (Law No. 10(I)/1994), which consolidates the law relating to the sale of goods, is the main source of the law on the matter. It applies to contracts for the sale of all types of goods namely to all kind of movable property other than things in action and money; "goods" include debentures and shares, emblements, crops and things attached to or forming part of land which are agreed to be severed before sale or under the contract of sale.

As Cyprus is a party to the Vienna Convention on Contracts

for International Sale of Goods, a Cypriot party will be bound by the terms and conditions of the said Convention if contracting with another party of a foreign state which is also a contracting party to that Convention.

### 11.2 Is the Vienna Convention on Contracts for International Sale of Goods applicable in your country?

The Vienna Convention on Contracts for International Sale of Goods has been ratified by the Republic of Cyprus by the Ratification Law No. 55(III)/2004 and is therefore applicable in Cyprus.

### 11.3 Are clauses exempting or excluding liability of a party to a contract of sale effective?

Clauses exempting or excluding liability of a party to a contract of sale are not always effective. The Law makes restrictions on the freedom of the parties to fix the terms of their own bargain (see also answer to question 1.4).

## 12 Conflict of Laws

### 12.1 What are the rules relating to the law application to the contract of sale in your legal system?

Generally, the issues that the courts of the Republic of Cyprus will look at when determining claims arising out of a contract of sale are contractual and proprietary issues.

The contractual issues refer to the "proper law of the contract". "The proper law of the contract", is the law which the parties intended to apply to their contract.

The proper law is discerned as follows:

- (i) where the parties have expressly chosen the law by which they wish their contract to be governed, this will be the proper law;
- (ii) where no express choice has been made in words, the intention is to be inferred from the terms of the contract and the surrounding circumstances; and
- (iii) where no express choice has been made and the intention cannot be inferred, the proper law will be the law with which the transaction has its closest and most real connection.

Proprietary issues are generally referred to the law of the country where the goods are situated at the relevant time i.e. the *lex situs*. Please see answer to question 4.2 above.

### 12.2 If the parties to an international contract of sale have not expressly chosen the law which will govern the contract, what factors will determine which law is applied?

Where the parties have not expressly or impliedly chosen the law which will govern the contract, the courts of the Republic of Cyprus will have regard to matters such as (without limitation) where the contract is most closely connected to, the country in which performance is to take place, the language in which the contract is written, the currency to be used in performance of the contract and the country in which the parties are resident.

**12.3 Are any limitations imposed on the freedom of the parties to choose the law governing a contract of sale?**

Generally, when the parties expressly agree on the law which will govern the contract of sale, that law is usually followed by the courts of the Republic of Cyprus provided of course that the law chosen by the parties must be the law of a country, in the sense of a recognised and definable body of national law rules.

There are certain exceptional situations in which a court of the Republic of Cyprus will refuse to apply the law of a foreign country, such as where the results of the application would be contrary to the fundamental public policy of Cyprus law.

## 13 Warehousing and Storage

**13.1 What is the legal effect, if any, of a warehouse receipt or a warrant under the laws of your country? Are they documents of title?**

A warehouse receipt or warrant constitutes a document of title. Such documents may entitle the party named therein or the last endorsee thereof or the assignee to delivery of the goods specified therein.

**13.2 If not, how is title over goods held in storage transferred and proven?**

Please see answer to question 13.1 above.

**13.3 Is it necessary to register an interest in goods in order to protect such interest against third party claims or interests? Are there any steps that you advise the owner of bulk goods to take in order to safeguard its title over goods whilst in storage?**

The answer to the question depends on the type of interest in the goods. Please see answer to question 13.5 below.

**13.4 Are there any other interests over moveable goods that the laws of your country will recognise? For example, a pledge or a charge?**

Cyprus Law recognises "a pledge" and "a charge" over moveable goods.

"A pledge" of goods is a bailment of goods as security for payment of a debt or performance of a promise. The pledgee may retain the goods pledged, not only for payment of the debt or the performance of the promise but for the interest of the debt and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged. If the pledgor makes default in payment of the debt or performance at the stipulated time of the promise in respect of which the goods were pledged, the pledgee may bring legal proceedings against the pledgor upon the debt or promise and retain the goods pledged as a collateral security; or he may sell the thing pledged on giving the pledgor reasonable notice of the sale.

"A charge" gives neither ownership to nor possession of the goods but gives a right to the chargee to have specified

property of the debtor applied to the discharge of the debt.

**13.5 If so, how are such interests created? Is it necessary to protect them by registration?**

A pledge over goods can be created by an oral agreement coupled with the physical delivery of the goods to the pledgee, except in the case of a pledge of bills of exchange, promissory notes, bonds (whether in customary form or not, other than those secured by mortgage or immovable property), share certificates or share warrants for shares in a company (as security for payment of a debt or performance of a promise), which shall not be valid and enforceable unless the contract of pledge is expressed in writing, is signed at the end thereof by the pledgor and is made in the presence of at least two witnesses themselves competent to contract and subscribed by them with their names as witnesses.

A pledge or charge given by a company, so far as any security on the company's property or undertaking is conferred thereby, shall be void against the liquidator and any creditor of the company unless the prescribed particulars of the charge together with the instrument, if any, by which the charge is created or evidenced, are delivered to the Registrar of Companies for registration in the manner required by the Cyprus Companies Law, Cap.113 (as amended).

It is advisable, in practise, for the security interests to be evidenced in writing.

**13.6 In relation to all of the questions at paragraphs 13.1 to 13.5 what if anything is the effect upon title or other security interests of co-mingling the relevant goods with other goods?**

A party's security is reduced in case of co-mingling the relevant goods with other goods. The ability of the party to pledge or charge his goods, is reduced.

## 14 Enforcement of Awards

**14.1 Are Awards of arbitration in respect of contracts for the sale of goods recognised under the laws of your country?**

Yes. Awards of arbitration made in Cyprus in respect of contracts for the sale of goods are recognised and are enforceable under Cyprus law.

As the Republic of Cyprus is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards (1958), Cyprus is bound to enforce awards made in foreign states which are contracting parties to that Convention.

**14.2 If so, what is the process for enforcement and approximate time scale?**

A domestic arbitration award can be enforced by registration and recognition as a court judgement, subject and pursuant to the Arbitration Law, Cap.4 (as amended). This can be effected by an application by summons filed by the award creditor with the Registry of the Court of the District where

the award debtor has his residence. The award debtor has the opportunity to oppose the registration and enforcement of the arbitration award by raising a limited number of grounds of defence concerning the validity of the award.

The enforcement of a foreign arbitration award can be effected by the filing of an application by summons by the award creditor at the competent District Court, requesting the recognition and enforcement of the award. The application must be served on the award debtor and must be supported by an affidavit together with the documents referred to in the New York Convention. The award debtor

has the right to appear at the first hearing of the application and to oppose the registration of the award.

When permission of the award recognition is given, the award may be enforced in the same manner as a judgment or order of a Cyprus court. All the methods of execution of Cypriot court judgments are available.

The time scale is usually up to two months depending on whether the respondent wishes to oppose the registration and enforcement of the award or whether all the relevant documents requested either by the local law or the New York Convention are in order.



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Sofi studied law at the University of Leicester whereby she obtained her LL.B. (Hons) in 1995. She was called to the English Bar (Lincoln's Inn) in 1996 and was admitted to the Cyprus Bar in 1997. She is a member of the Honourable Society of Lincoln's Inn, Limassol Bar Association, Cyprus Bar Association and of the International Bar Association.

Since 1997, she has practiced as an advocate in Cyprus and has dealt with and gained considerable knowledge and experience in relation to company law, admiralty, corporate, commercial, international trade and banking law.

In 2005, she joined Chrysses Demetriades & Co. and since then she has been involved in a wide range of ship finance work acting for banks or ship owners in connection with the financing of new buildings and the sale and purchase of vessels, in drafting and negotiating financing agreements and security documents in relation to a wide range of financing arrangements.

She has attended various international conferences. She has been a speaker in international conferences and has authored several articles on company law and banking law.



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Marion joined the firm in 2001 and became a partner in 2003. Prior to joining the firm she practiced as an advocate in Cyprus during 1987-1992 and gained wide experience in general litigation predominantly in relation to commercial law, admiralty, banking and criminal law cases, having made appearances before District Courts, the Supreme Court in its original and appellate jurisdiction and Assize Courts. As from January 1993 until May 2001 she was appointed and served as a District Court Judge dealing with cases in both civil and criminal jurisdiction. She was twice elected as the Secretary of the Cyprus Judges Association and served from that position for three years. She was appointed by the Supreme Court of Cyprus and represented the Cyprus judiciary at two conferences of the International Association of Women Judges (IAWJ) and once again appointed by the Supreme Court of Cyprus as a speaker at a Judge's conference organised by the Supreme Court of Cyprus. As from June 2001 she returned to advocacy and joined Chrysses Demetriades & Co. and since then she has been involved in a wide range of ship finance work acting for banks or ship owners in connection with the financing of new buildings and the sale and purchase of vessels. Academic qualifications: University of Kent at Canterbury, B.A. (Hons), 1984; Cambridge University, LL.M. in Commercial Law, 1985. Called to the English Bar (Middle Temple), 1986. Admitted to the Cyprus Bar in 1987.



Chrysses Demetriades & Co. was founded in 1948 by the late Chrysses Demetriades. It is the largest law firm in Cyprus having its main office in Limassol, Cyprus and associated offices in Nicosia, Cyprus and in Piraeus, Greece.

Chrysses Demetriades & Co. is an international legal practice firm which provides a comprehensive range of legal services predominately to the business and financial sectors. Its clients include some of the largest multinational organisations involved in banking, finance, shipping, investment, insurance, fund management, telecommunications, computer technology, media and entertainment. The firm also acts for public and private Cyprus companies from all sectors of industry, the Cyprus government and a number of foreign governments.

The growth of the firm in both size and specialisation has enabled it to develop expertise in the full range of legal disciplines required to provide effective and sophisticated advice to businesses in all sectors. The firm is organised into the following specialised legal departments:

- Company and Commercial
- Shipping
- Litigation (Civil and Criminal cases)

The firm's lawyers are supported by an experienced team of paralegals and other technical staff working with the latest management and information systems available today. Chrysses Demetriades & Co.'s continuing investment in human and technological resources, together with its highly developed network of international contacts, underpin the firm's ability to deliver the consistent level of high quality service on which its success to date has been founded.