Written by leading practitioners in the field, this fifth edition of *Arbitration World* provides readers with a single reference guide to over 50 different arbitration regimes and institutions around the world.

Arbitration World provides an informative, comparative and balanced overview of the key issues and is an essential resource for parties and lawyers engaged in arbitration, or considering arbitration as an option.

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General Editors: Karyl Nairn QC & Patrick Heneghan
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FOREWORD

Karyl Nairn QC & Patrick Heneghan | Skadden, Arps, Slate, Meagher & Flom (UK) LLP

We are delighted to have been invited once again by Thomson Reuters to edit this fifth edition of *Arbitration World*, published by its widely recognised legal arm, Sweet & Maxwell (and forming part of their new *International Series*).

Following the success of the previous publication, we are hoping that this revised and extended fifth edition will serve as an invaluable reference guide to the key arbitration jurisdictions, rules and institutions across the globe.

In the three years since the last edition was published, the arbitral landscape has continued to evolve, with important developments in both the law and practice of arbitration. For example, new arbitration centres have opened in New York, Seoul, Moscow and Mumbai; established institutions such as the LCIA, AAA, HKIAC, ICDR, SIAC, VIAC, UNCITRAL and WIPO have published revised arbitration rules; new arbitration legislation has been enacted in Hong Kong, Australia, Belgium and Austria; while other jurisdictions, such as India, have sought through case law to improve their "arbitration-friendly" credentials.

The global status and popularity of arbitration has also grown since the last edition of *Arbitration World*. From 2012 to 2014, ICSID saw the highest annual number of filings in its history, notwithstanding the criticisms in certain quarters about the legitimacy of the existing system of investment treaty arbitration. Arbitration is also extending its global reach – arbitral institutions are reporting that the parties to arbitration are more diversified than ever; 156 state parties have now adopted the New York Convention.

To reflect this trend of expansion, we have continued to broaden the scope of *Arbitration World*. This latest edition has 55 chapters, including 38 jurisdictions and 16 arbitration institutions. We feature 11 new chapters, comprising Belgium, Cayman Islands, Colombia, Egypt, Korea, Malta, Peru, Scotland and the arbitral institutions of CIETAC, SIAC and the SCC.

Arbitration World aims to provide a simple and practical guide to arbitration law and practice for parties and practitioners, enabling its readers to assess the comparative benefits and challenges of arbitrating in various jurisdictions and/or under the auspices of different institutions.

We should like to take this opportunity to express our gratitude to all the authors of *Arbitration World*, old and new. The popularity of this publication is testament to the quality and expertise of the leading law firms, practitioners and institutions who have committed their time to the project.

We should also like to thank Emily Kyriacou and her team at Thomson Reuters, including Katie Burrington, Nicola Pender and Chris Myers, for their superb management and coordination efforts. We also extend our gratitude to Michele O'Sullivan for commissioning the project all those years ago.

Finally, we wish to pay tribute to our hard-working colleagues at Skadden, Gulnaar Zafar, Ben Jacobs, Sabeen Sheikh, Bing Yan, Anna Grunseit, Judy Fu, Nicholas Lawn, Kam Nijar, Laura Feldman, David Edwards, Ekaterina Churanova, Calvin Chan, Ross Rymkiewicz, Catherine Kunz, Melis Acuner, Emma Farrow, Devika Khopkar, Sara

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Patrick Heneghan and Karyl Nairn QC, July 2015

CYPRUS

Katia Kakoulli & Polyvios Panayides | Chrysses Demetriades & Co LLC

1. EXECUTIVE SUMMARY

1.1 What are the advantages and disadvantages relevant to arbitrating or bringing arbitration-related proceedings in your jurisdiction?

- The Cyprus International Commercial Arbitration Law (Law 101/1987) (the ICA Law) follows the UNCITRAL Model Law on International Arbitration 1985 (the UNCITRAL Model Law) and is considered to be very workable in practice. The ICA Law applies to international commercial arbitrations in Cyprus (as outlined below).
- The Cypriot courts apply a presumption in favour of an agreement to resolve disputes by arbitration for cases falling within the scope of the domestic arbitration law, which comprises Chapter 4 of the codified laws of Cyprus and is known as Cap.4. Cap.4 operates in parallel with the ICA Law's governance of international commercial arbitrations, in respect of which there is a legal obligation to refer disputes to arbitration provided that the arbitration agreement is found to be valid.
- The Cypriot courts are able and willing to issue interim relief in aid of arbitration proceedings and often exercise this power in practice, in particular in the context of foreign international commercial arbitration cases.
- Cap.4 needs to be modernised so as to primarily limit the current ability of the parties to have recourse to the courts for a variety of issues affecting pending or anticipated arbitration proceedings. Major stakeholders are currently pushing for legislative changes aimed in this direction.
- Cypriot courts generally adopt a pro-enforcement approach to the recognition and enforcement of foreign arbitral awards, but there is scope for improvement, in particular with regard to certain requirements under the applicable procedural regime.

1.2 How would you rate the supportiveness of your jurisdiction to arbitration on a scale of 1 to 5, with the number 5 being highly supportive and 1 being unsupportive of arbitration? Where your jurisdiction is in the process of reform, please add a + sign after the number

3+.

2. GENERAL OVERVIEW AND NEW DEVELOPMENTS

2.1 How popular is arbitration as a method of settling disputes? What are the general trends and recent developments in your jurisdiction?

It is fair to say that Cyprus has not yet reached its actual potential in terms of resolving commercial disputes by arbitration. This is especially the case in relation to disputes with an international dimension, which currently occupy a large part of the workload of the Cypriot courts.

Even in purely national commercial disputes, arbitration is not yet widely considered as a real alternative to litigation. Construction disputes constitute an exception to this, with arbitration being widely used and perceived as offering a real alternative to litigation in practice.

The position of Cyprus as a well-established shipping and international corporate services centre, its strategic location and its legal framework arguably bestow Cyprus with the capability to further develop itself as an international arbitration centre.

Interest in arbitration in Cyprus has grown over the last decade due to the enhancement of the role of Cyprus as an international financial centre. However, further efforts are needed at the practical level in order to encourage all stakeholders to suggest and use arbitration more often in both national and international disputes. The recent establishment of two new dispute resolution centres is certainly a positive development. These are the Cyprus Arbitration and Mediation Centre (CAMC) and the Cyprus Dispute Resolution and Arbitration Centre (CEDRAC).

The Cyprus Chamber of Commerce and Industry (CCCI) plays an important role in promoting arbitration to its members as an alternative to litigation and in facilitating arbitrations taking place in Cyprus. The President of the CCCI is willing to appoint arbitrators pursuant to the terms that are agreed between the parties to a dispute and, in addition, the CCCI can provide facilities and administrative support to arbitration proceedings taking place in Cyprus. The Cyprus National Committee of the International Chamber of Commerce (ICC), which is affiliated to the CCCI, is also often asked by the International Court of Arbitration to propose Cypriot arbitrators to arbitrate in ICC arbitration cases.

The Cyprus Scientific Technical Chamber (the ETEK) also plays a prominent role in construction arbitrations through the exercise of its statutory powers pursuant to section 5 of the ETEK Law (Law 224/1990). In particular, the ETEK promotes the use of arbitration among its members and the public in general, as well as supporting arbitration proceedings both through the appointment of arbitrators from its approved panel and by providing assistance (such as arbitration rules, codes of ethics, or administrative support and facilities) through the ETEK Arbitration Centre.

Furthermore, the Cyprus branch of the Chartered Institute of Arbitrators (CIARB) has been operating in Cyprus since 1995. It is currently involved with the provision of arbitration training to Cypriot legal and other practitioners, and is in the process of finalising its own rules and scheme for the appointment of arbitrators for arbitrations taking place in Cyprus.

2.2 Are there any unique jurisdictional attributes or particular aspects of the approach to arbitration in your jurisdiction that bear special mention?

An important feature of Cyprus arbitration law is the divide that exists between "domestic" and "international" arbitrations.

Domestic arbitrations are governed by Cap.4, whereas international commercial arbitrations are governed by the ICA Law. The latter legislation implements the provisions of the UNCITRAL Model Law into the Cypriot legal system.

This distinction follows from section 2(2) of the ICA Law, which expressly sets out the scope of the ICA Law by listing criteria for the application of the ICA Law that includes whether:

- The place of business of the parties at the time of the conclusion of the agreement were in different countries.
- The place of the arbitration differs from the place of business of the parties.
- The place of performance of a major part of the obligations of the parties under the agreement governing their legal relationship is in a country other than the place of business of the parties.
- The parties have explicitly agreed that the object of the dispute relates to more than one state.

The regime under the ICA Law is limited to international commercial arbitrations, whereas the scope of Cap.4 is not expressly restricted to commercial disputes.

In accordance with the case law of the Supreme Court of Cyprus, if an arbitration case is considered to be international, then only the ICA Law will apply. At the same time, the ICA Law clarifies explicitly that Cap.4 remains applicable for arbitrations falling outside the scope of the ICA Law.

2.3 Principal laws and institutions

2.3.1 What are the principal sources of law and regulation relating to international and domestic arbitration in your jurisdiction?

As noted above, the legislative framework in Cyprus distinguishes between domestic arbitration and international commercial arbitration.

The ICA Law in reality incorporates the system envisaged by the UNCITRAL Model Law. In 1979, Cyprus also ratified the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention), by Law 84/1979.

The Courts of Justice Law (Law 14/1960) also provides for the discretionary power of the courts to refer a matter for adjudication by an arbitrator. Finally, the Limitations Law (Law 66/2012) also regulates some arbitration-related issues (as outlined below).

2.3.2 Which are the principal institutions that are commonly used and/or government agencies that assist in the administration or oversight of international and domestic arbitrations?

As noted above, the CCCI traditionally assists in the conduct of arbitrations and may agree to act as an appointing authority in domestic and international *ad hoc* arbitrations conducted in Cyprus. The ETEK has played an important role in construction disputes for the last few decades, and is both widely accepted and supported by the construction community in Cyprus.

It remains to be seen whether the above-mentioned newly created arbitration centres (i.e CAMC and CEDRAC) will become more established and whether their caseloads will increase in future years.

2.3.3 Which courts or other bodies have judicial oversight or supervision of the arbitral process?

Under the ICA Law, Cap.4 and the Courts of Justice Law, the district courts of the Republic of Cyprus have judicial oversight in the first instance of arbitral processes taking place in Cyprus. In cases where it is permitted to appeal a decision of the district court, relevant issues may also be brought before the Supreme Court.

3. ARBITRATION IN YOUR JURISDICTION – KEY FEATURES

3.1 The appointment of an arbitral tribunal

3.1.1 Are there any restrictions on the parties' freedom to choose arbitrators?

There are no restrictions on the parties' freedom to choose arbitrators.

Cap.4 contains a number of provisions about the appointment of arbitrators to domestic arbitrations in sections 9–15. More specifically, a party may make a court application seeking to annul an appointment on the basis of bias. If the parties fail to agree on the appointment of an arbitrator or if the arbitrator fails to take office, there are also various provisions providing for a court procedure that might be of assistance.

With regard to international commercial arbitrations, section 10 of the ICA Law provides that the parties are free to choose the number of arbitrators; whilst section 11 provides that, in the absence of agreement to the contrary, anybody may be appointed as an arbitrator irrespective of their nationality and that the parties are free to choose the procedure for arbitrator appointment. Section 10(2) further provides that, if the parties fail to specify the number of arbitrators, then the tribunal shall be comprised of three arbitrators.

3.1.2 Are there specific provisions of law regulating the appointment of arbitrators?

In Cap.4 there are a number of provisions dealing with the different aspects of the appointment of arbitrators in domestic arbitrations (for example, in sections 7 and 10–15). Part III of the ICA Law regulates the appointment and composition of the arbitral tribunal in international arbitrations.

3.1.3 Are there alternative procedures for appointing an arbitral tribunal in the absence of agreement by the parties?

As regards international commercial arbitrations, the general rule pursuant to section 11 of the ICA Law is that the parties are free to agree on the procedure that will govern the appointment of arbitrators. If the parties do not agree on the procedure, the ICA Law envisages the following appointment procedures:

- If the parties agreed to have three arbitrators, each of the parties shall appoint one arbitrator and these two arbitrators will appoint the third. If one of the parties fails to appoint an arbitrator within 30 days after a notice by the other party, or if the two arbitrators fail to appoint the third arbitrator within 30 days of their own appointment, then the competent district court may make the appointment following an application by one of the parties.
- If the parties agreed to appoint only one arbitrator but fail to agree on the appointment of a specific person as that arbitrator, the district court may appoint the arbitrator following an application by one of the parties.

In the event that, in the course of an agreed procedure for the appointment of arbitrators, one of the parties or a third party (including an arbitration organ) fails to act in accordance with the agreed procedure (or if the parties or the two arbitrators fail to reach an agreement that the agreed procedure envisages) then, following the application of a party, the courts may themselves take the necessary step. However, as further provided by section 11(4) of the ICA Law, the courts will not interfere with the appointment process if the procedure agreed between the parties provides for an alternative means of securing the appointment of the arbitrator(s).

Where the courts make an appointment pursuant to the ICA Law, they should take into account the qualifications that the arbitrator(s) should possess, the need to ensure the impartiality of the arbitrator(s) and the need to appoint arbitrator(s) of a nationality different from that of the parties.

When the matter falls within the remit of the domestic arbitration law, section 10 of Cap.4 lists various situations and provides that, if any of those situations arise, then one of the parties may serve upon the other or the arbitrators a notice for the appointment of an arbitrator or umpire (as appropriate). If the relevant appointment is not made within seven days of such notice, then either of the parties may apply to the court to request that the relevant appointment is made.

The specific situations listed in section 10 are the following:

- If the parties fail to appoint the arbitrator ab initio.
- If the arbitrator initially chosen cannot fulfil his or her obligations and the parties do not choose a replacement arbitrator.
- If there needs to be an umpire or three arbitrators, and the parties either fail to appoint him or her or they appoint the two arbitrators who in turn fail to appoint the third arbitrator or umpire.
- When a third arbitrator or umpire is not appointed either by the parties or by the two already appointed arbitrators in substitution of an arbitrator or umpire who cannot fulfil his or her obligations.

3.1.4 Are there requirements (including disclosure) for "impartiality" and/or "independence" and do such requirements differ as between domestic and international arbitrations?

In respect of domestic arbitration procedures under Cap.4, there are no explicit independence or impartiality requirements; nor are there obligations to make disclosures of interests. However, it is possible for any of the parties to have recourse to the court pursuant to section 9 of Cap.4 on the grounds of lack of impartiality, with the result that requirements for impartiality and independence are clearly implied by the domestic arbitration law.

As regards international arbitrations, section 12(1) of the ICA Law provides that any potential arbitrator should make known anything which may reasonably create suspicions regarding his or her impartiality and independence when he or she is offered the position, also providing that this obligation applies throughout the arbitration procedure. Section 12(2) of the ICA Law further provides that the removal of an arbitrator may be proposed by one of the parties if there are facts which may constitute a reasonable suspicion regarding the impartiality and independence of the arbitrator (per the process outlined below).

3.1.5 Are there provisions of law governing the challenge or removal of arbitrators?

Sections 12 and 13 of the ICA Law provide for the process of removal of arbitrators in international commercial arbitrations. Under section 12(2), the removal of an arbitrator may be proposed only for reasons of lack of impartiality or if the arbitrator does not possess the qualifications agreed between the parties. Under section 13, the parties are also free to agree to a procedure for the removal of arbitrators but, in the absence of such an agreement, once one of the parties is aware of the composition of the arbitral tribunal, or of any other reason why they would wish for one of the arbitrators to be removed, they have 15 days to propose their removal and submit that proposition to the

arbitral tribunal. Unless either the other party agrees to the removal of the arbitrator or the arbitrator that is being challenged resigns, the arbitral tribunal will decide on the issue of removal.

If the arbitral tribunal rejects the proposition for removal, then the proposing party has 30 days from the publication of the tribunal's decision to submit the proposition for removal to the district court. Section 14(1) of the ICA Law also provides that, if an arbitrator fails to fulfil his or her duties or acts with unjustified delay, then their mandate shall cease once they resign or once the parties agree to their removal. Disputes on this point can be resolved by the courts.

For domestic arbitrations, there are several relevant provisions in Cap.4 governing the challenge or removal of arbitrators. Section 13 provides that a party may file an application to the courts for the removal of an arbitrator for failure to act with necessary speed. Section 20(1) also allows the removal of an arbitrator by the court if the arbitrator "demonstrates misconduct" or "fails to handle the dispute properly". As noted above, Section 9 also allows for the challenge of an arbitrator on the grounds of lack of impartiality or independence. Following such an application, the court is empowered to suspend the arbitration procedure or declare the arbitration agreement void.

3.1.6 What role do national courts have in any such challenges?

For domestic arbitrations, section 13 of Cap.4 provides for the possibility of filing an application to the district court on the basis of a failure by the arbitrator to act in due time to fulfil his or her duties. Section 20 also provides the parties with the right to petition the courts for the removal of an arbitrator for misconduct or poor handling of a case. As noted in *Section 3.1.4* above, section 9 further allows the court to prevent the arbitrator from acting in a dispute if he or she is not impartial. Section 14 also provides the courts with the ability to appoint substitute arbitrator(s) in cases of removal.

In international commercial arbitrations, if a proposal for the removal of an arbitrator has been rejected by the arbitral tribunal itself, then the party which made the removal proposal has 30 days after the publication of the tribunal's decision to challenge that decision before the district court. As stressed in section 13(3) of the ICA Law, the court's decision will be binding and final, and so cannot be subject to any judicial review. As also provided in section 13(3), while the challenge to the courts is pending, the arbitration process will continue, with the participation of the arbitrator whose removal is being sought.

Further, if there is no agreement between the parties as to the termination of the mandate of an arbitrator, section 14(1) of the ICA Law provides that the courts will decide on the matter in a final and binding manner, without the possibility of an appeal.

3.1.7 What principles of law apply to determine the liability of arbitrators for acts related to their decision making function?

As outlined in *Sections 3.1.4 and 3.1.5* above, section 20 of Cap.4 provides that when an arbitrator has demonstrated misconduct he or she may be removed. Similarly, sections 12 and 13 of the ICA Law provide the grounds and procedure for the removal of arbitrators.

Beyond these, there are no specific legal provisions in Cypriot law which engage the personal liability of arbitrators as regards acts committed in relation to their decision-making function. Any damage caused by arbitrators to private

parties may, however, fall under the ordinary civil liability rules, namely the Civil Wrongs Law (Cap.148); however, we are not aware of any relevant case law in this area.

3.2 Confidentiality of arbitration proceedings

3.2.1 Is arbitration seated in your jurisdiction confidential? What are the relevant legal or institutional rules which apply?

There are no provisions that deal explicitly with the issue of confidentiality in either Cap.4 or the ICA Law.

However, the Cypriot courts have referred on occasions to the contractual and private nature of arbitration and that this generally implies a duty of confidentiality. This is something that can be regulated by the parties when concluding an arbitration agreement and such an agreement will generally be enforceable.

3.2.2 To what matters does any duty of confidentiality extend (for example, does it cover the existence of the arbitration, pleadings, documents produced, the hearing and/or the award)?

See *Section 3.2.1* above.

3.2.3 Can documents or evidence disclosed in arbitration be used in other proceedings or contexts?

Generally, one can rely on a duty of confidentiality in arbitration, though this is not absolute. However, as confidentiality is a matter to be determined between the parties, the ability to use documents outside of the arbitration is, to a large extent, also left at the parties' will.

3.2.4 When is confidentiality not available or lost?

According to Cyprus case law, the implied duty of confidentiality in arbitration can be derogated from in specific cases where disclosure of the information to a third party would be in the public interest (for example, if there are allegations of fraudulent conduct).

3.3 Role of (and interference by) the national courts and/or other authorities

3.3.1 Will national courts stay or dismiss court actions in favour of arbitration?

Section 8 of Cap.4 provides that if one of the parties to an arbitration agreement brings a claim before the courts regarding a dispute that should have been referred to arbitration on the basis of a valid arbitration clause, the other party may apply to the court for the stay of the court proceedings. The court may order a stay of court proceedings if it is satisfied that the matter should be referred to arbitration. The Cyprus case law on this point provides that, although whether to order a stay is a matter for the court's discretion, before declining an application for a stay of court proceedings on the basis of an arbitration agreement the court should be satisfied that there are good grounds to do so. The burden of proof is, therefore, on the party seeking to bring court proceedings despite the existence of an arbitration agreement.

In accordance with section 8 of the ICA Law, if an action which should have been referred to arbitration is initiated in the district court, the court before which the action is to be heard is obliged to refer the matter to arbitration where one of the parties so requests before filing its first legal pleading on the substance of the dispute (unless the arbitration agreement is found to be invalid or unenforceable).

3.3.2 Are there any grounds on which the national courts will order a stay of arbitral proceedings?

In Cap.4, section 9(1) provides that, if one of the arbitrators is not impartial, the courts may issue an order preventing the continuation of the arbitral proceedings or may declare the arbitration clause void. In addition, section 9(2) empowers the court, where as part of the dispute it is in issue whether one of the parties is guilty of fraud, to stay the arbitration to the extent necessary that this issue is determined by the court itself.

The ICA Law does not have any relevant provisions for staying ongoing arbitral proceedings. Indeed, as provided for by section 32(3) of the ICA Law, subject to challenges to the decision itself, the arbitration procedure will terminate upon the issuance of the award, the withdrawal of the claim, the reaching of an agreement between the parties, or where the tribunal believes that the continuation of the arbitration has become impossible or superfluous.

3.3.3 What is the approach of national courts to parties who commence court proceedings in your jurisdiction or elsewhere in breach of an agreement to arbitrate?

As noted in *Section 3.3.1* above, the Cyprus courts will exercise their discretion in favour of an agreement to arbitrate unless there are good reasons for not giving effect to such an agreement.

In instances of proceedings falling within the scope of the ICA Law, section 8 provides for a mandatory referral to arbitration. There are no Supreme Court decisions on this point; however, first instance decisions have given full effect to the wording of section 8.

3.3.4 Is there a presumption of arbitrability or policy in support of arbitration? Have national courts shown a willingness to interfere with arbitration proceedings on any other basis?

The Cyprus courts have laid down a clear presumption of arbitrability. However, there are remedies that can only be granted by the courts (for example, an order for the winding up of a company or an order for divorce).

The courts tend to avoid interfering with the choice of the parties to opt for arbitration proceedings and do not show any hostility towards arbitration procedures. It should, however, be noted that in domestic arbitrations the provisions of Cap.4 allow various recourses before the courts by a party that wishes to challenge the arbitration process itself or the appointment of the arbitrators with a view to achieving a delay in the arbitration process. The ICA Law, on the other hand, is much more restrictive as regards permitting court involvement in the process of an international arbitration.

3.3.5 Are there any other legal requirements for arbitral proceedings to be recognisable and enforceable?

Apart from the above-mentioned issues of impartiality in the conduct of the arbitrators (section 9, Cap.4), there are no specific requirements in Cap.4 as to the recognition of the domestic arbitration proceedings.

In section 31(1) of the ICA Law, there are some minimum requirements as to the form and content of an issued award that appear to be mandatory in respect of international commercial arbitrations.

3.4 Procedural flexibility and control

3.4.1 Are specific procedures mandated in particular cases, or in general, which govern the procedure of arbitrations or the conduct of an arbitration hearing? To what extent can the parties determine the applicable procedures?

In international commercial arbitrations, the parties are allowed under section 19(1) of the ICA Law to decide on the procedure of the arbitration. Section 19(2) provides that, if there is no agreement between the parties, then the arbitral tribunal may itself decide on the procedures governing the conduct of the arbitration and anything relating to evidence therein (having regard to the relevant basic requirements specified by the ICA Law).

Section 24(1) also provides that, unless it is agreed otherwise by the parties, the arbitral tribunal may decide on whether the procedure will be oral or written. However, if so requested by a party, the tribunal is obliged to convene an oral hearing. The parties should be duly notified before each hearing by the tribunal and the other party shall also be informed of any expert reports, documents or evidence that a party submits.

In terms of domestic arbitrations, section 4 of Annex I of Cap.4 provides that the parties shall provide any written evidence as required by the arbitral tribunal, and section 5 provides for the calling of witnesses. Section 30 of Cap.4 provides that the government may issue procedural regulations as to the conduct of arbitration proceedings (although no such regulations have been issued to date) and that the Civil Procedure Rules shall also apply to arbitration proceedings (with the necessary adaptations). These rules provide that the domestic arbitration procedure shall be primarily oral, there being no general provision for the parties to be free to determine the arbitration's procedure.

3.4.2 Are there any requirements governing the place or seat of arbitration, or any requirement for arbitral hearings to be held at the seat?

Section 20 of the ICA Law provides that the parties are free to decide where the arbitration will be held but, if there is no agreement between the parties, then the arbitral tribunal itself will choose the location. It is implied, however, that the location will be within the Republic of Cyprus, since this provision will only apply to arbitrations taking place in Cyprus.

For the provisions of Cap.4 to apply, the arbitration must take place within the jurisdiction of the Republic of Cyprus, as Cap.4 governs only domestic arbitrations.

3.4.3 What procedural powers and obligations does national law give or impose on an arbitral tribunal?

In international commercial arbitrations, section 27 of the ICA Law provides that the arbitral tribunal may, on its own initiative or at the request of a party, request the assistance of the courts in the taking of evidence. The arbitral tribunal also has the express power to appoint experts or call upon the parties to provide experts with relevant information. The arbitral tribunal also has the obligation under the ICA Law to allow each party to present its case.

Similarly, under sections 4 and 5 of Annex I of Cap.4, the arbitral tribunal in a domestic arbitration may examine witnesses and administer their oath, and may require that certain evidence be provided.

3.4.4 Evidence

3.4.4.1 What is the general approach to the gathering and tendering of written evidence at the pleading stage and at the hearing stage?

For international commercial arbitrations, section 19(2) of the ICA Law provides that, in the absence of agreement between the parties, the arbitral tribunal will set the rules for the presentation of any evidence during the arbitration proceedings. Section 23 also provides that the statement of claim and the defence should be filed in accordance with the manner agreed between the parties or as mandated by the arbitral tribunal, and may be accompanied by the relevant evidence (or references to it). Whether evidence should be presented at the pleading stage is something to be determined by the rules chosen by the parties (for example, UNICTRAL Rules) or decided by the tribunal.

For domestic arbitrations, there are no express provisions regarding pleadings and the presentation of evidence. Annex I of Cap.4 provides that the arbitral tribunal may require that the parties provide the tribunal with any written evidence, books, contracts or accounts which may be relevant to the dispute, and that witnesses are examined under oath or by way of an affirmation.

3.4.4.2 Can parties agree the rules on disclosure? How does the disclosure in arbitration typically differ to that in litigation?

For domestic arbitrations, disclosure is a matter determined on the basis of the Civil Procedure Rules.

The ICA Law contains no rules governing disclosure in international commercial arbitrations per se. Evidential matters such as those relevant to the presentation of written evidence are ultimately decided at the discretion of the arbitral tribunal.

3.4.4.3 What are the rules on oral (factual or expert witness) evidence? Is cross-examination used?

For international commercial arbitrations, section 19 of the ICA Law provides the parties with the freedom to choose the procedural rules to apply to the arbitration proceedings. In the absence of an agreement between the parties, the arbitral tribunal may determine the procedure to apply to the arbitration process and issues relating to the evidence to be put before it. Section 26 of the ICA Law permits the arbitral tribunal to appoint experts to provide the tribunal with testimony evidence and who may also participate in discussion of the dispute.

In domestic arbitrations, section 30 of Cap.4 provides that the Civil Procedure Rules shall apply (with the necessary adaptations). Furthermore, section 4 of Annex I of Cap.4 provides that the parties should take an oath and allow for the examination of all documents and evidence in their possession relevant to the dispute, as well as anything else which may be required by the arbitral tribunal. Also, section 5 of Annex I provides that the arbitral tribunal may examine the witnesses under oath or by way of affirmation.

Although not expressly provided for in Cap.4 or in the ICA Law, the established practice in Cyprus is to allow cross-examination in all cases. Also, as is the case with court proceedings, the established practice is to allow a written statement to stand as the evidence-in-chief of a witness.

3.4.4.4 If there is no express agreement, what powers of compulsion are there for arbitrators to require attendance of witnesses (factual or expert) or production of documents, either prior to or at the substantive hearing? To what extent are national courts willing or able to assist? Are there differences

between domestic and international arbitrations, or between orders sought as against parties and non-parties?

In international arbitrations, section 26 of the ICA Law provides that, in the absence of agreement between the parties, the arbitral tribunal may appoint an expert witness to provide the tribunal with evidence. Either on the tribunal's own initiative or at the request of one of the parties, that expert can be called by the tribunal to be examined at a hearing. Section 27 allows the arbitral tribunal itself (or any of the parties with the approval of the arbitral tribunal) to apply to the court seeking assistance in the obtaining of evidence, provided that such assistance is in line with the rules governing the gathering of evidence. This power includes the summoning of witnesses.

In domestic arbitrations, section 17 of Cap.4 provides that a party may request that the district court issue a summons ordering that a witness be examined or that any document be produced before the arbitral tribunal. Further, Annex II of Cap.4 allows the courts to issue orders for the calling and examination of any witnesses before the courts under oath. Section 4 of Annex I of Cap.4 also provides that the arbitral tribunal itself may order the parties, or any person claiming an entitlement through them, to provide the tribunal with any written evidence, books, contracts or accounts which may be relevant to the dispute.

3.4.4.5 Do special provisions exist for arbitrators appointed pursuant to international treaties (that is, bilateral or multilateral investment treaties)?

No such special provisions exist.

3.4.5 Are there particular qualification requirements for representatives appearing on behalf of the parties in your jurisdiction?

No such specific requirements exist in the ICA Law or in Cap.4.

3.5 The award

3.5.1 Are there provisions governing an arbitral tribunal's ability to determine the controversy in the absence of a party who, on appropriate notice, fails to appear at the arbitral proceedings?

In international arbitrations, section 25(c) of the ICA Law provides that, in the event of a failure by one of the parties to appear during the arbitral proceedings, the arbitral tribunal shall proceed and will be able to issue its award on the basis of the rest of the evidence put before it.

Cap.4 does not expressly regulate this matter.

3.5.2 Are there limits on arbitrators' powers to fashion appropriate remedies, for example, punitive or exemplary damages, specific performance, rectification, injunctions, interest and costs?

There are no general limits on the provision of any particular type of remedy in the ICA Law or in Cap.4.

However, in international arbitrations, the parties may agree that some powers that would otherwise be held by the arbitral tribunal shall not be available to it (for example, to issue interim measures). Cap.4 provides that, although the arbitral tribunal in a domestic arbitration may issue a decree of specific performance, it may not do so in relation to land or rights in land.

3.5.3 Must an award take a particular form? Are there any other legal requirements, for example, in writing, signed, dated, place stipulated, the need for reasons, method of delivery?

In international arbitrations, section 31 of the ICA Law provides that the award must be signed by all members of the arbitral tribunal and must be duly reasoned. A copy of the award, with the date and the place where it was awarded, must also be made known to each of the parties in the dispute.

In domestic arbitrations, section 6 of Annex I of Cap.4 provides that it is an implied clause in every arbitration agreement that the award should be made in writing.

3.5.4 Can an arbitral tribunal order the unsuccessful party to pay some or all of the costs of the dispute? Is an arbitral tribunal bound by any prior agreement by the parties as to costs?

The ICA Law does not expressly regulate the issue of costs in international arbitrations. Subject to an agreement between the parties, the issue of costs remains within the arbitral tribunal's discretion – although the general practice is that the loser will pay the costs of the arbitration. It does not appear that a prior agreement by the parties as to costs would fall foul of the ICA Law.

In domestic arbitrations, Cap.4 provides that the arbitral tribunal has the discretionary power to apportion the costs of the arbitration. Further, section 23 of Cap.4 provides that any prior agreement between the parties as to each of them bearing their own costs shall not be binding and will be considered void unless such agreement is made after the dispute has arisen.

3.5.5 What matters are included in the costs of arbitration?

The relevant legislation does not specify what matters are included, but the practice is to include the costs and fees of the arbitral tribunal, as well as counsel fees.

3.5.6 Are there any practical or legal limitations on the recovery of costs in arbitration?

No such practical or legal limitations exist in the relevant legislation.

In domestic arbitrations, Cap.4 provides that, if the arbitral tribunal has not specified the apportionment of the costs of the arbitration in the award, any of the parties may apply to the arbitral tribunal within 14 days of the issuance of the award for determination of the apportionment of costs to take place.

3.5.7 Are there any rules relating to the payment of taxes (including VAT) by foreign and domestic arbitrators? If taxes are payable, can these be included in the costs of arbitration?

There are no express rules in the Cypriot legislation regarding taxes in arbitration proceedings. However, the practice is to apply VAT to the fees of arbitrators and counsel.

3.6 Arbitration agreements and jurisdiction

3.6.1 Are there form, content or other legal requirements for an enforceable agreement to arbitrate? How may they be satisfied? What additional elements is it advisable to include in an arbitration agreement?

For domestic arbitrations, Cap.4 merely states that an arbitration agreement must be in writing and may cover present or future disputes (irrespective of whether the arbitrator is named in the agreement to arbitrate or not).

For international arbitrations, section 7(2) of the ICA Law provides that the arbitration agreement must be in writing. Section 7(3) provides that the arbitration agreement will be considered to be in writing if it is contained in:

- A written document with the parties' signatures.
- An exchange of letters, telegrams, telexes or other telecommunication means that set out the relevant agreement.
- An exchange of pleadings whereby a claim by one of the parties that there is an arbitration agreement is not rebutted by the other.

Cross-referencing to another agreement containing an arbitration agreement may also suffice.

It is advisable to include in the relevant clause a clear and binding procedure for the appointment of arbitrators to provide for situations in which the parties are later unable to agree on the point. It is also advisable to expressly state the place of the arbitration, the number of arbitrators and the language in which the proceedings are to be conducted, as well as the applicable arbitration rules.

3.6.2 Can an arbitral clause be considered valid even if the rest of the contract in which it is included is determined to be invalid?

Yes. In international arbitrations, section 16(1) of the ICA Law provides that an arbitral tribunal has the ability to rule on its own jurisdiction and declare the wider contract forming the object of the dispute void (while maintaining the arbitration clause itself as valid).

Cap.4 remains silent on this issue.

3.6.3 Can an arbitral tribunal determine its own jurisdiction ("competence-competence")? When will the national courts deal with the issue of jurisdiction of an arbitral tribunal? Need an arbitral tribunal suspend its proceedings if a party seeks to resolve the issue of jurisdiction before the national courts?

In international arbitrations, section 16 of the ICA Law states that the arbitral tribunal may decide on its own jurisdiction. It is further provided that, if an arbitral tribunal decides that it has jurisdiction but one of the parties disagrees, the party may seek recourse before the district court within 30 days. The fact that such recourse is being sought does not require that the arbitral proceedings be suspended while the issue is before the district court. The decision of the district court on the issue is final.

Cap.4 remains silent on this issue.

3.6.4 Is arbitration mandated for certain types of dispute? Is arbitration prohibited for certain types of dispute?

Cypriot legislation does not specify any types of dispute for which arbitration is considered mandatory or inappropriate. However, certain remedies can only be granted by the courts (for example, an order for the winding up of a company or an order for divorce).

3.6.5 What, if any, are the rules which prescribe the limitation periods for the commencement of arbitration proceedings and what are such periods?

The rules applying to such limitation periods are found in section 24 of Cap.4 for domestic arbitrations, with section 21(3) of the ICA Law also cross-referring international arbitration proceedings to the same Cap.4 provision. Section 24 of Cap.4 provides that the usual Cypriot limitation periods (which are now six years for contract and tort matters) will also apply to arbitrations. Section 24(2) of Cap.4 provides that the time period begins to run as soon as the cause of action itself arises.

In domestic arbitrations, the arbitration proceedings are deemed to have been commenced once one of the parties serves on the other(s) a notice to appoint arbitrators. In international arbitrations, section 23(1) of the ICA Law provides that the arbitration proceedings are deemed to have been commenced on the day that the application for reference to arbitration was received by the party to whom it is addressed.

The Limitations Law (Law 66/2012) also expressly regulates certain relevant limitation issues (for example, it provides that the commencement of arbitration proceedings stops the running of the limitation period and that a district court may extend the limitation period when setting aside an arbitral award).

3.6.6 Does national law enable an arbitral tribunal to assume jurisdiction over persons who are not party to the arbitration agreement?

Cypriot law does not (at least, not expressly) allow such an extensive jurisdiction in either domestic or international commercial arbitrations.

It should be noted, however, that the Cypriot courts allow the issuing of interim relief against non-parties in aid of foreign arbitration proceedings in the manner highlighted by *TSB Private Bank v Chabra*.

3.7 Applicable law

3.7.1 How is the substantive law governing the issues in dispute determined?

In international commercial arbitrations, section 28 of the ICA Law provides that the arbitral tribunal will decide on the substance of the dispute in accordance with the legal rules agreed between the parties, with any reference to those legal rules being interpreted as a reference to the domestic laws of the relevant state (unless the contrary has been agreed). If there is no such agreement as to the applicable substantive law, the arbitral tribunal will determine the applicable substantive law according to the rules of private international law applicable to that situation.

The ICA Law also provides that the arbitral tribunal should apply the terms of the contract by taking into account the customary rules of the transaction in question.

3.7.2 Are there mandatory laws (of the seat or elsewhere) which will apply?

No specific mandatory laws of the seat apply explicitly to international commercial arbitrations. Section 34(2) of the ICA Law, however, provides that the arbitral tribunal's award may be challenged on the ground that it is contrary to the public policy of the Republic of Cyprus. Section 36 of the ICA Law also gives the courts the power to refuse to recognise and enforce an arbitral decision that is contrary to the public policy of the Republic of Cyprus.

In domestic arbitrations, section 24 of Cap.4 provides that the Limitations Law (Law 66/2012) applies to arbitration proceedings as it does to ordinary court proceedings. Cap.4 does not explicitly refer to any other provisions of Cyprus law as mandatorily applying.

4. SEEKING INTERIM MEASURES IN SUPPORT OF ARBITRATION CLAIMS

4.1 Can an arbitral tribunal order interim relief? If so, in what circumstances? What forms of interim relief are available and what are the legal tests for qualifying for such relief?

In international commercial arbitrations, section 17 of the ICA Law provides that, in the absence of an agreement between the parties to the contrary, the arbitral tribunal may order interim relief regarding the subject matter of the dispute following an application made by either party to the arbitration.

In domestic arbitrations, section 9 of Annex I to Cap.4 provides that, in the absence of an agreement between the parties to the contrary, a presumption will apply that the arbitration agreement gives the arbitrators the ability to issue interim decisions.

4.2 Have national courts recognised and/or limited any power of an arbitral tribunal to grant interim relief?

We are not aware of any relevant case law on this issue.

4.3 Will national courts grant interim relief in support of arbitration proceedings and, if so, in what circumstances?

In international commercial arbitrations, section 9 of the ICA Law provides that the Cypriot courts may grant interim measures either before or during the arbitration proceedings. The wide availability of such measures means that they are often ordered in practice, especially in relation to arbitration proceedings filed or to be filed abroad. In many instances, such orders have been issued *ex parte* and made before the commencement of the related foreign arbitration proceedings.

In domestic arbitrations, section 26 of Cap.4 provides that, without prejudice to the arbitrators' abilities to issue orders, the court may make orders regarding various issues listed in Annex 2 of Cap.4 in support of the arbitration proceedings. Such orders may deal with the preservation of goods or property which are relevant to the arbitration or which may become the subject of an arbitration, or with security for costs, or with interim orders, or with the appointment of a receiver.

4.4 Are national courts willing to grant interim relief in support of arbitration proceedings seated elsewhere?

In a number of cases, the Cypriot courts, acting pursuant to section 9 of the ICA Law, have granted interim relief in support of anticipated or ongoing foreign arbitration proceedings.

It should be noted that, under this provision, the Cypriot courts are only empowered to order preservatory measures (for example, freezing orders).

5. CHALLENGING ARBITRATION AWARDS

5.1 Can an award be appealed to, challenged in or set aside by the national courts? If so, on what grounds?

In an international arbitration, section 34(1) of the ICA Law provides that the only means available for the challenge of an arbitration award is an action for annulment. Such an action must be submitted to the district court within three months under one of the specific grounds listed in section 34(2) of the ICA Law, namely:

- One of the contracting parties has no legal capacity.
- The arbitration agreement is null and void under the applicable law or, in the absence of an agreement on this point, under Cyprus law.
- One of the parties had no opportunity to appear before the arbitral tribunal, appoint arbitrators or be heard.
- The subject matter of the award is outside the scope of the arbitration agreement. If only some of the issues of the dispute are outside the scope of the agreement, then only the parts of the award that concern those issues can be annulled.
- The composition of the arbitral tribunal or the procedure adopted was contrary to a provision of the arbitration agreement (unless the said provision violated mandatory rules of the ICA Law) or contravened a provision of the ICA Law.
- The court finds that the subject matter of the dispute was not capable of being submitted to arbitration under Cyprus law or the award contravened the public policy of the Republic of Cyprus.

In a domestic arbitration, section 20 of Cap.4 provides that the district court may set aside an arbitral award on the grounds of misconduct or mishandling of the case by the arbitrator(s); or on the basis that the arbitration was performed, or the decision was issued, improperly.

5.2 Can the parties exclude rights of appeal or challenge?

The relevant legislation does not provide for such a possibility and it is likely that such an exclusion would have no legal effect under Cyprus law.

5.3 What are the provisions governing modification, clarification or correction of an award (if any)?

In international commercial arbitrations, section 33 of the ICA Law provides that, if the parties agree, any party may apply to the arbitral tribunal within 30 days of the issuance of the award (or within any different period agreed between the parties) to correct any typographical, numerical or analogous errors, or to clarify any point in the award. The arbitral tribunal must then do so within 30 days of the date of such application.

Section 33(3) of the ICA Law provides that the arbitral tribunal may also act on its own initiative within 30 days of the issuance of the award to correct any such errors therein.

Finally, under section 33(4) of the ICA Law, in the absence of an agreement to the contrary, any of the parties may apply to the arbitral tribunal within 30 days of the issuance of the award seeking a supplementary award addressing claims made during the arbitration proceedings that were not addressed in the original award.

In domestic arbitrations, section 16(b) of Cap.4 provides that the arbitral tribunal is empowered to correct any typographic mistake or error in the arbitral award that resulted from an unintentional error or omission.

6. ENFORCEMENT

6.1 Has your jurisdiction ratified the New York Convention or any other regional conventions concerning the enforcement of arbitration awards? Has it made any reservations?

Cyprus has ratified the New York Convention through the Law on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Law 84/1979). According to Cyprus' reservations, it "will apply the Convention, on the basis of reciprocity, to the recognition and enforcement of awards made only in the territory of another Contracting State; furthermore it will apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under its national law".

6.2 What are the procedures and standards for enforcing an award in your jurisdiction?

Domestic awards under Cap.4

For domestic arbitral awards falling within the scope of Cap.4, section 21 provides that, with the court's permission, an arbitral award issued on the basis of an arbitration agreement may be enforced as would a judicial decision or order of the same legal value; however, before the award becomes enforceable in this way, the respondent should be given the right to be heard. The grounds on which the court may refuse such permission are those contained within section 20 of Cap.4 (as outlined in *Section 5.1* above).

Foreign awards

The Foreign Court Judgments (Recognition, Registration and Enforcement) Law of 2000 (Law 121/2000) provides the procedural framework for the recognition and enforcement of foreign arbitral awards (where recognition and enforcement are sought on the basis of the New York Convention). This procedure – which, according to court decisions, should be used in all cases where recognition is sought pursuant to an international treaty or convention – commences with the filing at the competent district court of a "with notice" application. The respondent may then file a written opposition before the hearing of the application and has a right to be heard.

This Law further provides that the reasons which the respondent can rely upon in opposition are limited to grounds relating to the court's jurisdiction, the proven satisfaction of the award, or the non-fulfilment of conditions set out in the treaty forming the basis of the application for recognition and enforcement.

Given the decisions of the Cyprus Supreme Court in a number of cases, applicants should ensure their strict fulfilment of the requirements of the New York Convention regarding the certification of documents forming the basis of the application for recognition and enforcement.

The wording of section 3 of this Law sets the procedural framework that must be followed. In particular, further to the definition of a "foreign decision", the applicant must furnish the court with evidence that the award is enforceable in the country where it was issued. A number of first instance court decisions have also held that, in order to utilise this procedure (which is mandatory for cases falling within the scope of the New York Convention), either the applicant or the respondent should be a Cypriot natural or legal person.

Cypriot awards falling within the scope of the ICA Law

For awards issued in Cyprus falling within the scope of the ICA Law, sections 35 and 36 provide that the procedure will start with a written application, and that the court may then issue an order for enforcement (subject to the conditions expressly provided in the ICA Law). The grounds on the basis of which recognition and enforcement may be refused, as well as the relevant conditions for recognition, are similar to those provided in the New York Convention.

6.3 Is there a difference between the rules for enforcement of "domestic" awards and those for "non-domestic" awards?

The available enforcement measures, as well as the rules for enforcement after an award is declared recognised and enforceable by the courts, are the same in both cases.

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