

CYPRUS

DELOS GUIDE TO ARBITRATION PLACES (GAP)

CHAPTER PREPARED BY

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JURISDICTION INDICATIVE TRAFFIC LIGHTS

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There have not been any material changes requiring an update to this chapter (including the traffic lights) since the date of the latest version. Nonetheless, please note that this chapter does not constitute legal advice and its authors, the contributing law firm and Delos Dispute Resolution decline all responsibility in this regard.

IN-HOUSE AND CORPORATE COUNSEL SUMMARY

The Republic of Cyprus is a common law jurisdiction. It is a member of the EU since 2004 and a signatory to 27 bilateral investment treaties. It offers a user-friendly and relatively low-cost environment for international arbitrations. It has a dualist *lex arbitri*. Domestic arbitrations are primarily governed by the Arbitration Law (“**ARL**”),¹ which was enacted on 6th January 1944 and established a regime that is very similar to that of the English Arbitration Act 1950. International commercial arbitrations are governed by the International Commercial Arbitration Law of 1987 (“**ICA**”).² By passing the ICA, Cyprus adopted the UNCITRAL Model Law on International Commercial Arbitration (1985), with minor adjustments.

Key places of arbitration in the jurisdiction?	Nicosia (capital); Limassol (main port and financial centre).
Civil law / Common law environment?	Common law.
Confidentiality of arbitrations?	The legislation of Cyprus does not provide for confidentiality of arbitrations. As a result, it is suitable and is considered as standard practice to include confidentiality provisions in submission agreements and terms of reference.
Requirement to retain (local) counsel?	There is no requirement to appoint local counsel.
Ability to present party employee witness testimony?	Parties may call any person as their witness, provided he/she is competent to give evidence on oath (i.e. can understand questions and the importance of telling the truth in Court). Parties have the right to present employees to give testimony in arbitrations.
Ability to hold meetings and/or hearings outside of the seat?	s.20 ICA gives the parties the right to select the place where the meetings and hearing are to take place. In the absence of an agreement, the matter can be determined by the tribunal. The meetings and hearings do not have to be held at the seat.
Availability of interest as a remedy?	Yes. Interest can be granted in the same terms as a court judgment, ³ by application of a contractual provision or as special damage for breach of contract under Cyprus case law.
Ability to claim for reasonable costs incurred for the arbitration?	Yes. As a general rule, the winning party is awarded reasonable legal fees and other costs.
Restrictions regarding contingency fee arrangements and/or third-party funding?	There is no statutory prohibition against contingency fee arrangements or third-party funding. But contingency fee arrangements are not in conformity with the professional conduct rules of the Cyprus Bar Association.

¹ http://www.cylaw.org/nomoi/enop/non-ind/0_4/full.html.

² http://www.cylaw.org/nomoi/enop/non-ind/1987_1_101/full.html. For an English language translation, please refer to: <https://www.uv.es/medarb/observatorio/leyes-arbitraje/europa-resto/chipre-international-commercial-arbitration-law.pdf>.

³ s.33 of the Courts of Justice Laws of 1960.

Party to the New York Convention?	Yes.
Other key points to note?	φ
WJP Civil Justice score (2019)	φ

ARBITRATION PRACTITIONER SUMMARY

Date of arbitration law?	Arbitration Law (" ARL "), 6 th of January 1944, ⁴ for domestic arbitration; International Commercial Arbitration Law of 1987 (" ICA "), 27 th of May 1987, ⁵ for international arbitration.
UNCITRAL Model Law? If so, any key changes thereto?	The ICA is based on the UNCITRAL Model Law on International Commercial Arbitration (1985), with minor amendments. It does not include the 2006 amendments to the UNCITRAL Model Law.
Availability of specialised Courts or judges at the key seat(s) in the jurisdiction for handling arbitration-related matters?	Not at present. But the legislature is processing a bill for the establishment of a commercial court, which is expected to be finalized in 2019. The current draft gives exclusive jurisdiction to the commercial court over matters relating to arbitration where the amount in dispute is over €2 million.
Availability of <i>ex parte</i> pre-arbitration interim measures?	Yes, s.9 of the ICA states that parties can request interim measures before or during the arbitration proceedings. It is possible for a party to apply without notice to the other parties (<i>ex parte</i>) in cases of urgency or in other peculiar circumstances
Courts' attitude towards the competence-competence principle?	The competence-competence principle is enshrined in article 16 of the ICA and the national Courts abide by it.
Grounds for annulment of awards additional to those based on the criteria for the recognition and enforcement of awards under the New York Convention?	There are no additional grounds for annulments of international commercial arbitration awards. In contrast, domestic awards can be set aside on grounds of "misconduct" by the arbitrator or of the proceedings, ⁶ which are considerably wider than those of NYC.
Courts' attitude towards the recognition and enforcement of foreign awards annulled at the seat of the arbitration?	There is no case law in this regard, but the Cyprus courts will probably follow the English jurisprudence on this matter. ⁷ Accordingly, courts are expected to refuse enforcement of an award set aside at the seat, unless they consider that the setting aside judgment was extreme and incorrect to such degree that the foreign court could not have acted in good faith.
Other key points to note?	∅

⁴ http://www.cylaw.org/nomoi/enop/non-ind/0_4/full.html.

⁵ http://www.cylaw.org/nomoi/enop/non-ind/1987_1_101/full.html. For an English language translation, please refer to: <https://www.uv.es/medarb/observatorio/leyes-arbitraje/europa-resto/chipre-international-commercial-arbitration-law.pdf>.

⁶ s.20(2) ARL.

⁷ See: *Maximov v. OJSC Novolipetsky Metallurgichesky Kombinat* [2017] EWHC 1911 (Comm) on 27 July 2017.

JURISDICTION DETAILED ANALYSIS

1. The legal framework of the jurisdiction

1.1 Is the arbitration law based on the UNCITRAL Model Law?

Cyprus has a dualist *lex arbitri*. The ICA applies to arbitrations that are ‘international’ and ‘commercial’. An arbitration is ‘international’ if, at the time of entering into the arbitration agreement, the parties thereto had their places of business in different states or, where their places are located in the same state, the seat of arbitration is designated at a different state or the underlying contract is more closely connected with another state or it is expressly agreed between the parties that the subject matter of the arbitration is related to more than one states.⁸ The arbitration is ‘commercial’ if it relates to matters arising from relationships of a commercial nature, whether contractual or not.⁹ The ARL applies to all arbitrations that are not international commercial arbitrations.

The ARL is similar to the English Arbitration Act 1950. The ICA is modelled on the UNCITRAL Model Law (1985), with a few minor variations. At present, the legislature is considering updating the ICA so as to adopt the amendments that were made to the Model Law in 2006. Another proposal currently being processed is to amend the ICA so that parties can opt into the domestic arbitration regime.

1.2 When was the arbitration law last revised?

The ICA is currently under revision. The ARL¹⁰ has never been amended. Notably, one of the issues being discussed by the legislature at present is to include an opt-in provision in the ICA, to enable parties to select the ICA for domestic disputes.

2. The arbitration agreement

2.1 How do the Courts in the jurisdiction determine the law governing the arbitration agreement?

The Cyprus Courts will give effect to the choice of the parties. Usually, the law applicable to the underlying contract will also apply to the arbitration agreement. In the absence of parties’ choice, the Cyprus Courts will determine the applicable laws applying their conflict of laws rules, as these derive from international treaties, EU law and the common law.

2.2 Is the arbitration agreement considered to be independent from the rest of the contract in which it is set forth?

Yes, Cyprus law recognises the principle of separability. This can be deduced from the definition of “arbitration agreement” in the ICA¹¹ and has also been established by case law for both international and domestic arbitrations.¹²

2.3 What are the formal requirements (if any) for an enforceable arbitration agreement?

Under Cyprus law, the only requirement is for the arbitration agreement to be in writing. Neither the law nor the case law impose any other requirements or formalities.

⁸ s.2(2) ICA.

⁹ s.2(4) ICA.

¹⁰ http://www.cylaw.org/nomoi/enop/non-ind/0_4/full.html.

¹¹ s.7(1) ICA.

¹² See for example: *Joint-Stock Commercial Bank “Bank of Moscow” v. Right Path Ltd*, D.C. Nicosia App. No.58/15, Judgment of 09 December 2015.

2.4 To what extent, if at all, can a third party to the contract containing the arbitration agreement be bound by said arbitration agreement?

The arbitration agreement is generally not binding on non-signatory parties. There is no case law on the matter, but Cyprus Courts would most probably follow English case law.

2.5 Are there restrictions to arbitrability?

Matters of criminal law, family law and administrative law are considered non-arbitrable. The Cyprus case law is rather poor on the matter, but courts generally follow English law on this matter.

Importantly, in domestic arbitration, a party may apply to the court for an order that the arbitration agreement ceases to exist in relation to matters of fraud.¹³

3. Intervention of domestic Courts

3.1 Will the Courts stay litigation if there is a valid arbitration agreement covering the dispute?

Cyprus Courts adopt a pro-arbitration policy. They will stay court proceedings brought in breach of an arbitration agreement provided an application is made by one of the parties thereto, and the conditions set by s.8 ICA are met, *i.e.* that an action is filed in relation to a matter which is the subject of an arbitration agreement and a party applies for a stay no later than when submitting its first statement on the substance of the dispute, unless the arbitration agreement is null and void, inoperative or incapable of being performed.¹⁴ Similar conditions apply in domestic cases. S.8 ARL provides that court proceedings *may* be stayed if an action is filed in relation to a matter which is the subject of an arbitration agreement, a party applies for a stay after filing appearance but before submitting a pleading or taking any other step in the proceedings, and the court is satisfied that there are no good reasons for refusing to stay proceedings and that the applicant was ready and willing to do all things necessary to the proper conduct of the arbitration.

3.2 How do Courts treat injunctions by arbitrators enjoining parties to refrain from initiating, halt or withdraw litigation proceedings?

There is no case law on this matter. It is expected that a court facing such an occurrence will seriously take into account the arbitrator's findings on his/her jurisdiction.

3.3 On what ground(s) can the Courts intervene in arbitrations seated outside of the jurisdiction? (Relates to the anti-suit injunction but not only)

The ICA expressly provides that Court proceedings in Cyprus may be stayed in favour of a foreign-seated arbitration.¹⁵ It also gives Cyprus courts the power to issue injunctions in support of foreign arbitrations.¹⁶ An anti-suit injunction may be issued to restrain the bringing of foreign proceedings (outside the EU) in contravention of the arbitration clause. However, this power is rarely exercised in practice.

4. The conduct of proceeding

4.1 Can parties retain outside counsel or be self-represented?

Neither is prohibited, therefore both are possible.

¹³ s.9(2) ARL.

¹⁴ See: *Frischmann v. Republic* [2001] 1(A) A.A.Δ. 33.

¹⁵ s.8 ICA.

¹⁶ s.9 ICA.

4.2 How strictly do Courts control arbitrators' independence and impartiality? For example: does an arbitrator's failure to disclose suffice for the Court to accept a challenge or do Courts require that the undisclosed circumstances justify this outcome?

Under the ICA, a person who is approached in connection with his/her possible appointment as an arbitrator must disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence.¹⁷ The same apply to domestic arbitrations as a matter of practice. In either case, an arbitrator, from the time of his/her appointment and throughout the arbitral proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him/her. If circumstances exist that give rise to justifiable doubts as to the impartiality or independence of the arbitrator, or if he/she does not possess qualifications agreed to by the parties, any party may challenge his/her appointment.

4.3 On what grounds do Courts intervene to assist in the Constitution of the arbitral tribunal (in case of ad hoc arbitration)?

The ICA provides that, in the absence of an agreement of the parties, the tribunal shall consist of three arbitrators.¹⁸ In such case, each party shall appoint one arbitrator, and the two arbitrators shall appoint the third member of the tribunal. In the event that a party fails to appoint an arbitrator within thirty days from a relevant request by the other party, or the two arbitrators fail to appoint the third member of the tribunal, any party may apply to the Court with a request to appoint the remaining arbitrators.¹⁹ Under the ARL, the default position is that the tribunal shall consist of one arbitrator.²⁰ In the event that the parties fail to agree for the appointment of an arbitrator or umpire, they may apply to the court for such appointment.²¹

4.4 Do Courts have the power to issue interim measures in connection with arbitrations?

Under s.9 ICA, a Court may grant interim measures in connection with an arbitration, in the same way as it can do so in connection with a pending action (civil claim). As regards domestic arbitration, the ARL makes a similar provision in s.26 and the Second Schedule.

4.4.1 If so, are they willing to consider *ex parte* requests?

Injunctions may be issued *ex parte* if the applicant satisfies the court that the matter is urgent or justified by other peculiar circumstances.²²

4.5 Other than arbitrators' duty to be independent and impartial, does the law regulate the conduct of the arbitration?

According to s.19 ICA, the parties are free to agree and determine the procedure to be followed in the arbitration proceedings. In the absence of an agreement of the parties, the procedure is determined by the tribunal. S.18 codifies the principle of equality of the parties, which the arbitrators must abide to. In the context of domestic arbitration, the ARL is largely silent on procedure and typically the proceeding will be conducted on the basis of the Civil Procedure Rules, *mutatis mutandis*.

4.5.1 Does it provide for the confidentiality of arbitration proceedings?

There is not express provision regarding confidentiality. But it is generally provided for in arbitration agreements and terms of reference. It is considered as a matter of standard practice.

¹⁷ s.12 ICA.

¹⁸ s.10(2) ICA.

¹⁹ s.11(4) ICA.

²⁰ para.1, First Schedule, ARL.

²¹ ss.1—12 ARL.

²² s.9 of the Civil Procedure Law.

4.5.2 Does it regulate the length of arbitration proceedings?

According to s.13 ICA, the arbitrators must conduct the procedure efficiently, avoiding unnecessary delays. S.12 ARL provides that arbitrations must use all reasonable dispatch in making an award.

4.5.3 Does it regulate the place where hearings and/or meetings may be held?

Parties to the arbitration agreement are free to determine the place where the arbitration will be conducted. In the absence of a specific place in the agreement, the tribunal may determine the place of arbitration, by taking into account the circumstances of the case and the convenience of the parties.²³

4.5.4 Does it allow for arbitrators to issue interim measures?

Under s.17 ICA, in the absence of an agreement of the parties, the arbitral tribunal may, at the request of one of the parties, order any party to take the necessary provisional measures relating to the dispute, as well as invite any party to provide a statement of assurance on the measures. The ARL does not contain any similar provision.

4.5.5 Does it regulate the arbitrators' right to admit/exclude evidence?

The ICA gives wide discretion to the tribunal to determine the applicable procedure, including the admission of evidence.²⁴ It gives the tribunal the express power to require translation of documents into the language of the arbitration.²⁵ It also stipulates that pleadings may be accompanied by the evidence and documents on which each party intends to rely for its case.²⁶ The power of the tribunal to appoint its own expert is also expressly provided for in s.26. The ARL is silent on these matters.

4.5.6 Does it make it mandatory to hold a hearing?

According to s.24 ICA, an oral hearing must be held, unless the parties agree otherwise.

4.5.7 Does it prescribe principles governing the awarding of interest?

The ICA is silent on the matter. However, it is generally accepted that the tribunal may award interest, either at the equivalent rate of statutory interest (applicable to court judgments), or as a remedy under a contract or for breach of contract.²⁷ The ARL provides that, unless an award states otherwise, any sum awarded shall bear interest from the date of issue of the award, at the same rate as a court judgment.²⁸

4.5.8 Does it prescribe principles governing the allocation of arbitration costs?

There is no specific provision in the ICA, but the usual rule is that costs follow the event.

4.6 Liability

4.6.1 Do arbitrators benefit from immunity to civil liability?

No. Case law on domestic arbitration suggests the opposite,²⁹ though the matter has not been directly addressed by the Supreme Court.

²³ s.20 ICA.

²⁴ s.19 ICA.

²⁵ s.22(2) ICA.

²⁶ s.23 ICA.

²⁷ See: *Saab and another v. Holy Monastery of Ayios Neophytos* [1982] 1 C.L.R. 499.

²⁸ s.22 ARL.

²⁹ See: *Dimitriou v. Alexandrou*, Civil Appeal No.167/09, Judgment of 18 February 2016.

4.6.2 Are there any concerns arising from potential criminal liability for any of the participants in an arbitration proceeding?

The concerns that one may have are the same as in the case of court proceedings. It is possible for a participant to incur criminal liability for fraud, perjury or other related offences.

5. The award

5.1 Can parties waive the requirement for an award to provide reasons?

Yes. Section 31(2) ICA allows parties to dispense with the requirement for an award to provide reasons. There is no equivalent provision in the ARL.

5.2 Can parties waive the right to seek the annulment of the award?

The ICA and ARL do not include such a provision. Irregularities in the proceedings are generally waived unless raised promptly. The doctrines of waiver and estoppel may operate to limit or even extinguish a party's right to seek annulment of an award.

5.3 What atypical mandatory requirements apply to the rendering of a valid award rendered at a seat in the jurisdiction?

There are no such requirements.

5.4 Is it possible to appeal an award (as opposed to seeking its annulment)?

No.

5.5 What procedures exist for the recognition and enforcement of awards, what time-limits apply and is there a distinction to be made between local and foreign awards?

Any party may apply for the recognition and enforcement of the award. No time limits apply.

For domestic awards, it is necessary to make an application to the court, presenting the original arbitration agreement and the award.³⁰

For international awards, the applicant must present a duly certified original or copy of the award and the arbitration agreement.³¹ The Court may request from the applicant to present duly authorized translations of these documents.

5.6 Does the introduction of annulment or appeal proceedings automatically suspend the exercise of the right to enforce an award?

There is no automatic suspension. However, the Court has an inherent power to suspend enforcement proceedings pending an application for annulment of the award. The power is scarcely exercised.

5.7 When a foreign award has been annulled at its seat, does such annulment preclude the award from being enforced in the jurisdiction?

If the award was set aside at the seat, a Court in Cyprus would adopt a strict approach. It will probably follow the position of the English courts.³² Accordingly, the court will enforce such an award if it considers that the setting aside judgment was so extreme and incorrect that the foreign court could not have acted in good faith.

³⁰ s.21 ARL.

³¹ s.35 ICA.

³² See: *Maximov v. OJSC Novolipetsky Metallurgichesky Kombinat* [2017] EWHC 1911 (Comm) on 27 July 2017.

5.8 Are foreign awards readily enforceable in practice?

Yes, foreign arbitral awards are readily enforceable in practice under s.35 ICA. Most applications rejected to date concerned formality matters.³³

6. Funding arrangements

6.1 Are there restrictions to the use of contingency or alternative fee arrangements or third-party funding at the jurisdiction?

Professional conduct rules of the Cyprus Bar Association do not allow for an advocate's fee to be dependent on the outcome of the case to any extent. Therefore, contingency fee arrangements are not permitted for members of the Cyprus Bar Association.

Third party funding is not regulated. At present, it appears that it can be done in relation to arbitrations seated in Cyprus.

7. Is there likely to be any significant reform of the arbitration law in the near future?

At present, the legislature is processing a bill for amending the ICA. It is expected that the new law will be in place by the end of 2019.

³³ See for example: *Bristol v. Besuno* [2011] 1(B) A.A.Δ. 934.