Worldwide freezing orders, injunctions and interim relief in Cyprus courts

Anastasios A Antoniou
Anastasios Antoniou LLC

Cyprus is the ideal jurisdiction through which to pursue interim relief in the context of main proceedings or in aid of foreign judicial or arbitration proceedings. Cyprus courts exercise their powers in a wide and rigorous manner in relation to asset worldwide protection, freezing, discovery and tracing, provided all statutory and case law requirements are met. This article examines commercial litigation in Cyprus and various interim relief and injunctions granted by Cyprus courts.

COMMERCIAL LITIGATION IN CYPRUS

The law is stated as at 1 August 2014.

The independent judiciary and the constitutional rights and guarantees, which essentially incorporate the rights enshrined and protected under the European Convention on Human Rights into the Cyprus legal order, are the pillars on which the integrity of Cyprus courts has been built throughout the past 50 years. Cyprus courts afford litigants impartiality, equity and fairness, in carrying out an unbiased adjudication of disputes brought before them. The independence of the judiciary is enshrined as a fundamental aspect of the constitution and the prevalence of the rule of law is unquestionable.

The official languages of Cyprus are Greek and Turkish, and judicial proceedings are conducted, and judgments are drawn up, in one of these official languages. However, English is widely used and documents in English can be produced before or accepted by a court in Cyprus, as documents including affidavits in a foreign language are admissible as evidence.

Civil proceedings in Cyprus commence with an originating summons, which can be a writ of summons or an originating application. Typically, in the case of a civil action, the main stages are the following:

• Filing a writ of summons by the claimant (plaintiff), generally indorsed or specially indorsed, for service of a writ of summons on the defendants.

• Filing a note of appearance by the defendants within ten days from the time of service. If a defendant disputes the jurisdiction, he must apply for leave to file a conditional appearance. If the defendant is outside the jurisdiction, the plaintiff must first apply for leave to serve the writ, and then for leave to serve it outside the jurisdiction. If a generally indorsed statement of claim is filed, then a statement of claim must be filed within ten days of the defendant’s appearance.

• A defendant must file a statement of defence within 14 days after filing an appearance if a specially indorsed writ of summons is filed, or 14 days after the statement of claim if a generally indorsed writ of summons is filed.

• The plaintiff can file a reply within seven days after receiving the defence, but it is not compulsory.

• If the defendant has a counterclaim, the plaintiff will file a reply to and defence against the counterclaim within 14 days of the counterclaim.

• Once the pleadings close, which is usually followed by discovery (and, possibly, inspection) of documents, any party is entitled to apply to the court for a hearing date. The registrar fixes the matter for directions, and the judge decides when to fix the matter for hearing.

• During the trial, parties produce witnesses and their evidence (which are subject to cross-examination by the other party).

• Following the submissions of the parties, the court issues a judgment in the case.

A litigant not satisfied with the judgment issued by the court of first instance has the right to appeal to the Supreme Court against the judgment. A notice of appeal, setting out the grounds for appeal and the reasons relied on in full, must be filed within six weeks from the date of a judgment on the merits of the case (unless an extension is granted by the court), or 14 days from the date of an interim judgment.

INTERIM RELIEF AND INJUNCTIONS GRANTED BY CYPRUS COURTS

Civil courts in Cyprus have jurisdiction to issue interim orders in support and/or in aid of the following proceedings:

• Judicial proceedings pending before Cyprus courts.

• Arbitration proceedings pending in Cyprus.

• Judicial proceedings pending before national courts of any EU member state (excluding Denmark).

• International commercial arbitration proceedings to be filed or pending in any state (EU and non-EU).

Freezing orders (Mareva injunctions)

Freezing orders over assets in any part of the world can be issued on a successful application, including both tangible (immovable property only if situated in Cyprus) and intangible assets (funds, deposits, shares and goods).

The Cyprus legal order has incorporated the power of the courts to issue freezing orders to protect assets in risk of alienation, or to preserve a particular status quo pending the final and conclusive determination of the relevant proceedings.
The Supreme Court emphatically confirmed in 2007 that the courts of Cyprus can issue freezing orders with worldwide effect, stating that (Seamark Consultancy Services Limited v Joseph P Lasala et al (2007) 1 AA 162);

“It is apparent that by virtue of Section 32 of Law 14/60...having regard to the modern changes people make to their transactions, the court at first instance had the opportunity to grant the interim orders in question pursuant to which the assets of the appellants outside of the jurisdiction were frozen.

It is therefore obvious that by virtue of section 32 of Law 14/60...the court of first instance had the right, in this case, to make interim orders that also freeze assets of the appellants outside of the jurisdiction.

With the breadth of Section 32 of Law 14/60, as interpreted in the case of Kitalides (above), we decide that there was no obstacle whatsoever for the court of first instance to extend the Mareva type order that it issued to assets outside of the jurisdiction. We note that in Section 32 there is no restriction whatsoever, apart from the three preconditions”.

Injunctions preventing acts or events from taking place

Cyprus courts can issue interim orders preventing various acts or events, for example the implementation of corporate resolutions and the convening of annual general meetings (or extraordinary general meetings) of companies.

These types of interim orders are often issued, without limitation, in the context of shareholders’ disputes or derivative actions.

Discovery and tracing orders (Norwich Pharmacal orders)

Cyprus courts have jurisdiction to issue discovery orders under both:

- Section 32 of the Courts of Justice Law 14/1960. This empowers a court to grant an injunction in all cases in which it appears to the court to be just and convenient to do so.
- Section 29(1)(c) of the Courts of Justice Law, which requires courts to apply the principles of equity.

In the context of applications for discovery or tracing of assets, Cyprus courts can issue orders towards:

- Disclosure on oath by a respondent of the location and value of specified assets.
- Tracing purposes, namely leading to the disclosure of information and documents regarding assets deprived or stolen from the applicant, to enable the person having suffered harm to identify and pursue proceedings against the real person committing the tort (tortfeasor).

In addition to satisfying the requirements imposed under section 32 of the Courts of Justice Law, a litigant applying to the court for a discovery order must satisfy the court of all the following:

- A wrong has been carried out to the detriment of the applicant by an ultimate tortfeasor.
- The applicant intends to commence proceedings against the ultimate tortfeasor.
- A discovery order should be issued to assist the applicant in:
  - pleading and proving his claim;
  - identifying other wrongdoers; and
  - tracing alienated or stolen assets.
- The person against whom the discovery order will be issued has been, innocently or not, involved with the wrongdoing against the injured party and is able, or likely to be able, to provide the requested information or documentation.

There are no alternative means of obtaining the information or documentation sought by the applicant, other than issuing the order.

Appointment of interim receiver or administrator

In the appropriate circumstances, Cyprus courts can be seized and have jurisdiction to issue an order to appoint an interim receiver or administrator of assets, in the form of ancillary relief to support a protective regime imposed by a freezing order or other interim order.

In issuing this order, the court will instruct the applicant to secure by bank guarantee the fees of the receiver to be appointed, in addition to counter-security needed to secure the losses of the respondent if the order is later reversed. The latter is a common requirement for all interim orders issued by a Cyprus court.

The court will further stipulate in the order the powers, duties and rights of the interim receiver. On a number of occasions the receiver will be able to exercise voting rights in holding companies, to protect assets held by their subsidiaries.

Chabra orders

Chabra interim orders are injunctions issued by Cyprus courts against a defendant other than the main defendant, where there are reasonable grounds to believe that this co-defendant is in possession or control of assets to which the principal defendant is beneficially entitled. This is an exceptional order granted to prevent subsequent losses to the claimant applying for the order.

Based on the homonymous English case (TSB Private Bank International v Chabra [1992] 1 WLR 237), a Chabra injunction is essentially a freezing order directed to a party against which the claimant does not have a substantive cause of action, made to enforce a judgment (or an anticipated judgment) against a party against which the claimant does have a substantive cause of action.

The rationale for such orders is that as the principal defendant controls a third party, it indirectly controls the assets of that third party. Therefore such assets can be considered as being the principal defendant’s assets, and therefore subject to freezing.

A further case confirmed the principle that a freezing order can be obtained against the assets of a non-cause of action defendant, once it is established that such defendant is controlled directly or indirectly by the principal defendant (USC VTB Bank v (I) Pavel Valerjevich Skurikhin and others [2014] EWHC 279).

If the court is satisfied on a prima facie basis that such assets are in the possession or control of the co-defendant, a Chabra Order can be issued freezing or blocking the assets in the hands of the co-defendant as ancillary and incidental to the main claim against the principal defendant, despite there being no direct cause of action against such co-defendant.

Search orders (Anton Piller orders)

Anton Piller orders are interim orders issued by Cyprus courts. They order a party to admit another party to the former party’s premises, for the purpose of preserving evidence or property that is or may become the subject matter of the main proceedings.

Anton Piller orders can be claimed by a party to:

- Allow this party to discover and preserve evidence against the defendant, which is in the possession of the defendant and is likely to be concealed or destroyed by the defendant.
- Identify and obtain evidence against others who have been involved with the principal tortfeasor in the tortious activities.
- Prevent the defendant from warning others to destroy or conceal evidence.
- Reveal further harm and damage to the applicant.
Interim orders in aid and/or support of arbitration and other proceedings

Cyprus courts have jurisdiction to grant interim orders in aid and/or in support of international commercial arbitration proceedings conducted or to be conducted in Cyprus or overseas, whether in the EU or non-EU jurisdictions. Applying for such orders can be pursued on an ex-parte basis, provided the element of urgency exists in the facts of the case.

Cyprus courts have jurisdiction to issue interim orders in support and/or in aid of the following proceedings:

- Judicial proceedings pending before Cyprus courts.
- Arbitration proceedings pending in Cyprus.
- Judicial proceedings pending before national courts of any EU member state (excluding Denmark).
- International commercial arbitration proceedings to be filed or pending in any state (EU and non-EU).

With respect to judicial proceedings in another EU member state, Cyprus courts can issue at any time an interim order in aid and/or in support of court proceedings pending before the courts of an EU member state (Article 31, Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) (Brussels Regulation).

The Brussels Regulation has been recast by Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) (Recast Brussels Regulation), applicable as of 10 January 2015.

The Recast Brussels Regulation clarifies that arbitration is absolutely excluded from its ambit. As such, a Cyprus court being seized over a dispute that may be subject to arbitration will no longer bar another member state court from exercising jurisdiction to address the question of the validity of the arbitration agreement and to refer the parties to arbitration. In addition, the revised Brussels Regulation sets out in its recital the primacy of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, which Cyprus ratified as of 1980.
Anastasios A Antoniou
Advocate/Partner
Anastasios Antoniou LLC
T +357 2575 0003
F +357 2510 4574
E anastasios@antoniou.com.cy
W www.antoniou.com.cy

Professional qualifications. Advocate of the Supreme Court of Cyprus, UK-trained lawyer

Areas of practice. Merger control, competition law, maritime and shipping law, commercial litigation and international commercial/investment arbitration. Appearing as counsel before national and international courts and arbitration tribunals in high-profile maritime, energy, competition and international law disputes.

Ranked as a leading lawyer in competition law and merger control, shipping law, energy law and international law by eminent ranking houses, including The Legal 500, Who’s Who Legal, IFLR1000 and Best Lawyers International.

Recent transactions
- Advising Fujitsu General on dispute resolution issues involving competition and distribution law.
- Acting for Glencore in notification and clearance of cross-border acquisition.
- Advising Marathon Oil in relation to EU, commercial, dispute resolution and international law issues.
- Acting for International Lease Finance Corporation in a dispute resolution matter.
- Advising CGG and PGS on Cyprus law aspects.
- Acting for Western Union in notification and clearance of a cross-border acquisition.
- Acting for Henkel in notification and clearance of a cross-border acquisition.
- Acting for Bank of Cyprus in commercial litigation.
- Advising the Organization for Security and Co-operation in Europe on EU law.
- Retained by family and estate of victims in a fatal 2011 explosion causing EUR2 billion in damages.

Languages. English, Spanish, Greek

Professional associations/memberships
- Cyprus Bar Association and the International Bar Association (IBA).
- European Competition Lawyers Forum.
- Chartered Institute of Arbitrators.
- Association of International Petroleum Negotiators (AIPN).
- British Institute of Comparative and International Law.
- European Society of International Law.
- Honourable Society of the Inner Temple.

Indicative publications
- Cyprus chapter, Litigation and Dispute Resolution, Global Legal Insights, 3rd and 4th editions (GLG).
- Co-author, Oxford Competition Laws (OUP).
- Cyprus chapter, Merger Control, Global Legal Insights, 3rd edition (GLG).
- Cyprus chapter, Merger Control, Getting the Deal Through, 2011-2015 (LBR).
- Cyprus chapter, Litigation and Dispute Resolution, ICLG, 2010 (GLG).