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Cyprus

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Introduction

The strategic location of the island of Cyprus and its considerable wealth in ancient times have made it subject to occupation by several different nations and civilisations. These occupations began many centuries before Christianity and ended in 1960 when the island became an independent republic, after 82 years as a British colony. Although the invasion of the northern part of Cyprus by Turkey in 1974 had a traumatic effect on different areas of growth, it did not hinder the economic development plans launched in 1962.

Strategic planning for economic development continues to be an essential goal of the Cypriot government. The importance of international trade and foreign investment as vehicles to offset the losses suffered by the economy of Cyprus following the Turkish invasion in 1974 was recognised at once. Foreign investment, whether direct or indirect, or in or through Cyprus, in the form of financial capital and human resources, as well as technology, know-how, and expertise was, therefore, greatly encouraged.

On 1 May 2004, Cyprus was admitted to full membership of the European Union (EU). On 1 January 2008, it adopted the euro as its national currency. In the run-up to EU membership, in order to attract inward investment and enhance economic prosperity in Cyprus, the government liberalised foreign direct investment policy for both EU and non-EU nationals. In all but a very few strategic sectors of the economy (ie, those perceived to relate to national and public security, such as banking and media), foreign investors may now participate with no limits on equity holdings and without any prescribed minimum level of capital investment. In general, foreign investors no longer need approval from the Central Bank of Cyprus as was previously the case, and they may invest and do business in Cyprus on equal terms with local investors.

In 2006, Cyprus enacted legislation to allow the formation of European public limited companies (SEs) in line with EU Council Regulation 2157/2001. The aim of the SE regime is to allow companies incorporated in different member states (and in Iceland, Liechtenstein, and Norway) to avoid the legal and practical constraints arising from the existence of different national legal systems and to merge or form a holding company or joint

subsidiary that is able to operate throughout the internal market and beyond. Incorporation as an SE can significantly reduce the costs for businesses operating in more than one member state of the EU and allow them to restructure quickly and easily to exploit the advantages presented by the internal market.

One of the major factors determining the attractiveness of an SE is the tax regime of the host country. Cyprus's low tax rates, its extensive network of double-taxation agreements, and its simple, modern tax legislation make it extremely attractive as a location for SEs. It is, therefore, likely that businesses from all over Europe will find it advantageous to re-incorporate as Cyprus SEs.

Existing companies from other member states may be merged into an SE in Cyprus without any tax cost, since Cyprus has fully implemented the EU Mergers Directive. To further facilitate inward investment, the Ministry of Commerce, Industry and Tourism has established a 'one stop shop' Foreign Investors Service Centre tasked with co-ordinating and simplifying potential investors' dealings with the authorities.

Admission of Foreign Investment

In General

There are a small number of sectors, notably banking and tourism, where foreigners remain subject to maximum equity participation limits. However, in general, foreigners wishing to register a company in Cyprus or to buy shares in a Cyprus company need only to make the appropriate application to the Registrar of Companies.

Restrictions do remain on foreign investment for both EU and third-country citizens in the areas of real estate, tertiary education, public utilities, radio and television stations, newspapers and magazines, and airlines. Investment proposals concerning these areas must obtain prior approval from the Central Bank of Cyprus, which may consult with other government departments as appropriate. Each investment proposal is considered on its merits.

Investment by European Union Residents

All restrictions relating to the minimum level of investment and the maximum allowable percentage of participation in companies were abolished in 2000 in relation to resident citizens (whether individuals or corporate bodies) of the member states of the EU and the European Economic Area (EEA).

Restrictions on the acquisition of immovable property were removed in 2009 after a five-year transition period and the only remaining restrictions apply to specific sectors listed below under the heading 'Excluded Activities', and to regulated sectors such as financial services.

Investment by Non-European Union Residents

In General

Foreign direct investment in Cyprus from non-EU countries was fully liberalised with effect from 1 October 2004, and minimum investment amounts and maximum participation percentages were generally abolished, although licences from different public authorities may still be required for certain specific activities.

There is now no difference between companies carrying on business outside Cyprus (previously known as international business companies or offshore companies) and companies carrying on business inside Cyprus. Up to 100 per cent of the share capital of a company quoted on the Cyprus Stock Exchange may be acquired by a foreign investor. Restrictions do exist in respect of the purchase of shares in regulated sectors such as banking and other financial services. These are identical to those applied to EU citizens.

Excluded Activities

Foreign participation in the provision of public utility services covered by specific legislation also is prohibited. Such services include production and distribution of electricity, telecommunications services, postal services, agricultural insurance, and television and radio stations.

Economic Citizenship Programme

Cyprus has an 'economic citizenship' programme, granting accelerated citizenship to applicants who make substantial investments in Cyprus (above €2.5 million) or who are substantial shareholders of a company incorporated and doing business in Cyprus, the principal offices of which are situated in Cyprus, which employs at least ten Cypriot citizens and which has paid at least €500,000 per year to public revenues over the preceding five years. Up to two applications for naturalisation may be submitted in respect of each such company. The applicant must also have a clean criminal record and be the owner of a permanent residence in Cyprus with a value of €500,000 or more.

Regulation of Admission

In General

Regulations on the admission of foreign investment into Cyprus are divided into:

- Those imposing restrictions on foreign investment; and
- Those offering incentives for foreign investment.

Restrictions on Foreign Investment

Exchange Control. As a member of the Eurozone, Cyprus has minimal exchange control. As a condition of a financial support package for Cyprus

agreed in March 2013, the operations of Cyprus's two largest banks were scaled down and temporary controls over transfers of funds via banks in Cyprus were put in place. It is important to note that these controls affect only banks in Cyprus and do not apply to funds introduced to Cyprus after March 2013. They do not directly affect any Cyprus corporate and trust structures, nor do they detract from the favourable Cyprus holding company regime and the advantages offered by other Cyprus structures, since there is no requirement for Cyprus companies, entities, or trusts to open or maintain bank accounts in Cyprus.

Labour. Cyprus legislation on matters such as entry and stay of EU and third-country nationals for employment and study purposes and long-term residence is fully aligned with the EU *acqui*s *communautaire*. Persons who have been legally residing in Cyprus for at least five years are entitled to Long-Term Residence Permits that have an indefinite limit. Visa obligations for foreign nationals are in line with EU obligations. Cyprus is a signatory to the Schengen agreement but it has not yet been implemented. Citizens of EU member states have the same employment rights as Cypriots. If they are employed, they must obtain residence permits, to which they are entitled as of right.

Companies investing in Cyprus with the participation of non-residents are considered to be local companies and are treated as such. Thus, employees and staff working for these companies are expected to be residents of Cyprus, taking into account the availability on the island of a highly educated workforce with considerable professional skills. However, there are limited exceptions where no suitably qualified Cypriot or EU nationals are available to fill the required positions in certain companies.

The Immigration Officer at the Ministry of the Interior needs to be satisfied that foreign investors have genuinely sought local staff for those positions before engaging third-country employees. Employers, therefore, should first consult with the District Labour Office and advertise such positions in the local press and, when no suitably qualified Cypriots or EU nationals can be found for the positions in question, foreign employees may be hired. Third-country nationals must obtain a work permit before commencing work in Cyprus. The criteria for granting approval of a work permit to third-country nationals are the following:

- Non-availability of suitably qualified local Cypriot or EU nationals;
- Saving and better utilisation of the local labour force;
- Improvement of working conditions at the workplace; and
- Terms and conditions of employment identical to those for a local.

Where the third-country national is employed because he has skills or knowledge not possessed by locals, the employer must ensure training of a named local employee during the period of the foreigner's employment. Work permits are granted for employment by a specific employer and are normally

issued for one year, requiring annual renewal. Foreign-owned companies enjoy a number of benefits, including:

- The ability to obtain indefinite work and residence permits for senior management and other key employees;
- The relaxation of re-entry visa requirements for third-country workers who frequently travel outside Cyprus; and
- The availability of permanent residence permits for management employees who satisfy the necessary criteria.

Taxation

In General

Cyprus has a modern tax regime offering one of the lowest rates of corporate income tax in Europe. Liability to tax in Cyprus is based on residence, which for companies is determined by the locus of management and control. Companies are resident in Cyprus if management and control are exercised in Cyprus, but not otherwise.

Mere incorporation in Cyprus is not enough to establish tax residence. Resident companies are subject to Cyprus tax on their worldwide income and are entitled to benefit from Cyprus's network of double-taxation treaties. Non-resident companies are subject to Cyprus tax only on Cyprus-source income and are not entitled to benefit from double-taxation treaties.

As well as ensuring the benefits of lower withholding taxes, a Cyprus company can ensure that its overseas activities will not be subject to local tax if they come within the activities of a permanent establishment permitted by an applicable treaty. This is clearly an important issue for a trading company. Cyprus has concluded double-taxation treaties with 50 countries, and more are under negotiation.

Corporation Tax Rates

In General. Companies are subject to corporate income tax at a rate of 12½ per cent of taxable income. Partnerships are not taxable entities. The income of a partnership is attributed to the partners and is subject to income or corporation tax.

Double-Taxation Treaties. Double-taxation treaties are in force covering the following countries:

- Armenia;
- Austria;
- Azerbaijan;
- Belarus;
- Belgium;

- Bulgaria;
- Canada;
- China;
- Czech Republic;
- Denmark;
- Egypt;
- Estonia;
- Finland;
- France;
- Germany;
- Greece;
- Hungary;
- India;
- Ireland;
- Italy;
- Kuwait;
- Kyrgyzstan;
- Lebanon;
- Malta;
- Mauritius;
- Moldova;
- Montenegro;
- Norway;
- Poland;
- Portugal;
- Qatar;
- Romania;
- Russian Federation;
- San Marino;
- Serbia ;
- Seychelles;
- Singapore;
- Slovakia;
- Slovenia;
- South Africa;

- Spain;
- Sweden;
- Syria;
- Tajikistan;
- Thailand;
- Ukraine;
- United Arab Emirates;
- United Kingdom;
- United States; and
- Uzbekistan.

Treaties are under negotiation, or awaiting ratification, with many other countries. All of the treaties entered into by Cyprus are based on the Organisation for Economic Co-operation and Development (OECD) model. As with all double-taxation treaties, their objectives are to clarify and determine the taxing rights of each contracting state, reduce or avoid the impact of international double taxation, and introduce anti-avoidance provisions and mechanisms to prevent tax evasion.

The avoidance of double taxation is usually achieved either through the allowance of a tax credit against the tax levied on the taxpayer by his country of residence or through tax exemption in one contracting state of the income taxed in the other contracting state. Normally, the result is that the taxpayer pays no more than the higher of the two rates.

Where no double taxation treaty is in force, the Cyprus tax authorities generally allow unilateral credit against taxes payable in Cyprus for tax paid overseas.

Corporation Tax and Foreign Investment Income. The worldwide income of tax-resident companies (that is, companies whose management and control is exercised in Cyprus) is subject to Cyprus tax. Taxable income comprises business profits, income from property, revenue from the sale of goodwill, and interest earned in the ordinary course of business or closely connected to the ordinary course of business income. Tax losses may be carried forward for relief against future taxable income and group relief is available. Credit will be given against the Cyprus tax liability for taxes imposed by a ‘host’ country on profits earned from operations carried out in that country, either under a double-taxation treaty or, if there is no treaty in place, by way of unilateral relief.

A separate, highly favourable tax regime applies to international shipping and ship management services, with the tax liability being based on the tonnage of vessels used in the business rather than actual profits. An ‘intellectual property rights box’ regime, introduced with effect from 1 January 2012, provides

substantial tax exemptions and incentives to locate intellectual property assets in Cyprus. Auxiliary tourist projects, such as golf courses, marinas, camping sites, theme parks, and health clubs, are exempt from income tax on their profits for a period of 10 years from the commencement of the project provided that:

- The creation, extension, or conversion of the project began after 1 July 1997; and
- The total cost of the project is at least €854,300, excluding the price of land.

As losses generally may be carried forward for up to five years, so may any losses from these activities.

Withholding Tax on Dividends, Interest, and Royalties. Companies must deduct and pay over to the tax authorities Special Defence Contribution (SDC tax) at 17 per cent on dividends paid to Cyprus-resident individuals. No SDC tax is levied on dividends paid to Cyprus-resident corporate shareholders, as long as the dividend is paid within four years after the end of the year in which the underlying profits were earned, or to non-resident shareholders.

SDC tax is payable on ‘deemed’ distributions by companies which do not distribute profits within a certain time from their accrual. However, foreign-owned (whether directly or indirectly) companies are exempt. Interest payments to non-residents are not subject to withholding tax, nor are royalty payments unless the royalty relates to use in Cyprus of an asset or rights, in which cases it is subject to withholding tax at 10 per cent or such lower rate as may be stipulated by a relevant double-taxation treaty. Rental payments made to a person not resident in Cyprus in respect of films shown in Cyprus are subject to withholding tax at five per cent of the gross amount.

Taxation of Capital Gains. The only capital gains that are subject to taxation in Cyprus are gains derived from the disposal of immovable property located in Cyprus. A Cyprus holding company disposing of an overseas subsidiary at a profit will not be subject to any Cyprus tax on the gain. Certain of Cyprus's double-taxation treaties provide that such gains may only be taxed in Cyprus, effectively giving complete tax exemption.

Estate Duty

Estate duty (inheritance tax) was abolished as from 1 January 2000; since then, there have been no succession taxes in Cyprus.

Local Collaboration

Any local collaboration to support local companies or individuals in their productivity, marketing, sales, or know-how is, though not a requirement for foreign investments, a factor seriously considered by the Central Bank of Cyprus when considering applications to invest in restricted areas.

Safeguards and Incentives for Foreign Investment

In General

The extent of safeguards and incentives can be a major factor in international investment decisions. Cyprus offers a variety of safeguards and investments, which can be divided into four main categories.

Protection Afforded by International Investment Law

The safeguards relating to the protection of foreign investment and proprietary rights afforded by international investment law comprise the requirement of non-discrimination, the prohibition of confiscatory taxation, the standard of treatment of foreign investors, and the doctrine of abuse of rights.

As far as the non-discrimination requirement is concerned, Cyprus is considered to be a favourable jurisdiction for foreign investment. There is some kind of discrimination in terms of both general international law and conventional international law, but in favour of foreign investors.

Although there are no criteria by which to define confiscatory taxation, it is taken to mean that taxation may not operate as disguised confiscation or expropriation, which are not permitted in Cyprus. Moreover, as will be seen below, Cyprus is a signatory to the Convention Establishing the Multilateral Investment Guarantee Agency (MIGA Convention), which provides insurance cover against the risk of confiscatory taxation.

The standard of treatment of aliens in another country under general international law must comply with certain basic concepts, namely, the principles of natural justice and the observance of fundamental human rights. The standard is not a high one and is not connected with the way in which that country treats its own citizens. Cyprus is a democratic country with a very high standard of treatment of its own citizens and all aliens.

The doctrine of abuse of rights has not yet been adopted by international investment law, although it exists in various national legal systems. A classic example of an abuse of rights is when the state uses its exchange control regulations to secure a tax claim from an alien where the revenue authorities of that state have failed to secure that claim through the normal channels. Such a complaint, however, has never been made in Cyprus.

Fiscal Incentives

The Cyprus tax system offers numerous benefits for foreign investors, which have been described earlier. In addition, there are specific incentives for international shipping activities and for investment in intellectual property.

The Merchant Shipping (Fees and Taxing Provisions) Law of 2010 ('the Tonnage Tax Law') establishes a separate tax regime for Cyprus resident shipping and ship management companies, simplifying and significantly

reducing the tax burden. It extends the benefits of the tonnage tax regime and exemptions from income tax, which had previously been restricted to owners, operators, and managers of Cyprus-flag ships, to non-Cyprus flag vessels and widens the range of exempt gains to include profits on the disposal of vessels, interest earned on funds, and dividends paid directly or indirectly from shipping-related profits, in addition to profits from shipping operations.

Under the 'intellectual property box' arrangement introduced in May 2012, four-fifths of any revenue earned from the use of intangible assets (including any compensation for improper use) is disregarded for tax purposes. Combined with Cyprus's low corporate tax rate of 12½ per cent, this gives a maximum effective tax rate of 2½ per cent on such income, by far the lowest in Europe. Since any dividend income paid to nonresident shareholders is exempt from Cyprus tax of any description, a Cyprus company can be used to generate royalties under licensing or similar arrangements with third parties and distribute profits to its shareholders by way of dividends with minimal tax leakage.

Furthermore, four-fifths of any profit resulting from the disposal of relevant intangible assets is disregarded for tax purposes. In most cases, an even more beneficial result from the taxpayer's viewpoint can be achieved by holding the assets concerned in a separate company and disposing of the shares in that company, rather than the assets themselves. This option would result in full exemption of the gain, as well as stamp duty savings.

There also is a significant personal tax exemption for individuals relocating to Cyprus in order to work there. For the first three calendar years following the start of their employment, individuals taking up residence and employment in Cyprus will be entitled to an annual allowance of the lower of €8,550 or 20 per cent of their remuneration. If income from employment exceeds €100,000 *per annum*, a 50 per cent deduction is allowed for the first five years of employment.

Non-Fiscal Incentives

In General

Both foreign investors and Cyprus investors may take advantage of the various facilities that have been developed to promote productive investment in Cyprus. They include the Free Zones, bonded factories, and bonded warehouses.

Free Zones

The Larnaca Free Zone, operating under the Free Zones Law,[1] is intended to encourage international commerce and external trade by granting relief from customs duties and taxes in respect of goods introduced into such zones, which are regarded as being outside the customs territory. The Larnaca Free Zone comprises commercial enterprises, ie, importers of goods pending the goods'

1 Free Zones Law, Number 69 of 1975; Free Zones Regulation Number 275/81; and Free Zone Regulation Number 276/81.

subsequent re-exportation, and industrial enterprises, ie, processors of imported raw materials intended for subsequent export.

Licences to operate in the Free Zone are granted by the Ministry of Commerce, Industry, and Tourism. The Zone provides serviced factory sites, which can be leased on a long-term basis to export-oriented industries at moderate rents. Raw materials and machinery for the production of goods and office equipment required for the equipment or operation of the enterprise are not subject to customs duties pending re-exportation. Licences to operate in the Free Zone are granted by the Ministry of Commerce, Industry, and Tourism.

The Zone provides serviced factory sites, which can be leased on a long-term basis to export-oriented industries at reasonably low rents. Raw materials and machinery for the production of goods and office equipment required for the equipment or operation of the enterprise are not subject to customs rules.

Bonded Warehouses

The bonded warehouse regime, which exists by virtue of sections 71–83 of the Customs and Excise Law,[2] facilitates trade by allowing deferment of the payment of duties or complete waiver of duties if the goods are re-exported. Foreign investors operate their own bonded warehouses. Private bonded warehouses may be of particular use for goods in transit although, in some cases, simple processing operations are permissible.

Acquisition of Immovable Property by Non-Residents

The Acquisition of Immovable Property (Aliens) Law, which was enacted in the British colonial era, imposed restrictions on the acquisition of immovable property in Cyprus by non-Cypriots. Following independence, these restrictions were relaxed over the years, particularly since Cyprus joined the EU in 2004. EU citizens and companies incorporated in EU member states (irrespective of the nationality of the shareholders) are free to acquire property on the same terms as Cyprus citizens. Only third-country nationals and companies incorporated outside the EU are subject to any restriction under the law, which in any event is generally a formality.

The term 'acquisition of immovable property' includes the purchase of freehold property, the grant or purchase of a lease of property for a period exceeding 33 years, and the acquisition of shares in Cyprus companies which own immovable property on the island. The law requires third-country nationals and Cyprus companies controlled by them wishing to acquire immovable property to obtain the permission of the Council of Ministers.

Normally, permission is routinely granted to *bona fide* applicants to acquire a flat or a house or a piece of land not exceeding three donums (approximately

2 Customs and Excise Law, Law Number 82/1967.

4,000 square metres) for the erection of only one house for use as a residence only by the purchaser and his family.

Members of the family of an original purchaser may also acquire their own property, provided that they are completely independent of the purchaser, both financially and residentially, such as married children having their own family and business. Permission is granted for personal use, and not for letting or commercial use. This rule is relaxed for international companies that are permitted to acquire business premises, as well as houses or flats as residences for their members or directors.

Although it may take up to 12 months for the Council of Ministers' permit to be obtained, purchasers are entitled to occupy the property in the meantime. After the permit has been granted and the property has been registered in the purchaser's name, there is no further restriction and the property may be sold or disposed of by will or other instrument. Moreover, the legal heir is not required to obtain a permit in order to have the property registered in his name.

Treatment of Foreign Investment

In General

Foreign investors enjoy robust legal protection for their investments in Cyprus as a combination of international investment law, the Constitution of Cyprus, and domestic law, generally, and the treaty protection of the multilateral and bilateral treaties of Cyprus.

International Investment Law

International investment law is a long-established branch of international law, dealing with protecting the life and property of entrepreneurs carrying on business activities outside the territorial borders of their countries. Over the past century, international investment law has developed into a system that protects such entrepreneurs regardless of their origin and irrespective of the existence of any treaty protection or other relationship between their home country and the host country.

Most importantly, international investment law aims to create a regulatory framework for the integration and globalisation of the world economy. Cyprus, being an international business centre, has adopted and embodied all of the generally accepted concepts and principles of international investment law.

Constitution

The Constitution of Cyprus contains provisions for protection of the human rights of all persons, regardless of their citizenship or residence. Of particular importance are the provisions referring to equality of treatment, the right to petition, and the right to property, which will be examined below.

Standard of Treatment

There is no discrimination under the law between foreign and national investors. Both are entitled to fair and equitable treatment with regard to their investments, equivalent to that offered to the most-favoured nation.

Foreign investors are offered continuous protection and security in Cyprus, and unjustified discriminatory measures which could hinder the management of any activities related to investments located in Cyprus are strictly forbidden.

Regulations

As already established, all persons are equal under the law in Cyprus. The protection and security afforded by Cyprus, as well as all of the rights and interests enjoyed by Cypriots, also are afforded to and enjoyed by foreigners as long as they are in Cyprus or are under the jurisdiction of Cyprus.

As in most countries, there are a number of strategic sectors in which investment by non-nationals or non-EU nationals may be restricted, but, subject to this, all investors are treated equally, irrespective of nationality.

Transfer of Funds

Net revenues realised from investments in Cyprus may be transferred abroad in any convertible currency. The term ‘net revenues’ includes capital and capital appreciation, profits, interest, and dividends. These provisions also apply to transfers of funds for the payment of debts and for the use of patents, know-how, and brand names or for the discharge of any other contractual obligations. Expatriate employees who work and live in Cyprus also are permitted to transfer their salaries and wages abroad, after discharge of their tax liabilities.

Losses accrued by investments situated in Cyprus due to non-commercial reasons may be compensated, if the investments are insured according to the MIGA Convention, to which Cyprus is a signatory. In such a situation, the Multilateral Investment Guarantee Agency (MIGA) will be responsible for the payment of compensation in accordance with the contract of guarantee between the MIGA and the investor concerned and subject to the policies adopted by MIGA’s Board of Directors.

Reinvestment of Funds

A foreign investor wishing to reinvest income generated from a restricted sector investment in Cyprus requires fresh permission from the Central Bank of Cyprus in respect of a new investment in a restricted sector. While the fact that the investor has already had an investment in Cyprus does not entitle him to automatic authorisation for his new investment, it would certainly be taken into consideration.

Unfair Business Practises

In General

The Central Bank of Cyprus and government are generally very conscious of the reputation of Cyprus as an international business centre and will take any measure to prevent unfair business practices that may harm that reputation.

Money Laundering

In 1997, the government introduced the Prevention and Suppression of Money Laundering Activities Law (the 'AML Law'). Since its enactment, the AML Law has been regularly amended to keep abreast of new international initiatives and standards in the anti-money laundering field, and the Law has been consolidated into the Prevention and Suppression of Money Laundering Activities Law 188(I)/2007.

The AML Law conforms with EU Directives on the prevention of the use of the financial system for the purpose of money laundering. The Council of Europe's 1990 Convention on Laundering, Search, Seizure, and Confiscation of the Proceeds from Crime and the Financial Action Task Force, in its official report published in June 2000, recognised that the anti-money laundering system of Cyprus complies with international standards. Subsequent evaluation reports adopted by the Moneyval Committee commend the legal and other measures taken by Cyprus in line with international conventions and standards, and the efficiency and effectiveness of the practical implementation of those measures.

The AML criminalises money laundering from all crimes punishable with imprisonment in excess of one year, as well as terrorist financing activities. All persons carrying on 'relevant financial business' (including credit institutions, investment firms, insurance companies, lawyers, accountants, real estate agents, and dealers in precious metals and stones) are obliged to implement strict procedures for preventing the abuse of their services for money laundering. Persons subject to the Law are required to implement procedures for customer identification (both Cypriot and foreign nationals), record keeping, and internal reporting. They must ensure that their employees are aware of their obligations under the Law and provide adequate training to assist them in recognising money laundering transactions. Organisations must appoint properly qualified persons as 'Money Laundering Compliance Officers'.

The Central Bank of Cyprus is the competent supervisory authority for all banks operating in Cyprus and has the responsibility of ensuring banks' due compliance with the provisions of the Law. The Central Bank of Cyprus also has been appointed by the Council of Ministers as the supervisory authority for all persons licensed to provide money transmission services. The relevant professional bodies are responsible for their members' activities.

The AML Law established a special Unit for Combating Money Laundering (MOKAS) as part of the Attorney General's Office, to take responsibility for the

receipt and analysis of suspicious transaction reports and money laundering and terrorist financing investigations. MOKAS may apply to the Court for orders for the disclosure of relevant information related to the investigation, as well as orders for the freezing and confiscation of funds and property suspected to be derived from money laundering.

International Conventions Prohibiting Discrimination

Apart from the constitutional protection, certain international conventions that have been ratified by the Republic safeguard the human rights of non-Cypriots in Cyprus. The most important are:

- The European Convention on Human Rights and Fundamental Freedoms;
- The Convention on the Elimination of all Forms of Racial Discrimination;
- The Convention on Discrimination (Employment and Profession); and
- The Convention against Discrimination in Education.

General Protection of Foreign Investment

Right to Petition

Any person whose fundamental rights are violated by an administrative authority may request the authority concerned to remedy the situation. The authority must respond to the request within 30 days. Furthermore, such person has free access to any competent court in Cyprus, as well as to the European Court and Commission on Human Rights. In addition, and with regard to the right to property, article 23(1) of the Constitution states that:

> '. . . every person, alone or jointly with others, has the right to acquire, own, possess, enjoy or dispose of any movable or immovable property and has the right to respect for such right'.

As in most developed countries, the government has the right to compulsorily acquire any property in Cyprus for the purpose of public benefit subject to safeguards contained in the relevant law, in particular provided that:

- A decision of the acquiring authority is made under the provisions of the relevant law, clearly stating the reasons for such acquisition; and
- The owner whose property has been acquired is granted just and equitable compensation in advance.

Should a disagreement arise between the owner and the acquiring authority in relation to the amount of compensation, the owner may pursue a claim in a competent civil court. The owner also is entitled to interest payable from the date on which publication of the intended acquisition took place. Both Cypriots and non-Cypriots are entitled to the protection of the compulsory purchase law, and non-Cypriots who own property in Cyprus enjoy all of the

rights attached to property which are available to the citizens of Cyprus and can be assured that their property is absolutely protected.

Investment Insurance

In General

The MIGA is a member of the World Bank Group. It was established in 1988 for the purpose of enhancing capital and foreign investment in developing member countries by providing guarantees for investments against possible non-commercial risks.

It effectively acts as a mediator between developing member countries seeking to attract foreign investment and potential investors who require assurance that their investments will be profitable and not impaired for non-commercial reasons.

Eligible Investor

An eligible investor under the MIGA Convention may be either a physical person or a legal entity that is a national of a member country other than the country in whose territory the investment is situated (the host country). For legal entities to be classified as eligible for insurance by the MIGA, they must be engaged in commercial businesses. Legal entities are considered nationals of a member country if any of the following situations apply:

- The entity has its seat in a member country; or
- The majority of the entity's shares belong to nationals of the country.

Where an investor has more than one nationality, of which one is the nationality of a member country, the investor is eligible for insurance. However, this rule does not apply if the investor's nationality is that of the host country.

Eligible Investments

The term 'eligible investment' includes:

- Certain forms of direct investment as determined by the Board of Directors of the MIGA from time to time; and
- Equity interests, including medium-term and long-term loans made or guaranteed by shareholders of companies carrying out investments.

Other forms of medium-term and long-term investment may also be classified by the Board of Directors as eligible for insurance, provided that such classification has been voted for by a special majority. A 'special majority' means an affirmative vote of not less than two-thirds of the total voting power, representing not less than 55 per cent of the subscribed shares of the capital stock of the MIGA. However, loans other than those mentioned above may not be considered eligible investments unless they are connected to investments covered or eligible to be covered by the MIGA.

The MIGA Convention requires that applications for investments to be guaranteed by the MIGA be registered with the MIGA before such investments are implemented, otherwise the investments cannot be covered. Nevertheless, agreements which have already been implemented may still seek coverage when:

- A transfer of foreign exchange is made to modernise, expand, or develop the existing investment; and
- The earnings from the existing investment, which otherwise could be transferred abroad, are reinvested in the investment.

In addition to the above requirement, the MIGA also requires assurance that:

- The investment concerned is economically sound and contributes effectively to the development of the host country;
- The investment complies with the laws and regulations of the host country;
- The investment is consistent with the declared development objectives and priorities of the host country; and
- The investment conditions in the host country are satisfactory and fair, and equitable treatment and legal protection for investments are available there.

Insurable Risk

In General. The MIGA Convention sets out the following as non-commercial risks against which the MIGA may guarantee eligible investments carried out by eligible investors. Only non-commercial risks may be covered by the MIGA and, for this purpose, devaluation or depreciation of currency are not considered to be non-commercial risks.

Currency Transfer. This type of risk includes any restrictions imposed by the host country to prevent the income of the investment from being transferred abroad in a convertible currency acceptable to the eligible investor. This risk also includes undue delays on such transfers.

Expropriation and Similar Measures. This type of risk includes any measures leading to the deprivation of the investor of his ownership, control, or management of, or benefit from, his investment. The exception to this type of risk is any non-discriminatory measure commonly taken by governments to regulate the economic activities in their territories.

Breach of Contract. When the host country breaches a contract with an investor, the investor may resort to the usual legal proceedings, such as litigation or arbitration, to recover his losses which have resulted from such breach of contract.

If, for some reason, the investor cannot resort to the usual legal proceedings, or a decision on the dispute is not rendered within a reasonable period of time, or if

such decision is made within a reasonable period of time but is unenforceable, this risk is covered by the MIGA.

War and Civil Disturbance. This type of risk includes any kind of military action or state of national emergency, such as war, armed conflict, revolution, or other similar event. Insurable risks are not limited to the above, although other types of risk require the approval of the MIGA's Board of Directors by a special majority.

However, the Agency will not cover losses accrued due to an action or omission by the host government done by agreement with the investor, or as a result of the behaviour of the investor. The MIGA also will not cover losses accrued due to an event before the registration of the investment for guarantee.

Subrogation

Once the MIGA has paid or agreed to pay compensation to the holder of a guarantee, the MIGA is immediately subrogated to the rights of that guarantee holder. Thus, the MIGA will be entitled to exercise the investor's rights, including the right to invoke claims in connection with the guaranteed investment.

Further details of the terms and conditions of subrogation are usually found in the contract of guarantee. In any event, the rights transferred from the guarantee holder to the MIGA will be recognised by the member countries of the Convention.

Re-Insurance

Investments guaranteed by a regional investment guarantee agency may be reinsured by the MIGA, provided that the majority of the share capital of the said agency is held by member countries. Naturally, only guarantees against losses resulting from non-commercial risks may be reinsured by the MIGA. Conditions of eligibility with regard to the investor and the investment must be complied with to enable the guaranteed investment to be reinsured by the MIGA. Nevertheless, investments that have already been implemented can still be reinsured by the MIGA.

As regards the maximum contingent liability to be undertaken by the MIGA, this is usually determined by the Board of Directors from time to time. For investments that have been completed not less than 12 months prior to registration for reinsurance, the maximum amount of contingent liability to be assumed therefor shall normally not exceed 10 per cent of the MIGA's aggregate amount of contingent liability.

Contracts of reinsurance will determine the rights and obligations of the MIGA and the reinsured agency, taking into account the rules and regulations issued by the Board of Directors from time to time. When approving a contract for reinsuring an investment that has already been made, the Board of Directors takes into consideration whether:

- The reinsurance will contribute to minimising the risks anticipated in connection with the investment;

- The MIGA will receive premiums commensurate with the risk guaranteed; and
- The reinsured entity is committed to promoting new investment in developing member countries.

Either the MIGA or the reinsured entity will have, as far as possible, the right to subrogation and arbitration as if the MIGA were the primary insurer. Once the host country has approved reinsurance by the MIGA, subrogation becomes effective. Contracts of reinsurance usually contain provisions requiring that:

- All administrative remedies available under the laws of the host country be exhausted by the guarantee holder before any payment is made by the MIGA; and
- The previous requirement is contained in the agreement between the guarantee holder and the reinsured entity.

When the MIGA is the primary guarantor of the investment concerned, it may seek reinsurance, in whole or in part, with an appropriate reinsurance entity.

Co-Insurance

The MIGA is willing to cooperate with private insurers in insuring investments against losses accrued as a result of non-commercial risks on conditions similar to those applied by it if it were the sole insurer. Co-insurance arrangements in which the MIGA is engaged may also include provisions for reinsurance by the MIGA.

Premiums

Rates of premiums, fees, and other charges applicable to each type of risk are periodically established and reviewed by the MIGA.

Agreement Relating to Investment Guaranties with the United States

Nationals of the United States enjoy further protection for their investments in Cyprus under the bilateral agreement between the two countries in relation to investment guaranties, under which investments situated in Cyprus and owned by American nationals may be guaranteed by the government of the United States.

In such cases, if the government of the United States makes a payment in United States dollars to any of its nationals, Cyprus will recognise such a payment and the subrogation of that country, as a result, to any right, title, claim, or cause of action that the investor concerned had against that country in connection with his investment.

Treaty Protection for Foreign Investments

Bilateral Treaties

In General

Cyprus is a signatory to bilateral treaties for the promotion and reciprocal protection of investments with the following countries:

- Albania;
- Armenia;
- Belarus;
- Belgium;
- Bulgaria;
- China;
- Czech Republic;
- Egypt;
- Greece;
- Hungary;
- India;
- Iran;
- Israel;
- Jordan;
- Lebanon;
- Libya;
- Luxembourg;
- Malta;
- Moldova;
- Montenegro;
- Poland;
- Qatar;
- Romania;
- Russia (not yet ratified);
- San Marino;
- Serbia;
- Seychelles;
- Syria; and
- United States.

The bilateral treaties deal with all issues relating to investments carried out by nationals of one contracting state in another contracting state. They guarantee

protection for such investments and provide regulations for settling any disputes that may arise from them. The treatment provided for investors from other contracting states investing in Cyprus is the same treatment that would be offered by Cyprus to investors from any country and, in some cases, the Constitution and the applicable laws of Cyprus may provide better protection for foreign investors than the bilateral treaty.

Purpose of Bilateral Treaties

The bilateral treaties are generally similar to one another. Their main purposes are to:

- Strengthen economic cooperation between Cyprus and the other contracting states by creating favourable conditions for investment by nationals of either contracting state in the territory of the other to their reciprocal benefit on a long-term basis;
- Create and maintain a stable framework to stimulate investment and the maximum effective utilisation of the economic resources of the contracting states;
- Stimulate initiatives in the field of foreign investment between Cyprus and the other contracting states, which are expected to increase the prosperity of those states; and
- Contribute to the development of mutually beneficial trade and economic, scientific, and technical co-operation between Cyprus and the other contracting states.

Definitions

Under the bilateral treaties, the term ‘investment’ is given a broad definition. It is generally defined to comprise every kind of asset connected with direct or indirect participation in companies, associations, and joint ventures, whether the participation is taken in cash, in kind, or in services. More particularly, though not exclusively, the term includes:

- Movable and immovable property, as well as any property rights in respect of every kind of asset, such as mortgages, liens, pledges, and similar rights;
- Rights derived from bonds, shares, corporate rights, and any other kind of shareholding, including minority or indirect shareholdings, in companies constituted in the territory of a contracting state;
- Title to money, goodwill, and other assets and to any performance having an economic value; and
- Rights in the field of intellectual property, industrial property, technical processes, trade names, and know-how.

This definition may be more or less detailed in one treaty than in another, but the substance is similar in all of them. The treaties with Egypt and Romania add

reinvested returns as a form of investment, and the treaties with Belarus, Belgium, Greece, Israel, and Luxembourg add the following or similar: 'Business concessions conferred by law or under contract, including concessions to explore, develop, extract or exploit natural resources.'

The bilateral treaties agree that a change in the form in which the investment has been made does not affect its classification as an investment, provided that such change does not contradict the laws, regulations, and permissions of the relevant contracting state. They further agree and expressly state (except in the treaties with Belgium, Luxembourg, and Russia, which do not include such a provision) that the term 'investment', as previously defined, applies only to investments which comply with the laws and regulations of, and any written permits that may be required by, the contracting state in whose territory those investments have been made. Therefore, investments that do not comply with this provision are not covered by those treaties and cannot benefit from their protection and other advantages.

Corporate Nationality and Protection of Shareholders

The term 'investor', as defined in the bilateral treaties, includes both physical persons and legal entities. From a Cyprus perspective, the term 'investor' means:

- Any natural person having the citizenship of the Republic of Cyprus in accordance with its law; and
- Any legal entity incorporated in compliance with the laws of Cyprus and having its seat there.

An investor, whether a natural person or a legal entity, is considered to be a national of Cyprus if he or it falls within the two categories stated above and, hence, should be entitled to the protection offered to Cypriot investors in the host country under the relevant bilateral treaty. Equally, a foreign investor who is considered a national of a country engaged in a bilateral treaty with Cyprus according to the laws of that country is entitled to all of the rights of the bilateral treaty.

Standard of Treatment

Cyprus ensures fair and equitable treatment for the investments of investors who are citizens of any country having a bilateral treaty with Cyprus for the promotion and protection of foreign investments. Consequently, investments covered by the bilateral treaties are guaranteed continuous protection and security in Cyprus in addition to the guarantee of most-favoured-nation treatment.

In other words, the protection and security offered to those investments may in no case be less than are offered to investments of a third state. However, the

privileges provided pursuant to the bilateral treaties do not extend to cover the privileges resulting from:

- Treaties establishing an economic or customs union, free trade area, or regional economic organisation to which Cyprus is a contracting party; or
- Treaties for the avoidance of double taxation or any other treaties in the field of taxation.

Repatriation of Profits

Subject to the laws and regulations of Cyprus, investors of the other contracting states, in respect of their investment, may freely transfer the following moneys abroad:

- Return on capital;
- Income earned from the investment, including profits, interest, dividends, and royalties;
- Amounts necessary for the repayment of loans, royalties, and other payments due to the use of licence rights and commercial, administrative, and technical assistance;
- Proceeds of sale or liquidation of the investment whether partly or in whole; and
- Earnings of nationals of the other contracting states who work in Cyprus in connection with foreign investments.

The transfers are allowed in a freely convertible currency without delay at the exchange rates applicable for the time being.

Nationalisation and Compensation

Although nationalisation is prohibited by the Constitution of Cyprus, as previously mentioned, Cyprus has also committed itself further, in the various bilateral treaties to which it is a signatory, to restrict as far as possible the practice of such activity.

Thus, the bilateral treaties include provisions preventing the nationalisation of investments in share capital in which there is participation by nationals of other contracting states. However, the provisions recognise that activities of nationalisation may be practised by the host state under exceptional circumstances, which require additional measures of security to be taken to protect the national interest. In such cases, nationalisation may take place provided that:

- Such measures are taken in accordance with the procedure established by law;
- Such measures are not discriminatory or contrary to specific commitments; and
- Effective and adequate compensation is paid to the investor who has suffered from such measures.

Compensation paid as a result of nationalisation of investments should equal the actual value of the investments on the day before nationalisation. The amount must be paid in the currency of the contracting state of which the investor is a national or in any other convertible currency without undue delay. Delays are subject to payments of interest to the investor suffering nationalisation of his investment at the commercial rate for the time being.

The treaties with Hungary and Bulgaria impose stricter restrictions on nationalisation and they contain more guarantees for compensation. The former treaty imposes a time limit of three months within which compensation must be paid.

The latter expressly determines that ownership of the nationalised investment cannot be transferred to the nationalising authority before due compensation is paid. Also, under the latter treaty, as well as under the bilateral treaties with Greece and Israel, the legality of the administrative and legal procedure of nationalisation may be checked at the request of the investor concerned.

The amount of compensation should be determined in accordance with the laws and regulations of the state in whose territory the nationalised investment was made. Certain treaties, however, such as the treaty with Romania, require that this amount be determined by applying recognised principles of accounting or, when such principles cannot be provided, by applying equitable principles.

The treaties with Israel and Romania give the investor concerned the right to request a reassessment of the amount of compensation determined by a tribunal, or any other competent authority, within the jurisdiction of the contracting state which nationalised the investment.

The treaties with Belarus, Bulgaria, Egypt, and the Seychelles contain detailed provisions for the settlement of disputes, involving submission to an arbitral tribunal, whose decision is to be final and binding.

Under the treaty with Israel, disputes are to be subject to negotiations between the parties; if they are not settled within six months, the investor may submit the dispute to either a competent court of the contracting state in whose territory the investment was made, the International Centre for the Settlement of Investment Disputes, the Arbitral Tribunal of the International Chamber of Commerce in Paris, or an *ad hoc* arbitral tribunal. The issues concerning the arbitration process are similar to those when a dispute arises between contracting states.

Compensation for Destruction during War and National Emergency

Under the bilateral treaties, where investors of one contracting state suffer losses in the territory of the other due to war or other armed conflict, a state of national emergency, a revolution, or other similar event, the latter contracting state is obliged to indemnify the investors according to the standard of treatment it would provide for investors of any third country. The amount indemnified is to be freely transferable from the state providing it in any convertible currency.

Protection of Commitments

Cyprus and all of the other contracting states are committed to the provisions of the bilateral treaties by virtue of the treaties themselves. Where a dispute arises between contracting states in relation to the provisions of any of those treaties, it should be settled by negotiations carried out through diplomatic channels. In the case of a dispute that cannot be resolved through negotiation, it is agreed that it should be referred to an *ad hoc* arbitral tribunal. The arbitral tribunal will consist of two members, one appointed by each of the parties in dispute. The members will then appoint a national of a third country who will act as chairman of the tribunal.

The treaties set time limits for the appointment of the members and the chairman and, if the time limits are not met, the parties may agree on new time limits. Alternatively, at the request of any of the parties in dispute, the President of the International Court of Justice or the Secretary General of the United Nations, according to the relevant treaty, shall make the necessary appointments.

Once the tribunal is established, it will make its decision based on the provisions of the relevant treaty and other treaties existing between the parties and on the principles of international law. The decision will be made by a majority vote and is binding on both parties. All procedures relating to the arbitration process will be decided by the tribunal. Each party in dispute will bear the costs relating to the activities of the member representing it. The costs of the activities of the chairman and other costs relating to the arbitration process shall be borne by both parties equally.

The treaties with Belgium and Luxembourg require that a dispute between the contracting states which cannot be settled by negotiations through diplomatic channels should initially be referred to a joint commission convened at the request of either party and consisting of representatives of both parties. If the joint commission fails to settle the dispute, it should be referred to an arbitral tribunal as described above.

Settlement of Investment Disputes

Any investment dispute arising between an investor of a contracting state and the contracting state in whose territory the investment was made should be settled amicably as far as possible. Should the dispute not be solved amicably, at the request of the investor, it may be referred to one of the following according to the relevant treaty:

- A competent court or arbitral tribunal of the contracting state having territorial jurisdiction;
- An international *ad hoc* arbitration court in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL);
- The Arbitration Institute of the Arbitral Tribunal of the Chamber of Commerce in Stockholm;

- The Arbitral Tribunal of the International Chamber of Commerce in Paris; or
- The International Centre for the Settlement of Investment Disputes, where both contracting parties are members of the Convention of 18 March 1965 on the Settlement of Investment Disputes Between States and Nationals of Other States.

Under the treaties with Egypt and Poland, the application of the relevant measures stated above is restricted to disputes arising from nationalisation of investments.

Subrogation

According to the treaties with Egypt, Israel, and Romania, if a contracting state pays a guarantee to one of its national investors in respect of an investment carried out in the territory of the other contracting state, the latter contracting state must recognise the payment. The first contracting state is therefore in effect a guarantor.

The treaties with Belgium and Luxembourg extend the definition of the term 'guarantor' to public institutions in any of the contracting states making the payments described above. In both treaties, the contracting state in whose territory the investment is situated must also recognise that the guarantor is subrogated as insurer to the rights of the indemnified investor. Hence, both contracting states recognise in such a case that:

- The guarantor is entitled to exercise the rights of the indemnified investor in respect of the investment concerned, including the right to invoke claims, to transfer funds abroad, and to arbitration, but the rights of the indemnified investor which may be exercised by the guarantor are limited to those covered by the contract of guarantee, and any additional rights will have to be exercised by the investor himself; and
- The other contracting state will have the right to invoke against the guarantor all of the obligations of the indemnified investor determined by law or contract, including payments of taxes and fees.

Under the treaties with Armenia and Egypt, the term 'guarantor' has a broader definition to include:

- Either of the contracting states;
- Any governmental or semi-governmental institution of the contracting states;
- Any other public institution of the contracting states whose acceptability as a guarantor the states have mutually agreed in advance; or
- Any multilateral institution which is mutually acceptable to the contracting states and of which both states are members by virtue of a relevant international convention.

According to these treaties, compensation paid by the guarantor to the indemnified investor may not affect the investor's right to take arbitration proceedings prescribed by the relevant treaty. Internationally recognised accounting principles should be followed in determining the amount of compensation paid by the guarantor.

The treaties with Poland and Armenia contain further provisions regarding disputes arising between the guarantor and the other contracting state. The method of settling such disputes under these treaties depends on the identity of the guarantor as follows:

- Where the guarantor is either of the contracting states or a governmental or semi-governmental institution of either of the contracting states, the dispute is deemed to be one arising between the contracting states — hence, the provisions for the settlement of disputes between the contracting states included in the relevant treaty apply;
- Where the guarantor is a public institution of either of the contracting states, the dispute will be referred to arbitration in accordance with the provisions on arbitration included in the relevant treaty; or
- Where the guarantor is a multilateral institution, the dispute will be settled under the principles of international law and the relevant rules provided by the convention establishing the relevant institution.

Finally, the bilateral treaties with Bulgaria, Greece, Hungary, and Russia do not include provisions for subrogation.

Multilateral Treaties

Cyprus is a signatory to two multilateral treaties relating to foreign investment. The first is the MIGA Convention, which has been examined earlier, and the second is the Convention of 18 March 1965 on the Settlement of Investment Disputes Between States and Nationals of Other States (the Convention), which will be discussed below.

Settlement of Investment Disputes

In General

Disputes arising in connection with investments carried out in Cyprus may be settled either through legal proceedings in Cyprus or through reference to arbitration or conciliation. Parties wishing to refer their dispute to arbitration have the following three options:

- Reference to arbitration under the Cyprus Arbitration Law;
- Reference to arbitration under the Cyprus Law on International Commercial Arbitration; or

- Reference to the International Centre for the Settlement of Investment Disputes (ICSID) for arbitration or conciliation pursuant to the provisions of the Convention.

Arbitration Law

According to the Arbitration Law,[3] a dispute may be submitted to arbitration where both disputing parties have previously, or at the time, agreed thereon in writing. Such agreement shall determine the number and identity of the arbitrators. In the absence of agreement there will be a sole arbitrator.

If the parties fail to agree on the appointment of the arbitrator(s), the district court having jurisdiction over the dispute may make the necessary appointment(s) at the request of either party. The rules of law applicable to the dispute concerned are the Civil Procedure Rules, which will apply *mutatis mutandis* to arbitration proceedings under the Arbitration Law.

The arbitral award reached by the arbitrator(s) is binding on both parties and will be enforced in Cyprus as if it were a judgment. If the award includes the payment of money by either party, the amount payable will bear interest from the date of the award.

The Arbitration Law is applicable to domestic arbitration and is sometimes described as unsuitable for international arbitration. Although domestic arbitration is applicable to disputes arising from foreign investment in Cyprus, the disputing parties may find that their dispute has an international nature and may seek international arbitration. In such cases, the Law on International Commercial Arbitration may be appropriate.

Law on International Commercial Arbitration

Cyprus, in an attempt to establish a popular venue for international arbitration, has adopted the UNCITRAL Model Law on International Commercial Arbitration, with only minor amendments, being the second country to do so after Canada. The basic advantage that the Law on International Commercial Arbitration has over the Arbitration Law is that it does not provide for extensive court intervention during the arbitration proceedings, except in limited cases, thus preventing the parties in dispute from involving the court as a way of delaying proceedings.

The International Commercial Arbitration Law is applicable only to commercial disputes and disputes of an international nature, which mean disputes arising between two parties who have their places of business in different states. It does not therefore automatically apply to foreign investments carried out in Cyprus.

However, according to section 2(c), a dispute may be considered international if 'the parties have expressly agreed that the subject matter of the arbitration

3 Arbitration Law, Cap 4.

agreement relates to more than one country'. Hence, if the parties in dispute agree to refer the investment dispute to arbitration under the International Commercial Arbitration Law, this Law would be applicable.

Unless the parties agree otherwise, the members of the arbitral tribunal will be three. The parties may also agree on the procedure for appointing the arbitrator(s). If they fail to reach an agreement in this regard, each party will appoint an arbitrator and the appointed arbitrators will appoint the third. If the appointment of arbitrators cannot be made according to the procedure described, the competent district court will make the necessary appointments at the request of either party.

The applicable rules of law are those of the state chosen by the parties. The chosen rules will exclude the rules of conflict of laws unless the parties agree otherwise. If the parties fail to designate the applicable legal system in their arbitration agreement, the tribunal will apply the law determined by the rules of conflict of laws that it deems applicable. The tribunal may also decide the dispute *ex aequo et bono* or as *amiable compositeur* if it is authorised to do so by the parties.

An arbitral award made by a tribunal constituted under the Law on International Commercial Arbitration is enforceable in Cyprus. Furthermore, Cyprus is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which was incorporated into Cyprus law.[4]

As a contracting state, Cyprus is bound to enforce awards made in foreign states. Whether such foreign states will enforce awards made in Cyprus depends on whether these states are included in the list of signatories to the New York Convention.

Convention on Settlement of Investment Disputes

In General

Cyprus became a signatory to the Convention on the Settlement of Investment Disputes Between States and Nationals of Other States in 1966. For the purposes of the Convention, the term 'state' includes any constituent subdivision or agency of that state. The term 'national' includes natural and legal persons.

Purpose of Convention

The Convention was established to:

- Promote international co-operation for economic development and private international investment in the contracting states; and
- Provide facilities for international conciliation or arbitration to which contracting states and nationals of other contracting states may submit investment disputes if they so wish.

4 Law Number 101/1987, ss 35 and 36.

Jurisdiction

The International Centre for the Settlement of Investment Disputes (ICSID) has jurisdiction over any dispute arising from an investment made by a national of a contracting state in the territory of another contracting state, provided that both parties in dispute submit their written consent to ICSID.

Conciliation

Once the parties have agreed to submit their dispute to conciliation to ICSID, a conciliation commission is constituted as soon as possible. The commission will consist of one or any odd number of conciliators. Where the commission consists of more than one conciliator, the parties have the right to appoint an equal number of conciliators and must agree on one more to act as president of the commission.

If the parties fail to agree on the number of conciliators or their identities, the number will be three and the chairman of ICSID will make the appointments at the request of either party. The duty of the commission is basically to clarify the issues in dispute between the parties and to recommend, as far as possible, mutually acceptable terms for the settlement of the dispute.

Arbitration

The parties may wish to refer their dispute to arbitration at ICSID. In such a case, an arbitration tribunal will be constituted on the registration of a request to refer the dispute to arbitration. The arbitration tribunal will consist of one or any odd number of arbitrators.

Where the tribunal consists of more than one arbitrator, the parties have the right to appoint an equal number of arbitrators and must agree on one more to act as president of the tribunal. If the parties fail to agree, the chairman of ICSID will appoint a tribunal of three arbitrators.

The decision of the tribunal will be based on the rules of law agreed by the parties or, in default of agreement, on the rules of law (including the rules of conflict of laws) of the contracting states involved in the dispute. The appropriate rules of international law may also be applied and, if the parties agree, the tribunal may decide the dispute *ex aequo et bono*.

The tribunal will reach its decision in the dispute in question by a majority vote, and the award made will be binding on both parties. Contracting states must recognise the award made by the tribunal as binding. Where a party wishes to enforce an arbitration award made according to the Convention in Cyprus, this party may seek recognition and enforcement of the award by submitting it to the District Court of Nicosia.

The laws of Cyprus concerning the enforcement of foreign judgments will apply to the execution the award. Also, as a signatory to the New York Convention, Cyprus is bound to enforce all foreign arbitral awards, including those made by

ICSID. Parties in dispute who do not wish to refer their dispute to arbitration may resort to the competent district court to resolve the matter according to the domestic laws of Cyprus.

Conclusion

The government and people of Cyprus actively encourage foreign investment into Cyprus. Any such investment is offered robust protection both according to Cyprus laws and via a host of bilateral and multilateral investment and taxation treaties to which Cyprus is a signatory.

In preparation for EU membership, Cyprus made significant structural and economic reforms that transformed its economic landscape and created a modern, open, and dynamic business environment. Since its accession in 2004, Cyprus has successfully faced the challenge of European integration, and has established itself as the natural portal for inward and outward investment between the EU and the rest of the world, particularly the rapidly growing economies of Russia, Eastern Europe, India, and China.