

Ports & Terminals

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GETTING THE
DEAL THROUGH

Cyprus

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General

1 Which are the key ports in your jurisdiction and what sort of facilities do they comprise? What is the primary purpose of the ports?

Limassol is the main port of Cyprus. Located on the south coast, it is a multipurpose port with modern facilities for handling passengers, containers, ro-ro, general cargo vessels and bulk carriers; it also provides support to offshore oil and gas operations. It includes 1,980 metres of quays (container, general cargo, passenger etc), one ro-ro ramp, two container berths and a range of mooring and anchorage options. The marine area of the port is approximately 1 square kilometre and the land area is 1.3 square kilometres. The port is capable of handling vessels of up to 340 metres in length. Limassol handles all container traffic entering or leaving Cyprus. It has a nominal annual handling capacity of 600,000 TEUs; actual throughput in 2014 was 308,000 TEUs. The multipurpose terminal handles almost one million tonnes of general cargo traffic and close to 300,000 passengers per year. Overall, Limassol port currently services on the order of 3,200 ships per year, including container, general cargo, cruise, ro-ro and naval ships, using three tugs.

The second port in size is Larnaca, also on the south coast, approximately 60 kilometres east of Limassol, close to the principal international airport. It is a multipurpose port having an area of 445,000 square metres and deals with all types of cargo, including containers, ro-ro, bulk (animal fodder, grain, gypsum), conventional (lumber, iron, fertilisers, automobiles) and oil products. Larnaca also has an oil terminal for tankers.

There is a smaller port at Vasiliko, on the south coast approximately midway between Limassol and Larnaca. It belongs to the Cyprus Ports Authority but is leased on a long-term basis to the main cement producer in Cyprus. It principally deals with bulk cargo including exports of cement and imports of animal feed, cereals, minerals, construction materials and scrap metal.

The main oil terminal is nearby at Vasiliko. New facilities opened for business in 2014, including 28 tanks with a capacity of 544,000 cubic metres, a deep water marine jetty and road tanker loading facilities. An expansion is currently under evaluation which would create an additional 13 tanks and further capacity of 305,000 cubic metres. Its strategic location makes it the first terminal of its kind in the Eastern Mediterranean, connecting Europe and the Black Sea with the Middle East and Asia.

There are also smaller dedicated oil terminals for the electricity generation stations at Vasiliko and at Dhekelia, east of Larnaca. Mooring is effected on buoys and unloading takes place through submarine pipelines.

In addition, there are several ports for fishing and recreational vessels, the largest of which are at Paphos, Limassol and Latchi.

There is also a commercial port in the area occupied by Turkey, at Famagusta.

2 Describe any port reform that has been undertaken over the last few decades and the principal port model or models in your jurisdiction.

Most ports in Cyprus are owned and operated by the Cyprus Ports Authority (CPA), which provides piloting and towage services, facilities

for loading and unloading of ships, cargo handling and storage, transshipment trade and passenger handling.

The piloting and towage of all ships within the port area is provided by the CPA, without exception. Piloting is mandatory.

The law constituting the CPA, Law 38 of 1973 (the CPA Law) explicitly prohibits the CPA from undertaking loading and unloading of ships. These activities are carried out by agents appointed by the shippers. The agent is responsible for securing the use of cranes and storage facilities from the CPA and the services of stevedores to load and unload the vessel and porters for the horizontal movement of loads. United Stevedoring Company Limited, which is owned by the Shipping Agents Association of Cyprus, currently loads and unloads an estimated 40 per cent of the ships mooring at Limassol and Larnaca.

Loading and unloading of ships at the Vasiliko industrial port is carried out by the lessee, which manages the port under licence from the CPA, using the lessee's equipment and personnel.

The Vasiliko oil terminal is operated by its owner, a private company, and the oil terminals for the electricity generation stations are operated by the Electricity Authority of Cyprus.

There has recently been substantial change to this traditional model arising from the privatisation of Limassol port. In April 2016 concession agreements were signed to outsource the operations of the Limassol port, with the state retaining ownership of the port and the operators taking responsibility for its future development through the expansion of commercial activities and the implementation of best operational practice. The agreements involved an initial fee, a minimum annual fixed fee and a revenue share payable by the concessionaires. Based on the business plans submitted by the concessionaires, privatisation should yield revenues of almost €2 billion. In addition, it is expected to provide other benefits. Making the port more efficient and competitive should reduce costs for importers and should also increase the volume of transshipment business. It is now intended to extend the privatisation model to Larnaca port.

3 Is there an overall state policy for the development of ports in your jurisdiction?

Upgrading of port facilities is a priority for the government and the CPA. Limassol port has been deepened and the existing quays and parts of the breakwater were strengthened, and a project is under way to extend the quays in order to accommodate the next generation of ships. A new passenger terminal has recently been completed. It is fully compliant with EU safety and security requirements and includes a departure hall and two arrival halls, separate luggage handling facilities and catering and other facilities.

New facilities were completed in 2014 at the Vasiliko oil terminal and a second-phase expansion is being studied. A master plan is also being developed for reconstruction of the Vasiliko bulk cargo port, aimed at improving efficiency and capacity.

4 What 'green port' principles are proposed or required for ports and terminals in your jurisdiction?

Ports and port development are subject to domestic environmental legislation, which is fully aligned with EU legislation. Major projects are subject to completion of appropriate environmental impact assessment, and pollution control laws impose obligations regarding waste management and environmental sustainability.

Legislative framework and regulation

5 Is there a legislative framework for port development or operations in your jurisdiction?

The direct legislative framework for port development and operations is the CPA Law, which was enacted as a condition for World Bank funding of the construction of Limassol and Larnaca ports. It gave the CPA responsibility for the formulation of policy regarding ports and for the development, management and operation of ports. It aimed to create an independent and flexible organisation free of public sector bureaucratic procedures, able to operate on a commercial basis. Following completion of the first stage of the privatisation of Limassol port a review of the CPA is in progress, aimed at defining a new role and structure for it. It is understood that this review will include all the port regulations.

6 Is there a regulatory authority for each port or for all ports in your jurisdiction?

Yes, the CPA.

7 What are the key competences and powers of the port regulatory authority in your jurisdiction?

Apart from the power to declare a port closed, which is reserved to the Council of Ministers, the CPA Law gives the CPA comprehensive powers over the provision and management of port services, including the power to:

- prescribe, regulate, control and prohibit the use of any port areas or movement or any activity in them;
- provide piloting and towage and other navigational facilities such as lighthouses and buoys;
- promote the use, development and growth of ports;
- appoint, license and manage pilots, and license and supervise other workers in port areas;
- provide fire and, subject to the approval of the Council of Ministers, security services at ports and their approaches;
- advise the minister of transport on any matter falling within its remit; and
- anything else which is incidental to its duties.

In the performance of its duties the CPA may hold property, undertake commercial activities and provide services and enter into contracts of any nature. It may compulsorily acquire property under the provisions of the relevant law and it may borrow and incur credit.

8 How is a harbourmaster for a port in your jurisdiction appointed?

Harbourmasters are appointed by the CPA.

9 Are ports in your jurisdiction subject to specific national competition rules?

There are no specific competition rules applying to ports: the general domestic and EU competition law framework applies.

10 Are there regulations in relation to the tariffs that are imposed on ports and terminals users in your jurisdictions and how are tariffs collected?

Article 25 of the CPA Law gives the CPA the power, in consultation with the Council of Ministers, to set fees payable for the use of ports and facilities provided by the CPA or by others within port areas, the terms of payment and the manner of enforcement and collection. The law was amended in preparation for privatisation to give the operators of privatised ports the power to set their own charges and commercial terms. Vessels belonging to the National Guard or the police service or those providing humanitarian services are exempt from charges.

11 Does the state have any public service obligations in relation to port access or services? Can it satisfy these obligations through a contract with a private party?

The state has obligations with regard to the operation and safety of ports derived from international maritime conventions, from membership of the Paris Memorandum of Understanding and, as Cyprus is an EU member, from EU legislation.

12 Can a state entity enter into a joint venture with a port operator for the development or operation of a port in your jurisdiction? Is the state's stake in the venture subject to any percentage threshold?

Given that the CPA may contract out the entire operation of a port (and has done so) there would be nothing to stop it entering into a joint venture with a port operator for the development or operation of a port.

13 Are there restrictions on foreign participation in port projects?

There are no restrictions on foreign participation. The majority partners in the consortia awarded concessions to operate Limassol port are all overseas companies, some from non-EU countries.

Public procurement and PPP

14 Is the legislation governing procurement and PPP general or specific?

The legislation enabling the privatisation of the ports is specific, but as Cyprus is an EU member it is required to comply with EU public procurement legislation. There is a comprehensive framework of public procurement law. The principal law regulating public procurement is Law 12(I)/2006 as amended, which transposes EU Directive 2004/18/EC on public procurement into domestic law, and the detailed regulations on the coordination of procedures for the award of public works contracts, public supply contracts, public service contracts and related matters issued under the law. All other EU public procurement directives have also been transposed or are in the course of being transposed.

15 May the government or relevant port authority consider proposals for port privatisation/PPP other than as part of a formal tender?

This is unlikely. In all cases the process would be required to comply with public procurement legislation, which generally involves a tender.

16 What criteria are considered when awarding award port concessions and port joint venture agreements?

There is no explicit legislation, but guidance can be obtained from the recent Limassol port award process. This included Personal Situation Criteria, which had to be met by all members of any consortium; Financial Eligibility Criteria, which had to be met by the consortium as a whole, weighted by individual members' participation; and Technical Eligibility Criteria, which had to be met by the member designated as port operator. The Personal Situation Criteria are used to ensure that consortium members are 'fit and proper' and that no consortium member meets any of the grounds for mandatory or discretionary exclusion on grounds of integrity. In addition, the CPA reserved the right to disqualify any consortium or member on grounds of the protection of the essential interests of the state, including its national security. The Financial Eligibility Criteria were designed to ensure that interested parties were in a sound financial position and in possession of the necessary financial resources to execute the project. Similarly, the Technical Eligibility Criteria confirm that interested parties have the requisite operational resources, expertise and experience.

In addition, tenders were evaluated on the basis of the financial terms offered, in terms of an initial sum, annual payment and revenue share.

17 Is there a model PPP agreement that is used for port projects? To what extent can the public body deviate from its terms?

There is no model as such, but it is reasonable to assume that any future PPP agreement will be based on the Limassol model.

18 What government approvals are required for the implementation of a port PPP agreement in your jurisdiction? Must any specific law be passed in your jurisdiction for this?

The CPA Law contains the necessary powers.

19 On what basis are port projects in your jurisdiction typically implemented?

With few ports to deal with, there is no 'typical' basis as such, but it is reasonable to assume that any future project will be based on the Limassol model.

20 Is there a minimum or maximum term for port PPPs in your jurisdiction? What is the average term?

There is no explicit minimum or maximum duration. The Limassol port process envisaged a duration of between 20 and 25 years for container and multipurpose terminal operations and between 10 and 20 years for pilotage, towage and other marine services.

21 On what basis can the term be extended?

There is no standard provision.

22 What fee structures are used in your jurisdiction? Are they subject to indexation?

The Limassol port process envisaged an initial sum, annual payment and revenue share. Details of the final commercial terms agreed with the successful bidders have not been made public.

23 Does the government provide guarantees in relation to port PPPs or grant the port operator exclusivity?

In the Limassol PPP the concessionaires have exclusivity in terms of the services they have contracted to provide.

Port development and construction**24 What government approvals are required for a port operator to commence construction at the relevant port? How long does it typically take to obtain approvals?**

Details of the specific commercial arrangements relating to the Limassol port and the Vasiliko industrial port are not public, but they would need to be compatible with the general legal framework regarding planning and environmental protection.

25 Does the government or relevant port authority typically undertake any part of the port construction?

There is no precedent in this regard.

26 Does the port operator have to adhere to any specific construction standards, and may it engage any contractor it wishes?

There is no precedent in this regard and all that can be said is that any construction would have to meet legal standards.

27 What remedies are available for delays and defects in the construction of the port?

This would be a matter for negotiation on a case-by-case basis, depending on factors such as the nature of the works and the relative bargaining powers of the parties.

Port operations**28 What government approvals are required in your jurisdiction for a port operator to commence operations following construction? How long does it typically take to obtain approvals?**

This will vary according to the circumstances of the case, but in general compliance with all environmental, safety and marine legislation will be required. In the case of the Vasiliko oil terminal the entire process from planning to commencement of operations was completed in less than three years.

29 What services does a port operator and what services does the port authority typically provide in your jurisdiction? Do the port authorities typically charge the port operator for any services?

In the Limassol port and the Vasiliko industrial port, which are the only ports where ownership and operation are segregated, the port authority makes available the existing facilities. The concessionaires operate these facilities, and may supplement them with equipment they provide.

Update and trends

Following completion of the first stage of the privatisation of Limassol port a comprehensive review of the CPA is in progress, aimed at defining a new role and structure for it. It is understood that this review will include all the port regulations.

30 Does the government or relevant port authority typically give any commitments in relation to access to the hinterland? To what extent does it require the operator to finance development of access routes or interconnections?

This would be a matter for negotiation on a case-by-case basis.

31 How do port authorities in your jurisdiction oversee terminal operations and in what circumstances may a port authority require the operator to suspend them?

Such transactions are made on an individual basis, so this would be a matter for agreement between the parties. The specific arrangements in the case of Limassol port are confidential.

32 In what circumstances may the port authorities in your jurisdiction access the port area or take over port operations?

Such transactions are made on an individual basis, so this would be a matter for agreement between the parties. The specific arrangements in the case of Limassol port are confidential.

33 What remedies are available to the port authority or government against a port operator that fails to operate and maintain the port as agreed?

Such transactions are made on an individual basis, so this would be a matter for agreement between the parties. The specific arrangements in the case of Limassol port are confidential.

34 What assets must port operators transfer to the relevant port authority on termination of a concession? Must port authorities pay any compensation for transferred assets?

Such transactions are made on an individual basis, so this would be a matter for agreement between the parties. The specific arrangements in the case of Limassol port are confidential.

Miscellaneous**35 Is a port operator that is to construct or operate a port in your jurisdiction permitted (or required) to do so via a special purpose vehicle (SPV)? Must it be incorporated in your jurisdiction?**

Such transactions are made on an individual basis, so this would be a matter for agreement between the parties. The specific arrangements in the case of Limassol port are confidential.

36 Are ownership interests in the port operator freely transferable?

Such transactions are made on an individual basis, so this would be a matter for agreement between the parties. The arrangements in the case of Limassol port are confidential, but common sense would indicate that the port authority would wish to have a means of ensuring that the port operator maintained sufficient resources and could not transfer its obligations to a 'straw man'.

37 Can the port operator grant security over its rights under the PPP agreement to its project financing banks? Does a port authority in your jurisdiction typically agree to enter into direct agreements with the project financing banks and, if so, what are the key terms?

Such transactions are made on an individual basis, so this would be a matter for agreement between the parties. The specific arrangements in the case of Limassol port are confidential.

38 In what circumstances may agreements to construct or operate a port facility be varied or terminated?

Such transactions are made on an individual basis, so this would be a matter for agreement between the parties. The specific arrangements in the case of Limassol port are confidential.

39 What remedies are available to a government or port authority for contractual breach by a port operator?

Such transactions are made on an individual basis, so this would be a matter for agreement between the parties. The specific arrangements in the case of Limassol port are confidential.

40 Must all port PPP agreements be governed by the laws of your jurisdiction?

Such transactions are made on an individual basis, so this would be a matter for agreement between the parties. The specific arrangements in the case of Limassol port are confidential.

41 How are disputes between the government or port authority and the port operator customarily settled?

Such transactions are made on an individual basis, so this would be a matter for agreement between the parties. The specific arrangements in the case of Limassol port are confidential.



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