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# Cyprus

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## General labour market trends and latest/likely trends in employment litigation

Introduction and economic background

*General*

Cyprus is the third-largest island in the Mediterranean Sea, with an area of 9,251 square kilometres. It is strategically located in the Eastern Mediterranean at the crossroads of Europe, Asia and Africa. Its total population is estimated at 1.1 million, of whom approximately 840,000 live in the area controlled by the Republic of Cyprus according to the 2011 census. Up-to-date information for the occupied area is unavailable.

From 1878 to 1960 Cyprus was under British rule and much of its infrastructure and institutions, including its legal system, is still heavily influenced by that legacy. It achieved independence in 1960. The island was invaded in 1974 by the Turkish army and about 37% of the territory remains under Turkish occupation. The so-called Turkish Republic of North Cyprus is recognised only by Turkey, and all the references in this chapter relate to the legitimate government of the Republic of Cyprus. While political uncertainty continues to surround "the Cyprus problem", and it is hoped that there will be a satisfactory resolution in the near future, day-to-day business life is unaffected by the issue.

Cyprus is very well placed as an international business and financial centre. Apart from its strategic geographical location, relaxed way of life and attractive climate, it offers an excellent commercial infrastructure, a highly educated English-speaking labour force, a business-friendly environment, particularly in the area of taxation, a high standard of living and a low rate of crime. Living costs are moderate, while eurozone membership, good airline connections and telecommunications, and an increasing alignment with the European position in matters of culture and trade make it an effective bridge between West and East. Its time zone is seven hours ahead of New York, two hours ahead of London, one hour behind Moscow and five hours behind Beijing. The official languages are Greek and Turkish, but English is the *lingua franca* of business.

Modern Cyprus is an independent, sovereign republic with a presidential system of government and a written constitution which safeguards the rule of law, political stability, human rights and the ownership of private property. It has been a member of the European Union since 2004. 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 accession, it 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. Cyprus is a member of the

Commonwealth, the Council of Europe, the IMF, the UN, the World Bank and the WTO, and a founder member of the Organization for Security and Co-operation in Europe.

On 1 January 2008 Cyprus adopted the euro as its currency.

The legal system, modelled on the English common law system, is harmonised with the *acquis communautaire* of the EU. Cyprus is a signatory to a large number of international conventions and treaties, including an extensive network of more than 50 double taxation treaties.

*The Cyprus economy and the labour market*

The Cyprus economy achieved enviable progress in the 50 years following independence. The traditional agricultural economy of the early 1960s was gradually transformed into one characterised by a high standard of living, based on tourism, property development and a dynamic financial sector. *Per capita* income rose from €290 in 1960 to €21,700, representing 89% of the EU average, in 2010.

Throughout the period there was strong growth in the size of the workforce. According to a study by the Central Bank of Cyprus, the workforce increased by an average of 2.4% per year during the period 1960 to 2010. At the same time there was a substantial change in the composition of the workforce, with increased female participation (the proportion of employed women rose from below 50% in the late 1980s to almost 70% by 2010) and an influx of foreign workers, particularly after Cyprus joined the EU. Between 2002 and 2010 the workforce grew by an average 2.7% per year. There was a marked contrast between Cypriot and foreign workers, with the average growth in the number of Cypriot employees being 1.2% and the average increase in foreign workers in the same period being 12.4%. By 2010, more than 21% of the workforce was non-Cypriot.

The quality of the Cyprus workforce, in terms of education and skills, also improved substantially over the period. By 2010 more than 35% of the population had benefited from tertiary education, compared with just over 29% in 2004 and fewer than 10% in 1976. The educational level of the workforce is high by international standards: the 35% tertiary education proportion for 2010 is the highest in the EU and almost 40% higher than the EU average of 25.6%. The improvement in education and skills allowed the economy to diversify into more demanding sectors of economic activity, such as accounting, legal and financial services, with a corresponding decline in agriculture and manufacturing.

The decline in agriculture, combined with demand from overseas for second homes, helped fuel a property boom in the years before and following the millennium, adding further fuel to the economy. It is now apparent that much of the economic growth, particularly in the latter years, was unsustainable and that the economy had become unbalanced and over-reliant on certain sectors, particularly property development and construction. In 2012 the government was forced to apply for international financial support and the "bail-in" of March 2013 led to the forced recapitalisation of the island's largest commercial bank and closure of the second-largest, with customer funds in excess of €100,000 being used to recapitalise the banks. Many individuals lost their life savings and retirement provision, and many businesses lost all their reserves.

Even prior to the financial crisis, unemployment had been rising. In 2008 the average number of registered unemployed persons was 11,541: by 2011 it had more than doubled to 28,276 and by February 2014 it had almost doubled again, to 53,204. The general unemployment rate was 16.9% and youth unemployment 39.6%.

Since the first quarter of 2014 there has been a slight but nonetheless welcome fall in

unemployment. This is partly a result of seasonal factors but also due to an incipient recovery in activity in certain sectors. While the construction and property sector shows no signs of recovery, tourism and financial and professional services are proving more resilient.

The structure of the Cyprus labour market

The structure of the labour market in Cyprus is shaped by several factors. Clearly, the legal regime, in terms of statute and case law, is the most important, but other factors, such as the history of industrial relations, the institutions (trade unions and employers' organisations) involved and the approach taken by the government to industrial relations, should not be underestimated.

*The industrial relations infrastructure*

In recent decades the industrial relations system in Cyprus has been one of tripartite cooperation between employers, employees and government representatives, frequently referred to as the "social partners", based on freedom of speech and collective bargaining.

*The "social partners"*

Prior to 1930 the concept of employee rights was unknown in Cyprus. Working hours were long, wages were low and generally the terms and conditions of employment were very poor. The British colonial government was opposed to the formation of trade unions and the first Trade Union Law, introduced in 1932, requiring compulsory registration of trade unions and setting onerous conditions for registration, severely restricting the growth of trade unions. Nevertheless, a number of trade unions had been established and recognised in Cyprus by the beginning of the 1940s but their powers and influence were very limited as each one was acting on its own. After a few unsuccessful attempts to encourage cooperation between them, the Pancyprian Trade Union Committee was formed in 1941 and transformed in 1946 into the Pancyprian Federation of Labour (PEO); it is still active today.

The establishment in 1948 of the Labour Advisory Board, a tripartite body of social dialogue, was an important step in developing consensual industrial relations and social discussion, and during the 1950s unionisation spread to semi-government organisations and public sector employees.

At the same time, employers achieved effective representation with a view to safeguarding their rights in the area of industrial relations, with the establishment of the Employers Consultative Association of Cyprus, which was renamed the Employers and Industrialists Federation (OEB) in 1980.

When Cyprus became independent in 1960, the right to organise and the right to collective bargaining were explicitly recognised and given constitutional effect by being safeguarded as fundamental rights under the Constitution of the Republic of Cyprus. Cyprus also ratified the International Labour Organisation (ILO) Convention 87 on the Freedom of Association and the Right to Organise, and Convention 98 on the Right to Organise and Collective Bargaining, which were thus given the force of law in Cyprus.

In 1965, a new Trade Unions Law was enacted, which provided extensive protection and freedom for the registration of trade unions on the basis of statutory provisions.

*The Industrial Relations Code*

Before the development of trade unions there was no effective dialogue between employers and employees and strikes and picketing were commonplace. However, such actions rarely produced the desired outcome.

In 1962, the principal employers' associations and trade unions signed a gentlemen's

agreement called the Basic Agreement, laying out procedures for the settlement of employment disputes on a voluntary basis. In 1977, the Industrial Relations Code, also a gentlemen's agreement, replaced the Basic Agreement. This Code is not legally enforceable but has been respected and adhered to ever since. It lays out the procedures to be followed for the settlement of employment disputes, arbitration, mediation and public inquiry in disagreements over interests and rights.

*Collective agreements*

In many industries collective agreements are in place that determine the terms and conditions of employment. They may provide for more favourable terms than those provided by employment laws but not for less.

Collective agreements do not have any legal back-up, and disputes under them cannot be settled in court but only according to the provisions of the Industrial Relations Code. Nevertheless, the provisions of applicable collective agreements in any given case, together with any other existing practices concerning terms and conditions of employment, are taken into consideration by Cyprus courts as evidence of such terms and conditions.

*The legal framework*

Cyprus employment law is a mixture of statute and case law. Statutory provisions govern certain aspects of an employment relationship such as termination, working hours, annual leave and social insurance contributions. Nevertheless, every employment relationship is contractual in nature and to the extent that any of its aspects are not regulated by specific legal provisions, general contract law applies.

Employment law in Cyprus is often referred to as social legislation. It is a term commonly used to describe statutory provisions which are enacted to afford protection to certain sectors of the population that are considered to be at a disadvantage *vis-à-vis* others with whom there may be some relationship of dependency. As such, employment law is often criticised as tending to be somewhat one-sided since the overall scope and vast majority of its provisions concern the rights of employees and the obligations of employers.

However, the need to offer wider statutory protection to workers, even if this is sometimes perceived by employers as a unilateral process which restricts their freedom to contract, is generally recognised as essential in progressive societies. The safeguarding, even at minimum levels, of rights such as those relating to termination of employment, hours of work, health and safety, minimum pay and annual leave, and of social benefits such as maternity allowance, sickness benefit, unemployment benefit and a pension, allows citizens to maintain an adequate standard of living for themselves and their families. This increases welfare and productivity to the ultimate benefit of the state.

Following Cyprus's entry into the European Union in 2004, the myriad EU legislative instruments governing employment law have become part of Cyprus national law. This has been a welcome upgrade in the already socially oriented framework of employment law in Cyprus, raising the level of protection of local rights to meet EU standards. In the following paragraphs we outline some of the key provisions of employment law.

*Nature of the relationship*

The first question to be answered is whether an employer-employee relationship exists, in which case the individual concerned is entitled to the protections offered by employment legislation, or whether he or she is an independent contractor. This distinction is important for determining liability for payment of taxes and social insurance contributions, for determining to what extent the employer may incur vicarious liability for the individual's

actions, and for the application of statutory employment and other rights, such as the right to statutory compensation for unlawful dismissal.

In an engagement of persons as independent contractors and in any other case where the Termination of Employment Law, Law 24 of 1967, as amended ("the Termination of Employment Law"), is not applicable, such as where the employment is for a period of less than 26 weeks, the relationship is governed by the provisions of the Contract Law, Cap.149 as amended ("the Contract Law").

*Contracts of employment*

A contract of employment is important evidence in writing of an employment relationship but it is not the only factor to be considered. In order to establish the terms of the relationship, a court will not restrict itself to the written documents exchanged between the parties but will also have regard to all the particular circumstances and the conditions of the case.

Cyprus law makes statutory provision for certain matters which are usually contained in contracts, such as notice periods, probation periods and annual leave, usually by laying down minimum standards which must be observed.

*Duration of employment*

An employment contract may be for a fixed term or an indefinite term. As a general rule, employment under a fixed term contract is considered to be automatically (and lawfully) terminated when the specified term expires. However, article 5(d) of the Termination of Employment Law provides that termination is not lawfully effected at the end of a fixed term if the Industrial Disputes Court has reason to consider that the contract is actually for an indefinite period.

In order to recognise that a contract is indeed for a fixed term, the court must be persuaded, on the basis of all available evidence, that there is a genuine intent that the employment relationship will be severed at the end of the fixed term. A year-to-year employment by fixed term contract is likely to be interpreted as an indefinite employment, especially if there is a history of re-employment.

The Termination of Employment Law is supplemented by the Law on Employees with Fixed-Term Work (Prohibition of Less Favourable Treatment) of 2003, Law 98(I) of 2003 ("the Law on Fixed Term Employees"), which transposes Directive 1999/70/EC into the domestic legal order. It provides that the period of employment under a fixed term contract may not exceed 30 months and that an employment relationship which continues beyond this term should be considered of unlimited duration unless the employer can show that the fixed term employment can be justified on objective grounds, including:

- the temporary nature of the requirement of the business in relation to a particular position;
- the fact that the employee is a temporary replacement for another employee;
- the special character of a specific position which justifies the fixed term nature of the employment;
- the fixed term employee being under probation; and
- the fixed term employment having been ordered by the court.

*Information to be given by the employer to the employee*

The Law Providing for an Employer's Obligation to Inform Employees of the Conditions Applicable to the Contract or Employment Relationship, Law 100(I) of 2000, requires employers to provide their employees with information about their terms of employment. Article 4(2) defines the minimum information to be given as follows:

- the identity of the parties;
- the place of work and the registered address of the business or the home address of the employer;
- the position or the specialisation of the employee, his or her grade, the nature of his or her duties and the object of his or her employment;
- the date of commencement of the contract or the employment relationship and its duration if this is for a fixed term;
- the duration of any annual leave to which the employee is entitled, and the manner and time in which it may be taken;
- the notice periods that must be observed by the employer and the employee in the event of a termination of the employment, either by consent or unilaterally;
- all types of emoluments to which the employee may be entitled and the time schedule for their payment;
- the usual duration of the daily or weekly employment; and
- details of any collective agreements which govern the terms and/or conditions of employment.

The information must be communicated to the employee in a contract of employment, a letter of appointment or in any other written document signed by the employer, and must be provided within one month after the employment begins.

*Protection against unfair dismissal*

The Termination of Employment Law protects employees against unfair dismissal. It does not apply for the first 26 weeks of employment or during an agreed probation period, which can be up to 104 weeks. Such employment will only be governed by general contract law, and any rights and obligations of either party will be contractual in nature.

Article 5 sets out the following list of the lawful grounds for termination of employment that do not give rise to a right to compensation:

- where the employee does not perform the required duties in a reasonably satisfactory manner (excluding temporary incapacity for work due to illness, injury or childbirth);
- where the employee has been made redundant in accordance with the law;
- where the termination is due to *force majeure*, act of war, civil commotion, act of God, destruction, etc.;
- where the employment is terminated at the end of a fixed term; or
- where the employee displays such conduct as to render himself subject to summary dismissal without notice and it is clear that the relationship between employer and employee cannot be reasonably expected to continue, for example if the employee has committed a serious disciplinary or criminal offence during the performance of his duties, has behaved indecently during the performance of his duties or has repeatedly violated or ignored the rules of his employment.

These are the only statutory grounds under which an employer may dismiss an employee without being liable to pay compensation, and dismissal for any reason which cannot be justified under any one or more of them will be judged unlawful by the court. The first four grounds require written notice (statutory or contractual) to be given to the employee, and the last renders the employee liable to summary dismissal without notice.

*Other employment rights*

The employment legislation includes laws safeguarding certain basic employee rights and setting minimum standards that cannot be contracted out of, and apply whether or not they are included in the written contract. These are in accordance with EU norms and include the right:

- of association (i.e. trade union membership);
- to notice in the event of termination of employment;
- to compensation for unfair dismissal and for redundancy;
- to annual leave;
- to maternity leave, parental leave and leave for reasons of *force majeure*;
- to rest periods and an adequate work-life balance, by regulating maximum hours and unsocial hours;
- to equal treatment and non-discrimination, including equal payment for equal work; and
- to a safe working environment.

Certain of these rights (for example, regarding termination and notice periods) do not apply during the first 26 weeks of employment or during an agreed probation period.

Many occupations are covered by collective agreements which give greater benefits than the statutory *minima*. While collective agreements are legally enforceable by employees as against their employers only if they are integrated into the contract of employment, it is nevertheless common practice for all parties to follow the terms and conditions of such collective agreements and resolve disputes under the provisions of the Industrial Relations Code.

*Minimum wage*

There is a minimum wage for certain lower-paid and non-organised categories of employment such as security guards, shop workers and cleaners. The latest rates have been in effect since 1 April 2012 and have not been increased since, due to the state of the economy.

The minimum monthly pay for employees such as salespersons in shops, office workers, medical assistants, care assistants in clinics, hospitals and nursing homes and baby and child carers is €870, rising to €924 after the employee has completed a continuous period of employment of six months with the same employer.

For hourly-paid cleaners of business premises the minimum rate is €4.55 per hour on recruitment and €4.84 after six months' continuous employment with the same employer. For security guards the minimum hourly pay is €4.90, increasing to €5.20 after six months' continuous employment with the same employer.

*Sick pay*

There is no statutory obligation on employers to pay sick pay. Unless the employer has entered into a specific arrangement with employees regarding sick pay, it is payable by the Social Insurance Department and not by the employer.

Article 32 of the Social Insurance Law, Law 41 of 1980, as amended, entitles employees to receive sick pay for any period of more than three days during which they are unable to work due to sickness. The weekly entitlement is 60% of the weekly average of the employee's basic insurable earnings for the previous year, and is increased by one-third for the first dependant or spouse, and by one-sixth for each further dependant.

Sick pay is payable for up to 156 days in relation to every period of interrupted employment. This can be extended for a further period of 156 days during the same period of interrupted employment, provided that the insured person is eligible to receive incapacity pension but is not expected to remain permanently incapacitated.

*Non-competition clauses in employment*

Non-competition clauses, as far as their purpose is to restrict an individual in exercising a profession after the termination of an employment relationship, are deemed to be "in

restraint of trade" and consequently void under section 27(1) of the Contract Law, which provides that "any agreement by which anyone is restrained from exercising a lawful profession, trade, or business of any kind, is to that extent void".

Section 27(2) contains specific exemptions, concerning the sale of goodwill of a business and partnerships after dissolution, but there is no express exemption in the Contract Law or any other statute for such clauses as they relate to employees.

Under English common law, non-competition clauses may be upheld to the extent that the court considers them reasonable for the protection of the legitimate interests of the party for the benefit of which they are intended. However, the case law of the Supreme Court of Cyprus dating back to 1937 follows a different approach, namely that the list of exemptions set out in section 27(2) is exhaustive and that a non-competition clause falling outside its scope is void. In the light of the above decision, there is considerable risk of such clauses in employment contracts being struck out by the courts.

*Resolution of disputes*

There are three Industrial Disputes Tribunals, one in each of the major population centres. They are established under article 30 of the Termination of Employment Law and have exclusive jurisdiction to determine matters arising from the termination of employment such as the payment of compensation (except where the amount claimed exceeds the equivalent of two years' salary, in which case the applicant has to apply to the District Court against the employer for breach of contract), payment in lieu of notice, compensation arising out of redundancy and any other claim for any payment arising out of the contract of employment. Additionally the Industrial Disputes Tribunal has jurisdiction to determine any claim arising out of the application of the Protection of Motherhood Law, cases of unequal treatment or sexual harassment in the workplace, and disputes between provident funds and their members.

Appeal from the Industrial Disputes Tribunals or the District Courts is to the Supreme Court of Cyprus.

**Key case law affecting employers' decision-making over dismissals, redundancies dismissals etc.**

From the accumulated case law it is clear that the courts take their responsibility to employees very seriously, and will rigorously examine any claim put forward by an employer to justify dismissal.

Unlike with other civil cases, where the burden of proof is on the claimant, article 6 of the Termination of Employment Law places the burden of proof on the employer, to demonstrate on the balance of probabilities that a dismissal is lawful and justifiable on any of the grounds listed in article 5 (*Andri Demosthenous v Andreas Ouris, IDC case 1075/97*).

However, where the employer raises an allegation of voluntary termination of employment by the employee in defence of a claim for unlawful dismissal, the burden of proof shifts to the employee to show that his employment was in fact terminated by the employer. If he succeeds in doing so then the burden of proof reverts back to the employer to show that the termination was justifiable under the Termination of Employment Law (*Michalis Zanos v Andreas Strouthou, IDC case 382/95*).

In any event, the courts have recognised that in accordance with general contract law a contract of employment may be terminated by mutual agreement between both parties

(*IDC case 852/89*). Such termination will not be regulated strictly by the provisions of the Termination of Employment Law and the statutory compensation provisions will not be applicable.

The economic downturn of 2010 onwards has increased the number of redundancies and focused attention on the proper handling of redundancies. Article 18 of the Termination of Employment Law sets out the following grounds for redundancy:

- the employer has ceased or intends to cease to undertake the business in which the employee is employed; or
- the employer has ceased or intends to cease conducting business in the place where the employee is employed; or
- for any of the following reasons related to the operation of the business:
  - modernisation, mechanisation or any other change in production methods or organisation that reduces the number of employees required;
  - changes in products, production methods or the skills required of employees;
  - elimination of processes;
  - difficulties in placing products on the market or credit difficulties,
  - shortage of orders or raw materials,
  - shortage of means of production, or
  - reduction in the volume of work or business.

The court will not readily uphold any argument by the employer within the grounds mentioned above, unless it is satisfied on the basis of convincing evidence, such as objective economic evidence, put forward by the employer (*IDC cases 144/96 and 553/ 91)*.

In the 2012 case of *Jean Toufic v Vesta Tourist Management Limited,* the question that came before the court was whether or not there was a real reduction in the volume of work that would justify redundancy. The court considered the normal cycle of business during the last years before dismissal and assessed whether there was a substantial reduction in the normal turnover of the company at the relevant time, to such an extent that reasonably warranted dismissal on grounds of redundancy. It referred to the 1994 Supreme Court judgment in the case of *A Iason Limited v Christou and others* which found that seasonal or temporary reduction of the volume of work in the employer's normal business activity short of a permanent downward shift or a secular trend does not constitute grounds for termination of employment due to redundancy. The assessment should be based on objective facts: subjective views are not enough.

### Recent statutory or legislative changes

Apart from the suspension of the Cost of Living Adjustment in the public sector by government fiat (see below) and the introduction of a levy on earnings and increase of Social Insurance contributions for the employer and the employee, there have been no legislative changes affecting the labour market in the recent past.

### Likely or impending reforms to employment legislation and enforcement procedures

The Memorandum of Understanding between the Cyprus government and the "troika" of providers of financial support (the European Commission, European Central Bank and the International Monetary Fund) commits the government to reform of the labour market in three main areas, namely:

- to implement a reform of the system of wage indexation commensurate with ensuring a sustainable improvement in the competitiveness of the economy and allowing wage formation to better reflect productivity developments;
- to prepare and implement a comprehensive reform of public assistance in order to achieve an appropriate balance between public assistance and incentives to take up work, target income support to the most vulnerable, strengthen activation policies and contain the public finance impact of rising unemployment; and
- to help attenuate adverse competitiveness and employment effects by linking any change in the minimum wage to economic conditions.

The government is also under substantial pressure from the troika to implement the General Health Scheme, which was established by Law 89(I)/2001, under which employees, employers and self-employed individuals are required to make compulsory contributions to the Health Insurance Fund established under the law based on their total emoluments in order to qualify for medical cover under the scheme.

Cyprus is one of a very few European countries with an automatic system of pay indexation, known as the Cost of Living Adjustment or COLA. Under the present system for calculating the cost of living allowance, workers' total earnings at the end of each six-month period are readjusted on the basis of the percentage change in the Consumer Price Index for the preceding six-month period. Both the principle and the present system have been criticised not only by employers' organisations, but by international financial institutions such as the IMF, which considers that it contributes to the persistence of inflationary shocks and loss of competitiveness and, coupled with seniority-based rules governing salary increases in the public sector, it entrenches a structural upward drift in the real wage bill and reduces employers' scope for providing performance-related compensation increases.

The government has suspended the COLA in the public sector and is committed to pursuing a tripartite agreement with social partners for the suspension of wage indexation in the private sector until 2016 and the application thereafter of the reformed wage indexation system (COLA) applicable to the public sector (lower frequency of adjustment, suspension at times of recession and partial indexation).

The government has also committed to reform the system of public assistance so as to ensure that social assistance serves as a safety net to ensure a minimum income for those unable to support a basic standard of living, while safeguarding incentives to take up work, and has agreed that for the duration of the economic adjustment programme, any change in the minimum wage should be consistent with economic and labour market developments and will be implemented only after consultation with the troika.

The Memorandum of Understanding also recognises the need to take action to combat youth unemployment, in the face of one of the steepest increases in the youth unemployment rate in the EU and the rapid rise of young people not in employment, education or training (NEETs). A National Action Plan for Youth Employment is to be produced, which will include measures envisaged under the Youth Employment Initiative and the implementation of the Youth Guarantee, in line with the conclusions of the European Council of June 2013.

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From 1999 to 2001 he was an in-house legal advisor at one of the island's largest cruise shipping companies. He was an instructor in Business and Company Law (Business Law 101 and ACCA) at a private university in Cyprus from 2001 to 2003.

Nicholas joined Andreas Neocleous & Co as an associate in 2001 and was admitted as a partner in the firm in 2007. His areas of practice include business law, employment law, data protection, and intellectual property. He is the author of several published articles and chapters on Cyprus law in these areas.

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