



Enforcement of an arbitration agreement; Stay of winding up Petition granted

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The question of the extent to which shareholders can contract out of company law has long been a matter of controversy. It has been widely accepted that the statutory right of a shareholder of a limited liability company to petition the winding up of the company is not arbitrable. Our Dr. Pavlos Neofytou Kourtellos handling the motion on behalf of an affected shareholder proved otherwise adding to the chain of precedent-setting decisions achieved by our law firm.

The issue of whether to grant a stay of a winding up Petition presented was the first time to be examined by a Cyprus Court and the judgment delivered by the District Court of Limassol affirms the contractual liberal approach of Cypriot Judges when it comes to the enforcement of agreements to arbitrate.

The result is in accordance with the modern judicial tendency to uphold arbitration clauses, unless, there is clear language to exclude certain matters from the arbitrator's jurisdiction. Such approach recognizes the principle of party autonomy. The Court went on to quote from the Appeal in **The Attorney of the Republic of Kenya v. Bank Fur Arbeit und Wirtschaft AG (1999) 1 (A) AAD 585, 590** that:

“... The law faithfully reflects the central ideas and all Arbitration Code provisions which adopted on 21.6.1985 Commission on International Trade Law of the United Nations. The arbitration as an alternative dispute resolution process is a characteristic complement of any modern legal system. The arbitration institution survives without remedies, which only in specific cases can be used in the arbitration award. The entire structure of the Law and the philosophy that it covers show that the Court does not interfere unnecessarily in the process, but only as provided by law and in particular in support of arbitral proceedings ...”

Since December 1980, Cyprus has been a contracting party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. All international Commercial arbitrations as defined in Article 1 (3) of the UNCITRAL Model Law are regulated by the Cyprus Arbitration Law No. 101/87 which reflects and incorporates into the domestic legal order the UNCITRAL Model Law.

The Court concluded that where the claims related to matters of dispute arising under a shareholders' agreement which contained LCIA arbitration clause a stay should be granted with reliance on the leading textbooks and authorities including Irish and Australian decisions and in particular on equivalent recent English authorities.



If a party to an arbitration agreement commences legal proceedings in a court against another party to the agreement in respect of a matter agreed to be submitted to arbitration, a party to the legal proceedings may apply, before or after entering an appearance and before delivery of any pleadings or taking any other step in the proceedings, to that court to stay the legal proceedings. Unless it determines that the arbitration agreement is void, inoperative or incapable of being performed the Court must make an order staying the legal proceedings. Where parties have committed themselves to arbitration as a chosen means of resolving their dispute in relation to the subject of their agreement, the court should give effect to that desire.

The wide terms of the clauses in the circumstances in concern negate any suggestion that the parties intended to limit the scope of the arbitration agreement out of concern for the inability of the arbitrator to make orders binding on non-parties which is considered incidental matter. A request for the finding of an oppression and an oppression remedy that is not available to be provided by an arbitrator does not mean that the matter should necessarily be resolved by the courts, rather than by arbitration. It would only be in circumstances where the arbitrator concluded that winding-up proceedings would be justified that a shareholder would then be entitled to present a petition.

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