

## CYPRUS

### LEGAL BASIS

1. **Has your State signed and/or ratified the European convention on State Immunity (1972) and/or the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004)? Do the authorities of your State consider the provisions of these treaties on service of process as a codification of customary international law? Does your State apply any other international legal instrument (apart from bilateral agreements)?**

The Republic of Cyprus is a State Party to the European Convention on State Immunity, but not to the United Nations Convention on Jurisdictional Immunities of States and Their Property (2004). There is very limited case-law by the Supreme Court on the subject of State Immunity (see reply to question 2 below) and domestic Courts have not had the opportunity to pronounce on whether the provisions of the UN Convention reflect customary law. Nevertheless, the authorities of the Republic (including the Judiciary and the Attorney General of the Republic, as legal advisor to the Ministry of Foreign Affairs), may draw guidance in this matter from the dicta of the European Court of Human Rights in a number of recent cases<sup>1</sup> to the effect that the UN Convention does reflect customary law.

2. **Please provide information on:**

- a. **National legislation (in particular its title source and content, if available, please provide official translations and/or references to internet sources)**

Under Article 169(2) of the Constitution of the Republic of Cyprus, the European Convention on State Immunity was concluded and became binding and operative upon the Republic following approval by a law of the House of Representatives (Ratifying Law No. 6/76). Further, according to Article 169(3) of the Constitution, treaties, conventions and agreements concluded in accordance with Article 169 shall have, as from their publication in the Official Gazette of the Republic, superior force to any municipal law, on condition that such treaties, conventions and agreements are applied by the other party thereto. Customary international Law may also be applicable in the domestic legal order as part of common law.

- b. **Case-law and practice, specifying whether your national courts and tribunals review the lawfulness of the service of process by operation of law.**

Domestic case-law on the issue of service of process upon a foreign State is limited. However, it may be of interest to note that in *Re Unitica Enterprises Limited v. the Slovak Republic (2001) 1 CLR<sup>2</sup> 1196*, the Supreme Court at first instance (sitting in single judge formation) annulled, by an order of Certiorari, the service of a writ of summons in a civil action against a foreign sovereign State at the Embassy of the defendant State in Nicosia (see reply to question 3 below as to the Court's reasoning on the validity of the service). On appeal, the Supreme Court upheld the first instance judgment regarding the validity of service, but it went further to hold that the writ of summons filed in the District Court of Nicosia for service within the jurisdiction of the Court, i.e. upon the Embassy of the foreign State located in Nicosia, was itself fatally flawed and void for illegality. According to the appeal Judgment (*Re Unitica Enterprises Limited v. the Slovak Republic (2004) 1 CLR 730*), a writ of summons joining as defendant a foreign State is meant for service outside the jurisdiction, in which case the plaintiff, under applicable Law and the Civil Procedure Rules had to first obtain the Court's leave to file and seal such a writ. In the absence of such leave, the writ was void and so were all further procedures based thereon, including service.

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<sup>1</sup> See inter alia, *Sabel El Leil v. France*, Application No.34869/04, judgment dated 29.6.2011  
*Wallishauer v. Austria*, Application no. 156/04, judgment dated 17.7.2012.

<sup>2</sup> Cyprus Law Reports

## PROCEDURE

3. **Please describe the procedure applicable to service of process on a foreign State, specifying the hierarchy between the different methods for serving process. In particular, please provide information on when the service is deemed to be effected, time-limits, the grounds to refuse service of process and the consequences of the unlawfulness of the service.**

In general terms, service of a writ upon a foreign State through diplomatic channels entails delivery by the Ministry of Foreign Affairs to the Embassy of the Republic of Cyprus in the defendant/respondent State under cover of a Note Verbale/Diplomatic Note for onward service to the Ministry of Foreign Affairs of the defendant/respondent State.

- a. **How are the terms “diplomatic” channels (Article 16§2 of the European Convention and Article 22§1 (c)(i) of the United Nations Convention) interpreted by your national authorities? Please indicate whether these terms include a notification to the embassy of the State concerned in the State of the forum.**

The Supreme Court of Cyprus has taken the view that Article 16.2 of the European Convention on State Immunity does not allow service of process to be effected upon the Embassy of the defendant State in the State of the forum. In *Re Unitica Enterprises Limited v. the Slovak Republic (2001) 1 CLR 1196* the Court noted with regard to Article 16.2 that the said provision constitutes “a clear cut indication that the method of service chosen in the present case [namely service of the writ at the Embassy of the defendant state in Nicosia] cannot be lawfully permitted”. In its judgment the Cyprus Supreme Court drew guidance from the judgment of the House of Lords in *Kuwait Airways v. Iraqi Airways (1995) 3 All E.R 694*, where it was concluded that service on a diplomatic mission was not service on the State of that mission for the purposes of section 12(1) of the 1978 State Immunity Act, which is the UK implementing legislation of the European Convention on State Immunity. In the *Kuwait Airways* case the House of Lords noted that the delivery of the writ to the Iraqi Embassy was at best a request to the Iraqi embassy to forward the writ on behalf of the Foreign and Commonwealth Office to the Iraqi Ministry of Foreign Affairs.

- b. **How are the terms “if necessary” (Article 16§2 of the European Convention and Article 22§3 of the United Nations Convention) interpreted by your national authorities?**

There is no authoritative interpretation by the Cyprus authorities, including the Cyprus Courts, of the term “if necessary” in Article 16§2 of the European Convention. However, drawing guidance from the explanatory report to the European Convention on State Immunity (see paragraph 62 thereof) Cyprus would be inclined to favour the view that the translation referred to in the said provision is for purposes of information, so that the documents served/notified are understandable to the defendant State.

4. **Where your State is the defendant in the proceedings, what is accepted as an adequate service of process? Please specify whether your State accepts the service to its embassy in the State of forum.**

In light of the information provided under questions 2(b) and 3(a), as a matter of general principle Cyprus would not accept the service to its embassy in the State of the forum. However, it cannot be excluded that different arrangements may apply, depending on the situation.