

CRYPTO ASSET TRACING & RECOVERY IN CYPRUS

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Introduction

In recent years, the Cyprus Courts have dealt extensively with a plethora of cross-border fraud disputes and have adjudicated and considered a number of cases involving asset tracing and recovery. The courts have consistently exhibited a readiness to issue interlocutory injunctions and, notably, worldwide freezing orders on an urgent basis and in special circumstances where such orders are necessary. This has solidly positioned Cyprus as an advantageous forum for adjudicating such disputes.

This stems from the symbiotic relationship between the Cyprus legal system and the English common law system is a main driver for the abovementioned. Notably, pursuant to section 29 of the Courts of Justice Law (Law 14/1960), the Cyprus Courts, in the absence of contrary legislation, must follow the principles of common law and equity. A fortiori, English case law extensively applies and provides valuable guidance to the Cyprus Courts.

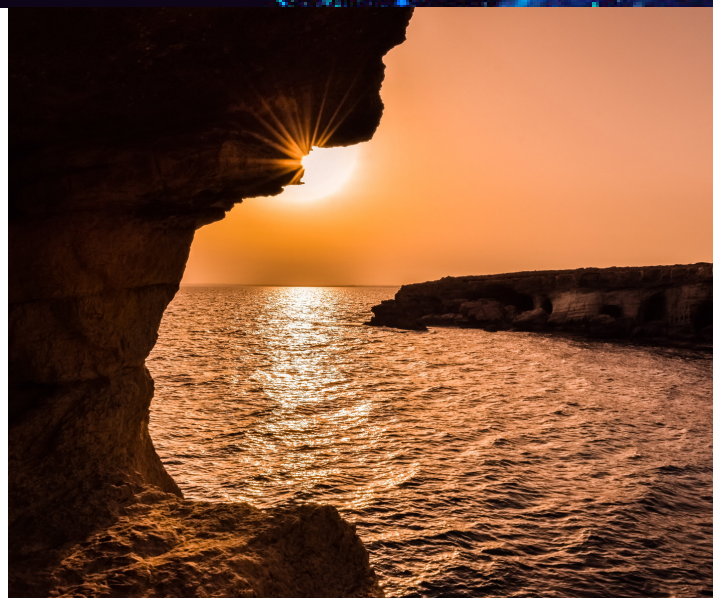
Furthermore, in September 2023, the Supreme Court of Cyprus introduced a new set of Civil Procedure Rules (CPRs), modelled accordingly after the English CPRs.

Cyprus and Cryptoassets

Over the past ten years, Cyprus has also cultivated a sophisticated hub for Regulated Investment firms (CIFs), possessing an experienced, robust, regulatory authority, and an excellent market of employees with the necessary know-how.

Coupling the above and the need for CIFs to consider, trade, and deal with cryptoassets, it was inevitable for Cyprus to prepare and introduce a Crypto Asset Service Provider (CASP) license. CASP license has seen significant demand, as several existing (and new) CIFs and other crypto entities and exchanges have applied to obtain it.

Having a number of crypto exchanges, naturally, brings Cyprus to the forefront of asset tracing and recovery.



Cryptoassets Property?

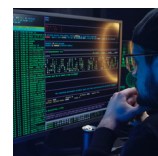
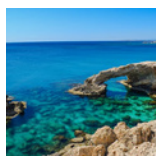
The quintessential question of whether cryptoassets should be treated as “property” has not been addressed by the legislator, and as of today, there is no reasoned judgment on the matter. As such, the authoritative reasoning in the English judgment of *AA v Persons Unknown & Ors* (2019) EWHC 3556 (Comm) (and subsequent judgments on the matter) treating cryptoassets as property will most likely be followed by the Cyprus Courts – considering the symbiotic relationship of English and Cyprus Law.

Although, as mentioned, no reported reasoned judgment has been published yet, we are aware that a number of interim proprietary and/or freezing injunctions have been issued on a without-notice basis (ex-parte) relating to cryptoassets, indicating that cryptoassets can be treated as property pursuant to Cyprus Law.

Norwich Pharmacal & Bankers Trust order

A Norwich Pharmacal order (NPO) is a disclosure order, which essentially requires the respondent, who is involved or mixed up in a wrongdoing (whether innocently or not), to disclose certain documents and/or information to the applicant, for example, identifying the wrongdoer or tracing its assets.

Bankers Trust orders involve proprietary claims in which the claimant seeks to trace assets. It is a form of disclosure order whereby banks, similar institutions or cryptocurrency exchanges disclose information in an effort to trace assets over which proprietary interest is claimed.



The Cyprus Courts have adopted the principles of NPOs and Bankers Trusts and have recognised the need for the availability of such effective remedies to deal comprehensively with the increasingly sophisticated schemes that wrongdoers are using to defraud, conceal and evade justice.

To that effect, both of the above play an instrumental role in the tracing and recovering misappropriated cryptoassets, particularly, given the increase of cryptocurrency exchanges in Cyprus.

Persons Unknown

The anonymity and borderless nature of cryptoassets has brought forth the relevancy of Persons Unknown orders.

Persons Unknown orders are used when the identity of the defendants or respondents is not known. Such orders are instrumental to claimants, allowing them to enlist the assistance of the court even though the intended defendant cannot be identified by name or even where they have no knowledge of who the appropriate defendants might be.

Their instrumental role in cryptoasset recovery and tracing has been seen in recent cases in England, the British Virgin Islands and Singapore.

The Cyprus Courts have not yet examined the availability of 'Persons Unknown' orders. Nevertheless, since the new Cyprus CPRs enunciate both the (a) over-riding objective; and (b) obligation on reliance on substance over form; of the English CPRs, it is highly arguable that the Cyprus Courts will readily espouse the principles of Persons Unknown orders, as introduced in the English judgment of **Bloomsbury Publishing Group Ltd v News Group Newspapers Ltd & Others (2003)** EWHC 1087 Ch, and issue the well needed relief of Persons Unknown orders against cryptoasset fraudsters.

Recovery

Once cryptoassets are deemed as "property", the weaponry of civil fraud litigators will be unlocked, providing a range of potential personal claims, such as deceit, conspiracy, unjust enrichment and conversion. Furthermore, dishonest assistance and knowing receipt may also be of instrumental importance in casting the net of liability to third parties – provided that a breach of trust or fiduciary duty exists, along with their relevant requirements.

Further, the full spectrum of interim reliefs available by the Cyprus Courts will aid in the recovery of the misappropriated assets by issuing relevant proprietary injunctions or securing the enforcement of a potential judgment by issuing worldwide freezing orders (along with ancillary disclosure orders) or Chabra orders, against third parties. If necessary, the Cyprus Courts can issue appropriate imaging and search orders to secure files and documents or appoint an interim receiver if proportionate.

Lastly, Cyprus law provides crypto-fraud victims a number of mechanisms to enforce their judgments, including:

(1) writ of delivery, ordering crypto-exchange or fraudster(s) to deliver up cryptoassets to the judgment creditor(s);

(2) writ of attachment (garnishee order);

(3) charging order (and subsequent sale of such charged assets) over the interest of the judgment debtor's shares, corporate debentures, unit trusts, and funds in court owned by the judgment debtor;

(4) post-judgment disclosure for the purposes of enforcement;

(5) information about the judgment debtor's assets;

(6) an order for repayment of the judgment debt in instalments and asset disclosure;

(7) appointment of a receiver by virtue of equitable execution of the judgment.



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