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## **MEMORANDUM**

**TO:** Claimants in the ICSID Arbitration Against Cyprus

**FROM:** Jay W. Eisenhofer  
Olav A. Haazen  
Caitlin M. Moyna

**DATE:** November 3, 2016

**RE:** Cyprus Arbitration Update

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### **I. INTRODUCTION**

We write to provide an update of the arbitration pending against the Government of Cyprus in the International Centre for the Settlement of Investment Disputes (“ICSID”) for breaches of Cyprus’ bilateral investment treaties (“BITs”) with Greece and Luxembourg based upon the conduct Cyprus took in enacting the bail-in of Laiki Bank and the Bank of Cyprus in March 2013. We provide below a brief synopsis of the developments that have transpired since we first began to retain clients in 2014, as well as an outline of upcoming steps in the arbitration.

### **II. PAST EVENTS**

We began investigating this matter shortly after the bail-in in 2013 and worked hard during 2014 and 2015 to bring together a powerful group of investors who had become victims of Cyprus’ actions. As of approximately August 2015, our group consisted of over 600 depositors and bondholders of Bank of Cyprus and Laiki Bank, who had joined forces and together represent a total loss of over € 206 million.

On September 25, 2015, we filed the Request for Arbitration (“RFA”) with the Secretary General of ICSID asserting a series of violations of the BIT between Cyprus and Greece. On November 18, 2015, we filed a supplemental RFA that identified additional claimants, including one claimant from Luxembourg.

Under ICSID procedures, once the RFA has been filed, a Tribunal consisting of three arbitrators is selected. The Claimants select one arbitrator; the Government selects one arbitrator; and then various measures are taken to select the third arbitrator, who also serves as



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the President of the Tribunal. Early on, we selected as arbitrator Professor Orrego Vicuña, who is a national of Chile. Cyprus appointed Professor Marcelo Kohen, a national of Argentina.

Despite several attempts lasting nearly six months, we were unable to reach agreement with the Government of Cyprus on the appointment of a President. We proposed a number of suitable candidates on several occasions, but the government of Cyprus rejected them every time. Ultimately, we had to call upon the Secretary of ICSID to make the appointment of the President, who then appointed Professor Donald McRae. With the appointment of Professor McRae, the Tribunal was officially convened on September 28, 2016, and the arbitration has now begun in earnest.

### **III. NEXT STEPS**

#### **A. Overview of Schedule**

Once the tribunal is appointed, it holds a “first session” with counsel for the parties. Typically, the issues addressed at the first session are largely procedural, concerning scheduling and procedures that will govern throughout the arbitration. We expect that this first session will be held sometime in late November or early December of this year.

Cyprus has indicated that it wishes to split the proceedings in two stages—the first stage to determine whether the Tribunal has jurisdiction over the claims, and a second stage to address Cyprus’ liability and the compensation due to Claimants. Cyprus holds the view that it is not possible for claimants to join forces in one large group and bring over 600 claims at once, and that the Tribunal has no jurisdiction over such a case. It also believes that European Union law has superseded Cyprus’ BITs such that there is no basis for this Tribunal to exist. Cyprus also believes that some Claimants are not Greek, but Cypriot, and that some deposits and bond purchases do not count as “investments” under the BITs or under ICSID’s provisions. While we do not disagree with splitting the case in two stages, we strongly disagree with Cyprus’ views on jurisdiction, and we will argue that the Tribunal was properly constituted and has jurisdiction over the Claimants and their claims against Cyprus.

If the Tribunal decides to split the case, we expect that Cyprus will be required to file a detailed memorial outlining its objections to jurisdiction around in or February or March 2017. We would then file a response in or around April or May 2017. Cyprus may get a chance to make one more written submission, after which there will be an in-person hearing before the Tribunal. The Tribunal will deliberate and issue a written decision sometime after that. Only if



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we win the issues of jurisdiction, as we suspect will be the case, the arbitration will proceed to questions of liability and compensations.

If the Tribunal decides not to split the proceedings, we will be the first to file a memorial, which will set forth in detail the reasons why Cyprus has violated the BITs with Greece and Luxembourg. Cyprus will then get a chance to respond, and will also be afforded the chance to raise its jurisdictional challenges. Claimants will have the opportunity to respond, and the in-person hearing before the Tribunal will follow. If the proceedings are not bifurcated, all of these steps may require additional time, and it is difficult to predict, at this point, what the schedule will be.

#### **B. Obligations of Claimants**

As a Claimant, you should be aware that you have obligations not to destroy or alter any documentation concerning the Cypriot bail-in, including any information about your investments in the Bank of Cyprus and Laiki Bank, such as your bank statements or certificates of bond purchases. In addition, we may have specific questions for you about your documents, or we may require additional documentation, and we thank you in advance for your continued cooperation.

We appreciate your consideration of the issues described above, and look forward to speaking with you on this if you have any questions.