



# Cyprus mortgage problems guide



**A guide to problems with Swiss  
Franc mortgages**



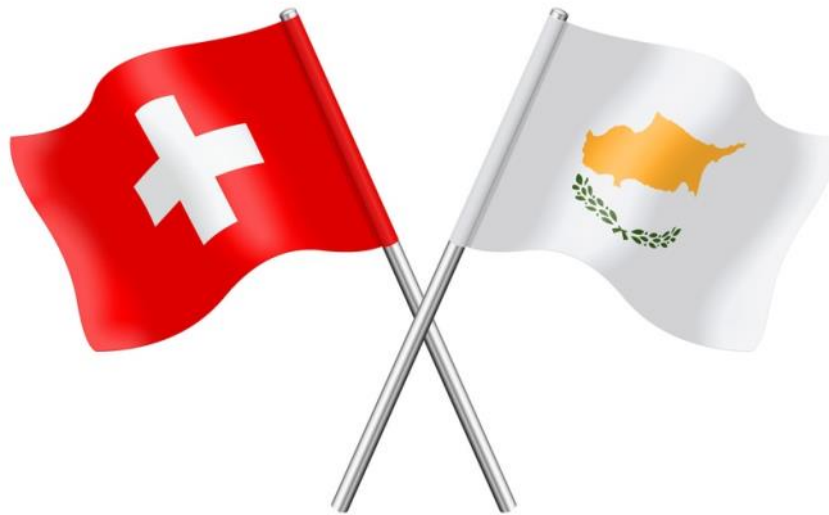
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Introduction	4
Renegotiation	5
Getting out of Your Mortgage	6
Can a Cyprus Bank Pursue Me in the UK	7
Writs, Termination Notices and Service in UK	8
What Constitutes Service of Writ in the UK	9
Jurisdiction – UK or Cyprus	10
Group Action	11
Time Barr	12
Legal Process - A Brief Summary	13
Why Use Judicare	15

## introduction

At one time it was common practice for people buying immovable property in Cyprus to take out or be encouraged to take out a mortgage in Swiss Francs. In part this was because at the time the exchange rate and interest rates worked in their favour. In fact, prior to Swiss Franc Mortgages the Cyprus Banks were also offering loans in Japanese Yen (until the exchange rate and interest rates changed).

Whilst interest rates and exchange rates worked in their favour this was a good idea, unfortunately with three currencies involved (the property price is in Cypriot Pounds, the mortgage in Swiss Francs and your income in the currency of your home country) there was always a potential for something to go wrong. When it did, the combined effects have resulted in thousands of British purchasers of immovable property in Cyprus facing unmanageable financial burdens and in extreme cases the very real prospect of their UK assets being placed at risk as they fail to maintain the loan repayments.



Despite the adverse currency damage which has affected the Swiss Franc Loans there are many purchasers who wish to retain their properties and as a result are happy to enter into a renegotiation with their bank to restructure the terms of a new loan. And as a result to maintain the loan but under different financial conditions which are more manageable. Renegotiation can take various forms. It is possible to change the interest rate, to change the base currency of the mortgage, and to achieve varying discounts due to the currency damage caused. It is also possible to negotiate interest free periods and/or even writing off lump sums from the mortgage.

Whatever you are looking for in your negotiation with the bank it is vital that you take independent legal advice and assistance in doing so. It is important for clients who are negotiating personally with the bank that the terms of any restructuring deal are reviewed by a lawyer prior to the new deal being signed off. This will ensure clients are protected moving forward. It is worth noting however once a client concludes the restructure and enters into the new loan this will remove any and all claims which may have existed under the original loan agreement .



## getting out of your mortgage

In a vast majority of instances however, and where individual circumstances support such a position, purchasers are seeking the release from the obligations which currently bind them to the bank(s) under the loan agreements as they take up their legal rights before the Cyprus Courts. In such cases we would review personal documentation to ascertain if there are any grounds upon which the individual can challenge the legality and validity of the mortgage and therefore potentially a way out of the Loan. We have found that in many cases (but not all) there are failings in the way that the mortgage was presented and also irregularities in the paperwork which may mean that the mortgage can be deemed to be void as a result.



# can a Cyprus bank pursue me in the UK

One of the most common questions we are asked and the one where there seems to be the most misinformation, relates to Cyprus banks being able to pursue clients in the UK. The simple answer is yes. If the Cyprus bank obtains a judgement from a court in Cyprus against an individual then yes, they can pursue your assets in the UK in satisfaction of that judgement. It is simply a formality to register in the UK and enforce a judgement obtained in Cyprus against your UK assets.

The said registration will take place on the basis of EU Directive 44/2001.

At the registration stage the client of the bank cannot contest any issues of a jurisdictional nature or raise the issue of their case, they can only raise an issue in relation to the service of the Action to him. This service takes place on the basis of an order of the Court in Cyprus and if it is complied with then the service requirement will be deemed satisfied.



## writs, termination notices and service in UK

Increasingly UK clients are also being served with Writs from Cyprus Banks at their UK residences in relation to the non payment of loans taken out for the purchase of property in Cyprus; and in particular Swiss Franc loans. The writs give the recipient a fixed period of time in which to file an appearance in court in Cyprus to defend the claims made in those writs and if no appearance is filed then a judgement will be issued against the client of the bank by the court in Cyprus.

It is therefore critical that any client being served in the UK seeks legal advice from Cypriot Counsel in order to respond within the stated deadline. There will be no opportunity to challenge the judgement or its subsequent enforcement.

Additionally clients are also receiving Termination Notices from the banks in relation to the non- payment of the loans (Writs are likely to follow) and it is again critical that clients formally respond to these notices and raise their objections to the content of such notices.

We strongly advise that any recipient of such writs or termination notices act to address the matter and not simply ignore the service and the potential implications.





## what constitutes service of a writ in the UK

We are often asked about the way clients of Cyprus Banks can defend Actions against them and there is concern that people are likely to find themselves in serious financial trouble in the future if they ignore the Service of the Writ to them in the UK and/or make no efforts to file the required Notice of Appearance to the Writ in the Cyprus court of issue.

We base the above in the premise that the jurisdiction of the Cyprus Bank to sue its client in a Cyprus Court can only be disputed in the Court in which the Action is initiated i.e. the Cyprus Court.

If this is not challenged and the judicial process comes to its conclusion with a judgment in favour of the Bank against its client then this judgment will be registered in the U.K with an Order of the U.K Court and will be executed in the U.K as a normal U.K Court judgment on the basis of the relevant EU Directive.



## jurisdiction – UK or Cyprus



There has been lots of talk on the question of jurisdiction. Should you take your case to the Cyprus courts or a British court?

The contracts most often state they are subject to Cypriot Law. The properties are in Cyprus. The banks are in Cyprus. Therefore Cyprus Courts definitely have jurisdiction. The Banks will not dispute it. On the other hand the jurisdiction of English Courts has to be proved through Court proceedings as the Banks will dispute it. This means additional legal costs.

Even if English Courts have jurisdiction this is parallel to that of the Cyprus Courts. It's not instead of the jurisdiction of Cyprus Courts. So purchasers will still find themselves as defendants in Actions brought against them by Banks in Cyprus Courts. This they cannot avoid. So in effect they will be "fighting a battle" on two fronts i.e. incurring double legal costs.

If a judgment is obtained in an English Court against the Bank how is it enforced? Only by going to the Cyprus Court in order to register the English judgment. So again the Cyprus Court, a Cyprus Lawyer and additional expense cannot be avoided.

This draws the inevitable conclusion that it is advisable to pursue the banks directly in the Cypriot Courts rather than attempting to do this through the British Legal System.

## group actions

Are there any benefits to bringing a group Court Action on the grounds that this results in legal costs in England being less than if individual Court proceedings are initiated in Cyprus? Costs will duplicate if a purchaser has to pay a lawyer in England to represent him or her as a member of a group Court Action, and at the same time has to pay a Lawyer to defend him or her in the Court proceedings brought against him or her by the Bank in the Court in Cyprus. Remember, this they cannot avoid as it does not depend on the Purchaser but the Bank. And in addition to this if they then have to pay a Lawyer to represent them in a Cyprus Court in order to register the judgment they have obtained in England as a member of a group court Action -so as to enforce it against the Bank- costs can escalate and very quickly become prohibitive.



## when will I be time-barred?



It has been claimed that purchasers only have a certain time in which to make a claim or else they will be “time-barred.”

Under Cyprus Law – and remember, this is the one the Banks will use in their Court Actions against the Purchasers in the Courts in Cyprus - this eventuality does not arise. Based on the relevant statutory provision the period of six years does not start to run until the Bank sends a demand letter. It could be said that this applies in the case of the Court Action by The Bank and not by the Purchasers. This is doubtful but even if it is so and taking into account all that is stated above this is one more reason why the Purchasers should choose to litigate in Cyprus Courts. Court proceedings in England will still “leave them open” to Court proceedings against them in Cyprus by the Banks, with no six year time limit and all the negatives mentioned above.

# the legal process in Cyprus – a brief summary

The legal process in Cyprus is based on the UK legal system and the court procedures follow the same procedures as the UK, in particular the Civil Procedure Rules as set out in the “White book” of 1955.

These are the rules that dictate the various steps in the Court process in Actions initiated by the bank:

**(a) The Writ in the Action is filed by the Plaintiffs**

**(b) It is served on the Defendants**

**(c) They (the Defendants) enter an Appearance in Court through a Lawyer**

**(d) The Plaintiffs file their Statement of Claim (setting out the claim in detail) if this is not already endorsed in the Writ served on the Defendant.**

**(e) The Defendants file their Defence, and**

**(f) The Plaintiffs file their Reply to the Defence.**

There are time limits in which the above have to take place which can be enlarged by the Court and all the above usually cover a time period of about 6 months.

Thereafter interlocutory Applications are filed by the Parties e.g. in order to obtain documents from the other side etc... And these Applications cover a period of about another 6 months.

Of course there may be issues of a preliminary nature raised e.g. the jurisdiction of the Court or if the service of the above documents was done properly.

These issues are heard before the Action on its merits is heard and may take 6 to 8 months to be resolved.

## ...the legal process in Cyprus – a brief summary

This means that the Action on its merits will come for the 1st time before the Court for hearing about 18 to 20 months after it is filed and then depending on the schedule of the Court it will take its turn. As due to the financial crisis in Cyprus the Courts are now very busy and the trial of the Action usually takes place about 2 to 3 years after it is filed.

And of course the side that loses the case has a right of Appeal to the Supreme Court which takes another 2 years to be completed.

The first case that finishes will definitely go to Appeal but thereafter the 1st judgment of the Supreme Court will bind and guide all the other cases that have not been heard yet and which involve the same issues of fact and law.

This will naturally speed matters up.

Finally and in order to rest the mind of clients at ease concerning Cyprus Courts it can be said that the judgments of the latter can be challenged in two European Courts (depending on the issue)- The European Court of Human Rights and the European Court of Justice.



## **Cypriot lawyers**

A highly experienced legal team of Cyprus Barristers.

## **We are Solicitors**

We are a UK based firm of Solicitors regulated by the Solicitors Regulation Authority and who specialise in international legal issues.

## **We are members of AIPP**

The Association of International Property Professionals was set up to improve standards of professionalism in a largely unregulated overseas property market.

## **Experience**

Our Cypriot team has many years of experience dealing with a whole range of legal issues in Cyprus at all levels of the Cypriot Legal System and at the European Court of Human Rights. They have studied law in the UK and have been called to the Bar in the UK. Lead Counsel Mr. Christos Triantafyllides comes from one of the oldest lawyers' families in Cyprus and his late father was the Chief Judge of the Supreme Court and thereafter Attorney General of the Republic. He is now a member of the committee drafting the new laws relating to the rights of the clients of the banks who cannot pay off their loans and is also acting as one of the advisers of the negotiator in the discussions concerning the finding of a political solution of the Cyprus problem.

## **We speak your language**

You need a legal team who can speak your own language. More importantly you need somebody who can explain and discuss often complicated issues in terms that you understand and provide regular updates.

# Contacts

A member of the Judicare Team can be contacted either by phone, email or post.

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