

Enforcement of Foreign Judgments

Fundamental Principles [Cyprus]

2020



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I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS)

A. Ability to Apply for Recognition and Enforcement of a Court Judgment

- 1. Is it possible to apply for enforcement of a foreign court judgment in your country?**

Answer: Yes.

B. Applicable Law: General Rules

- 1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?**

Answer: In Cyprus, the rules concerning the procedure on recognition, enforcement and execution of foreign judgments are contained in the Foreign Court Judgments (Recognition, Registration and Enforcement) Law (121(1)/2000). Pursuant to section 3(1) of the said law, a decision of a foreign court is the decision of the court, arbitral organ or organ of a foreign country with which the Republic of Cyprus has concluded an agreement or with which it is connected with an agreement for mutual recognition and enforcement of judicial decisions and arbitral awards and which is enforceable in the country issuing such decision.

Moreover, Foreign Judgments (Reciprocal Enforcement) Law, Cap. 10, was enacted during the time Cyprus was a British Colony. This law, is very closely modelled on the UK's own Foreign Judgments (Reciprocal Enforcement) Act 1933 and specifically applies to judgments of the courts of the UK and would become very relevant if the UK exits from the EU on a 'no-deal' basis and no separate special arrangements are put in place between the UK and Cyprus.

Additionally, Cyprus has concluded bilateral treaties with several other countries such as Russia and the Ukraine.

Furthermore, see answer below in relation to judgments issued by other EU Member States.

Finally, in relation to foreign judgments issued by countries with which Cyprus has not concluded any bilateral treaties, judgment must be enforced under common law principles and fresh legal proceedings would have to be filed before the courts of Cyprus, usually followed by an application for summary judgment.

C. Special Rules: European Union

1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?

Answer: As explained above, in Cyprus, the rules concerning the procedure on recognition, enforcement and execution of foreign judgments are contained in the Foreign Court Judgments (Recognition, Registration and Enforcement) Law (121(1)/2000). Pursuant to section 3(1) of the said law, a decision of a foreign court is the decision of the court or arbitral organ or organ of a foreign country with which the Republic of Cyprus has concluded an agreement or with which it is connected with an agreement for mutual recognition and enforcement of judicial decisions and arbitral awards and which is enforceable in the country issuing such decision.

Such a connection exists between Cyprus and the other EU Member States on the basis of the Regulation (EC) No 1215/2012 of 12 December 2012 ("Brussels Recast Regulation") and the Regulation (EC) 44/2001 ("Brussels I Regulation"). The Brussels Recast Regulation applies to EU judgments issued on or after 10 January 2015, whereas its predecessor, the Brussels I Regulation, applies to EU judgments issued before 10 January 2015. Additionally, the European Enforcement Order Regulation (EC) 805/2004, provides a streamlined enforcement procedure for uncontested claims (see answer below at C.2).

Foreign judgments originating from Switzerland, Norway and Iceland may be recognised and enforced pursuant to the framework provided under the Lugano Convention of 30 October 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

Cyprus has also acceded to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards signed in New York on 10 June 1958.

Remarkably, the Republic of Cyprus has concluded various bilateral treaties in relation to judicial cooperation, including matters relating to the recognition and enforcement of judgments with several countries such as, the Czech Republic, Hungary, Germany, Bulgaria, Greece, Syria, Russian Federation, the Ukraine, Serbia, Slovenia, China, Egypt and Poland.

2. Does the European Union have a special procedure to enforce court judgments coming from its Member States?

Answer:

- (i) Regulation (EC) No 1215/2012 of 12 December 2012 ("Brussels Recast Regulation") which replaces Regulation (EC) 44/2001 ("Brussels I Regulation") on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and is applicable from 10 January 2015.

A claimant who has obtained a judgment from one of the EU Member States can enforce this in the other EU Member States without having to commence separate proceedings.

For judgments on civil and commercial matters in court proceedings issued on or after 10 January 2015, the procedure is governed by the Brussels Recast Regulation which has direct effect in all EU Member States. Unlike the previous 2001 Brussels Regulation, the Brussels Recast Regulation provides that judgments given in a Member State which are enforceable in that Member State shall be enforceable in other states without a declaration of enforceability (*exequatur*) being necessary. Pursuant to Article 39 of the Regulation, a judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required, while pursuant to Article 36 a judgment given in a Member State which is enforceable in that Member State shall be recognised in other Member States without any special procedure being required.

Pursuant to Article 41(1) of the Regulation, the procedure for the enforcement of judgments given in another Member State is governed by the law of the Member State in which enforcement is sought.

The 2001 Brussels Regulation continues to apply to civil and commercial matters where court proceedings were initiated prior to 10 January 2015. The courts of the enforcing Member State must first declare the judgment to be enforceable and so an application must be made locally. Pursuant to Articles 33 and 38 of the Regulation (EC) No. 44/2001 judgments given in a Member State, which are enforceable in that Member State, can be enforced in another Member State once they are declared enforceable there, on an application by anyone who has an interest in the matter, without any special procedure being required. Such an application should be made to the District Court (or, in the case of a maintenance judgment, the Family Court) of the District where the respondent resides. If the respondent resides abroad or when there was no respondent in the procedure where the judgment was issued, the application should be made to the District Court (or, in the case of a maintenance judgment, the Family Court) of the District where the Applicant resides (Article 39).

- (ii) Regulation (EC) No 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims.

All Member States with the exception of Denmark are bound by this Regulation which has been applicable since 21 October 2005.

Regulation (EC) No 805/2004 aims for mutual trust in the administration of justice in the Member States to ensure the mutual recognition of foreign judgments which are certified as European Enforcement Orders (EEOs) in another Member State. The Regulation accelerates and simplifies access to enforcement in a Member State by abolishing the *exequatur*, i.e. by enforcing the automatic recognition and enforcement and dispensing with any intermediate measures to be taken prior to enforcement in the Member State in which enforcement is sought. As a result, a “judgment that has been certified as a European Enforcement Order by the court of origin should be treated as if it had been delivered in the Member State in which enforcement is sought”.

EEO is exclusively intended for uncontested claims. The definition of an “uncontested” claim is provided in Article 3(1) of the Regulation as follows:

“A claim shall be regarded as uncontested if:

- (a) the debtor has expressly agreed to it by admission or by means of a settlement which has been approved by a court or concluded before a court in the course of proceedings; or
- (b) the debtor has never objected to it, in compliance with the relevant procedural requirements under the law of the Member State of origin, in the course of the court proceedings; or
- (c) the debtor has not appeared or been represented at a court hearing regarding that claim after having initially objected to the claim in the course of the court proceedings, provided that such conduct amounts to a tacit admission of the claim or of the facts alleged by the creditor under the law of the Member State of origin; or
- (d) the debtor has expressly agreed to it in an authentic instrument”.

Certain requirements must be fulfilled, before the court that deals with the uncontested claim issues a judgment certified as an EEO. The requirements are provided under Article 6 as follows:

“1. A judgment on an uncontested claim delivered in a Member State shall, upon application at any time to the court of origin, be certified as a European Enforcement Order if:

- (a) the judgment is enforceable in the Member State of origin; and
- (b) the judgment does not conflict with the rules on jurisdiction as laid down in sections 3 and 6 of Chapter II of Regulation (EC) No 44/2001; and

(c) the court proceedings in the Member State of origin met the requirements as set out in Chapter III where a claim is uncontested within the meaning of Article 3(1)(b) or (c); and

(d) the judgment was given in the Member State of the debtor's domicile within the meaning of Article 59 of Regulation (EC) No 44/2001, in cases where:

- ❖ a claim is uncontested within the meaning of Article 3(1)(b) or (c); and
- ❖ it relates to a contract concluded by a person, the consumer, for a purpose which can be regarded as being outside his trade or profession; and
- ❖ the debtor is the consumer”.

The Regulation lays down minimum standards with regard to the service of documents instituting the proceedings that must be fulfilled, to ensure that the debtor is informed about the court action against him so that he can contest the claim.

The methods of service are contained within Articles 13 and 14 of the Regulation and only these methods are allowed, if the judgment is to be certified as an EEO. The method of service provided in Article 13 is characterised by full certainty that the document served has reached its addressee, since there must be an acknowledgement of receipt by the debtor, whether the service was personal, postal or by electronic means.

Under Article 14, there must be a very high degree of likelihood that the document has reached its addressee but there is no need for proof of receipt by the debtor.

The Regulation, however, does not oblige the Member States to adapt their national legislation to the minimum standards set out in the Regulation. It only provides an incentive, by creating a more efficient and speedy enforceability of judgments in other Member States only if those minimum standards are met.

Under Article 20(2) of the Regulation, the creditor seeking enforcement of the EEO could be asked to file a copy of the judgment and a copy of the EEO certificate, both duly translated in the Greek language. The translation into Greek shall be made by an official or a sworn translator or by a diplomatic or consular agent. No security deposit shall be required from the creditor on the grounds of nationality or foreign residence.

Pursuant to Article 21, the enforcement could be refused upon an application by the debtor if the judgment certified as an EEO is in conflict

with an existing earlier judgment given in any Member State or in a third country.

- (iii) The EC Regulations No 1896/2006 and 936/2012 of the European Parliament and of the Council of 12 December 2006 creating a European Order for Payment Procedure

Under EC Regulation No. 1896/2006, creditors have the choice to apply for a European Order for Payment. The procedure simplifies, speeds up and reduces the costs of litigation in cross-border cases concerning uncontested pecuniary claims in civil and commercial matters.

The European Order for Payment is recognised and enforced in all EU countries (except Denmark), without the need for any intermediary proceedings in the EU country of enforcement or a declaration of enforceability, prior to its recognition and enforcement.

This Order does not involve obtaining a judgment following any actual court proceedings, but merely includes the completion of a form, which sets out the pecuniary claim for a specific amount.

- (iv) European Small Claims Procedure - EC Regulation No. 861/2007

The European Small Claims Procedure sets out a simplified procedure for civil or commercial cross-border claims with a value of up to €5,000 (previously €2,000). The European Small Claims Procedure is available to litigants as an alternative to the procedures existing under the laws of the Member States. A judgment given in the European Small Claims Procedure is recognised and enforceable in another Member State without the need for a declaration of enforceability and without any possibility of opposing its recognition.

There is no specific Small Claims Procedure under the legal system of Cyprus other than that provided for in Regulation 861/2007, for the application of which a procedural Regulation has been adopted.

D. Average Duration of Enforcement Procedure

1. What is the average length of time for this kind of procedure?

Answer: It depends on the court's schedule and availability and whether an opposition is filed by the respondent. If no opposition is filed, it could take up to 3 months. If an opposition is filed, it could take up to 6 months. Additional time will be needed for the actual enforcement of the judgment by selling assets, etc.

II. Denial of Recognition and Enforcement of a Foreign Court Judgment: Reasons

A. Can a court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?

Answer: Yes, it can be denied.

Article 45 (1) of the Recast Brussels Regulation sets out some grounds under which a judgment shall not be recognised:

“(a) if such recognition is manifestly contrary to public policy (*ordre public*) in the Member State in which recognition is sought;

(b) where the judgment was given in default of appearance, if the defendant was not served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;

(c) if the judgment is irreconcilable with a judgment given between the same parties in the Member State in which recognition is sought;

(d) if the judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed; or

(e) if the judgment conflicts with:

- ❖ (i) Sections 3 (Jurisdiction in matters relating to insurance), 4 (Jurisdiction over consumer contracts) or 5 (Jurisdiction over individual contracts of employment) of Chapter II where the policyholder, the insured, a beneficiary of the insurance contract, the injured party, the consumer or the employee was the defendant; or
- ❖ (ii) Section 6 (Exclusive jurisdiction) of Chapter II.

Also, Article 46 states that on the application of the person against whom enforcement is sought, the enforcement of a judgment shall be refused where one of the grounds referred to in Article 45 is found to exist.

- (i) As regards foreign judgments falling within the ambit of the Certain Judgments of Courts of Commonwealth Countries (Reciprocal Enforcement) Law, the Cyprus courts may similarly refuse recognition and enforcement on grounds of:

- ❖ public policy;
 - ❖ lack of jurisdiction;
 - ❖ lack of proper notice of the proceedings which resulted in the foreign judgment to the judgment debtor; and
 - ❖ the existence of a final and conclusive judgment by another court (other than the court of origin) which had jurisdiction to hear the dispute.
- (ii) In relation to non-EU judgments, the grounds on which the judgment debtor may rely to contest recognition proceedings filed on the basis of the Foreign Judgments Law or a bilateral treaty with a third party are limited to:
- ❖ issues regarding the jurisdiction of the court;
 - ❖ the proven satisfaction of the foreign judgment; and
 - ❖ the judgment creditor's failure to meet any other conditions laid down in the convention or bilateral treaty.
- (iii) As regards common law judgments, whether foreign judgments will be recognised or enforced when recognition or enforcement is pursued under common law will be a matter of discretion for the Cyprus courts, based on the facts of each case. The grounds on which a refusal to recognise or enforce a particular foreign judgment may mirror those examined by the courts under the Certain Judgments of Courts of Commonwealth Countries (Reciprocal Enforcement) Law.

Further to these, a court can refuse recognition/enforcement where the defendant has not been properly served.

B. Costs and Expenses

1. What kind of costs and expenses can a claimant expect in this enforcement procedure?

Answer: The lawyers' fees depend on the value of the judgment and will certainly be higher if an opposition is filed. In the absence of a private agreement between the applicant and his or her lawyers, the fees will be estimated pursuant to a bill of costs filed by the applicant's lawyers after the enforcement judgment is issued. The amount of costs is determined by the rules of the Supreme Court of Cyprus on the basis of the pre-set scale of costs relevant to the proceedings. In more complex cases, lawyers may charge an hourly rate or work on a special retainer basis. In turn, this is determined by the value of the foreign judgment to be enforced. It is noted that contingency fee agreements are not permissible under Cyprus law as they offend the principle of champerty.

Expenses would include the court fees/stamps, fees for the translation of the foreign judgment and any other relevant documents into Greek and service costs.

III. FORMAL REQUIREMENTS

A. Time Limit

1. Is there a time limit to apply for enforcement of a foreign court judgment?

Answer: As a general rule, the domestic legislation and relevant regulations provide no limitation period in relation to the filing of applications for the recognition and enforcement of foreign judgments. However, pursuant to section 3 of the Foreign Court Judgments (Recognition, Registration and Enforcement) Law (121(1)/2000), a foreign judgment must be enforceable in the country it was issued. So in this sense, a limitation exists but not from the Cyprus side.

Additionally, pursuant to the Limitation of Actionable Rights Law of 2012 (Law 66(I)/2012), actions to enforce a foreign judgment at common law, become statute barred 15 years from the date on which the judgment became final. It is noted that as a result of various suspensions of the Limitation Laws in Cyprus, time begins to run as of 1 January 2016 for all foreign judgments issued before 31 December 2015.

B. Final and Definitive Court Judgment: Provisional Enforcement

1. Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?

Answer: For a foreign judgment to be enforced in Cyprus, when there is a connection with the country issuing the judgment, the provisions of the relevant treaty connecting the two countries must be taken into consideration. For example, a foreign judgment issued by an EU country, has to be enforceable in the country that issued it, but it doesn't have to be final pursuant to section 39 of the Brussels Recast Regulation.

When there is no connection between Cyprus and the country that issued the foreign judgment, such a foreign judgment can be enforced by filing a claim at common law and it has to be final and definitive.

"Final" has been interpreted to mean that the judgment cannot be reopened in the court of origin, even though an appeal may be pending against it. Additionally, interim judgments cannot be considered "final". On the other

hand, “definitive” means that the judgment represents the court’s settled conclusion on the merits of the case.

In general, there are no special requirements to provisionally enforce a court judgment which is not final and definitive.

C. Necessary Requirements

1. What necessary requirements must the foreign court judgment fulfil to be recognised and enforced?

Answer: The only requirement is for the judgment to be enforceable in the country which issued the judgment.

D. Other Formal Requirements: Court Fees

1. Is it mandatory to pay court fees for this kind of application?

Answer: Yes, but usually these are minimal. For judgments enforced under the common law, there will be a court issue fee for the issuing of fresh Cyprus proceedings, that depend on the value of the claim. If an application is made for summary judgment, a further court fee in respect of that application will also be payable.

E. Are there any other formal requirements in your country to enforce a court judgment?

Answer: No.

IV. PROCEDURE

A. Competent Court

1. Which court or courts are competent to decide an enforcement application?

Answer: The judgment creditor may have the foreign judgment registered either: in the court of the district in which the judgment debtor resides or carries on his or her profession; or if the subject matter of a judgment is immovable property in Cyprus, in the court of the district where that property is situated.

B. Informational Requirements for the Application to Enforce a Foreign Court Judgment

1. What information must be contained in the enforcement application of a foreign court judgment?

Answer: Generally speaking, the information required includes:

- ❖ The name of the judgment creditor and their address for service within the jurisdiction.
- ❖ The name of the judgment debtor and his address or place of business.
- ❖ The grounds on which the judgment creditor is entitled to enforce the judgment.
- ❖ In the case of a monetary judgment, the amount in respect of which it remains unsatisfied.
- ❖ Where interest is recoverable, the amount of interest which has accrued up to the date of the application or the rate of interest, the date from which it is recoverable and the date on which it ceases to accrue.

C. What documents must be included with/attached to the application to enforce a foreign court judgment?

Answer: The extent of the documentary requirements which must be met by the judgment creditor to enable the recognition and enforcement of a foreign judgment in Cyprus will ultimately depend on the enforcement regime applicable to the foreign judgment.

1. Judgments from a country with which Cyprus is connected with an international or bilateral treaty are governed by the provisions of that Treaty along with the provisions of Law 121(1)/2000.
2. Judgments from an EU country: Pursuant to Article 37 of Regulation no. 1215/2012, a party who wishes to recognise and enforce a judgment issued by another Member State shall produce a copy of the judgment which satisfies the conditions necessary to establish its authenticity along with a certificate from the court of origin, issued in the form set out at Annex 1 to the Recast Brussels Regulation, certifying that the judgment is enforceable and containing an extract of the judgment as well as relevant information on the recoverable costs of the proceedings and the calculation of interest. Such certificate shall be served on the person against whom the enforcement is sought prior to the first enforcement measure. The certificate shall be accompanied by the judgment, if not already served on that person. A translation of the judgment sought to be enforced should also be served either in a language which the said person understands or in the official language or one of the official languages of the Member State in which the said person is domiciled.

As regards EU judgments falling under the ambit of the European Enforcement Order Regulation no. 805/2004, the judgment creditor must provide a copy of the judgment which satisfies the conditions necessary to establish its authenticity, a copy of the European

Enforcement Order certificate which satisfies the conditions necessary to establish its authenticity and where necessary, a transcription of the European Enforcement Order certificate or a translation thereof into the official language or one of the official languages of the Member State of enforcement.

D. Phases of the Procedure

1. What are the phases of the procedure to enforce a foreign court judgment?

Answer: The enforcement of a foreign judgment can be effected by filing an application by summons by the party seeking enforcement, that is to say the judgment creditor and the judgment creditor's application is usually scheduled before the court within four weeks. Where the judgment debtor has not taken part in the proceedings pursuant to which the judgment was issued, this application may also be filed on an ex-parte basis (without notice to the respondent). Whether filed by summons or on an ex-parte basis, the application must be supported by an affidavit to which any relevant documents are attached as exhibits. The respondent is given the opportunity to file an opposition and the case is then fixed for a hearing.

E. Opposition of the Defendant

1. Can a defendant oppose this enforcement application?

Answer: Yes.

2. Are there a limited number of reasons for the defendant to oppose the enforcement of the court judgment? If YES: what are those reasons?

Answer: Yes.

The grounds on which a respondent may raise an opposition are limited to:

- ❖ challenging the jurisdiction of the court hearing the application;
- ❖ challenging whether the prerequisites set by the treaty or convention pursuant to which the judgment creditor seeks to enforce have been met; and
- ❖ alleging that the judgment has already been satisfied.

F. Appeal and its Consequences in this Procedure

- 1. Is it possible to appeal a court decision to recognise and enforce a foreign court decision?**

Answer: Yes.

- 2. Can this appeal suspend the enforcement?**

Answer: The enforcement judgment remains enforceable irrespective of the appeal, but the court with which an appeal is lodged may, on the application of the party against whom enforcement is sought, stay the proceedings.

G. Recovery of Judicial Costs and Expenses

- 1. Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?**

Answer: There are no special rules regarding costs related to the enforcement of court judgments, so the general rule is applicable; the respondent must pay for the costs and expenses caused by the enforcement procedure unless his appeal or opposition is accepted by the court.

V. RECOVERY OF THE DEBT

A. Means of Enforcement

- 1. What types of assets are subject to enforcement of the court's judgment?**

Answer: All available assets of the debtor.

- ❖ By seizure and sale of movable property (except property essential for the debtor to work/live);
- ❖ By sale of or making the judgment a charge on immovable property;
- ❖ By sequestration of immovable property;
- ❖ By attachment of property; or
- ❖ By examining the debtor with respect to his financial situation and his ability to make the payment and by issuing an order to pay the sum owed by monthly instalments (including an attachment of earnings order);
- ❖ Third party debt order;

Additionally, special provisions are included in Law 31(1)/92, which amongst others, provides for a procedure whereby a court order can be obtained for the attachment and subsequent sale of shares that a judgment debtor holds in a Cyprus company. Where necessary, this law also provides for the possibility of the appointment of a receiver to oversee such sale.

VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION

A. Any other issues of interest in your jurisdiction

Answer: One issue of interest will be whether a reform of the Certain Judgments of Courts of Commonwealth Countries (Reciprocal Enforcement) Law (which governs the recognition and enforcement of judgments issued by courts of the United Kingdom) may be required, depending on the mechanics of the Brexit process.

CYPRUS

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