

Enforcement of Foreign Judgments

Fundamental Principles [Malta]

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. This may be done in Malta in terms of articles 825A *et seq* of the Code of Organization and Civil Procedure (hereinafter referred to as the ‘**COCP**’), Chapter 12 of the Laws of Malta, provided that these provisions shall only apply where (A) they are not inconsistent with what the provisions of regulations of the European Union provide or (B) in matters not falling within the ambit of such regulations.

Where the regulations of the European Union provide different than in the said provisions, the European Regulations shall prevail.

B. Applicable Law: General Rules

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

Answer: The applicable law in relation to the enforcement of foreign judgments in Malta is the COCP, namely articles 825A *et seq*.

C. Special Rules: European Union

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

Answer:

The European Union provides for several legal regimes with the aim of easing the freedom of movement of judgements between EU Member states, in particular:

1. Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and enforcement of judgements in civil and commercial matters (Recast);
2. Regulation (EC) No 805/2004 of the European Parliament and the Council of 21 April 2004 creating a European Enforcement Order for uncontested claims;
3. Regulation (EC) No 861/2008 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure; and

4. Regulation (EU) 2015/848 of the European Parliament and the Council of 20 May 2015 on insolvency proceedings (Recast)

On a national level, besides the provisions of the COCP, there is the British Judgments (Reciprocal Enforcement) Act, (Chapter 52 of the Laws of Malta), which provides for the enforcement of judgments obtained in any civil or commercial proceedings, before a superior court in the United Kingdom, whether before or after the passing of the Act, whereby any sum of money is made payable.

Other provisions are also found in a number of other laws such as the Marriage Act (Chapter 255 of the Laws of Malta), which relates to decisions given by ecclesiastical tribunals.

There are also Multilateral International Treaties in relation to the enforcement of foreign judgments such as the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters (16th September 1988).

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

Answer: Yes. This procedure is in Regulation (EU) No. 1215/2012 of the 12nd December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

In accordance with Article 36(1) of the Regulation, a judgment given in a Member State may be recognised in the other Member States without any special procedure being required.

In this regard Article 39 stipulates that a judgment given in a Member State and enforceable in that State may be enforced in another Member State without any declaration of enforceability being required.

In Malta, as per the Designation of Courts Regulations (Subsidiary Legislation 12.23) the Civil Court First Hall, the Court of Magistrates (Gozo) (General Jurisdiction Section) in its superior jurisdiction, the Court of Appeal, the Registrar, Civil Courts and Tribunals and the Registrar Gozo Courts and Tribunals are deemed to be the competent courts for the purposes of Council Regulation (EC) No 44/2001 of 22 December 2000¹ on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

¹ Maltese Legislation still refers to the Council Regulation, which has since been replaced by Regulation (EU) No. 1215/2012 of the 12nd December 2012

D. Average Duration of Enforcement Procedure

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

Answer: Article 3(1) of the British Judgments (Reciprocal Enforcement) Act, Chapter 52 of the Laws of Malta provides that the judgment creditor may apply to the Courts to have the judgment registered in one of the superior Courts of Malta up to twelve months after the date of the foreign judgment, or such longer period as may be allowed.

As regards to other judgments the length of time for the enforcement procedure may vary and is dependent on a number of factors including, *inter alia*, the time taken to notify the defendant of the application as he would then have twenty days from the date of notification to file his reply. Another factor to be considered is the possibility of an appeal by the defendant.

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. Section 827 of the COCP states that the provision related to the enforcement of a foreign judgment shall not have effect: -

- (a) If the judgment sought to be enforced can be set aside on any of the grounds established under Article 811 of the Civil Code in relation to retrial;
- (b) In the case of a judgment by default, if the parties were not contumacious according to foreign law;
- (c) If the judgment contains any disposition contrary to public policy or to the internal public law of Malta.

Additionally, under Article 3(2) of the British Judgments (Reciprocal Enforcement) Act, the judgment shall not be ordered to be registered if -

- (i) The original court acted without jurisdiction;
- (ii) The judgment debtor, being a person who was neither carrying out business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit, or agree to submit to the jurisdiction of the court;
- (iii) The judgment debtor, being the defendant in the proceedings, was not duly served with the notice of proceedings in the original court,

and did not appear, notwithstanding that he was ordinarily resident or was carrying out business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court; or

- (iv) The judgment was obtained by fraud; or
- (v) The judgment debtor satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal against the judgment; or
- (vi) The judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason, could not have been entertained by the registering court.

Furthermore and in so far as recognition of the judgment is concerned, Article 45 of Regulation (EU) No 1215/2012 states that: -

The recognition of a judgement shall be refused:-

1. If such recognition is manifestly contrary to public policy in the Member State in which recognition is sought;
2. Where it 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 defense, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;
3. If it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought;
4. If it 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.

Additionally, Article 35(1) of the said Convention states that a judgment shall not be recognised if it conflicts with Sections 3, 4 or 6 of Chapter II, which deal with jurisdiction in matters relating to insurance, jurisdiction over consumer contracts and exclusive jurisdiction respectively, or in a case provided for in Article 72.

B. Costs and expenses

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

Answer: In so far as costs are concerned, one would need to consider court fees, lawyers' fees and legal procurator fees. The latter two may vary while one would also need to include fees for the notification of the parties concerned and the Attorney General. As regards to expenses, these would include such expenses incurred for the translation of the judgment if necessary, as well as for acquiring a power of attorney, as the case may be.

III. FORMAL REQUIREMENTS

A. Time limit

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

Answer: A time limit of twelve months from the date of the foreign judgment is imposed if one is applying for the enforcement of such under the British Judgments (Reciprocal Enforcement) Act, Chapter 52 of the Laws of Malta.

On the other hand, under the COCP, although no specific time-limit is imposed to enforce a foreign court judgment, where a period of ten years has expired since the day a judgment of the superior courts could have been enforced, or a period of five years has expired since the day a judgment of the inferior courts or Small Claims Tribunal could have been enforced, the enforcement may only be proceeded with upon a demand made with an application to the competent court.

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: The provisions relating to the enforcement of a foreign judgment refer specifically to judgments which are final and definitive, such that in terms of Article 826 of the COCP, any judgment delivered by a competent court outside Malta and constituting a *res judicata* may be enforced by the competent court in Malta in the same manner as judgments delivered in Malta, upon an application demanding that the enforcement of such judgment be ordered.

C. Necessary Requirements

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

Answer: There are no requirements in the case of judgments delivered in a Member State of the European Union. If a judgement is enforceable in the court of the Member State in which the judgement was delivered, then such a judgement would also be enforceable in Malta.

In the case of judgments delivered in a country which is not a member of the European Union, such judgment may be enforced if it is delivered by a competent court outside Malta and it constitutes a *res judicata*, upon an application demanding that the enforcement of such judgment is ordered.

In the case of judgments falling under the British Judgments (Reciprocal Enforcement) Act, Chapter 52 of the Laws of Malta, a judgment must have been obtained in a superior court in the United Kingdom in order to be recognised and enforced. Maltese law also requires that such judgments be registered in Malta before enforcement is proceeded with. Such judgements may only be registered if the Maltese Court of Appeal considers it just and convenient that the judgment should be enforced in Malta.

D. Other Formal Requirements: Court Fees

1. Is it mandatory to pay Court Fees for this kind of application?

Answer: YES

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: In accordance with Article 75 of Regulation (EU) 1215/2012, applications should be submitted to the First Hall of the Civil Court or the Court of Magistrates (Gozo) in its superior jurisdiction. In the case of a maintenance judgment, the application is to be submitted to the Court Registrar on transmission by the Justice Minister.

Under the Marriage Act (Chapter 255 of the Laws of Malta), the Court of Appeal declares whether a decision is enforceable in Malta if it concerns a decision that has become final and relates to the nullity or validity of a Catholic marriage, where one of the parties is domiciled in or a citizen of Malta.

Under the British Judgments (Reciprocal Enforcement) Act, the application for enforcement of a judgment obtained in a superior court in the United Kingdom is to be submitted to the Court of Appeal.

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: In the case of a judgment from a European Union Member State, the procedure for enforcement of a judgment given in another Member State shall be governed by the law of the Member State addressed. A judgment which is enforceable in the Member State addressed shall be enforced under the same conditions as a judgment given in the Member State addressed (Article 41 of Regulation (EU) No 1215/2012)

In Malta, an enforcement application is to be done according to Article 826 of the COCP, which requires that the application demands that the enforcement of the judgment be ordered.

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

Answer: Such an application would require the following documents to be attached:-

- A copy of the judgment which satisfies the conditions necessary to establish its authenticity;
- A certificate issued by the court or competent authority of the Member State where the judgment was given, which certificate needs to be in the standard form as per Annex V of the Regulation.
- If the court or competent authority so requires, a certified translation of the documents is to be produced.

Under the Marriage Act (Chapter 255 of the Laws of Malta), the following documents are to be filed with the application:-

- An authentic copy of the decision;

- A declaration of executivity according to Canon Law issued by the Tribunal that has given the decision.

D. Phases of the Procedure

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

Answer: In the case of judgments delivered in a Member State of the European Union: -

- (i) Enforcement application;
- (ii) Court decision on the application of enforceability;
- (iii) Appeal;
- (iv) In the case of a maintenance judgment, there can be a further appeal.
- (v) Opposition
- (vi) Sale of assets subject to enforcement

In the case of judgments from a country which is not an EU Member State:

- (i) Enforcement application;
- (ii) Opposition;
- (iii) Court decision granting enforcement;
- (iv) Registration of judgment.

Under the Marriage Act:

- (i) Enforcement application;
- (ii) Reply from respondent;
- (iii) Decree declaring the decision enforceable in Malta.

E. Opposition of the Defendant

1. Can a defendant oppose to this enforcement application?

Answer: YES

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

Answer: YES

With regard to judgments given within Member States of the European Union:-

- (i) If recognition of the judgment is manifestly contrary to public policy in the Member State in which recognition is sought;
- (ii) Where it 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 himself to challenge the judgment when it was possible for him to do so;
- (iii) If it is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought;
- (iv) If it 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.
- (v) If it conflicts with Sections 3, 4 or 6 of Chapter II of Regulation 44/2001;
- (vi) If the Member State in which enforcement is sought has undertaken, prior to the entry into force of Regulation 44/2001 pursuant to Article 59 of the Brussels Convention, not to recognise judgments given against defendants domiciled or habitually resident in a third country where, in cases provided for in Article 4 of that Convention, the judgment could only be founded on a ground of jurisdiction specified in the second paragraph of Article 3 of that Convention.

Article 24(5) of the Marriage Act also lists a number of grounds, including where:

- (i) The Tribunal was not competent to judge the case of nullity of the marriage;
- (ii) The right of action and defence was not assured to the parties;

- (iii) There is a contrary judgment binding the parties pronounced by a court, and which has become *res judicata*, based on the same grounds of nullity;
- (iv) In the case of a marriage celebrated in Malta after 11th August 1975, the act of marriage has not been delivered or transmitted to the Public Registry.

Article 3(2) of the British Judgments (Reciprocal Enforcement) Act sets out the following grounds:-

- (i) Lack of jurisdiction;
- (ii) The judgment debtor, being a person who was neither carrying out business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit, or agree to submit to the jurisdiction of the court;
- (iii) The judgment debtor, being the defendant in the proceedings, was not duly served with notice of the proceedings in the original court, and did not appear, notwithstanding that he was ordinarily resident or was carrying out business within the jurisdiction of that court, or agreed to submit to the jurisdiction of that court; or
- (iv) The judgment was obtained by fraud; or
- (v) The judgment debtor satisfies the registering court, either that an appeal is pending, or that he is entitled and intends to appeal against the judgment; or
- (vi) The judgment was in respect of a cause of action which, for reasons of public policy or for some other similar reason, could not have been entertained by the registering court.

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: With regard to judgments from an EU Member State, the decision on the application for a declaration of enforceability may be appealed against by either party. (Article 49 Regulation 1215/2012).

In Malta, this appeal is to be lodged with the Court of Appeal in accordance with the procedure laid down for appeals in the COCP. In the case of maintenance judgments, the appeal is to be lodged before the First Hall of the Civil Court or the Court of Magistrates (Gozo) in its superior jurisdiction.

According to Article 50 of Regulation 1215/2012, the judgment given on appeal may only be contested by a further appeal provided that the Member State concerned informs the Commission of the court hearing that appeal pursuant to point (c) of Article 75. In the case of Malta however, no further appeal lies to any other court except in the case of a maintenance judgment, where an appeal may be lodged before the Court of Appeal in accordance with the procedure laid down for appeal in the COCP.

2. Can this appeal suspend the enforcement?

Answer: In the case of judgments given in an EU Member State, the court with which an appeal is lodged under Article 49 or Article 50 of Regulation 1215/2012 may, on the application of the party against whom enforcement is sought, stay the proceedings if an ordinary appeal has been lodged against the judgment in the Member State of origin or if the time for such an appeal has not yet expired. In the latter case, the court may specify the time within which such an appeal is to be lodged (Article 51.1 of Regulation 1215/2012).

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: Article 3(3)(c) of the British Judgments (Reciprocal Enforcement) Act, Chapter 52 of the Laws of Malta provides that the costs of, and incidental to, the registration of the judgment (including the costs of obtaining a certified copy thereof from the original court and of the application for registration) shall be recoverable in like manner as if they were sums payable under the judgment.

In the case of other judgments which do not fall under the British Judgments (Reciprocal Enforcement) Act, there do not seem to be any special rules regarding costs related to the enforcement of foreign court judgments. Therefore, the general rule would be applicable whereby the costs would be recoverable by the applicant unless the application is rejected.

V. RECOVERY OF THE DEBT

A. Means of Enforcement

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

Answer: Both movable and immovable property belonging to the debtor is subject to the enforcement of any judgment, as the creditor shall state.

However, certain exceptions are stipulated depending on the warrant being issued.

In the case of a warrant for seizure, the property mentioned hereunder is excluded:

- (a) Such clothes for daily wear, bedding and such utensils and furniture as are considered reasonably necessary for the decent living of the debtor and his family;
- (b) Personal documents and books relating to the profession of the debtor, of his wife or of his children;
- (c) The registers and minute-books of public notaries;
- (d) Tools and implements necessary for the instruction in or the exercise of any science or of any art of the debtor, of his wife or of his children;
- (e) Animals and tools required for agriculture, and any fruit either cut or not yet separated from the ground;
- (f) Aircraft, exclusively appropriated for state service, including the postal service, but excluding commercial service;
- (g) Sea vessels wholly chartered for the service of the Government of Malta;
- (h) Sacred vestments and vessels which are used in a consecrated church, or belonging to a priest, a religious order or any member thereof;
- (i) Any property of any member of the Police Force or of the Armed Forces of Malta being arms, ammunition, equipment, instruments or clothing used by him in the discharge of his duties:

Any such property as listed in paragraphs (a) to (g) may be seized if:

- (i) The execution is demanded in respect of the price of such property;
- (ii) The execution is demanded in respect of rent or ground-rent of the tenement in which such property is kept;
- (iii) The executive title, by virtue of which the warrant has been issued, specifically condemns the debtor to return such property.

Furthermore, it shall not be lawful to issue a garnishee order upon:

- (a) Any salary, or wages (including bonus, allowances, overtime and other emoluments);

- (b) Any benefit, pension, allowance or assistance mentioned in the Social Security Act or other allowance of any person pensioned by the Government;
- (c) Any charitable grant or donation made by the Government;
- (d) Any bequest expressly made for the purpose of maintenance, if the debtor has no other means of subsistence and the debt itself is not due in respect of maintenance;
- (e) Any sum due for maintenance whether awarded *officio judicis*, or by public deed if the debt itself is not due in respect of maintenance;
- (f) Moneys which have been made available to the debtor by deed of loan for the building, construction and maintenance of houses intended as a main dwelling place for the debtor;
- (g) Overdraft banking facilities excluding credit cards by means of which commercial going concerns run by the debtor are being operated;
- (h) Bank guarantees and letters of credit.

In the case of any salary, wage benefit, pension or allowance, except for any benefit, pension, allowance or assistance mentioned in the Social Security Act, when the same exceed six hundred and ninety-eight euros and eighty one cents (€698.81) per month or such amount as may from time to time be established by order made by the Justice Minister, the issue of a garnishee order shall be applicable on that part in excess of the said amount. Provided that the debtor, upon an application shows to the satisfaction of the court that he needs such excess or part thereof for his maintenance or for the maintenance of his family, the court shall revoke the garnishee order with respect to the excess or such part thereof, whereupon the said order shall be deemed to be and to have been without effect to the extent to which it had been revoked. Provided further, that this provision shall not apply to the pay of an officer or man of the regular force of Malta.

VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION

A. Any other issues of interest in your jurisdiction

Answer: Malta is also a member of the New York Convention of 1958 on the recognition and enforcement of foreign arbitration awards.

Malta

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