



Enforcement of Foreign Judgments

in 28 jurisdictions worldwide

2012

Contributing editors: Mark Moedritzer and Kay C Whittaker



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| | |
|--|------------|
| Global Overview <i>Mark Moedritzer and Kay C Whittaker</i> Shook, Hardy & Bacon LLP | 3 |
| Australia <i>Colin Loveday and Sheena McKie</i> Clayton Utz | 5 |
| Belgium <i>Laurent Arnauts and Isabelle Ven</i> Arnauts Attorneys | 10 |
| Bermuda <i>Chen Foley, Mark Chudleigh and Nick Miles</i> Sedgwick Chudleigh | 16 |
| Brazil <i>Marcus Alexandre Matteucci Gomes and Fabiana Bruno Solano Pereira Felsberg e Associados</i> | 21 |
| Canada <i>John K Downing, Jennifer J Quick, Sherry A Kettle and Joel G Belisle</i> Miller Thomson LLP | 25 |
| China <i>Tim Meng</i> GoldenGate Lawyers | 31 |
| Cyprus <i>Michalis Kyriakides, Olga Shelyagova and Asrin Daoudi</i> Harris Kyriakides LLC | 35 |
| Ecuador <i>Rodrigo Jijón Letort and Juan Manuel Marchan</i> Perez Bustamante & Ponce | 40 |
| France <i>Christoph Schultheiss</i> Endrös-Baum Associés | 44 |
| Germany <i>Stephan Kleemann and Stefanie Burkhardt</i> Schmitz & Partner Rechtsanwälte | 50 |
| Guernsey <i>Mark Dunster and Sophia Harrison</i> Carey Olsen | 56 |
| India <i>Mustafa Motiwala, Dhirajkumar Totala and Neha Samant</i> Juris Corp, Advocates & Solicitors | 62 |
| Japan <i>Masahiro Nakatsukasa</i> Chuo Sogo Law Office PC | 67 |
| Korea <i>Woo Young Choi, Sang Bong Lee and Dong Hyuk Kim</i> Hwang Mok Park PC | 72 |
| Luxembourg <i>Christel Dumont and Guy Perrot</i> OPF Partners | 76 |
| Netherlands <i>Philip WM ter Burg and Femke Faes</i> Buren van Velzen Guelen NV | 80 |
| Nigeria <i>Etigwe Uwa, SAN, Adeyinka Aderemi and Chinasa Unaegbunam</i> Streamsowers & Köhn | 86 |
| Philippines <i>Simeon V Marcelo</i> Villaraza Cruz Marcelo & Angangco | 91 |
| Russia <i>Alexander Bezborodov and Nikita Rodionov</i> Beiten Burkhardt | 97 |
| Singapore <i>Edmund Jerome Kronenburg, Tan Kok Peng and Charmaine Cheong</i> Braddell Brothers LLP | 103 |
| South Africa <i>Roger Wakefield</i> Werksmans Attorneys | 108 |
| Sweden <i>Sverker Bonde, Polina Permyakova and Anna Backman</i> Advokatfirman Delphi KB | 115 |
| Switzerland <i>Dieter A Hofmann and Oliver M Kunz</i> Walder Wyss Ltd | 120 |
| Turkey <i>Serap Zuvin, Melis Oget Koc and T Gokmen Bolayir</i> Serap Zuvin Law Offices | 126 |
| Ukraine <i>Timur Bondaryev, Markian Malskyy and Volodymyr Yaremko</i> Arzinger | 131 |
| United Kingdom <i>Mark Tyler</i> Shook Hardy & Bacon International LLP | 136 |
| United States <i>Mark Moedritzer and Kay C Whittaker</i> Shook, Hardy & Bacon LLP | 143 |
| Venezuela <i>Carlos Dominguez Hoet</i> Pelaez Castillo & Duque | 149 |

Cyprus

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1 Treaties

Is your country party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments? What is the country's approach to entering into these treaties and what, if any, amendments or reservations has your country made to such treaties?

Cyprus is bound by bilateral treaties relating to the recognition and enforcement of foreign judgments with Belarus, the Czech Republic, Germany, Montenegro, Serbia, Slovakia, Ukraine, Russia, Bulgaria (Law No. 18/84), China (Law No. 19(III)/95), Greece (Law No. 55/84), Hungary (Law No. 7/83), Poland (Law No. 10 (III)/97), Syria (Law No. 160/86), Czechoslovakia (Law No. 68/82), Egypt (Law No. 32(III)/92), and Yugoslavia (Law No. 179/86). It is also a signatory to the following multilateral conventions relating to the recognition and enforcement of foreign judgments:

- the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters and Supplementary Protocol thereto;
- the Convention on the Recovery Abroad of Maintenance (Ratification);
- the European Convention on the Recognition and Enforcement of Decisions concerning the Custody and/or Restoration of Custody of Children;
- the European Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and
- the European Convention on the Recognition and Enforcement on Certain International Aspects of Bankruptcy.

Since Cyprus' succession to the European Union, it is also bound by EC Regulation No. 44/2001 (Brussels I Regulation) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and by EC Regulation No. 805/2004 creating a European Enforcement Order for uncontested claims.

The registration of judgments obtained in the United Kingdom is governed by the Foreign Judgments (Reciprocal Enforcement) Law, 1935 (and the rules made thereunder by means of an Order in Council under section 3). The Law is modelled on the corresponding English statute, the Foreign Judgments (Reciprocal Enforcement) Rules and the Maintenance Orders (Facilities for Enforcement) Law of 1921.

2 Intra-state variations

Is there uniformity in the law on the enforcement of foreign judgments among different jurisdictions within the country?

There is no unified system in Cyprus for the enforcement of foreign judgments. A judgment of a court of a foreign country has no direct operation in Cyprus, but it may be enforceable by action or counter-claim at common law or under statute, or it may be recognised as a defence to an action or as conclusive of an issue in an action.

A foreign judgment may be enforceable under statute by the process of registration according to the Foreign Judgment (Reciprocal Enforcement) Law. On the other hand, a judgment creditor

seeking to enforce a foreign judgment in Cyprus at common law cannot do so by direct execution of judgment; he or she must bring an action on the foreign judgment.

3 Sources of law

What are the sources of law regarding the enforcement of foreign judgments?

The main source of law is EC Regulation No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. The national rules concerning the procedure on recognition, enforcement and execution of foreign judgments are contained in Law No. 121(1)/2000 and in the Foreign Judgment (Reciprocal Enforcement) Law. This Law applies to all cases in which recognition, registration and enforcement of decisions of foreign courts is requested.

The Republic of Cyprus acceded to the European Union on 1 May 2004 and is therefore bound by EC Regulations No. 44/2001 and No. 805/2004. No measures are required nor have been taken to implement the said EC Regulations in the national law, since they are considered as binding law for all member states. By introducing the two Regulations, the European Union aims to ensure mutual trust in the administration of justice within its boundaries and to make the recognition of judgments from one member state to the other automatic, without any intermediate procedure. Therefore, European Union law takes precedence over earlier or later domestic law. Cyprus courts also take into consideration the case law of the European Court of Justice.

4 Hague Convention requirements

To the extent the enforcing country is a signatory of the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, will the court require strict compliance with its provisions before recognising a foreign judgment?

Cyprus signed the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters on 1 February 1971, which entered into force in Cyprus on 12 March 1976 (the day of its publication in the official Gazette). However, the Convention has no practical effect because, according to article 21 of the Convention, it is a prerequisite for implementing the bilateral treaty between Cyprus and the state that the foreign judgment comes from.

5 Limitation periods

What is the limitation period for enforcement of a foreign judgment? When does it commence to run? In what circumstances would the enforcing court consider the statute of limitations of the foreign jurisdiction?

The application must be filed within six years from the date of the judgment seeking to be registered. Cyprus procedural law does not

provide for a period of limitation applicable to the enforcement of a judgment. If the original judgment was obtained in another EU state, the judgment will be declared enforceable immediately on completion of the formalities in accordance with articles 41, 53 and 54 of EU Regulation No. 44/2001. Therefore, a party seeking recognition or applying for a declaration of enforceability shall produce a copy of the judgment that satisfies the conditions necessary to establish its authenticity and a certification that the judgment is enforceable in the member state of issue. The court or competent authority of a member state where a judgment was given shall issue, at the request of any interested party, a certificate using the standard form in annex V to the Regulation.

6 Types of enforceable order

Which remedies ordered by a foreign court are enforceable in your jurisdiction?

The types of enforceable order are usually specified in the bilateral or multilateral treaties to which Cyprus is a party. Generally, all lawful orders are enforceable, including money judgments, interim and permanent injunctions and orders for specific performance.

An injunction in Cyprus may be sought simultaneously with or after the application to register the foreign judgment. When the judgment debtor is a Cypriot national or a local Cypriot company, an injunction can be obtained only against their immovable property and not against its movables, save in the case that the specific asset or chattel is the subject of the foreign proceedings. Cypriot courts do not have jurisdiction to issue injunctions having extraterritorial effect.

The provisional measures available in Cyprus for interlocutory relief are:

- a *Mareva* injunction to prevent a defendant from removing assets outside the jurisdiction, or disposing of assets that are situated within the jurisdiction, so as to prohibit satisfaction of a possible judgment or execution order against him or her.

The requirements laid down by the courts for granting a *Mareva* injunction are:

- a cause of action justiciable in Cyprus;
- a good, arguable case;
- a defendant's possession of assets within the jurisdiction;
- assets to be subject of the action; and
- a real, immediate and tangible risk that the defendant may dissipate those assets before judgment can be enforced; and
- an *Anton Piller* order, which is a collection of interlocutory orders designated to enable a plaintiff to secure the preservation of relevant evidence that might otherwise be destroyed or concealed by the defendant.

The requirements laid down by the courts for granting an *Anton Piller* order are:

- there must be an extremely strong prima facie case on the merits;
- the defendant's activities must be proved to result in very serious potential or actual harm to the plaintiff's interests;
- there must be clear evidence that incriminating documents or materials are in the defendant's possession; and
- there must be a real possibility that such items may be destroyed before any inter partes application can be made.

Measures resulting in provisional fulfilment of the claim in terms of provisional payment are not available in Cyprus.

7 Competent courts

Must cases seeking enforcement of foreign judgments be brought in a particular court?

There is no special court in this regard. The judgment creditor may choose to have the judgment registered either in the district

court where the debtor resides or carries on his or her profession or where the property to which the judgment relates is situated. For a judgment to be capable of registration, it must meet the following requirements:

- the judgment is final and conclusive between the parties;
- there is a sum of money payable under it that is not related to tax claims or similar charges or in respect of a fine or penalty;
- the application is made within six years from the date that judgment was given or an appeal adjudicated;
- the judgment is unsatisfied, at least in part;
- the judgment is capable of execution in the original foreign court; and
- the foreign judgment must be issued by a court that had jurisdiction.

8 Separation of recognition and enforcement

To what extent is the process for obtaining judicial recognition of a foreign judgment separate from the process for enforcement?

The process for obtaining recognition and the process for enforcement of a foreign judgment are considered interconnected in Cyprus. By virtue of article 33 of Regulation No. 44/2001, no special procedure is required for the recognition of a judgment given in a member state. A mere application according to the relevant procedure in Cyprus would suffice. Recognition should be refused only in those situations exhaustively listed in article 34, such as if:

- recognition is manifestly contrary to the public policy of the member state in which it is sought;
- the judgment was given in default of appearance, and no proper and timely notice of the proceedings was given to the defendant;
- the judgment is irreconcilable with another given in a dispute between the same parties in the member state in which recognition is sought; and
- the judgment is irreconcilable with an earlier judgment, given in another member state or in a non-member state, between the same parties with the same issue and involving the same cause of action where the earlier decision fulfils the conditions required for recognition in the state of recognition.

For the enforceability of a foreign judgment, in addition to the non-existence of the above cases, the judgment must be enforceable in the member state in which it was issued.

Once enforcement is ordered by the court, the judgment is treated and can be executed as if it had been given by a Cypriot court.

9 Defences

Can a defendant raise merits-based defences to liability or to the scope of the award entered in the foreign jurisdiction, or is the defendant limited to more narrow grounds for challenging a foreign judgment?

In accordance with EU Regulation No. 44/2001, the defendant may lodge an appeal against the declaration of enforceability pursuant to article 43 of the Regulation. The Cypriot court with which the appeal is lodged will refuse or revoke the declaration of enforceability only on one of the grounds specified in articles 34 and 35 and it will give such decision without delay.

In accordance with Cyprus Law No. 121(1)/2000, the defendant's objection to the foreign judgment is limited to the jurisdiction of the court, to the demonstration of satisfaction of the fulfilment of the decision or to the existence of the conditions mentioned in the Convention regarding the application of the decision.

10 Basic requirements for recognition

What are the basic mandatory requirements for recognition of a foreign judgment?

As a rule, the judgments of foreign courts do not have direct effect in Cyprus but, provided that certain requirements are satisfied, Cypriot courts will assist in the enforcement of a foreign judgment. Generally, for a foreign judgment to achieve recognition in Cyprus, it:

- must have been issued by a court that has jurisdiction according to the Cypriot conflict of laws rules;
- may not injure Cypriot public policy;
- must have been made on merit and not according to procedure;
- may not have been obtained by fraud; and
- must have been the outcome of proceedings that were conducted in accordance with natural justice.

11 Other factors

May other non-mandatory factors for recognition of a foreign judgment be considered, and if so, what factors?

There is no Cyprus law or case law that specifically covers this. Overall, the Cypriot courts primarily consider the main factors that are stated above.

12 Procedural equivalence

Is there a requirement that the judicial proceedings where the judgment was entered correspond to due process in your jurisdiction, and if so, how is that requirement evaluated?

Yes. It is necessary that the foreign court proceedings conform to the foreign procedural law. Moreover, they should in any event respect the basic principles of due process as reflected in the Cypriot procedural law. One of the requisites of due process is that the foreign court proceedings should be understood by the defendant. If the defendant is unable to understand the language used by the court, he or she must be informed through the translation of documents and the use of an interpreter. The due process requirement is most crucial for foreign default judgments. The Cypriot judge will always examine whether the defaulting party has been duly summoned to appear. The defendant should have been aware of the claims filed against him or her and have had full opportunity to be heard and defend himself or herself. The enforcement of a foreign judgment may be impeached if the proceedings in which the judgment is obtained were opposed to natural justice. Thus, if the foreign court failed to adhere to the *audi alteram partem* rule by refusing to hear the defendant, any resulting judgment might be successfully set aside in Cyprus.

It is required that the judicial proceedings where the judgment was entered were duly conducted. Pursuant to EU legislation, specifically article 34 of Council Regulation (EC) No. 44/2001, Cyprus courts have the authority to refuse recognition and enforcement of a foreign judgment where the judgment was given in default of appearance if the defendant was not served with the document that instituted the proceedings, or with an equivalent document, in sufficient time and in such a way as to enable him or her to arrange for his or her defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him or her to do so. Such resulting judgment can be successfully set aside in Cyprus.

13 Personal jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had personal jurisdiction over the defendant, and if so, how is that requirement met?

No, not if the court of origin of the judgment is situated within the EU. In accordance with article 35 (3) of EU Regulation No. 44/2001,

the jurisdiction of the court of the member state of origin may not be reviewed.

The general rule on jurisdiction in the EU is that persons or legal persons having their residence or legal seat in one of the member states are to be sued before the courts of that state, irrespective of their nationality.

If the court of origin of the judgment is located outside the EU, the examination of jurisdiction depends on the wording of the bilateral treaties or other conventions to which Cyprus is a party. There is no sufficient case law to demonstrate how this requirement is met.

14 Subject-matter jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had subject-matter jurisdiction over the controversy, and if so, how is that requirement met?

No. In accordance with article 36 of EU Regulation No. 44/2001, under no circumstances may a foreign judgment be reviewed as to its substance. However, it is important to note that within the EU, special provisions apply on jurisdiction in cases relating to insurance matters, consumer contracts and employment contracts.

If the judgment was made by the court of a state where the defendant had no residence or legal seat, the Cypriot court will examine whether that court had subject-matter jurisdiction.

15 Service

Must the defendant have been technically or formally served with notice of the original action in the foreign jurisdiction, or is actual notice sufficient? How much notice is usually considered sufficient?

The Cypriot courts require that the defendant is properly served with the notice of proceedings that, in order to be considered sufficient, must enable him or her to defend.

In the event of a judgment given in default of appearance, there must be exhibited with the affidavit the original or a certified copy of the actual notice of service of the summons on the defaulting party or an equivalent document, a duly certified Greek translation of the judgment and such other evidence as may be required.

16 Fairness of foreign jurisdiction

Will the court consider the relative inconvenience of the foreign jurisdiction to the defendant as a basis for declining to enforce a foreign judgment?

No. With respect to jurisdiction, the Cypriot court will only examine whether the foreign court had jurisdiction and not whether the jurisdiction was convenient to the defendant, in order to avoid forum shopping. Usually the place of jurisdiction is the place of the defendant's domicile, or its registered office if the defendant is a legal person.

17 Vitiating by fraud

Will the court examine the foreign judgment for allegations of fraud upon the defendant or the court?

Yes. A judgment debtor may allege that the judgment was obtained by fraud and make a defence against its recognition in Cyprus. The particularities that support the fraud allegation may be put forward by the judgment debtor and, if credible, will be investigated. A judgment of a foreign court obtained by fraud, either on the part of the court or on the part of the party seeking to enforce it, will not be recognised in a Cypriot court. The foreign judgment cannot be enforced by an action, counter claim or under statute, or be recognised as a defence to an action or as conclusive of an issue in an action.

Update and trends

Regarding the recognition of judgments given in the courts of northern Cyprus, in the landmark case of *Apostolides v Orams*, on 28 April 2009 the European Court of Justice decided on the right of Greek Cypriot refugees displaced after the 1974 Turkish invasion to reclaim land in northern Cyprus. The case determined that, although Cyprus does not exercise effective control in northern Cyprus, cases decided in its courts are applicable through European Union law.

Article 35(1) of Regulation No. 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters does not authorise a court of a member state to refuse recognition or enforcement of a judgment given by the courts of another member state concerning land situated in an area of the latter state over which its government does not exercise effective control.

To summarise, the trend in Cyprus is as follows. The recognition or enforcement of judgments in Cyprus that have been given by, and are enforceable by, the courts of a foreign country with which Cyprus

has entered into a bilateral treaty or a convention for reciprocal enforcement of judgments may be conditional upon obtaining an enforcement order in Cyprus. Judgments given in an EU state and enforceable in that state shall be enforceable in Cyprus on application to the Cypriot court for a declaration of enforceability (Council Regulation (EC) No. 44/2001). If there is no such bilateral treaty or convention entered between Cyprus and a foreign country, and the latter is not a member of the EU, the judgment given by the court of the foreign country for a definite sum of money (not being a sum payable in respect of taxes, or in respect of a fine or other penalty) may only be enforced in Cyprus by bringing an action in Cyprus in respect of such judgment, provided that it is a final and conclusive judgment.

Enforcement in Cyprus could be refused if impeachable for fraud on the part of the party in whose favour the judgment is given or fraud on the part of the court pronouncing the judgment, or on the ground that its enforcement or recognition would be contrary to public policy.

18 Public policy

Will the court examine the foreign judgment for consistency with the enforcing jurisdiction's public policy and substantive laws?

Yes. If recognition of a foreign judgment would in any way offend Cypriot public policy, it is unlikely that it will be recognised. There is no legislative provision in Cyprus that defines the concept of public policy. It must be defined, however, as the totality of fundamental values, perceptions and ideas on which the ethical, financial and political order regulate Cypriot society at a certain time.

19 Conflicting decisions

What will the court do if the foreign judgment sought to be enforced is in conflict with another final and conclusive judgment involving the same parties or parties in privity?

Unless the latest judgment is based on new facts and findings that make it distinct from the previously obtained final and conclusive judgments involving the same parties, the Cypriot courts will not register such foreign judgment for recognition and enforcement. With regards to EU law, recognition will be refused if the judgment is irreconcilable with an earlier judgment given in another member state in which recognition is sought.

20 Alternative dispute resolution

What will the court do if the parties had an enforceable agreement to use alternative dispute resolution, and the defendant argues that this requirement was not followed by the party seeking to enforce?

If the foreign judgment was given irrespective of the enforceable alternative dispute resolution agreement, the Cypriot court will not recognise such judgment as it would not meet the requirement of fairness.

21 Favourably treated jurisdictions

Are judgments from some foreign jurisdictions given greater deference than judgments from others? If so, why?

Since Cyprus is a member of the European Union, the recognition and enforcement of judgments made in other EU member states are subject to more straightforward procedure than those from outside the European Union. However, Cyprus also provides greater deference to those foreign jurisdictions with which Cyprus has concluded bilateral agreements with respect to recognition and enforcement of foreign judgments.

22 Alteration of awards

Will a court ever recognise only part of a judgment, or alter or limit the damage award?

A court can recognise only part of a judgment. In accordance with article 48 of EU Regulation No. 44/2001, where a foreign judgment has been given in respect of several matters and the declaration of enforceability cannot be given for all of them, the court or competent authority shall give it for one or more of them. Furthermore, an applicant may request a declaration of enforceability limited to parts of a judgment.

There is no case law to evaluate the practice of the Cypriot courts with regards to enforcing punitive damages. The general rule is that the Cypriot courts will enforce a lawful judgment as it is.

23 Currency, interest, costs

In recognising a foreign judgment, does the court convert the damage award to local currency and take into account such factors as interest and court costs and exchange controls? If interest claims are allowed, which law governs the rate of interest?

Where the sum payable under the judgment is expressed in a currency other than the euro, an affidavit must be attached stating the amount that the sum represents in euros, calculated at the rate of exchange prevailing on the date of the judgment.

The order for registration will include interest due under the law of the foreign jurisdiction as at the date of registration, and interest will accrue under Cypriot law at the current rate of 8 per cent.

24 Security

Is there a right to appeal from a judgment recognising or enforcing a foreign judgment? If so, what procedures, if any, are available to ensure the judgment will be enforceable against the defendant if and when it is affirmed?

Yes. The defendant, within the period stated in an order issued by the court, may proceed to file an application to have registration set aside. The registering court must set aside the registration if any of the following prerequisites are met:

- the foreign judgment is not a judgment within the meaning of the Foreign Judgments Law or the original judgment was registered in contravention of the Law;
- the original court had no jurisdiction;
- the judgment debtor as defendant in the original court did not receive notice of the proceedings to enable him or her to defend and did not appear;
- the original judgment was obtained by fraud;

- the enforcement of the original judgment would be contrary to Cypriot public policy; or
- the rights under the original judgment are not vested in the person applying for registration.

It is under the court's authority to decide whether the judgment is enforceable against the defendant and to ensure its enforcement when it affirms the judgment.

25 Enforcement process

Once a foreign judgment is recognised, what is the process for enforcing it in your jurisdiction?

Pursuant to provision 5(a) of Law No. 121(1)/2000, the procedure starts with filing an application by summons and an affidavit at the

district court, in accordance with the Civil Procedure Rules. Following that, a hearing date is given by the court within four weeks from the filing date. The respondent must be served with a copy of the application without any delay. The Law allows the respondent to contest the application by filing a written objection accompanied by an affidavit where he or she states the facts on which his or her objection is based, at least two days before the date of the hearing.

26 Pitfalls

What are the most common pitfalls in seeking recognition or enforcement of a foreign judgment in your jurisdiction?

There is no available case law to demonstrate whether there are any pitfalls in seeking recognition or enforcement of a foreign judgment in Cyprus.

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