

Chapter 19

Cyprus

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§ 19:1 Introduction

For approximately 80 years preceding independence, Cyprus was a British colony. On independence in 1960 the Constitution of the new Republic provided that the laws previously applicable should remain in force until repealed or amended by new laws of the Republic. Since independence, myriad laws have been enacted, and the legal

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framework has been increasingly aligned with the European *acquis communautaire* since Cyprus joined the European Union (EU) in 2004. Nevertheless, English Common Law remains the foundation of the legal system, particularly in relation to commercial matters.

EU law now takes precedence over earlier or later domestic law.¹ Article 179.1 of the Constitution of Cyprus provides that the Constitution is the supreme law of the Republic; however, when there is a conflict between the provisions of EU law and domestic legislation, EU law will prevail. This reflects the principle of the supremacy of EU law as it was crystallised by case law of the European Court of Justice.

This chapter examines the mechanisms for the recognition and enforcement of foreign judgments in Cyprus under the provisions of EU Regulations,² under Common Law, and under statute law. As a rule, the judgments of foreign courts have no direct effect in Cyprus but, provided that certain prerequisites are satisfied, the courts will assist in the enforcement of a foreign judgment. Generally, for a foreign judgment to achieve recognition in Cyprus, it:

1. Must have been issued by a court that has jurisdiction according to the conflict of laws rules applied in Cyprus;
2. May not be contrary to public policy;
3. Must have been made on merit and not according to procedure;
4. May not have been obtained by fraud; and
5. Must have been the outcome of proceedings that were conducted in accordance with natural justice.

Most of the judgments dealt with by the Cyprus courts now originate in other member states of the EU, with judgments from Eastern European countries coming next in volume.

An important distinction must be drawn between the terms “recognition” and “enforcement”. Recognition of a judgment means treating the claim which was adjudicated as having been determined once and for all. However, not every judgment entitled to recognition may be enforced, and no judgment can be enforced until it has been recognized. Once enforcement is ordered by the court, the judgment is treated (and can be executed) as if it had been given by a Cyprus court.

§ 19:2 Enforcement under European Union Regulations 1215/2012 and 44/2001—In general

Regulation 1215/2012 is the “recast” successor to Regulation 44/

[Section 19:1]

¹*Costa v. ENEL* 1964, Case 6/64 [1964] E.C.R. 585.

²Regulation (EU) 1215/2012 on jurisdiction and recognition and enforcement of judgments in civil and commercial matters (recast), OJ 20 December 2012, L 351/1 p1-32 and Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, OJ 2001 L 12/1. See also Regulation 805/2004 on the enforcement of uncontested claims.

2001, the original Brussels I regulation. It applies to all judgments given after 10 January 2015 in civil and commercial matters by the courts of EU member states, apart from Denmark. The objective of the Regulation, like the original Regulation 44/2001, is to achieve the free circulation of judgments within the member states by means of a legal instrument which is binding and directly applicable in all member states.

The Regulations aim to unify the rules of conflict of jurisdiction and to simplify the recognition and enforcement procedures for judgments in member states, and represent a continuation of the Brussels Convention of 1968¹ Article 66 of Regulation 1215/2012 sets out the arrangements for transition between it and Regulation 44/2001. Regulation applies to legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded on or after 10 January 2015. Notwithstanding its repeal by Regulation 1215/2012,² Regulation 44/2001 will continue to apply to judgments given in legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded before 10 January 2015 which fall within its scope.

The case of *Apostolides v. Orams*³ is a landmark decision for Cyprus. Following an application for a preliminary ruling made by the Court of Appeal of England and Wales, the European Court of Justice held that judgments of Cyprus courts can be executed in any of the member states of the European Union, pursuant to Regulation 44/2001, even if the subject matter of these judgments concerns property situated in the occupied areas of the Republic of Cyprus where the government cannot exercise effective control.

The plaintiff brought an action against the defendants who had constructed a holiday home on his property in the occupied northern part of Cyprus. The Cyprus court ruled that the defendants were trespassing on the plaintiff's land and ordered them to demolish the buildings erected on the property, surrender vacant possession to the plaintiff and pay damages. The plaintiff sought to have this judgment enforced in Britain.

The High Court of Justice in the United Kingdom allowed the defendants' appeal against registration and enforcement in the United Kingdom of the judgment of the Cyprus court on the grounds that the application of the *acquis communautaire* was suspended in the oc-

[Section 19:2]

¹Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, OJ 1972 L 299/32.

²Regulation 1215/2012, article 80.

³C420/07, *Meletis Apostolides v David Charles Orams and Linda Elizabeth Orams* (27 April 2009).

cupied area. The plaintiff subsequently appealed the High Court decision to the Court of Appeal, which reversed the ruling and decided on 19 January 2010 that the Cyprus court decision could be registered and enforced in the United Kingdom on the basis of EC Regulation 44/2001.⁴ This decision is of critical importance since it is binding on the courts of all member states.

§ 19:3 Enforcement under European Union Regulations 1215/2012 and 44/2001—Civil or commercial matters—Article 1

A creditor seeking execution of a judgment against a debtor must first satisfy the requirement that the judgment was given in a “civil or commercial matter”. It is thought that the recognizing court is entitled to decide whether the judgment was indeed given in a civil or commercial matter. And, in most cases, it will be relatively easy to determine whether or not a judgment falls within the scope of the Regulation. The finding of the adjudicating court on this point is expected to be persuasive, but in theory, the recognizing court in Cyprus is entitled to decide the matter for itself.

With respect to those matters falling outside the scope of the Regulation, the jurisdiction of the courts over the judgment debtor becomes a matter to be dealt with under the established jurisdictional rules of Cyprus law.

§ 19:4 Enforcement under European Union Regulations 1215/2012 and 44/2001—Scope

According to article 2 of Regulation 1215/2012 (article 32 of Regulation 44/2001), the term “judgment” means any judgment given by the court or tribunal of a member state, whatever the judgment may be called, including a decree, order, decision, or writ of execution, as well as the determination of costs or expenses by an officer of the court. Articles 1(2)(d) of both the original and recast Regulations exclude arbitration from their scope.

Many commentators explain that this is due to the need to avoid conflict with existing international conventions on arbitration and, in particular, the New York Convention of 1958. It is important to note, however, that, in the *Marc Rich*¹ case, the European Court of Justice distinguished between “arbitration” as the subject matter of the proceedings and as a preliminary issue.²

⁴*Orams v. Apostolides*, [2010] E.W.C.A. Civ 9.

[Section 19:4]

¹*Marc Rich & Co. AG v. Societa Italiana Impianti PA*, Case C-190/89 [1991] E.C.R. I-3855.

²Ambrose, “Arbitration and the Free Movement of Judgments”, *Arbitration*

By virtue of article 36 of Regulation 1215/2012 (article 33 of Regulation 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. Under Regulation 44/2001 recognition should be refused only in those situations listed in articles 34, 35 and 37, 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 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 and involving the same cause of action.

One of the major changes introduced with Regulation 1215/2012 concerns the conditions that must be satisfied when an application for recognition is brought before the court. According to article 33(2) of Regulation 44/2001, any interested party who raises the recognition of a judgment as the principal issue in a dispute may apply for a decision that the judgment be recognized. The equivalent article of Regulation 1215/2012, namely article 36(2), provides that any interested party may apply for a decision that there are no grounds for refusal of recognition. This means that the court, when examining an application for recognition under Regulation 44/2001, should check whether all the conditions are satisfied for a judgment to be satisfied and if satisfied that this is the case, would be able to grant a decision that the judgment is recognized. When examining an application for recognition under Regulation 1215/2012, the court presumes that the judgment meets all the conditions that allow it to be recognized in another member state and restricts its examination to confirming that there are no grounds for refusal of recognition. This change in approach indicates the intention of the EU to further simplify the recognition procedures.

§ 19:5 Enforcement under European Union Regulations 1215/2012 and 44/2001—Enforcement

According to Regulation 44/2001, any judgment entitled to recognition and enforcement in the state in which it was given, may, in principle, on application by any interested party, be certified enforce-

International, volume 19, number 1, 2003.

able in another member state.¹ The procedure to be followed is set out in articles 38-52 of Regulation 44/2001. Generally, the procedure should be governed by Cyprus law,² and the competent court should see that this requirement is met. The judgment creditor seeking to obtain a certificate of enforceability in Cyprus may apply ex parte to the court. Therefore the judgment debtor will have no say in the proceedings until the certificate is issued and, if it is indeed issued, it must be served on the debtor in accordance with article 42 of Regulation 44/2001.

With the introduction of Regulation 1215/2012, no such procedure is required. In particular, according to article 39 of the Regulation, a judgment given in a Member State which is enforceable in that Member State is enforceable in other Member States without any declaration of enforceability being required. Under Regulation 1215/2012, a certificate of enforceability is issued by the court of origin of the judgment, as provided in article 53. In other words, when a judgment is recognized in another member state, and the interested party obtains from the member state of origin a certificate of enforceability, the judgment is enforceable in the Member State addressed, under the same conditions as a judgment given by its own courts.

§ 19:6 Enforcement at Common Law

A foreign judgment will be recognized at Common Law if it can be shown that it is final and conclusive. “Final” has been interpreted to mean that it cannot be re opened in the court of origin, even though an appeal may be pending against it, and “conclusive” that it represents the court’s settled conclusion on the merits of the case.

A judgment creditor seeking to register and execute a foreign judgment in Cyprus at Common Law must ordinarily bring an action on the foreign judgment. The action is filed on a specially endorsed writ,¹ which enables the judgment creditor to apply for summary judgment against the debtor under Order 18 of the Civil Procedure Rules, on the ground that the latter has no real prospect of successfully defending the claim.

If the application satisfies all the requirements set out in Order 18, Rule 1, and the defendant fails either to satisfy the court that he has a good and arguable case on the merits of the action or to disclose sufficient facts to justify allowing him to file his defense, the court will give judgment on the claim. If not, the court will dismiss the application and the claim will proceed to trial in the ordinary way.

[Section 19:5]

¹Regulation 1215/2012, article 39 (article 38 of Regulation 44/2001).

²Regulation article 39 (article 38 of Regulation 44/2001).

[Section 19:6]

¹Civil Procedure Rules, Order 2, Rule 6.

Instead of filing an action on the foreign judgment, the judgment creditor may file an action relying on the facts that created the cause of action on which the foreign judgment was given, in accordance with the Supreme Court's decision in *Constandinou v. Demokritos* (1996).² Here, it was decided on appeal that if the foreign judgment is capable of registration, it cannot be enforced by a Common Law action.

§ 19:7 Enforcement under statute—In general

Cyprus follows the adversarial system of Common Law and the litigation process and other procedural matters are generally similar, and often identical, to the provisions pertaining in the United Kingdom. A judgment creditor may enforce a foreign judgment in Cyprus under statute by a process of direct registration.

It could be argued that the substantive grounds on which registration may be obtained or set aside closely reflect the Common Law. In accordance with section 29(1) of the Courts of Justice Law of 1960,¹ each court, in its civil jurisdiction, must apply the Constitution and the laws enacted under it, including all laws that have continued to be in force by virtue of article 188 of the Constitution, the Common Law, and the principles of equity, as well as all laws of the United Kingdom and Northern Ireland that were in force in Cyprus immediately before independence in 1960, unless these are inconsistent with the Constitution or any law made under it.²

Also relevant is article 169 of the Constitution which provides that conventions or treaties relating to commercial matters, economic cooperation, and *modus vivendi* that Cyprus may ratify will, on the basis of reciprocity, have superior force over domestic law.

Cyprus is bound by bilateral treaties relating to the recognition and enforcement of foreign judgments with Bulgaria, China, Czech Republic, Egypt, Germany, Greece, Hungary, Poland, Russia, Serbia, Slovenia, Syria and Ukraine. It also is a signatory to the following multilateral conventions relating to the recognition and enforcement of foreign judgments:

1. The Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters and Supplementary Protocol thereto;

²*Constandinou v. Ekdotiki Eteria Demokritos Ltd. and Another*, Civil Appeal Number 8578 (1996).

[Section 19:7]

¹The Courts of Justice Law of 1960, Law Number 14/60, section 29(1), provides that “. . . each court in exercising its civil and criminal jurisdiction shall apply . . . the Common Law and the principles of equity . . .”.

²The Constitution of Cyprus, article 188(1), provides that “. . . each law which as at the date of the commencement of the Constitution is in force shall continue to be in force after that date until it is amended or abolished by any law enacted according to the Constitution”.

2. The Convention on the Recovery Abroad of Maintenance (Ratification);
3. The European Convention on the Recognition and Enforcement of Decisions concerning Custody and/or Restoration of Custody of Children;
4. The European Convention on the Recognition and Enforcement of Foreign Arbitral Awards; and
5. The European Convention on the Recognition and Enforcement of Certain International Aspects of Bankruptcy.

Registration of judgments obtained in the United Kingdom, is governed by the Foreign Judgments (Reciprocal Enforcement) Law of 1935 (Cap. 10) and the rules made under it by Order in Council. The Law is modeled on the corresponding English statutes, the Foreign Judgments (Reciprocal Enforcement) Rules (Cap. 16), and the Maintenance Orders (Facilities for Enforcement) Law of 1921. Since Cyprus joined the EU and recognition and enforcement under Regulation 44/2001 became an option, many of these treaties have become much less important.

§ 19:8 Enforcement under statute—Registration requirements

As stated above, the substantive grounds on which registration may be obtained (or set aside) closely reflect the Common Law. An application for registration of a foreign judgment may be made *ex parte*, accompanied by an affidavit in support which should exhibit a certified copy of the judgment (authenticated by its seal) and a duly certified Greek translation of the judgment.

The judgment creditor may choose to have the judgment registered in the District Court for the area where the debtor resides or where any property to which the judgment relates is situated. For a judgment to be capable of registration, the following requirements must be met:

1. The judgment is final and conclusive;
2. There is a sum of money payable under it which is not related to tax claims or similar charges or in respect of a fine or penalty;
3. The application is made within six years from the date that judgment was given or an appeal adjudicated;
4. The judgment is unsatisfied, at least in part; and
5. The judgment is capable of execution in the original foreign court.

If interest is due under the law of the country of the original court, this also must be shown and, where the sum payable under the judgment is in a foreign currency, the affidavit accompanying the application must state the amount in local currency (euro) at the rate of exchange prevailing on the date that judgment was given.

In the case 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 regarding the provisions of the Order in Council extending the law to the country of the original court.

Once all the requirements are met, the court may issue an order to register the judgment. Although a mere notice in writing disclosing full particulars and informing the judgment debtor of the registration and his rights will ordinarily suffice, most lawyers in Cyprus prefer to serve on the debtor a certified copy of the registration itself. The judgment debtor will have an opportunity to apply to the court to have the registration order set aside within the period stated in the order.

If the case is appropriate, the judgment creditor may seek an injunction on the assets of the debtor either simultaneously or after the application to register the judgment.

§ 19:9 Enforcement under statute—Application to set aside registration

The judgment debtor may, within the period stated in the order issued *ex parte* by the court, apply to have the registration set aside on one or more of the following grounds:

1. The foreign judgment is not a judgment within the meaning of the Foreign Judgments (Reciprocal Enforcement) Law or the original judgment was registered in contravention of the Law;
2. The original court had no jurisdiction;
3. The judgment debtor as defendant in the original court did not receive proper notice of the proceedings to enable him to defend and did not appear;
4. The original judgment was obtained by fraud;
5. The enforcement of the original judgment would be contrary to Cypriot public policy; and
6. The rights under the original judgment are not vested in the person applying for registration.

The court should set aside the registration if any of the conditions set out above is satisfied. The court will have discretion as to whether it should set aside the registration:

1. If it is satisfied that, prior to the date of the original judgment, the matter in dispute in the original court was finally and conclusively determined by a court having jurisdiction in the matter; or
2. An appeal is pending or could be initiated, in which case the judgment debtor could be given a specified time to have the appeal heard.

§ 19:10 Other related matters—Fraud

A judgment debtor may allege that the judgment was obtained by fraud as a defense against its recognition in Cyprus. The particulars which support the fraud allegation may be put forward by the judgment debtor and, if credible, will be investigated.¹

Unlike the situation where a domestic judgment may be set aside on the ground of fraud only if the plaintiff can produce fresh evidence which could not have been put forward at trial, here, the judgment debtor may produce the same evidence which failed to persuade the original (foreign) court; however, the defendant will have to make a credible case that the foreign court was the victim of, or party to, fraud.

In principle, 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 recognized in Cyprus. Such a judgment cannot be enforced by an action or counterclaim at Common Law or under statute or be recognized as a defense to an action.

§ 19:11 Other related matters—Public policy

If a foreign judgment is contrary to the public policy of Cyprus, the Cyprus court will deny recognition. In *Attorney General of the Republic of Kenya v Bank für Arbeit und Wirtschaft AG*,¹ the Supreme Court of Cyprus stated that “. . . public policy includes the fundamental values which a society recognizes, in a specific time period, as those values which govern the transactions and other perspectives of its members, with which the established legal order is imbued.” The lower courts are expected to follow this definition given by the Supreme Court.

§ 19:12 Other related matters—Natural justice—Due process

The enforcement of a foreign judgment may be refused if the proceedings in which it was given were conducted contrary to natural justice. The Common Law has traditionally developed two rules of natural justice, namely:

1. The *nemo iudex* rule (i.e., no man should be a judge in his own cause); and
2. The *audi alteram partem* rule (i.e., the right to a fair hearing).

These two basic legal safeguards govern all decisions by judges or

[Section 19:10]

¹*Jet Holdings Inc v. Patel* [1990] I Q.B. 335 (C.A.).

[Section 19:11]

¹*Attorney General of the Republic of Kenya v Bank für Arbeit und Wirtschaft AG* (1999) 1A C.L.R. 585.

government officials when they take judicial or quasi-judicial decisions. Although, since the House of Lord's decision in *Ridge v. Baldwin*,¹ the courts have applied the concept of natural justice in a very wide variety of situations, we are only concerned with those general principles relating to the established rules of court procedure.

Many judges have explained natural justice purely in terms of fairness.² It is equally fundamental to a just decision that all parties should have the opportunity of knowing the case against them and the chance to present their version of the facts.

The manner in which evidence is obtained or the obtaining of the names of potential witnesses from the other side as well as the right to cross-examine those witnesses are matters that, among others, have been judicially decided to fall within the context of natural justice. Therefore, it is anticipated, for example, that, 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 by a court in Cyprus.

The due process requirement is central to the recognition of a foreign judgment; it serves the same purpose as the natural justice doctrine, namely that of a fair trial. Therefore, if the proceedings before the foreign court fell short of the standards set by the rules of natural justice or if the due process requirement was neglected, the Cyprus court might deny recognition.

§ 19:13 Other related matters—Execution

All the methods of execution of domestic court judgments are available. The most usual are:

1. Writ of *feri facias*;
2. Garnishee proceedings;
3. Charging order;
4. Appointment of receiver;
5. Order of committal; and
6. Order of sequestration.

In addition, the judgment debtor may be summoned to be examined with respect to the extent and whereabouts of his assets and existence of debts. The filing of an appeal does not prevent the execution of a judgment. The domestic judgment is regarded as final for execution purposes, even when an appeal is pending, unless a special order for stay of execution is made by the court. An appeal can be made only on

[Section 19:12]

¹*Ridge v. Baldwin* [1963] 1 Q.B. 539.

²*Lloyd v. McMalon* [1987] A.C. 625, at p. 702; *R. v. Commission for Racial Equality, ex p Hillingdon Council* [1982] A.C. 779, at p. 787; *Selvarajan v. Race Relations Board* [1976] 1 All E.R. 12.

a point of law and generally will concern the right of the foreign court to exercise jurisdiction on the question of whether the foreign court has complied with the requirements of registration. No leave to appeal is required and either party may appeal.

§ 19:14 Other related matters—Interest

As already indicated, once a foreign judgment has been registered, it immediately takes effect as a judgment of a domestic court.

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 Cyprus law at the current rate of eight per cent.

§ 19:15 Other related matters—Legal costs

The legal costs of an action are taxed by the Registrar of the registering court after the successful party files an itemized bill of costs, the amount depending on the scale of the case. Although not a rule, costs are usually awarded to the successful party. The court fees are set by regulations and are as follows:

1. Filing the application to register the judgment, approximately €21;
2. Swearing the supporting affidavit, €2; and
3. Each exhibit, €0.50.

The legal fees in litigious matters are determined by the Rules of the Supreme Court of the Republic and are fairly low, especially in comparison with those in other EU member states.

In straightforward cases, Cypriot law firms will apply the fee prescribed by the Rules but, in complex cases, they may choose to charge on an hourly basis (usually between €150 and €350 per hour) or on the basis of a special retainer. It is prohibited by law for a lawyer to enter into a contingency fee agreement with a client.

§ 19:16 Arbitration awards—In general

The successful party in an international commercial arbitration must be able at all times to obtain recognition and enforcement of the award in the country where the losing party has assets.

For some considerable time, the only legislation governing arbitration in Cyprus was Cap. 4 of the Codified Laws of Cyprus, as amended, which was primarily based on and similar to the United Kingdom Arbitration Act 1950. This law, however, had to be set aside, since it allowed for extensive intervention by the courts, which led to considerable delays, which, in the current era of international arbitration, were seen as a great disadvantage, taking into account the parties' desire for flexible and quick means of resolving their disputes.

To meet the needs of modern international commercial arbitration,

i.e., speedy procedures, flexibility, and quick resolution, the Cyprus arbitration landscape has been enhanced by two further enactments. These are:

1. Law Number 101 of 1987, which provides for international arbitration in commercial and related matters and adopts, with minimal amendments, the United Nations International Trade Law Commission (UNCITRAL) Model Law on International Arbitration; and
2. Law Number 84 of 1979, which ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.

Recognition and enforcement of foreign arbitration awards may be obtained on the basis of the above laws.

Law Number 101 of 1987, applicable only to international commercial arbitration, defines the term “international arbitration” as arbitration between two parties who have their businesses in different states and the term “commercial” as referring to matters arising from relationships of a commercial nature.¹

It sets out indicative examples of “relationships of a commercial nature”, such as trade transactions for the supply or exchange of goods or services, carriage of goods, joint ventures, and other forms of industrial or business cooperation.² It minimizes the scope for the courts to intervene by providing, whether expressly or impliedly, for those instances where this may happen.

The instances of court intervention may be divided into two main categories, namely, before and after the delivery of an award. Broadly speaking, before the delivery of an award, the court may:

1. Appoint an arbitrator if the parties fail to do so;
2. Review a ruling of the tribunal on the matter of jurisdiction;
3. Deal with a challenge against an arbitrator if the tribunal has dismissed such challenge; and
4. Decide on the termination of an arbitrator’s mandate if he fails to discharge his duties or is guilty of undue delay in doing so.

With respect to the second category, i.e., after the delivery of an award, the court may set aside an award or refuse its recognition or enforcement on the following grounds:

1. The incapacity of the parties;
2. The invalidity of the arbitration agreement;
3. The lack of proper notice or the presence of some kind of procedural irregularity;

[Section 19:16]

¹Law Number 101/87, article 2(2) and (4).

²Law Number 101/87, article 2(5).

4. A lack of jurisdiction of the arbitral tribunal;
5. A defect in the composition of the tribunal;
6. The subject matter of the dispute is not capable of settlement by arbitration under the law of Cyprus; and
7. The award is in conflict with the public policy of Cyprus.

§ 19:17 Arbitration awards—Recognition and enforcement

Cyprus is bound to enforce awards made in foreign states that are signatories to the New York Convention of 1958. A judgment creditor seeking to enforce a foreign arbitral award in Cyprus may apply to the relevant District Court, requesting recognition and enforcement of the award.

There has been considerable debate as to whether such an application should be made by originating summons or *ex parte*. The matter was resolved by the Supreme Court of Cyprus in *Udruzena Beogradska Banka v. Westacre Investment Inc.*,¹ where the court had to consider, among other matters, the following two questions:

1. Whether an application for recognition and enforcement of a Convention award could be made *ex parte*; and
2. In the event that the answer to the first question is negative, could such a procedural irregularity be redressed by virtue of Rule 64 of the Civil Procedure Rules.²

The Supreme Court cited the aforementioned laws, in particular articles IV and V of the Convention. The Supreme Court overruled the District Court's finding that such an application cannot be made *ex parte* and noted that this is possible, especially when the court is called to decide on an application regarding a preliminary issue. In the light of the affirmative answer to the first question, the Supreme Court did not consider the second. However, section 5(1) of the Foreign Court Judgments (Recognition, Registration and Enforcement under Statute) Law, 121(I) of 2000, requires the application for recognition to be made by summons.³

Although the New York Convention refers invariably to “recognition and enforcement” as one phrase, it is understood that enforcement cannot be sought unless recognition is first obtained. Even though an application made by a Cypriot lawyer may read “the applicant

[Section 19:17]

¹*Udruzena Beogradska Banka v. Westacre Investment Inc.*, Civil Appeal 9423, 28 January 1999.

²According to Rule 64 of the Civil Procedure Rules, the adoption of a different form for instituting proceedings from that provided for in the Rules does not necessarily lead to the nullity of the proceedings.

³Article 3(1) of the Law provides that arbitration awards fall within the definition of a judgment.

requests the recognition and/or enforcement of . . .”, it is understood that enforcement (a term that, in Cyprus, many regard as synonymous with execution) comes after recognition (a term that, in Cyprus, many regard as synonymous with registration).

§ 19:18 Arbitration awards—Convention requirements

According to article IV of the New York Convention, the party applying for recognition and enforcement must produce the following documents:

1. The duly authenticated original award or a duly certified copy; and
2. The original agreement or a duly certified copy.

Duly certified translations of the above must be provided in Greek, which is one of the official languages of Cyprus. Article V of the Convention sets out the grounds on which recognition and enforcement may be refused. These are:

1. Incapacity of the parties or invalid arbitration agreement;¹
2. Improper notice or lack of due process;²
3. Jurisdictional issues;³
4. Composition of tribunal or procedure not in accordance with the arbitration agreement or the relevant law;⁴ or
5. Award not binding, suspended, or set aside.⁵

Article V of the Convention also provides that recognition and enforcement of an award may be refused if the subject matter of the

[Section 19:18]

¹Article VI(a) of the Convention provides: “The parties to the agreement referred to in article II were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made”.

²Article VI(b) of the Convention provides: “The party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case”.

³Article VI(c) of the Convention provides: “The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced”.

⁴Article VI(d) of the Convention provides: “The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place”.

⁵Article VI(e) of the Convention provides: “The award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which that award was made”.

dispute is not capable of settlement by arbitration under the law of that country and if it would be contrary to the public policy of that country.

Finally, the judgment creditor may, when appropriate, apply for an injunction freezing the assets of the debtor to be found within the jurisdiction of the Cyprus courts while judgment on the application for registration of the award is pending. Such an application is made *ex parte*, and it can be filed at the same time as the application for registration.

§ 19:19 Arbitration awards—Execution

A foreign award that has been recognized by a Cypriot court is treated as a judgment given by a domestic court. Therefore, all the methods of execution of domestic court judgments (stated above) apply, *mutatis mutandis*, to the execution of all foreign arbitration awards without discrimination.