

# Cyprus

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## 1. UNIFORMITY OF LAW AND REGULATIONS

The Republic of Cyprus has a national system of justice which is enforced uniformly throughout the government-controlled area of the country. The northern part of the island (approximately one-third of the total area) was occupied by Turkish forces in 1974, and it remains so at present. Information in this chapter does not apply to the occupied area. Cyprus was a British colony until 1960 and followed English law. Following independence Cyprus law continues to lean heavily on English law, but since Cyprus joined the EU in 2004 European law has also become influential.

This history is evident in the fact that mechanisms exist for the recognition and enforcement of foreign judgments via several routes, namely:

- European Union Regulations, particularly Regulation 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters ('Regulation 44/2001'), Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) ('Regulation 1215/2012') and Regulation 805/2004 creating a European Enforcement Order for uncontested claims ('Regulation 805/2004');
- Common law;

## 1-1 / Europe

- Statute; and
- Bilateral treaties and multilateral conventions.

Which mechanism will apply depends on the facts of the case. For judgments originating in the courts of EU countries the appropriate route is the Regulation. Claims are brought under statute when there is a bilateral treaty or the judgment originates in a court of a Commonwealth country. Common law actions are taken in other cases.

Regulation 44/2001 was the original 'Brussels I' regulation. Notwithstanding its repeal by Regulation 1215/2012<sup>1</sup> it continues to apply to judgments given in civil and commercial matters by the courts of Member States except Denmark in legal proceedings instituted, to authentic instruments formally drawn up or registered and to court settlements approved or concluded before 10 January 2015 that fall within its scope. The objective of the Regulation was 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. Regulation 1215/2012 applies to judgments and corresponding documents issued on or after 10 January 2015. It is expected that the original Regulation will fall into disuse after a short transition period.

Regulation 805/2004 provides a parallel streamlined enforcement mechanism for uncontested claims.

For judgments obtained in the United Kingdom, British dominions, protectorates and mandated territories as well as other foreign countries which accord reciprocal treatment to judgments given in the Republic of Cyprus, registration is governed by the Foreign Judgments (Reciprocal Enforcement) Law of 1935, Cap 10, as amended by the Reciprocal Execution of certain Judgments of the Commonwealth Countries Law, 130(I) of 2000. Cap 10 was modelled on the corresponding English legislation, that is, the Foreign Judgments (Reciprocal Enforcement) Act 1933; its use as a vehicle for recognition and enforcement of foreign judgments has fallen following the accession of Cyprus to the EU in 2004 and the application of Regulation 44/2001.

Common law rules normally apply to the recognition of judgments in civil and commercial matters which originate in jurisdictions outside the EU.

The substantive grounds on which a foreign judgment may be enforced under statute closely reflect the common law. In accordance with section 29(1) of the Courts of Justice Law, each court in its civil jurisdiction must apply the Constitution and the laws enacted under it, including all laws that have continued in force by virtue of Article 188 of the Constitution, the common law and the principles of equity, as well as all United Kingdom laws that were in force in Cyprus immediately before independence in 1960, unless these are repugnant to the Constitution or any law made under it. Of particular importance is Article 169 of the Constitution which provides that conventions or treaties relating to commercial matters, economic cooperation and *modus vivendi* that Cyprus ratifies will, on the basis of reciprocity, have superior force over

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1. Regulation 1215/2012, Art. 80.

domestic law. This is particularly important in respect of the enforcement of arbitration judgments since Cyprus has ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958. It has also adopted, with minimal amendments, the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Arbitration.

## 2. JUDGMENTS

### 2.1. Definition

Article 2 of Regulation 1215/2012, like Article 32 of the predecessor Regulation 44/2001, defines a judgment as:

any judgment given by a court or tribunal of an EU 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.

Omitting the reference to EU Member States, this is a reasonable approximation of the definition used throughout Cyprus law.

The Regulations do not extend to revenue, customs or administrative matters or to the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*), or to:

- the status or legal capacity of natural persons, or rights in property arising out of a matrimonial or similar relationship;
- bankruptcy, proceedings relating to the winding-up of insolvent companies or other legal persons, judicial arrangements, compositions and analogous proceedings;
- social security;
- maintenance obligations arising from a family relationship, parentage, marriage or affinity; or
- wills and succession, including maintenance obligations arising by reason of death.

Both the original and the recast regulations also 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*<sup>2</sup> case, the European Court of Justice distinguished between ‘arbitration’ as the subject matter of the proceedings and as a preliminary issue.<sup>3</sup>

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

3. Ambrose, *Arbitration and the Free Movement of Judgments*, 19(1) Arb. Intl. (2003).

## 2-2 / Europe

### 2.2. Enforceability of Various Categories of Judgment

#### *Under EU Regulations*

In summary, as regards the enforceability under the Regulations of the various categories of judgments listed in the questionnaire:

- (a) money judgments – are generally enforceable;
- (b) specific performance – are generally enforceable;
- (c) injunctions – are generally enforceable;
- (d) arbitration awards – are not enforceable;
- (e) personal status (divorce, matrimonial, inheritance, adoption, insolvency) – are not enforceable;
- (f) an award for multiple/punitive damages – would be enforceable unless it could be shown to be contrary to public policy;
- (g) a judgment which is in itself a recognition of a previous foreign judgment – would generally be enforceable;
- (h) are foreign interim orders enforceable for:
  - (i) relief pendente lite – yes;
  - (ii) maintenance and custody – no.
- (i) judgments against the local State or any of its organs – the recast Regulation specifically excludes the liability of the State for acts and omissions in the exercise of State authority (*acta iure imperii*);
- (j) apart from judgments which are against public policy are there any judgments which would not be enforceable? Yes – rulings relating to revenue, customs or administrative matters, the status or legal capacity of natural persons, matrimonial matters, wills and succession, bankruptcy and social security. Are foreign fiscal judgments (income tax and customs duties) enforceable? No.

#### *Brussels I Regulations*

Under Regulation 44/2001 every judgment entitled to recognition and enforceable in the Member State in which it was given may, in principle, on application be declared enforceable in Cyprus. 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, 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.

*Regulation 805/2004*

Regulation 805/2004 also excludes from its scope rulings relating to revenue, customs or administrative matters, the status or legal capacity of natural persons, matrimonial matters, wills and succession, bankruptcy and social security.

*Under Common Law*

In summary, as regards the enforceability under common law of the various categories of judgments listed in the questionnaire:

- (a) money judgments – are generally enforceable;
- (b) specific performance – are generally enforceable;
- (c) injunctions – are generally enforceable;
- (d) arbitration awards – are generally enforceable;
- (e) personal status (divorce, matrimonial, inheritance, adoption, insolvency) – are generally enforceable;
- (f) an award for multiple/punitive damages – would be enforceable unless it could be shown to be contrary to public policy;
- (g) a judgment which is in itself a recognition of a previous foreign judgment – would generally be enforceable;
- (h) are foreign interim orders enforceable for:
  - (i) relief pendente lite – yes;
  - (ii) maintenance and custody – yes.
- (i) judgments against the local State or any of its organs – yes;
- (j) apart from judgments which are against public policy are there any judgments which would not be enforceable? No. Are foreign fiscal judgments (income tax and customs duties) enforceable? Yes.

In common law a foreign judgment is recognized when the Cyprus court concludes that a particular claim has already been adjudicated and determined once and for all by the foreign court (*res judicata*).

A judgment creditor can enforce a foreign judgment in Cyprus at common law by bringing a fresh action. As soon as he files a writ of summons (usually specially endorsed), he can apply by summons for summary judgment under Order 18 of the Civil Procedure Rules on the ground that the defendant has no defence to the claim. If his application is successful, the defendant will not be allowed to defend. The merits of the judgment are not reviewable and the

## 2-2 / Europe

judgment must be final and conclusive and for a fixed sum of money. 'Final' has been interpreted to mean that the judgment cannot be reopened in the court of origin, even though an appeal may be pending against it, and 'conclusive', that the judgment represents the court's settled conclusion on the merits of the case.

Alternatively, instead of filing an action on the foreign judgment, the judgment creditor can file an action relying on the facts which created the cause of action in which the foreign judgment was given. However, the Supreme Court has ruled that if the judgment is capable of registration (see statute section below) it cannot be enforced by a common law action on the judgment.

### *Under Statute*

The enforceability of the various categories of judgments listed in the questionnaire is broadly the same as under common law, and is as follows:

- (a) money judgments – are generally enforceable;
- (b) specific performance – are generally enforceable;
- (c) injunctions – are generally enforceable;
- (c) arbitration awards – are generally enforceable;
- (e) personal status (divorce, matrimonial, inheritance, adoption, insolvency) – are generally enforceable;
- (f) an award for multiple/punitive damages – would be enforceable unless it could be shown to be contrary to public policy;
- (g) a judgment which is in itself a recognition of a previous foreign judgment – would generally be enforceable;
- (h) are foreign interim orders enforceable for:
  - (i) relief pendente lite – yes;
  - (ii) maintenance and custody – yes.
- (i) judgments against the local State or any of its organs – yes;
- (j) apart from judgments which are against public policy are there any judgments which would not be enforceable? No. Are foreign fiscal judgments (income tax and customs duties) enforceable? Yes.

However, the relevant statute in each case should be checked for any particular exceptions.

The substantive grounds on which registration of a foreign judgment may be made or set aside closely reflect the common law in Cyprus. A foreign judgment can be enforceable by direct registration, under the provisions of an applicable statute. For example, the registration of judgments obtained in the UK is governed by the Foreign Judgments (Reciprocal Enforcement) Law 1935 and the rules made under the Law by an Order in Council. The Law is modelled on the corresponding UK statute, the Foreign Judgments (Reciprocal Enforcement) Law Rules and the Maintenance Orders (Facilities for Enforcement) Law 1921. Cyprus is also bound by bilateral treaties relating to the recognition and enforcement of foreign judgments with Bulgaria, China, Germany, Greece, Hungary, Poland, Russia, Serbia and Syria, and it is a signatory to various

multilateral conventions relating to the recognition and enforcement of foreign judgments. These include:

- the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters 1971 and Supplementary Protocol thereto;<sup>4</sup>
- the European Convention on the Recognition and Enforcement of Decisions concerning Custody of Children and/or Restoration of Custody of Children 1980;<sup>5</sup>
- the European Convention on the Recognition and Enforcement of Certain International Aspects of Bankruptcy 1990.<sup>6</sup>

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. In order for a judgment to be registered it must comply with the following requirements:

- the judgment is final and conclusive;
- 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;
- the application is made within six years of the judgment having been given or an appeal adjudicated;
- the judgment is unsatisfied, at least in part; and the judgment is capable of execution in the original foreign court.

### *Insolvency*

Regulation (EC) No. 1346/2000 on insolvency proceedings is directly applicable in Cyprus. Under the regulation, a judgment initiating insolvency proceedings issued by a competent court of an EU Member State will be recognized in Cyprus and vice versa.

## **2.3. Reciprocity**

The acceptance and enforcement in Cyprus of a foreign judgment depends solely on the existence or not of a mutual recognition and enforcement treaty between Cyprus and the country in which the judgment was issued. A foreign decision emanating from a country with which Cyprus has not signed such a treaty, cannot be enforced in Cyprus, and it would be necessary to bring a fresh action under common law as described under heading 2.2 above. Where there is such a treaty, the enforcement of the foreign judgment depends entirely on the contents and interpretation of the relevant terms of the treaty.

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4. Ratified by Law 11 of 1976.

5. Ratified by Law 36 of 1986.

6. Ratified by Law 36(III) of 1993.

### 3-4 / Europe

#### 3. CURRENCY REGULATIONS AND RESTRICTIONS

- (a) Cyprus has no exchange control regulations or restrictions which would prevent free transfer of any amount which may be recovered as a result of the enforcement of the foreign judgment.
- (b) Does not apply.
- (c) An application for registration of a foreign judgment under statute must be accompanied by an affidavit in support. Where the sum payable under the judgment is in a foreign currency the affidavit must state the amount in Cyprus currency (i.e., euro) at the rate of exchange prevailing on the date that the judgment was given. If interest is due under the law of the country of the original court this must also be translated into euro and included in the affidavit.

#### 4. DOCUMENTARY REQUIREMENTS

Documentary requirements vary according to the enforcement route, as follows.

*Under Regulations 44/2001 and 1215/2012*

A party seeking recognition or applying for a declaration of enforceability of a judgment is required to produce a certified copy of the judgment. A party applying for a declaration of enforceability of the judgment must also produce a certificate as specified in Article 53 of Regulation 1215/2012.<sup>7</sup> The certificate is to be issued by the court issuing the judgment or by the designated competent authority of the Member State as recognized by Regulation 44/2001. The certificate must contain the following information:

- (1) Member State of origin.
- (2) Court or competent authority issuing the certificate:
  - (2.1) Name.
  - (2.2) Address.
  - (2.3) Telephone/fax/e-mail.
- (3) Court which delivered the judgment/approved the court settlement:
  - (3.1) Type of court.
  - (3.2) Place of court.
- (4) Judgment/court settlement:
  - (4.1) Date.
  - (4.2) Reference number.
  - (4.3) The parties to the judgment/court settlement:
    - (4.3.1) Name(s) of plaintiff(s).
    - (4.3.2) Name(s) of defendant(s).
    - (4.3.3) Name(s) of other party(ies), if any.
  - (4.4) Date of service of the document instituting the proceedings where judgment was given in default of appearance.

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7. Article 54 of Regulation 44/2001.



- (4.5) Text of the judgment/court settlement as annexed to this certificate.  
 (5) Names of parties to whom legal aid has been granted.  
 (6) The following completed statement:

The judgment/court settlement is enforceable in the Member State of origin  
 (Articles 38 and 58 of the Regulation)  
 against:  
 Name:  
 Done at ....., date .....  
 Signature and/or stamp .....

*Under Regulation 805/2004*

Regulation 805/2004 provides for a standard European Enforcement Order certificate to be issued by the court issuing the original decision. The certificate is in the standard form set out in Annex I of the Regulation.

*Under Common Law*

Action on enforcement commences with a writ which may be either generally endorsed with a statement of the nature of the claim or more usually will have a statement of the plaintiff's claim endorsed on it.

The statement of the claim will set out details of the judgment sought to be enforced and will usually include the plea that the court has jurisdiction over the defendant. The writ will claim the amount of judgment debt and associated interest. This will normally be translated into Cyprus currency (euro) at the rate of exchange ruling when the judgment was given. A defendant who had the writ served on him in Cyprus is obliged to acknowledge receipt by lodging a Memorandum of Appearance with the court. If the defendant gives notice of an intention to defend the claim and a statement of the claim has been served the judgment creditor may apply for summary judgment under Order 18 of the Civil Procedure Rules. The application is made by summons and supported by an affidavit sworn by or on behalf of the plaintiff. The affidavit must verify the facts on which the claim or the part of the claim to which the application relates is based; and contain a statement of the deponent's belief that there is no defence to the claim or the part thereof to which the application relates.

The application, a copy of the supporting affidavit and any exhibits attached thereto must be served on the defendant.

*Under Statute*

An application for registration of a foreign judgment must be accompanied by an affidavit in support which should exhibit a certified copy of the judgment as well as a duly certified Greek translation of it. The judgment creditor may choose to have the judgment registered in the district court where either the debtor resides or any property to which the judgment relates is situated. For a judgment to be capable of registration it must meet the following requirements:

## 4-4 / Europe

- the judgment is final and conclusive;
- 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;
- the application for registration is made within six years from the date when judgment was given or an appeal adjudicated;
- the judgment is unsatisfied, at least in part, on the date of the application for registration; and
- the judgment is capable of execution in the original foreign court on the date of the application for registration.

If interest is due under the law of the country of the original court, this must also 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 Cypriot currency (euro) at the rate of exchange prevailing on the date that judgment was given.

If the judgment was 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 of the provisions of the Order in Council extending the law to the country of the original court.

Once all the requirements are met, the Cyprus 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 the debtor with a certified copy of the registration itself. The judgment debtor may apply to the court to have the registration order set aside within the period stated in the order.

### *Arbitration Awards*

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 request the relevant district court to recognize and enforce the award. To do this the creditor will file an application by summons.

The application must be served on the judgment debtor and supported by an affidavit together with the documents required under Article IV of the New York Convention, namely:

- the authenticated original award or a duly certified copy of it;
- the original agreement or a duly certified copy of it; and
- duly certified translations of these documents in Greek.
  - (a) Corporate Plaintiff  
If the plaintiff is a body corporate it is advisable to include a copy of a board resolution authorizing the proceedings certified as a true copy in line with normal practice in the company's home jurisdiction.

- (b) Contents of Affidavit or Certificate  
See under 4 above.
- (c) Acceptability of Faxed Documents  
Documents must be originals or certified copies. Faxed copies are not accepted.

## 5. CONVENTIONS

Cyprus is a signatory to the following Hague conventions:

- Civil Procedure
- Service Abroad
- Enforcement of Judgments
- Divorce – Recognition
- Civil Aspects of Abduction of Children.

## 6. AUTHENTICATION OF DOCUMENTS

In respect of the EU Regulations the required documentation is to be issued by the court issuing the judgment or by the designated competent authority of the Member State as recognized by the respective regulation.

In respect of an application for registration of the judgment under statute the application must be accompanied by an affidavit exhibiting a certified copy of the judgment, authenticated by its seal, and a translation into Greek certified as correct by a diplomatic or consular agent, a sworn translator or any other person so authorized.

## 7. TRANSLATION OF DOCUMENTS

Documents must be translated into Greek, which is one of the official languages of Cyprus. All translations must be certified by:

- a court official;
- a sworn translator (who may be Cypriot or foreign); or
- a consular or diplomatic official.

## 8. REOPENING OR REVIEW OF JUDGMENTS

(a) (b) The powers of the local court to review judgments under the various enforcement routes and the grounds on which they might do so are as follows:

## 8–8 / Europe

### *Under Regulations 1215/2012 and 44/2001*

By virtue of Article 36 of Regulation 1215/2012<sup>8</sup> 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 is sufficient. Under Regulation 44/2001 the substance of a judgment given in one Member State may not be reviewed in another. A judgment will not be recognized only:

- if recognition is manifestly contrary to the public policy of Cyprus;
- if the judgment was given in default of appearance and no proper notice of the proceedings was given to the defendant;
- if the judgment is irreconcilable with another given in a dispute between the same parties in Cyprus; and
- if 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 recognized, and if satisfied that this is the case, issue an order 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.

### *Under Common Law and Statute*

At common law and in statute the merits of the judgment are not reviewable, and the judgment must be final and conclusive and for a fixed sum of money. If a foreign judgment is contrary to the public policy of Cyprus, the Cyprus court will deny recognition.

The enforcement of a foreign judgment may be impeached if the proceedings in which it was given were conducted contrary to natural justice. Therefore it is likely, for example, that if a foreign court refused to hear the defendant, any resulting judgment might be set aside by a Cyprus court.

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8. Article 33 of Regulation 44/2001.

The due process requirement is also 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.

(c) 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 a Cyprus court. A judgment debtor may allege that the judgment was obtained by fraud and make a defence against its recognition in Cyprus. The particulars which support the fraud allegation may be put forward by the judgment debtor and, if credible, the matter will be investigated by the Cyprus court.<sup>9</sup> For the debtor to succeed he must produce solid evidence that the claimant somehow defrauded the foreign court.

## 9. PENDING PROCEDURE

*Under Regulations 1215/2012 and 44/2001*

- (a) Pending proceedings issued by the defendant prior to the judgment will not delay enforcement.
- (b) A Cyprus court in which recognition is sought of a judgment given in another Member State may stay the proceedings if an ordinary appeal against the judgment has been lodged.

*Under Common Law*

- (a) Pending proceedings issued by the defendant prior to the judgment will be irrelevant.
- (b) A foreign judgment will be recognized in Cyprus at common law if it can be shown that it is final and conclusive. Final has been interpreted to mean that it cannot be reopened 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. If the Cyprus court has recognized the judgment a pending appeal will have no effect.

*Under Statute*

- (a) Where a foreign judgment which is viewed as final and conclusive by the Cyprus court has been duly registered it takes immediate effect.
- (b) The filing of an appeal does not prevent execution of a judgment unless the court gives a special order for a stay of execution.

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9. *Jet Holdings Inc v. Patel* [1990] 1 QB 335 (CA).

## 10–10 / Europe

### 10. DEFENCES

#### *Under Regulations 1215/2012 and 44/2001*

A judgment debtor may appeal the enforcement of a judgment under either Article 43 or 44 of Regulation 1215/2012. In order for the court to refuse or revoke a declaration of enforceability the defendant must prove the existence of one of the grounds specified in Article 45 of the Regulation.

Effectively he must demonstrate one or more of the following:

- The judgment is manifestly contrary to the public policy of the Member State in which it is sought. The Supreme Court of Cyprus has defined ‘public policy’ as including ‘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 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.
- 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, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed.

A judgment will also not be recognized if it conflicts with sections 3, 4 or 6 of Chapter II of the Regulation, or if Article 72 of the Regulation is applicable.<sup>10</sup> Under Article 43(5) the judgment debtor must appeal against the declaration of enforceability within one month from service if domiciled in the enforcing state or within two months if domiciled in another Member State. Article 44 provides for a further appeal from the decision made under Article 43, but this can happen only once and must be based on a point of law.

#### *Under Common Law*

Defences under common law are similar to those available under Regulation 44/2001. The judgment debtor may raise the following defences in common law:

- The foreign judgment is contrary to the public policy of Cyprus as defined by the Supreme Court of Cyprus (see defences to Regulation 44/2001 above).
- The judgment was obtained by fraud. The particulars which support the fraud allegation must be put forward by the judgment debtor and, if the allegation is credible, the matter will be investigated by the Cyprus court.<sup>11</sup> For the

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10. Article 35(1).

11. *Jet Holdings Inc v. Patel* [1990] 1 QB 335 (CA).

debtor to succeed he must produce solid evidence that the claimant somehow defrauded the foreign court.

- The proceedings in which the judgment was given were conducted in a manner which was contrary to natural justice or there was a failure to observe due process. It is likely, for example, that if a foreign court refused to hear the defendant or refused to allow the cross-examination of witnesses, any resulting judgment would be set aside by a Cyprus court.
- It is still possible to reopen the judgment in the court of origin. That is to say the judgment is not final and conclusive.
- The foreign court lacked jurisdiction in the case. In the event of such a defence being raised the Cyprus court will apply the rules of Private International Law on jurisdiction.
- The judgment is inconsistent with a prior judgment given in Cyprus or with a foreign judgment between the same parties and delivered earlier in time which is entitled to recognition in Cyprus.

#### *Under Statute*

The substantive grounds on which registration under statutory law may be obtained or set aside closely reflect the common law. Additionally under section 6(1) of Cap 10 the judgment debtor may apply to have the registration set aside in the following circumstances:

- the judgment is not a judgment to which Part I of Cap 10 applies or was registered in contravention of the provisions of Cap 10;
- the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend and did not appear;
- the rights under the judgment are not vested in the person applying for registration.

The court must set aside the registration if one of the criteria set out above is satisfied.

The court also has discretion to set aside the registration if:

- it is satisfied that, before 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
- 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.

#### *Defences to Arbitration Awards*

Defences to an arbitration award are similar to those outlined above. Specifically, the defendant in an arbitration case may apply to the Cyprus court

## 11–11 / Europe

to have the award set aside or for the court to refuse its recognition and/or enforcement on grounds of:

- the incapacity of the parties;
- the invalidity of the arbitration agreement;
- a lack of proper notice or some kind of procedural irregularity;
- a lack of jurisdiction of the tribunal;
- a defect in the composition of the tribunal;
- the incapability of settlement of the subject matter of the dispute by arbitration under Cyprus law; or
- a conflict between the award and public policy.

### 11. JURISDICTION

*Under Regulations 1215/2012 and 44/2001*

Subject to there being no grounds under Article 45<sup>12</sup> to contest the judgment, the jurisdiction of the court of the Member State of origin may not be reviewed. The test of public policy referred to in Article 45(1)<sup>13</sup> may not be applied to the rules relating to jurisdiction.

*Under Common Law and Statute*

The local court may examine the issue of jurisdiction if a judgment debtor raises lack of jurisdiction in the case as a reason for the court not to recognize and enforce the judgment. In such a case the Cyprus court will apply the rules of Private International Law on jurisdiction.

The original court will be deemed to have jurisdiction if:

- (i) in an action in personam the judgment debtor:
  - submitted to the jurisdiction voluntarily other than for the purpose of protecting or obtaining the release of the property seized or threatened to be seized;
  - was the plaintiff in or counterclaimed in the original court;
  - had agreed to submit to the jurisdiction of the original court;
  - was resident or, if a company, had its principal place of business in the original country; or
  - had an office or place of business in the original country and the original proceedings were in respect of a transaction effected by that office or place.
- (ii) in a judgment given in an action of which the subject matter was immoveable property, or in an action in rem of which the subject matter was immoveable property, the property in question was, at the time of the proceeding in the original court, situated in the country of that court;  
or

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12. Articles 34 and 35 of Regulation 44/2001.

13. Article 34 of Regulation 44/2001.



- (iii) in a judgment given in any action other than those stated above, the jurisdiction of that court is recognized in Cyprus law.

The original court will not be deemed to have had jurisdiction if:

- (i) the subject matter of the judgment was immovable property in another jurisdiction outside the country of the original court; or
- (ii) the filing of the proceedings in the original court was in breach of an agreement to resolve that dispute other than by a court action in that jurisdiction, except where the judgment debtor:
  - submitted to the jurisdiction voluntarily, other than for the purpose of protecting or obtaining the release of the property seized or threatened to be seized;
  - was the plaintiff in or counterclaimed in the original court;
  - had agreed to submit to the jurisdiction of the original court; or
  - where the jurisdiction of that court is recognized in Cyprus law.
- (iii) the judgment debtor was by rules of international public law entitled to immunity from the jurisdiction of the original court and did not submit to that jurisdiction.

As noted above, a defendant who submitted to the jurisdiction of the original court for the sole purpose of protecting or obtaining the release of the property seized or threatened to be seized may subsequently repudiate the jurisdiction of that court in proceedings before the Cyprus court.

If a judgment was granted by default, the original documents or certified true copies of them are required to establish that the summons was duly served on the defaulting party. Where the language used in the original court is not one which is understood by the defendant it is necessary to show that he has been properly informed via the translation of the relevant documents and the use of an interpreter. It is also important to establish that the defendant has been given adequate notice of the proceedings to enable him to properly prepare his defence.

The Cyprus court cannot decide to review a judgment on the grounds that the foreign court accepted a clause conferring exclusive jurisdiction on that foreign court unless it can be shown that the judgment debtor did not voluntarily agree to the clause.

#### *Defences to Arbitration Awards*

The Cyprus court may set aside the enforcement of an award on grounds of lack of jurisdiction if it can be demonstrated that the award:

- deals with a difference not contemplated by or not falling within the terms of the submission to arbitration; or

## 12–15 / Europe

- contains decisions on matters beyond the scope of the submission to arbitration.

It should be noted 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.

### 12. CONTRACTUAL WAIVER

- (a) A prior contractual waiver of service or notice would be recognized by the Cyprus court provided that the party entered into the waiver voluntarily and was fully aware of the consequences of doing so.
- (b) A foreign judgment granted after a contractual waiver of procedural requirements usually imposed by the Cyprus court would be recognized if it was satisfied that the concept of natural justice had been upheld.

### 13. SERVICE REQUIREMENTS

- (a) The method of service used to initiate proceedings will generally be acceptable to the Cyprus court provided that it does not run contrary to the concepts of natural justice and due process. In particular the initiating summons or process must be adequate to allow the defendant to:
  - fully comprehend the matter at issue and the mechanisms by which it may be pursued and defended (e.g., document translations and interpreters must be made available where the defendant is a non native speaker); and
  - have sufficient time to prepare a proper defence.

### 14. CESSION

- (a) There are no reported cases on this issue. Since Cyprus law generally follows English law it is likely that cession would be allowed, subject to proper notice being given.
- (b) As none of Cyprus's treaties gives any special advantage compared to the others, there would be no particular benefit.

### 15. INTERIM RELIEF

- (a) In appropriate circumstances the Cyprus court may grant interim relief such as a freezing order over the assets of the judgment debtor.
- (b) In principle, a defendant who has suffered loss due to the inappropriate granting of an interim injunction may raise an action to be compensated and

the applicant is generally required to lodge security with the court in the form of a bank guarantee or cash. However actions of this nature are rare.

## 16. INTEREST

Once the Cyprus court has recognized a foreign judgment it will allow all interest due under the law of the foreign jurisdiction up to the date of recognition. Thereafter interest will accrue under Cyprus law at the rate stipulated by law, currently 8% per annum.

## 17. TIME OF ENFORCEMENT AND SUBSEQUENT ACTION

### (a) Time of Enforcement

*Under Regulations 1215/2012, 44/2001 and 805/2004*

In Cyprus judgments are declared enforceable immediately on the filing of both:

- a certified copy of the judgment; and
- a certificate of authenticity issued by the court in which the judgment originated.

*Under Common Law*

A defendant is obliged to acknowledge service of the writ of summons by the judgment creditor within fourteen days from the date of service by filing a Memorandum of Appearance. In the event that the defendant gives notice of intention to defend and subject to a statement of claim having been served, the plaintiff may then apply for summary judgment under Order 18 of the Civil Procedure Rules on the ground that the defendant has no arguable defence to the claim.

At the first hearing of the application the defendant has the right to object to the application and the court will direct him to file his written opposition and will set the application for hearing. It is necessary for the defendant to demonstrate that he should be given leave to defend the proceedings. This evidence is almost always given by affidavit in which the defendant must satisfy the court that there is an issue or a question in dispute which should be tried or that for some other reason there ought to be a trial.

If the defendant raises an arguable defence, the court will give him leave to defend the action. In the case of a defence which the court regards as dubious or lacking in substance, the court may make the grant of leave to defend subject to conditions (often the payment into court of all the sum claimed). If the court finds that there is no triable issue, it will award judgment for the plaintiff. If there is a triable issue the time taken to arrive at a final resolution will depend on the complexity of the case, the procedural requirements and the caseload of the

## 17–17 / Europe

court. Pending final resolution the court may make such interim order as it deems appropriate.

### *Under Statute*

Once a foreign judgment has been duly registered it immediately takes effect as a judgment of a domestic court and all the methods of execution court judgments are available. 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 a stay of execution is made by the court. An appeal can be made only on a point of law and generally will concern the right of the court to exercise jurisdiction on the question whether the foreign court has complied with the requirements of registration. No leave to appeal is required and either party may appeal.

### *Arbitration*

A foreign award recognized by a Cyprus court is treated as a judgment given by a domestic court. Therefore all the methods of execution of court judgments apply, mutatis mutandis, to the execution of all foreign arbitration awards without discrimination.

## **(b) and (c) Enforcement Routes**

In Cyprus any person against whom a judgment is given must immediately comply with it and fully satisfy it. This applies whether a judgment is made under Regulation 44/2001, common law or statute. If a party fails to obey a judgment made against him, measures can be taken for the execution and enforcement of the judgment so that the successful party will obtain the remedy to which he is entitled. These are:

- a writ of execution for the sale of movables;
- garnishee proceedings (requiring a third party who owes money to the judgment debtor to pay the money to the judgment creditor);
- the registration of a charging order over the immovable property of the judgment debtor or over his chattels;
- a writ of delivery of goods, ordering those goods to be delivered to the judgment creditor;
- a writ of possession of land, ordering that land to be delivered to the judgment creditor;
- committal for breach of an order or undertaking;
- a writ of sequestration ordering the seizure or attachment of property;
- bankruptcy or liquidation proceedings against the judgment debtor.

**(d) Appeals***Under Regulations 1215/2012 and 44/2001*

Any appeal against the declaration of enforceability of the judgment must be lodged within one month from service if the judgment debtor is domiciled in the enforcing state or within two months if domiciled in another Member State. Article 44 provides for a further appeal from the decision made under Article 43, but this can happen only once and must be based on a point of law. On appeal under either Article 43 or 44, the court can only refuse or revoke a declaration of enforceability on one of the grounds specified in Article 45 of the Regulation.<sup>14</sup> The recognizing court in Cyprus may grant protective measures such as an injunction based on section 32 of the Courts of Justice Law, 14 of 1960, against the property of the judgment debtor until the final determination of any appeal.

*Under Common Law*

The defendant may appeal to the Supreme Court as of right against an order refusing leave to defend and both the defendant and plaintiff may appeal as of right against an order granting conditional leave to defend. The court will make such interim order as it deems appropriate, depending on the circumstances.

*Under Statute*

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

*Arbitration*

As noted above, a foreign award recognized by a Cyprus court is treated as a judgment given by a domestic court and the same principles apply regarding appeals, *mutatis mutandis*.

**18. EXPENSES, LEGAL FEES AND SECURITY FOR COSTS**

- (a) Court fees are set by regulation and are as follows:
- filing a petition to register a judgment EUR 21;
  - swearing a supporting affidavit EUR 2;
  - each exhibit EUR 0.50.

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14. Articles 34 and 35 of Regulation 44/2001.

## 19–20 / Europe

- (b) In litigious matters the lawyer's minimum charges are determined by the rules of the Supreme Court of Cyprus and they are generally observed by the legal profession where the case is straightforward. In more complex cases lawyers may charge an hourly rate or work on a special retainer basis.
- (c) Contingency fee agreements are not permissible under Cyprus law.
- (d) Costs are normally awarded to the successful party and the award is subject to taxation by the court's taxing master who is the Registrar of the local court. On average two-thirds of the costs claimed are awarded.
- (e) The court may grant an order for security for costs in appropriate circumstances, but only against 'third country' (non-EU) residents. No order for security for costs will be granted against a plaintiff who is resident in Cyprus or the EU. The amount of security that may be ordered is the amount of the costs expected to be incurred defending the action. If an order for security for costs is not satisfied within the time directed by the court, the action may be dismissed.

### 19. BANKRUPTCY/LIQUIDATION

- (a) In the event of insolvency of the judgment debtor a foreign judgment creditor can prove its claim in the insolvency proceedings in Cyprus under the normal procedure applicable to all creditors. There is no discrimination between foreign and local creditors.
- (b) Foreign insolvency proceedings are recognized by courts in Cyprus when those proceedings are taken in accordance with the law of the country of in which the company is incorporated and there is no domestic law which prevents recognition. The appointment of a foreign liquidator will also be recognized and there will be no need for the liquidator to apply for formal recognition. In the event of concurrent liquidation of the same debtor in the foreign jurisdiction, a creditor who proved his claim in Cyprus will only receive a share in any distribution after any amount received in the foreign proceedings has been taken into account.

### 20. LAWYERS (WHO CAN APPEAR?)

All practising lawyers registered with the Cyprus Bar Council and the Supreme Court Registrar have the right to conduct cases in the courts. By implication, in-house lawyers do not have such rights. Upon certain conditions, EU lawyers have the right to appear before the courts but they must be accompanied by a Cyprus qualified lawyer. Such lawyers are required to use their home jurisdiction's title and present documents evidencing their legal qualification. If they provide legal services on a permanent basis, they must register with the Cyprus Bar Council.

Third-country lawyers may with special permission from the Bar Council practise as advocates provided they present the necessary documentation to the

Supreme Court Registrar. In order to appear before the court, they must be accompanied by a Cyprus qualified lawyer.

## 21. INTERNATIONAL TREATIES

The Republic of 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 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 1971 and Supplementary Protocol thereto.<sup>15</sup>
- The European Convention on the Recognition and Enforcement of Decisions concerning Custody of Children and/or Restoration of Custody of Children 1980.<sup>16</sup>
- The European Convention on the Recognition and Enforcement of Certain International Aspects of Bankruptcy 1990.<sup>17</sup>

## 22. CROSS-EXAMINATION OF AFFIDAVIT'S DEPONENT

The court has wide discretion in these matters and can order cross-examination if it considers it appropriate, on such terms as it deems appropriate, including security for costs.

## 23. REQUIRED AFFIDAVIT

The format of the affidavit is stipulated in the Civil Procedure Rules. It must state the name, residence and occupation of the affiant, must exhibit the original judgment for which enforcement is sought and a translation thereof, must state the details of the applicant and refer to the entitlement of the applicant to seek enforcement of the judgment in question as well as to the amount due as per that judgment.

## 24. NEW ACTION INSTEAD OF ENFORCEMENT

- (a) Under common law, the judgment creditor, instead of filing an action on the foreign judgment, can file an action relying on the facts which created the cause of action in which the foreign judgment was given. However, the

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15. Ratified by Law 11 of 1976.

16. Ratified by Law 36 of 1986.

17. Ratified by Law 36(III) of 1993.

## 25–26 / Europe

Supreme Court has ruled that if the judgment is capable of registration under statute it cannot be enforced by a common law action on the judgment.

(b) Limitation periods are set out in the Limitation of Actions Law, Cap. 15, which was suspended in 1964 following intercommunal disturbances. The Suspension of Limitation Period (Provisional Provisions) Law (Law 110(I)/2002) reinstated the provisions of the Limitation of Actions Law with effect from 1 June 2005, except in relation to any immovable or movable property situated in areas now occupied by Turkish troops (or property which was situated there at the time of the Turkish invasion). Notwithstanding the passage of the 2002 Law, the Limitation of Actions Law has remained suspended, as a series of laws have been passed extending the suspension for a further year. Limitation periods are currently suspended until 31 December 2011. The main provisions of the Limitation of Actions Law are as follows:

- In relation to bonds in a customary form or any mortgage, the time limit is fifteen years from the date the cause of action arose.
- In relation to any judgment the time limit is fifteen years from the date on which the judgment became enforceable.
- In relation to any book debt due to or from a bank, the time limit is six years from the date the cause of action accrued.
- In relation to any goods sold and delivered, bills, work done and wages, the time limit is two years from the date the cause of action accrued.
- In relation to Evkaf or Vakf property (property irrevocably earmarked for Muslim, religious or charitable purposes) the time limit is fifteen years from the date the cause of action accrued. Where the action concerns the corpus of any such property, the limitation period is thirty-six years.
- Section 5 of the Limitation Law provides that with respect to causes of action not expressly provided for by the law or not expressly exempted, the limitation period is six years from the date when such cause of action accrued.

### 25. PRESCRIPTION

The application for registration of a foreign judgment must be made within six years from the date when judgment was given or an appeal adjudicated.

### 26. STATES/CANTONS

Not applicable.