

Enforcement of Foreign Judgments

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Europe

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 country. 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 Regulation 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters ('Regulation 44/2001');
- Common law;
- 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.

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Regulation 44/2001 applies to all judgments given in civil and commercial matters by the courts of Member States except Denmark. The idea behind 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.

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 been minimized by 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 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 32 of 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.

(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 recognised 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 recognised 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, Germany, Greece, Hungary, Poland, Russia, Serbia and Syria. It is also a signatory to the following

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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.⁷
- The European Convention on the Recognition and Enforcement of Decisions concerning Custody of Children and/or Restoration of Custody of Children 1980.⁸
- The European Convention on the Recognition and Enforcement of Certain International Aspects of Bankruptcy 1990.⁹

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 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

7. Ratified by Law 11 of 1976.

8. Ratified by Law 36 of 1986.

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

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.

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