

# Enforcement of Foreign Judgments

*Contributing editor*  
**Patrick Doris**



2017

GETTING THE  
DEAL THROUGH 

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# Enforcement of Foreign Judgments 2017

*Contributing editor*

**Patrick Doris**

**Gibson, Dunn & Crutcher LLP**

Publisher  
Gideon Robertson  
gideon.roberton@lbresearch.com

Subscriptions  
Sophie Pallier  
subscriptions@gettingthedealthrough.com

Senior business development managers  
Alan Lee  
alan.lee@gettingthedealthrough.com

Adam Sargent  
adam.sargent@gettingthedealthrough.com

Dan White  
dan.white@gettingthedealthrough.com



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# Cyprus

George Mountis and Yiannis Karamanolis

Dr K Chrysostomides & Co LLC

## 1 Treaties

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

The law pertaining to recognition and enforcement of foreign judgments in Cyprus can be found in a number of different sources (ie, multilateral treaties, EU Regulations, domestic laws and the principles of common law).

### Multilateral treaties

The Republic of Cyprus is a signatory to the following multilateral conventions relating to the recognition and enforcement of foreign judgments:

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

### Bilateral treaties

Cyprus is also bound by bilateral treaties relating to the recognition and enforcement of foreign judgments with Belarus, the Czech Republic, Germany, Montenegro, Serbia, Slovenia, Slovakia, Ukraine, Russia, Georgia, Bulgaria, China, Greece, Hungary, Poland, Syria and Egypt.

### European Union regime

Since the succession of Cyprus to the European Union, it is also bound by the following regulations:

- EC Regulation No. 44/2001 (Brussels I Regulation) as replaced by EC Regulation No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters. Regulation 1215/2012 (the EU Regulation) applies to judgments issued on or after 10 January 2015. For (i) legal proceedings instituted, (ii) authentic instruments formally drawn up or registered, and (iii) court settlements approved or concluded before 10 January 2015, Regulation 44/2001 is still applicable.
- EC Regulation No. 805/2004 (the European Enforcement Order) provides for the enforcement procedure of uncontested claims. This regulation applies to judgments for specific sums of money that have been obtained in uncontested proceedings (ie, the debtor admitted liability or failed to appear or to object).
- Where a civil claim does not exceed the amount of €2,000, it can be enforced in other member states pursuant to the provisions of EC No. 861/2007 (Small Claims Procedure).

- Uncontested money debts may also be enforceable in other member states under the provisions of the EC 1896/2006 as amended (European Payment Order Procedure).

The Republic of Cyprus is willing and ready to enter into and conclude multilateral and bilateral treaties regarding the recognition and enforcement of foreign judgments without making any reservations that would severely alter their effect or render their provisions meaningless.

## 2 Intra-state variations

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

Yes, the law relating to enforcement of foreign judgments is the same throughout the jurisdiction of the Republic of Cyprus.

## 3 Sources of law

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

In addition to the multilateral and bilateral treaties and the EU Regulations referred to in question 1 above, the sources of law regarding the enforcement and the recognition of foreign judgments also include the following:

### Statutes – domestic laws

- The Judgments of Foreign Courts (Recognition, Registration and Enforcement by Convention) Law of 2000 (Law 121(I)/2000) provides for mutual recognition and enforcement of judicial decisions issued in countries with which Cyprus has concluded an agreement; these are Belarus, Bulgaria, China, Czech Republic, Egypt, Georgia, Greece, Hungary, Poland, Russia, Serbia, Slovakia, Slovenia, Syria and Ukraine.
- The registration of judgments obtained in the United Kingdom is governed by the Reciprocal Enforcement of Certain Judgments issued by the Courts of the Commonwealth Countries, Cap 10 (Cap 10).

Pursuant to article 169 of the Constitution of Cyprus, conventions or treaties relating to commercial matters ratified by the Republic of Cyprus will have priority over domestic law.

### Common law

The principles of the common law will apply to the recognition of judgments which originated from countries that have not concluded relevant treaties with the Republic of Cyprus and in the absence of any applicable domestic legislation.

Under common law, the creditor will need to file a new action that will be based on the provisions of the foreign judgment. The judgment must be final and for a definite sum. Any recognition and enforcement under common law will be refused where:

- the issuing court lacks jurisdiction according to the conflicts of law rules of Cyprus;
- the foreign judgment was obtained by fraud;
- the foreign judgment is contrary to the public policy of Cyprus; and
- the foreign judgment is contrary to the requirements of natural justice.

#### 4 Hague Convention requirements

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

Cyprus signed and ratified the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters. However, the Convention has no practical effect, as Cyprus has not signed any supplementary agreement with any other party to the Convention.

#### 5 Limitation periods

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

The EU Regulation does not provide for limitation periods. However article 4 of Cap 10 provides that the creditor may apply for the recognition of a foreign judgment within six years of the foreign judgment or, where the judgment was appealed, from the date of the last judgment in the foreign proceedings.

Under section 10 of the Limitation of Actionable Rights Law of 2012 [Law 66(I)/2012], the relevant limitation period for an action on a foreign judgment would be 15 years from the date when the judgment became final.

#### 6 Types of enforceable order

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

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

Pursuant to article 2, the Regulation provides for enforcement of any judgment given by a 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 decisions on the determination of costs or expenses by an officer of the court. The term judgment also includes provisional and protective measures ordered by a court or tribunal which by virtue of the Regulation has jurisdiction as to the substance of the matter. However, it does not include a provisional/protective measure which is ordered without the defendant being summoned to appear unless the judgment is served on the defendant before enforcement. Moreover, as per the provisions of article 55, a judgment ordering payment by way of a penalty shall be enforceable only if the amount of the payment has been finally determined by the court of origin.

The provisions of Law 121(I)/2000 apply to any foreign judgment of a court or tribunal or any arbitral award issued in countries with which Cyprus has concluded an agreement for mutual recognition and enforcement of judicial decisions (see question 3). The said judgments must be enforceable in the country of origin and they include interim, provisional and protective measures ordered by a court or tribunal in the country of origin.

The provisions of Cap 10 include judgments or orders made by a court in civil or criminal proceedings for a sum of money regarding compensation or damages to the injured party.

At common law, the judgment must be final and for a definite sum.

#### 7 Competent courts

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

There is no particular court in this regard. The judgment creditor may choose to have the judgment registered either in the District Court where the debtor resides or carries on his or her profession, or where the property to which the judgment relates is situated.

#### 8 Separation of recognition and enforcement

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

Even though the provisions of the Regulation make separate reference to recognition and enforcement, it must be noted that under article 36 a judgment given in another member state shall be recognised without any special procedure being required. The only requirements for a party seeking to invoke the judgment are (i) to produce a copy of the judgment that satisfies the conditions necessary to establish its authenticity and (ii) to produce a certificate which is issued pursuant to article 53. The respondent may argue that recognition should be refused only on the grounds stated in article 45 (see question 9). Once it is recognised, the foreign judgment is enforceable since, as per the provisions of article 39, a judgment given in a member state which is enforceable in that member state shall be enforceable in the other member states and no declaration of enforceability is required. The enforcement of a judgment shall be refused only where one of the grounds referred to in article 45 exists.

We note though that under the provisions of the European Enforcement Order and the Small Claims Procedure no registration is required.

Under the provisions of domestic legislation and common law, the process for obtaining recognition and the process for enforcement of a foreign judgment are considered interconnected in Cyprus, and the foreign judgment will not be enforceable before it has been recognised by a domestic court.

Once enforcement is ordered, the foreign judgment will be on the same footing and has the same status and can be executed as if it had been given by a domestic court. We note though that there are cases where a foreign judgment will be unable to be enforced (ie, declaratory judgments), and the plaintiff will only seek its recognition.

#### 9 Defences

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

##### EU Regulation

As per the provisions of article 52 of the EU Regulation, a judgment given in a member state may not be reviewed as to its substance in the member state addressed. When examining an application for the recognition of a foreign judgment under the said regime, the court presumes that the judgment satisfies all the conditions for its recognition in another member state and its examination is limited to confirming that there are no grounds for refusal of recognition. Under article 45 of the EU Regulation any interested party may apply for a decision that there are grounds for refusal of recognition. These grounds are the following:

- recognition is manifestly contrary to the public policy of the member state addressed;
- the judgment was given in default of appearance, and the defendant was not served with the document instituting the proceedings or an equivalent document in sufficient time and in such a way as to enable him or her to arrange for his or her defence. Recognition will not be refused, though, if the defendant failed to commence proceedings to challenge the judgment issued in default;
- 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 with the same issue and involving the same cause of action where the earlier decision fulfils the conditions required for recognition in the state of recognition; and
- the judgment conflicts with sections 3, 4 or 5 of Chapter II (ie, jurisdiction in matters relating to insurance, consumer contracts and employment contracts) and with section 6 of Chapter II (ie, the provisions for exclusive jurisdiction).

Where one of the above grounds is found to exist, the enforcement of a foreign judgment shall be refused (article 46).

The court shall decide on the application for refusal of enforcement without delay, and this decision may be appealed by either party.

**Law 121(I)/2000**

In accordance with Cyprus Law No. 121(I)/2000, the defendant's objection to the foreign judgment is limited to the jurisdiction of the court, to the demonstration of satisfaction or fulfilment of the decision, or to the existence of any other conditions provided for in the bilateral treaty (article 5(1)(e)).

**Cap 10**

The grounds on which registration under the statutory law may be set aside reflect the common law principles. Under article 6(1) of Cap 10, the judgment debtor may apply to set aside the registration of a foreign judgment in the following instances:

- the judgment is outside the scope of Cap 10;
- the judgment was issued by a court that did not have jurisdiction to try the case;
- the judgment debtor did not receive proper notice of the proceedings before the court and did not appear during those proceedings;
- the judgment was obtained by fraud;
- recognition is manifestly contrary to the public policy of the member state addressed;
- the rights conferred under the judgment are not vested in the person seeking registration and enforcement;
- the matter in dispute was finally and conclusively determined by a court having jurisdiction on this matter; and
- an appeal is pending or could be filed.

**Common law**

Under common law the recognition and enforcement of a foreign judgment are totally discretionary, and the courts in Cyprus may not recognise a foreign judgment in the instances referred to in Cap 10 (which, as stated above, reflect the common law principles).

**10 Injunctive relief****May a party obtain injunctive relief to prevent foreign judgment enforcement proceedings in your jurisdiction?**

Pursuant to the provisions of the Courts of Justice Law 14/1960 as amended, the courts of Cyprus are competent and have jurisdiction to grant any interim order, in all cases, in which it appears to the court just and convenient to do so, provided that the following conditions are met:

- a serious issue exists that is to be tried in relation to the main proceedings;
- it appears that the applicant has a probability of obtaining a favourable judgment in the main proceedings;
- there is a great risk that, if the interim order is not granted, it will be difficult or impossible for justice to be served at a later stage; and
- the balance of convenience is in favour of the applicant.

However, the right to obtain an injunction is not a cause of action and cannot stand on its own. Injunctions are issued on an interim basis and are merely ancillary to a pre-existing cause of action against the respondent.

In theory, an interested party may apply for an interim injunction restraining persons within their jurisdiction from enforcing a foreign judgment in Cyprus. However, there is no precedent to this effect because (i) as stated above, injunctions can only be granted on an interim basis and (ii) because the main grounds on which the request for injunctive relief will be based (ie, fraud, lack of jurisdiction and lack of proper notice) are explicitly listed among the grounds for challenging registration and enforcement of foreign judgments in the various statutes and other instruments governing enforcement.

With regard to the enforcement proceedings of EU judgments in Cyprus, EU Regulation provides that in the event of an application for refusal of enforcement of a foreign judgment, the court in the member state addressed may, on the application of the person against whom enforcement is sought, suspend either wholly or in part the enforcement proceedings (article 44). Moreover, according to the provisions of article 51, the court before which an application for refusal of enforcement is submitted or the court which hears an appeal lodged under article 49 or article 50 may stay the proceedings if an appeal has been lodged against the judgment in the member state of origin or if the time for such an appeal has not yet expired. In the latter case, the court may specify the time within which such an appeal is to be lodged.

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

Please refer to questions 1 and 3 and questions 14 to 20.

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

The recognition and enforcement of a foreign judgment depend on the existence of a bilateral or multilateral agreement between the state of origin and the state of enforcement. A foreign judgment emanating from a country with which Cyprus has not signed any bilateral or multilateral agreements cannot be enforced in Cyprus without the filing of a fresh action under common law. Under common law the enforcement of the foreign judgment is discretionary and for the exercise of its discretion the court may consider any other factor that is relevant to the facts of the case.

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

As a general rule, the court will not analyse the procedural equivalence of the original court's proceedings when considering whether the recognition and enforcement of a foreign judgment will be permitted.

Under the EU Regulation regime, it is presumed that a basic minimum standard of adequate and fair process will be achieved in all member states, and there is a strong (though rebuttable) presumption that procedures in all member states are in line with article 6 of the European Convention on Human Rights. As the CJEU noted in Case C-116/02 *Gasser GmbH v Misat Srl*:

*[I]t must be borne in mind that the Brussels Convention is necessarily based on the trust which the Contracting States accord to each other's legal systems and judicial institutions. It is that mutual trust which has enabled a compulsory system of jurisdiction to be established, which all the courts within the purview of the Convention are required to respect, and as a corollary the waiver by those States of the right to apply their internal rules on recognition and enforcement of foreign judgments in favour of a simplified mechanism for the recognition and enforcement of judgments.*

The same principle applies to the enforcement proceedings under domestic legislation, since the originating court's procedural provisions have been considered when the relevant bilateral treaties were concluded and the scope of Cap 10 covers the Commonwealth countries which have similar proceedings.

Under common law the defendant may raise some procedural issues (eg, that the judgment was obtained by fraud or that the proceedings in which the judgment was given were conducted in a manner which was contrary to natural justice), but in any case the court will be very reluctant to carry out a detailed review of whether the procedures that have resulted in the judgment correspond to due process.

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

Under the EU Regulation persons domiciled in a member state shall, irrespective of their nationality, be sued in the courts of the member state (article 4). In addition, the Regulation provides a list of matters in respect of which a person domiciled in one member state may be sued in the courts of another member state. The jurisdiction of the court of origin may not be reviewed (subject to very limited exceptions). These exceptions are stipulated in article 45(1)(e), which provides that the recognition of a foreign judgment shall be refused if it conflicts with sections 3, 4 or 5 of Chapter II (ie, jurisdiction in matters relating to insurance, consumer contracts and employment contracts) or with section 6 of Chapter II (ie, the provisions for exclusive jurisdiction).

**Law 121(I)/2000**

As stated above, article 5(1)(e) provides that the defendant may object to the recognition and enforcement of a foreign judgment if the court of origin did not have jurisdiction to try the case, on the basis of the conflicts of law rules that are applicable in Cyprus.

**Cap 10**

As stated above, the judgment debtor may apply to set aside the registration of a foreign judgment if the judgment was issued by a court that did not have jurisdiction to try the case. The court of origin is deemed to have jurisdiction in cases where:

- the judgment debtor submitted to the jurisdiction of the court by voluntarily appearing in the proceedings;
- the judgment debtor filed a claim or counterclaim in the proceedings in the court of origin;
- the judgment debtor had before the commencement of proceedings agreed to submit to the jurisdiction of that court;
- the judgment debtor was at the time when the proceedings were instituted domiciled or had its principal place of business in the country of the court of origin;
- the judgment debtor had an office or place of business in the country of the court of origin and the proceedings were connected with a transaction effected through that office or place;
- the property in question was at the time of the proceedings situated in the country of origin; or
- the jurisdiction of the court of origin is recognised by the laws of the court where the applicant is seeking enforcement.

**Common law**

As stated above, recognition and enforcement of the foreign judgment is discretionary under common law, and the courts in Cyprus will consider whether the issuing court lacked jurisdiction or not in accordance with the conflicts of law rules applicable in Cyprus.

**15 Subject-matter jurisdiction**

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

Subject-matter jurisdiction is usually relevant where specific bilateral or multilateral treaties are concluded, and they are applicable only regarding specific subject matters. The Regulation provides a list of matters in respect of which a person domiciled in one member state may be sued in another member state and expressly exclude certain matters from its application. Given the above, the courts in Cyprus will have to determine whether the foreign judgment will be enforceable in Cyprus pursuant to the provisions of the Regulation or whether the common law principles must be applied.

**16 Service**

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

Under article 28(2) of the Regulation, the court shall stay the proceedings if it is not shown that the defendant has been able to receive the document instituting the proceedings or an equivalent document in sufficient time to enable him or her to arrange for his or her defence, or that all necessary steps have been taken to this end.

Under Cap 10 the judgment debtor may apply to set aside the registration if he or she did not receive proper notice of the proceedings before the court so as to be enabled to defend the claim, and did not appear during those proceedings.

Under common law, a lack of notice to the defendant will most probably result in a finding that the requirement of natural justice was not satisfied.

In all cases the defendant must be served with the necessary documents in sufficient time and in a such a way as to enable him or her to arrange for his or her defence.

**Update and trends**

The new EU Regulation 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast) is now applicable. Under the new regime a judgment given in one member state on or after 10 January 2015 is immediately enforceable in the other member states of the EU, without any need for a declaration of enforceability. Other than that, there have been no new developments with regard to foreign judgments enforcement in Cyprus.

**17 Fairness of foreign jurisdiction**

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

No. With respect to jurisdiction, the Cypriot court will only examine whether the foreign court had jurisdiction and not whether the jurisdiction was convenient to the defendant. In *Owusu v Jackson and Others* (Case C-281/02) it was decided that a court of a member state may not decline the jurisdiction conferred on it by the Brussels Convention on the ground of forum convenience. This conclusion was also endorsed by the Supreme Court of Cyprus in its judgment in *Hampton Advisory Group S.A v 1. Bost Ad and other* (2012) 1 CLR 549.

**18 Vitiating by fraud**

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

Under the EU Regulation, judgments obtained contrary to the public policy of Cyprus will not be recognised. While fraudulent actions may also be contrary to the public policy, fraud per se will not be enough to investigate these allegations. However, pursuant to the provisions of Cap 10 and the common law, a foreign judgment that was obtained by fraud will not be recognised or enforced in Cyprus.

**19 Public policy**

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

Yes. Under the provisions of the EU Regulation, Cap 10 and the common law, the courts in Cyprus will not recognise or enforce a foreign judgment which is contrary to Cyprus public policy. There is no legislative provision defining the concept of public policy, which is a variable notion, depending on changing manners, morals and economic conditions. The Supreme Court of Cyprus in its judgment *Attorney General of the Republic of Kenya v Wirtschaft AG* (1999) 1A CLR 585 defined public policy as the fundamental values which a society recognises in a specific period of time.

In view of the above, some examples of foreign judgments that may be contrary to the public policy include judgments (i) obtained by fraud, (ii) obtained in breach of article 6 of the ECHR or other fundamental rights of the parties, and (iii) which were irreconcilable with existing judgments in Cyprus between the same parties and on the same facts.

**20 Conflicting decisions**

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

All enforcement regimes provide that the recognition of a foreign judgment may be challenged in cases where a conflicting judgment exists. The conflicting judgment must be between the same parties and based on the same cause of action.

In order to prevent conflicting decisions, article 29 of the EU Regulation provides that where proceedings involving the same cause of action and between the same parties are brought in the courts of different member states, any court other than the court first seized shall stay its proceedings until the jurisdiction of the court first seized is established.

**21 Enforcement against third parties**

**Will a court apply the principles of agency or alter ego to enforce a judgment against a party other than the named judgment debtor?**

No, the judgment will be enforceable only against the named judgment debtor.

**22 Alternative dispute resolution**

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

The EU Regulation does not apply to arbitral awards, and there is no reference to the effect of an agreement for alternative dispute resolution (ADR) in any of the above-stated regimes. In practice, if the parties had an enforceable agreement for ADR and this requirement was not followed, save where the defendant has voluntarily submitted to the jurisdiction of the foreign court by voluntarily participating in proceedings, the domestic court will refuse registration of a foreign judgment where the bringing of the proceedings in the foreign court is contrary to an agreement between the parties that the dispute was to be settled by ADR.

**23 Favourably treated jurisdictions**

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

The recognition and enforcement of judgments issued in other EU member states are subject to the provisions of the Regulation, which is a speedier and more straightforward procedure. Cyprus also provides deference to those foreign jurisdictions with which Cyprus has concluded bilateral agreements regarding recognition and enforcement of foreign judgments.

**24 Alteration of awards**

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

The general rule is that the Cypriot courts will enforce a foreign judgment as it was issued. However, the courts are able to sever parts of foreign judgment that are not able to be enforced in Cyprus and partially recognise the judgment. Moreover, in accordance with article 54 of the EU Regulation, if a judgment contains a measure or an order which is not known in the law of the member state addressed, that measure or order shall, to the extent possible, be adapted to a measure or an order known in the law of the member state which has equivalent effects attached to it and which pursues similar aims and interests. Moreover, as per the provisions of article 55 of the Regulation, a judgment given in a member state which orders a payment by way of penalty shall be enforceable only if the amount of the payment has been finally determined by the issuing court.

**25 Currency, interest, costs**

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

Where the sum payable under the judgment is in a currency other than the official currency of Cyprus (ie, the euro), an affidavit must be attached to the application for registration of the foreign judgment, stating the awarded amount converted in euros and the interest accrued up to the date of filing. The court's order for registration and enforcement will also provide (i) for interest after the enforcement and until full settlement, as per the provisions of the foreign judgment or for legal interest (currently at the rate of 4 per cent per year) accruing from the date of the enforcement order, and (ii) for the legal fees incurred by the claimant during the registration and enforcement proceedings. Legal fees awarded to a litigant will also bear legal interest from the date that they were awarded.

**26 Security**

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

See question 9. If an appeal is filed, the party trying to enforce the foreign judgment can apply for security for costs under our Civil Procedures Rules. Security for costs ensures that he or she will be able to recover costs from the unsuccessful appellant. Two conditions must be satisfied to obtain security for costs:

- the appellant must be domiciled outside the EU; and
- the court must be satisfied that the appellant will be unable to pay the respondent's costs if ordered to do so.

The court has an inherent jurisdiction to grant or refuse to grant an order for security for costs. If an order for security for costs is not satisfied within the time directed by the court, the appeal may be dismissed. The amount of security that may be ordered is the amount of the costs expected to be incurred while defending the appeal filed against the court's order for the enforcement of the foreign judgment.

Pursuant to article 44 of the EU Regulation, in the event of an application for refusal of enforcement of a judgment, any person against whom enforcement is sought may apply to the court and request the enforcement to be conditional on the provision of security.

**27 Enforcement process**

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

Once recognition is ordered, the foreign judgment will be on the same footing and have the same status, and can be enforced as if it had been given by a domestic court. If a party fails to comply with a judgment made



**George Mountis**  
**Yiannis Karamanolis**

**g.mountis@chrysostomides.com.cy**  
**y.karamanolis@chrysostomides.com.cy**

1 Lampousas  
1095 Nicosia  
Cyprus

Tel: +357 22 777000  
Fax: +357 22 779939  
www.chrysostomides.com.cy



against him or her, measures can be taken for the execution and enforcement of the judgment to enable the successful party to obtain the remedy to which it is entitled. These measures are:

- a writ of execution for the sale of moveables;
- 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 immoveable property or the chattels of the judgment debtor;
- 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; and
- bankruptcy or liquidation proceedings against the judgment debtor.

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## 28 Pitfalls

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

Due to the many different rules pertaining to the recognition or enforcement of foreign judgments and the different grounds for the refusal or setting aside of enforcement, the identification of the applicable regime in each respective case has proved to be a challenging and demanding task.

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