

CYPRUS

LAW AND PRACTICE:

p.3

Contributed by Patrikios Pavlou & Associates LLC

The 'Law & Practice' sections provide easily accessible information on navigating the legal system when conducting business in the jurisdiction. Leading lawyers explain local law and practice at key transactional stages and for crucial aspects of doing business.

Law and Practice

Contributed by Patrikios Pavlou & Associates LLC

Contents

1. Identifying Assets in the Jurisdiction	p.4
1.1 Options to Identify Another Party's Asset Position	p.4
2. Domestic Judgments	p.5
2.1 Types of Domestic Judgments	p.5
2.2 Enforcement of Domestic Judgments	p.6
2.3 Costs and Time Taken to Enforce Domestic Judgments	p.7
2.4 Post-judgment Procedures for Determining Defendants' Assets	p.7
2.5 Challenging Enforcement of Domestic Judgments	p.7
2.6 Unenforceable Domestic Judgments	p.7
2.7 Register of Domestic Judgments	p.7
3. Foreign Judgments	p.8
3.1 Legal Issues Concerning Enforcement of Foreign Judgments	p.8
3.2 Variations in Approach to Enforcement of Foreign Judgments	p.8
3.3 Categories of Foreign Judgments Not Enforced	p.8
3.4 Process of Enforcing Foreign Judgments	p.9
3.5 Costs and Time Taken to Enforce Foreign Judgments	p.10
3.6 Challenging Enforcement of Foreign Judgments	p.10
4. Arbitral Awards	p.11
4.1 Legal Issues Concerning Enforcement of Arbitral Awards	p.11
4.2 Variations in Approach to Enforcement of Arbitral Awards	p.12
4.3 Categories of Arbitral Awards Not Enforced	p.12
4.4 Process of Enforcing Arbitral Awards	p.12
4.5 Costs and Time Taken to Enforce Arbitral Awards	p.13
4.6 Challenging Enforcement of Arbitral Awards	p.13

Patrikios Pavlou & Associates LLC is a multi-awarded, leading law firm based in Cyprus. With 56 years of experience in the local and international legal market, the firm has developed distinguished expertise in dispute resolution and ADR, and a renowned legal consulting department. The largest and most experienced department of the firm is the litigation practice, which consists of 23 professional associates who handle a wide range of claims and disputes,

both locally and internationally, with a focus on corporate and commercial disputes, fraud and conspiracy claims, injunctive reliefs, and registration and enforcement of foreign judgments and arbitral awards, as well as insolvency proceedings. Additionally, the dispute resolution team handles general civil, banking and criminal litigation as well as administrative recourses to the Administrative Court of Cyprus.

Authors



Eleana Christofi is a partner with the dispute resolution department of the firm. She received an LLM degree in international business law from the University of Manchester and an MSc in management from Lancaster University

before being admitted to the Cyprus Bar. In early 2017, Eleana successfully completed Module 2 – The Laws of Arbitration in International Commercial Arbitration, a five-month course by the Chartered Institute of Arbitrators (CI Arb). Eleana has authored and co-authored various articles on litigation and arbitration, and is involved in civil, commercial and corporate litigation cases, both domestic and international; shareholder disputes; injunctive reliefs; insolvency proceedings; and registration and enforcement of foreign judgments and arbitral awards.



Georgia Siopacha is an associate at Patrikios Pavlou & Associates LLC. She obtained her LLM degree in corporate and commercial law from Queen Mary University of London and was then admitted to the Cyprus Bar. Georgia has

co-authored articles on ‘Litigation and Enforcement in Cyprus: overview’, and ‘Cyprus Shipping: casting a long shadow over the International Maritime Industry’.



Theodoros Symeonides is a senior associate at Patrikios Pavlou & Associates LLC. He obtained an LLM degree in law and economics from University College London. In 2012, Theodoros completed the Legal Practice Course at Nottingham

Law School and he was admitted to the Cyprus Bar in 2013. Theodoros specialises in international commercial and corporate matters, including handling arbitration proceedings, shareholder disputes, insolvency proceedings and applications for injunctive relief.



Agathi Zervou is an associate at Patrikios Pavlou & Associates LLC. She received an LLM degree in commercial law from the University of Bristol. Agathi also completed the Legal Practice Course from the BPP University Law School in 2014

before being admitted to the Cyprus Bar in 2015. She focuses on commercial and corporate litigation cases, both domestic and international.

1. Identifying Assets in the Jurisdiction

1.1 Options to Identify Another Party's Asset Position

As a general remark, in Cyprus, information as to the location and position of the assets of a party is not publicly available, in the sense that in the absence of a court judgment/order ordering the disclosure of relevant information, one cannot obtain information with regards to the location and position of the property assets of another party. However, a judgment creditor or a party to an action or other litigation proceeding can also obtain information against the judgment debtor or other party in relation to the latter's immovable property, from the Land Registry. If assets are held by a company registered in Cyprus, a limited amount of information with regards to the said entity may be obtained from the electronic database/registry of the Registrar of Companies that is available to the public. The results of such search at the electronic registry of the Registrar of Companies may provide general information in relation to the identity of the company's shareholders and directors as well as the number of shares held by each one of them, as well as present and previous charges. Furthermore, each company has to file its financial statements to the Registrar of Companies, which are accessible to the public with the payment of a fee. Therefore, information can be obtained through the financial statements.

Another option available in Cyprus for the purposes of identification or tracing of property assets is through an order of the court ordering the disclosure of information in relation to the specific assets of a party. Cypriot courts have a wide discretion to issue interim orders and injunctions, including prohibiting and mandatory injunctions ordering the respondent to act in a particular manner or perform certain activities, as well as disclosure orders for the purpose of asset tracking and execution. In examining an application for a mandatory injunction, specific conditions should be met that are set out in the legislation and the case law. Freezing orders prohibiting the removal of assets from the jurisdiction, but also preventing the respondent from dissipating assets in general, are commonly issued by the courts where the conditions set by the case law are met. Disclosure orders may also be ordered alongside a freezing order so as to enable the monitoring and effectiveness of the freezing order. Most often the Cypriot courts will issue the following interim orders/injunctions.

Mareva Injunctions

Interim attachment orders, commonly referred to as 'Mareva' injunctions, are often issued by the Cypriot courts when the applicant can show that unless the freezing order is issued, there is a real risk of alienation or dissipation of assets. In recent years the jurisdiction of the Cypriot courts to issue worldwide freezing orders has also been recognised. The court will issue the requested order on the balance of con-

venience towards preserving a particular status quo pending the final adjudication and determination of the issues of the relevant proceedings. Freezing orders can be granted in relation to assets, including both tangible and intangible assets, inside and outside Cyprus.

Chabra Injunctions

In addition to the above, Cypriot courts also asserted jurisdiction in issuing orders by way of a 'Chabra' injunction (*TSB Private Bank International v Chabra* [1992] 1 WLR 231). A Chabra injunction is essentially a freezing order directed to a party against which the claimant does not have a substantive cause of action. It is made to enforce a judgment (or an anticipated judgment) against that third party and/or freeze assets that are beneficially owned by the cause of action defendant.

Norwich Pharmacal Type Disclosure Orders

These orders are designed to force a third party to divulge the details of a wrongdoer so that the applicant/claimant can bring a named action against them. A Norwich Pharmacal order is essentially an order under which a respondent who is involved or mixed up in a wrongdoing (whether innocently or not) is required to disclose certain documents and/or information to the applicant; for example, to identify the wrongdoer or trace its assets. Typically, an application for a Norwich Pharmacal order will be made where, without the information requested, no claim can be brought against the wrongdoer or property misappropriated may not be found.

2. Domestic Judgments

2.1 Types of Domestic Judgments

Judgments in Default of Appearance or Defence

Legal proceedings in a district court in Cyprus are initiated when a writ of summons or an originating summons is filed and sealed at court. The writ of summons can be generally endorsed (containing only a list of the remedies sought) or specially endorsed (containing a statement of claim providing the main factual background on which the cause of action is founded). Following service of the proceedings, the defendant has ten days to file an appearance and then a defence must be filed within 14 days.

- If the defendant fails to file an appearance within the prescribed period, the claimant can apply to the court and obtain a default judgment. However, it is possible for a defendant to file an appearance outside the prescribed time limit to block the issuing of a judgment in default.
- If the defendant files an appearance but not a defence, the claimant can file an application for issuance of judgment without a full hearing being conducted.

Additionally, where the defendant files an appearance or a defence to a specially endorsed writ of summons, the claim-

ant can, where appropriate, apply for a summary judgment on the grounds that there is no defence to the action. Summary judgment proceedings are governed by Order 18 of the Civil Procedure Rules (CPR). Although a summary judgment does not always result in the final adjudication of a case, it is a fast-track procedure that can be used by a claimant seeking the quick adjudication of its claim, in instances where it has good and valid reasons to believe that the defendant has no defence.

Judgment to Set Aside

A defendant can apply to the court to have the claim dismissed and/or set aside and/or request to strike out part or the whole action for various reasons such as due to lack of jurisdiction of the Cypriot court to try the action, the actionable right being covered by *res judicata* or the proceedings being frivolous and vexatious or constituting an abuse of the court's process.

Interim Orders/Judgments

There are various types of other interim judgments/orders that can be issued by the court in the process of a litigation proceeding that are issued following the filing of a relevant application by a party, such as a judgment for the claimant to provide security for costs, judgment for amending pleadings, judgment for provision of further and better particulars on a filed pleading, and others.

Furthermore, the Cypriot courts may issue interim prohibitive, mandatory, disclosure or preservation orders within the framework of pending proceedings, as discussed in **1.1 Options to Identify Another Party's Asset Position**. In addition to these orders, Cypriot courts have jurisdiction to issue Anton Piller orders (search orders enabling the claimant to enter premises and obtain information that is likely to be destroyed), Norwich Pharmacal orders (ordering disclosure of information against a wrongdoer) and gagging orders (preventing the respondents from disclosing the filing of the proceedings and/or the application to the public in general, any potential defendants and/or any other unauthorised third party). Orders for the appointment of an interim receiver or an administrator of assets can also be issued. Such orders are deemed appropriate in cases where a prohibitive injunction is insufficient on its own. These cases are likely to arise where there is a measurable risk that a defendant/respondent will act in breach of the freezing order or otherwise seek to ensure that its assets will not be available to satisfy any judgment that may be given against it.

Other orders that can be issued are orders in support of arbitration or foreign proceedings, or orders facilitating an arbitration proceeding. Under Regulation (EU) 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast Brussels Regulation), Cypriot courts can issue an interim order at any time in aid or support of court proceedings pending

before the courts of an EU member state without the need to file substantive proceedings in Cyprus. These orders are considered interim, pending the adjudication of the main proceeding, which is taking place in another jurisdiction.

Final Remedies

A party can seek most of the remedies usually available under common law and the principles of equity. The Cypriot courts have broad powers to award a variety of remedies to a successful claimant. Most commonly, the following remedies are awarded for civil and commercial claims:

- compensatory damages (general/special damages), in relation to claims for loss suffered by the claimant, which are determined and calculated in accordance to the extent and type of loss suffered by the injured party;
- restitutionary damages in equity, to prevent unjust enrichment;
- declaratory court decisions/judgments recognising an ownership status, declaring as unlawful, void and/or without legal effect the acts and operations of a defendant;
- orders for specific performance, most commonly in relation to contract disputes;
- other type of appropriate prohibitive, mandatory or any other type of final order by which a family dispute, a dispute emanating from the commission of a tort or any other type of civil dispute is regulated in a final manner; and
- punitive or exemplary damages, to punish the behaviour of the defendant in certain circumstances.

2.2 Enforcement of Domestic Judgments

Once a party obtains a judgment in Cyprus or once a foreign judgment is recognised and registered in Cyprus (once a foreign judgment is registered, it takes the form of a domestic judgment and it is treated as such by the courts in Cyprus) then the party who has obtained a judgment may take execution measures towards the satisfaction of the judgment.

The Civil Procedure Law, Cap 6 provides that every court's judgment ordering the payment of money may be enforced through all or any of the following methods of execution and enforcement directed against the judgment debtor.

- Writ of execution for sale of movables: this method of execution entails the sale of a judgment creditor's movable property for the benefit of the judgment debtor.
- Writ for sale of immovable property or charging the property through the registration of a charging order/security (commonly known as MEMO) over the property.
- Writ of sequestration of immovable property.
- Garnishee order/third-party debt order: according to this method of execution, a money judgment is enforced through the attachment of the debts due or accruing

due to the judgment debtor that form part of his property available in execution (ie, garnishee order). By this method of execution a third party who owes money to the judgment debtor is required to pay directly to the judgment creditor the debt due or accruing due from him to the judgment debtor, or as much of it as may be sufficient to satisfy the amount of the judgment.

- The court may examine the judgment debtor with regards to his financial position and subsequently the court may order the judgment debtor to make payments over the debt on a monthly basis and such payments may be made directly from the judgment creditor's monthly instalments/salary.
- Every court's judgment or order for the delivery of possession of immovable property may be executed through a writ of possession, ordering the delivery of the immovable property to the judgment creditor.
- Every court's judgment or order for the delivery of possession of movable property may be executed through a writ of delivery, ordering the delivery of the movable property to the judgment creditor.
- Moreover, the court may issue injunctions and other orders encumbering the interest of the judgment debtor on shares and other stock owned by the judgment debtor according to the provisions of the Encumbering Orders Law of 1992 (Law 31(I)/1992).
- Liquidation/winding-up proceedings may be initiated against a judgment debtor but these are not enforcement methods per se in that they do not guarantee payment of the judgment debt as the liquidator will be distributing the assets of the judgment debtor company according to the priority of creditors (secured, unsecured, etc).

2.3 Costs and Time Taken to Enforce Domestic Judgments

Many different factors are taken into consideration when calculating the costs and time needed for enforcing a domestic judgment, such as the amount of the judgment, the chosen measure for enforcement and whether there will be substantial opposition by the debtor in the enforcement proceedings (delaying tactics, the filing of interim applications, etc) as well as the agreement for costs of services between the advocate and the client, therefore it is impossible to assess a general range of costs to be incurred by the applicant. The type of enforcement measure that will be chosen by the creditor will depend on any information available regarding the debtor's assets, such as movable and immovable property, shares in another company or money in bank accounts.

Ex parte applications are fixed by the Registrar between seven and ten days from filing for first appearance whereas applications by summons are fixed between one and one and a half months from filing, and in applications by summons the debtor may file an opposition to the measure of enforcement requested by the creditor, leading therefore to a hearing and the court reserving its judgment and issuing

it at a later date. For example, an application for charging of shares is an ex parte application and therefore will be adjudicated quickly; however, an application for the sale of the shares thereafter is a by summons application that can take anything between three and eight months to be adjudicated.

An application for the appointment of a receiver for reasons of equitable execution could take between four and twelve months to be adjudicated. An application for the freezing of assets may also be necessary to pursue if there are fears that the judgment debtor may alienate his assets. Such an application can be made ex parte (if there is urgency or other exceptional circumstances) but will then have to be served to the respondents and will usually be followed by a hearing. Depending on the complexity of the matter, the value of the claim and whether the procedure will be burdened by further interlocutory applications, this process can take anything between three months and a year.

Writs of attachments or writs of possession are more straightforward procedures and can be adjudicated in six months, although obtaining possession of an immovable property may still be delayed by other factors such as if the property is rented to a third party.

2.4 Post-judgment Procedures for Determining Defendants' Assets

A judgment creditor may proceed and conduct a search at the Land Registry to locate any immovable property registered in the name of the judgment debtor. Upon a relevant application by the judgment creditor, the court may examine the judgment debtor with regard to his financial position and its assets, and subsequently the court may order the judgment debtor to make payments over the debt on a monthly basis. Furthermore, the judgment creditor may also request the issue of Mareva orders and disclosure orders in aid of execution, thus allowing the judgment creditor to freeze the debtor's assets and gain information on the assets available for execution.

2.5 Challenging Enforcement of Domestic Judgments

Any order granted ex parte can be requested to be set aside by any person who is affected by it. Such a request will be done via the filing of a by summons application and will therefore proceed to a hearing. If a measure for enforcement is requested through a by summons application (for example, the sale of charged shares) then in any event the debtor will have the opportunity to appear and oppose the granting of the requested execution order. Any final judgment issued followed an inter parte hearing may be appealed by the losing party. Upon filing an appeal, the appellant may also request the stay of execution of the judgment under appeal – such a request is promoted firstly through the court that issued the first-instance judgment and, if it is dismissed, then

through the Supreme Court. However, exceptional circumstances should be shown in order for the stay to be granted.

Grounds for opposing enforcement vary and could be procedural, such as irregular or invalid service of the judicial documents; jurisdictional, such as the court lacks jurisdiction to issue a requested order; or on the merits, for example, the debtor does not have any assets available for execution or he holds assets in trust for another or lack of evidence in support of the relevant application.

2.6 Unenforceable Domestic Judgments

All judgments issued by a court exercising its civil jurisdiction can be enforced, with the exception of judgments the execution of which has been stayed either by the First Instance Court or the Supreme Court and declaratory judgments, such as a judgment that may simply declare the non-existence of a debt or declare the proper termination of a contract.

2.7 Register of Domestic Judgments

There is a register of all judgments and in it one can find some limited information that includes the date of issue of the judgment and the parties in favour of whom the judgment was issued as well as the parties against whom the judgment was issued. The fact that a judgment was issued will remain in the register even though the judgment debtor may have paid off the judgment debt.

3. Foreign Judgments

3.1 Legal Issues Concerning Enforcement of Foreign Judgments

When a judgment is recognised and registered within the Cyprus jurisdiction then it has the same legal effect as if the judgment had been issued by a Cypriot court. Without such recognition, a foreign judgment debt will not be deemed valid by the Cypriot courts for the purposes of promoting execution measures or a winding-up/bankruptcy petition against the judgment debtor in Cyprus.

Judgments issued by a court of a member state of the EU are recognised in Cyprus pursuant to the provisions of the European regulations, particularly Regulation 44/2001 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters, Regulation 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), Regulation 805/2004 creating a European Enforcement Order for uncontested claims and Regulation (EC) No 1346/2000 on insolvency proceedings.

For judgments obtained in the United Kingdom, British dominions, protectorates and mandated territories as well as other foreign countries that accord reciprocal treatment

to judgments given in the Republic of Cyprus, recognition and enforcement of foreign judgments is governed by the Foreign Judgments (Reciprocal Enforcement) Law of 1935, Cap 10, as amended. In light of the accession of Cyprus to the EU and the applicability of the EU regulations set out above, this law is not often used as a basis for recognition of foreign judgments.

Cyprus is also part of various bilateral treaties relating to the recognition and enforcement of foreign judgments – including the Russian Federation, Ukraine, Georgia and China – as well as a signatory of various multilateral conventions. Depending on the country of origin of the various judgments, one needs to examine the provisions of the applicable treaties in order to determine the legal requirements that need to be complied with for the purpose of recognition of the judgment. Such treaties and conventions are based on the ‘principle of reciprocity’ and therefore a foreign judgment may not be recognised in Cyprus if the courts of a foreign country would not be willing to proceed with the recognition of an identical judgment had this been issued by Cypriot courts.

For completeness purposes, it is noted here that on 2 July 2019, the Hague Conference on Private International Law finalised a new treaty on enforcement of judgments that aims to facilitate the enforcement of judgment in the contracting states. The New Hague Convention will only apply between those countries that ratify it and bring it into force. Since this is a recent development, it is not yet certain which countries will ratify the said convention (including Cyprus) and when these changes will come into force.

The rules concerning the procedure on recognition, enforcement and execution of foreign judgments issued by a court of a country with which Cyprus has concluded a bilateral or multilateral treaty for the recognition of judgments are contained in Law No 121(1)/2000.

Pursuant to Article 2 of Law No 121(1)/2000, Cypriot courts will assume jurisdiction to adjudicate applications for the recognition of foreign judgment when at least one of the parties is resident within the Cyprus jurisdiction. Cypriot case law has not yet determined whether it would, nevertheless, be possible to proceed with the recognition of a foreign judgment in cases where both parties are non-Cypriot residents but when the judgment debtor holds assets within the jurisdiction. This has been answered in the affirmative by Courts of First Instance in relation to the recognition of arbitral awards pursuant to the New York Convention and this firm is of the opinion that the same reasoning may apply in regards to the recognition of civil judgments on this matter.

If the foreign judgment is issued by a court of a country outside the EU with which Cyprus has not signed an international treaty then the recognition and enforcement of the

judgment may be achieved via a common law action. In such instance, the judgment creditor may initiate an action before the Cypriot courts requesting an award for damages in the amount of the foreign judgment on the basis of the foreign judgment debt. Within the framework of this procedure, it is possible to apply for the issue of a summary judgment on the ground that the defendant – ie, the judgment debtor – has no defence. Cypriot courts will assume jurisdiction when the judgment debtor is resident within the Cyprus jurisdiction but it has not yet been clarified whether common law actions for recognition of foreign judgments could be adjudicated in cases where the judgment debtor is a non-Cypriot resident who retains assets within the jurisdiction that may be used towards the satisfaction of the judgment debt.

3.2 Variations in Approach to Enforcement of Foreign Judgments

As explained above, the procedure and legal requirements that need to be met for the purpose of recognition and enforcement of a foreign judgment vary to a significant extent depending on the country of origin of the said foreign judgment as different legal frameworks apply in each case.

3.3 Categories of Foreign Judgments Not Enforced

In relation to judgments issued within the EU, Article 2 of the Regulation 1215/2012 defines ‘judgments’, which can be recognised as follows: “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.”

The regulation does 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*).

In addition, the regulation does not apply to:

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

In regards to foreign judgments issued by courts of countries with which Cyprus has entered into bilateral or multinational treaties, the foreign judgments that may be recognised

in Cyprus will depend on the provisions of the said treaties and usually concern civil or commercial matters.

In terms of common law enforcement of foreign judgments, there are no restrictions as to the categories of judgments that may be recognised in Cyprus subject to considerations of public policy and due process discussed below.

3.4 Process of Enforcing Foreign Judgments

Judgments issued before the enactment of the Regulations 1215/2012 are governed by Regulation (EC) 44/2001 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Brussels Regulation). The judgment creditor seeking to obtain a declaration of enforceability in Cyprus may apply *ex parte* to the court. Therefore the judgment debtor will have no notice of the existence of the proceedings until the declaration is issued. Upon the issue of the declaration of enforceability, the pleadings along with the declaration of enforceability must be served on the debtor in accordance with Article 42 of Regulation 44/2001 and the judgment debtor will have a specific period of time within which they may appeal against the issue of declaration of enforceability. If no appeal is lodged then the foreign judgment becomes enforceable in Cyprus and carries the same effect as if it was issued by the Cypriot courts.

Pursuant to the provisions of Regulation 1215/2012, a judgment given in a member state after 10 January 2015 that is enforceable in that member state shall be recognised as enforceable in another member state without any special procedure and without the need to obtain a certificate of enforceability by the courts of the member states where recognition is sought.

According to Regulation 1215/2012, the court of origin shall, at the request of any interested party, issue the certificate of enforceability using the form set out in Annex I of the regulation. This certificate, along with a copy of the judgment, needs to be served upon the party against whom the judgment is sought prior to proceeding to any enforcement step pursuant to the judgment in another member state. The judgment creditor has to produce (i) a copy of the judgment, (ii) the standard certificate annexed to the regulation and, where necessary, (iii) a translation of the certificate and/or judgment.

Any interested party may apply for a decision before the courts of the member state where recognition is sought that there are no grounds for refusal of recognition as referred to in Article 45 of the regulation. Under no circumstances may a judgment given in a member state be reviewed as to its substance in the member state addressed.

When the foreign judgment has been issued by a court of a country with which Cyprus has entered into a unilateral or

bilateral treaty then the procedural provisions of such treaty will apply. In the absence of procedural provisions, the judgment creditor will follow the procedure provided for by Law 121(I)/2000, which states that the judgment creditor shall file an application by summons requesting a declaratory judgment for the recognition of the foreign judgment. The application is served upon the judgment debtor, who has the opportunity to oppose the application for recognition. The Law provides that the application should be fixed for hearing within four weeks from the date of the filing of the application and no postponement is granted unless there are exceptional reasons.

For judgment that may be recognised pursuant to the provisions of Cap 10, the Law provides that the judgment creditor may file an application to the court on an ex parte basis requesting the recognition of the foreign judgment. Upon the satisfaction of the court that the foreign judgment should be recognised in Cyprus, an order is issued to that effect. The court order should provide, in its order for recognition, for a specific period of time within which the judgment debtor may be allowed to file an application to set aside the order of recognition of the foreign judgment, if they so wish. During this period, the foreign judgment cannot be enforced.

When recognition and enforcement of a foreign judgment is sought via a common law action, the judgment creditor initiates fresh proceedings by filing a writ of summons (usually specifically endorsed) and requesting relief identical to the relief provided for by the foreign judgment based on the existence of the said judgment. Once the writ of summons is served upon the defendant, the plaintiff may 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. This route of enforcement is only available when no other route of enforcement applies pursuant to any EU regulation, multilateral or bilateral treaty or domestic statute.

3.5 Costs and Time Taken to Enforce Foreign Judgments

Legal costs involved and time required for filing applications for the registration of foreign judgments in Cyprus vary extensively depending on the engagement agreement entered into between the client and their counsel (ie, charging rates), the origin of the foreign judgment and applicable procedure, the reaction and any delaying tactics employed by the other side, schedule of the court in fixing either the application for recognition or the application to set aside a previously recognised judgment, as the case may be, for hearing and later promptness in issuing a relevant judgment, etc. In addition, upon recognition of the judgment, costs and time for actually proceeding with enforcement measures in order to satisfy the judgment debt will also vary depending on the nature of the assets available, the extent of the oppo-

sition/reaction of the judgment debtor and, of course, the schedule of the court in handling the enforcement procedure. In light of the above, it is impossible to give an estimation on the costs and time involved.

Nevertheless, the most efficient method of recognition of judgment is the one provided for by the EU regulation as well as Cap 10, as this entails the filing of an ex parte application for the recognition of the judgment. This means that the foreign judgment may be 'prima facie' recognised relatively quickly, approximately within one to two weeks from the date of the filing of the ex parte application. However, since the judgment debtor has a right to apply for the setting aside of the judgment of recognition, the actual enforcement of the judgment will be delayed depending on the steps taken by the judgment debtor as well as the grounds of opposition.

On average, this firm estimates that a by summons application, whether this is an application for recognition in accordance with the provisions of Law 121(I)/2000 or an application by the judgment debtor to set aside an already recognised judgment, may be adjudicated within three to five months from the date of filing of such application.

The expenses associated with purchasing the court stamps necessary for filing the application as well as relevant expenses associated with the service of any pleadings to judgment debtors are minimal.

3.6 Challenging Enforcement of Foreign Judgments

As a general rule, both under common law and statute, the Cypriot courts cannot review the substance or merits of a foreign judgment at the stage of recognition and/or enforcement. However, Cypriot courts may deny recognition of a foreign judgment on one of the following grounds of refusal.

- Issues of public policy: recognition and enforcement of a foreign judgment may be denied if a foreign judgment is contrary to the public policy of Cyprus. The Cypriot courts have established that the notion of public policy includes "the fundamental values which a society recognises 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" (see Attorney General of the Republic of Kenya v bank fur Arbeit Uno Wirtschaft AG (1999) 1 A CLR 585).
- Improper due process and breach of natural justice: the enforcement of a foreign judgment might be denied if the foreign proceedings in the context of which it was obtained were conducted improperly or in breach of the notion of natural justice. In examining such a ground of refusal, the Cypriot courts will assess whether the judgment of the foreign court is just and fair as well as whether all the parties in the original proceedings have been duly served in accordance with the relevant laws of

the country of the court of origin and whether such parties were given the opportunity to appear before the court in order to present their case and version of events.

- Jurisdictional matters/lack of jurisdiction: the Cypriot courts will refuse enforcement of a foreign judgment if the foreign/original court that issued the said judgment lacked jurisdiction to do so. In such an event the Cypriot courts will examine the matter by applying the jurisdictional rules of private international law.
- Presence of fraud: in the event where the judgment issued by the foreign court was obtained by fraud, the Cypriot courts are likely to refuse enforcement upon such ground. A party who wishes to challenge the recognition of the judgment on such ground must bring strong and solid evidence of the alleged fraud before the Cypriot court, in order to persuade it that the foreign judgment was indeed obtained by the fraudulent acts and operations of the judgment creditor.
- The foreign judgment is not final and conclusive: as a general rule, a foreign judgment is enforceable in Cyprus only if it is final and conclusive. A foreign judgment is deemed to be final and conclusive if it creates *res judicata* between the parties to the foreign proceedings, in the sense that such a judgment cannot be altered in any manner or declined by the foreign/original court. A foreign judgment may still be deemed as final even if an appeal is pending before the higher courts of the country of origin. Nevertheless, an interim judgment related to provisional, including protective, measures ordered by a court of an EU member state will still be registrable and enforceable in Cyprus under the provisions of Regulation (EC) 1215/12.
- The foreign judgment is inconsistent with previously issued judgments between the same parties. In accordance to the above ground, the enforcement of a foreign judgment could be refused if the judgment the enforcement of which is sought is contrary or inconsistent with a previously issued Cypriot judgment or other judgment of the foreign court that is enforceable in Cyprus.

Application to Set Aside the Registration

An applicant seeking to register a judgment issued by a court of a country that has in place a bilateral treaty with Cyprus facilitating the enforcement of judgment, or is a member state to a multilateral convention to which Cyprus is also a member for this purpose, has to file a relevant by summons application; ie, with notification to the other party. The other party can then appear in court and oppose the application, which will then lead to a hearing and the issue of a judgment. Following the issue of the judgment, the losing party can then appeal the judgment. If, for any reason, the other party does not appear in the proceedings for registration then it could apply at a later stage to have the judgment set aside due to specific reasons, such as improper service or lack of jurisdiction of the court.

If a judgment is registered in Cyprus pursuant to Cap 10, which allows for the registration of judgments issued by a court of a Commonwealth country that allows for an *ex parte* procedure for the registration, then a debtor may apply to the Cypriot courts requesting the setting aside of the registration of the foreign judgment. Cap 10 provides that the registration may be set aside if any of the following conditions is met.

- The above law does not apply to the judgment or the judgment was registered contrary to the provisions of the law.
- The foreign court lacked jurisdiction upon the circumstances of the case to issue the judgment.
- The judgment debtor- Defendant to the original proceedings before the foreign court (irrespective of the fact that he may have been duly served in accordance with the law of the country of the original court) has not received sufficient notice of such proceedings so as to enable him to defend himself in the said proceedings and did not appear or:
 - the judgment was obtained by fraud;
 - (i) recognition and enforcement of the judgment would be contrary to public policy in the country of registration; or
 - (a) the rights under the judgment are not attributable to the person who is applying/requesting the registration of the judgment.
 - (b) In the event that an appeal is already pending in the country where the judgment was initially issued, or is likely to be filed by the judgment debtor, the Cypriot courts retain discretion to decide whether to set aside the registration of the judgment. In such an event, the court will provide the judgment debtor with a timeframe within which he must have the appeal heard.

If the judgment is recognised in Cyprus pursuant to the provisions of EU Regulation No 1215/12 then the party wishing to challenge the registration or enforcement of the judgment can do so, on the limited grounds permitted by the said regulation. Recognition and enforcement can be refused if the recognition is manifestly contrary to public policy of Cyprus, if the judgment was given in default of appearance or the defendant was not served with the document that instituted the proceedings, if the judgment is irreconcilable with a judgment given between the same parties in the member state addressed, etc.

4. Arbitral Awards

4.1 Legal Issues Concerning Enforcement of Arbitral Awards

An award creditor seeking to enforce a foreign arbitral award in Cyprus may apply to the relevant District Court

requesting the recognition and enforcement of the award. Cyprus is a signatory to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, New York, 10/06/1958 (the New York Convention), which was ratified and implemented in Cyprus with the Law on the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (Ratification) 84/1979 (Ratification Law) and therefore is bound to enforce awards made in foreign states that are signatories to the New York Convention.

International arbitral awards relating to commercial matters can also be enforced in Cyprus under the provisions of the Cypriot Law on International Arbitration in Commercial Matters Law No 101/1987 (Law No 101/1987). Law No 101/1987 adopts, with minimal amendments, the UNCITRAL Model Law of 1985 and applies solely to arbitrations that are of both an international and commercial nature. Pursuant to Section 2 of Law No 101/1987, a dispute is considered to be an 'international' one if the parties had their place of business or relevant commercial relations in different countries when they entered into the contract, whilst a dispute is considered to be a 'commercial' one if it relates to matters that arise from relationships of a commercial nature, whether contractual or not. The said provision sets out a non-exhaustive list of examples of "relationships of a commercial nature", such as trade transactions for the supply or exchange of goods or services, carriage of goods, construction works, the provision of advisory services, licensing, investment, financing, banking and insurance, joint ventures, and other forms of industrial or business activity.

When considering applications for recognition and enforcement of an arbitral award issued in a country with which Cyprus has entered into a bilateral or multilateral treaty for enforcement of judgments, the Cypriot courts will also have regard to the provisions of the Foreign Courts Judgments (Recognition, Registration and Enforcement) Law of 2000 (Law 121(I)/2000), which provides for the procedure to be followed by a party wishing to have a foreign award recognised and enforced in Cyprus.

A common issue of contention is whether an application for recognition and enforcement of foreign arbitration awards can be made when both parties are non-residents of Cyprus. Unfortunately, the matter has not been definitely settled by the Cyprus Supreme Court yet but there are some conflicting first-instance judgments on this issue. Whilst some of the judgments indicate that the Cypriot courts should assume jurisdiction in order to facilitate the spirit of the New York Convention, which overrides any procedural hurdles contained in local rules, regardless of the residence of the parties to the arbitral award, other judgments of the First Instance Courts take a stricter approach to the matter and provide that in the event where neither of the parties is resident in Cyprus, the Cypriot courts should not assume jurisdiction,

thereby creating a requirement of residency in Cyprus by at least one of the parties.

Following the recognition of a foreign award by a Cypriot court, the award will be treated as if it was a judgment given by a domestic court and thus all the methods of execution of domestic court judgments will apply to the execution of all foreign arbitration awards.

The award creditor may further, when this is deemed appropriate, apply for an injunction to freeze any assets of the debtor within the jurisdiction of the Cypriot courts while the judgment on the application for registration of the award is pending. Such an application may be filed at the same time as the application for registration and may be filed on an ex parte basis if the award creditor can show that the issue of the freezing order is urgent or that there are "exceptional circumstances" for this purpose, which are the prerequisites that need to be satisfied by an applicant who seeks interim relief on an ex parte basis, as set by Article 9 of the Civil Procedure Law, Cap 6.

Domestic arbitration in Cyprus is governed by the 1944 Arbitration Law, Cap 4 and an arbitral award issued pursuant to the provisions of the said law is enforceable and binding as if it was a Cypriot court's judgment, upon a relevant application to the court.

It is further worth mentioning that in situations where the award debtor fails to comply with the provisions of a domestic or an international award, the award creditor may proceed with the recognition and enforcement of such an award by filing an action with the Cypriot courts pursuant to the debtor's non-compliance with the arbitral award, creating thus a new actionable right for the judgment creditor. An application for summary judgment may be made within the framework of this procedure.

4.2 Variations in Approach to Enforcement of Arbitral Awards

With the exception of interim awards and orders that might be issued by an arbitrator or a tribunal, there are no differences in the rules and procedure for enforcement between the various arbitral awards. The chosen measure for execution will be selected by the judgment creditor on the available information of the judgment debtor's assets.

4.3 Categories of Arbitral Awards Not Enforced

Both the provisions of Law No 101/1987 and the New York Convention provide that a party may resist enforcement of an award on grounds that it is not yet 'binding', thereby requiring finality as an essential characteristic of an award in order for it to be enforced. Although no definition of 'binding' is provided in the New York Convention or Law L. 101/1987, the Cypriot courts will consider that an award is binding if there is no way of bringing an appeal on the

merits. As such, a binding partial award or a binding consent award rendered by the tribunal would be enforceable but the same will not apply in relation to orders and awards issued by the tribunal that are only of interim nature.

4.4 Process of Enforcing Arbitral Awards

Article IV of the New York Convention and Section 35 of Law No 101/1987 provide that in order to obtain recognition and enforcement of an international arbitral award in Cyprus, the successful party must apply in writing and supply the Cypriot court with the following documents: (i) the duly authenticated original award or a duly certified copy thereof and (ii) the original agreement or a duly certified copy thereof.

Duly certified translations of the above must be provided in Greek and the translation shall be certified by an official or sworn translator, or by a diplomatic or consular agent. Despite that the New York Convention does not clarify in its provisions whether the translator needs to be sworn in or officially appointed and from which country the diplomatic/consular agent should originate, a translation certified by a sworn translator in, or a consular agent of, the country where the enforcement is sought is sufficient. Since Cyprus is the country where enforcement is sought, the above documents shall be translated and certified by a certified translator who is registered in the Register of Sworn Translators of the Council of Sworn Translators. Failure to produce correctly certified copies of the award and the original agreement may lead to the dismissal of an application for recognition and enforcement.

As mentioned above, the Cypriot courts will further take into account when considering the enforcement of an international arbitral award the provisions of Law 121(I)/2000. The said law requires a party seeking enforcement of a foreign arbitral award to file an application by summons accompanied by an affidavit and the application must be served on the other party. Once this is filed and fixed for hearing, the respondent will have the chance to contest the application by filing a written Notice to Oppose and the burden of proof shifts to him to resist enforcement.

According to Section 21 of the 1944 Arbitration Law, Cap 4, a domestic arbitral award may – following the permission of the court, which shall be issued on the basis of a relevant application – be enforced in the same way as a court judgment and in such a case a judgment can be issued containing the content of the arbitral award. Once the said permission of the court is granted, the award creditor may choose between the various execution measures analysed above, depending on the circumstances of its case.

When the award creditor decides to proceed with recognition and enforcement of an arbitral award through a common law action due to the debtor's non-compliance with the

provisions of the arbitral award, these proceedings will be initiated with the filing of a writ of summons. Where this is applicable and once the writ of summons is served upon the defendant-award debtor, the plaintiff-award creditor may apply for a summary judgment on the grounds that there is no defence to the action. Summary judgment proceedings are governed by Order 18 of the Civil Procedure Rules and it is a fast-track procedure that can be used in instances where it has good and valid reasons to believe that the defendant-award debtor has no defence.

4.5 Costs and Time Taken to Enforce Arbitral Awards

The legal costs involved for the enforcement of an arbitral award will vary depending on the engagement agreement entered into between the client and their counsel as well as the reaction employed by the award debtor to such an application. There is no specific timeframe for the completion of the enforcement procedure and this will mostly depend on the schedule of the court, the time needed for the service of the application upon the award debtor, the grounds of opposition and any other possible delaying tactics it may employ. Taking into account the various factors that may cause delay in the procedure for enforcement, a judgment for recognition and enforcement of the arbitral award is usually issued in between three months from the date of filing of the relevant application to over a year.

The relevant court fees for the purchasing of the court stamps necessary for filing the application for recognition and enforcement are set by regulations and considered to minimal, and any expenses associated with the service of any judicial documents upon the award debtor will depend on whether it resides in the Cyprus jurisdiction or abroad.

4.6 Challenging Enforcement of Arbitral Awards

Pursuant to the provisions of Section 36 of Law No 101/1987, which mirrors Article V of the New York Convention, Cypriot courts will recognise and enforce a foreign award unless a party who seeks to resist the enforcement proves that:

- one of the parties to the arbitration agreement lacked contractual capacity at the relevant time, or the arbitration agreement is invalid based on the applicable law that the parties chose or, in the absence of a chosen applicable law, based on the laws of the Republic of Cyprus;
- the party against whom the award is invoked was not notified in a timely manner and on a regular basis of the appointment of the arbitrator or the arbitral proceedings, or has by any other means been deprived of a chance to present his or her case;
- the award refers to matters irrelevant to the terms of the submission to arbitration or contains decisions beyond the scope of the arbitration;
- the composition of the tribunal or the procedure of arbitration was in breach of the agreement of the parties or

contradicts the provisions of the law of the country where the arbitration took place; or

- the award has not yet become binding on the parties, or has been set aside/suspended or annulled by a competent authority of the country in which, or under the law of which, the award was made. As already mentioned, no definition of 'binding' is provided in the New York Convention or Law No 101/1987 but the Cypriot courts will consider that an award is binding if there is no way of bringing an appeal on the merits.

The Cypriot court can also refuse enforcement if (i) the subject matter of the dispute is not arbitrable under Cypriot law or (ii) it is contrary to the public policy of Cyprus. The term 'public policy' is not defined in the provisions of the New York Convention nor the Law No 101/1987 but the Cypriot courts have viewed this defence narrowly so as to keep with the convention's pro-enforcement spirit. In the case of *Beogradska Banka v Westacre Investments* (2008) 1 AAD 1217, the Supreme Court held that since the tribunal had already examined and rejected allegations of bribery, the Court could not re-examine the merits of the case at the post-award stage. Additionally, if an award is refused enforcement in another country purely for reasons of public policy, the Cypriot courts are not bound to refuse enforcement as well but will review anew the issue.

The above-mentioned reasons listed by both Law No 101/1987 and Article V of the New York Convention are the only reasons under which an application for recognition and enforcement of an international foreign award may be refused by a Cypriot court.

Patrikios Pavlou & Associates LLC

Patrician Chambers
332 Agiou Andreou str.,
3035 Limassol, Cyprus

Tel: +357 25 871599
Fax: + 25 344548
Email: info@pavlaw.com
Web: www.pavlaw.com



Although there is no specific provision within the Cypriot legislation on the issue of limitation of actionable rights resulting from an arbitral award or in relation to the timeframe within which a party has to proceed with its registration and enforcement in Cyprus, Section 10 of the Limitations of Causes of Action Law of 2012 (66(I)/2012) provides that no action based on or in relation to a court judgment can be initiated more than 15 years from the date that the judgment is rendered final. To this end – and taking into account that once a foreign arbitral award is recognised by a Cypriot court, it will be treated as if it was a judgment given by a domestic court – any possible execution measures relating to the enforcement of the arbitral award will have to be taken within 15 years from its registration in Cyprus.

A party wishing to challenge a First Instance Court's judgment in relation to the enforcement of a foreign arbitral award that was issued following an inter parties hearing may file an appeal before the Supreme Court, which has exclusive jurisdiction to adjudicate finally an appeal. Such an application has to be brought within six weeks from the date the order or judgment becomes binding on the intending appellant, or in the case of the refusal of an application, from the date of such refusal. As a general rule, court judgments can be appealed on both points of law or fact but the Supreme Court cannot intervene in the exercise of the inferior court's discretion, unless it is satisfied that this was wrongly exercised.

Any domestic arbitral award issued pursuant to the 1944 Arbitration Law, Cap 4 may be challenged by a party with the filing of an application to the relevant court requesting its annulment where the arbitrator has misconducted him or herself or the proceedings or arbitration process, or the award has been improperly procured. The other side has the right to oppose the application, and following the filing of Notice to Oppose, the said application will proceed to a hearing. Even though the 1944 Arbitration Law, Cap 4 does not provide for a specific timeframe for the filing of such an application for annulment, such an application must be filed within a reasonable time from the issue of the domestic arbitral award and in any event such an application should be submitted before the application for registration and registration of the arbitration award is approved for the purpose of enforcement as a court's judgment (Section 21 of 1944 Arbitration Law, Cap 4 mentioned above).