

Article

# Recognition and Enforcement of English Judgments in Cyprus post Brexit

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There is a long-standing prevalence in cross border agreements of parties opting to resolve their disputes before the English courts. Thus, it is of great importance to international business whether English law judgments will continue to have the same value in the EU and how they will be enforced post Brexit.

The UK left the EU on 31 January 2020. Pursuant to a withdrawal agreement (the “**Withdrawal Agreement**”) entered into between the UK and the EU, a transitional period applied from the date of the withdrawal of the UK from the EU to 31 December 2020, during which EU law continued to apply to the UK. The Withdrawal Agreement provides that judgments issued by English courts in proceedings instituted before the end of the transition period (i.e., before 31 December 2020) will continue to be recognised and enforced in the EU pursuant to the Recast Regulation, subject to its provisions.

From 1 January 2021 the Brussels I Regulation No. 1215/2012 (the “**Recast Regulation**”) and Lugano Convention cease to apply in the United Kingdom. This means that for all proceedings that were not instituted prior to 1 January 2021, parties have two options when seeking enforcement of an English judgment in the European Union –under either (a) the 2005 Hague Convention on Choice of Court Agreements (the “**Hague Convention**”) or (b) the domestic law of the relevant EU Member State.

The Hague Convention only applies to judgments of courts of contracting states designated in exclusive choice of court agreements and there are limitations and uncertainties as to its scope. Unlike the Recast Regulation, it does not apply to certain protective measures. If the Hague Convention does not apply enforcement of an English court judgment would be determined in accordance with the relevant member state’s domestic law and subject to any limitations under that law.

In its White Paper from July 2018, the UK Government stated that it would seek to participate in the Lugano Convention on leaving the EU, which would mean English judgments would continue to be recognised and enforced in contracting states. In the same White Paper, the UK Government also stated it would seek a new bilateral agreement with the remaining EU Member States concerning cooperation in the area of civil justice including arrangements for the continued mutual recognition and enforcement of judgments. However, in a document dated 27 February 2020 entitled "Our Approach to the Future Relationship with the EU", the UK Government referred only to the Hague Convention and the Lugano Convention. The UK had applied to accede to the Lugano Convention, but the EU recently notified the parties to the Lugano Convention that it is not in a position to invite the UK to accede to the Lugano Convention.

As a consequence of this, two situations must hence be distinguished:

- (i) Where the Hague Convention applies, a final civil or commercial judgment obtained in the courts of England will be enforceable in Cyprus subject to the applicable enforcement proceedings provided for in the Hague Convention.
- (ii) Where the Hague Convention does not apply, for example in relation to asymmetrical jurisdiction clauses a final and conclusive civil or commercial judgment obtained in the courts of England will be enforceable in Cyprus subject to the rules on recognition and enforcement of judgments in Cyprus as laid down in The Foreign Judgments (Reciprocal Enforcement) Law Cap.10 (as amended).

Asymmetric jurisdiction clauses are commonplace in financing documents and allow one party (typically the lender/finance party(ies)) to sue another party (typically the borrower) in any jurisdiction but restricts the borrower to sue in only one exclusive jurisdiction. Thus the lender has the comfort of knowing that it can only be sued in its preferred jurisdiction but it has the flexibility to sue the borrower in any jurisdiction.

The status of asymmetric clauses has been considered recently in obiter by the English Court of Appeal in *Etihad Airways PJSC v Flöther* [2019] EWHC 3107 (Comm). The Court stated that it was prepared to proceed on the basis that the Hague Convention should probably be interpreted as not applying to asymmetric clauses. Thus, it is advisable that if a party wishes to take advantage of the Hague Convention, the safest assumption when choosing a jurisdiction clause is that only a symmetric exclusive jurisdiction clause, which applies equally to both parties, will be within the Hague Convention.

Turning to recognition and enforcement under Cyprus law same is effected pursuant to the provisions of Cap.10. Cypriot courts will authorise the enforcement in Cyprus of the judgment of the English court, unless the Cypriot court considers that any of the following apply (in which case, enforcement may be refused):

- the English judgment cannot be enforced by execution in England;
- the enforcement of the English judgment would be contrary to public policy in Cyprus;
- the judgment debtor had not received notice of the original proceedings in England in sufficient time to enable him to defend the proceedings and did not appear;
- the English court had no jurisdiction in the circumstances of the case;
- the rights under the English judgment are not attributable to the person who is seeking its registration and enforcement; or

- the matter in dispute in the proceedings in England had previously to the date of the English judgment been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.

Accordingly, enforcing in Cyprus a judgment rendered by an English court will require the completion of potentially more burdensome proceedings compared to the situation prior to the end of the Brexit transition period.

**The foregoing should not be read or construed or relied upon as legal advice in any specific or individual circumstance.**

**In the event of any query or need for clarification please contact the undersigned.**

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