

Cyprus

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1. What are the basic criteria for the courts of your jurisdiction to allow enforcement of a foreign judgment?

There is no unified system in Cyprus for the enforcement of foreign judgments; different regimes govern the recognition and enforcement of foreign judgments depending on their origin.

A. EU judgments

- i. The Recast Brussels Regulation (*(EU) 1215/2012 of the European Parliament and of the Council on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters*) applies to judgments issued in EU member states on or after the enactment of the Regulation (10 January 2015). The Recast Brussels Regulation provides for a simplified, nearly automatic, procedure for enforcement, entailing a check of the documents attached to an ex parte application for recognition. Judgments issued before the enactment of the Recast Brussels Regulation are governed by the Brussels Regulation ((EC) 44/2001).

The Recast Brussels Regulation does not apply to matters relating to:

- The status or legal capacity of natural persons, rights in property arising out of a matrimonial relationship or a relationship deemed 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.
- Wills and succession.

Under the Recast Brussels Regulation, no special procedure is required for recognition and enforcement and there is no need for a declaration of enforceability. Since no declaration of enforceability is required, when enforcing a judgment under the Recast Brussels Regulation, a creditor can go straight to the registrar of any Cyprus district court to deposit and register an EU judgment; upon recognition, the judgment can be enforced as a Cypriot court judgment.

A judgment given in a member state must be recognised in the other member states without any special procedure being required (Article 36, Recast Brussels Regulation). The party wishing to invoke in a member state a judgment issued in another member state must simply produce a copy of the judgment that satisfies the conditions necessary to establish its authenticity and the standard certificate issued by the court of origin in accordance with the form set out in Annex I of the Recast Brussels Regulation certifying that the judgment is enforceable (Articles 37 and 53, Recast Brussels Regulation) and a translation when requested in accordance with the Regulation.

- ii. Enforcement of judgments can also be achieved under the European Enforcement Order Regulation ((*EC*) 805/2004). The European Enforcement Order Regulation has been adopted by all EU member states with the exception of Denmark and applies to judgments obtained in uncontested claims for a specific sum of money issued after 21 October 2005.

An 'uncontested claim' is a claim where the debtor:

- has not appeared in court or has not been represented in court regarding the claim, after having initially objected to the claim in the course of the court proceedings (provided that such conduct amounts to a tacit admission of the claim or of the facts alleged by the creditor under the law of the member state of origin);
- has failed to object to the claim; or
- has expressly agreed to the claim either by admission or in an authentic instrument, or by means of a court-approved settlement.

Pursuant to Article 5 of the European Enforcement Order Regulation, a judgment which, upon application, has been certified by the court of the member state of origin as a European enforcement order will automatically be recognised and enforced in other member states without the need for a declaration of enforceability and without any possibility of opposing its recognition, except in the case of conflicting judgments.

The requirements for certification of a judgment as a European enforcement order are laid down in Article 6 of the regulation.

In *Vapenik v Thurner* (Case C-508/12) [2013], the Court of Justice of the European Union held that the European Enforcement Order Regulation applies only to contracts concluded between two persons who are engaged in professional or commercial activities.

- iii. **EU Regulation 861/2007 – European small claims procedure:** EU Regulation 861/2007 (as amended by EU Regulations 936/2012 and 2015/2421) on the European small claims procedure has been adopted by all EU member states, with the exception of Denmark. It applies to judgments issued in cross-border cases on civil and commercial matters in which the claim does not exceed €5,000 and which are issued on or after 1 January 2009.

In addition to those matters to which the Recast Brussels Regulation does not apply, this regulation does not apply to maintenance obligations arising from a family, marriage or similar relationship, employment issues, violations of privacy or defamation and to tenancies of immovable property, with the exception of actions on monetary claims.

- iv. **EU Regulation 1896/2006 – European order for payment procedure:** EU Regulation 1896/2006 (as amended by EU Regulations 936/2012 and 2015/2421) on the European order for payment procedure has been adopted by all EU member states, with the exception of Denmark. It establishes a procedure for the collection of specific amounts due from uncontested pecuniary claims in cross-border cases on civil and commercial matters resulting from judgments issued on or after 12 December 2008.

In addition to the matters to which the Recast Brussels Regulation does not apply, this regulation does not apply to claims arising from non-contractual obligations unless:

- they have been the subject of an agreement between the parties;
- there has been an admission of debt; or
- they relate to liquidated debts arising from joint ownership of property.

Like the European small claims procedure, the European order for payment procedure provides for enforcement in other member states without the need first for certification or recognition of the judgment. Furthermore, in contrast to the European small claims procedure, the European order for payment procedure imposes no limitations on the maximum value of the judgment.

Following the amendments to the European order for payment procedure effected by Regulation 2015/2421, the court fees for such procedure must not be greater than those for proceedings where there is no preceding European order for payment.

- v. **The Hague Convention on Choice of Court Agreements 2005:** The European Union has signed and ratified the Hague Convention 2005 on behalf of all EU member states (including Denmark, from 1 September 2018). The Hague Convention 2005 came into force between the European Union and Mexico on 1 October 2015 and between the European Union and Singapore on 1 October 2016. The Hague Convention 2005 has also been signed but not yet ratified by China, Montenegro, Ukraine and the United States. The Hague Convention 2005 has the status of EU law within the European Union and as EU law is directly applicable to Cyprus.

The Hague Convention 2005 applies to judgments on the merits in civil and commercial matters where there is an exclusive choice of court agreement in place (unless one party is a natural person who is acting for primarily personal, family or household purposes). Such an agreement must be in writing or another form that renders it accessible for subsequent reference.

The Hague Convention 2005 specifically excludes the following matters:

- the status and legal capacity of natural persons;
- maintenance obligations;
- family law matters;
- wills and succession;
- insolvency composition and analogous proceedings;
- the carriage of passengers and goods;
- certain maritime and shipping matters;
- competition matters;

- liability for nuclear damage;
- claims for personal injury brought by or on behalf of natural persons;
- tort or delict claims for damage to tangible property not arising from a contractual relationship;
- rights *in rem* and tenancies of immovable property;
- validity or nullity or dissolution of legal persons and the validity of decisions of their organs;
- validity of IP rights other than copyright or related rights;
- infringement of IP rights other than copyright and related rights, unless proceedings could also be brought for breach of contract; and
- validity of entries in public registers.

The European Union has also made a declaration under the Hague Convention 2005 that this convention will apply to insurance contracts only in the cases stated in Section 2 of the EU Declaration of 11 June 2015, which include the following:

- where the contract is a reinsurance contract;
- where the choice of court agreement is entered into after the dispute has arisen;
- where the choice of court agreement is concluded between a policy holder and an insurer which, at the time of conclusion of the insurance contract, are both domiciled or habitually resident in the same contracting state, where that agreement confers jurisdiction on the courts of that state, even if the harmful event occurred abroad, provided that such an agreement is not contrary to the law of that state; and
- where the choice of court agreement relates to an insurance contract which covers certain large risks, including any loss or damage arising from perils relating to the use for commercial purposes of ships, aircraft and railway rolling stock, among others.

This reflects the special provisions in relation to insurance which are set out in Articles 15 and 16 of the Recast Brussels Regulation.

Judgments under the Hague Convention 2005 are recognised by application if they are enforceable or effective in their country of origin. The party against which recognition of the judgment is sought is not entitled to make submissions on an application for recognition of a Hague Convention 2005 judgment; and once recognised, the judgment becomes enforceable as if it were a Cypriot judgment.

However, a decision to recognise a judgment can be appealed on the following grounds:

- The judgment is not effective or enforceable in its state of origin;
- The relevant choice of court agreement was null and void;
- A party lacked capacity under the relevant law to enter into the choice of court agreement;
- Proceedings were not notified to the defendant in a manner that would allow it to organise its defence (unless the defendant appeared and put its case in the original court and did not raise this);

- The proceedings were notified to the defendant in Cyprus in breach of fundamental principles of service in Cyprus;
- The judgment was obtained by procedural fraud;
- Enforcement would be manifestly incompatible with public policy in Cyprus (including if it is incompatible with basic principles of procedural fairness); or
- The judgment is incompatible either with an earlier judgment given in Cyprus between the same parties or with an earlier judgment given in another Hague Convention state between the same parties and in the same cause of action.

B. Non-EU 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 a similar judgment, had this been issued by Cypriot courts.

The enforcement of a foreign judgment issued by the courts of a state with which Cyprus has entered into a bilateral or multilateral agreement is governed by that agreement and the Foreign Court Judgments (Recognition, Registration and Enforcement based on Convention) Law of 2000 (Law 121(I)/2000) (Foreign Court Judgments Law).

Enforcement under statute of non-European judgments

Recognition and enforcement under statute of non-European judgments are regulated by Law 121(I)/2000, which provides for the filing of an application by summons, supported by the necessary documentation, including:

- an affidavit attaching an apostille-certified true copy of the foreign judgment;
- a certified Greek translation of the foreign judgment; and
- expert legal advice under the law of the country of issue confirming that the foreign judgment is final and enforceable in the country where the foreign judgment was issued.

The Foreign Judgments (Reciprocal Enforcement) Law covers judgments or orders issued by a superior court in civil proceedings or criminal proceedings for a sum of money in respect of compensation or damages to an injured party, as long as that sum is not a tax, fine or penalty, as well as for any other remedy (ie, declaratory) not awarding a monetary sum (see Law 130(1)/2000). The judgment must also finally and conclusively determine the rights and liabilities of the parties in the state in which it was issued (although a pending appeal is no bar to enforcement if there is no stay restraining enforcement of the lower court decision in place), or require the judgment debtor to make an interim payment to the judgment creditor.

The bilateral treaties regulating the enforcement of non-EU foreign judgments in Cyprus provide for the enforcement of monetary judgments issued in the context of civil or criminal proceedings which do not involve tax or a similar charge, or a fine or penalty, as well as of declaratory judgments.

C. Enforcement at common law

A foreign judgment which cannot be recognised and enforced under statute can be recognised and enforced at common law through an action based on the foreign judgment, which must comply with the following requirements:

- The judgment must be for a definite sum; therefore, only monetary judgments can be enforced. Moreover, the Cypriot courts will not enforce foreign revenue, penal or other public laws, whether directly or through recognition of a foreign judgment;
- The judgment must be final and conclusive by the court that issued it. Even if an appeal is pending, the judgment may still be considered final and conclusive, unless the appeal has the effect of staying the judgment;
- The judgment against the defendant must have been issued by a court of competent jurisdiction. This means that the foreign court must have had jurisdiction under Cypriot conflict of law rules to deliver the final and conclusive judgment in respect of which recognition and enforcement are sought. Submission to the jurisdiction of the foreign court by the defendant will usually arise:
 - by virtue of a prior agreement to that effect;
 - by participation in the foreign proceedings; or
 - through presence in the jurisdiction at the time of the proceedings.

D. Judgments obtained in the United Kingdom, British dominions, protectorates and mandated territories as well as other foreign countries which accord reciprocal treatment to judgments given in the Republic of Cyprus.

The Foreign Judgments (Reciprocal Enforcement) Law of 1935 (Cap. 10), as amended by the Reciprocal Execution of certain Judgments of the Commonwealth Countries Law 130(I) of 2000 applies.

Art. 2 (1) of Cap. 10 provides a definition of a “judgment” as a judgment or order given or made by a court in any civil proceedings, or a judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to any injured party.

The substantive grounds on which a foreign judgment may be recognised and enforced under Cap. 10 closely reflect common law. Art. 6 of Cap. 10 requires that:

- a. the judgment is final and conclusive;
- b. the judgment provides for a payable sum of money;
- c. the courts of the country of the original court had jurisdiction;
- d. the judgment was duly served;
- e. the judgment does not contravene public policy;

- f. the judgment has not been obtained by fraud; and
- g. the rights under the judgment are not vested in the person by whom the application for registration was made.

With respect to UK judgments that may be recognised and enforced pursuant to the provisions of Cap. 10, the following procedure shall be followed:

The judgment creditor may file an application to the court on an ex parte basis (without notifying the other party) 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.

Following its issuance, the order must be served to the judgment debtor, who has the right to dispute the recognition by applying to the court to set aside the registration.

With regard to Cap. 10, enforcement may be refused when the following conditions apply:

- the UK judgment cannot be enforced by execution in the UK;
- the enforcement of the UK judgment would be contrary to public policy in Cyprus;
- the judgment debtor had not received notice of the original proceedings in the UK in sufficient time to enable them to defend the proceedings, and thus did not appear;
- the UK court had no jurisdiction in the circumstances of the case;
- the rights under the UK judgment are not attributable to the person who is seeking its registration and enforcement; or
- the matter in dispute in the proceedings in the UK had, previously to the date of the UK judgment, been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.

E. Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters

Under the 2019 Hague Convention, a judgment given by a court of a Contracting State (the state of origin) shall in principle be recognized and enforced in another Contracting State (the requested state) without any review of the merits. The 2019 Hague Convention applies between those countries that ratify it and bring it into force. The European Union has signed and ratified the 2019 Hague Convention on behalf of all EU member states and it has also been ratified by Ukraine. A few other countries have now signed 2019 Hague Convention but have not yet ratified it.

In brief the Hague Convention regulates the enforcement of foreign judgments by state parties. Some of the aspects of the said Convention include the following:

- (i) its scope excludes administrative, customs and revenue matters, and matrimonial, insolvency, defamation, competition law and intellectual property disputes;

	<p>(ii) the types of judgments that must be recognized fall into three groups: (a) judgments where there is a connection between the state of origin and the defendant; (b) judgments where the state of origin’s jurisdiction was based on express consent; or (c) judgments where there is a connection between the claim and the state of origin;</p> <p>(iii) the registration of a foreign judgment may be opposed by the defendant if certain grounds are established, for example if the foreign judgment was obtained by fraud or is inconsistent with fundamental public policy of the requested state, there was violated due process or that the foreign judgment was inconsistent with another judgment handed down by the requested state between the same parties.</p> <p>Common grounds for refusing recognition and enforcement under the above regimes include:</p> <ul style="list-style-type: none"> • That the Cyprus Courts lack jurisdiction. • That the foreign judgment has been satisfied. • Any ground of resistance provided in a specific bilateral or multilateral convention that is applicable in the specific case (section 5(1)(e), Foreign Court Judgments Law). • In addition, a foreign judgment that has been registered in Cyprus can be set aside if the court is satisfied (among others) that the: <ul style="list-style-type: none"> - Foreign court that issued the judgment lacked jurisdiction to do so. - Defendant did not receive notice of the original proceedings in sufficient time to defend the proceedings and did not appear. - Judgment was obtained by fraud. - Enforcement of the judgment would be contrary to the public policy of Cyprus. - Rights under the judgment are not vested in the person by whom the application for registration was made. - Matter in dispute in the proceedings in the original court had been (before the date of the original judgment) the subject of a final and conclusive judgment by a court having jurisdiction in the matter (Chapter 10, section 6, Foreign Judgments (Reciprocal Enforcement) Law 1935).
2.	<p>What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, e.g. notice provisions?</p>
	<p>Enforcement of a foreign judgment against a state in Cyprus is a purely Court process and does not require any formal notices or the consent of a political body.</p>

3.	<p>What special considerations apply where the defendant/debtor in enforcement proceedings is a state, e.g. doctrine of sovereign immunity?</p>
	<p>A. Enforcement of a foreign judgment against a State could be contrary to the public policy of Cyprus</p> <p>The Cypriot courts will not allow recognition and enforcement of a foreign judgment against a State under the EU regulations, the Hague Convention 2005, the Law Concerning Foreign Judgments or any treaty, or at common law, where such foreign judgment is contrary to Cypriot public policy.</p> <p>Public policy is not legislatively defined in Cyprus. However, it has been judicially established that the notion of public policy includes “<i>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</i>” (<i>Attorney General of the Republic of Kenya v bank fur Arbeit Uno Wirtschaft AG (1999) 1 A CLR 585</i>).</p> <p>Furthermore, in <i>Attorney General of the Republic of Kenya v bank fur Arbeit Uno Wirtschaft AG (1999) 1 A CLR 585</i>, reference was made to the Canadian judgment in <i>Schreter v. Gasmac Inc.</i>, dated 13/2/92 issued by a Court in Ontario in which there was an argument that international arbitration awards based on the Model Law of the United Nations were contrary to public policy, and the following was quoted from the Canadian judgment at pages 23-24:</p> <p><i>"Professor McLeod puts it at p. 621, that the public policy prohibition ought to be invoked only if the judgment involves an <u>act that is illegal in the forum or where the action involves acts repugnant to the orderly functioning of the social or commercial life of the forum.</u> An obvious example would be the enforcement of a gambling debt which would be illegal in Ontario. No such element is asserted in the case at bar, which as I have said is essentially that the California judgment is wrong or is a breach of natural justice.</i></p> <p><i>The June 1985 Report also gives some guidance on the intended scope of the public policy ground for refusal of recognition (p.63):</i></p> <p><i>296. In discussing the term "public policy", it was understood that it was not equivalent to the political stance or international policies of a State but comprised the fundamental notions and principles of justice.....</i></p> <p><i>297.It was understood that the term "public policy", which was used in the 1958 New York Convention and many other treaties, covered fundamental principles of law and justice in substantive as well as procedural respects. Thus, <u>instances such as corruption, bribery or fraud and similar serious cases would constitute a ground for setting aside.</u> It was noted, in that connection, that the wording "the award is in conflict with the public policy of this State" was not to be interpreted as excluding instances or events relating to the manner in which an award was arrived at."</i></p> <p>In the recent case of <i>Intralot Holdings Ltd v. Ion</i>, Application No. 246/2020, judgment dated 23 July 2021, the court of first instance whilst applying EU case law interpreted the</p>

public policy exception in a less restrictive manner, and held that in order for the objection of public policy to succeed, it must mainly touch on a broader issue of general importance for the Cypriot legal order.

The defence of public policy may be relied on by the courts *ex officio* and also if the state raises the defence in course of the enforcement proceedings.

B. Sovereign immunity

The Republic of Cyprus has recognised the concept of international law of state immunity as developed from the principle of *par in parem non habet imperium*, by virtue of which one state is not subject to the jurisdiction of another. More specifically, Cyprus has implemented the concept in its jurisdiction in the form of relative immunity as opposed to absolute immunity through the adoption of international legal instruments which impose restrictions to state immunity. One of which is the European Convention on State Immunity 1972 and its Additional Protocol (ETS no.074A) (“**European Convention on State Immunity**”) which the Republic of Cyprus acceded to and transposed into national legislation by the Ratifying Law on the European Convention on State Immunity and its Additional Protocol of 1976 (Law 6/1976). The Republic of Cyprus has also acceded to the Vienna Convention on Diplomatic Relations 1961 and transposed it into national legislation by the Ratifying Law on the Convention of Vienna of 1961 on Diplomatic Relations Law (Law 40/1968) which regulates state immunity of diplomatic agents. State immunity and its general principles have also been enshrined in the United Nations Convention on Jurisdictional Immunities of States and their Properties as adopted by the General Assembly on the 2nd of December 2004. This convention has not yet entered into force due to an insufficient number of states having ratified, accepted, approved or acceded to it. The Republic of Cyprus is not a signatory to the United Nations Convention.

The Supreme Court of Cyprus in the case of the *General Attorney of the Republic (No.1) (1997) 1 SCJ 802* has recognised the divergence in public international law between absolute and restrictive state immunity and adopted the latter approach whereby state acts are differentiated between governmental and commercial acts. In the said case, the Supreme Court of Cyprus stated that state immunity applies where governmental acts are taken in the exercise of sovereign capacity and thus characterised as “*acta jure imperii*,” whereas it does not apply when actions are “private” or “commercial” and thus “*acta jure gestionis*.”

The limited applicability to state immunity was highlighted in the case of *Slovenia v Beogradska Banka D.D. interlocutory appeal judgment (1999) 1 SCJ 225* where the Supreme Court of Cyprus examined whether Cypriot Courts have jurisdiction over a dispute between Slovenia and a bank controlled by the then Republic of Yugoslavia concerning the succession in certain assets of the former Yugoslavia that were allegedly deposited with the bank. The Supreme Court of Cyprus rejected the argument that the mechanism of the assets being held beneficially on trust by the state-controlled bank on behalf of the government raised a ‘private’ or ‘commercial’ element and instead confirmed the established principle that a body acting in a governmental and public capacity such as a state-controlled bank was covered by the privilege of state immunity. Thus, although the bank was deemed a commercial institution, it was held that it was still acting as a state organ.

	<p>Furthermore, for actions to satisfy the definition of ‘commercial’ and ‘private’ and thus restrict state immunity, they must be raised in cases where the state owned/controlled assets are used for purely commercial purposes and not associated in any manner with acts of execution of sovereign governmental duties (<u><i>Tlais Enterprises Ltd v Her Majesty’s Revenue & Customs (Ex Her Majesty’s Customs and Excise)</i>, Civil Appeal number 109/2009 dated 18/3/2015</u>).</p> <p>Another restriction to state immunity recognised by the Supreme Court is where the state willingly appears in the legal proceedings against it and thus renounces its rights or privileges to immunity. This restriction was held to be a reflection of custom, international law and international conventions (<u><i>General Attorney of the Republic (2001) SCJ 1196</i></u>).</p>
<p>4.</p>	<p>What exceptions may apply where the claim results from improper actions of the defendant state, e.g. wars of aggression?</p>
	<p>A. Wars of aggression and serious violations of human rights</p> <p>There is currently no case law in Cyprus dealing with this matter. The courts in Cyprus have not examined whether a war of aggression or breach of international law could form a basis for an exception to the applicability of the regime of sovereign immunity and thus it is unclear how a Cypriot Court would decide when presented with such a matter.</p> <p>An exception to state immunity for serious human rights violations has been the subject of judicial developments in different jurisdictions. State immunity was restricted in the case of <u><i>Voiotia v Germany, Greek Supreme Court (Areios Págos), no 11; (2001) 95 AJIL 198, 4 May 2000</i></u>, in which the Court took the view that Germany had impliedly waived its immunity when its soldiers engaged in a massacre in a Greek village during the Second World War. The Italian Supreme Court in <u><i>Ferrini v Germany, Appeal decision, no 5044/4; ILDC 19 (IT 2004) 11 March 2004</i></u> lifted Germany’s state immunity in a case brought by a claimant who had been captured by the German occupation forces and then was deported to Germany for forced labour during the Second World War. The Court restricted state immunity on the basis that the state’s actions constituted international crimes. Although this case was overturned by the International Court of Justice on the ground that Germany’s state immunity should have been upheld, the reasoning of the Supreme Court of Italy demonstrates a tendency towards attempts being made to limit state immunity in the context of human rights violations. Both of these cases apply to territorial jurisdiction, meaning that the violations that resulted in the restriction of state immunity, took place in the soil of the forum state.</p> <p>Furthermore, there are a number of cases against former heads of State in which immunity was denied e.g. <u><i>Ex-King v. Christian Dior, France, (1957) 24 ILR 228; Société’ v. Prince Farouk, France, (1963) 65 ILR 37; Honecker Prosecution Case, Germany, (1993) 100 ILR 393, 399–400; Haiti v. Duvalier, England, 1988, [1990] 1 QB 202, 215; 107 ILR 490, 501; cf. Duvalier v. Haiti, France, (1990) 113 ILR 448, 449</i></u>.</p> <p>The case of most pertinence where state immunity was restricted in a case of extra-territorial jurisdiction (as the acts which served the foundation to limit state immunity took place outside the forum state) is that of <u><i>R v Bow Street Metropolitan Stipendiary Ex</i></u></p>

p Pinochet Ugarte (Amnesty International intervening) (No 3), (2000) AC 151. Here, the House of Lords precluded a former head of state from claiming immunity on the basis that the acts of torture committed during his term in office amounted to a violation of the United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 (the “**Torture Convention**”). Since both the United Kingdom and Chile were signatory parties to the Torture Convention and this instrument is silent on the issue of immunity of heads of states, the House of Lords asserted its jurisdiction to restrict the state immunity of the former head of government. Cyprus is a common law jurisdiction and in the absence of relevant Cyprus case law, the courts apply English common law under Article 29(1)(c) of the Courts Act (Law 14/60) and the above case can be used as persuasive authority before the Cyprus Courts.

The abovementioned case law of foreign jurisdictions demonstrates both failed and successful attempts to restrict state immunity and indicate that the matter is not straightforward. Although these cases do not demonstrate a categorical change in international law and customary international law, they do represent attempts to restrict the principle of state immunity.

B. Other defences

Article 9 of the European Convention on State Immunity stipulates the following:

“Contracting States cannot claim immunity from the jurisdiction of a Court of another Contracting State if the proceedings relate to:

- a) its rights or interests in, or its use or possession of, immovable property; or
 - b) its obligations arising out of its rights or interests in, or use or possession of, immovable property
- and the property is situated in the territory of the State of the forum.”

It should be noted that although a country might not be a signatory party to the European Convention on State Immunity it could potentially still be able to rely on state immunity and the provisions of the European Convention on State Immunity as demonstrated in *Nikou K. Siakola v Turkish Republic, claim number 823/11 of the Famagusta District Court, interim judgment dated 16/1/2012*. It is noted that District Court judgments are not binding on other District Courts as are the judgments of the Supreme Court of Cyprus, but they are considered to have persuasive force and are thus relevant and could offer guidance. In this case, the President of the District Court highlighted the fact that the Republic of Turkey has not acceded to the European Convention of State Immunity but nonetheless proceeded with reference to the exception to state immunity contained in Article 9 of the European Convention, on the basis that it represents international law and stated the following:

“Consequently, the exception in Article 9 is in fact a codification of a rule of international law as recognised by the common law”

On the basis of the reasoning of *Nikou K. Siakola v Turkish Republic*, the limitations to state immunity as seen in international law are also relevant. As seen in judgments of the European Court of Human Rights and the International Court of Justice (*Jurisdictional Immunities of the State (Germany v Italy - Greece Intervening) (Judgment), International*

	<p><i>Court of Justice, General List No 143, 3 February 2012</i>), the European Convention on State Immunity has been deemed to be an influential source of customary international law. For this reason, the principles contained therein have been implemented despite a state not formally recognising them through accession or ratification of the European Convention.</p>
5.	What due process standards and exceptions may apply in proceedings for enforcement of judgment against a state?
	<p>In this respect, Cyprus law does not differentiate between a state/state debtor and any other judgment debtor.</p>
a.	<i>What standard will the court apply in the enforcement proceedings when assessing whether the service requirements have been met in the original proceedings against a state?</i>
	<p>A foreign court decision will not be recognized or declared enforceable if due process or the rights of the defence have been violated or if the defendant did not receive notice of the original proceedings in sufficient time to defend the proceedings and did not appear. The precise wording and scope of the exception will depend on the convention or regime applicable to the situation (see question 1 above).</p> <p>In the context of recognition and enforcement of EU judgments under the EU regulations, or of non-EU judgments under statute or at common law, the Cypriot courts have the power to refuse recognition and enforcement on the grounds of natural justice i.e., due process.</p> <p>The foreign court proceedings must have conformed to the foreign procedural law and must respect the basic principles of due process as reflected in the Cypriot procedural law. One of the requirements of due process is that the foreign court proceedings have been understood by the defendant.</p> <p>If the defendant is unable to understand the language used by the court, it must be informed through the translation of documents and the use of an interpreter. The due process requirement is most crucial for foreign default judgments. The Cypriot judge will always examine whether the defaulting party was duly summoned to appear. The defendant should have been aware of the claims filed against it and should have had a full opportunity to be heard and defend itself.</p> <p>The enforcement of a foreign judgment may be denied if the proceedings in which the judgment is obtained were opposed to natural justice. Thus, if the foreign court failed to adhere to the <i>audi alteram partem</i> rule by refusing to hear the defendant, any resulting judgment might be successfully be set aside in Cyprus (see <i>Ahapittas v Roc-Chik Ltd (1968) 1 CLR 1; Hassidoff v Sandi (1970) 1 CLR 220</i>).</p>

Further, in the context of enforcement of a non-European judgment under statute or at common law, the Cypriot courts can refuse to recognise and enforce the foreign judgment if it was obtained by fraud, on the part of either the court or the party seeking to enforce it.

Further, in the context of statutory enforcement of a foreign judgment issued outside the European Union, the court may refuse to recognise and enforce it on procedural grounds for failure to satisfy the requirements of Law 121 (I)/2000.

Cyprus courts may refuse to recognise or enforce a default judgment which is enforceable under the Recast Brussels Regulation if it is shown that the defendant was not served with the document that instituted the proceedings in sufficient time and manner in order to enable him to arrange his/her defence.

Similarly, most of the relevant bilateral treaties to which Cyprus is a party contain provisions to the effect that enforcement may be refused if the defendant was not properly served or was served in a manner which adversely affected his/her ability to appear before the foreign court and exercise his/her rights of defence.

Cap. 10 does not contain any express provisions imposing requirements on the way in which the defendant was served with the foreign proceedings. However, if it is shown that the defendant was not properly notified of the foreign proceedings or was notified in such a way which adversely affected his/her ability to appear before the foreign court and exercise his/her rights of defence, a Cypriot court would most probably refuse to recognise and enforce the foreign judgment on the ground that the defendant's right to a fair trial was infringed and that recognition of the judgment would therefore be contrary to the public policy of Cyprus.

A case where enforcement of a foreign default judgment in Cyprus was challenged is the case of *BTA Bank v Ablyazov (General Applications 63/13 and 64/13 before the District Court of Nicosia, judgments dated 06/06/2014)*. In the case in question, the English High Court issued default judgments against the defendant after his defences were struck out following his being found guilty of contempt of court and his failure to comply with an "unless order" which required him to surrender to the authorities. The defendant challenged the recognition and enforcement of the default judgments in Cyprus on the ground that his right to a fair trial was infringed and that the recognition of the judgments would therefore be contrary to public policy. Following a close examination of the facts and the way in which the proceedings before the English court were conducted, the Cypriot court dismissed these arguments after concluding that the striking out of the defendant's defences by the English court was a reasonable and proportionate measure in light of the defendant's conduct, that the defendant's right to a fair trial was not infringed and that recognition and enforcement of the default judgment was therefore not contrary to public policy.

b. *What exceptions may apply where conventional forms of service against a state are impossible, e.g. due to absence of diplomatic relations?*

The matter has not been examined by the Cyprus courts yet.

c.	<i>What standard will the court apply in the enforcement proceedings when assessing whether the right to representation requirements have been met in the original proceedings against a state?</i>
	<p>There is no such specific standard in Cyprus law and the matter has not been examined by the Cyprus courts yet.</p> <p>However, it is undisputed that the right of a defendant to defend him/herself in proceedings, and to be represented by counsel in the process, is a fundamental feature of any fair trial as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. As explained above in question 5a., in the context of recognition and enforcement of EU judgments under the EU regulations, or of non-EU judgments under statute or at common law, the Cypriot courts have the power to refuse recognition and enforcement on the grounds of natural justice i.e. due process. The enforcement of a foreign judgment may be denied if the proceedings in which the judgment is obtained were opposed to natural justice. Thus, if the foreign court failed to adhere to the audi alteram partem rule by refusing to hear the defendant, any resulting judgment might be successfully set aside in Cyprus (see <i>Ahapittas v Roc-Chik Ltd (1968) 1 CLR 1; Hassidoff v Sandi (1970) 1 CLR 220</i>). Therefore, by analogy the Courts might refuse to enforce a judgment if the right to representation requirements have not been met in the original proceedings.</p>
d.	<i>What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?</i>
	<p>The matter has not been examined by the Cyprus courts yet.</p> <p>As explained above in question 5a., the enforcement of a foreign judgment may be denied if the proceedings in which the judgment is obtained were opposed to natural justice. Thus, if the foreign court failed to adhere to the audi alteram partem rule by refusing to hear the defendant, any resulting judgment might be successfully set aside in Cyprus (see <i>Ahapittas v Roc-Chik Ltd (1968) 1 CLR 1; Hassidoff v Sandi (1970) 1 CLR 220</i>). This could possibly apply by analogy in cases where it is made known that the defendant state could not find legal representation in the original proceedings and did not have a full opportunity to be heard which could result in the original proceedings being perceived as being opposed to natural justice.</p>
6.	What assets may be subject of enforcement if the claim is against a state and what are the requirements, e.g., enforcement against assets of state-owned entities?
	<p>In general, assets subject to enforcement may include bank accounts, movable property, shares, registered vehicles, immovable property and other items and in this respect,</p>

Cyprus law does not differentiate between assets of state-owned entities and private entities.

In cases where state owned/controlled assets are used for purely commercial purposes and not associated in any manner with acts of execution of sovereign governmental duties (see also answer to question 2 above), then state immunity can be restricted and these assets can be the subject of enforcement in Cyprus (*Tlais Enterprises Ltd v Her Majesty's Revenue & Customs (Ex Her Majesty's Customs and Excise, Civil Appeal number 109/2009 dated 18/3/2015)*).

However, in the case of *Slovenia v Beogradska Banka D.D. interlocutory appeal judgment (1999) 1 SCJ 225* when the Supreme Court of Cyprus examined whether Cypriot Courts have jurisdiction over a dispute between Slovenia and a bank controlled by the then Republic of Yugoslavia concerning the succession in certain assets of the former Yugoslavia that were allegedly deposited with the bank, rejected the argument that the mechanism of the assets being held beneficially on trust by the state-controlled bank on behalf of the government raised a 'private' or 'commercial' element and instead confirmed the established principle that a body acting in a governmental and public capacity such as a state-controlled bank was covered by the privilege of state immunity. Thus, although the bank was deemed a commercial institution, it was still held that it was still acting as a state organ.