



ICLG

The International Comparative Legal Guide to:

Enforcement of Foreign Judgments 2019

4th edition

A practical cross-border insight into the enforcement of foreign judgments

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EDITORIAL

Welcome to the fourth edition of *The International Comparative Legal Guide to: Enforcement of Foreign Judgments*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations relating to the enforcement of foreign judgments.

It is divided into two main sections:

Three general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting the enforcement of foreign judgments, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in the enforcement of foreign judgments in 36 jurisdictions.

All chapters are written by leading lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Louise Freeman and Chiz Nwokonkor of Covington & Burling LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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1 Country Finder

1.1 Please set out the various regimes applicable to recognising and enforcing judgments in your jurisdiction and the names of the countries to which such special regimes apply.

Applicable Law/ Statutory Regime	Relevant Jurisdiction(s)	Corresponding Section Below
The Code of Organisation and Civil Procedure (Chapter 12 of the Laws of Malta).	All jurisdictions for which no EU or bilateral conventions apply.	Section 2.
The British Judgments (Reciprocal Enforcement) Act (Chapter 52 of the Laws of Malta).	The United Kingdom.	Section 3.

2 General Regime

2.1 Absent any applicable special regime, what is the legal framework under which a foreign judgment would be recognised and enforced in your jurisdiction?

The recognition and enforcement of foreign judgments in Malta which fall outside the scope of the special EU and bilateral treaties are dealt with by the Code of Organisation and Civil Procedure (COCP) (Chapter 12 of the Laws of Malta).

The procedure for enforcement of such foreign judgments is set out in Title V of the COCP: Enforcement of Judgments of Tribunals of Countries Outside Malta.

2.2 What constitutes a ‘judgment’ capable of recognition and enforcement in your jurisdiction?

Title V of the COCP does not specify a definition of such a ‘judgment’.

2.3 What requirements (in form and substance) must a foreign judgment satisfy in order to be recognised and enforceable in your jurisdiction?

In accordance with Article 826 of the COCP, the foreign judgment

must: (i) have been delivered by a competent court outside of Malta; and (ii) constitute *res judicata*, i.e. it must be final and conclusive according to the law of the country of origin, and no longer open for appeal.

2.4 What (if any) connection to the jurisdiction is required for your courts to accept jurisdiction for recognition and enforcement of a foreign judgment?

The courts of Malta have jurisdiction to decide on questions of enforcement under the COCP without any need to establish a degree of connection with Malta.

2.5 Is there a difference between recognition and enforcement of judgments? If so, what are the legal effects of recognition and enforcement respectively?

In theory, Maltese law does distinguish between the recognition and enforcement of judgments.

Recognition introduces the situation established by a foreign judgment into the Maltese legal order. However, there is no formal procedure specifically designed for this purpose. Rather, recognition has practical effects. A party can rely on a foreign judgment to prevent a claim already decided by a foreign court from being made in Malta; or, alternatively, to support a new claim made in Malta on the basis of the legal situation created by that foreign judgment.

Enforcement allows a party to take coercive steps against the debtor in Maltese territory. The foreign judgment acquires the same legal status as a judgment delivered by a Maltese court, providing full access to the available enforcement measures under Maltese law.

2.6 Briefly explain the procedure for recognising and enforcing a foreign judgment in your jurisdiction.

In order to enforce a foreign judgment, the party seeking enforcement must file an application in court containing an explanation of the facts of the case and a demand for an enforcement order, along with a certified copy of the foreign judgment and a translation in either the Maltese or English language, and evidence that the judgment constitutes *res judicata*. Moreover, the value of any money judgments must be converted into the local currency, which is the Euro.

Proceedings must be served upon the opposing party, and both parties have the right to make written and oral submissions. Eventual judgments are open to appeal.

2.7 On what grounds can recognition/enforcement of a judgment be challenged? When can such a challenge be made?

Enforcement of a foreign judgment can be challenged on the following grounds:

- i. in the case of a default judgment, if the parties were not contumacious according to foreign law;
- ii. if the judgment is contrary to the public policy of internal public law of Malta;
- iii. if it was obtained by fraud of either party to the prejudice of the other;
- iv. if the sworn application instituting proceedings was not served upon the defendant, and that party did not enter an appearance at the trial;
- v. if any party to the suite was under a legal disability to sue or be sued, provided no plea thereto was raised and determined by the court of origin;
- vi. where the judgment was delivered by a court having no jurisdiction in terms of Article 741(a) of the COCP, provided no plea thereto was raised and determined by the court of origin;
- vii. where the judgment contains a wrong application of law, consisting of an application of the wrong legal provision, rather than a misinterpretation of the correct provision;
- viii. where the judgment was given on any matter not included in the demand;
- ix. where the judgment was given in excess of the demand;
- x. where the judgment conflicts with a previous judgment given in an action on the same subject matter and between the same parties, and constituting *res judicata*, provided no such plea was raised and determined by the court of origin;
- xi. where the judgment contains contrary dispositions, specifically in the operative part;
- xii. where the judgment was based on evidence which, in a subsequent judgment, was declared to be false or which was so declared in a previous judgment, but the party cast was not aware of such fact;
- xiii. where, after the judgment, some conclusive document was obtained, of which the party producing it had no knowledge, or which, with the means provided by law, he could not have produced before the judgment;
- xiv. where the judgment was the effect of an error resulting from the proceedings or documents of the cause; or
- xv. the judgment imposes a fine or a penalty upon the judgment debtor, or in any other way would have the practical effect of enforcing a foreign penal, revenue or other public law.

These challenges can be made by the defendant in proceedings instituted for enforcement of the foreign judgment.

2.8 What, if any, is the relevant legal framework applicable to recognising and enforcing foreign judgments relating to specific subject matters?

Malta is a party to various multilateral conventions which contain provisions regulating the recognition and enforcement of foreign judgments relating to specific subject matters, such as the Cross-Border Insolvency Regulations 2006 (SI 2006/2013), the Civil Aviation Act 1982, the Carriage of Goods by Road Act 1965, etc.

2.9 What is your court's approach to recognition and enforcement of a foreign judgment when there is: (a) a conflicting local judgment between the parties relating to the same issue; or (b) local proceedings pending between the parties?

Under national conflict of law rules, the defendant is entitled to challenge enforcement of a foreign judgment on the basis that the judgment conflicts with a previous judgment given in an action on the same subject matter and between the same parties, and constituting *res judicata*, provided no such plea was raised and determined by the court of origin.

If proceedings are ongoing locally between the parties, and one of them seeks enforcement of a foreign judgment on the same issue, the Maltese court is likely to stay the Maltese proceedings until the judgment creditor's claim for enforcement has been determined.

2.10 What is your court's approach to recognition and enforcement of a foreign judgment when there is a conflicting local law or prior judgment on the same or a similar issue, but between different parties?

The existence of a conflicting local law or prior judgment between different parties is irrelevant, unless it would amount to an incompatibility with Maltese public policy rules.

2.11 What is your court's approach to recognition and enforcement of a foreign judgment that purports to apply the law of your country?

A Maltese court would treat this as any other foreign judgment, with no ulterior review of the way that Maltese law was interpreted in the particular case.

2.12 Are there any differences in the rules and procedure of recognition and enforcement between the various states/regions/provinces in your country? Please explain.

Private international law rules apply to the Maltese islands indiscriminately.

2.13 What is the relevant limitation period to recognise and enforce a foreign judgment?

There is no limitation period imposed by law.

3 Special Enforcement Regimes Applicable to Judgments from Certain Countries

3.1 With reference to each of the specific regimes set out in question 1.1, what requirements (in form and substance) must the judgment satisfy in order to be recognised and enforceable under the respective regime?

The British Judgments (Reciprocal Enforcement) Act, Chapter 52 of the Laws of Malta provides for the enforcement of judgments obtained in any civil or commercial proceedings before a superior court in the United Kingdom, whereby a sum of money is made

payable. These judgments may be registered in Malta if, in all circumstances of the case, the Maltese Court of Appeal considers it just and convenient that the judgment should be enforced in Malta.

Registration of such judgments pursuant to this regime is optional. In most cases, the judgment will also be enforceable pursuant to the Brussels Regulation 1215/2012.

3.2 With reference to each of the specific regimes set out in question 1.1, does the regime specify a difference between recognition and enforcement? If so, what is the difference between the legal effect of recognition and enforcement?

The British Judgments (Reciprocal Enforcement) Act requires registration of judgments before enforcement can be proceeded with.

3.3 With reference to each of the specific regimes set out in question 1.1, briefly explain the procedure for recognising and enforcing a foreign judgment.

Under the British Judgments (Reciprocal Enforcement) Act, the application for registration must be made to the Court of Appeal at any time within 12 months after the date of the judgment, or such longer period as may be allowed by the Court. In practice, the application should be filed with an authenticated copy of the relevant foreign judgment, with a declaration that it constitutes *res judicata*. The application must specify the grounds for enforcement, the amount in respect of which the foreign judgment remains unsatisfied, and the amount of interest claimed.

3.4 With reference to each of the specific regimes set out in question 1.1, on what grounds can recognition/enforcement of a judgment be challenged under the special regime? When can such a challenge be made?

Under the British Judgments (Reciprocal Enforcement) Act, registration of foreign judgments may be challenged on the following grounds:

- a) the court of origin acted without jurisdiction;
- b) the judgment debtor did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of the court of origin, and, moreover, was not ordinarily resident and did not carry on business in that jurisdiction;
- c) the judgment debtor was not duly served with the process of the original court, and did not appear, notwithstanding the fact that he was ordinarily resident or carried on business in that jurisdiction, or agreed to submit to the jurisdiction of that court;
- d) the judgment was obtained by fraud;
- e) the judgment debtor satisfies the registering court that: (i) either an appeal is pending; or (ii) he is entitled and intends to appeal the judgment; or
- f) the cause of action of the judgment runs counter to Maltese public policy, or cannot otherwise be entertained by the registering court for a similar reason.

4 Enforcement

4.1 Once a foreign judgment is recognised and enforced, what are the general methods of enforcement available to a judgment creditor?

In Malta, a judgment creditor can proceed with precautionary executive measures on the basis of the foreign judgment even before

commencing enforcement proceedings, provided that the relevant conditions of the COCP are satisfied. The application must be confirmed on oath by the applicant, and at a minimum must contain a description of the origin and nature of the debt or claim sought to be secured, and the amount of the debt in the case of a money judgment. Invariably, precautionary acts must be followed by an action on the merits within 20 days – in this case, an action for enforcement of the foreign judgment.

Precautionary acts include:

- warrant of description;
- warrant of seizure;
- warrant of seizure of a commercial going concern;
- garnishee order;
- warrant of impediment of departure;
- warrant of arrest of sea vessels;
- warrant of arrest of aircraft; and
- warrant of prohibitory injunction.

Executive acts include:

- warrant of seizure of movable property;
- warrant of seizure of immovable property;
- warrant of seizure of a commercial going concern;
- judicial sale by auction of movable or immovable property or of rights annexed to immovable property;
- executive garnishee order;
- warrant of arrest of sea vessels;
- warrant of arrest of aircraft; and
- warrant *in procinctu*.

Moreover, a judgment declaring a foreign judgment enforceable in Malta, once registered in the Public Registry Office, creates a hypothec *vis-à-vis* the debt judicially acknowledged by the foreign judgment, from the day of registration. Such hypothec effectively constitutes a security on the entirety of the estate in Malta (present and future) of the judgment debtor, and would also provide preferential ranking in any winding-up proceedings of the latter.

5 Other Matters

5.1 Have there been any noteworthy recent (in the last 12 months) legal developments in your jurisdiction relevant to the recognition and enforcement of foreign judgments? Please provide a brief description.

There have not been any recent judicial developments locally, the bulk being mainly delivered by the Court of Justice of the European Union concerning recognition and enforcement under the European legislative framework.

5.2 Are there any particular tips you would give, or critical issues that you would flag, to clients seeking to recognise and enforce a foreign judgment in your jurisdiction?

It is worth noting that pending determination of an application for enforcement of a foreign judgment, precautionary acts may be proceeded with in order to provide interim relief or security.

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GANADO

ADVOCATES

GANADO Advocates is a leading commercial law firm with a particular focus on the corporate, financial services and maritime/aviation sectors, predominantly servicing international clients doing business in or out of Malta. The firm also promotes other areas such as tax, pensions, intellectual property, employment and litigation.

The firm traces its roots back to the early 1900s and has, over the past decades, contributed directly towards creating and enhancing Malta's hard-won reputation as a reliable and effective international centre for financial and maritime services. Today, the firm continues to provide high standards of legal advisory services to support and enhance Malta's offering.

GANADO Advocates' Litigation and Dispute Resolution practice is prominent in arbitration and commercial litigation, having represented clients in some of the largest and most complex arbitrations and commercial litigation in Malta. These cases include maritime disputes, corporate and financial services litigation, and insurance claims. Today, the firm has dedicated dispute resolution streams in the specialised litigation fields of shareholder and corporate disputes, insolvency, intellectual property, public procurement, competition law and international arbitration.

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