



Cyprus

e-manual appendix





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What is enforced

The enforcement proceedings aim to gather the judicial payment of a debt, delivering a certain thing or the execution of a mandatory act. In order to start an enforcement process, you must have an enforceable title, that is, a document that the law considers sufficient to demonstrate that a debt exists, or that someone is obliged to hand over or do something.

Documents considered as enforceable titles are:

- Court judgments and settlements (arising from reconciliation)
- Enforceable decisions in both administrative and misdemeanour proceedings
- Arbitral awards
- Municipal administrative acts
- Documents considered as enforceable titles subject to certain conditions:
 - Agreement after a (successful) mediation procedure
 - Foreign court decisions and settlements
 - Foreign arbitral awards
 - Mortgage agreements
 - Administrative acts pertaining to satisfying pecuniary claims issued by other administrative bodies
 - Invoices in utility cases
 - Cheques
 - Bills of Exchange

In case of an enforcement order based on a judgment from a foreign country, the enforcement criteria are usually specified in the corresponding agreement. A usual condition in this case is that the defendant must have been duly notified of the proceedings which took place against him/her in the foreign country.

When it comes to the enforcement procedure of an EU judgment in Cyprus, the Recast Brussels Regulation applies to judgments issued in EU member states on or after the enactment of the Regulation (January 10th, 2015).

Who enforces

In Cyprus, (private) bailiffs are functionaries of the court, but not public servants. Service of documents is undertaken by private bailiffs, the majority of whom exercise their role as either liberal or self-employed professionals. More specifically, in order to speed up the enforcement procedure, the service of documents in all civil court cases has been entrusted to (private) bailiffs since 1996, so that Judicial Officers can focus on the enforcement of judgments. The latter are public servants, employed at the courts, on a permanent basis and carry out, under the control of the

Registrar, acts relevant to the enforcement of judicial decisions, such as executions of writs or sale of movable property.

Having said the above, there is a distinction of bailiffs into court bailiffs (Judicial Officers) and private bailiffs.

Enforcement procedure

A domestic judgment becomes automatically enforceable on issue, without the need to be registered, or to take any further measures. In order for an enforcement procedure to commence, there must be a court judgment, delivery of the judgment that creates an obligation, and refusal or failure of the defendant to pay the sum awarded. All undisputed orders become final and have the force of a court judgment. In case of an enforcement order based on a judgment from a foreign country, the enforcement criteria are usually specified in the corresponding agreement. A usual condition in this case is that the defendant must have been duly notified of the proceedings which took place against him/her in the foreign country.

Items or assets subject to enforcement may include bank accounts, movable property, shares, registered vehicles, immovable property and other items. Very personal items which are essential for survival or for the pursuit of the defendant's occupation are excluded.

The judgment creditor has several options on how to proceed with execution of the judgment. Under the Civil Procedure Law (Cap. 6), every court's judgement ordering the payment of money can be enforced through all or any of the following methods:

- (i) a writ of execution for the sale of movables,
- (ii) a writ for sale of immovable property or registration of a charging order (memo) over the property,
- (iii) a writ of sequestration of immovable property,
- (iv) a garnishee order - under this method of execution, the judgment is enforced through the attachment of debts due or accruing due to the judgment's debtor that form part of its property available in execution. As a first step, the court issues a garnishee order, under which the garnishee is forbidden from alienating in any way the amount determined in the order. The court can issue the writ of attachment if a third party keeps assets on behalf of the judgment debtor, e.g., a bank where an account in the name of the judgment debtor is kept or is a debtor of the judgment debtor (Civil Procedure Law Section 73). Through this process, the court has power to order a third party not to alienate in any way the amount determined in the order. The garnishee or the judgment debtor can file an opposition to such an order. After hearing the respondents, the court can order the garnishee to pay directly to the judgment creditor the debt due or accruing due to the judgment debtor, or as much of it as may be sufficient to satisfy the amount

of the judgment,

(v) an additional order to the judgment debtor to make payments over the debt on a monthly basis is possible. The amount and dates of the payments will be determined by the court according to the financial position of the judgment debtor,

(vi) a writ of possession, ordering property to be delivered to the judgment creditor is another enforcement method among with,

(vii) a writ of delivery, ordering movable property to be delivered to the judgment creditor,

(viii) Injunctions and other orders encumbering the interest of the judgment debtor on shares and other stock owned (Encumbering Orders Law 31(I)/1992),

(ix) bankruptcy or

(x) liquidation proceedings, can be initiated against a judgment's debtor.

The last two measures are not strict enforcement methods in the sense that they do not guarantee payment of the judgment's debt, but they are often used as a pressure mechanism to the debtor.

In this framework, the enforcement measures include:

- I. warrant of seizure and sale of movable property,
- II. warrant of surrender of movable property,
- III. writ of garnishment to seize assets in the hands of a third party,
- IV. order to repay a judgment debt in monthly instalments,
- V. order to make deductions from the judgment debtor's monthly earnings (which is served on the employer for execution),
- VI. order to surrender possession of immovable property,
- VII. order to sell immovable property,
- VIII. order to place immovable property in escrow (issued on request of the judgment debtor, as long as the court is satisfied that in, up to three years, the income from the immovable property can cover the judgment debt, interest and all costs),
- IX. immovable property charge (with entry of the judgment against the property),
- X. bankruptcy,
- XI. company dissolution.

In the case of a maintenance order, the enforcement includes the possibility of issuing a writ of detention against the debtor. When it comes to the enforcement of a judgment or order for the recovery or delivery of any movable property by writ of delivery, the Court may, upon an ex parte application of the plaintiff accompanied by a copy of the judgment or order sought to be enforced, pursuant to Order 43B of the CPR (Writ of delivery), to issue a writ for the delivery of the property. Every writ of possession or writ of delivery shall be passed to a Judicial Officer for enforcement.

A judgment creditor has the opportunity to enforce his judgment by resorting to multiple measures of execution, without this being abusive as it was held.

The persons against whom the enforcement measures are applied, meaning the debtor and any third party, they are obliged to comply with the judgment ordering the enforcement measure. If the debtor refuses or neglects to carry out the acts/actions specified in the order imposing the enforcement measures, an imprisonment procedure may be initiated against him for disobeying a court order. Regarding, garnishment to seize (certain) bank accounts, the bank on which a garnishment order is served is required to freeze the relevant account, unless it has reason to contest this. In this case, it has to appear before the court which delivered it and provide reasons why this should not apply.

In the framework of the debtor's protection provisions, any personal belongings that are essential to survival or to the pursuit of a person's profession cannot be subject to enforcement. Moreover, where the debtor is a state or public service, objects and equipment intended for a purpose essential for the general public, including equipment belonging to the armed forces and security forces, objects of artistic, archaeological, cultural, religious and historical importance and foreign exchange reserves, are exempt from enforcement.

Where a judgment or order is to the effect that any party is entitled to any relief subject to or upon the fulfilment of any condition or contingency, the party so entitled may, upon the fulfilment of the condition or contingency, and demand made upon the party against whom he is entitled to relief, apply to the Court for leave to issue execution against such party.

In practice, though, the system of execution of judgments has proved to be totally inefficient.

Duration of enforcement procedure

A judgment imposing enforcement measures is valid for six years from the date of delivery. In case of non-enforcement within that period, the judgment may be renewed by the court pursuant to Rule 40D.8 of the Civil Procedure Rules. Moreover, it is provided that where any person who has obtained any judgment or order upon condition does not perform or comply with such condition, he/she shall be considered to have waived or abandoned such judgment or order to the extent that it is beneficial to him/her. The forced sale by public auction of not mortgaged immovable property via the Department of Lands and Surveys of Cyprus may last even for many years and this is a proof that the system is not efficient.

Cost of enforcement procedure

The Judicial Officer will request prepayment of the enforcement expenses having informed the creditor on the likely costs of such fees, in addition to the performance fee. Prepayment paid by the creditor during the enforcement procedure is always reimbursed from the debtor once the debtor pays in full. The debtor in some instances will also pay the initial fee, third party expenses, e.g., a locksmith in the process of eviction, enforcement expenses and the performance fee. Under no circumstances can the debtor be exempt from enforcement fees/expenses.

The fee for initiation of proceedings is a fixed amount, which is proportional to the value of the claim. The enforcement expenses are also proportional based on the amount of the claim and cover reimbursement of procedural expenses necessary to fulfil the judicial officers' functions. A Judicial Officer is entitled to receive remuneration of enforcement costs for any activities undertaken, which is dictated by law or regulation regarding enforcement against movable assets. The enforcement fees in general cannot be determined or estimated in advance, they are not accessible on a website etc., they are demanded from the debtor and are proportional to the amount of the claim, the type of enforcement action and the nature of the assets seized. Moreover, it depends whether publishing, storage, transportation etc. costs will be required in each specific case. In the event the debtor is insolvent, the creditor covers any unpaid enforcement fees. The fee schedule is obligatory. 5% of the outcome of every auction is deposited in the Fixed Treasury of the State, which aims to cover the costs of the enforcement in case it is not possible to be covered by the outcome of the auction because e.g. the auction did not take place. With regard to public auctions, the debtor is charged a fee for the use of the auction room. Finally, when it comes to enforcement on immovable property and more specifically to forced sale by public auction via the Department of Lands and Surveys of Cyprus, there are certain rights and fees to be paid which are available at the website of the forementioned Department¹.

¹ See at: <https://portal.dls.moi.gov.cy/en-us/Rights%20and%20Fees/PublishingImages/Pages/default/Rights%20and%20Fees.pdf> (in English).

