

The British Judgments (Reciprocal Enforcement) Act - Chapter 52 of the Laws of Malta

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In this article, **Ethan Brincat** examines Chapter 52, and its role in the recognition and enforcement of foreign judgments in Malta, as well as certain procedures related to similar cases.

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1. Introduction

Many entrances and exits are made into and out of the laws of Malta, as new laws replace old ones. However, there are also many times when old laws seem to have been relegated to the wayside of the Maltese legal process. One such example is Chapter 52 of the Laws of Malta known as the ‘British Judgments (Reciprocal Enforcement) Act’, enacted on 17 March 1924, hereinafter referred to as ‘the Act’.¹

2. Private International Law in General

The enforcement of foreign judgments constitutes the third prong of Private International Law. This area of law concerns cross-border private disputes; that is, disputes of a civil or commercial nature. When one obtains a judgment aimed at resolving such type of dispute, by a court with jurisdiction according to one set of rules and having chosen and applied the proper law according to another set of rules, one must follow yet more rules in order to have that judgment recognised and enforced by the courts of the State where one desires it.

3. Recognition and Enforcement of Foreign Judgments in Malta

Under Maltese law, there are several legal regimes under which a party may obtain a favourable judgment from a foreign court. The ‘base’ regime is that provided for in Articles 825A to 828 of the Code of Organisation and Civil Procedure (hereinafter referred to as ‘the COCP’), Chapter 12 of the Laws of Malta, under ‘Of the Enforcement of Judgments of Tribunals of Countries outside Malta’.² These provisions are the first to be applied to this end, subject to two important exceptions. Under Article 825A, relevant provisions of certain European Union regulations on the recognition and enforcement of foreign judgments are to be applied instead, unless the same provisions direct the court back to the national rules. Secondly is the reference to the abovementioned Act in Article 826.³ The Act cannot

1 British Judgments (Reciprocal Enforcement) Act , Chapter 52 of the Laws of Malta.

2 Code of Organization and Civil Procedure, Chapter 12 of the Laws of Malta , Book Third ‘Of Certain Matters Relating to Judicial Procedure’, Title V ‘Of the Enforcement of Judgments of Tribunals of Countries outside Malta’.

3 Ibid., Article 825A ‘Applicability of this Title and European Union Regulations. Added

derogate from the articles in the COCP beyond its limited scope of certain British judgments:⁴

4. Chapter 52 of the Laws of Malta: The British Judgments (Reciprocal Enforcement) Act

The Act is to '[t]o make provisions for the enforcement in Malta of judgments obtained in the United Kingdom and in the British dominions', where British dominions include '*any territory which is under British protection*'.⁵ The type of court judgments or orders, the enforcement of which the Act makes provisions for, are those '*given or made by a court in any civil or commercial proceedings, whether before or after the passing of this Act, whereby any sum of money is made payable*'.⁶ This means that not all judgments by British Courts or their dominion counterparts fall within the scope of the Act, and that there are instances where one must return to the above-mentioned provisions of the COCP.

5. Conditions for Registration for Enforcement of Foreign Judgments under Chapter 52

When a superior court in the UK; that is, the 'original court', has given a judgment that an interested party would like to have enforced in Malta, an application needs to be made to the Maltese Court of Appeal for its registration in the competent 'registering court; that is, '*the court by which the judgment was registered*'⁷. Such application must be made within 12 months from when it was given by the original court, though the Court of Appeal may allow for more. It is then up to the latter to decide whether it is '*just and convenient*' to register the judgment or not.⁸

by III.200442.', and Article 826 'Enforcement of judgments of tribunals outside Malta. Amended by XXII.2006.66. Cap. 52.'; Chief among these EU regulations is Regulation (EU) No 1215/2012 of the European Parliament and of the Council [of the European Union, ex Council of Ministers] of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (recast), more commonly known as the 'Brussels I recast Regulation'.

4 [n 1], Article 6 'Provisions of Code of Organization and Civil Procedure to continue to apply to enforcement of foreign judgments. Cap. 12.'

5 [n 1], Article 5 'Extension of Act. Amended by: XV.1958.2; XXV.1962.24; L.N. 46 of 1965; LVIII.1974.68.'

6 Ibid., Article 2 'Interpretation', definition of "judgment".

7 Ibid., definition of "original court"; and definition of "registering court".

8 Ibid., Article 3 'Enforcement in Malta of judgments obtained in superior courts in the United Kingdom. Amended by XIX.1929.2; L.N. 148 of 1975.'

6. Foreign Judgments Prohibited from being Enforced

The Act prohibits the following judgments from being registered as specified above:

Those given by an original court without jurisdiction;

Those given where the ‘judgment debtor’; that is, ‘*the person against whom the judgment was given*’, was neither within the original court’s jurisdiction nor did they submit to it, or, if they were within its jurisdiction, were not served with documents;⁹

Those obtained by fraud;

Those subject or about to be subjected to appeal; and

Those which would go against public policy if enforced.¹⁰

7. Effects of Enforcing Foreign Judgments

There are three principal effects of registering a judgment as mentioned previously:

1. The foreign judgment given in the original court has the same force and effect as if it had been given in the registered court;
2. The registering court has the same jurisdiction over the judgment given in the original court as if it had been given in it, but this is limited to the judgment’s execution; and
3. The costs relating to the judgment’s registration, for example to obtain a certified copy of the original judgment and the application fee, are added to the existing judicial costs.¹¹

8. Powers of the Court of Appeal to Make Rules

The Act grants the Maltese Court of Appeal the power to make rules on:

The mode of registration and preservation of judgment registers;

⁹ [n 6], definition of “judgment debtor”.

¹⁰ [n 8].

¹¹ Ibid.

The service of the notice of the application of registration to the judgment debtor;

To enable the registering court to set aside the registration of a judgment; and

To suspend the execution of a registered judgment until the expiry of the 12-month period, or such other period as may have been granted by the Court of Appeal, for application for registration of that judgment.¹²

9. Other Provisions

The plaintiff cannot recover any costs relating to any action brought on a foreign judgment which can be registered in Malta unless:

- a. The application for registration had been refused, or
- b. Unless the Court otherwise orders.¹³

When a Maltese superior court gives a judgment, it must issue a certified copy of the judgment to the ‘judgment creditor’; that is, ‘*the person by whom the judgment was obtained*’ or their successors and assigns¹⁴:

1. On an application made by the judgment creditor, and
2. On proof that the judgment debtor is a UK/British dominion resident.¹⁵

10. Extension of Applicability and Reciprocity of Chapter 52

The Act came into force upon Proclamation No. XII of the 14th of April, 1931 in the Government Gazette by Order-in-Council and granted ‘*reciprocity for the enforcement in the United Kingdom of judgments obtained in Malta*’. The President of Malta extends the provisions of the Act to a British dominion by proclamation when he/she is satisfied that they have legislated

12 Ibid.

13 Ibid.

14 [n 6], definition of “judgment creditor”.

15 [n 1], Article 4 ‘Issue of certificate of judgments obtained in Malta. Amended by XIX.1929.3.’.

in order to grant Maltese judgments enforceability there. This extension grants the same reciprocity granted to judgments obtained in the UK.¹⁶

11. Conclusion

Although the provisions of the Act give a rather ‘colonial’ impression as to Malta’s judicial relationship with the UK and the ‘British dominions’; that is, the last remnants of the former British Empire, it is by no means obsolete. It is true that it is greatly overshadowed by the application of multilateral legal regimes such as the Brussels Regime, of which both Malta and the UK are parties to. However, with the UK eager to cut many ties with the EU, it is highly possible that it will fall back on the reciprocity it silently enjoys with this Act insofar as Anglo-Maltese Private International Law is concerned.

16 [n 5].

