

## **POLAND | Enforcement of foreign judgements in Poland**

### **INTRODUCTION**

The globalisation of markets has its advantages and has certainly improved day-to-day living standards and business opportunities. It also has its disadvantages, in particular a much greater ability to spread one's assets across jurisdictions in order to hide them from enforcement. International cooperation between authorities and courts is therefore crucial, including in the enforcement in a given jurisdiction of judgments handed down by a foreign court.

This article summarises the procedure for the enforcement of interim measures in Poland and provides an outline of what a creditor should be aware of when considering pursuing a debtor's assets in Poland.

### **ENFORCEMENT OF FOREIGN JUDGEMENTS IN POLAND**

#### **WHAT IS EXEQUATUR?**

When it comes to enforcing a foreign judgment in another jurisdiction, one word is key - exequatur. This word is of Latin origin and can be translated as "let it be done". It is usually used in relation to persons exercising a representative function (consuls), but it also comes into play in enforcement proceedings. In relation to judgments, 'exequatur' is nothing more than an official formal authorisation by a competent authority (a court) to enforce a judgment in a given jurisdiction. Without exequatur, it may not be possible to enforce a foreign judgment in that jurisdiction.

In Poland, the authorisation of a foreign judgment (exequatur) takes the form of a court attaching an enforceability clause to the judgment. This is usually preceded by a court procedure involving the debtor and the creditor, which is discussed in more detail below.

### **ENFORCEMENT OF JUDGMENTS ISSUED BY AN EU COURT**

Poland is an EU Member State, which means that European Union law and international instruments to which the European Union is a party are also part of Polish law.

The primary legal instrument within the European Union system that regulates enforcement of judgments is the Regulation No. 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters ("Regulation No. 1215/2012"). Importantly, Regulation 1215/2012 abolishes the requirement for "exequatur" when a judgment has been given by a court of an EU Member State and is to be enforced in another EU Member State. This idea is based on the view that mutual trust in the administration of justice within the EU Member States justifies the principle that judgments given in one Member State should be recognised in all Member States without the need for any special procedure.

This Regulation allows the creditor to directly enforce a judgment against his debtor without first having to obtain a declaration of enforceability from a competent authority - provided that the judgment was given in an EU Member State and is to be enforced in another EU Member State.

## **HOW WOULD IT LOOK LIKE IN POLAND?**

### **ENFORCEMENT OF JUDGEMENT ISSUED BY A COURT OF AN EU MEMBER STATE**

The authority responsible for enforcing judgments in Poland is an enforcement officer (komornik sądowy). Enforcement officers are appointed to local district courts and carry out enforcement in civil cases in their assigned districts.

- 1) If a judgement was issued in an EU Member State, the request for enforcement may be filed directly to the enforcement officer, without any prior declaration of enforceability by the court being required. That is because judgements issued by courts of another EU Member States are so-called 'enforcement titles' in Poland.
- 2) The request should meet the formal conditions specified i.a. in the Regulation No 1215/2012. This means that the creditor should present a copy of the judgment and a certificate certifying that the judgment is enforceable. The enforcement officer may also request the party to submit translations of documents provided.
- 3) The creditor should also indicate the means of enforcement, e.g. seizure of funds from bank, seizure of movable assets or seizure of real estate, which may influence the cost of enforcement. For example, the costs of seizure of real estate are higher than costs of seizing bank accounts and moveables.
- 4) The creditor may be required to pay the costs of enforcement, in particular an advance on the enforcement officer's costs (e.g. correspondence). In general, however, the enforcement fee is collected (charged) by the enforcement officer from the debtor together with the enforced debt, in proportion to the value of the enforced debt.
- 5) The creditor will be notified by the enforcement officer on the status of enforcement and the amounts seized.
- 6) Alike procedure would apply also to interim measures granted by a court of EU Member State, however in order to protect the debtor's rights, there is an additional requirement, namely the creditor is obliged to proof of service of such measure – if the measure was ordered without the defendant being summoned to appear.

### **ENFORCEMENT OF JUDGEMENT ISSUED BY A FOREIGN COURT**

The procedure is slightly different if the enforcement is based on a judgment, which has not been given by a court of an EU Member State.

First, the creditor must obtain an 'exequatur' (authorisation). To do this, the creditor should submit an application to the court. The court fee is relatively low and amounts to PLN 300 (approx. EUR 70). However, the creditor may be required to provide translations of the documents submitted, which may increase the total cost.

Polish court may deny enforcement, if the prerequisites indicated in Polish law are present, namely if the court finds that:

- 1) if the judgement is not final in the state in which it was issued;
- 2) if the judgement was issued in a case falling within the exclusive jurisdiction of the Polish courts;
- 3) the defendant, who did not engage in the dispute, was not duly served with the document commencing the proceedings in sufficient time to enable them to defend themselves;
- 4) a party in the course of the proceedings was unable to present their case;
- 5) a case concerning the same claim between the same parties was pending in the Republic of Poland earlier than before the court of a foreign state;

- 6) the judgement is inconsistent with an earlier final and binding judgement issued by a Polish court or an earlier final and binding judgement of a court of a foreign state which fulfils the conditions for its recognition in the Republic of Poland, made in a case involving the same claim between the same parties;
- 7) recognition would be contrary to the fundamental principles of the legal order of the Republic of Poland (public policy clause).
- 8) There may also be other requirements that a Polish court would take into account, such as those arising from international treaties (e.g. the 2005 Hague Convention on Choice of Court Agreements) or bilateral treaties to which Poland is a party. These would take precedence over Polish law in this respect, as international treaties take precedence over Polish national laws in the hierarchy of legal acts in Poland.

Once the court has added the enforcement clause to the foreign judgment, its enforcement would be essentially the same as that of a judgment given by a court of an EU Member State, as summarised above.

A similar procedure would also apply to interim measures granted by a foreign court. Unlike interim measures granted in an EU Member State, Polish law does not impose any additional requirements for applications for enforcement. However, the general rules on refusal of enforcement would apply. In particular, it can be assumed that before enforcing a particular interim measure, the court would examine whether the type of interim measure is compatible with the Polish legal system.

## **CONCLUSION**

Given that the debtor's assets may be located in different jurisdictions, it may be useful to know what the enforcement procedure is in that jurisdiction. This is because national law and the national enforcement procedure may affect the timeliness and success of enforcement. Enforcement of judgments and interim measures in Poland depends on the origin of the judgment to be enforced, but both procedures run fairly smoothly and may allow the creditor to succeed.

The text originally appeared: Chambers and Partners, 15.07.2024