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Cyprus

ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

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This country-specific Q&A provides an overview of enforcement of judgments in civil and commercial matters laws and regulations applicable in Cyprus.

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CYPRUS

ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS



1. What international conventions, treaties or other arrangements apply to the enforcement of foreign judgments in your jurisdiction and in what circumstances do they apply?

EU Regulations

The provisions of the Recast Brussels Regulation; apply to judgments issued in EU Member States after 10 January 2015, including judgments issued in the UK in proceedings commenced before 31 December 2020.

Moreover, Cyprus is bound by the following EU Regulations relating to the recognition and enforcement of judgments issued in courts of EU Member States:

- Regulation (EC) No. 805/2004 of the European Parliament and Council of 24 April 2004 creating a European Enforcement Order for uncontested claims;
- Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European order for payment procedure;
- Regulation (EC) No. 861/2007 of the European Parliament and of the Council of July 2007 establishing a European Small Claims Procedure;
- Regulation 1346/2000 on Insolvency Proceedings.

Lugano Convention

Judgments given in civil and commercial matters by the courts of Norway, Switzerland and Iceland are enforceable in Cyprus pursuant to the provisions of the Lugano Convention on jurisdiction and the recognition and enforcement of judgments.

Bilateral Treaties

Cyprus has signed a number of bilateral treaties relating to legal and judicial cooperation with various countries. To the extent that such treaties were concluded with countries which are now members of the EU, the provisions of these treaties have in practice been superseded by the provisions of the relevant EU Regulations. Non-EU Member States with which Cyprus has signed bilateral treaties providing for the mutual enforcement of judgments include Russia, Georgia, Ukraine, Belarus, Montenegro, Serbia, Egypt and Syria.

International Conventions

In regards to international conventions on reciprocal recognition and enforcement of foreign judgments, Cyprus is bound by:

- the Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters;
- the European Convention on Certain International Aspects of Bankruptcy;
- the Hague Convention on the Recognition of Divorces and Legal Separations;
- the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children and
- the Hague Convention on Choice of Court Agreements.

Judgments originating from countries that are parties to the above conventions may be recognised and enforced in Cyprus in accordance with the procedure and subject to the exceptions and qualifications stipulated in the relevant convention.

Enforcement under Cypriot statute providing for the enforcement of judgments given in certain Commonwealth states

Judgments given in certain Commonwealth countries in civil matters are enforceable in Cyprus pursuant to the provisions of the Mutual Recognition of Certain Judgments of the Courts of Commonwealth Countries Law, Cap. 10 ("Cap. 10"). This statute has become particularly important post-Brexit as it provides a legal basis for the continued recognition and enforcement in Cyprus of judgments given by the UK courts after 31 December 2020.

Notwithstanding Brexit, judgments given in the United Kingdom continue to be enforceable in Cyprus pursuant to the provisions of this Law. Final and conclusive judgments for a definite sum given by a court having jurisdiction in a country other than those mentioned above, may be enforced in Cyprus by bringing an action at common law on the basis of the foreign judgment.

2. What, if any, reservations has your jurisdiction made to such treaties?

Cyprus has not made any reservations with respect to the enforcement of foreign judgments pursuant to the above treaties or conventions except as follows:

Cyprus has reserved the right under para. (1) of Article 19 of the Hague Convention on the Recognition of Divorces and Legal Separations to refuse to recognize a divorce or legal separation between two spouses who, at the time of the divorce or legal separation, were both citizens of the Republic of Cyprus and of no other State and a law other than that indicated by the rules of Private International Law obtaining in Cyprus was applied, unless the result reached is the same as that which would have been reached by applying the law indicated by those rules.

3. Can foreign judgments be enforced in your jurisdiction where there is not a convention or treaty or other arrangement, e.g. under the general law?

In the absence of a convention, treaty or other arrangement, final and conclusive judgments for a definite sum may be enforced in Cyprus by bringing an action at common law on the basis of the foreign judgment. This entails bringing a separate action in Cyprus against the judgment debtor, requesting an award of damages equal to the judgment debt arising from the foreign judgment. Only a limited number of the defences are available with respect to such a claim, including lack of jurisdiction of the foreign court, procedural unfairness, breach of the defendant's rights and public policy (i.e. that the enforcement of the

judgment would be contrary to the public policy of Cyprus). Significantly the available defences do not include defences based on contentions that the foreign judgment is wrong (i.e. the Cypriot court will not review the merits of the foreign judgment). The judgment creditor may be able to obtain a summary judgment in cases where it can be shown that the defendant/judgment debtor has no arguable defence.

4. What basic criteria does a foreign judgment have to satisfy before it can be enforced in your jurisdiction? Is it limited to money judgments or does it extend to other forms of relief?

There are substantial differences in the process and legal requirements that must be met in order for the foreign judgment to be recognised and enforced depending on the country of origin of the foreign judgment and the applicable legal framework.

Under the Recast Brussels Regulation, "*any judgment given by a court or tribunal of an EU Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court*" may be enforced in Cyprus (including interlocutory judgments or orders).

Each of the relevant bilateral treaties to which Cyprus is a party contains its own provisions as to what kind of judgments can be recognised and enforced. In general, the provisions of such treaties provide that only "*final and conclusive*" judgments for a specific amount of money may be recognised and enforced if given in the context of civil or criminal proceedings which do not involve tax or a similar charge, or a fine or penalty. As a rule, declaratory judgments are also capable of recognition.

Similarly, the provisions of Cap. 10 apply for to the recognition and enforcement of judgments issued in either civil or criminal proceedings for a sum of money in regards to 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 which does not award a monetary sum.

At common law, in order to be capable of recognition by means of a new action, the foreign judgment must be for a definite sum and must be final and conclusive between the parties.

5. What is the procedure for enforcement of foreign judgments pursuant to such conventions, treaties or arrangements in your jurisdiction?

Enforcement under the Recast Brussels Regulation

Under the Recast Brussels Regulation, a judgment given in an EU Member State is directly enforceable in Cyprus, (i.e. can be enforced in the same manner as a Cypriot judgment), without any need of obtaining a declaration of enforceability. In order to proceed with the enforcement of a judgment, the judgment creditor must present the documents specified in Article 42 of the Recast Brussels Regulation, namely:

- a copy of the judgment bearing the original seal of the court; and
- a certificate as per Annex I of the Regulation issued by the court of origin confirming that the judgment is enforceable in the country of origin and that it has been served on the defendant (see Article 43 of the Regulation).

The above documents are required to be presented in the context of the enforcement process. If the enforcement process requires an application to be made to the court (e.g., for an order permitting the seizure and sale of assets or for a garnishee order) the documents are put before the court through the affidavit filed in support of the relevant application.

Enforcement under bilateral treaties or international conventions

The procedure for enforcing foreign judgments of countries with which Cyprus has entered into a bilateral treaty, is set out in Law 121(I)/2000 (the Foreign Courts (Recognition, Registration and Enforcement pursuant to Treaties) Law of 2000). Law 121(I)/2000 provides that the applicant must seek recognition of the foreign judgment by filing an application with notice to the judgment debtor. Such application must be accompanied by an affidavit to which the documents required by the relevant treaty must be attached. The judgment debtor has the opportunity to oppose the application but can do so only on a number of specified grounds set out in section 5(e) of Law 121(I)/2000 (namely lack of jurisdiction of the foreign court, proven satisfaction of the foreign judgment and non-satisfaction of the conditions set out in the relevant treaty with regard to its application). Law 121(I)/2000 also contains provisions which are intended to ensure that applications for the recognition and enforcement are determined quickly but unfortunately these provisions have not achieved the desired result as there are often delays in the

determination of the relevant applications. A weakness of Law 121(I)/2000 is that it contains provisions which have been interpreted by the Cypriot courts as leading to the conclusion that the Cypriot courts only have jurisdiction to determine an application for recognition of a foreign judgment pursuant to the provisions of the law if the judgment debtor or the judgment creditor seeking enforcement is resident in Cyprus. This is a serious potential limitation as it essentially precludes the recognition and enforcement of judgments in cases where none of the parties are resident in Cyprus even if there are assets in Cyprus against which the judgment may be enforced. It is hoped that the relevant provisions of the Law 121(I)/2000 will be amended so as to deal with this problem or alternatively that the Cypriot courts will accept the argument that such a limitation is contrary to the provisions of the relevant bilateral and international treaties which have superior force to any national legislation.

Enforcement under Cap. 10

The procedure for enforcement pursuant to the provisions of Cap. 10 entails the filing of an ex parte application for recognition and registration of the foreign judgment accompanied by an affidavit, setting out the facts which show that the relevant judgment is enforceable in Cyprus. Once an order for registration is issued, such order specifies the time within which the judgment debtor is entitled to file an application to set aside the order. If no such application is filed, the judgment creditor may proceed with the enforcement of judgment.

6. If applicable, what is the procedure for enforcement of foreign judgments under the general law in your jurisdiction?

The procedure for enforcement of foreign judgments under the general law entails bringing a civil action on the basis of the foreign judgment by filing a writ of summons to the court, seeking an award of damages in the amount of the foreign judgment. The judgment debtor is entitled to file a Defence, subject to what is stated in our response to Question 3 above with respect to the validity of the grounds on which such defence may be based. The action is tried in the same manner as all civil actions which means that, unless an application for summary judgment is successful, the process will culminate in a trial in the context of which oral evidence will need to be presented.

7. What, if any, formal requirements do the

courts of your jurisdiction impose upon foreign judgments before they can be enforced? For example, must the judgment be apostilled?

Recast Brussels Regulation

Where enforcement is sought pursuant to the provisions of the Recast Brussels Regulation the only requirements with respect to the foreign judgment are those set out in Article 42 of the Regulation. The applicant is only required to produce:

(a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and

(b) the certificate as per Annex I of the Regulation, issued by the foreign court, certifying that the judgment is enforceable in the Member State of origin.

The foreign judgment is not required to be apostilled and in practice the Cypriot courts generally simply require the applicant to produce the original or a verified copy of the judgment bearing the seal of the foreign court. In addition, the Cypriot court may require the applicant to produce a translation of the certificate into Greek. In practice the Cypriot courts do not require a Greek translation if the certificate of the foreign court is in English.

Bilateral Treaties or International Conventions

Where enforcement is sought pursuant to the provisions of a bilateral treaty or an international convention, the Cypriot court will require compliance with the provisions of the relevant treaty or convention, concerning the formal requirements which the foreign judgment must satisfy in order to be recognised or enforced. It is therefore necessary in each case to examine the relevant provisions of the applicable treaty or convention. Many of the bilateral treaties to which Cyprus is a party contain provisions which impose specific formal requirements which the foreign judgment must satisfy, such as the presentation of a certified original or copy of the foreign judgment together with a certified Greek translation of the judgment. The requirements concerning "certification" are generally regarded as being satisfied if the documents in question are certified by a body or a person who has the authority to certify them under the law of the country where the judgment was issued. Although the treaties do not generally require the foreign judgment to be apostilled (and indeed many of them contain provisions to the effect that the judgment is not required to be apostilled) in practice it is usual for applicants to present apostilled certified copies of the foreign judgment in order to avoid

any disputes regarding the authenticity of the seals of the court, the certifying officer etc.

Cap. 10

Where enforcement is sought pursuant to the provisions of Cap. 10, the applicant is required to produce a certified copy of the judgment issued by the original court and authenticated by its seal and a Greek translation of the judgment authenticated by affidavit.

8. How long does it usually take to enforce or register a foreign judgment in your jurisdiction? Is there a summary procedure available?

There are many factors which may affect the time that will be required to enforce or register a foreign judgment in Cyprus. For example, the process may take a very long time if the relevant application is required to be served on the judgment debtor outside the jurisdiction or if enforcement is sought by bringing a common law action. Subject to what is stated in our response to Question 3 above regarding the possibility of summary judgment in a common law action, a summary procedure is not generally available.

In practice, in cases where the judgment debtor is determined to oppose or delay enforcement, enforcing the judgment in Cyprus is likely to take many months. Even in cases where enforcement is sought pursuant to the provisions of the Recast Brussels Regulation, without any need for prior recognition or registration of the judgment, the judgment debtor may cause significant delay in the process, for example by filing an application for refusal of enforcement of the foreign judgment pursuant to Articles 46 and 47 of the Regulation (even if there no valid basis whatsoever for such an application), applying for a stay of the proceedings concerning the application for refusal of enforcement pending the determination of an appeal in the court of origin (under Article 51 of the Regulation) and applying for an order ordering the "suspension" of all enforcement proceedings in pending the determination of the application for refusal of enforcement (under Article 44 of the Regulation).

9. Is it possible to obtain interim relief (e.g. an injunction to restrain disposal of assets) while the enforcement or registration procedure takes place?

It is possible to obtain interim relief in Cyprus while the enforcement or registration procedure takes place.

Indeed, given that the judgment debtor is likely to be able to cause significant delays in the enforcement process, it is usually advisable for the judgment creditor to apply for such interim relief in Cyprus so as to prevent the disposition of assets against which the judgment may be enforced.

The interim relief which the judgment creditor may be able to obtain in the context and in aid of proceedings for recognition and enforcement of a foreign judgment (whether under the Recast Brussels Regulation, a bilateral treaty or international convention, or by a common law action) includes the following:

- a freezing order over assets of the judgement debtor;
- a “Chabra” order freezing assets beneficially owned by the judgment debtor, but held or administered by third parties;
- a charging order imposing a charge on the interest of the judgment debtor in specific assets he/she such as bonds and shares in Cypriot companies;
- a garnishee order-nisi ordering the attachment of debts owed to the judgment debtor by a third party (the garnishee) including money standing to the credit of the judgment debtor in any bank account;
- a disclosure order ordering the judgment debtor or third parties such as banks and service providers to disclose information likely to assist the judgment creditor in identifying and securing the preservation of assets of the judgment debtor against which the foreign judgment may be enforced.

10. What is the limitation period for enforcing a foreign judgment in your jurisdiction?

Section 4 of Cap. 10 provides that an application for recognition and enforcement pursuant to the provisions of Cap. 10 must be filed within 6 years from the date of the foreign judgment or, if an appeal is filed, from the date of the final appellate judgment.

A common law action to enforce a foreign judgment must be filed within 15 years from the date on which the judgment becomes final. This is because the “general” limitation of 15 years prescribed by the Cypriot Limitation of Actionable Rights Law of 2012 (Law 66(I)/2012) applies to such actions.

11. On what grounds can the enforcement

of foreign judgments be challenged in your jurisdiction?

The enforcement of a foreign judgment which is enforceable under the Recast Brussels Regulation can only be challenged on one of the grounds specified in Article 45 of the Regulation, namely:

- on the ground that recognition or enforcement of the foreign judgment would be manifestly contrary to public policy in Cyprus;
- on the ground that the judgment was given in default of appearance, without the defendant being served with the document which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his/her defence;
- on the ground that the judgment is irreconcilable with a judgment given between the same parties in Cyprus;
- on the ground that the judgment is irreconcilable with an earlier judgment which must be recognised pursuant to the provisions of the Regulation.

Many of the bilateral treaties to which Cyprus is a party contain specific provisions as to the grounds on which enforcement can be challenged. As a general rule, enforcement of a foreign judgment cannot be challenged on grounds relating to the merits of the judgment. Enforcement can only be challenged on one of the following grounds:

- that recognition and enforcement would be manifestly contrary to public policy;
- that the foreign court did not have jurisdiction to try the case;
- that the proceedings before the foreign court were conducted in breach of the principles of natural justice and/or in a way which resulted in a violation of the defendant’s right to a fair trial;
- that the foreign judgment was obtained by fraud;
- that the foreign judgment is irreconcilable with a judgment issued by a Cypriot court or with an earlier judgment of a foreign court which is enforceable in Cyprus; and
- that the applicable formal requirements relating to the foreign judgment and/or the documents required to be presented are not satisfied.

- Similar grounds for refusal of recognition and enforcement apply where enforcement is sought under the provisions of Cap. 10 or by a common law action.

12. Will the courts in your jurisdiction reconsider the merits of the judgment to be enforced?

Cypriot courts would not directly review or reconsider the merits of the foreign judgment to be enforced but may consider the merits or background of the judgement in other contexts, as stated in our response to Question 11 above.

13. Will the courts in your jurisdiction examine whether the foreign court had jurisdiction over the defendant? If so, what criteria will they apply to this?

Article 45(3) of the Recast Brussels Regulation expressly provides that the jurisdiction of the court of origin may not be reviewed save for the limited instances provided by the Recast Brussels Regulation itself, including those summarised in our response to Question 11 above.

With respect to judgments given in non-EU Member States, the general rule is that the Cypriot courts will examine whether the foreign court had jurisdiction over the defendant. Where enforcement is sought under a bilateral treaty, and such treaty contains provisions specifying when the courts of each state are considered to have jurisdiction over the defendant, Cypriot courts will apply these provisions.

Cap. 10 contains specific provisions addressing the question of when the foreign court is considered to have jurisdiction over the defendant. Specifically, section 6(2) of Cap. 10 provides that, with respect to actions in personam, the foreign court is considered to have had jurisdiction over the defendant if the defendant agreed to submit or submitted to the jurisdiction of the foreign court or filed a counterclaim in the proceedings, or was domiciled or had a place of business within the jurisdiction of the foreign court or if the proceedings before the foreign court had as their object rights in moveable or immovable property situated within the jurisdiction of the foreign court.

Similar criteria apply where enforcement is sought by a common law action.

14. Do the courts in your jurisdiction

impose any requirements on the way in which the defendant was served with the proceedings? Can foreign judgments in default be enforced?

As stated above, the Cypriot court 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 rights to a fair trial was infringed and that recognition of the judgment would therefore be contrary to the public policy of Cyprus.

A very interesting example of a case where enforcement of a foreign default judgment in Cyprus was challenged is the case of *BTA Bank v Ablyazov*⁴ where our firm acted for the judgment creditor. 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.

15. Do the courts in your jurisdiction have a discretion over whether or not to recognise foreign judgments?

A Cypriot court cannot refuse to recognise a foreign judgment falling within the scope of application of the Recast Brussels Regulation or any bilateral treaty or international convention or Cap.10 or under the common law rules unless one or more of the specific grounds for refusal or recognition referred to in our answer to Question 11 applies.

16. Are there any types of foreign judgment which cannot be enforced in your jurisdiction? For example can foreign judgments for punitive or multiple damages be enforced?

The Brussels Recast Regulation does not contain any provision which permits the non-enforcement of foreign judgments for punitive or multiple damages. On the contrary, Article 55 of the Regulation suggests that judgments which order a payment by way of penalty are required to be enforced so long as the payment has been finally determined by the court of origin.

In principle, and regardless of whether enforcement is sought under the Recast Brussels Regulation or a bilateral treaty or an international convention or under Cap.10 or by a common law action, a foreign judgment given in civil proceedings will be enforced even if it awards punitive or multiple damages unless the Cypriot court considers that the imposition of such damages is so manifestly unjustified and unfair or that the amount of such damages is so unreasonably high that enforcement of the judgment would be contrary to public policy. We consider that the Cypriot court would be reluctant to take this view except in very extreme cases.

17. Can enforcement procedures be started in your jurisdiction if there is a pending appeal in the foreign jurisdiction?

The lodging of an appeal would not, of itself, prevent the enforcement of a first instance judgment in Cyprus unless it affects the enforceability of the judgment in the state of origin. However, if such an appeal is lodged, the enforcement process in Cyprus may be delayed because the lodging of an appeal may in certain circumstances enable the judgment debtor to achieve a stay of the enforcement proceedings.

18. Can you appeal a decision recognising or enforcing a foreign judgment in your jurisdiction?

All decisions recognising or enforcing a foreign judgment may be appealed. However, the lodging of such an appeal does not affect the enforceability of the foreign judgment unless an order ordering a stay of the execution of the foreign judgment pending the appeal is granted by the first instance court or the appellate court.

19. Can interest be claimed on the judgment sum in your jurisdiction? If so on what basis and at what rate?

The judgment creditor is entitled to claim such interest on the judgment as is payable to him under the law of the foreign court which has given the judgment.

20. Do the courts of your jurisdiction require a foreign judgment to be converted into local currency for the purposes of enforcement?

There are no limitations or exchange control laws in Cyprus that would hinder the free movement of any amount that could be recovered as a consequence of the implementation of the foreign judgment.

21. Can the costs of enforcement (e.g. court costs, as well as the parties' costs of instructing lawyers and other professionals) be recovered from the judgment debtor in your jurisdiction?

Costs are normally awarded to the successful party. Thus, if the recognition and enforcement of the foreign judgment is successful, the total sum will be determined in the local currency for the purpose of execution at the site of execution. The respondent may also be required to pay the court fees and costs associated with the enforcement procedures. It should be noted however that the costs of legal representation which the successful party is entitled to recover are assessed with reference to the amounts stipulated in rules published by the Supreme Court of Cyprus and not with reference to the successful party's actual costs. This means that the successful party may be able to recover only a fraction of his/her actual costs.

22. Are third parties allowed to fund enforcement action in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

It is unclear whether third party funding is permitted in Cyprus as this matter has not yet been determined or considered by the Cypriot courts. Given that, as a rule, a costs order cannot be issued against a person who is not a party to the proceedings, even if third party funding is held to be permitted, it is unlikely that a Cypriot court would make a third-party funder liable for the costs incurred by the other side.

23. What do you think will be the most significant developments in the enforcement process in your jurisdiction in the next 5 years?

The most significant development will undoubtedly be the major overhaul of the Cypriot court system which is in the process of being completed and which entails,

among other things, the establishment of a new Court of Appeal as well as a new Commercial Court. These reforms are expected to significantly improve the speed and efficiency of our courts resulting in swifter enforcement procedures.

24. Has your country ratified the Hague Choice of Courts Convention 2005? If not, do you expect it to in the foreseeable future?

As a member of the EU, Cyprus is bound by the Hague Choice of Courts Convention 2005 without there being any need for ratification.

25. Has your country ratified the Hague Judgments Convention 2019? If not, do you expect it to in the foreseeable future?

As a member of the EU, Cyprus is bound by the Hague Judgments Convention of 2019 (to which the European Union acceded in July 2022) without there being any need for ratification.

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