# Cyprus: Corporate Residence in the context of Recognition and Enforcement of Foreign Judgments – Is it a matter of a mere piece of paper?

## In a landmark judgment issued by the District Court of Nicosia last September, the test of corporate residence in the context of recognition and enforcement of foreign judgments was thoroughly examined.

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**Introduction**

The case concerned an application filed in Cyprus by a Russian limited liability company (the "**Russian Applicant Company**") in order to recognize a judgment allegedly issued by a Russian court against a Russian national and resident individual, now deceased (the "**Russian Respondent**").

The Treaty between the Republic of Cyprus and the Union of Soviet Socialist Republics on Legal Assistance in Civil and Criminal Matters of 19 January 1984 (the "**Treaty**") was applicable.

Article 27 of the Treaty provides that any application for enforcement of a judgment *must be submitted to* the judicial authority at the place where the judgment was given (***the State of Issue***) in which case the application *will be transmitted* by the said judicial authority to the competent court of the other Contracting State **(*the State of Enforcement*)**. *By way of an exception*, Article 27 of the Treaty allows an applicant to submit the application for enforcement directly *to the competent court of the State of Enforcement if the applicant has his permanent or temporary residence in the territory of the State of Enforcement*.

In the case in question the Russian Applicant Company was initially registered in Cyprus as a foreign company with a place of business in Cyprus pursuant to the provisions of section 347 of Companies Law, Cap. 113 (securing a relevant certificate of registration issued by the Registrar of Companies in Cyprus) and then filed the application *directly* to the Cypriot court (the District Court of Nicosia).

The Russian Respondent objected to the application by contesting *inter alia* the jurisdiction of the Cyprus courts.

**Residence – An Issue of jurisdiction**

The Cypriot court accepted the submissions put forward by the advocates for the Russian Respondent that the issue of residence pertains to the jurisdiction of the court to exercise its powers under the Treaty and further that the jurisdiction is not a floating

issue but is an issue which must be determined by reference to the time when the Court is seised, citing in this regard a number of Cypriot court cases and an English court case brought to its attention including the Cypriot cases of *VTB Bank (Open Joint-Stock Company) -v- Alekseyevich and another,* Civil Appeal no. 206/2014, 12/06/2020 and *Yushchenko Tatiana Nikolaevna -v- Borodin Andrey Fridrihovich*, Application no. 5/2013, DC Limassol, dated 14/11/2014 as well as the recent English case of *Derbyshire County Council v Mother and others* [2023] 2 W.L.R. 1270.

**Corporate Residence – The test**

Acknowledging that in the case of taxation, in the case of an overseas trading corporation as well as in others cases, "*the residence of a company is not determined by the application of a uniform test but a different meaning is given to those words in each of them"* (*Palmer's Company Law*, Vol. I, 1982, p. 102, para. 8-11) the Court ruled that reference to "residence" in Article 27 of the Treaty is not void of content since apart from the fact that as a condition it pertains to the jurisdiction of the Court, it requires the existence of some form of *nexus* between the applicant and the State of Enforcement in case the application is filed directly in that state.

The Court then proceeded to address the question whether the mere registration of the Russian Applicant Company as a foreign company having a place of business in Cyprus pursuant to section 347 of the Companies Law, Cap. 113 constitutes "residence" of the Russian Applicant Company in Cyprus. The answer was negative.

Citing *Borodin* where it was found that in the case of a Russian individual "*residence [under Article 27 of the Treaty] is not possible to exist on papers only [and that] physical presence of the person, accompanied by his intention to reside temporarily, or as the case may be, permanently at the place where he chose, to have his residence is required"* the Court concluded that no less stringent test should be applied in the case of foreign (Russian) companies, noting that there is *nothing in the Treaty or Cap. 113* to suggest that the mere registration by a foreign company of a place of business in Cyprus *shall be deemed* to constitute residence of that company in Cyprus. In this respect, it is interesting to highlight the fact that although there was Cypriot case law (the *Promsvyazbank* cases) brought to the attention of the court by the advocates for the Russian Applicant Company suggesting that the existence of a place of business (a branch) in Cyprus fully satisfies the criterion of residence, the Court accepted the submissions put forward by the advocates for the Russian Respondent that the facts in those cases were materially different from the facts of the present case since in the *Promsvyazbank* cases (a) the argument of the respondents that the relevant licence for the operation of the branch of Promsvyazbank was suspended was not submitted by way of an affidavit (as it should) but it was only submitted during the stage of submissions (and therefore there was a lack of a factual basis to support the relevant argument); and (b) it was apparent from the facts that the branch of Promsvyazbank was not limited to a mere registration but it conducted business including banking business.

The Court therefore concluded that whether the Russian Applicant Company resides in Cyprus or not must be decided by reference to the full spectrum of facts of the case and not only by reference to the registration of the Russian Applicant Company as a foreign

company pursuant to section 347 of Cap. 113, noting in this respect that the facts must refer to some sort of activity being carried on in the State of Enforcement even though such activity is ancillary to its main activity. In support of its conclusion the Court relied on well-known English textbooks widely recognized and relied upon by the Courts as well as relevant English case law.

Citing *Palmer's Company Law***,** 24th Edition, Steven & Sons Ltd (1987) at. p.1658, the Court explained that the concept of 'established place of business' of the English provision which is equivalent to Article 347(1) of Cap. 113, entails "*a specified or identifiable place at which [the company] carries on business"* that *"there must be some 'visible sign or physical indication'* that *"the company [must have] a connection with particular premises from which habitually or with some degree of regularity business is conducted"* and that *"it is not sufficient for the company to carry on business through an agent"*. And "*if the company is incorporated outside Great Britain has a locality satisfying this test in this country, it has an established place of business here even if it does not carry out its main activities at that locality but restricts its activities there to matters incidental to its main business".*

The Court further relied on Dicey, Morris & Collins, *The Conflict of Laws,* 16th ed, Sweet & Maxwell (2022) at p. 473 – 474 sating that the existence of a 'place of business' is now treated as "*a question of fact***"** and noting in this respect that "*the activity must have been carried on for a sufficient time for it to be characterised as a business"* and acknowledging that *"a real problem will normally only arise where the corporation's business is alleged to be carried on by a representative or agent who is not an officer or employee of the corporation, and who may act as a representative or agent if the business is that of the corporation, and not solely the business of the representative or agent who acts for it in England".*

The Court also noted that in Dicey, reference is made to *Adams v. Cape Industries Plc* [1990] Ch. 433 acknowledging that *Adams* was confirmed by subsequent case law as being the *locus classicus* governing questions of residence of a foreign company in the country ( see *Chopra a.o. v. Bank of Singapore Ltd* [2015] EWHC 1549 and see also *Hand Held Products Inc a.o. v. Zebra Technologies Europe Ltd* [2022] EWHC 640 (Ch). In *Adams* the following were decided by the English Court of Appeal (see p. 531 of the judgment) (emphasis added).

> *"In relation to trading corporations, we derive the three following propositions from consideration of the many authorities cited to us relating to the 'presence' of an overseas corporation.*
>
> *(1) The English courts will be likely to treat a trading corporation incorporated under the law of one country ('an overseas corporation') as present within the jurisdiction of the courts of another country only if either (i) it has established and* ***maintained at its own expense*** *(whether as owner or lessee) a fixed place of business of its own in the other country and for more than a minimal period of time* ***has carried on its own business at or from such premises by its servants or agents*** *(a 'branch office' case), or (ii)* ***a representative*** *of the overseas corporation has for more than a minimal period of time* ***been carrying on the overseas corporation's business*** *in the other country at or from some fixed place of business.*
>
> *(2) In either of these two cases presence can only be established if it can fairly be said that the overseas corporation's* ***business*** *(whether or not together with the*

*representative's own business)* ***has been transacted*** *at or from the fixed place of business. In the first case, this condition is likely to present few problems. In the second, the question whether* ***the representative has been carrying on the overseas corporation's business*** *or has been doing no more than carry on his own business will necessitate an investigation of the functions which he has been performing and all aspects of the relationship between him and the overseas corporation.*

*(3) In particular, but without prejudice to the generality of the foregoing, the following questions are likely to be relevant on such investigation: (a) whether or not the fixed place of business from which the representative operates was originally acquired for the purpose of enabling him to act on behalf of the overseas corporation; (b) whether the overseas corporation has directly reimbursed him for (i) the cost of his accommodation at the fixed place of business; (ii) the cost of his staff; (c) what other contributions, if any, the overseas corporation makes to the financing of the business carried on by the representative; (d) whether the representative is remunerated by reference to transactions, e.g. by commission, or by fixed regular payments or in some other way; (e) what degree of control the overseas corporation exercises over the running of the business conducted by the representative; (f) whether the representative reserves (i) part of his accommodation, (ii) part of his staff for conducting business related to the overseas corporation; (g) whether the representative displays the overseas corporation's name at his premises or on his stationery, and if so, whether he does so in such a way as to indicate that he is a representative of the overseas corporation; (h)* ***what business, if any, the representative transacts*** *as principal exclusively on his own behalf; (i) whether the representative makes contracts with customers or other third parties in the name of the overseas corporation, or otherwise in such manner as to bind it; (j) if so, whether the representative requires specific authority in advance before binding the overseas corporation to contractual obligations.*

*This list of questions is not exhaustive, and the answer to none of them is necessarily conclusive. If the judge, ante, p. 476B-C, was intending to say that in any case, other than a branch office case, the presence of the overseas company can never be established unless the representative has authority to contract on behalf of and bind the principal, we would regard this proposition as too widely stated. We accept Mr. Morison's submission to this effect. Every case of this character is likely to involve "a nice examination of all the facts, and inferences must be drawn from a number of facts adjusted together and contrasted:" La Bourgogne [1899] P. 1, 18, per Collins L.J.*

*Nevertheless, we agree with the general principle stated thus by Pearson J. in F. & K. Jabbour v. Custodian of Israeli Absentee Property [1954] 1 W.L.R. 139, 146:*

*'A corporation resides in a country* ***if it carries on business there*** *at a fixed place of business, and,* ***in the case of an agency, the principal test to be applied in determining whether the corporation is carrying on business at the agency is to ascertain whether the agent has authority to enter into contracts on behalf of the corporation without submitting them to the corporation for approval****...'***

*On the authorities, the presence or absence of such authority is clearly regarded as being of great importance one way or the other. A fortiori the fact that a representative, whether with or without prior approval, never makes contracts in the name of the overseas corporation or otherwise in such manner as to bind it must be a powerful factor pointing against the presence of the overseas corporation."*

As the Court further pointed out reference to *Adams* and also to part of the above passage from Dicey is made in the judgment of the Honorable President T. Th. Economou, P.D.C (as he then was) in (the first instance judgment in) *VTB Bank (Open*

*Joint – Stock Company) v. Taruta Sergey Aleksevevich et al*, General Application no. 378/14, 27.6.2014, where it becomes clear that the presence of a foreign [company] in the Republic of Cyprus is determined on the basis of the above principles. In particular, with reference to *Adams*, the Honorable President T. Th. Economou, P.D.C (as he then was) said:

> *The English Court of Appeal has exhaustively reviewed the relevant case law and has come to identify a large number of factors which must be taken into account. From this point of view, no one disputes that if the issue is raised properly, it may be a question of fact that will be decided in the context of the hearing on the merits.*

**Factual Findings**

In the present case the following (non-exhaustive) facts were proved before the Court or were otherwise admitted by the parties:

- The Russian Applicant Company is a company registered in Russia pursuant to Russian law.

- The main activity of the Russian Applicant Company is the investment in securities.

- The Russian Applicant Company was registered in Cyprus as a foreign company with a place of business in Cyprus, pursuant to section 347 of Cap. 113 on 06/04/2017. The place of business was an address in Nicosia (the "**Nicosia Address**"). The Russian Applicant Company never paid any local taxes to the Municipality of Nicosia pursuant to the applicable laws.

- The Nicosia Address was and still is the address of a Cypriot group of companies which provide corporate (fiduciary) services (the "**Corporate Service Provider Group**").

- Many companies being members of the Corporate Service Provider Group have the Nicosia Address registered as their registered office.

- In 2022 the registered address of the place of business of the Russian Applicavnt Company (the Nicosia Address) was changed to an address in Limassol (the "**Limassol Address**"). The Russian Applicant Company never paid any local taxes to the Municipality of Limassol pursuant to the applicable laws.

- The Limassol Address is the address of a flat forming part of a residential building.

- At the time of filing of the court application, the director of the Russian Applicant Company was a Russian national residing in Moscow. Subsequently, the director of the Russian Applicant Company was another Russian national residing in Moscow.

- At the time of registration of the Russian Applicant as a foreign company, YM was registered as an authorized person of the Russian Applicant Company in Cyprus. Address for correspondence was the Nicosia Address. Later in 2022, YM was substituted by a Latvian national as the new authorized person of the Russian Applicant Company.

- YM was a director of a number of companies being members of the Corporate Service Provider Group. YM was an employee of the Corporate Service Provider Group.

- The Registrar of Companies did not conduct any inspection in order to determine whether the Russian Applicant Company carried on any business activities in Cyprus before registering it as a foreign company with a place of business in Cyprus.

- The Russian Applicant never filed any documents pursuant to section 350(1) and (2) of Cap. 113 (eg financial statements) which are required to be filed by foreign companies having a place of business in Cyprus.

**The Court's Conclusions**

Citing *Alekseyevich*, the Court noted that the burden of proof is on the Russian Applicant to prove residence in Cyprus.

On the basis of the above, the Court concluded that there was nothing to suggest that the Russian Applicant Company carried on any business activity from Cyprus (from the Nicosia Address) (*Aktiesselskabet Dampskib "Hercules" v Grand Trunk Pacific Railway Co* [1912] 1 KB 222 and *South India Shipping Corp Ltd v Export-Import Bank of Korea* [1985] 1 WLR 585; *Adams (op. cit.).*

The Court further stated that YM is an employee of the Corporate Service Provider and not a director or an employee of the Russian Applicant Company noting that nothing was brought before the court about the nature of the authorization granted by the Russian Applicant Company to YM.

Referring to the admission by the Russian Applicant Company that the registration of many and hundreds of companies with the same registered address constitutes a usual practice, the Court found that the present case falls into what Dicey has commented that, "*in practice a real problem will normally only arise where the corporation's business is alleged to be carried on by a representative or agent, who is not an officer or employee of the corporation, and who may act as a representative or agent for other corporations in addition*.".

The Court found that the place of business at the Nicosia Address was not acquired with the purpose of establishing a place of business exclusively for the Russian Applicant Company and stated that there was no evidence in relation to the rest of the factors set out in *Adams,* for example about the costs of any services that may have been rendered by the Corporate Service Provider Group to the Russian Applicant Company or the extent of control by the Corporate Service Provider Group on any decisions of the

Russian Applicant Company, noting in this respect that the only evidence before the Court was a general statement made a by a Russian witness called by the Russian Applicant Company that the establishment of a place of business in Cyprus by the Russian Applicant Company was so established "*in order to represent some of its interests"*.

Nor could the service of a court document on the Russian Applicant Company at the Nicosia Address prove residence in Cyprus since such a service was duly made pursuant to section 347(1) of Cap. 113 on the basis of which the Russian Applicant Company provided an address for service of documents in Cyprus.

As a result, the Court found that the Russian Applicant was not resident in any way in Cyprus (whether permanently or temporarily) for the purpose of Article 27 of the Treaty. The Court therefore lacked any jurisdiction and the application was consequently dismissed with costs against the Russian Applicant Company.