

ENFORCEMENT OF FOREIGN JUDGMENTS

Author Guide

[A] Aim of the Publication

Free trade agreements, the growing expansion of international business, open-border politics--each in its own way offers major opportunities for world trade and new hope for individuals seeking to better their standard of living. But these new opportunities may come with challenges. The complications which can arise in a breakdown of contracts in multinational transactions and an attempt to enforce foreign judgements can prove costly and time-consuming.

Enforcement of Foreign Judgements helps alleviate the time and costs of consulting foreign attorneys or government agencies for information regarding the specific procedures of individual nations and their policies towards enforcement of foreign judgements.

It addresses the most pertinent specifications, requirements, and legislation of each individual nation. Topics addressed include:

- Categories of enforceable judgment
- Documentary requirements
- Methods of execution
- Translation of documents
- Pending proceedings
- And service requirements.

Having this crucial information on hand in a practical loose leaf guide allows users to research a particular country's requirements regarding enforcement policies without the need to search numerous separate sources. Periodic updates assure that *Enforcement of Foreign Judgements* includes all countries in which international business takes place.

[B] Contact Details

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[C] Submission Guidelines

- [1] A brief biographical note, including both the current affiliation as well as the e-mail address of the author(s), should be provided in the manuscript.

- [2] Only manuscripts in English will be considered for publication. Manuscripts should be written in standard English, while using 'ize' and 'ization' instead of 'ise' and 'isation'. Preferred reference source is the Oxford English Dictionary. However, in case of quotations the original spelling should be maintained. In case the complete manuscript is written by an American author, US spelling may also be used.
- [3] Manuscripts will be returned to the author if the English is below standard. In case of doubt about the correct use of the English language, authors are advised to have their text checked by a native speaker before submitting it.
- [4] Heading levels should be clearly indicated and should follow the standardized outline to allow for the full comparability of the contribution with other such contributions in the publication.
- [5] Special attention should be paid to quotations, footnotes, and references. All citations and quotations must be verified before submission of the manuscript. The accuracy of the contribution is the responsibility of the author. The journal has adopted the Association of Legal Writing Directors (ALWD) legal citation style to ensure uniformity. Citations should not appear in the text but in the footnotes. Footnotes should be numbered consecutively, using the footnote function in Word so that if any footnotes are added or deleted the others are automatically renumbered.
- [6] Tables should be self-explanatory and their content should not be repeated in the text. Do not tabulate unnecessarily. Tables should be numbered and should include concise titles.
- [7] Figures should be submitted as separate files along with the manuscript, and it is very important that they are high quality: .tif or .jpg files with a resolution of at least 600 dpi. Image material that has been downloaded from the internet generally is not acceptable due to low resolution.
- [8] Submitted manuscripts are understood to be final versions. They must not have been published or submitted for publication elsewhere.
- [9] Manuscripts should be submitted electronically, in Word format.

For further information on style, see the [House Style Guide](#).

[D] Update Cycle

We strive to update the content of this publication annually. We will inform the author well in advance of their deadline and send a reminder at least two times if the deadline is not met. Should we fail to hear from an author after several reminders, we will consider replacing the author.

[E] Peer Review

This publication is peer reviewed under the responsibility of the general editor.

[F] Copyright

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- [3] The author shall receive for the rights granted an electronic copy of their contribution.

[G] Outline

1. UNIFORMITY OF LAW AND REGULATIONS

Does the local country have a federal system, and if so, do the same law and regulations for the enforcement of foreign judgments apply in all states or cantons? If the same law does not apply, refer to question 26 and base your present answers on the federal code.

2. JUDGEMENTS

2.1 Definition

Define 'judgment' for the purpose of enforcement procedures.

2.2 Categories

Which type of judgment is enforceable, i.e.:

- (a) money judgments*
- (b) specific performance*
- (c) injunctions*
- (d) arbitration awards*
- (e) personal status (divorce, matrimonial, inheritance, adoption, insolvency)*
- (f) an award for multiple/punitive damages*
- (g) a judgment which is in itself a recognition of a previous foreign judgment*
- (h) are foreign interim order enforceable for:*
 - i. relief pendente lite*
 - ii. maintenance and custody*
- (i) judgments against the local State or any of its organs*
- (j) Apart from judgments which are against public policy and subject to paragraph 10, are there any judgments which would not be enforceable?
Are foreign fiscal judgments (income tax and customs duties) enforceable?*

2.3 Reciprocity

Is reciprocity of enforcement on the part of the foreign courts an essential for the enforcement by local courts?

3. CURRENCY REGULATIONS AND RESTRICTIONS

- (a) Are there any exchange control regulations or restrictions which would prevent free transfer of any amount which may be recovered as a result of the enforcement of the foreign judgment?*
- (b) If so, what relief is available other than acceptance of payment in the local currency?*
- (c) Must the value of the judgment be converted to local currency?*

4. DOCUMENTARY REQUIREMENTS

In the absence of any special treaty with a particular country (see Question 21), what are the documentary requirements for enforcement in addition to the certified copy of the judgment, i.e. power of attorney, affidavit, etc.:

- (a) If plaintiff is a company how is authorization to act to be proved, e.g. extract from company's office, resolution by directors certified by the attorney as being correct, or other method of proof?*
- (b) What allegation will be required in the application/affidavit, e.g., that the judgment is not against public morality, that the judgment is not longer appealable, etc.?*
- (c) Are faxed supporting documents or notarized copies acceptable, or only Originals?*

5. CONVENTIONS

To which of the following Hague conventions is the local country a signatory:

- *Civil Procedure*
- *National Law vs. Law of Domicile*
- *Recognition of Companies*
- *Maintenance of Children – Applicable Law*
- *Maintenance of Children – Enforcement*
- *Service Abroad*
- *Choice of Court*
- *Enforcement of Judgments*
- *Divorce – Recognition*
- *Administration of Estates*
- *Maintenance – Enforcement*
- *Maintenance – Applicable Law*
- *Matrimonial Property*
- *Civil Aspects of Abduction of Children*

6. AUTHENTICATION OF DOCUMENTS

How are the required documents to be authenticated, e.g., by the foreign court and/or local consulate, attorney, or by any other method of authentication?

7. TRANSLATION OF DOCUMENTS

- (a) Which languages are recognized without the necessity for translation of documents into local language?*
- (b) If translation is required, who has to certify the translation?*

8. REOPENING OR REVIEW OF JUDGMENTS

- (a) Would the local court have any power to review the foreign judgment if all formalities have been complied with and if the judgment meets local requirements?*

- (b) If so, what are the possible grounds?*
- (c) Can an allegation of fraud be raised in proceedings before the local court if such allegations had not previously been raised before the foreign court?*

9. PENDING PROCEDURE

- (a) What would be the effect of any pending proceedings instituted by the defendant in the local country or in another foreign country prior to the granting of judgment in the foreign country?*
- (b) What would be the effect of any pending appeal?*

10. DEFENCES

What defences are available to the defendant?

11. JURISDICTION

- (a) Does the local court automatically accept that the foreign court had jurisdiction and was properly seized of the matter? If not;*
- (b) Which law determines the question of jurisdiction, the local or foreign law?*
- (c) Does the local court require:*
 - i. consent to the foreign jurisdiction or*
 - ii. residence/citizenship/property ownership or domicile in the foreign country on the part of the party against whom judgment was granted?*
- (d) Does the entry of an appearance to defend in the foreign court prevent the defendant from subsequently repudiating the jurisdiction of the foreign court in proceedings before the local court:*
 - i. where jurisdiction was contested;*
 - ii. where jurisdiction was not contested?*
- (e) i. Is a foreign judgment granted by default treated any differently from any other kind of judgment?*
 - ii. If so, what would be regarded by the local court as a default judgment: i.e., failure to enter appearance to defend, failure to submit subsequent pleadings, or failure to appear at any hearing?*
- (f) If the foreign court accepted a clause conferring exclusive jurisdiction on the foreign court, can the local court decide to review the judgment on that ground?*
- (g) Must the respondent be a citizen/resident, own assets or carry on business in the local country for an application for enforcement to be submitted?*

12. CONTRACTUAL WAIVER

- (a) Would a prior contractual waiver of service or notice be recognized by the local courts?*
- (b) Would the local court enforce a foreign judgment although it was granted after a contractual waiver of procedural requirements usually imposed by the local court?*

13. SERVICE REQUIREMENTS

Does the local court have any requirements regarding the method of service on the initiating summons or process which led to the foreign judgment, or will the local court automatically accept the method of service recognized by the foreign court, even if it is not a method which would be recognized in respect of a locally initiated action?

14. CESSION

- (a) Would the local court recognize cession of a judgment either to another foreign claimant or to a local claimant?*
- (b) Could such a cession confer any advantages in the proceedings before the local court, e.g., a cession to a claimant in a foreign country enjoying a special treaty with the local country?*

15. INTERIM RELIEF

- (a) At the time of the filing the application for enforcement of the foreign judgment, would interim relief be granted by the local court pending recognition, e.g., attachment restraint from leaving the country, or any other interim relief?*
- (b) If interim relief is allowed, would the local court require that the foreign applicant provide security and if so in what amount and in what form?*

16. INTEREST

What interest is allowed:

- i. in terms of the original judgment;*
- ii. from date of recognition of the foreign judgment?*

17. TIME OF ENFORCEMENT AND SUBSEQUENT ACTION

- (a) Give the estimated time period from the date of filing of the application until the date of the enforcement of the foreign judgment:*
 - i. if unopposed,*
 - ii. if opposed.*
- (b) If the judgment is enforced by the local court, how is this enforceable:*
 - i. attachment of property – movable and immovable,*
 - ii. civil imprisonment,*
 - iii. bankruptcy/liquidation*
 - iv. restraint on leaving the country?*
- (c) Add a short and general description of enforcement procedure after local enforcement has been granted should there be any addition to the above possibilities.*
- (d) In the event of an appeal from a decision granting or refusing to grant enforcement:*
 - i. Is this an automatic right of appeal, or does leave to appeal have to be granted? If the latter, what is the usual attitude of the local courts?*
 - ii. What is the usual time period for such an appeal?*

- iii. *If the defendant appeals, would this automatically suspend execution proceedings or would the defendant have to make a special application? In the latter case, under what circumstances would the local court usually grant a suspension of proceedings?*

18. EXPENSES, LEGAL FEES AND SECURITY FOR COSTS

- (a) *What court fees are payable?*
(b) *On what basis would attorneys' fees to be charged?*
(c) *Is a lawyer permitted, should he so wish, to enter into a fee contingency agreement?*
(d) *What portion, if any, of local fees would be recoverable in the event of the applicant's success?*
(e) *Would the applicant have to give security for costs (apart from an application for interim relief dealt with under 15(b))?*

19. BANKRUPTCY/LIQUIDATION

- (a) *In the event of bankruptcy, either as a result of recognition of the foreign judgment or as a result of local bankruptcy proceeding, will the foreign creditor enjoy equality of dividend with local creditors?*
(b) *What powers would a foreign trustee have over the local assets after enforcement of the foreign bankruptcy?*

20. LAWYERS (WHO CAN APPEAR?)

Can all local lawyers appear in all jurisdictions necessary for enforcement procedures?

21. INTERNATIONAL TREATIES

With which countries does the local country have bi-lateral treaties or special treaties which could affect the answers in this questionnaire? Give details of any relevant changes.

22. CROSS EXAMINATION OF AFFIDAVIT'S DEPONENT

- (a) *If a supporting affidavit is required, can the defendant/respondent or court request cross-examination of the deponent?*
(b) *If so, under what circumstances? What would be the grounds for opposing such a request?*
(c) *Would the defendant be required to give security for the traveling expenses of the deponent?*

23. REQUIRED AFFIDAVIT

Format of required affidavit. Suggested form.

24. NEW ACTION INSTEAD OF ENFORCEMENT

(a) Can a new action be instituted on the original cause of action instead of making application for enforcement based on the judgment?

(b) If so, what is the period of prescription?

25. PRESCRIPTION

Within what period from granting of the judgment in the foreign country must action be initiated in the local country?

26. STATES/CANTONS

If the law in individual states or cantons differs, to what significant extent are the above answers modified?