



ICLG

The International Comparative Legal Guide to:

Enforcement of Foreign Judgments 2019

4th edition

A practical cross-border insight into the enforcement of foreign judgments

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EDITORIAL

Welcome to the fourth edition of *The International Comparative Legal Guide to: Enforcement of Foreign Judgments*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations relating to the enforcement of foreign judgments.

It is divided into two main sections:

Three general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting the enforcement of foreign judgments, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in the enforcement of foreign judgments in 36 jurisdictions.

All chapters are written by leading lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Louise Freeman and Chiz Nwokonkor of Covington & Burling LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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N-Advogados & CM Advogados

1 Country Finder

1.1 Please set out the various regimes applicable to recognising and enforcing judgments in your jurisdiction and the names of the countries to which such special regimes apply.

| Applicable Law/ Statutory Regime | Relevant Jurisdiction(s) | Corresponding Section Below |
|---|--|-----------------------------|
| Angolan Civil Procedure Code. | All countries to which none of the below specific statutes/ regulations apply. | Section 2. |
| New York Convention: New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 10 June 1958. | All signatory countries. | Section 3. |

2 General Regime

2.1 Absent any applicable special regime, what is the legal framework under which a foreign judgment would be recognised and enforced in your jurisdiction?

Besides the regulations and conventions stated in question 1.1, in the Angolan legal regime, the recognition and enforcement of foreign judgments is provided in Book III, Special Forms of Procedure, Chapter XII, The Foreign Judgment Review, article 1094 *et seq.* of the Angolan Civil Procedure Code (*Código do Processo Civil*), and supplemented by relevant case law on the numerous matters on which the codes remain silent. Angola is a civil law country, which means that case law is not binding but is highly persuasive on lower courts.

2.2 What constitutes a ‘judgment’ capable of recognition and enforcement in your jurisdiction?

As stated in article 1096 of the Angolan Civil Procedure Code, a judgment capable of recognition and enforcement under the Angolan jurisdiction has to fulfil the following requirements:

- the judgment has to be authentic;
- the judgment has to be final in accordance with the law of the country in which it was issued;
- it has to come from a foreign court whose jurisdiction has not been provoked in violation of the law and is not subject to the exclusive jurisdiction of the Angolan courts;
- the exception of *lis pendens* or *res judicata* cannot be invoked with reason in case it affects the Angolan courts, except if it was the foreign court that prevented the jurisdiction;
- the defendant has been regularly summoned for the action, under the law of the country of the court of origin, and that in the proceeding the adversarial principles and the equality of the parties has been observed; and
- it does not contain a decision whose recognition leads to a result manifestly incompatible with the principles of the international public order of the Angolan State.

2.3 What requirements (in form and substance) must a foreign judgment satisfy in order to be recognised and enforceable in your jurisdiction?

For a foreign judgment to be recognised and enforced in Angola, it has to pass through a formal recognition process called “*exequatur*”. To begin this process, the party must first file a claim that should be accompanied by the original or a certified copy of the following documents:

- the foreign judgment duly legalised or apostilled;
- the date when the decision was rendered in default;
- a document verifying that the defendant was notified with a summoning order;
- a document attesting that the ruling is final and enforceable in the country of origin;
- translations of the documents; and
- proof of power of attorney.

In addition, the following legal requirements are required in the Angolan legal order, stated in article 1096 of the Civil Procedure Code:

- that there is no doubt regarding the authenticity of the document containing the judgment or the intelligence of the decision;
- that the judgment has become final in accordance with the law of the country in which it was issued;
- that the judgment comes from a foreign court whose jurisdiction has not been provoked as a consequence of fraud and is not a matter with the exclusive competence of the Angolan courts;
- that the exception of *lis pendens* or *res judicata* cannot be invoked to question the jurisdiction of the Angolan court, except if it was a foreign court which prevented the jurisdiction;

- that the defendant has been regularly summoned for the action, under the law of the country of the court of origin, and that in the proceedings the adversarial principles and equality of the parties has been observed; and
- that the judgment does not contain a decision whose recognition leads to a result manifestly incompatible with the principles of the international public order of the Angolan State.

2.4 What (if any) connection to the jurisdiction is required for your courts to accept jurisdiction for recognition and enforcement of a foreign judgment?

A connection to the jurisdiction of the foreign judgment is not required.

2.5 Is there a difference between recognition and enforcement of judgments? If so, what are the legal effects of recognition and enforcement respectively?

Angolan law distinguishes between recognition and enforcement of judgments.

On one hand, recognition is the process that gives, in Angola, the same effects that the judgment has in the State where it was produced (the State in which enforcement is petitioned by any of the parties). This happens by introducing into the Angolan jurisdiction the same situation that was established in the legal order of the State of origin.

On the other hand, enforcement means that a judgment can be executed before an Angolan court, allowing the party to act coercively against the debtor in Angola.

In practice, creditors seeking to recover a claim in Angola will seek an enforcement order (termed an “*exequatur*”).

The request for review is filed at the Supreme Court. Once the *exequatur* is granted, the enforcement may be filed in the first instance court as if it were a domestic award.

2.6 Briefly explain the procedure for recognising and enforcing a foreign judgment in your jurisdiction.

The *exequatur* procedure, as described in question 2.3, will take place at the Chamber of Civil and Administration of the Supreme Court (*Tribunal Supremo*) which, according to article 1095 of the Civil Procedure Code, is the competent court in Angola to deal with this kind of process.

Regarding arbitral awards, article III of the New York Convention prescribes that the procedure for recognition and enforcement of foreign arbitral judgments follows the same procedure as judicial judgments as stated in the Civil Procedure Code.

The Angolan system of recognition of foreign judgments is a formal system in which the court limits its activity to the verification of the compliance of the judgment with the form requisites (regularity requirements).

In accordance with articles 1094 to 1102 of the Civil Procedure Code, the main steps to recognise a foreign judgment are the following:

- the claim (*petição inicial*);
- after the presentation of the claim at Court, the Court will make a preliminary analysis of the claim, to check it obeys the legal requisites for the process to proceed;
- if the claim obeys the conditions, the defendant is cited to present its statement of defence (*contestação*);
- if any matter arises from the statement of defence that deserves a response from the claimant, a written response (*resposta*) may be made;

- once the written statements are complete, the parties and the Public Ministry have 10 days each to plead before a trial and decision; and
- the decision can be subject to appeal, if the award does not comply with paragraphs c), f) and g) of article 1096 of the Angolan Civil Procedure Code.

To enforce the judgment, the creditor must summon the other party before the court of the opposing party’s domicile or the court of the place where the enforcement is contemplated.

The decision will be made by a single judge, after the exchange of written submissions and a hearing. The parties must be represented by a lawyer. The claim has to be accompanied by the following documents: a copy of the decision; proof of power of attorney; and other documents that are considered relevant to the enforcement proceedings. The bailiff proceeds with the enforcement, rendering an order stating the affected parties and the subject matter of the enforcement, as well as the investigation and research measures aimed to localise the assets of the judgment debtor. Finally, once the assets have been identified, they will be allocated to the creditor. Notifications are performed by bailiffs. In case of opposition to the enforcement of the foreign judgment, the ruling deciding on such opposition can be subject to further appeal. In case of dismissal of the enforcement without opposition, it is also possible to appeal such decision before the Appeal Court.

2.7 On what grounds can recognition/enforcement of a judgment be challenged? When can such a challenge be made?

The Angolan courts do not review the merits of the judgment, since the process of recognition and enforcement is thought to focus on the formal requirements. If the formal requirements are fulfilled, the judgment will be recognised/enforced. Therefore, the judgment can only be challenged if it does not comply with the formal requirements.

In this case, a decision should not be granted if it leads to a result that is manifestly incompatible with the international public policy principles of the Angolan State – principles that derive from a complex of rules, inspired by political, moral and economic factors which are accepted by a number of nations as an expression of an identical civilisation and culture and which are therefore embodied in the legal order of a number of States with which Angola has legal affinities, in line with the Constitution. Therefore, the judgment can also be challenged if it is incompatible with international public policy or if it was procured by fraud.

2.8 What, if any, is the relevant legal framework applicable to recognising and enforcing foreign judgments relating to specific subject matters?

The legal framework for the recognition and enforcement of foreign judgments normally applies to all subject matters.

As an exception to the above, foreign judgments rendered on public matters, i.e. through which the government of a foreign country relies upon its sovereign prerogatives (typically tax and criminal judgments), cannot be recognised and enforced in Angola.

Also, as an exception, we can point to the New York Convention, mentioned in question 1.1, to which Angola is a party, that contains specific provisions as to the recognition and enforcement of arbitral awards.

2.9 What is your court's approach to recognition and enforcement of a foreign judgment when there is: (a) a conflicting local judgment between the parties relating to the same issue; or (b) local proceedings pending between the parties?

As stated above in question 2.7, the Angolan courts only make a formal revision of foreign judgments.

Thus, courts cannot appreciate the merits of the judgment, so if the judgment complies with the formal requirements stated in article 1096 of the Civil Procedure Code, the judgment must be recognised, unless it is against Angolan international public order principles.

A foreign judgment is not recognised and declared enforceable if Angolan court proceedings are pending before the proceedings on which the judgment is based are finalised. By contrast, proceedings pending before foreign courts are irrelevant.

2.10 What is your court's approach to recognition and enforcement of a foreign judgment when there is a conflicting local law or prior judgment on the same or a similar issue, but between different parties?

As said above, in Angola there is no review of the merits of the judgment. This means that Angolan courts generally do not review whether the judgment complies with Angolan or foreign substantive law. The existence of a conflicting local law or prior judgment between different parties is not relevant, unless it would lead to an incompatibility with international public policy rules, since Angola is a civil law country and does not use the precedent principle.

2.11 What is your court's approach to recognition and enforcement of a foreign judgment that purports to apply the law of your country?

Angolan courts cannot review the merits of a foreign judgment, even if the foreign court incorrectly applied the law. The revision will be limited to verifying whether any of the conclusions or the procedure led to a breach of public policy rules. Therefore, there is no particular approach to the recognition and enforcement of a foreign judgment that purports to apply Angolan law.

2.12 Are there any differences in the rules and procedure of recognition and enforcement between the various states/regions/provinces in your country? Please explain.

Angolan law applies to the whole of Angola's territory. There are no specific local laws regarding this matter.

2.13 What is the relevant limitation period to recognise and enforce a foreign judgment?

There is no specific provision regarding the limitation period to enforce a foreign judgment. However, claims that have been declared final and absolute are time-barred after 30 years.

3 Special Enforcement Regimes Applicable to Judgments from Certain Countries

3.1 With reference to each of the specific regimes set out in question 1.1, what requirements (in form and substance) must the judgment satisfy in order to be recognised and enforceable under the respective regime?

The convention mentioned in question 1.1 – **NY Convention of 1958** is applicable to any arbitral awards that fall within the description of its Article I.

This Convention has the purpose of providing a form of proceedings whose purpose is to confer validity and enforceability to a foreign arbitral award within a specific legal order.

It also prescribes the enforcement of foreign arbitral judgments. However, the execution can only begin after the judgment has become valid and effective; in other words, after having been duly recognised.

In order to obtain recognition and enforcement, the party shall supply the duly authenticated original award or a duly certified copy, the original arbitration agreement or a duly certified copy.

Also, if the said award or agreement is not made in the official language of the country in which the award is enforced, the party applying for recognition and enforcement of the award shall translate these documents into such language, which shall be an official or sworn translation.

3.2 With reference to each of the specific regimes set out in question 1.1, does the regime specify a difference between recognition and enforcement? If so, what is the difference between the legal effect of recognition and enforcement?

The New York Convention provides for automatic recognition of foreign judgments, which has the same effects and limitations as described under the general regime.

3.3 With reference to each of the specific regimes set out in question 1.1, briefly explain the procedure for recognising and enforcing a foreign judgment.

The convention provides simplified proceedings to obtain enforcement of a foreign judgment. The creditor must summon the other party before the Court.

The claimant must provide a copy of the foreign judgment together with a translation, a copy of the notification of the decision to the debtor and a certificate from the foreign court certifying that no appeal was filed.

3.4 With reference to each of the specific regimes set out in question 1.1, on what grounds can recognition/enforcement of a judgment be challenged under the special regime? When can such a challenge be made?

According to the convention listed in question 1.1, enforcement can be challenged if the form requirements are not fulfilled.

Recognition and enforcement of foreign arbitral awards can be refused on the grounds set out in Article V of the New York Convention. These include:

- lack of a valid arbitration agreement;
- violations of the right to be heard;
- excess of authority;
- irregularities in the constitution of the arbitral tribunal or the proceedings;
- lack of a final and binding award;
- lack of objective arbitrability; and
- violation of public policy.

Beyond these grounds, no further review of the award is possible. In particular, there is no review of the merits of the judgment.

Also, recognition and enforcement will be denied if the judgment conflicts with Angolan international public policy rules.

4 Enforcement

4.1 Once a foreign judgment is recognised and enforced, what are the general methods of enforcement available to a judgment creditor?

A judgment creditor can proceed with the enforcement of a judgment, with *interim enforcement measures* on the basis of a foreign judgment even before beginning recognition/enforcement court proceedings in Angola, requesting the seizure of assets of the debtor when there is a threat to the recovery of the values in debt.

Such a threat will result from evidence that the debtor is likely to disappear or becomes bankrupt. The interim attachment will be executed by a bailiff without prior notice to the debtor and without the need for a court order. The assets will automatically be frozen upon service to the asset-holder, be it the debtor itself or a third party. The attachment must then be notified to the debtor within eight days and is subject to judicial review. Unless the court orders the attachments to be lifted, the assets will remain frozen for the duration of the enforcement procedure. If the court orders

enforcement of the foreign judgment, the frozen assets will be transferred to the creditor.

Attachments may be executed on movable or immovable assets, whether tangible or intangible, including real estate, bank accounts, claims, dividends, royalties, vehicles, etc.

The debtor can challenge enforcement measures. The case must be filed before court, where the parties file briefs and appear in court. The judgment confirming or lifting the attachments can be appealed.

5 Other Matters

5.1 Have there been any noteworthy recent (in the last 12 months) legal developments in your jurisdiction relevant to the recognition and enforcement of foreign judgments? Please provide a brief description.

Not that we are aware of.

5.2 Are there any particular tips you would give, or critical issues that you would flag, to clients seeking to recognise and enforce a foreign judgment in your jurisdiction?

Creditors are aware of the fact that enforcement proceedings in Angola are often slow. In some cases, notifications can be an extremely slow phase of the process, especially when the debtor is domiciled abroad.

In addition, all enforcement-related acts are performed by bailiffs. Angolan bailiffs are court workers which perform execution acts.

Also, it is important to meet, at the outset, all the legal requirements set out in the relevant regulation (including any minor procedural requirements as to the translation of the ruling into the official language of the State where the judgment is enforced) in order to avoid relevant delays in the processing of the case. Although in principle these proceedings should be relatively straightforward, depending upon the particularities of the case and the specific legal framework applicable, they can become more complex to solve.

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