



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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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
Portuguese Civil Procedure Code: Portuguese Code of Civil Enforcement Proceedings and Corresponding Case Law	All countries to which none of the below specific statutes/regulations apply	Section 2
Brussels I Bis Regulation: EU Regulation no 1215/2012, of 12 December 2012, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters	All countries within the EU	Section 3
Brussels II Bis Regulation: Council Regulation (EC) no 2201/2003, of 27 November 2003, on jurisdiction and the recognition and enforcement of judgments in marriage and paternal responsibility matters	All countries within the EU	Section 3
Insolvency Regulation: Regulation (EU) no 848/2015, of 20 November 2015, of the European Parliament and of the Council on insolvency proceedings	All countries within the EU	Section 3

Applicable Law/ Statutory Regime	Relevant Jurisdiction(s)	Corresponding Section Below
Succession Regulation: Regulation (EU) no 650/2012, of 4 July 2012, of the European Parliament and of the Council on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession	All countries within the EU	Section 3
Lugano Convention: Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, of 21 December 2007	Switzerland, Norway and Iceland	Section 3
New York Convention: New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, of 10 June 1958	All signatory countries	Section 3
Washington Convention: Convention on the Settlement of Investment Disputes Between States and Nationals of Other States, of 18 March 1965	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 Portuguese jurisdiction, the recognition and enforcement of foreign judgments is stated in the Civil Procedure Code (*Código do Processo Civil*), Book V, Special forms of procedure, Title XIV, The Foreign Judgment Review, Article 978 *et seq.*, and supplemented by relevant case law on the numerous matters on which the codes remain silent. In a civil law jurisdiction (such as Portugal), 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 980 of the Civil Procedure Code, a judgment capable of recognition and enforcement under the Portuguese 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;
- the judgment 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 Portuguese courts;
- the exception of *lis pendens* or *res judicata* cannot be invoked with reason in case it affects the Portuguese court, 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 have 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 Portuguese 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 Portugal, it has to pass through a formal recognition process called "exequatur".

In order to start 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 to this, the judgment has to meet the requirements stated in Article 980 of the Civil Procedure Code, as mentioned in question 2.2:

- there should be no doubt regarding the authenticity of the document containing the judgment or the intelligence of the decision;

- the judgment has to be final in accordance with the law of the country in which it was issued;
- the judgment has to come 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 Portuguese courts;
- the exception of *lis pendens* or *res judicata* cannot be invoked to question the jurisdiction of the Portuguese court, except if it was the foreign court which 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 proceedings, the principles of the adversary and equality of the parties have been observed; and
- the judgment cannot contain a decision whose recognition leads to a result manifestly incompatible with the principles of the international public order of the Portuguese 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?

The Portuguese jurisdiction distinguishes between recognition and enforcement of judgments.

The recognition is a process that gives the same effects to the judgment in Portugal as it does 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 Portuguese legal order 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 a Portuguese court, allowing the party to act coercively against the debtor in Portugal.

In practice, creditors seeking to recover a claim in Portugal will seek an enforcement order ("exequatur").

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 Court of Second Instance (*Tribunal da Relação*), of the registered domicile of the defendant, which is the competent court in Portugal to deal with this kind of process.

However, if the judgment in question is an arbitral award, the competent court will be the First Instance Court (*Tribunal da Primeira Instância*). Besides, Article III of the New York Convention states 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 Portuguese 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).

To recognise a foreign judgment, in accordance with Articles 978 to 985 of the Civil Procedure Code, the main phases are the following:

- the claim (*petição inicial*);
- a preliminary analysis of the claim will be made by the Court, to check it obeys the legal requisites for the process to

proceed and if the claim obeys the conditions, the defendant is cited to present its statement of defence (*contestação*);

- following the presentation of the statement of defence by the defendant, if any matter arises that deserves a response from the claimant, there will be place for a written response (*resposta*);
- once the written statements are finished, the parties and the Public Ministry have 15 days to plead and there is a trial and decision; and
- the decision can be subject to appeal if any of the parties do not agree with the decision and comply with the legal requisites to appeal.

In order 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 a period of exchange of written submissions and a hearing. The parties must be represented by a lawyer.

The claim is 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 or the execution agent 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 debtor. Once the assets have been identified, they will be allocated to the creditor.

Notifications are performed by bailiffs or execution agents. When the recipient is domiciled abroad, unless provided otherwise by special conventions on international notifications, a special procedure applies. In case of opposition to the enforcement of the foreign judgment, the ruling deciding on such opposition can be subject to 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 Portuguese courts do not review the merits of the judgment, because the process is thought to only verify that formal requirements are fulfilled. Therefore, the recognition and enforcement of a judgment can only be challenged if it does not comply with the formal requirements.

The system for reviewing foreign judgments is shaped by the principle of formal review, which is based on the restriction that a decision should not be granted if it leads to a result that is manifestly incompatible with the international public policy principles of the Portuguese State, i.e. 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 Portugal has legal affinities, in line with the Portuguese Constitution (*Constituição da República Portuguesa – CRP*).

Thus, 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 Portugal.

Also, as an exception, we can point to the multilateral conventions, to which Portugal is a party, that contain specific provisions as to recognition and enforcement, such as those stated in question 1.1.

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, Portuguese courts only make a formal revision of foreign judgments.

Therefore, courts cannot appreciate the merits of the judgment, so if the judgment complies with the formal requirements stated in Article 980 of the Civil Procedure Code, the judgment must be recognised, unless it is against Portuguese international public order principles.

A foreign judgment is not recognised and declared enforceable if Portuguese 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?

In Portugal there is no review of the merits of the judgment. This means that Portuguese courts do not review whether the judgment complies with Portuguese 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 incompatibility with international public policy rules, since Portugal 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?

Portuguese courts cannot review the merits of a foreign judgment, even if the foreign court incorrectly applied the law. The revision process is 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 Portuguese 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.

Portuguese law applies to the whole Portuguese 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 conventions mentioned in question 1.1 above require the foreign judgment to be final and binding in the country of origin before being recognised and enforced in another country. Also, the foreign judgment must have been rendered by a court of competent jurisdiction according to private international law rules. The conventions also require that the defendant must have been properly summoned. Below, we give a short summary of the conventions to which Portugal is a signatory and its particularities.

Brussels I Bis Regulation:

Under the Brussels I Bis Regulation, the decisions that can be recognised and enforced are on civil and commercial matters. The decisions concerning these matters, rendered by any Member State, will be automatically recognised, without the need for exequatur. Also, a judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required.

Brussels II Bis Regulation:

The decisions that can be enforced under Brussels II are those of matrimonial and parental responsibility matters, mainly regarding divorce, nullity of marriage, and rulings on the parental responsibility of the parents. It also expressly recognises the possibility of partial enforcement. It reproduces the requirements set out in the Brussels I Bis Regulation, with minor differences.

Insolvency Regulation:

Regarding the Insolvency Regulation, the decisions that can be enforced are those that comply with the definition provided in its Article 2, which mainly refers to any resolution issued in the context of an insolvency proceeding. It also expressly refers to the provisions of Brussels I for the enforcement of such judgments.

Succession Regulation:

Under Regulation 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession, the decisions that can be enforced are those that comply with the definition provided in Article 3, paragraph g): any decision in a matter of succession given by a court of a Member State, and that fall within its scope. It is very similar to the Brussels I Bis Regulation, except for some small differences such as interim measures that can be ordered together with the enforcement of the judgment. It also recognises the possibility of partial enforcement.

Lugano Convention:

Under the Lugano Convention, the decisions which ought to be enforced are those that fall within its scope. The requirements are

very similar to those required under the Brussels I Bis Regulation, except for interim measures, which can be ordered along with the enforcement of the judgment. It also recognises the possibility of partial enforcement.

NY Convention:

The New York 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 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 it into such language. The translation must be an official or sworn translation.

Washington Convention:

The Washington Convention of 1965 is applicable to arbitral awards issued by the International Centre for Settlement of Investment Disputes (ICSID), for disputes concerning an investment between a signatory State and a national of another signatory State. In order to recognise a judgment, a copy of the award certified by the Secretary-General is required. According to paragraph 1 of Article 54 of the Washington Convention, each Contracting State must recognise an award rendered within the Convention and enforce the pecuniary obligations imposed by that award. Therefore, no exequatur will be needed. The enforcement of partial/interim awards is also possible.

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?

All conventions provide 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 conventions provide simplified proceedings to obtain enforcement of a foreign judgment. The creditor must summon the other party before the Court.

The claimant shall provide the following documents:

- 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 conventions 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;
- violation 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. Particularly, there is no review of the merits of the judgment.

Also, recognition and enforcement will be denied if the judgment conflicts with Portuguese 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 Portugal, requesting the seizure of assets of the debtor when there is a threat to the recovery of the values in debt.

In practice, such a threat will result from evidence that the debtor is likely to disappear or become insolvent. 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 the 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 the 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 Portugal are generally slow. For instance, in some cases, notifications can be an extremely slow phase of the process, especially when the debtor is domiciled abroad.

Additionally, all enforcement-related acts are performed by bailiffs or execution agents (*agentes de execução*). Portuguese execution agents are hired by the parties themselves rather than appointed by the court. Retaining the services of a competent bailiff is a key part of enforcing in Portugal and enhances the likelihood of effective collection.

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 on the particularities of the case and the specific legal framework applicable, they can become more complex to solve.

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Born on September 5, 1981, in Braga, Portugal. Filipa has a law degree from the University of Minho (2004). Between 2007 and 2010, Filipa collaborated with a notary, and is therefore familiarised with notarial functions. Filipa attended a Short Term Advanced Course on Local Authorities in 2005 at the University of Minho. Filipa has been legally qualified to give professional training since 2011. Filipa has been inscribed in Portugal's Bar Association, as a lawyer, since 2010, and has worked at N-Advogados – Nuno Albuquerque, Deolinda Ribas, Sociedade De Advogados, R.L. since then. She has solid experience in advising national and international companies and groups, especially in the international market, namely in relation to foreign investment, financing agreements, international negotiation, the formation process of companies abroad, registration of foreign companies, as well as acquisition of national companies or international groups of the company, or of its assets, including national or international mergers.



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- Alternative Investment Funds
- Anti-Money Laundering
- Aviation Law
- Business Crime
- Cartels & Leniency
- Class & Group Actions
- Competition Litigation
- Construction & Engineering Law
- Copyright
- Corporate Governance
- Corporate Immigration
- Corporate Investigations
- Corporate Recovery & Insolvency
- Corporate Tax
- Cybersecurity
- Data Protection
- Employment & Labour Law
- Enforcement of Foreign Judgments
- Environment & Climate Change Law
- Family Law
- Financial Services Disputes
- Fintech
- Franchise
- Gambling
- Insurance & Reinsurance
- International Arbitration
- Investor-State Arbitration
- Lending & Secured Finance
- Litigation & Dispute Resolution
- Merger Control
- Mergers & Acquisitions
- Mining Law
- Oil & Gas Regulation
- Outsourcing
- Patents
- Pharmaceutical Advertising
- Private Client
- Private Equity
- Product Liability
- Project Finance
- Public Investment Funds
- Public Procurement
- Real Estate
- Securitisation
- Shipping Law
- Telecoms, Media & Internet
- Trade Marks
- Vertical Agreements and Dominant Firms

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