

Spain

Alfredo Guerrero



Fernando Badenes



King & Wood Mallesons

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 Jurisdictions	Corresponding Section Below
EU regulations.	All countries within the EU.	Please see European Union chapter for more details.
Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters 2007 (“ Lugano Convention ”).	Switzerland, Norway and Iceland.	Section 3.
New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (“ NY Convention ”).	All countries signatory to the Convention.	Section 3.
European Convention on International Commercial Arbitration 1961 (“ Geneva Convention ”).	All countries signatory to the Convention.	Section 3.
Convention on the Settlement of Investment Disputes Between States and Nationals of Other States 1965 (“ Washington Convention ”).	All countries signatory to the Convention.	Section 3.
Bilateral treaties.	Countries with whom Spain has signed a bilateral treaty on enforcement (for instance, Colombia, El Salvador, Israel, Mexico and Tunisia).	Section 3.
Act 29/2015, of 30 July, on international legal cooperation on civil matters (“ Legal Cooperation Act ”).	All countries not part of any multilateral or bilateral convention.	Section 2.

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?

Civil and commercial enforcement in Spain is governed under the Civil Procedure Act (*Ley de Enjuiciamiento Civil*), Book III and, particularly, by the Legal Cooperation Act, Title V.

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

Firstly, note that, save some exceptions (pursuant to certain international treaties), according to the Legal Cooperation Act for the enforcement of foreign judgments, it is necessary beforehand to undergo a formal contentious process for its recognition called “*exequatur*”. In these cases, it is necessary to supply, along with the claim, the following documents: (i) the original or certified copy of the foreign judgment duly legalised or apostilled; (ii) when the decision was rendered in default, the document verifying that the defendant was notified with a summoning order; (iii) a document attesting that the ruling is final and enforceable in the country of origin; (iv) the corresponding translations; and (v) the power of attorney.

Further, the basic requirements for any foreign judgment (not subject to any international convention) to be recognised in Spain are the following: (i) the judgment shall be final (i.e. no appeal has been submitted); (ii) it cannot be against the public policy of Spain; (iii) it should not have breached the rights of defence, as would occur if the judgment was rendered in default when no notification took place with enough time to prepare a defence; (iv) the foreign courts should not have decided on a matter for which Spanish courts were exclusively competent or concerning other matters when the jurisdiction of the foreign court was not based on the basis of a reasonable connection; (v) it cannot be irreconcilable with a judgment rendered in Spain; (vi) it cannot be irreconcilable with a prior foreign judgment when the latter meets the necessary conditions for its recognition in Spain; and (vii) no pending proceedings have taken place between the same parties and on the same subject matter in Spain which have commenced on a previous date.

In addition, please note that any judicial decisions, legally defined as those rendered by a jurisdictional body of any State independently appointed, can be recognised or enforced. With regard to interim measures, recognition or enforcement are only available provided

that, before its adoption, a hearing took place in the presence of the defendant in circumstances when their refusal would entail a breach of the right to receive an effective legal protection.

With regard to specific subject matters, the only rules to be applied are the European Regulations described in the EU chapter in this guide.

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

Recognition and enforcement show differences. Enforcement means that a judgment may be executed before the competent court, while recognition is the process of giving the same effects to the judgment in the State in which enforcement is sought as it does in the State of origin.

The main reason why a judgment creditor may choose to merely recognise the judgment is to prevent the debtor from triggering litigation concerning the same subject matter or where the creditor aims to recognise a legal situation in the relevant country (e.g. divorce). However, for the judgment to deploy all its effects and if the judgment creditor wants to compel the debtor to comply with the said judgment, enforcement must be sought.

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

In general, the exequatur procedure described under question 2.2 will take place (save the provisions contained in international treaties where this procedure is not necessary) and the judgment creditor will file a claim seeking the recognition and subsequent enforcement of the decision. The case will be heard by the First Instance Court or Commercial Court (depending on the subject matter of the judicial decision) of the registered domicile of the defendant or, secondarily, where enforcement will effectively take place or, lastly, the Court at which the claim is filed. In these proceedings, no hearing will take place and the public prosecutor will be involved.

The ruling of the Court recognising the foreign judgment is subject to appeal first before the Appeal Court and, subsequently, before the Supreme Court following the requirements set forth under the Civil Procedure Act.

Further, along with the exequatur claim, it can also seek enforcement. Enforcement proceedings are governed by the Civil Procedure Act. They commence with a claim (either separate or along with the exequatur claim) seeking the enforcement of the judgment or award. The claim shall be accompanied with: (i) a copy of the decision (in arbitration, also a copy of the agreement and the document verifying its notification to the parties is requested); (ii) the power of attorney; and (iii) any other documents that may be relevant to the enforcement proceedings. The legal clerk will then proceed 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 (either directly or after being sold) to the judgment creditor.

Please note that in case of opposition to the enforcement of the foreign judgment, the ruling that decides 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.

Lastly, note that, in general, the average time for enforcement is from four months to one year, and that pursuant to Articles 49 and 50.3 of the Legal Cooperation Act, partial recognition or enforcement is possible.

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

This process cannot entail a revision on the merits, but it is designed to merely verify that formal requirements are met, in order to avoid that an “unfair” judgment is enforced under Spanish law. This revision can be carried out during both the recognition (exequatur) and enforcement stages. Thus, if the legal requirements are met, recognition and enforcement will generally take place.

With regard to the grounds to challenge the recognition, these are summarised in question 2.2. In relation to enforcement, the eventual grounds included under the Civil Procedure Act are very limited. In this sense, please note that the debtor could claim that: (i) the limitation period to file the enforcement claim has elapsed; (ii) it has complied with the judgment; (iii) the principal amount of the enforcement is higher than the original penalty; and (iv) other limited procedural grounds (for instance, the lack of capacity of the claimant, the nullity of the judicial order or the lack of capacity of the defendant for being considered as the debtor within enforcement proceedings).

Moreover, if the judgment is against Spanish public policy, it cannot be either recognised or enforced, and according to Article 36.2 of the Civil Procedure Act and Article 21.2 of the Organic Law of the Judicial Power, Spanish courts would not be competent to hear cases which involve sovereign immunity. Both concepts are construed narrowly by Spanish courts.

In addition, there are no countries whose judgments are historically subjected to a higher degree of scrutiny in this regard. In this vein, please note that although reciprocity is not requested under the Legal Cooperation Act, the Government could issue a Royal Decree stating that no cooperation will take place with those foreign countries that repeatedly refuse cooperation.

Lastly, note that, in Spain, anti-suit injunctions are not available.

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

In general, aside from the European Regulations concerning specific subject matters, it is not foreseen that any particular legal framework applies.

2.7 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?

In the cases highlighted, according to the Legal Cooperation Act, recognition will be refused if it (i) would be irreconcilable with a Spanish ruling, and (ii) cannot be recognised in scenarios where pending proceedings between the parties take place in Spain if they have commenced before the foreign proceedings.

2.8 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?

Since Spanish courts cannot review the merits, the revision will be limited to verifying whether the judgment is against public policy

when applying any applicable law to the case. Further, as stated above in question 2.7, if the foreign judgment is irreconcilable to a Spanish judgment, it will not be recognised pursuant to the Legal Cooperation Act.

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

As stated in question 2.8, Spanish courts will neither review the merits nor the procedural rules that may have been applied. Therefore, the revision will be limited to verifying whether any of the conclusions reached (concerning the legal merits) or the procedure (e.g. whether the parties could properly defend themselves) amounted to a breach of public policy.

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

Enforcement in Spain takes place identically throughout the whole territory.

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

Spanish case law has clarified that the limitation period is five years as from the date the foreign judgment is made final, pursuant to Article 518 of the Civil Procedure Act (judgment of the Supreme Court 4838/2014, dated 16 October 2014).

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?

Find below the answers depending upon the specific regime:

- a) **Lugano Convention:** The decisions that can be enforced are those that fall within its scope. It basically reproduces the requirements stated in EU Regulation No. 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (“**Brussels I Bis Regulation**”), save the last mention of interim measures, which can be ordered together with the enforcement of the judgment. It recognises the possibility of a partial enforcement of a judgment.
- b) **NY Convention:** The Convention is applicable to any arbitral awards that fall within the description stated in Article I. According to Article IV, the parties, in order to obtain recognition and enforcement, shall supply: (i) the duly authenticated original award or a duly certified copy thereof; and (ii) the original arbitration agreement or a duly certified copy thereof. Further, if the said award or agreement is not made in an official language of the country in which the award is enforced, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language, which shall be an official or sworn translation.

In addition, pursuant to Article V, recognition and enforcement of the award may only be refused where: (i) the parties to the arbitration agreement were under some incapacity, or the said

agreement is not valid; (ii) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; (iii) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced; (iv) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; and (v) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

Pursuant to Article V, other grounds available for refusal are: (vi) the subject matter was not arbitrable; and (vii) the award is against public policy. These grounds have been strictly applied by Spanish courts.

Lastly, it should be noted that enforcement of partial/interim awards is possible.

- c) **Geneva Convention:** This Convention is applicable to controversies arising from commercial international transactions. This Convention reflects the same first four requirements as set forth pursuant to Article V of the NY Convention. As stated in point b) above, enforcement of partial/interim awards is possible.
- d) **Washington Convention:** This convention is applicable to arbitral awards issued by the International Centre for Settlement of Investment Disputes (ICSID) regarding the disputes concerning an investment between a signatory state and a national of another signatory state. It requires a copy of the award certified by the Secretary-General. Further, according to Article 54.1, each Contracting State shall recognise an award rendered pursuant to the Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State. Therefore, no exequatur will be needed. Also, enforcement of partial/interim awards is possible. This convention does not specify any cause of opposition. Therefore, only the causes of opposition to enforcement set forth under the Civil Procedure Act detailed in question 2.5 apply.

The limitation period would be five years, as stated in question 2.11 above.

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 regime for recognition and enforcement is essentially the same. As regards the difference between the legal effect of recognition and enforcement, this answer is the same as the one stated in question 2.3 above.

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.

For the European Regulations and the Washington Convention, no exequatur will be necessary and, therefore, enforcement proceedings

according to the procedural law applicable to the Member State where the enforcement is made could commence automatically. These proceedings are described in question 2.4 above.

As to the remaining judgments and arbitral awards, exequatur will be mandatory, either by direct application of the Legal Cooperation Act or by the reference to the latter made by the Spanish Arbitration Act 60/2003, of 23 December, when stating in its Article 46 – with regard to foreign awards – that the exequatur shall be governed by the NY Convention (save any more beneficial conventions) and be conducted by the procedure set forth by the civil procedural framework for judgments rendered by foreign courts.

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?

In this sense, please note that no revision on the merits is possible for either the European Regulations or for the arbitration conventions. Therefore, this answer has been provided in question 3.1 above.

The challenge, where applicable, can be made either at the recognition stage or at the enforcement stage.

4 Enforcement

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

In order to enforce a judgment, the creditor may principally request the seizure of assets, although in some particular scenarios (for instance, when a company or the majority of shares or participations are seized), a judicial receiver may be also appointed and the creditor may also request to manage the assets seized in order to be repaid with their profits.

In addition, when the legal requirements set forth in the Civil Procedure Act for these purposes are met, interim measures could also be requested (for instance, interim freezing of assets, judicial intervention or receiver of assets, deposit of a movable asset, registration within the Property or Commercial Registry of the claim, prohibition to make any act of disposal concerning the assets or properties at stake, the suspension of the effects of corporate resolutions, etc.).

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.

There have not been any noteworthy legal developments in the last 12 months.

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?

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. Another important hurdle is sometimes the lack of the necessary knowledge of the process by the competent Spanish Court, which can lead to significant delays.

**Alfredo Guerrero**

King & Wood Mallesons
C/ Goya, 6, 4º planta
C.P. 28001, Madrid
Spain

Tel: +34 91 426 0050
Email: alfredo.guerrero@eu.kwm.com
URL: www.kwm.com/en

Alfredo Guerrero is Partner and head of Litigation and Arbitration in the Spanish office of King & Wood Mallesons (KWM). He specialises in the fields of Company, Civil and Criminal Law. He has been responsible for legal proceedings throughout his professional career, providing legal direction in all stages of the law process: Investigative Courts; Courts of First Instance; Company Courts; Contentious-Administrative Courts; Provincial Court of Appeals; National Court of Appeals; the Supreme Court; the Economic-Administrative Court; and the Constitutional Court. He has experience acting in complex commercial and financial disputes for a wide range of Spanish and international clients, including investment banks, international corporate groups, private equity funds and other financial institutions.

Alfredo is recommended by *Chambers & Partners* and *Best Lawyers* as one of the best specialists in Dispute Resolution in Spain.

**Fernando Badenes**

King & Wood Mallesons
C/ Goya, 6, 4º planta
C.P. 28001, Madrid
Spain

Tel: +34 91 426 0050
Email: fernando.badenes@eu.kwm.com
URL: www.kwm.com/en

Fernando Badenes is a Senior Associate of the Litigation and Arbitration Department in the Spanish office of King & Wood Mallesons (KWM). He specialises in the fields of Company, Civil and Insolvency and Restructuring Law. He has a wide expertise in all kind of Civil and Commercial Disputes between national and international major companies before either ordinary Courts or Arbitration Courts, including, amongst others, contractual liability, disputes between shareholders, directors liability, stock markets, unfair competition, private equity issues and construction agreements. He has also a depth of practice in proceedings under controversy in the application of Public and Private International Law. Finally, he also has wide expertise in advising on criminal proceedings regarding white-collar crimes committed by directors and shareholders.

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