

International **Comparative** Legal Guides



Enforcement of Foreign Judgments **2021**

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

Sixth Edition

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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
EU Regulation No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (“ Brussels I Bis Regulation ”).	All countries within the EU.	Section 3.
Council Regulation (EC) No 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, repealing Regulation (EC) No 1347/2000 (“ Brussels II Bis Regulation ”).	All countries within the EU, except Denmark.	Section 3.
Regulation (EU) No 2015/848 of the European Parliament and of the Council on insolvency proceedings (“ Insolvency Regulation ”).	All countries within the EU, except Denmark.	Section 3.
Regulation (EU) No 650/2012 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 (“ Succession Regulation ”).	All countries within the EU, except Denmark and Ireland.	Section 3.
Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters 2007 (“ Lugano Convention ”).	All countries within the EU, Iceland, Norway and Switzerland. On April 8, 2020, the United Kingdom (“ UK ”) requested to join the Convention, but it is not yet a party.	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.
2005 Hague Convention on Choice of Court Agreements (“ 2005 Hague Convention ”).	All countries signatory to the Convention, including the UK.	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?

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 constitutes a 'judgment' capable of recognition and enforcement in your jurisdiction?

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 is 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 effective legal protection.

With regard to specific subject matters, the only rules to be applied are the European Regulations.

2.3 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 have not 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 have not 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.

With regard to specific subject matters, the only rules to be applied are the European Regulations, highlighted in question 1.1.

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?

According to the Legal Cooperation Act, no connection to the

jurisdiction is required to accept jurisdiction for recognition and enforcement of a foreign judgment save that the judgment, that shall be final, derives from a proceeding decided by a Court or Tribunal.

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 the enforcement will effectively take place or, lastly, the Court at which the claim is filed. In case the enforced company is under insolvency proceedings in Spain, the case will be heard by the Commercial Court that handles such insolvency proceedings if the subject matter is within the competence of the latter.

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

There are differences between recognition and enforcement. 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.

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

In general, the *exequatur* procedure described under question 2.3 will take place (save for 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. As stated above in question 2.4, 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 case the enforced company is under insolvency proceedings in Spain, the case will be heard by the Commercial Court that handles such insolvency proceedings if the subject matter is within competence of the latter. 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, enforcement can be sought. 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 at localising 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.

2.7 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 an “unfair” judgment being 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 2.3. 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 the debtor within enforcement proceedings).

Moreover, if the judgment is against Spanish public policy, it can be neither recognised nor 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 subject 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, please note that in Spain, anti-suit injunctions are not available.

2.8 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. In this sense, the European Regulations applicable are: (i) the Brussels I Bis Regulation; (ii) the Lugano Convention; (iii) the Brussels II Bis Regulation; (iv) the Insolvency Regulation; and (v) the Succession Regulation.

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?

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.

2.10 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?

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 2.9, if the foreign judgment is irreconcilable to a Spanish judgment, it will not be recognised pursuant to the Legal Cooperation Act.

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?

As stated in question 2.10, 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.

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

Enforcement in Spain takes place identically throughout the whole territory.

2.13 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.

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) **Brussels I Bis Regulation:** The decisions that can be recognised and enforced are those that comply with the

definition provided in Article 2.a) and which fall within its scope. Any of these decisions rendered by any Member State shall be automatically recognised, without the need for any *exequatur* procedure in this regard. In the same vein, 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.

Having said that, the parties shall supply the following documents: (i) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and (ii) the certificate issued pursuant to the provisions contained in the regulation. Further, where necessary, translation of the documents may be required.

Moreover, in order to be recognised or/and enforced, the *judgment*: (i) must comply with the public policy; (ii) if rendered in default, the defendant should have been served with the document which instituted the proceedings (or with an equivalent document) in sufficient time and in such a way as to enable him to arrange for his defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so; (iii) should not be irreconcilable with a judgment given between the same parties in the Member State addressed; (iv) should not be irreconcilable either with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the Member State addressed; and (v) cannot conflict with certain sections of the regulation.

The requirements set out above apply to all forms and types of judgments that fall within the scope of the regulation. However, with respect to *interim measures*, please note that the applicant should provide: (i) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; (ii) where the measure was ordered without the defendant being summoned to appear, proof of service of the judgment; and (iii) the certificate issued pursuant to the regulation, containing a description of the measure and certifying that: (a) the Court has jurisdiction as to the substance of the matter; and (b) the judgment is enforceable in the Member State of origin.

- b) **Brussels II Bis Regulation:** The decisions that can be enforced are those that comply with the definition provided in Article 2 and which fall within its scope, which mainly refer to any decision regarding divorce or nullity of the marriage as well as any ruling on the parental responsibility of the parents. It also expressly recognises the possibility of partial enforcement.

With minor differences, it reproduces the requirements set out in the Brussels I Bis Regulation. In this sense, it is noteworthy that in some cases a hearing of the affected party is required (a child or any third party that alleges that the judgment affects its parental responsibility), and the lack of this requirement is an additional reason to deny the recognition of the foreign judgment.

In addition, in the case of a judgment given in default, the party seeking recognition or applying for a declaration of enforceability shall produce: (i) the original or certified true copy of the document which establishes that the defaulting party was served with the document instituting the proceedings or with an equivalent document; or (ii) any document indicating that the defendant has accepted the judgment unequivocally.

- c) **Insolvency Regulation:** The decisions that can be enforced are those that comply with the definition provided in Article 2 and which fall within its scope, which mainly refer to any resolution issued in the context of an insolvency proceeding.

It directly refers to the provisions of the Brussels I Bis Regulation for the enforcement of such resolutions.

Any Member State could challenge the recognition of an insolvency proceeding opened or the enforcement of any judgment issued within such insolvency proceeding when such recognition or enforcement could produce effects contrary to the public policy of such Member State.

- d) **Succession Regulation:** The decisions that can be enforced are those that comply with the definition provided in Article 3.1.g) and which fall within its scope. It practically reflects the Brussels I Bis Regulation, save for some minor differences including the interim measures that can be ordered together with the enforcement of the judgment. It also expressly recognises the possibility of partial enforcement.

- e) **Lugano Convention:** The decisions that can be enforced are those that fall within its scope. It basically reproduces the requirements stated in the Brussels I Bis Regulation, save for 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.

- f) **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.

- g) **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.

- h) **Washington Convention:** This Convention is applicable to arbitral awards issued by the International Centre for Settlement of Investment Disputes (“ICSID”) regarding 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 as set forth under the Civil Procedure Act detailed in question 2.7 apply.
- i) **2005 Hague Convention:** The Hague Convention of 30 June 2005 on choice of court agreements states that a judgment given by a Court of a Contracting State designated in an exclusive choice of court agreement shall be recognised and enforced in other Contracting States. The party seeking recognition or enforcement shall produce: (i) a complete and certified copy of the judgment; (ii) the exclusive choice of court agreement, a certified copy thereof, or other evidence of its existence; (iii) if the judgment was given by default, the original or certified copy of a document establishing that the document which instituted the proceedings was notified to the defaulting party; (iv) documents establishing the judgment’s effect or enforceability in the State of origin; or (v) in the case of judicial settlements, a certificate of a Court of the State of origin of its enforceability.

According to the Convention, recognition or enforcement may be refused only if: (i) the agreement was null and void under the law of the State of the chosen Court; (ii) a party lacked the capacity to conclude the agreement under the law of the requested State; (iii) the document which instituted the proceedings or an equivalent document, including the essential elements of the claim, was either not notified to the defendant in sufficient time, not enabling him to arrange for his defence, or was notified to the defendant in the requested State in a manner that is incompatible with the fundamental principles of the requested State concerning service of documents; (iv) the judgment was obtained by fraud in connection with a matter of procedure; (v) recognition or enforcement would be manifestly incompatible with the public policy of the requested State; (vi) the judgment is inconsistent with a judgment given in the requested State in a dispute between the same parties; or (vii) the judgment is inconsistent with an earlier judgment given in another State between the same parties on the same cause of action, provided that the earlier judgment fulfils the conditions necessary for its recognition in the requested State.

Lastly, please note that the procedure for recognition, declaration of enforceability or registration for enforcement, and the enforcement of the judgment, are governed by the law of the requested State, which, in Spain, is the Legal Cooperation Act.

The limitation period would be five years, as stated in question 2.13 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 regimes for recognition and enforcement are essentially the

same. As regards the difference between the legal effects of recognition and enforcement, please see question 2.5 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 2.6 above.

As to the remaining judgments and arbitral awards, *exequatur* will be mandatory, either by direct application of the Legal Cooperation Act or by 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 at either 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.

The exit of the UK from the EU implies significant changes in the regulatory framework for the recognition and enforcement in Spain of judgments issued by British Courts.

On January 1, 2021, the United Kingdom ceased to be part of the EU and, consequently, as of then EU legislation for the recognition and enforcement of foreign judgments is no longer applicable. However, it is important to clarify that the Brussels I Bis Regulation will continue to apply to all UK resolutions issued pursuant to proceedings initiated before January 1, 2021.

As regards judgments rendered pursuant to proceedings commenced on or after January 1, 2021, the regime applicable to the recognition and enforcement of UK judgments in Spain (and *vice versa*) will be the regime set out in the 2005 Hague Convention, which applies to judgments issued by a Court of a Contracting State previously designated in an exclusive choice of court agreement.

It should be noted that there is currently no other bilateral or multilateral treaty between the UK and the EU or Spain for the recognition and enforcement of foreign resolutions and, therefore, where the Hague Convention is not applicable, domestic legislation must be applied (the Legal Cooperation Act).

Moreover, on April 8, 2020, the UK applied for admission to the Lugano Convention, but as long as the UK's adhesion is not accepted by the Member States, this Convention will not be applicable. It is also possible that in the future the EU and UK

will ratify the 2019 Hague Convention, which is not yet in force; or even enter into a bilateral treaty to regulate the recognition and enforcement of judgments in a similar way to the Brussels I Bis Regulation, which would certainly be the best option.

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 necessary knowledge of the process by the competent Spanish Court, which can lead to significant delays.



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