

GETTING THE
DEAL THROUGH 

Enforcement of Foreign Judgments 2019

Contributing editor

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Preface

Enforcement of Foreign Judgments 2019

Eighth edition

Getting the Deal Through is delighted to publish the eighth edition of *Enforcement of Foreign Judgments*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Ghana and Russia.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Patrick Doris of Gibson, Dunn & Crutcher UK LLP, for his continued assistance with this volume.

GETTING THE
DEAL THROUGH 

London
August 2018

Panama

Jose Carrizo

Morgan & Morgan

1 Treaties

Is your country party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments? What is the country's approach to entering into these treaties and what, if any, amendments or reservations has your country made to such treaties?

Yes. Panama is a signatory to various bilateral and multilateral treaties. From a legal standpoint, those treaties, once signed, need to be ratified by the National Assembly, pursuant to the Constitution.

2 Intra-state variations

Is there uniformity in the law on the enforcement of foreign judgments among different jurisdictions within the country?

Yes.

3 Sources of law

What are the sources of law regarding the enforcement of foreign judgments?

Primarily, legislation.

4 Hague Convention requirements

To the extent the enforcing country is a signatory of the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, will the court require strict compliance with its provisions before recognising a foreign judgment?

Yes.

5 Limitation periods

What is the limitation period for enforcement of a foreign judgment? When does it commence to run? In what circumstances would the enforcing court consider the statute of limitations of the foreign jurisdiction?

The enforcing court will not enter into considerations related to the statute of limitations.

6 Types of enforceable order

Which remedies ordered by a foreign court are enforceable in your jurisdiction?

Final judgments are subject to exequatur proceedings. Interim measures, however, may be subject to personal services in Panama, provided that the requested party is physically located in Panama.

7 Competent courts

Must cases seeking enforcement of foreign judgments be brought in a particular court?

Exequatur proceedings on the enforcement of foreign judgments are handled by the Fourth Chamber of the Supreme Court of Justice.

8 Separation of recognition and enforcement

To what extent is the process for obtaining judicial recognition of a foreign judgment separate from the process for enforcement?

These are separate proceedings. After the exequatur proceedings have concluded, the enforcement process starts.

9 Defences

Can a defendant raise merits-based defences to liability or to the scope of the award entered in the foreign jurisdiction, or is the defendant limited to more narrow grounds for challenging a foreign judgment?

The defendant may oppose the exequatur proceedings if the following conditions are not met:

- the foreign judgment was rendered as a consequence of the exercise of an action in personam, with the exception of when the law especially regulates probate matters opened in other countries;
- the foreign judgment was rendered as part of proceedings in which the lawsuit was personally served on the defendant;
- the obligation that is sought to be enforced in Panama is legal in the territory of Panama; and
- the copy of the foreign judgment is authentic (that is, it must have been authenticated either by the Panamanian Consul of the place where it was issued or by Apostille prior to its submission in Panama as part of the request of enforcement).

10 Injunctive relief

May a party obtain injunctive relief to prevent foreign judgment enforcement proceedings in your jurisdiction?

Such a possibility does not exist in Panama.

11 Basic requirements for recognition

What are the basic mandatory requirements for recognition of a foreign judgment?

The basic requirements are as follows:

- the foreign judgment was rendered as a consequence of the exercise of an action in personam, with the exception of when the law especially regulates probate matters opened in other countries;
- the foreign judgment was rendered as part of proceedings in which the lawsuit was personally served on the defendant;
- the obligation that is sought to be enforced in Panama is legal in the territory of Panama; and
- the copy of the foreign judgment is authentic (that is, it must have been authenticated either by the Panamanian Consul of the place where it was issued or by Apostille prior to its submission in Panama as part of the request of enforcement).

12 Other factors

May other non-mandatory factors for recognition of a foreign judgment be considered and if so what factors?

In the absence of a bilateral or multinational treaty, reciprocity should be always considered.

13 Procedural equivalence

Is there a requirement that the judicial proceedings where the judgment was entered correspond to due process in your jurisdiction, and if so, how is that requirement evaluated?

It should meet the same requirements as set out in question 11.

14 Personal jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had personal jurisdiction over the defendant, and if so, how is that requirement met?

The main requirement is that the defendant has been personally served in the jurisdiction where the judgment was issued.

15 Subject-matter jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had subject-matter jurisdiction over the controversy, and if so, how is that requirement met?

The foreign judgment should be rendered as a consequence of the exercise of an action in personam.

16 Service

Must the defendant have been technically or formally served with notice of the original action in the foreign jurisdiction, or is actual notice sufficient? How much notice is usually considered sufficient?

The defendant must have been personally served.

17 Fairness of foreign jurisdiction

Will the court consider the relative inconvenience of the foreign jurisdiction to the defendant as a basis for declining to enforce a foreign judgment?

No.

18 Vitiating by fraud

Will the court examine the foreign judgment for allegations of fraud upon the defendant or the court?

Such allegations could be opposed as being contrary to Panamanian public order.

19 Public policy

Will the court examine the foreign judgment for consistency with the enforcing jurisdiction's public policy and substantive laws?

Yes.

20 Conflicting decisions

What will the court do if the foreign judgment sought to be enforced is in conflict with another final and conclusive judgment involving the same parties or parties in privity?

If the court determines that conflicting decisions could be deemed as being contrary to public order, yes.

21 Enforcement against third parties

Will a court apply the principles of agency or alter ego to enforce a judgment against a party other than the named judgment debtor?

No.

22 Alternative dispute resolution

What will the court do if the parties had an enforceable agreement to use alternative dispute resolution, and the defendant argues that this requirement was not followed by the party seeking to enforce?

This is a consideration that the local court will probably not enter into.

23 Favourably treated jurisdictions

Are judgments from some foreign jurisdictions given greater deference than judgments from others? If so, why?

No.

24 Alteration of awards

Will a court ever recognise only part of a judgment, or alter or limit the damage award?

No.



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25 Currency, interest, costs

In recognising a foreign judgment, does the court convert the damage award to local currency and take into account such factors as interest and court costs and exchange controls? If interest claims are allowed, which law governs the rate of interest?

The award can be converted into the local currency; however, as granted by the judgment issued, interest should be outside Panamanian jurisdiction.

26 Security

Is there a right to appeal from a judgment recognising or enforcing a foreign judgment? If so, what procedures, if any, are available to ensure the judgment will be enforceable against the defendant if and when it is affirmed?

No.

27 Enforcement process

Once a foreign judgment is recognised, what is the process for enforcing it in your jurisdiction?

Enforcement proceedings should be commenced after the exequatur proceedings have concluded.

28 Pitfalls

What are the most common pitfalls in seeking recognition or enforcement of a foreign judgment in your jurisdiction?

Non-compliance with the basic requirements set out in question 11.

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