



ICLG

The International Comparative Legal Guide to:

Enforcement of Foreign Judgments 2018

3rd Edition

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

Published by Global Legal Group, with contributions from:

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URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Stephens & George
Print Group
March 2018

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ISBN 978-1-911367-99-4
ISSN 2397-1924

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EDITORIAL

Welcome to the third 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:

Two general chapters. These chapters 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
Luxembourg Civil Code of civil procedure.	All jurisdictions for which no EU or bilateral conventions apply.	Section 2.
Multilateral conventions.	State parties to multilateral conventions including Brussels Treaty between Belgium, the Netherlands and Luxembourg on the Jurisdiction, Bankruptcy, Validity and Enforcement of Judgments, Arbitration Awards and Authentic Instruments (24 November 1961), the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) and the Hague Convention on Recognition and Enforcement of Decisions Relating to Maintenance Obligations (2 October 1973).	Section 2.
Bilateral conventions on mutual judicial assistance.	State parties to bilateral conventions.	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?

The general regime of recognition and enforceability of foreign judgments is laid down in the Luxembourg Code of civil procedure (“NCPC”) and pertains to the entire field of civil and commercial

matters. The NCPC provides for a regime of recognition and enforceability by default, subject to the application of international treaties, European legislation and more specific rules of Luxembourgish law.

Subject to the special regimes set out by EU regulations and bilateral or multilateral conventions, the NCPC is applicable to all foreign judgments pertaining to civil and commercial matters, regardless of their country of origin.

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

For the purpose of enforcement proceedings in Luxembourg, “judgment” refers to a decision taken by a court of law or arbitration panel resolving a dispute at least partially. It can include orders, default judgments, injunctions, and interim measures.

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

In accordance with Article 678 of the NCPC and Articles 2123 and 2128 of the Luxembourg Civil Code, a judgment is to be understood as a decision stemming from a state authority exercising judicial power, i.e., having the competence to decide over a dispute in a binding manner. Any such decision is apt to be recognised or declared enforceable, whatever the name of the decision and whatever the nature of the authority that has rendered it, be it a body belonging to the judiciary, administration or other state division.

A judgment given in another state must be enforceable in its state of origin in order to be enforced in Luxembourg, regardless of whether the foreign decision is final or provisional (*Tribunal d’arrondissement de Luxembourg* 21 July 1934, Pas.13, p. 561; *Tribunal d’arrondissement de Luxembourg* 6 July 1955, Pas.16, p. 415; *Tribunal d’arrondissement de Luxembourg* 19 October 1955, Pas.16, p. 419; *Tribunal d’arrondissement de Luxembourg* 5 February 1964, Pas.19, p. 285).

Additional requirements such as compliance with due process, proper appearance in court, etc. are treated as forming part of the Luxembourg public policy. If the foreign judgment is not subject to a convention or to a European act, enforcement is governed by the general rules of Luxembourg law. The Luxembourg judge will verify whether the foreign judgment fulfils the following conditions:

- The foreign judgment is not contrary to Luxembourg public order. A Luxembourg judgment has decided that this is only taken into account where application of the foreign law would be an offence sufficiently serious to an interest considered

by Luxembourg law as one that must be protected (*Tribunal d'arrondissement de Luxembourg* 26 November 2008, No. 260/2008).

- The foreign judgment is enforceable in the country where it has been rendered.
- The foreign judgment has been given by a jurisdiction recognised by Luxembourg conflict of law rules.
- The foreign judgment accords with the laws of the country of origin.
- The defendant had proper notice of the proceedings. The Luxembourg enforcement judge must check that the procedural rules in the jurisdiction of origin have been respected, to detect possible fraud (for example, respect for the rights of the defendant, *Tribunal d'arrondissement de Luxembourg* 18 June 1986, No. 34622).
- No conflicting domestic or foreign judgment exists. The Luxembourg judge will check that there is no fraud with regard to Luxembourg law. The foreign judgment will only be declared enforceable in Luxembourg if it has been rendered without fraud to Luxembourg law.
- The foreign judgment must contain an order that can be executed (*Cour d'Appel Luxembourg* 14 May 1975, Pas.23, p. 138).

In relation to the application of the law determined by Luxembourg conflicts of law rules, since a French decision (French Cour de cassation 20 February 2007, 05-14.082, Cornelissen) and a decision of the ECHR (*ECHR 28 June 2007, W v Luxembourg*), the enforcement judge is not obliged to check that the law applied by the foreign judge is the law designated by the Luxembourg conflicts of law rules (*Tribunal d'arrondissement de Luxembourg* 10 January 2008, No.111736; *Tribunal d'arrondissement de Luxembourg* 17 April 2008, No.116/2008).

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?

There are no legal requirements as to the required connection to Luxembourg courts to accept jurisdiction for recognition and enforcement of a foreign judgment. However, a connection should exist such as the applicant's intent to enforce the decision on assets held in Luxembourg, as it would contribute to any interest in starting a legal action.

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

Luxembourg, on the basis of treaties such as the Council Regulation (EU) No. 1215/2012 of the European Parliament and the Council of 12 December 2012 on the Jurisdiction, Recognition and Enforcement of Judgments in Civil and Commercial Matters, which came into force on 10 January 2015 and replaces Regulation No. 44/2001, distinguishes between recognition and enforcement of judgments.

Recognition is intended to introduce into the Luxembourgish legal order the situation established by a foreign judgment. Most foreign judgments are recognised in Luxembourg without the need for a court to issue a judgment. However, a party may wish to seek recognition to secure a formal acknowledgment of its rights. For instance, a party can request recognition to prevent a claim already judged in a foreign court from being made in Luxembourg; or, to the contrary, to support a new claim made in Luxembourg on the basis of the legal situation created by a foreign judgment.

Enforcement carries greater effect in that it allows a party to take coercive steps against the debtor on Luxembourg territory. The foreign judgment acquires the same legal force and effect as Luxembourgish judgments, providing full access to the available enforcement measures under local law.

It seems that when it comes to a recognition and an enforcement of foreign judgments solely based on Article 678 of the NCPC, this distinction is not as clear, as this Article only refers to enforcements. Finally, in case of a foreign judgment subject to a treaty, the foreign judgment will be enforceable once the time-period to challenge the recognition order will have expired.

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

European Judgments. Foreign judgments that are subject to a treaty or EU law fall under Articles 679–685 of the NCPC, which refers to the simplified procedure of enforcement that applies, as provided by the Council Regulation (EU) No. 1215/2012 of the European Parliament and the Council of 12 December 2012 on the Jurisdiction, Recognition and Enforcement of Judgments in Civil and Commercial Matters, which came into force on 10 January 2015 and replaces Regulation No. 44/2001.

These judgments are recognised and immediately enforceable in the way provided for by the Regulation.

Foreign Judgments subject to a Treaty. Under Article 680 and subsequent of the NCPC, such foreign judgments must be submitted to simplified exequatur formalities to have legal effects in Luxembourg, which consists in filing an *ex parte* petition with the President of the District Court who will grant an order if all the criteria are met.

Foreign Judgments not subject to a Treaty or EU law. Under Article 678 of the NCPC, foreign judgments not subject to a treaty or EU law must be submitted to the exequatur formalities to have legal effect in Luxembourg (*Tribunal d'arrondissement de Luxembourg*, 22 October 1913, Pas. 10, p. 219). The decision will be submitted to the court to obtain an exequatur, in the presence of the prosecutor, who will make sure the public's interests are preserved. Such proceedings will request the filing of briefs and usually take several months.

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

European Judgments. Council Regulation (EU) No. 1215/2012 of the European Parliament and the Council of 12 December 2012 on the Jurisdiction, Recognition and Enforcement of Judgments in Civil and Commercial Matters provides for specific grounds and specific proceedings, which apply in all European countries.

Foreign Judgments subject to a Treaty. Once the order granted by the President of the District Court is served by a Bailiff on the defendant, the latter has one month if he resides in Luxembourg and two months if he resides abroad to challenge this recognition order.

There are no specific grounds provided by the NCPC in this situation governed by the specific treaty. However, if the requirements provided by the applicable treaty to recognise and enforce the decision are not met or if the foreign judgment is contrary to Luxembourg's public policy, these should be considered as solid grounds on which the recognition/enforcement of a judgment can be challenged.

Foreign Judgments not subject to a Treaty or EU law. A foreign judgment will be challenged by the opposing party or the prosecutor ("*ministère public*") during the proceedings initiated by the applicant

to have the judgment declared enforceable in Luxembourg. These arguments will be raised in the exchange of briefs.

A foreign judgment may only be challenged on the grounds that:

- the foreign judgment does not meet the conditions set out in question 2.2 above;
- the foreign judgment is incompatible with the Luxembourg international public policy regime. Under international public policy, Luxembourg courts will exercise more restraint and will show greater deference to the foreign court than under domestic public policy. International public policy rules require: proper service to the defendant; reasonable time afforded to the parties during the foreign proceedings; equality of arms in the course of the proceedings; and independence and impartiality of the foreign court;
- the foreign judgment was procured by fraud; or
- the foreign judgment conflicts with another national judgment.

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

If the judgment does not fall under the scope of Council Regulation (EU) No. 1215/2012 of the European Parliament and the Council of 12 December 2012 on the Jurisdiction, Recognition and Enforcement of Judgments in Civil and Commercial Matters, the NCPC will apply.

It should be noted, however, that specific instruments apply, for example, in regards to the child custody and visitation rights.

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?

Recognition/enforcement may be denied in case of incompatibility with a prior conflicting judgment. Two judgments are deemed incompatible when their legal consequences exclude each other. Therefore, if a recognition and enforcement is sought in Luxembourg and a conflicting local judgment pre-exists, the recognition and enforcement would be refused.

If local proceedings have already been initiated, and subsequently a recognition and enforcement of a foreign judgment is initiated, the second judge to be called should stay the proceedings until a decision in the first proceedings is handed down.

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?

The existence of a conflicting local law or prior judgment between different parties is irrelevant, unless it would result to an incompatibility with Luxembourg public policy rules. The Court would have to determine if public policy is violated on a case-by-case approach.

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?

Luxembourg courts cannot review the merits of a foreign judgment, even if the foreign court incorrectly applied Luxembourg law. There

is therefore no particular approach to the recognition and enforcement of a foreign judgment that purports to apply Luxembourg law except for 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.

Luxembourg does not have various states/regions/provinces having different laws in regards to the recognition and enforcement of foreign judgments.

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. Since Luxembourg courts can only enforce foreign judgments that are enforceable in their country of origin; the limitation period to recognise or enforce a foreign judgment could depend on the law applicable to the foreign judgment in its country of origin.

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?

European Judgments are recognised upon production of a copy of the decision, of a certificate and possibly of a translation as per provided by Council Regulation (EU) No. 1215/2012 of the European Parliament and the Council of 12 December 2012 on the Jurisdiction, Recognition and Enforcement of Judgments in Civil and Commercial Matters. These judgments are immediately enforceable.

Foreign Judgments subject to a Treaty can be recognised if the requirements provided by the Treaty at stake are fulfilled.

Foreign Judgments not subject to a Treaty or EU law are subject to the requirements provided for in question 2.3 here 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?

We refer to our answer to 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.

We refer to our answer to question 2.6 above.

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?

We refer to our answer to question 2.7 above.

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 Luxembourg, a judgment creditor may proceed with interim enforcement measures on the basis of a foreign judgment even before starting recognition/enforcement court proceedings in Luxembourg, provided that it can rely on the existence of a “threat to the recovery of its claim”. In practice, such a threat will result from evidence that the debtor is likely to disappear or become insolvent: The interim attachment will be performed by a bailiff without prior notice to the debtor, and without the need for a court order. The targeted asset 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 (8) days and is subject to judicial review and validation.

Unless a court orders the lifting of the attachment, the assets will remain frozen for the duration of the enforcement procedure. If the court orders validation of the provisional arrest based upon 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 the following specific categories: real estate; bank accounts; claims; dividends; royalties, etc.

Interestingly, Regulation of the European Parliament and of the Council No. 655/2014 of 15 May 2014 establishing a European Account Preservation Order (the “EAPO”) procedure to facilitate cross-border debt recovery in civil and commercial matters (the “Regulation”) became fully applicable on 18 January 2017 in the Member States of the European Union, with the exception of the United Kingdom and Denmark. It is now possible to file a single application in standard form with the competent court of a participating Member State, at any stage of the proceedings, to freeze the debtor’s bank accounts in another participating Member State without further freezing order(s) or without being granted authorisation from the courts of the executing State.

In order to allow a creditor to obtain payment on the Preserved Bank Account, the Luxembourg Ministry of Justice submitted on 6 November 2017 to the Luxembourg Parliament draft law no. 7203 (the “Draft Law”), relating to the conversion of the EAPO into a national enforcement measure by means of a new provision, Article 791–1 of the NCPC.

The Draft Law entitles the creditor, once in possession of an enforceable title, to receive payment up to the value of his claim from the attached third party by means of a simple act of conversion (“*acte de conversion*”) served on both the attached third party and the debtor.

The Regulation further sets forth an interesting procedure allowing a creditor to request that the information necessary to identify the debtor’s bank(s) and account(s) be obtained by the court from a designated information authority of the Member State in which the creditor believes the debtor has an account.

Garnishees/third-party debtors are compelled to disclose, upon service of an attachment order, all their financial commitments to the debtor and to provide the supporting documentation.

In any case, a judgment creditor may proceed with the final attachment at the debtor’s promises or in the hands of a garnishee.

Attachments carried out in Luxembourg are deemed to include all assets located in Luxembourg – which include, in some circumstances, receivables against foreign branches of Luxembourg entities.

A debtor may challenge enforcement measures with one month of service (or three months if the debtor is domiciled abroad). The case must be filed before an enforcement judge who generally rules within three to six months, during which the parties file briefs and appear in court. The judgment confirming or lifting the attachment may be appealed.

Finally, a forced execution of the recognised foreign judgment may be undertaken according to the NCPC, for example, through an auction sale of assets belonging to the debtor.

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 has been no recent development relating to the sole recognition and enforcement of foreign judgments. It is, however, worth noting that in regards to the EAPO, Luxembourg has recently clarified how to converse the EAPO into a national enforcement measure, which is particularly interesting in the context of the recognition and enforcement of foreign judgments.

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?

As provided above, the applicant may proceed with an attachment of the debtor’s assets even prior to initiating recognition and enforcement proceedings. We therefore recommend, as a first step, to attach the debtor’s assets before commencing any proceeding in order to surprise the counterparty and maximise chances of recovery.

Also, it is to be noted that such proceedings in Luxembourg are not subject to initial court fees. The only fees incurred by the applicant are lawyers’ fees as well as the bailiff’s fees (which might include translation costs, but are not significant and unrelated to the amounts at stake).

Luxembourg is therefore an interesting jurisdiction for the recognition and enforcement of foreign judgments and courts are frequently solicited to that effect.

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