



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

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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
The Law on International Private Law.	All countries.	Section 2.
The Law on Enforcement.	All countries.	Section 2.
The Law on International Trade Arbitration of the Republic of Macedonia.	All countries.	Section 2.
New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.	All signatory countries of the New York 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?

Recognition of a foreign judgment in the Republic of Macedonia is regulated by the Law on International Private Law, and enforcement of judgments, including a foreign judgment recognised by a Macedonian court, is regulated by the Law on Enforcement.

In accordance with the Law on International Trade Arbitration of the Republic of Macedonia, the recognition of foreign arbitral awards is performed in accordance with the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.

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

The party that submits to the court a request for recognition of a foreign court decision should provide the original copy of the

foreign court decision or a certified copy of the same, along with a verified translation in the Macedonian language, and a confirmation issued from the competent foreign court or other body that such foreign decision is final.

If the request for recognition of the foreign court decision refers to its enforcement as well, the applicant party should also submit a confirmation issued under the law of the foreign country that such decision is enforceable.

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

Foreign court judgments will be recognised by Macedonian courts if the following conditions are met:

- 1) the party has provided the original or duly verified copy of the award to be provided;
- 2) the award is confirmed as final by the relevant authority;
- 3) the judgment is confirmed as enforceable by the relevant authority;
- 4) there was no violation of due process in the foreign procedure against the opposing party;
- 5) there is no exclusive jurisdiction of a Macedonian court for the subject of the dispute;
- 6) there is no agreement between the parties that a Macedonian court be competent for solving the dispute;
- 7) there is no *res judicata* in the substantive case; and
- 8) the judgment is not contrary to Macedonian public order.

In addition, to obtain the recognition and enforcement of a foreign arbitral judgment, the party applying for recognition and enforcement shall, at the time of the application, supply:

- a) The duly authenticated original award or a duly certified copy thereof.
- b) The original arbitration agreement or a duly certified copy thereof.

If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the arbitral judgment shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

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?

Please see items 5, 6, 7 and 8 under the answer to question 2.3 above.

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 is a difference between recognition and enforcement of a judgment under Macedonian law.

By way of recognition of a foreign judgment, the foreign judgment shall be considered as a judgment reached by Macedonian courts and it shall have legal effect in Macedonia as well.

By way of enforcement of the foreign judgment recognised by the Macedonian courts, the creditor collects its claim against the debtor as determined by the judgment.

The same refers to the recognition of both foreign court judgments and foreign arbitral judgments.

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

The procedure for recognition is as follows:

- 1) a proposal for recognition and determination of enforceability of the foreign judgment is to be filed with the competent Macedonian court (on the basis of residence of the opposing party) against the opposing party;
- 2) the court will examine *ex officio* whether the above conditions for recognition have been met and may schedule a hearing;
- 3) if the above conditions for recognition have been met, the court will make a decision on the recognition and determination of enforceability of the foreign judgment;
- 4) the court will send the decision to the opposing party;
- 5) the opposing party has the right to file an opposition against the decision within 15 calendar days from the day of receipt of the decision;
- 6) a council of three judges will decide upon the opposition of the opposing party. If the court finds that the decision on the opposition depends on certain disputable facts, the court will decide upon a hearing;
- 7) the court will make a decision on the opposition; and
- 8) any unsatisfied party has the right to file an appeal within eight calendar days to the appellate court.

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

The recognition of a foreign judgment can be challenged in case of a lack of any of the conditions that must exist for a foreign judgment to be recognised in Macedonia, as explained above under question 2.3.

The debtor may challenge the recognition by way of objection against the decision for recognition of a foreign judgment reached by the first instance court and by way of appeal against the decision reached by the council of three judges within the first instance court.

Furthermore, recognition and enforcement of the foreign arbitral judgment may be refused, at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

- a) the parties to the arbitrage agreement under the law applicable to them, are under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereof, under the law of the country where the judgment was made;
- b) the party against whom the judgment 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;
- c) the judgment 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;
- d) 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; or
- e) the judgment 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.

Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that:

- a) the subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
- b) the recognition or enforcement of the award would be contrary to the public order of that country.

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

Macedonian law does not provide a specific regime for enforcing foreign judgments relating to specific subject matters.

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?

If Macedonian courts have reached a final judgment on the same matter as the matter decided with the foreign judgment, it will be considered that such matter is *res judicata* and the foreign judgment cannot be recognised in Macedonia.

However, the local proceedings between the parties for the same matter shall not prevent the foreign judgment from being recognised in Macedonia, unless Macedonian law does not regulate the exclusive competence of the Macedonian courts for such a matter.

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?

A foreign judgment that conflicts with the imperative provisions of the Macedonian law may not be recognised by the Macedonian courts. In such case, it may be considered that the recognition of such foreign judgment is contrary to the Macedonian public order, which is a legal obstacle for recognition of the foreign judgment.

The existence of a prior judgment on the same or a similar issue, but between different parties, is not formally regulated as an obstacle for recognition of a foreign judgment. However, it cannot be excluded that a foreign judgment that is contrary to a prior judgment on the same or a similar issue, but between different parties, may be considered as contrary to the Macedonian public order, which prevents recognition of a foreign judgment in Macedonia.

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?

No additional conditions are required for the recognition and enforcement of a foreign judgment that purports to apply the law of our country except for the conditions mentioned in question 2.3 above. Thus, the court will determine if the conditions for recognition of a judgment mentioned in question 2.3 above are met, including if the recognition of the judgment is contrary to Macedonian public order.

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.

There are no differences in the rules and procedure of recognition and enforcement of a foreign judgment among various regions in Macedonia.

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

Macedonian laws do not regulate the limitation period to recognise and enforce a foreign judgment.

However, according to the Macedonian Law on Obligations, the limitation period for the enforcement of claims that are determined with a final judgment is 10 years. Therefore, if the foreign final judgment has become final and enforceable and has been recognised by Macedonian courts more than 10 years prior to initiation of the procedure for enforcement, then, at the objection of the defendant party, it would be considered time-barred.

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?

Please see the answer to question 2.3 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?

Please see the 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.

Please see the 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?

Please see the answer to question 2.6 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?

Once a foreign judgment or arbitral award is recognised, the creditor may initiate an enforcement procedure against the debtor for collection of the claim determined with the judgment.

The enforcement procedure is regulated by the Law on Enforcement.

The enforcement will be performed through the competent enforcement agents and the subject of enforcement may be the debtor's assets (funds on bank accounts, movables, immovables, shares, etc.) as well as the debtor's claims towards third parties.

In case of bankruptcy of the debtor, the provisions of the Law on Enforcement would not apply, and enforcement of the judgment shall be performed on the basis of the Law on Bankruptcy.

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 changes to the applicable laws relating to recognising and enforcing judgments in Macedonia 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?

There are no particular issues that need to be flagged.



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Polenak Law Firm is one of the leading law firms in the Republic of Macedonia. It is a full legal service law firm. The firm's practice encompasses major mergers and acquisitions involving local and international investors, competition and antitrust matters, legal due diligence reports, numerous commercial, civil and criminal litigations, financial transactions, loans and enforcements, employment issues, preparation and review of contracts, real estate transactions, share transfers and intellectual property.

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