

# Enforcement of Foreign Judgments 2020

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# Enforcement of Foreign Judgments 2020

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**Contributing editor****Patrick Doris**

Gibson, Dunn &amp; Crutcher LLP

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Lexology Getting The Deal Through is delighted to publish the ninth edition of *Enforcement of Foreign Judgments*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology 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 Lexology 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 Armenia, Brazil, Canada (Quebec), Cyprus, Germany, Hong Kong, Jordan, Luxembourg, the Netherlands and Sweden.

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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.

Lexology 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 LLP, for his continued assistance with this volume.

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# Armenia

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## LEGISLATION

### Treaties

1 | 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?

Armenia is party to the following conventions and bilateral treaties:

- Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters 1993;
- Chisinau Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters 2002;
- Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children;
- New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958;
- bilateral treaty on the delivery of judicial and non-judicial documents related to civil and economic cases and obtaining proof, and also the recognition and enforcement of judicial acts between the Republic of Armenia (RA) and the United Arab Emirates;
- bilateral agreement on legal assistance in civil cases between the RA and the Syrian Arab Republic;
- bilateral agreement on legal assistance in civil cases between the RA and Georgia;
- bilateral treaty on legal assistance and legal relations in civil, family and criminal matters between the RA and the Republic of Lithuania;
- bilateral treaty on legal assistance and legal relations in civil, family and criminal matters between the RA and the Hellenic Republic;
- bilateral treaty on legal assistance in civil and criminal cases between the RA and the Republic of Bulgaria;
- bilateral treaty on legal assistance in civil and criminal cases between the RA and Romania;
- bilateral agreement on legal assistance in civil and criminal cases between the RA and the Islamic Republic of Iran;
- bilateral agreement on legal assistance in criminal cases between the RA and the Syrian Arab Republic;
- bilateral treaty on legal assistance in civil and criminal cases between the RA and Romania;
- bilateral treaty on legal assistance in criminal cases between the RA and the Republic of Georgia;
- bilateral treaty on legal assistance in criminal cases between the RA and the United Arab Emirates; and
- bilateral treaty on legal assistance in criminal cases between the RA and the Arab Republic of Egypt.

According to these treaties, the judicial act shall be recognised without special proceedings if it is not subject to enforcement based on its nature. As for judicial acts requiring execution, an application shall be submitted to the court of the state where the enforcement shall be provided and the national regime is determined for countries that are party to the aforementioned treaties.

In general, Armenia is open to entering into treaties on the recognition and enforcement of foreign judicial awards.

### Intra-state variations

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

Armenia is a unilateral country with a single unified jurisdiction, so there is no difference between different parts of the country.

### Sources of law

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

The main laws regulating the enforcement of foreign judgments and arbitral awards are:

- the Civil Procedural Code of the RA (the Code);
- the Criminal Procedural Code of the RA;
- the Law on Compulsory Execution of Judicial Acts; and
- the Law on Commercial Arbitration.

### Hague Convention requirements

4 | To the extent the enforcing country is a signatory of the Hague Convention on 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?

Armenia is not a signatory of the Hague Convention.

## BRINGING A CLAIM FOR ENFORCEMENT

### Limitation periods

5 | 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?

A foreign judicial act may be submitted to the competent court of the RA for recognition and enforcement within three years of the date of its entry into legal force. The moment of entry into legal force of a foreign judicial act shall be determined by the law of the country where the judicial act has been made (article 348 of the Code).

## Types of enforceable order

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

Armenian legislation uses 'judicial act' to describe a decision made by a court. For recognition and enforcement, a foreign judicial act shall be deemed to be the final judicial act adopted by a judicial authority of another country, irrespective of its name, which has legal force in the state where it has been delivered, including conciliation agreements approved by a foreign court, judicial orders, payment orders and criminal judgments with regard to criminal cases involving compensation for damage incurred as a consequence of crime. After the adoption of a new Civil Procedural Code of Armenia in 2018, decisions of a foreign court on securing a claim (injunctions) have also become subject to recognition and enforcement in Armenia.

There is no limitation on the subject matter of the judgment, which means it can include money judgments, orders to act in a specific way indicated in the judgment in the scope allowed under Armenian law, as well as interim security measures.

## Competent courts

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

An application for the recognition and enforcement of a foreign arbitration award in Armenia shall be filed to the Yerevan city court of general jurisdiction of first instance.

An application on recognising a foreign judicial act and permitting the execution thereof shall be filed with the court of the place of residence (location) of the debtor. If the debtor has no place of residence or the location is unknown, the application shall be filed with the court of the area where the property belonging to the debtor is located. If a foreign judicial act in its nature does not assume any enforcement activity against any debtor or does not require enforcement, the application on recognising such an act and permitting the execution thereof shall be filed with the court of the place of residence of the person filing the application. Where the application on recognising a foreign judicial act and permitting the execution thereof has been filed with a non-competent court, the latter is obliged to transfer it to the competent court.

## Separation of recognition and enforcement

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

It is possible to file an application on the recognition of a foreign act without a request for enforcement if the latter is not sought. However, it is impossible to request the enforcement of a foreign judgment without prior recognition.

Concerning the process of enforcement itself, the judicial act enforcement authority in Armenia is not part of the court system. To be enforced, the Armenian court act should be filed to the compulsory enforcement service of the Ministry of Justice of the Republic of Armenia. The court is obliged to submit its act to the compulsory enforcement service under the application of the party in whose favour the decision is made. The aforementioned is true for the recognition and enforcement of foreign judicial acts and arbitration awards. The Armenian court examines and decides on recognition and permission to execute the foreign judicial act or the arbitration award, and upon the request of the applicant files the act to the compulsory enforcement service. The compulsory enforcement service is provided under the Law on Compulsory Execution of Judicial Acts within the scope of common national compulsory enforcement procedures.

## OPPOSITION

### Defences

### 9 | 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?

A decision of a foreign state court or international court may be reviewed by the competent court of the RA only in cases provided for by international treaties. The RA is a party to many bilateral treaties and conventions, but none of them provides the opportunity to review the decision made by the court of the contracting party (there is a minor exception in the Chisinau Convention for criminal cases).

However, the court in general would be authorised to review the content if an issue of public order is being discussed (even if the court cannot evaluate the content of the decision, rather than accept or deny the decision as a whole).

Finally, there are specific regulations for criminal cases. Recognition of the decision of the foreign country may be denied if the act for which the person has been convicted is not criminally punishable according to the legislation of Armenia or the person has been sentenced to the death penalty.

### Injunctive relief

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

There are no specific regulations or relevant practices. However, as recognition and enforcement are automatic and it is compulsory to have a court hearing with the participation of both parties, in practice there is no need for preliminary injunctions.

## REQUIREMENTS FOR RECOGNITION

### Basic requirements for recognition

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

To be recognised in Armenia, a foreign judgment on civil cases must comply with the requirements of the relevant chapter of the Code and international agreements of the Republic of Armenia (article 352(2) of the Code). The Code allows the recognition of a foreign judicial act, including those regarding securing claims (hereinafter the judicial act), and its enforcement in Armenia if:

- the dispute resolved by the act involves a civil case under legislation of the RA (article 346(4) of the Code) (this includes both family law and commercial claims);
- the judgment applied for recognition and enforcement is entered into legal force (articles 351 and 354 of the Code);
- the participants of the foreign court case are duly notified about the case and hearings (articles 351 and 354 of the Code);
- the dispute resolved by the act is not subject to examination in an Armenian court commenced before the case is resolved in the foreign court (articles 351 and 354 of the Code); and
- there is no judicial act on a case between the same persons, on the same subject matter and on the same grounds delivered by an Armenian court, which has entered into legal force, or a judicial act delivered by the court of a foreign state and recognised by the Armenian court (articles 351 and 354 of the Code).

To be recognised, the final foreign arbitration awards should be presented to the Armenian court together with the arbitration agreement.

There are no specific conditions as to the quality or composition of the judicial system of the country where the decision was made, but the obligation to ensure the right to be heard, and the more general defence based on the European Convention on Human Rights (ECHR) and constitutional guarantees may be available and successful for cases where the decision is from a country that does not guarantee basic fair trial standards (however, such practices are now available).

As regards the recognition of foreign judgments on criminal cases, the competent court of the RA determines whether the conditions necessary for recognition, which are provided for by international treaty, have been met. The maintenance of the necessary terms and absence of grounds for the rejection of recognition and enforcement is a basis for the recognition and enforcement of a foreign judicial act. In such cases, a general defence under ECHR standards may again be applicable.

### Other factors

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

Foreign judicial acts on civil cases may be recognised and enforced in Armenia based either on international or bilateral treaties or reciprocity (article 346 of the Code). Where the recognition and execution of a foreign judicial act depend on reciprocity, the reciprocity shall be considered to exist unless proved otherwise (there is a presumption of reciprocity).

If there are no international treaties on legal assistance for legal proceedings in criminal matters between foreign countries and the RA, legal assistance may be provided in exceptional cases in accordance with the agreement on mutual assistance based on reciprocity, which shall be reached by diplomatic channels.

### Procedural equivalence

**13** | **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?**

The foreign judgment must satisfy a number of requirements in order to be recognised and enforced (see question 11). Some of these requirements refer to procedural items. In particular, in civil procedures the Code allows the recognition of the foreign judicial act if:

- the participants of the foreign court have been duly notified about the case and hearings;
- the dispute resolved by the act involves a civil case under legislation of the RA;
- the judgment applied for recognition and enforcement has entered into legal force;
- the party had an opportunity to participate in the proceedings; or
- the recognition and execution of a judicial act does not contradict the public order of the RA.

In criminal procedures, recognition of a foreign state court verdict may be rejected on grounds mentioned in international treaties of the RA, as well as considering the declarations or reservations made by the RA, and if the act for which the person has been convicted is not criminally punishable according to the legislation of the RA or the person has been sentenced to the death penalty.

## JURISDICTION OF THE FOREIGN COURT

### Personal jurisdiction

**14** | **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?**

According to RA legislation, the court of the RA has no obligation to examine whether the court of a foreign state had personal jurisdiction over the person, but there are special requirements for the examination of whether the foreign court has jurisdiction over the case (article 354 of the Code), which technically includes the personal and territorial jurisdiction.

As for criminal procedures, according to the Criminal Procedural Code of the RA, the court of the RA has no obligation to examine whether the foreign court had personal jurisdiction over the defendant. There is also no requirement for the examination of whether the foreign court had personal jurisdiction over the defendant in conventions and bilateral treaties that have been verified by the RA.

### Subject-matter jurisdiction

**15** | **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?**

In civil procedures, the court of Armenia examines whether the case on which the judicial act of the court of a foreign state has been delivered belongs to the exclusive jurisdiction of the courts of the RA or whether the case is within the international jurisdiction of the court of that state. In cases where the judicial act belongs to the exclusive jurisdiction of the courts of the RA or the case is not within the international jurisdiction of the court that has made the decision, the recognition and enforcement of the judicial act shall be rejected (article 354 of the Code).

However, in general, the rule is that the foreign court has already determined the subject matter and personal jurisdiction, and there is a presumption of legality of the proceedings in the foreign court.

### Service

**16** | **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 recognition and enforcement of a foreign judicial act shall be rejected by the court of the RA if the party has been deprived of an opportunity to participate in the proceedings (article 354(4) of the Code). It is therefore very important for the foreign court to notify the party of the proceedings, otherwise the recognition and enforcement of the judicial act will be rejected by the court of the RA. There is no special regulation as to the content of the notice or services; however, the general rule is that it should contain sufficient information for the party to know that there is a court proceeding, the time and place of the proceeding and the issue to be discussed, which means there is no obligation to send the claim and other documents.

### Fairness of foreign jurisdiction

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

A decision of a foreign state court or international court may be reviewed by the competent court of the RA exclusively in the cases provided for by international treaties. The RA is a party to many bilateral treaties and

conventions, but none of them provides the opportunity not to recognise the decision based on the inconvenience of the foreign jurisdiction.

There is no precedent, but a general constitutional defence may be available if a foreign judgment was enacted artificially by abuse of right; however, the burden of proof would be extremely high for this defence, if the courts would agree at all.

## EXAMINATION OF THE FOREIGN JUDGMENT

### Vitiation by fraud

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

See question 17.

### Public policy

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

In civil procedures, the court shall reject an application to recognise and execute a foreign judicial act if the recognition and execution contradict the public order of the RA (article 354(1) of the Code). As for criminal procedures, recognition of a foreign state court verdict may be rejected if the act for which the person has been convicted is not criminally punishable according to the legislation of the RA or the person has been sentenced to the death penalty. In addition, the enforcement may be rejected under general criminal procedure standards (for example, if the person has already been convicted in Armenia for the same crime and served a sentence).

### Conflicting decisions

20 | 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?

The Code allows the recognition and enforcement of a foreign judicial act in Armenia if there is no judicial act on a case between the same persons, on the same subject matter and on the same grounds delivered by an Armenian court that has entered into legal force, or there is a judicial act delivered by the court of a foreign state and recognised by an Armenian court. Therefore, if there is another final and conclusive judgment involving the same parties or the case is on the same subject matter and on the same grounds, the recognition and enforcement of the foreign judgment shall be rejected by the Armenian court. Technically, this means the application of the principle of temporal primacy applies (first recognised decisions shall prevail).

### Enforcement against third parties

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

The Armenian court takes measures to enforce a foreign judicial act only against the debtor that is mentioned in the foreign judicial act. The recognition and enforcement process does not allow the changing of the parties or the recognition of parties as agents or real beneficiaries. In such cases a new court claim must be submitted to recognise a different person liable for the obligations of the defendant.

### Alternative dispute resolution

22 | 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?

The issue must have been examined by the court of the foreign state before applying the recognition and enforcement of the foreign judgment. The Armenian court only checks whether the foreign judgment complies with the requirements mentioned in the relevant chapter of the Code and international agreements of the RA (article 352(2) of the Code). There is a presumption of legality of foreign judicial decisions.

### Favourably treated jurisdictions

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

The only bases of differentiated approach would be the existence of international treaties. The RA is a party to many bilateral treaties and conventions (see question 1). It follows from analysis of the articles of the treaties in cases where the judicial act has been made by the court of the contracting party, it must be recognised and enforced in accordance with the laws and other legal acts of the RA and the national regime determined for the contracting party. Thus, each of the contracting parties shall recognise and implement the decisions of the courts of the other contracting party in accordance with its national laws and other legal acts. So, in cases where the country requesting the recognition and enforcement of a judicial act is a party to the aforementioned treaties, the national regime must be determined and, in some cases, the foreign judgment can be recognised without special proceedings (see the Minsk and Chisinau Conventions).

### Alteration of awards

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

In cases where it is possible to recognise a foreign judicial act partially the court may do so, if specific legal consequences of the foreign judicial act are not provided for by the legislation of the RA or if, upon availability of one of the grounds for rejecting the recognition and permission for execution of a foreign judicial act provided for by the Code (article 354(1)), it is possible to recognise the act for the part with regard to which such ground for rejecting is absent. This is usually applied when the judgment has a civil law subject matter and some public law elements (for example, state duty issues) that are not subject to recognition.

However, the court does not have jurisdiction to review the foreign judgment unless otherwise provided for by the international treaties of the RA.

## AWARDS AND SECURITY FOR APPEALS

### Currency, interest, costs

25 | 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 court does not convert the monetary value established in a foreign currency (claim, interest, judicial costs, etc) into Armenian dram. However, the exchange is done at the market rate (the exchange rate in Armenia is floating and the central bank rate and market rate match)



during the compulsory execution (if the party does not pay the amount due voluntarily) in the following manner.

When the compulsory enforcement officer receives the court judgment (the execution order), he or she shall impose an attachment on the monetary funds in the foreign currency the debtor holds in his or her bank accounts and deposits, if this is not present in Armenian dram accounts and other assets. Within 10 days of receipt of the decision of the compulsory enforcement officer, the bank or other financial institution shall transfer the money obtained from the sale of the foreign currency (technically exchanged) to the deposit account of the appropriate division of the compulsory enforcement service. The compulsory enforcement officer imposes an attachment on the monetary funds in the foreign currency (if present), but the bank shall sell it and transfer the obtained sum of money in drams to the deposit account of the compulsory enforcement service. If no foreign currency is available, the amount shall be calculated in Armenian dram at the exchange rate on the day of enforcement.

### Security

26 | 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?

A judgment on recognising or enforcing a foreign judgment can be appealed to a higher court: the court of appeal and later to the court of cassation (with limited grounds). The decision of the court regarding cases on the recognition and enforcement of foreign arbitral awards and foreign judgments shall be announced and will enter into legal force seven days after the announcement, unless an appeal is filed against it.

## ENFORCEMENT AND PITFALLS

### Enforcement process

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

To be enforced, the Armenian court act should be filed to the compulsory enforcement service of the Ministry of Justice of the RA. The court is obliged to submit its act to the compulsory enforcement upon the application of the party in whose favour the decision is made. The aforementioned is true for the recognition and enforcement of foreign judicial acts and arbitration awards. The Armenian court examines and decides on the recognition and execution of the foreign judicial act or arbitration award and, upon the request of the applicant, files the act to compulsory enforcement. The compulsory enforcement is later provided for under the Law on Compulsory Execution of Judicial Acts within the scope of common national compulsory enforcement procedures.

### Pitfalls

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

It is advisable to consider procedural deadlines and to check the list of the debtor's assets in Armenia before applying to an Armenian court.

Armenian legislation allows the recognition and enforcement of intermediary judicial acts of a foreign state court (ie, the decision of a foreign court on securing the claim). Armenia also takes an obligation to act based on reciprocity as a ground to recognition and permitting the enforcement of the foreign state court decision.



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## UPDATE AND TRENDS

### Hot topics

29 | Are there any emerging trends or hot topics in foreign judgment enforcement in your jurisdiction?

There is a current court case regarding the recognition and execution of a foreign court act on securing a claim based on reciprocity. At the time of writing, the case is at the stage of the cassation complaint (ie, the cassation court accepted the complaint to a hearing). The issue presented for the examination of the court is whether the foreign court act on securing the claim is subject to recognition in Armenia based on reciprocity, as well as the terms and conditions of the applicability of reciprocity in Armenia in general.

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