

# Enforcement of Foreign Judgments

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Fundamental Principles [Chile]

2020



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## **I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS)**

### **A. Ability to Apply for Recognition and Enforcement of a Court Judgment**

#### **1. Is it possible to apply for enforcement of a foreign court judgment in your country?**

**Answer:** Yes. According to article 242 of the Chilean Civil Procedure Code (ChCPC) foreign decisions will be enforced in Chile under the treaties provisions and will be executed by the local courts pursuant to the rules set forth by the Chilean Law, unless otherwise provided by the said treaties. In case there is no treaty applicable to the matter, the enforcement of the foreign judgment will be granted pursuant to the rules set forth in articles 243 through 251 of the ChCPC.

### **B. Applicable Law: General Rules**

#### **1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?**

**Answer:** As mentioned above, the courts will apply the specific treaty signed by both the country of origin of the court decision and Chile. Absent of treaty, the courts will apply the rules established in the CHCPC.

### **C. Special Rules: European Union**

#### **1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?**

**Answer:** Not applicable

#### **2. Does the European Union have a special procedure to enforce court judgments coming its member states?**

**Answer:** Not applicable

### **D. Average Duration of Enforcement Procedure**

#### **1. What is the average length of time for this kind of procedure?**

**Answer:** Duration of the enforcement procedure will depend on whether there is opposition from the party against whom enforcement is sought. In a non-challenge procedure the average length of the procedure should not exceed the 6 months period. In a contested enforcement procedure, the length of time increases dramatically to more than a year.

## II. DENIAL OF RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT JUDGMENT: REASONS

### A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?

**Answer:** Yes. If there is no treaty applicable to the recognition and enforcement of the foreign judgment, recognition and enforcement can be denied in the following cases:

No reciprocity (in the absence of a treaty): The country of origin of the foreign judgment has denied enforcement of similar Chilean judgments in its territory (articles 243 and 244 of the ChCPC);

No minimum legal regularity (in the absence of a treaty and/or a reciprocity record): In this case the Chilean Courts will perform a screening procedure under which they will look into the judgment in order to grant enforcement. Pursuant to article 245 ChCPC foreign judgments will have in Chile the same enforceability as domestic judgments provided the following rules:

The judgment is not contrary to the laws of Chile. By laws of Chile the Courts have meant that the judgment does not contradict laws which contain fundamental public policy principles such as criminal laws, family laws or labor laws (it has been decided that only few laws contain such fundamental principles). In addition, in deciding whether there is contradiction between the foreign judgment and the laws of Chile, the courts are not allowed to consider the Chilean procedure laws that would had been applied in case the conflict would had been brought before the Chilean Courts.

The judgment does not oppose to the Chilean Court's jurisdiction. Chilean Courts will not recognize a foreign judgment rendered in a case that, under Chilean law, should had been brought before the Chilean Courts. Please note that unlike common law systems, the Chilean system does not deal with the idea of non-exclusive jurisdiction. In general terms Chilean Court's jurisdiction is always considered exclusive.

Defendant was afforded appropriate service of process. Chilean Courts will not grant enforcement to a foreign judgment where the complaint was not properly served to defendant against whom recognition is sought in Chile. In assessing what it is proper service of process Courts will consider the Chilean procedural rules on the matter. Please note that Chilean Courts offer judicial assistance to foreign courts in order to practice service of process in Chile. They do it under the letter

rogatory system established in article 76 of the ChCPC or similar systems provided in several treaties signed by Chile with foreign countries (being the most popular the Inter American Convention on the Letter Rogatory and the International Private Law Treaty also known as “*Código Bustamante*”). In other words, not any service of process (e.g. under the foreign court laws) will be considered “proper” for these purposes by the Chilean Courts.

**Availability of defense:** The party against whom recognition or enforcement is sought in Chile must have been given the right to appear before the foreign court and exercise similar rights as any other national of the foreign country. Please note that Chilean Courts typically will deny recognition of the foreign judgment where the defendant was not afforded permission to enter the foreign country or where the appearance in court would have subject the defendant to the risk of criminal imprisonment or other significant burden. On the other hand, the mere fact of high cost of defense and/or expenses has been ruled as not sufficient impairment for the defense of the foreign person.

The judgment is final according to the laws of the country where it has been rendered. Chilean Courts will not grant enforcement of a foreign judgment pending an appeal or some other mean of revision of the Foreign Court’s decision. Therefore, the applicant must show proof that there are no pending motions, appeals, annulments, or any other challenge against the foreign judgment. Usually a certificate issued by the foreign Court officials stating the above would suffice.

## **B. Costs and expenses**

### **1. What kind of cost and expenses can a claimant expect in this enforcement procedure?**

**Answer:** There are two kind of cost and expenses the claimant can expect:

*Procedural cost and expenses:* They typically would comprise fees that parties are obliged to pay to Court Officials for the service of process of the defendant and for the attachment of assets. Also, in order to liquidate (by selling in a public auction) the assets of the debtor, there are some expenses the claimant must incur such as the cost of publishing advertisements of the public auction in newspapers.

*Personal cost and expenses (Reasonable attorney’s fees):* They relate to the fees of the other parties’ attorney, appraised by the judge, in case an opposition to the enforcement procedure succeeds.

### III. FORMAL REQUIREMENTS

#### A. Time limit

##### 1. Is there a time limit to apply for enforcement of a foreign court judgment?

**Answer:** The law does not provide for a specific time limit to apply for enforcement of a foreign court judgment. Nonetheless, according to article 442 of the ChCPC, in general, no judgment can be enforced after 3 years. The mentioned provision is substantive and not procedural in nature. It could also be considered a public policy rule. Therefore, it could be raised the argument that the Chilean courts cannot grant enforcement to foreign judgments after 3 years regardless of what the foreign law provides on the matter.

#### B. Final and Definitive Court Judgment: Provisional Enforcement

##### 1. Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?

**Answer:** Yes. It is mandatory for the judgment to be final and definitive. As mentioned before, a Court certificate stating such circumstance will suffice.

#### C. Necessary Requirements

##### 1. What necessary requirements must the foreign court Judgment fulfill to be recognized and enforced?

**Answer:** As explained in section II. A. above, the Court first will see whether there is a treaty that regulates the matter between both countries. Lacking a treaty, the Court will seek whether reciprocity among both countries can be established. Absent of treaty or reciprocity record, the Court will look into the judgment to determine whether it fulfills a minimum regularity test (see above).

#### D. Other Formal Requirements: Court Fees

##### 1. Is it mandatory to pay Court Fees for this kind of application?

**Answer:** From a formal point of view the enforcement petition must attach a legalized or apostilled copy of the judgment. Pursuant to article



345 of the ChCPC the legalized copy must be issued by a foreign Court official whose signature has been subsequently authorized by a Notary Public or similar authority in the foreign country. Then, the closest Chilean Consulate must authorize the Foreign Notary Public's signature. At this point, the legalized copy of the foreign judgment must be sent to the Chilean Ministry of Foreign Relations in Chile (unless otherwise provided in a treaty or convention). The Chilean Ministry of Foreign Relations, in Chile, will authorize the Chilean Consulate's signature. A copy of the legalized judgment, with all the authorizations (the full package), can be registered before a Chilean Notary Public. The Chilean Notary Public will then issue as many authentic copies of the full package as the interested party needs. One of these authentic copies must be attached to the complaint.

Notwithstanding the foregoing, pursuant to article 345 bis of ChCPC if the foreign judgment has been issued by a Court of a State party to the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents, it shall not be subject to the legalization procedure described above, if it is duly apostilled by the authority designated by the State from which the Judgment emanate from.

**E. Are there any other formal requirements in your country to enforce a court judgment?**

**Answer:** Yes, pursuant to article 347 ChCPC, if the judgment is written in a foreign language (*i.e.* not Spanish), the applicant must submit a translation of the same or request the Court to appoint an expert who shall translate it into Spanish.

**IV. PROCEDURE**

**A. Competent court**

**1. Which Court or courts are competent to decide an enforcement application?**

**Answer:** The Court in charge of granting recognition and enforcement of a foreign judgment is the Chilean Supreme Court. If enforcement is granted, the attachment and subsequent liquidation of assets continue before the Courts of first instance.

**B. Informational Requirements for the Application to Enforce a Foreign Court Judgment**

**1. What information must be contained in the enforcement application of a foreign court judgment?**

**Answer:** Basically, the enforcement application needs to attach the foreign judgment and its translation if it is in a foreign language. It also needs to comply with article 254 of the ChCPC which provides for the following requirements of all complaints:

- (i) Name of the Court before which the application is filed (Supreme Court).
- (ii) Complete name of the applicant, profession or business, and domicile.
- (iii) Complete name of the person against whom the enforcement is requested.
- (iv) Complete description of the relevant issues of fact.
- (v) Complete citation of the legal statutes and principles upon which the application is based.
- (vi) The precise relief the applicant is requesting (here there are two reliefs, the first one is the recognition of the foreign judgments and secondly, and more specifically, the performance owed by the debtor).

**C. What documents must be included with/attached to the application to enforce a foreign court judgment?**

**Answer:** As mentioned before, the application needs to attach a copy of the foreign judgment obtained with the formalities described in section III. D. above.

**D. Phases of the Procedure**

**1. What are the phases of the procedure to enforce a foreign court judgment?**

**Answer:** Once the application for enforcement has been filed, the Court will order the service of process to the defendant. The latter will have a minimum of 15 working days (excluding Sundays and holidays), depending on where the defendant has been served (articles 248, 258 and 259 all from ChCPC) in order to respond whatever he deems convenient to the application for recognition or enforcement. With the defendant's response or without it, the Court will order the Public Prosecutor of the Supreme Court to study the case and issue a recommendation in the form of a brief. The Court will hear oral arguments of the parties before deciding. In case evidence is needed to

decide the application, the Court, prior to the oral arguments, can set a time frame of 8 working days during which the parties can produce it. Under Chilean law, parties are allowed to prove the foreign law.

**E. Opposition of the Defendant**

**1. Can a defendant oppose to this enforcement application?**

**Answer:** Yes (see section IV. D. above)

**2. Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons?**

**Answer:** No. Defendant can raise all kinds of arguments for the Chilean Courts to deny enforcement. Of course, the most effective relate to the fulfillment of the requirements above mentioned in the application.

**F. Appeal and its Consequences in this Procedure**

**1. Is it possible to appeal a court decision to recognize and enforce a foreign court decision?**

**Answer:** No. The decision of the Court cannot be appealed (it is issued by the Supreme Court so there is no superior Court).

**2. Can this appeal suspend the enforcement?**

**Answer:** See above.

**G. Recovery of judicial costs and expenses**

**1. Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?**

**Answer:** Yes, the prevailing party can recover personal (reasonable attorney's fees) and procedural cost and expenses (as defined in section II. B above) against the other party. The Court will assess the value of the personal cost and expenses (reasonable attorney's fees) regardless of the actual fees paid by the prevailing party (usually they are much less than the actual fees).

**V. RECOVERY OF THE DEBT**

**A. Means of Enforcement**

**1. What types of assets are subject to enforcement of the court's judgment?**

**Answer:** All kinds of assets, movable and immovable, present and future except those excluded by the law (usually assets necessary for the survival of the debtor cannot be attached) (also, assets necessary to provide a public service are also excluded by law).

**VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION**

**A. Any other issues of interest in your jurisdiction**

**Answer:** No.