

Enforcement of Foreign Judgments

Fundamental Principles [Taiwan]

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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:

Foreign court judgments with final and binding force are eligible for recognition and enforcement application in Taiwan if there is no statutory exception where the court does not grant recognition under Article 402 of Taiwan's Code of Civil Procedure (the "Code").

B. Applicable Law: General Rules

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

Answer: Article 402 of the Code and the Compulsory Enforcement Act.

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: Subject to actual circumstances, enforcement proceedings may take several weeks to months, or even a year if real property is involved.

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, Taiwanese courts may deny recognition and enforcement of a foreign court judgment in any of the following circumstances (Article 402 of the Code):

1. Where the foreign court lacks jurisdiction pursuant to Taiwan laws.
2. Where a default judgment is rendered against the losing defendant, except where the notice or summons of the initiation of action was legally served in a reasonable time in the foreign country or was served through judicial assistance provided under Taiwan laws.
3. Where the performance ordered by such judgment or its litigation procedure is contrary to Taiwan public policy or morals.
4. Where there exists no mutual recognition of judgments between the foreign country and Taiwan.

B. Costs and expenses

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

Answer:

1. Fees & Expenses

According to Article 28-2 of the Compulsory Enforcement Act and Standard of Increasing Taiwan High Court Civil Litigation and Enforcement Fees, where the amount or value of the subject of enforcement is less than NTD 5,000, no enforcement costs will be charged. Where the enforcement amount or value exceeds NTD 5,000, there is an enforcement fee payable to the court equivalent to 0.8% of the amount sought to be recovered. Where the subject of enforcement is a non-property, the enforcement cost will be NTD 3,000.

III. FORMAL REQUIREMENTS

A. Time limit

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

Answer: The procedural laws do not stipulate a time limit. But the statute of limitations for the underlying credits may apply. As statute of limitations is a substantive issue under Taiwan law, it may be subject to the governing law of the credits.

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: According to Article 402 of the Code, only final judgments and rulings can be the subject of recognition and enforcement application

C. Necessary Requirements

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

Answer:

Foreign court judgments with final and binding force are eligible for recognition and enforcement application if there is no statutory exception where the court does not grant recognition under Article 402 of the Code.

If no exception under Article 402 of the Code is met, and Taiwan courts have granted the application for enforcement, the prevailing party to the judgment may apply for enforcement against the debtor's assets in Taiwan.

D. Other Formal Requirements: Court Fees

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

Answer: Yes. See Question II.B.1.

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

Answer: No.

IV. PROCEDURE

A. Competent court

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

Answer: According to Article 7 of the Compulsory Enforcement Act, the court of the place where the assets are located is competent to decide an enforcement application; if it is unclear where the assets are located, the court of the debtor's place of domicile is competent to decide an enforcement application.

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:

According to Article 2 of the Compulsory Enforcement Instructions, the following information should be submitted to the court:

1. The parties and their representatives.
2. The enforcement titles.
3. The petitioned right to be performed through enforcement.
4. The objects to be enforced.

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

Answer:

1. A written application for enforcement.
2. Judgment from Taiwan courts granting the enforcement of the foreign judgments.
3. Receipt for payment of court fees.
4. Evidence of ownership of the assets against which enforcement is sought.

D. Phases of the Procedure

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

Answer:

1. Application for grant of the enforcement of the foreign judgment.
2. Application for enforcement.
3. Attachment of assets.
4. Valuation of attached assets.
5. Auction of attached assets.
6. Reporting of creditors' claims and distribution of monies, in the event of more than one creditor.
8. Payment.

E. Opposition of the Defendant

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

Answer: Yes, in accordance with the Compulsory Enforcement Act.

- 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: Yes.

According to Articles 14 and 14-1 of the Compulsory Enforcement Act, before the enforcement procedure is completed, the defendant may be able to oppose enforcement where:

1. there is an event extinguishing or preventing the creditor's claim after the judgement is made or after the oral arguments of the procedure of such judgement; or
2. the debtor believes he or she is not subject to the enforcement title.

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: Yes.

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

Answer: According to Article 18 of the Compulsory Enforcement Act, the enforcement will not be suspended unless the court finds it necessary or the debtor lodges a security bond with the court.

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: Court fees, but not the attorneys' fees (except for those granted by the court for the third instance), can be recovered in the enforcement proceedings.

V. RECOVERY OF THE DEBT

A. Means of Enforcement

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

Answer: Property (including movable property and real property) as well as credits and corporate shares may be subject to enforcement by the court.

Some types of assets cannot be the subject of enforcement, e.g., money to cover two months' subsistence expenses for the debtor and his or her family, clothes and other necessities for daily life or work.

VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION

A. Any other issues of interest in your jurisdiction

Answer: One of the requirements for recognition of a foreign judgment in Taiwan is that Taiwan court judgments can be reasonably expected to be recognized by such foreign country. This reciprocity requirement is not intended to have a Taiwan court recognize a judgment made in a foreign country only after such foreign country recognizes a judgment rendered by Taiwan courts first. In other words, Taiwan adopts an open attitude to recognition and enforcement of foreign judgments in terms of reciprocity.

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