



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
Treaty between the Principality of Liechtenstein and the Swiss Confederation on the recognition and enforcement of judgments and arbitral awards dated 25 April 1968.	Liechtenstein and Switzerland.	Section 3.
Treaty between the Principality of Liechtenstein and the Republic of Austria on the recognition and enforcement of judgments, arbitral awards, settlements and public deeds dated 5 July 1973.	Liechtenstein and Austria.	Section 3.
The Hague Convention of 15 April 1958 concerning the recognition and enforcement of decisions relating to maintenance obligations towards children.	Austria, Belgium, China (Macao), Czech Republic, Denmark, Finland, France, Germany, Hungary, Italy, Liechtenstein, The Netherlands, Norway, Portugal, Slovakia, Spain, Suriname, Sweden, Switzerland, Turkey.	Section 3.

Applicable Law/ Statutory Regime	Relevant Jurisdiction(s)	Corresponding Section Below
The European Convention of 20 May 1980 concerning the recognition and enforcement of decisions relating to custody rights for children.	Andorra, Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malta, Moldova, Montenegro, The Netherlands, Norway, Poland, Portugal, Romania, Serbia, Slovakia, Spain, Sweden, Switzerland, Turkey, Ukraine, United Kingdom.	Section 3.
New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958.	All countries signatory to the Convention.	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 enforcement of judgments in civil law issues in Liechtenstein is exclusively based on the Liechtenstein Enforcement Act of 24 November 1971 (*Exekutionsordnung*, “EO”). According to Art. 52 EO, a formal recognition and enforcement of a foreign judgment in Liechtenstein is contingent upon reciprocity and thus generally not possible.

However, decisions of foreign courts may be used as a basis for summary proceedings in accordance with the Civil Procedure Code of 10 December 1912 (*Zivilprozessordnung*, “ZPO”). If a summary court order is disputed, a specific procedure is instigated, the so-called “Reinstitution Procedure” (*Rechtsöffnungsverfahren*), which is regulated by the Act on the Protection of Rights of 9 February 1923 (*Rechtssicherungsordnung*, “RSO”). In most cases, this leads to an entirely new judging of the merits of the case in Liechtenstein.

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

As explained above, the scope of application of Art. 52 EO is rather limited and therefore, the legal requirements for a judgment according to the RSO are dealt with in the following.

To initiate the Reinstitution Procedure, a foreign public deed is required. In particular, a foreign judgment or a private acknowledgment of debt qualify as such. The foreign public deed must have been issued in accordance with the law of the country of origin. Furthermore, the creditor’s claim must be of a civil law nature and aimed at the payment or surrender of money or an article of property. Lastly, the foreign judgment must be final and legally binding and must not violate the *ordre public*.

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

According to Art. 52 of the EO, a foreign judgment may only be enforced in Liechtenstein if and to the extent that this is stipulated in a treaty or if reciprocity is guaranteed by treaty or declaration of reciprocity. Therefore, in the absence of any applicable special regime, foreign judgments are principally not enforceable in Liechtenstein.

Although a formal recognition and thus, an enforcement of a foreign judgment, is therefore not possible in Liechtenstein, a successful plaintiff, who is a creditor on the basis of a foreign judgment, may achieve his goal by way of the Reinstitution Procedure.

As explained above, a foreign public deed is required to initiate the Reinstitution Procedure. Apart from the substantive requirements mentioned in question 2.2, the original foreign judgment or a certified copy thereof has to be presented to court. Furthermore, if the foreign judgment is in a language other than German, a translation of the judgment has to be produced.

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?

The jurisdiction of Liechtenstein courts is stipulated in the Liechtenstein Judicature Act dated 10 December 1912 (*Jurisdiktionsnorm*, “JN”). The local jurisdiction of Liechtenstein courts also establishes their international jurisdiction. Pursuant to § 30 JN, the Princely Court of Justice shall have jurisdiction if the defendant is domiciled in Liechtenstein (“general forum”).

In addition, there are several forums which constitute special jurisdictions in favour of a Liechtenstein court. For example, a venue may be established in Liechtenstein if the foreign defendant has assets in Liechtenstein (§ 50 para. 1 JN). Liechtenstein courts may have jurisdiction over a foreign-based company if either its permanent representation or its entities in charge of management are residents of Liechtenstein (§ 50 para. 3 JN). If a party has chosen a special location in Liechtenstein for the performance of an

obligation, a lawsuit against that party may be brought at that place (§ 43 JN). Liechtenstein courts further have jurisdiction over actions asserting a right *in rem* to an immovable property if the immovable property is situated in Liechtenstein (§ 38 JN). Moreover, a venue may be established in Liechtenstein by way of a jurisdiction clause in a contract executed by both parties to the dispute (§ 53 JN).

For a long time, Liechtenstein courts have been applying the rule of indication. According to this rule, Liechtenstein courts only have jurisdiction if a venue is established in Liechtenstein and if there is a close connection between Liechtenstein and the case brought before the court. In the meantime, Liechtenstein courts have departed from this rule and thus the necessity for a close connection between Liechtenstein and the case brought before court has been eliminated.

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

Liechtenstein law distinguishes between recognition and enforcement of judgments. Recognition extends the effects of a foreign judgment to the recognising country, whereas enforcement denotes the execution of a judgment.

Recognition and enforcement are closely linked as a foreign judgment and may only be enforced if it has been recognised. If the requirements for recognition are met, the foreign judgment is recognised automatically. By contrast, a foreign judgment does not become enforceable until it has been declared enforceable. Thus, if a foreign judgment is recognised in Liechtenstein, all of its effects extend to Liechtenstein except for its enforceability. Depending on its nature and content, a foreign judgment only requires recognition or it may require recognition and enforcement. For instance, a declaratory can only be recognised, whereas a judgment granting performance additionally requires a declaration of enforceability.

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

As already mentioned, foreign judgments may be rendered enforceable in Liechtenstein by way of a special procedure which is divided into summary proceedings and the (normally) ensuing Reinstitution Procedure.

Based on a foreign judgment, the creditor may apply for a payment order (if the foreign judgment states the debtor’s obligation to pay a certain amount of money or transfer fungible assets to the creditor) or a court order for a specific performance by the debtor (if the foreign judgment is of a declaratory nature or states the debtor’s obligation to perform or not to perform certain acts). Such summary court orders have the quality of a Liechtenstein judgment and can therefore be enforced in Liechtenstein. As a result, although a formal recognition of a foreign judgment is principally not possible in Liechtenstein, it can be converted into a Liechtenstein court order which can be enforced in Liechtenstein. However, as summary court orders are issued without the opposing party being heard, the debtor can raise an objection and thus nullify the court order by simple notice to the court.

If the summary court order is nullified upon an objection by the debtor, the creditor may, in turn, demand that the court set aside the debtor’s objection and reinstate the creditor’s summary court order. Such an application for reinstatement (*Rechtsöffnungsgesuch*) can be regarded as a regular claim and leads to a court procedure, which is, however, simplified and structured as a very speedy summary procedure. The court must schedule a hearing, at the latest, five days after receipt of the application for reinstatement.

The Reinstitution Procedure is purely based on enforcement law. Thus, the court does not evaluate and decide whether the claim as such does exist. Instead, the court decides whether it is correct and lawful to enforce this claim in Liechtenstein. In the course of the Reinstitution Procedure, the debtor is also heard and thus has a first chance to oppose the claim raised by the creditor based on formal arguments (e.g. lack of agreements on enforcement and acknowledgment, violation of the debtor's right to be heard in the foreign procedure, lack of the foreign court's competence to hear the case) and substantive arguments (e.g. *ordre public*). The debtor may furnish evidence by providing deeds or through the testimony of witnesses present at the hearing. As the Reinstitution Procedure is meant to be a speedy, simplified procedure, no other evidence is admissible.

If reinstatement is not granted, the creditor is informed by the court that if he wishes to pursue his claim further, he will have to file a claim in Liechtenstein. The dismissal of the creditor's application for reinstatement only has a formally binding effect, but not a materially binding effect. Therefore, the creditor may initiate regular judicial proceedings without the debtor being able to object for reasons of *res judicata*.

If reinstatement is granted, the according decision of the court serves as a legal title, based on which the creditor can demand enforcement of his claim. The debtor may not formally appeal against this decision. However, the debtor may file the so-called Disallowance Claim ("*Aberkennungsklage*").

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

By means of the Disallowance Claim, the debtor may object to the reinstatement. However, the Disallowance Claim is not a legal remedy in the sense of an appeal, but a regular claim aimed at a negative declaratory judgment. If it is granted, the court confirms that the claim underlying the Reinstitution Procedure does not exist or is not enforceable and that the reinstatement is set aside. The Disallowance Claim is beneficial for foreign creditors as it reverses the roles of the parties (the debtor must file the claim) and thus a foreign creditor does not have to provide a security deposit for procedural costs. However, although the debtor files the claim, the burden of proof is still placed upon the creditor.

In the course of the Disallowance Procedure, the debtor has the chance to lay out and prove his arguments in a regular, full and unrestricted court procedure and specifically object to the foundation and existence of the claim raised by the creditor for the first time. The Disallowance Procedure therefore no longer deals with the question of whether it was correct for the court to confirm enforceability of the creditor's claim and thus to grant reinstatement, but it is, rather, a full procedure on the merits of the claim raised by the creditor – notwithstanding the fact that a foreign judgment on such a claim may already exist.

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

In the area of personal and family law, the strict requirement of reciprocity stipulated in Art. 52 EO is dispensed with. The recognition of personal and family law matters is stipulated in Art. 89 PGR. According to this provision, decisions or other deeds on changes regarding the civil status, citizenship, name or marital

status of a person whose birth, marriage or civil union was certified in a domestic register, shall be registered accordingly in the civil register upon approval of the government or, in further instances, the board of appeal.

However, an approval may only be granted if the foreign decision or deed has been issued by the competent authority in accordance with the law of the country of origin.

If the birth, marriage or civil union was registered in a foreign civil register, the changes regarding the civil status, citizenship, name or marital status as well as the corrections of birth, death, marriage or civil union registrations may be registered in the domestic civil register on instruction of the government. A same-sex marriage contracted abroad is recognised as a civil union in Liechtenstein.

In the case of Liechtenstein citizens, the registration must be made if the change is to be regarded as legally effective.

On the basis of Art. 89 PGR, the registry office, which has been declared as competent by the government, has regularly verified, recognised and registered foreign decisions to the extent that they were relevant for the Liechtenstein register.

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?

A formal recognition and enforcement of foreign decisions is principally not possible in Liechtenstein. Thus the alternative procedures, such as summary proceedings and the Reinstitution Procedure, are considered in the following.

The application for a summary court order is to be dismissed by the court if there is a conflicting local judgment between the parties relating to the same issue or if there are local proceedings pending between the parties. However, as summary court orders are issued without the opposing party being heard, any conflicting local judgments or pending proceedings may go unnoticed. Nevertheless, the debtor has the opportunity to object and thus to eliminate the court order by simple notice to the court.

In the Reinstitution Procedure, the debtor can oppose the claim raised by the creditor based on formal arguments. Therefore, he may also invoke the defences of *res judicata* or *lis pendens*. If there is a conflicting local judgment between the parties relating to the same issue or local proceedings pending between the parties, the court will dismiss the demand for reinstatement.

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?

As already explained above, the conversion of a foreign judgment into a Liechtenstein judgment regularly leads to an entirely new judging of the merits of the case in Liechtenstein. As a result, the Liechtenstein courts will review whether the judgment was rendered in accordance with the applicable law. In particular, the Liechtenstein courts may verify whether the judgment is in accordance with the Liechtenstein *ordre public*.

A conflicting prior judgment on the same or a similar issue between different parties will be considered by the court and arguably hinder the conversion of the foreign judgment.

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?

As stated above, the conversion of a foreign judgment into a Liechtenstein judgment involves a *révision au fond*. Therefore, a Liechtenstein court will review whether the foreign court has correctly applied the Liechtenstein substantive law.

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.

The above-mentioned laws (EO, ZPO, RSO, PGR) apply uniformly throughout Liechtenstein. There are no differences in the rules and procedure of recognition and enforcement between various regions.

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

The statute of limitation is a question of substantive and not of procedural law. As a result, the limitation period varies depending on the claim in question and the applicable law to such a claim. Consequently, the limitation period has to be assessed under the law governing the claim in question.

Under Liechtenstein law, a judgment may be enforced within 30 years of its entry into legal force, irrespective of which limitation period has been applicable to the underlying claim. The limitation period is interrupted as soon as a motion for enforcement is filed with the competent court, provided that it is granted eventually.

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?

Among the multilateral and bilateral treaties and conventions listed in question 1.1, the most important ones are the Treaty between Liechtenstein and Switzerland, the Treaty between Liechtenstein and Austria and the New York Convention, all of which will be dealt with in the following.

The Treaty between Liechtenstein and Austria regulates judgments, arbitral awards, settlements and public deeds in civil and commercial matters. Decisions in insolvency proceedings, decisions in inheritance and estate proceedings, decisions in guardianship and tutelage proceedings, interlocutory injunctions, administrative penalties, and decisions on civil law claims rendered in criminal proceedings are excluded from the scope of the Treaty. The requirements for the recognition of judgments are stipulated in Art. 1 of the Treaty: firstly, the *ordre public* of the state in which recognition is sought must not be violated. In particular, the decision must not violate the principle of *res judicata*. Secondly, the decision must have been rendered by a court which was competent to do so in accordance with Art. 2 of the Treaty. Thirdly, the decision must be final and binding as well as enforceable. And finally, in case of judgments by default, summary court orders and payment orders, the opposing party must have been summoned in accordance with the law.

The Treaty between Liechtenstein and Switzerland regulates judgments and arbitral awards in civil matters. Art. 1 of the Treaty between Liechtenstein and Switzerland stipulates the same requirements as Art. 1 of the Treaty between Liechtenstein and Austria. However, the Treaty only excludes the recognition and enforcement of decisions in insolvency proceedings, interlocutory injunctions, administrative penalties, and decisions on civil law claims rendered in criminal proceedings from its scope.

The New York Convention applies to the recognition and enforcement of foreign arbitral awards. In order to be recognised in Liechtenstein, an arbitral award must have been rendered in a contracting state as Liechtenstein reserved the application of the Convention only to recognition and enforcement of awards made in the territory of other contracting states. If an arbitral award is not made in the official language of Liechtenstein (German), the party applying for recognition and enforcement of the award shall produce a translation of these documents into German. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent (*cf.* Art. IV of the New York Convention).

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?

The treaties with Austria and Switzerland as well as the New York Convention distinguish between recognition and enforcement. Recognition extends the legal effects of a foreign judgment to the recognising country, whereas enforcement denotes the execution of a judgment.

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.

According to Art. 5 of the Treaty with Austria, the party seeking recognition of a judgment shall supply a counterpart of the judgment affixed with an official signature and the official seal or stamp, a judicial confirmation of the judgment's entry into legal force and – if necessary – its enforceability, in case of a judgment by default a counterpart of the summons and a judicial confirmation of the kind and time of its delivery to the absent party, and, if the facts of the case are not recognisable by means of the judgment, a counterpart of the claim or other appropriate deeds. Art. 5 of the Treaty with Switzerland lays down similar requirements. However, in addition to the above-mentioned documents, a translation of said documents may have to be provided since Switzerland has several official languages.

To obtain the recognition and enforcement of a foreign arbitral award under the New York Convention, the party applying for recognition and enforcement shall, at the time of the application, supply the duly authenticated original award or a duly certified copy thereof and the original arbitral agreement or a duly certified copy thereof.

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?

In case of the treaties with Austria and Switzerland, judgments which are sought to be recognised and enforced must not be reviewed as to the correct application of substantive law. It may only be assessed whether they comply with the requirements stipulated in Art. 1 and 5 of the Treaty.

Recognition and enforcement of foreign arbitral awards under the New York Convention can be challenged on the grounds stipulated in Art. V. These include:

- lack of a valid arbitration agreement;
- violations of the right to be heard;
- excess of the scope of the arbitration agreement;
- irregularities in the constitution of the arbitral tribunal or the proceedings;
- lack of a final and binding award;
- lack of objective arbitrability; and
- violation of public policy.

4 Enforcement

4.1 Once a foreign judgment is recognised and enforced, what are the general methods of enforcement available to a judgment creditor?

Liechtenstein enforcement law provides for various methods of enforcement. On the one hand, a distinction is made as to whether the judgment to be enforced is based on a monetary claim or on a claim for specific performance and, on the other hand, against what kind of assets enforcement is sought.

If the judgment is based on a monetary claim, the creditor is provided with the following enforcement measures: with regard to immovable property, the debtor may demand forced creation of a mortgage, forced administration or compulsory auction. As regards movable property, enforcement is made by way of seizure, valuation and compulsory sale. Lastly, attachment and transfer of receivables is possible.

If the judgment is based on a claim for specific performance, the creditor has the following options: with regard to the surrender of movable property, the creditor may order the bailiff to seize the specified property and deliver it against acknowledgment; as regards the transfer of immovable property, the creditor may order the bailiff to evict the property and confer possession upon the creditor; or finally, the performance or permission of an act or omission by the debtor may be achieved by different means: the creditor may have a third party perform the act in question and demand the

corresponding costs from the debtor by way of attachment and transfer. If the act cannot be performed by a third party, the debtor may be compelled to perform it by way of coercive detention or fines. The same applies to omissions or permission of an act.

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.

As Liechtenstein has a quite restrictive approach regarding the recognition and enforcement of foreign judgments; there are not many noteworthy recent legal developments in this regard. However, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards was joined by Liechtenstein quite recently. It has been applicable in Liechtenstein since 5 October 2011. Now parties may solve their civil disputes quickly, discreetly and considerably more cheaply before a “private” *ad hoc* arbitral panel which they can appoint free of many structural formalities. And, most importantly, the award may be enforced both in Liechtenstein and abroad. Liechtenstein follows the recent dynamic international trend of solving important financial disputes not before courts of law, but via arbitration.

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?

Foreign judgments are principally not enforceable in Liechtenstein. Though Liechtenstein law offers a few routes to finally obtain what a Liechtenstein debtor owes, the effort to enforce a foreign judgment in Liechtenstein often leads to an entirely new judging of the merits of the case in Liechtenstein.

Thus, instead of initiating legal proceedings against a Liechtenstein debtor outside Liechtenstein, even if that is done through a contractual jurisdiction clause, the substantial difficulties, additional costs and efforts required for the enforcement of a foreign judgment in Liechtenstein may overall make it easier, more efficient and cheaper to sue a Liechtenstein debtor at the outset in Liechtenstein.

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