

# Enforcement of Foreign Judgments

In 28 jurisdictions worldwide

*Contributing editor*  
**Patrick Doris**



**2015**

**GETTING THE  
DEAL THROUGH**

GETTING THE  
DEAL THROUGH 

# Enforcement of Foreign Judgments 2015

*Contributing editor*

**Patrick Doris**

**Gibson, Dunn & Crutcher LLP**

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# Belarus

Alexey Anischenko and Daria Denisiuk

SORAINEN

## 1 Treaties

**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?**

Belarus is a party to number of multilateral and bilateral international treaties for reciprocal recognition and enforcement of foreign judgments.

Among multilateral treaties that could serve as a legal basis for recognition and enforcement of foreign judgments are the Convention on the Contract for the International Carriage of Goods by Road of 1956 and regional treaties involving CIS countries, the Treaty on Procedure for Setting Commercial Disputes of 1992 (Kiev Treaty), the Convention on Judicial Assistance in Civil, Family and Criminal Matters of 1993 (Minsk Treaty) and the Convention on Judicial Assistance in Civil, Family and Criminal Matters of 2002 (Kishinev Treaty).

Belarus is also a party to several bilateral treaties (including treaties adhered to by way of succession after the USSR) on reciprocal judicial assistance and support in civil, family and criminal matters, in particular, with Bulgaria, China, Cuba, Czech Republic, Hungary, Iran, Italy, Latvia, Lithuania, Poland, Serbia, Slovakia, Vietnam, etc. By way of succession after the USSR, Belarus has also become a party to a bilateral agreement regarding judicial assistance with Finland. This agreement has, however, been disregarded by the Finnish government, which has sent an official letter in that regard to the Ministry of Foreign Affairs of the Republic of Belarus.

Belarus also signed several inter-institutional treaties between the higher court institutions of Belarus and those of the Azerbaijan, Cuba, Kazakhstan, the Russian Federation, Serbia, Tadjikistan, Turkey, etc.

The norms of international treaties of Belarus are part of the Belarusian legislation and are directly enforced on its territory. In most cases an international treaty is enforced in Belarus after it has been ratified by the Parliament.

Belarus has not made any amendments or reservations to the above-mentioned treaties.

## 2 Intra-state variations

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

Belarus is a unitary state, and its territory comprises a single jurisdiction with uniform law on recognition and enforcement of foreign judgments. The order and terms for recognition and enforcement of foreign judgments are contained in the Civil Procedural Code (for civil matters), the Economic Procedural Code (for commercial matters) and in the resolutions adopted by the Supreme Courts. The provisions of these acts apply to the whole territory of Belarus and may not be changed or supplemented at a local level.

## 3 Sources of law

**What are the sources of law regarding the enforcement of foreign judgments?**

The main source of law in Belarus is its legislation, including, in particular, norms of international treaties to which Belarus is a party. Moreover,

the provisions of international law have precedence over domestic legal acts, namely, they should apply if domestic legal acts contradict them. Precedent is not considered to be an official source of law; however, it comprises evidence of general court practice. At the same time, resolutions adopted by the Supreme Economic Court and the Supreme Court (since 1 January 2014 merged into the one Supreme Court) are binding on the lower-instance courts.

## 4 Hague Convention requirements

**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?**

Belarus is not a party to the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters of 1971.

## 5 Limitation periods

**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?**

The three years limitation period for enforcement of foreign judgments is established by the Economic Procedural Code and Civil Procedural Code. The limitation period commences running on the day after a foreign judgment has entered into legal force, unless otherwise provided by an applicable international treaty. If the limitation period is missed, it can be restored by the court if it finds the reasons for omission of the limitation period excusable. However, no criteria are established for that decision, and it is up to the court's discretion to decide if a reason can be viewed as excusable on a case-by-case basis.

## 6 Types of enforceable order

**Which remedies ordered by a foreign court are enforceable in your jurisdiction?**

The following remedies ordered by a foreign court in its final judgment on the merits are enforced and recognised in Belarus:

- money judgments or judgments on the award of property;
- judgments on recognition of the order for specific performance or other documents as unenforceable, judgments on obligations to perform specific actions, etc;
- amicable settlements;
- personal status judgments (divorce, matrimonial, inheritance, adoption, insolvency, etc);
- judgments for multiple and punitive damages;
- judgments, which are in themselves a recognition of previous foreign judgments;
- judgments issued against the Republic of Belarus or its bodies, provided that state immunity has been properly waived; and
- fiscal judgments.

Belarusian procedural law does not distinguish any particular type of a foreign judgment that may not be enforced. As a matter of principle, any foreign judgment can be enforced in Belarus if it is final and meets all the necessary requirements for its recognition and enforcement, including compliance with Belarusian public policy.

## 7 Competent courts

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

Cases seeking enforcement of foreign judgments are brought before a competent court in situ of a defendant or its property.

Since 1 January 2014, general courts and economic courts have been merged into a single system of general jurisdiction courts. However, the former division of subject matter jurisdiction is still valid. In accordance with the Civil Procedural Code cases to which a citizen not carrying out economic activity via a legal entity and not possessing a status of individual entrepreneur is a party are brought before regional courts or Minsk City Court. Commercial cases in accordance with the Economic Procedural Code are dealt with by economic courts.

## 8 Separation of recognition and enforcement

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

Recognition and enforcement of foreign judgments is interlinked, as a foreign judgment cannot be enforced if it has not been recognised.

In accordance with the Economic Procedural Code, the court deciding on the issue of recognition and enforcement of a foreign judgment issues a court ruling, which then serves as a ground for enforcement and issuing of an enforcement order.

Foreign judgments that do not require enforcement are recognised with no further proceedings in accordance with the Civil Procedural Code.

## 9 Defences

### 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?

On the basis of the Economic Procedural Code a foreign judgment may not be reviewed by a Belarusian court on its merits. The court only examines whether all the mandatory requirements are met to recognise and enforce a foreign judgment or refuse its recognition and enforcement. The parties are free to raise arguments for and against recognition and enforcement, but, if parties are silent or favour recognition and enforcement, a Belarusian court is still obliged to verify compliance with the formal requirements and public policy in the first place.

## 10 Injunctive relief

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

No. Only final judgments on the merits can be recognised and enforced. A party objecting recognition and enforcement of a certain foreign judgment in Belarus may only appeal it in the country of its origin and ask for suspension of recognition and enforcement proceedings in Belarus until the appeal is decided by the competent foreign court.

## 11 Basic requirements for recognition

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

The Economic Procedural Code and the Civil Procedural Code sets forth the following mandatory requirements for a foreign judgment to be recognised in Belarus:

- the foreign judgment should have entered into force under the law of the state where it was issued if otherwise it is not provided by an international treaty of the Republic of Belarus;
- the party against whom the judgment was issued was duly notified on time and venue of the proceedings;

- the dispute, in accordance with the Belarusian legislation or an international treaty of the Republic of Belarus, is not a subject to exclusive competence of the Belarusian courts;
- no judgment between the same parties on the same subject and on the same grounds was issued by a Belarusian court;
- no proceedings on a dispute between the same parties on the same subject and on the same grounds commenced in a Belarusian court prior to the proceedings in a foreign court;
- the term for filing an application on the recognition and enforcement of a foreign judgment in the Republic of Belarus has not expired or has been revived by the court in the established order; and
- the foreign judgment does not contravene the public policy of the Republic of Belarus (for more details, see question 19).

## 12 Other factors

### May other non-mandatory factors for recognition of a foreign judgment be considered and if so what factors?

Reciprocity may serve as a legal basis for recognition and enforcement of a foreign judgment rendered in commercial (business-related) disputes even if Belarus does not have a corresponding treaty with a foreign state.

Foreign judgments rendered in civil disputes cannot be recognised and enforced by virtue of reciprocity.

Reciprocity is usually presumed until otherwise proved by the party objecting recognition and enforcement.

## 13 Procedural equivalence

### 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?

There is no requirement that the judicial proceedings where the judgment was entered shall correspond to the process and order established in Belarus. The review of a foreign judgment on the merits is not permissible and that is why the court only examines compliance with mandatory requirements (see question 11) established for recognition and enforcement of foreign judgments.

## 14 Personal jurisdiction

### 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?

While considering the application for recognition and enforcement of a foreign judgment, a Belarusian court normally presumes jurisdiction and compliance with procedural rules by the court that issued the judgment, unless it is objected by the defendant.

Though Belarusian procedural law does not explicitly require consent to a foreign jurisdiction, nor requires the defendant to have had residence, citizenship, property ownership or domicile in the foreign country, Belarusian courts are unlikely to allow recognition and enforcement of a foreign judgment if they established that there was no personal jurisdiction over the defendant, and would certainly refuse recognition and enforcement of foreign judgments given in a dispute between two or more Belarusian parties.

Absence of competence, nevertheless, may become grounds of refusal of foreign judgment recognition and enforcement in accordance with an international treaty. Certain international treaties, for example, the Kiev Treaty of 1992, even stipulate absence of competence as a special ground to refuse recognition and enforcement of a foreign judgment.

## 15 Subject-matter jurisdiction

### 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?

A similar approach as described in answer to question 14 applies.

**16 Service**

**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 actual notice is sufficient. If a defendant did not participate in the proceedings because it was not duly served with a notice, a Belarusian court should refuse recognition and enforcement of a foreign judgment.

Technical or formal service of a defendant with a notice is not considered to be appropriate. Technical or formal forwarding a notice via mail is unlikely to be regarded as a sufficient notice for the purpose of recognition and enforcement of a foreign judgment.

Appropriate notice service means notification of a defendant by actual delivery that enables it to receive information on the date and venue of proceedings and provides sufficient time to prepare a defence.

The defendant is deemed to be properly notified if the notice was served according to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 1965 or any other applicable international treaty.

**17 Fairness of foreign jurisdiction**

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

According to the Economic Procedural Code, the Belarusian courts, while deciding on recognition and enforcement of a foreign judgment, have no right to review a foreign judgment on its merits. Therefore, Belarusian courts consider a foreign judgment only regarding absence of grounds for its recognition and enforcement refusal, leaving the issue of relative inconvenience of the foreign jurisdiction to the defendant behind. Moreover, the entry of an appearance to defend in the foreign court will generally prevent the respondent from subsequently repudiating the jurisdiction of the foreign court in proceedings before the Belarusian court if the defendant did not initially contest the jurisdiction of the foreign court.

**18 Vitiating by fraud**

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

Belarusian courts normally should not examine a foreign judgment for allegations of fraud upon the defendant or the court, as review on the merits is not allowed. The enforcing court presumes that a material or legal dispute has already been resolved and thus possible deceit and fraud during the proceedings abroad do not affect recognition and enforcement of a foreign judgment in Belarus. However, it is theoretically possible to argue that the recognition and enforcement of fraudulent foreign judgments will be against public policy in Belarus.

**19 Public policy**

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

The court will not examine the foreign judgment for consistency with public policy. However, it will examine the consequences of its recognition in terms of compliance with the public policy of Belarus. If they contradict public policy, the foreign judgment will not be recognised and enforced in Belarus.

The public policy of Belarus is not well defined and established either in theory or in practice and comprises the basic principles of international law, the norms of Constitution, the provisions of international treaties and basic principles of founding law branches.

If a debtor is in a state of bankruptcy or there is a possibility of such a state for the debtor, this fact should not serve as the basis for refusal of recognition and enforcement of the judgment on the grounds of contradiction to public policy.

Errors in law by a foreign court, as well as differences in the substantive law of the country where the judgment was issued and Belarusian law shall not be viewed by Belarusian courts as contradicting public policy, as this essentially leads to review of a foreign judgment on its merits.

**20 Conflicting decisions**

**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 mandatory requirements for a foreign judgment to be enforced include absence of a judgment issued by a Belarusian court on a dispute on the same subject and grounds between the same parties that has entered into force.

In addition, a dispute shall not be the subject of the proceedings carried out in a Belarusian court at the moment an application to recognise and enforce a foreign judgment has been submitted, if such proceedings commenced prior to the application having been received. In this case, a Belarusian court refuses to recognise and enforce a foreign judgment. These criteria, however, apply only upon Belarusian courts. The fact that there is another final and conclusive judgment involving the same parties or parties in privity in the country where a recognised and enforced judgment was issued or in a third country is not considered by a Belarusian court that is being requested to decide on recognition and enforcement of a foreign judgment.

**21 Enforcement against third parties**

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

As the court recognises and enforces a foreign judgment after proving that all the mandatory requirements are met formally, only the data (including the data debtor) provided in such a judgment are taken into consideration. Therefore, the court is most likely not to apply the principles of agency or alter ego and will not enforce a foreign judgment against a party other than that one named in a foreign judgment. Enforcing a foreign judgment against another party would mean alteration of a foreign judgment, namely, a review of a foreign judgment on its merits, which is not permitted.

**22 Alternative dispute resolution**

**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?**

There is no established practice in this regard in Belarus. Most likely, ignorance of a particular ADR mechanism by the parties to a dispute as such would not lead to refusal or recognition and enforcement of a foreign judgment.

**23 Favourably treated jurisdictions**

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

Judgments from countries that are parties to Kiev Treaty, Minsk Treaty and Kishinev Treaty (mostly CIS countries) are usually given greater deference than judgments from non-CIS countries because of close and long-term political and economic relations and trust on the governmental level, as well as court system similarities existing between these countries. Moreover, the Agreement on the Order of Mutual Enforcement of Judicial Acts of Economic Courts of the Republic of Belarus and Arbitration Courts of the Russian Federation of 2002 provides for enforcement of foreign judicial acts in the same order as is done with the domestic ones. No recognition is needed in this case.

With respect to non-CIS countries, presence of an international treaty usually simplifies the process of recognition and enforcement of foreign judgments. However, if there is no international treaty concluded between Belarus and a country where the judgment was issued, the principle of reciprocity is taken into consideration (see question 12).

**24 Alteration of awards**

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

The review of a foreign judgment on its merits is not permitted. However, it is possible that a Belarusian court will reduce or refuse to recognise a

punitive damage award or an award of an attorney's fees stipulated in a foreign judgment if it finds such recognition and enforcement is against Belarusian public policy.

## 25 Currency, interest, costs

**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?**

According to the Resolution of the Supreme Economic Court of the Republic of Belarus, the sum of damage award stipulated in a foreign currency is collected from an individual after conversion into the local currency (Belarusian roubles) taking into account the official exchange rate on the date of payment. However, collection of damages from legal entities is executed in the foreign currency that is stipulated in the damage award. The money payment is executed from the currency account of a legal entity. Where a legal entity does not possess a currency account, the necessary sum of Belarusian roubles is charged off the account opened in Belarusian roubles. The bank transfers to the creditor the necessary sum of Belarusian roubles equivalent to the amount in foreign currency stipulated in the damage award.

## 26 Security

**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?**

According to the Economic Procedural Code the ruling on recognition and enforcement of a foreign judgment can be appealed against in cassation instance within one month from the date the ruling has entered into force or in a supervisory instance within one year from the date of the ruling that has entered into force.

The cassation instance is the Collegium on Economic Issues of the Supreme Court (CEI). The CEI, while deciding on cassation appeal, proves accuracy of material and procedural norms application. Based on the results of review the CEI has the right:

- to uphold a ruling of a first instance court without variation and dismiss the cassation appeal;
- to abolish or alter a ruling of a first instance court and without transferring the case for a new review adopt a new judicial act if the circumstances that are relevant to the case have been substantiated on the presented evidence;
- to abolish a ruling of a first instance court fully or partially and submit the dispute to a first instance court again; and
- to abolish a ruling of a first instance court fully or partially and leave the statement of claim without consideration in full or in part, or terminate the proceedings on the case.

A ruling of a first instance court can be abolished or altered in the following cases:

- a ruling is fully or partially inconsistent if:
  - a court has not fully examined the circumstances that are relevant to the case;
  - the circumstances that are relevant to the case and taken as the basis of a ruling are not proved by valid and convincing evidence; or
  - the conclusions of a ruling do not correspond to the materials and facts of the case;
- material law norms are violated or implied inaccurately if:
  - a court that issued a ruling has not applied the legislation that shall be applied;
  - a court that issued a ruling has applied the legislation that shall not be applied; or
  - a court that issued a ruling has interpreted the legislation in a wrong way;
- procedural law norms are violated and this violation has led or could lead to an issuance of a wrong ruling. The procedural law norms are also violated if:
  - the dispute was considered by a court in illegal composition;

- the dispute was considered by a court in absence of the parties participating in the case, which were not duly notified on the time and venue of the proceedings;
- the dispute was considered with a violation of proceedings language rules;
- a ruling was issued by a court with respect to the rights and duties of third parties;
- a ruling is not signed by a judge or is signed by judges who are not stipulated in a ruling; or
- minutes of proceedings are absent in the case or are not signed by the persons that are obliged to sign them (unless minutes of proceedings are facultative).

A ruling on recognition and enforcement of a foreign judgment may become a subject of review by the supervisory instance.

The supervisory instance is the Presidium of the Supreme Court. An appeal in a supervisory order can be submitted only if all the possible legal remedies were exhausted by the party submitting an application or if the grounds for not appealing against a ruling in appellation and cassation order are found to be sufficient. The appeal can be submitted by the interested parties (only parties to the case and their representatives) to certain governmental officials: the Prosecutor-General and his or her deputies, or the Chairman of the Supreme Court and his or her deputies.

After considering an appeal the Presidium of the Supreme Court has the right to:

- uphold a ruling of a first instance court, appellation court or cassation court without variation and dismiss the appeal in supervisory order;
- abolish a ruling of a first instance court, appellation court or cassation court fully or partially and submit the dispute for a new reviewing;
- abolish a ruling of a first instance court, appellation court or cassation court fully or partially and leave the statement of claim without consideration in full or in part or terminate the proceedings of the case; and
- abolish or alter a ruling of a first instance court, appellation court, cassation court and, without transferring the case for a new review, adopt a new judicial act if there is a mistake in the interpretation of material or procedural law norms but all the case circumstances are substantiated fully and accurately and approved by the corresponding evidence.

In accordance with the Civil Procedural Code, the ruling on recognition and enforcement issued by a competent court can be appealed against in a cassation and supervisory order.

The cassation appeal can be submitted within 10 days after the date a ruling was issued. The cassation court reviews the case in full and is not bound by the grounds stipulated in a cassation appeal. The cassation court powers are the same as under the Economic Procedural Code. A ruling can be abolished in cassation order if:

- it is fully or partially inconsistent; or
- the court has wrongly applied material and procedural law norms.

A ruling that is accurate on its merits cannot be abolished only on formal grounds.

Appellation in a supervisory order can take place within three years after the ruling has entered into force, in accordance with the rules established by the Civil Procedural Code.

## 27 Enforcement process

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

According to the Economic Procedural Code, after reviewing an application on recognition and enforcement of a foreign judgment, a Belarusian court issues a ruling. The ruling of a Belarusian court shall include the following data:

- the name and address of the foreign court that issued the foreign judgment;
- the name of the creditor and the debtor;
- data on a foreign judgment that is to be recognised and enforced; and
- approval or refusal to recognition and enforcement of a foreign judgment.

**Update and trends**

Since 1 January 2014, general courts and economic courts have been merged into a single system of general jurisdiction courts with a single Supreme Court. It is expected that this reorganisation should lead also to unification of existing, slightly different, approaches of civil and economic courts to recognition and enforcement of foreign judgments.

The following ruling enters into force after the issuance and can be appealed against in cassation instance or in supervisory instance. Enforcement is carried out in accordance with the execution documents. The term for free-will execution of an executive document by a debtor comprises seven days and after that an enforcement officer takes enforcement measures including execution upon property, withdrawal of property and its transfer to the creditor, realisation of arrested property, etc.

The Civil Procedural Code governs the process of recognition of judgments that do not demand enforcement.

Such judgments are automatically recognised, namely, no further proceedings take place. Within one month from the date an interested party became aware of the judgment to be recognised it is entitled to submit to the court its objections. After the court considers the objections it issues the corresponding ruling. The refusal of recognition of a foreign judgment in this case is possible on the grounds stipulated in question 11, except for the term of filing an application for recognition and enforcement expiry. The ruling on recognition of such a judgment can be appealed against in the Supreme Court.

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

First, it should be noted that Belarusian courts recognise and enforce only final foreign judgments. Interlocutory decisions or rulings granting interim measures will not be recognised and enforced. Another common pitfall in recognising and enforcing foreign judgments is a reference by a Belarusian court to public policy as a main obstacle to recognise and enforce a foreign judgment. Moreover, as foreign judgments are not reviewed by the courts on their merits, it means that the courts strictly follow the formal criteria established for recognition and enforcement of foreign judgments. Therefore, the formal approach applied by the judges when considering a particular case may result in refusal of foreign judgment recognition and enforcement, for example, when the apostil is formalised in a form other than is stipulated by law, if a defendant was serviced with a notice in an inappropriate way (via e-mail, fax or post) or had not sufficient time to prepare a defence (time sufficiency is assessed by the court in each case). To successfully recognise and enforce a foreign judgment, all possible documents have to be submitted to the court for it not to refuse recognition and enforcement on formal grounds.



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