

GETTING THE
DEAL THROUGH 

Enforcement of Foreign Judgments 2015

Contributing editor

Patrick Doris

Gibson, Dunn & Crutcher LLP

Publisher
Gideon Robertson
gideon.roberton@lbresearch.com

Subscriptions
Sophie Pallier
subscriptions@gettingthedealthrough.com

Business development managers
George Ingledeu
george.ingledeu@lbresearch.com

Alan Lee
alan.lee@lbresearch.com

Dan White
dan.white@lbresearch.com



Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910

© Law Business Research Ltd 2014
No photocopying: copyright licences do not apply.
First published 2011
fourth edition
ISSN 2048-464X

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. Although the information provided is accurate as of September 2014, be advised that this is a developing area.

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



CONTENTS

Australia	4	Japan	72
Colin Loveday and Sheena McKie Clayton Utz		Shinya Tago, Ryohei Kudo and Fumiya Beppu Iwata Godo	
Austria	10	Korea	76
Katharina Kitzberger and Stefan Weber Weber & Co Rechtsanwälte GmbH		Woo Young Choi, Sang Bong Lee and Ji Yun Seok Hwang Mok Park PC	
Belarus	15	Latvia	80
Alexey Anischenko and Daria Denisiuk SORAINEN		Agris Repšs, Valts Nerets and Agita Sprūde SORAINEN	
Bermuda	20	Lithuania	85
Delroy B Duncan Trott & Duncan Limited		Kęstutis Švirinas, Renata Beržanskienė and Almina Ivanauskaitė SORAINEN	
Brazil	24	Mexico	91
Marcus Alexandre Matteucci Gomes and Fabiana Bruno Solano Pereira Felsberg Advogados		José María Abascal, Romualdo Segovia and Héctor Flores Abascal, Segovia & Asociados	
Canada	28	New Zealand	95
Peter J Cavanagh and Chloe A Snider Dentons Canada LLP		Margaret A Helen Macfarlane, Sarah Holderness, Michael O'Brien, Claire Perry and Shukti Sharma Hesketh Henry	
Cayman Islands	34	Nigeria	100
James Corbett QC and Pamella Mitchel Kobre & Kim LLP		Etigwe Uwa SAN, Adeyinka Aderemi and Chinasa Unaegbunam Streamswowers & Köhn	
China	38	Russia	105
Tim Meng GoldenGate Lawyers		Andrey Zelenin, Artem Antonov and Evgeny Lidzhiev Lidings	
Ecuador	42	Switzerland	110
Rodrigo Jijón-Letort and Juan Manuel Marchán Perez Bustamante & Ponce		Dieter A Hofmann and Oliver M Kunz Walder Wyss Ltd	
Estonia	46	Turkey	115
Carri Ginter and Triin Toom SORAINEN		Pelin Baysal and Beril Yayla Gün + Partners	
France	51	Ukraine	119
Anke Sprengel Endrös-Baum Associés		Timur Bondaryev, Markian Malskyy and Volodymyr Yaremko Arzinger	
Germany	57	United Kingdom	124
Christoph Wagner Heuking Kühn Lüer Wojtek		Charles Falconer, Patrick Doris, Sunita Patel, Meghan Higgins and Jennifer Darcy Gibson, Dunn & Crutcher LLP	
Greece	62	United States	131
Aphrodite Vassardani A. Vassardanis & Partners Law Firm		Scott A Edelman, Perlette Michèle Jura, Nathaniel L Bach and Miguel Loza Jr Gibson, Dunn & Crutcher LLP	
Guatemala	68	Venezuela	136
Concepción Villeda and Rafael Pinto Mayora & Mayora, SC		Carlos Dominguez Hoet Pelaez Castillo & Duque	

Latvia

Agris Repšs, Valts Nerets and Agita Sprūde

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?

Latvia has entered into a number of bilateral and multilateral treaties and is bound by the European Union regulations regarding reciprocal recognition and enforcement of foreign judgments.

EU

- Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters, which is superseded by Regulation No. 44/2001 but which continues to apply with respect to those territories of EU countries that fall within its territorial scope and that are excluded from the regulation pursuant to article 355 of the Treaty on the Functioning of the European Union;
- Council Regulation (EC) No. 1346/2000 of 29 May 2000 on Insolvency Proceedings;
- Council Regulation (EC) No. 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (the Brussels I Regulation);
- Regulation (EC) No. 805/2004 of the European Parliament and of the Council of 21 April 2004 creating a European Enforcement Order (EEO) for Uncontested Claims (Regulation on European Enforcement Order);
- Regulation (EC) No. 1896/2006 of the European Parliament and of the Council of 12 December 2006 creating a European Order for Payment Procedure (Regulation on European Payment Order);
- Regulation (EC) No. 861/2007 of the European Parliament and of the Council of 11 July 2007 establishing a European Small Claims Procedure (Regulation on European Small Claims Procedure (ESCP));
- Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (recast) (applicable starting on 10 January 2015);
- for relations between Denmark and other EU member states, the Agreement between the European Community and the Kingdom of Denmark on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 19 October 2005 applies; and
- for relations between Norway, Iceland and Switzerland and other EU member states, the Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters of 30 October 2007 (New Lugano Convention) applies.

International bilateral treaties

Latvia is a party to bilateral treaties dealing with reciprocal recognition and enforcement of foreign judgments with the following states:

- Belarus: Treaty between the Republic of Latvia and Republic of Belarus on Legal Assistance and Legal Relations, 21 February 1994;
- Kyrgyzstan: Treaty between the Republic of Latvia and the Republic of Kyrgyzstan on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, 10 April 1997;

- Moldova: Treaty between the Republic of Latvia and the Republic of Moldova on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, 14 April 1993;
- Poland: Treaty between the Republic of Latvia and the Republic of Poland on Legal Assistance and Legal Relations in Civil, Family, Labour and Criminal Matters, 23 February 1994;
- Russia: Treaty between the Republic of Latvia and the Russian Federation on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, 3 February 1993;
- Ukraine: Treaty between the Republic of Latvia and Ukraine on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, 24 May 1995; and
- Uzbekistan: Treaty between the Republic of Latvia and the Republic of Uzbekistan on Legal Assistance and Legal Relations in Civil, Family and Criminal Matters, 23 May 1996.

International multilateral treaties

Latvia is a party to several multilateral treaties containing provisions on the recognition and enforcement of foreign judgments, however, those treaties apply to specific commercial activities or specific aspects of litigation. Such treaties are the Geneva Convention of 19 May 1956 on the Contract for International Carriage of Goods by Road, the Hague Convention of 1 March 1954 on Civil Procedure and the Hague Convention of 25 October 1980 on International Access to Justice. Also, Latvia is a party to a tripartite treaty with two neighbouring countries, Estonia and Lithuania, on legal assistance and legal relations, 11 November 1992.

Latvia has made no reservations or amendments to the treaties mentioned above.

The treaty with Poland and the tripartite treaty with Lithuania and Estonia are not applicable for recognition and enforcement of foreign judgments due to the multilateral treaties in force.

A full list of international bilateral and multilateral treaties that Latvia has adhered to, can be found at www.mfa.gov.lv/en/policy/.

2 Intra-state variations

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

The judicial system in Latvia is uniform, thus the law on the enforcement of foreign judgments is uniformly regulated in Latvia.

3 Sources of law

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

Sources of law include the Civil Procedure Law of Latvia (CPL) and the above-mentioned international legislation. The CPL is applied insofar as such is allowed by the provisions of the relevant supranational conventions and regulations.

The jurisprudence is still scarce and existing decisions, especially from higher courts, have an influence on the court practice; however, as it is not equivalent to case law, the Supreme Court's jurisprudence is not legally binding as such.

In respect to recognition and enforcement of court ruling issued in countries that are not EU member states, but that have entered into treaties on legal assistance with Latvia, the provisions of these treaties are primary,

and the provisions of the CPL are applicable only in cases that are not governed by bilateral treaties.

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?

Latvia has not signed the Hague Convention of 1 February 1971 on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

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?

There are no explicit limitation periods for enforcement of a foreign judgment in Latvia. The general principle is that judgments, like all obligation rights, must be enforced within 10 years from the day when a national court decision on adjudication of a foreign court comes into effect.

6 Types of enforceable order

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

Enforceability of remedies in Latvia differs depending on whether they are ordered by an EU or non-EU court.

For enforcement of non-EU court remedies, the general CPL provisions apply unless the non-EU state has concluded a bilateral treaty with Latvia on legal assistance (see question 1). Pursuant to section 636 (1) of the CPL, only those foreign court adjudications by which a matter is adjudged on the merits, as well as an approved amicable settlement of a foreign court, are enforceable in Latvia. Thus enforcement of interim injunction orders or decisions that do not adjudicate the matter on the merits of a non-EU court, unless provided in a bilateral treaty in force with that state, is impossible in Latvia. Such orders and decisions include requests for securing of evidence, requests of evidence, preliminary injunctions.

Adjudications that are not final or that do not adjudicate the matter on merits may be enforceable in Latvia under the bilateral treaties on legal assistance with Belarus, Kyrgyzstan, Moldova, Russia, Ukraine, and Uzbekistan.

As regards EU-court adjudications, an adjudication of a foreign court is also an adjudication of a foreign competent authority, which is to be enforced in the state that made it if the recognition of the adjudication and enforcement arises from directly applicable legal norms of the EU or international agreements binding upon Latvia. Pursuant to articles 1, 31 and 32 of the Brussels I Regulation (similarly, see articles 1, 31, and 32 of the New Lugano Convention), as well as orders and decisions that do not adjudicate the matter on merits, are enforceable in Latvia if certain conditions established by the CJEU are met.

First, in order to be enforceable, such a decision must be issued in a case that falls within the case categories listed under article 1 of the Brussels I Regulation and must relate to the provisional and protective measures as stated under article 31 of the Brussels I Regulation (in the case law of the CJEU this is known as the *Van Uden-Paul Dairy-Reichert* test). Second, the defendant must have been invited to the proceedings or, if the decision has been taken in ex parte proceedings, the defendant must have had a right to appeal the decision (known as the *Demilauler-Hengst Import* test). Thus, enforcing of an ex parte decision that does not adjudicate the matter on merits is impossible in Latvia. But if an EU court in proceedings with the defendant present issues a decision on preliminary injunction, it will be enforceable in Latvia.

Notwithstanding the fact whether the decision adjudicates the matter on merits, non-enforceable remedies are those that contradict with the public policy of Latvia. For example, recent amendments to the Civil Law aim to combat excessive contractual penalties as means of an unjust enrichment. Thus recognition of a foreign judgment adjudicating a non-proportionate contractual penalty will be impossible.

7 Competent courts

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

The case must be brought in a district (city) court on the basis of the place of enforcement of the adjudication or also on the basis of the declared place of residence of the defendant, but if none, the place of residence or legal address of the defendant.

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?

According to the CPL, for a foreign judgment to obtain full legal effect, it requires both recognition and enforcement.

If a judgment is issued by a court of a member state of the EU or a member state of the New Lugano Convention, no special procedure of recognition is required. However, a Latvian court decision on enforcement of a foreign judgment is mandatory.

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?

The possibility of raising a merits-based defence against the recognition of foreign judgment is excluded from the law. The CPL provides an exhaustive list of the permitted grounds for non-recognition of a foreign (non-EU) judgment:

- a foreign court that made the judgment was not competent in accordance with Latvian law to adjudicate the dispute or such a dispute is an exception under the jurisdiction of the Latvian courts;
- a foreign judgment has not entered into lawful effect;
- the defendant was denied a possibility of defending his or her rights, especially if the defendant who has not participated in the adjudication of the matter was not notified regarding appearing in court in a timely and proper manner, unless the defendant has not appealed such a judgment even though he or she had the possibility to do so;
- a foreign judgment is incompatible with a court judgment already rendered earlier and entered into lawful effect in Latvia in the same dispute between the same parties or with already earlier commenced court proceedings between the same parties in a Latvian court;
- a foreign judgment is incompatible with such a foreign judgment already earlier rendered and entered into lawful effect in the same dispute between the same parties, which may be recognised or is already recognised in Latvia;
- a recognition of a foreign judgment is in conflict with the public order of Latvia; or
- in the making of a foreign judgment, the law of such a state was not applied as should have been applied according to Latvian international private law conflict of law norms.

The Brussels I Regulation and the New Lugano Convention limit the possibility of challenging a judgment made by a court of a member state. The only possible means of defence are defined in articles 34, 35, and 72 of the Brussels I Regulation and the New Lugano Convention. Accordingly, a Latvian court will not recognise a foreign judgment only:

- if such recognition is manifestly contrary to public policy in Latvia;
- where it was given in default of appearance, if the defendant was not served with the document that instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him or her to arrange for his or her defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him or her to do so;
- if it is irreconcilable with a judgment given in a dispute between the same parties in Latvia; or
- if it is irreconcilable with an earlier judgment given in another member state or in the third state involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in Latvia.

Although article 35 states the principle that the competence of the jurisdiction in the country of origin must not be reviewed, it allows exceptions to this principle with regard to decisions in matters relating to insurance, consumer contracts or decisions by the exclusive jurisdictions, according to article 22. In these cases, a lack of competence will constitute a reason for the refusal of recognition.

10 Injunctive relief

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

A decision on the recognition and enforcement of a foreign judgment is made in ex parte proceedings within 10 days from the submission of an application to the court. The district (city) court's decision is subject to appeal by submitting an ancillary complaint to the regional court whose decision may also be appealed by an ancillary complaint to the Supreme Court. Defendants with a place of residence or legal address in Latvia may submit the ancillary complaint within 30 days (the time period for foreign defendants is 60 days), and the period commences at the moment when the defendant receives the documents, which are served via the Ministry of Justice of Latvia. If an ancillary complaint is submitted, the court's decision on recognition and enforcement does not come into a legal effect. Thus the appellate process in fact has an effect of an injunctive relief on behalf of the defendant.

Due to the lengthy period of appeal (30 and 60 days), from the claimant's perspective, application on recognition and enforcement of a foreign judgment is effective if simultaneously an application on securing of claim (ie, in fact, securing of enforcement) is brought. Such an opportunity is also supported by article 47 of the Brussels I Regulation and the New Lugano Convention.

11 Basic requirements for recognition

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

Latvian law does not explicitly provide requirements for recognition, but such requirements derive implicitly from the national and EU law norms prescribing grounds for non-recognition (see question 9). According to the CPL, in order to recognise a foreign non-EU judgment, it has to be issued in a civil or commercial matter by a state court that is created under and independently operates pursuant to a law. The judgment must have entered into lawful effect and must have been made in adversarial proceedings where the defendant had a possibility to defend his or her rights. The judgment must be compatible with an earlier judgment rendered in Latvia (or a foreign judgment recognised in Latvia) in the same dispute between the same parties. The foreign non-EU judgment must not be in conflict with public policy of Latvia and must have been decided by applying the correct material law under the Latvian conflict of law norms.

Similarly, the Brussels I Regulation and the New Lugano Convention state that a foreign judgment ought to be recognised without any special procedure. Articles 34 and 35 determine similar requirements for recognition of a foreign judgment – it must be in conformity with the public policy of Latvia, it has to be reconcilable with a judgment given before in dispute between the same parties, etc (see question 9).

In addition, it is important that the foreign judgment has a clear and enforceable content as, in practice, too vague or imprecise judgments may be impossible to enforce. Recently, Latvian courts have faced problems with enforcing worldwide freezing orders (*Mareva* injunctions) in Latvia as they are broad and prescribe means of preliminary injunction that are not listed under the CPL. At the same time, Latvian court practice on securing claims in support of foreign litigations is still very undeveloped.

12 Other factors

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

There are no other non-mandatory factors to be considered. All factors for recognition of a foreign judgment are defined by the CPL or the EU law as described above.

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?

One of the grounds that may serve for non-recognition of a foreign judgment under the CPL and bilateral treaties on legal assistance is the fact that the defendant was denied a possibility of defending his or her rights, especially if the defendant who has not participated in the adjudication of the matter was not notified regarding appearing in court in a timely and proper manner. Submission of the document issued by a foreign court, which certifies that the defendant who has not participated in the adjudication of the matter was notified of the adjudication in a timely and proper manner, is mandatory.

The principle of adversarial proceedings, by way of which the parties exercise their procedural rights in civil litigation, is one of the basic principles of the CPL. Violation of this principle will constitute a ground for non-recognition of a foreign judgment. Significant violations of other material or procedural law norms may make the judgment contrary to public policy of Latvia and thus non-recognisable and non-enforceable.

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?

The jurisdiction of the court of a member state of EU may not be reviewed. Therefore the court of Latvia will not challenge jurisdiction of a court of another EU member state.

However, a judgment of a non-EU court is not subject to recognition in Latvia if the court that entered the judgment could not have made the judgment pursuant to the provisions of Latvian law on jurisdiction. The Latvian court as the enforcing court examines whether the court where the judgment was entered had jurisdiction on basis of the application and its attachments that are submitted by the claimant. In practice, where there are doubts on competence, the Latvian court contacts the court where the judgment was entered. If there are no obvious grounds to believe that the foreign court was incompetent, the Latvian court will consider the foreign court as competent. The defendant can raise objections regarding incompetence as a ground for non-recognition in the appellate procedure.

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?

The court of Latvia does not review EU member state courts' judgments on their merits, thus it presumes that the court where the judgment was entered had subject-matter jurisdiction over the controversy. The jurisdiction may be examined in exceptional cases provided for in article 35(1) of the Brussels I Regulation (in consumer law or insurance law disputes or, in the case of exclusive jurisdiction, according to article 22).

Judgment of a non-EU court is not subject to recognition in Latvia if the court that entered the judgment could not have made the judgment pursuant to the provisions of the Latvian law on jurisdiction. The Latvian court as the enforcing court examines whether the court where the judgment was entered had subject-matter jurisdiction over the controversy on basis of the application and its attachments that are submitted by the claimant. In practice, where there are doubts on competence, the Latvian court contacts the court where the judgment was entered. If there are no obvious grounds to believe that the foreign court was incompetent, the Latvian court will consider the foreign court as competent. The defendant can raise objections regarding incompetence as a ground for non-recognition in the appellate procedure.

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?

It is a general requirement that the foreign judgment must be enforceable in the state in which it was rendered in order to be declared enforceable in

Latvia. However, the CPL stipulates that a judgment will not be recognised or declared enforceable if the rights of defence were violated, particularly if the defendant was not notified about the hearing in court in a timely and proper manner. There is also exception to that rule when the defendant has not appealed such a decision even though he or she had the possibility to do so. Moreover, it is a requirement that the application for recognition and enforcement, a document issued by a foreign court that certifies that the defendant, who had not participated in the adjudication of the matter, was notified of the time and place of the adjudication of the matter in a timely and proper manner is attached. The right to be timely and sufficiently notified about the time and place of the court hearing is also an integral part of the right to a fair trial protected by the Constitution of the Republic of Latvia.

Also, according to article 26 of the Brussels I Regulation and the New Lugano Convention, the court is obliged to verify whether the defendant has been able to receive the document instituting the proceedings, or an equivalent document, in sufficient time to enable him or her to arrange for his or her defence, or that all necessary steps have been taken to this end in order to ensure compliance with the fundamental principle of a fair trial.

Whether the defendant must have been technically or formally served with notice of the original action in the foreign jurisdiction, or if the actual notice is sufficient, depends on the law of the foreign court that entered the judgment. This is derived from the fact that the foreign judgment must be enforceable in the state in which it was rendered in order to be declared enforceable in Latvia. Therefore, whether the defendant has been timely and sufficiently notified about the time and place of the court hearing must be determined under the law of the foreign court that entered the judgment.

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 CPL, the court will not take this fact into consideration as long as the foreign judgment under consideration was entered by a court that was competent in accordance with Latvian law to adjudicate the dispute.

18 Vitiatio by fraud

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

According to the CPL, the court does not examine the foreign judgment on merits. The court can refuse recognition or enforcement of a foreign judgment if that would be incompatible with the public policy. If the judgment was rendered as a result of fraud or corruption in the foreign court, the recognition and enforcement of such a judgment would likely be seen as against public policy of Latvia. However, the burden of proof is for the party that opposes the recognition and enforcement.

19 Public policy

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

The CPL states that one of the grounds for non-recognition of a foreign judgment is when the judgment is in conflict with the public policy of Latvia.

In deciding whether the judgment is or is not in conformity with the public policy of Latvia, the court is bound by the circumstances established by the adjudication of the foreign court. According to the jurisprudence of the Supreme Court of Latvia, enforcement of a foreign judgment will be considered incompatible with the public policy if, for example, the judgment does not contain grounds and reasoning, with the exception of when the defendant had received documents that were equivalent to the argumentation excluded from the judgment.

Article 34(1) of the Brussels I Regulation and the New Lugano Convention precludes enforcement if the foreign judgment is 'manifestly contrary' to public policy. Pursuant to the case law of the CJEU, the notion of public policy (public order) refers to both matters of law as to matters of judicial competence, and this notion must be interpreted autonomously and not according to national legislative rules. However, it has been held

that public policy should only be invoked when there is not a more specific ground for refusal to enforce the foreign judgment.

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?

According to the CPL, if a foreign judgment is incompatible with a prior final and conclusive judgment, whether it is Latvian or foreign, this foreign judgment will not be recognised or enforced by the Latvian courts.

In order to avoid contradictory judgments, the same also applies for conflicting judgments concerning the same parties under the Brussels I Regulation and the New Lugano Convention.

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?

In Latvia, courts do not apply the principles of agency or alter ego. Therefore, a foreign judgment can only be enforced against the defendant named in the judgment.

However, Latvian law allows the transfer and assignment of rights by means of an amendment of the court decision of enforceability (writ of execution). If the legal succession as such can be proven, the judgment can still be enforced by the legal successor or against the legal successor and a new litigation may be avoided.

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?

Under the Brussels I Regulation and the New Lugano Convention the jurisdiction of a court of a member state of EU may not be reviewed and the test of public policy may not be applied to the rules relating to jurisdiction. Therefore, the court of Latvia will not review the matter on merits and will not challenge jurisdiction of a court of another EU member state, even if the parties had an enforceable agreement to use alternative dispute resolution irrespective of the means of alternative dispute resolution.

However, a judgment of a non-EU court is not subject to recognition in Latvia if the court that entered the judgment could not have made the judgment pursuant to the provisions of Latvian law on jurisdiction. In Latvia, all civil legal disputes are subject to the court, unless otherwise provided for by law. This does not deprive parties of the right to apply, upon mutual agreement, to an arbitration court in order to settle a dispute. If the parties have a valid agreement on arbitration as a mean of dispute resolution, the court of Latvia will not accept jurisdiction. Therefore, the judgment of a non-EU court may not be recognised in Latvia if the claimant has not honoured an agreement on arbitration but referred to a regular (state) court instead.

23 Favourably treated jurisdictions

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

No, there are no judgments from any foreign jurisdictions that are given greater deference than judgments from others.

24 Alteration of awards

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

If, with an adjudication of the foreign court, several combined claims in one claim are satisfied and such an adjudication is not to be recognised in full, the adjudication of the foreign court may be recognised in relation to one or more of the satisfied claims. Courts in Latvia do not review the judgments on merits, but if a part of the judgment is against the public policy of Latvia and the recognition can be made in relation to one or part of the satisfied claims, the court will recognise only a part of the judgment.

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?

The CPL is silent on the necessity to convert currency, therefore, the court is entitled not to convert. However, in practice, for judgments where execution is sought in Latvia, the claimants usually convert the damage award into euros in the application form for convenience and avoidance of doubt at the enforcement stage.

The court declaring enforceability does not review the matter on merits, therefore, it cannot allow interest if the foreign court has not decided on this. The court may order the defendant to compensate the claimant court fees and other costs of enforcement of the foreign judgment.

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?

Under the CPL, the defendant may submit an ancillary complaint regarding the court's decision on recognition and enforcement of the foreign judgment (see question 10). The decision on the ancillary complaint may be appealed by another ancillary claim to the Supreme Court. The law states that parties may submit the ancillary complaint within 30 or 60 days from the moment the defendant has received the documents that are served via the Ministry of Justice of Latvia. If the ancillary complaint is submitted, the enforcement is stayed until the decision on recognition and enforcement becomes final.

It is possible, and from the perspective of the claimant also highly recommended, to secure the enforcement of a foreign judgment by filing an application on securing of a claim (enforcement) to the court, indicating the means of security as listed under the CPL. The appeal of decision on recognition and enforcement of the foreign judgment does not prevent enforcement of means of security.

The Brussels I Regulation and the New Lugano Convention also establish an independent system of legal protection providing rights to appeal in articles 43 and 44.

27 Enforcement process

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

Once a foreign judgment has been recognised and declared enforceable in Latvia, the decision of the Latvian court may be enforced in Latvia. Once the Latvian court's decision becomes final, a writ of execution must be

Update and trends

As highlighted in questions 10, 26 and 28, in procedure of recognition and enforcement of foreign judgments in Latvia, it is of the utmost importance that, additionally, an application on securing of a claim (enforcement) is sought, for which the general law requirements on the securing of claims apply.

The general requirements are that the claimant must provide evidence that there is a reason to believe that execution of the court judgment may become problematic or impossible, which the claimant is not always capable of proving. In addition, a state fee of 0.5 per cent of the amount claimed must be paid upon submitting the application on securing of the claim (enforcement).

A recent revolutionary and claimant-friendly trend that has been confirmed by the courts of first and second instance in 2014 (and is being reviewed at the Supreme Court with the purpose of becoming a *res judicata* adjudication) is that the application on securing of a claim must not be reasoned and is not subject to payment of state fee.

Once the recent claimant-friendly case law comes into lawful effect, Latvia will significantly improve safe and trustworthy procedure for recognition and enforcement of foreign judgments.

obtained from the court that made the decision. Usually, there is a certain period of time given for the defendant to voluntarily fulfil the obligations under the judgment, but this period is no longer than 10 days. Afterwards, the claimant acquiring the writ of execution may submit it to the bailiff to enforce the decision and impose one or more of the enforcement methods such as seizure of assets, pledge over real estate, freezing orders against bank accounts or recovery of funds owed by third parties to the debtor, attachment of wages or other earnings, or charges over land and other assets, including securities. On basis of the application to the bailiff he or she further enforces the decision by application of the methods of enforcement indicated by the claimant.

28 Pitfalls

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

Procedure of recognition and enforcement of foreign adjudications in Latvia is ineffective if, simultaneously with the application on recognition and enforcement, securing of claim (enforcement) is not sought. As mentioned above (see questions 10 and 26), the Latvian court's decision on recognition and enforcement is subject to appeal up to 60 days from the moment the foreign defendant has received the documents from the court. Taking into account that the documents must be translated prior to their sending, entrance into force of the Latvian court's decision and, accordingly, enforcement is significantly hindered. For this reason, it is important that the securing of claim (enforcement) is sought, but unfortunately this is often omitted.



SORAINEN

Agris Repšs
Valts Nerets
Agita Sprūde

agris.repss@sorainen.com
valts.nerets@sorainen.com
agita.sprude@sorainen.com

Valdemara Centre, 4th floor
Kr Valdemāra 21
Riga LV-1010
Latvia

Tel: +371 67 365 000
Fax: +371 67 365 001
www.sorainen.com

Getting the Deal Through

Acquisition Finance	Dispute Resolution	Licensing	Public-Private Partnerships
Advertising & Marketing	Domains and Domain Names	Life Sciences	Public Procurement
Air Transport	Dominance	Mediation	Real Estate
Anti-Corruption Regulation	e-Commerce	Merger Control	Restructuring & Insolvency
Anti-Money Laundering	Electricity Regulation	Mergers & Acquisitions	Right of Publicity
Arbitration	Enforcement of Foreign Judgments	Mining	Securities Finance
Asset Recovery	Environment	Oil Regulation	Ship Finance
Aviation Finance & Leasing	Foreign Investment Review	Outsourcing	Shipbuilding
Banking Regulation	Franchise	Patents	Shipping
Cartel Regulation	Gas Regulation	Pensions & Retirement Plans	State Aid
Climate Regulation	Government Investigations	Pharmaceutical Antitrust	Tax Controversy
Construction	Insurance & Reinsurance	Private Antitrust Litigation	Tax on Inbound Investment
Copyright	Insurance Litigation	Private Client	Telecoms and Media
Corporate Governance	Intellectual Property & Antitrust	Private Equity	Trade & Customs
Corporate Immigration	Investment Treaty Arbitration	Product Liability	Trademarks
Data Protection & Privacy	Islamic Finance & Markets	Product Recall	Transfer Pricing
Debt Capital Markets	Labour & Employment	Project Finance	Vertical Agreements

Also available digitally



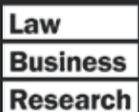
Online

www.gettingthedealthrough.com



iPad app

Available on iTunes



Enforcement of Foreign
Judgments
ISSN 2048-464X



THE QUEEN'S AWARDS
FOR ENTERPRISE:
2012



Official Partner of the Latin American
Corporate Counsel Association



Strategic Research Partner of the
ABA Section of International Law