

**ENFORCEMENT OF
FOREIGN JUDGMENTS**

OFFPRINT

KLUWER LAW
INTERNATIONAL

Belarus

Belarus

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1. UNIFORMITY OF LAW AND REGULATIONS

Belarus is a unitary state with a uniform system of law and regulations. The same procedure for the recognition and enforcement of judgments of foreign courts is applicable throughout the country.

Rules on the recognition and enforcement of foreign judgments are determined at both a national and international level. Belarus is party to a number of bilateral and multilateral treaties concerning mutual legal assistance in civil, family and criminal cases which establish special rules on the issue.

Foreign judgments arising out of commercial (economic) disputes and insolvency cases are recognized and enforced in Belarus in commercial courts according to Chapter 28 of the Economic Procedural Code of the Republic of Belarus dated 15 December 1998 (as amended, hereinafter – EPC) by virtue of international treaties to which Belarus is party *or* on the basis of the reciprocity principle.

Foreign judgments arising out of civil disputes involving individuals, family or labour cases are recognized and enforced in Belarus in civil courts according to Article 561 and Annex 4 of the Civil Procedural Code of the Republic of Belarus dated 11 January 1999 (as amended, hereinafter – CPC) by virtue only of an international treaty. In the absence of an international treaty, the recognition and enforcement of such foreign judgments in Belarus is not possible.

2. JUDGMENTS

2.1 Definition

Belarusian legislation does not provide for any particular definition of a 'judgement' for the purposes of recognition and enforcement. The term 'judgement'

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can be defined as a final court's or arbitral ruling and equivalent act (an order, a decision) on civil, labour and family matters, including settlement agreements of lawsuits, as well as sentences in criminal matters as part of reparation for damages caused by a crime.

2.2 Categories

The following foreign judgments can be enforced in Belarus, subject to recognition under the established procedure:

- (a) money judgments;
- (b) specific performance judgments;
- (c) injunctions;
- (d) arbitration awards;
- (e) personal status judgments (divorce, matrimonial, inheritance, adoption, insolvency);
- (f) awards for multiple/punitive damages;
- (g) judgment which in itself is a recognition of a previous foreign judgment;
- (h) judgments against the Republic of Belarus and/or its organs, provided that state immunity has been properly waived;
- (i) Belarusian legislation does not distinguish any particular type of judgment which would not be enforced as a matter of principle, if it does not contradict to public policy and all formal requirements for its recognition are fulfilled;
- (j) Regarding foreign fiscal judgments, i.e. for income tax or customs duties, it is presumed that foreign fiscal judgments could be enforced if the court finds that all formal requirements have been fulfilled and that the enforcement of this judgment would not be contrary to public policy. The recovery of income tax or customs duties for the benefit of a foreign country does not fall under the exclusive competence of Belarusian courts. There has been no acknowledged court practice on that issue until now.

2.3 Reciprocity

Reciprocity on the part of the foreign courts might serve as a legal basis for the recognition of judgments rendered in commercial (economic) disputes when Belarus does not have a corresponding treaty with a foreign state.

No other type of judgment will be enforced by virtue of a reciprocity principle. As stated above, a treaty is necessary for enforcement in civil disputes.

3. CURRENCY REGULATIONS AND RESTRICTIONS

(a, b) Belarusian currency control regulations do not impose any specific restrictions on the free transfer of sums recovered as a result of the enforcement of a foreign judgment in Belarus to a foreign applicant (claimant).

(c) There is no need for either the applicant or for the court to convert the value of the judgement into the national currency (BYR) for the purposes of recognition and enforcement.

If, in the course of enforcement, the sum is recovered in a currency other than that of the recognized foreign judgement, the executor should apply to the bank for conversion of this sum into the currency of the judgement at the official exchange rate of the National Bank of the Republic of Belarus.

4. DOCUMENTARY REQUIREMENTS

In the absence of a relevant international treaty between Belarus and a foreign state, the following documents are to be submitted to the court in addition to the certified copy of foreign judgment:

- the application for the recognition and enforcement of the judgment;
- a certified document confirming that the judgment came into force, if it is not precisely stated in the text of the judgment;
- a certified document confirming that the respondent was timely and properly notified of the proceedings in the foreign court;
- a certified power of attorney or other document confirming authorization of the person who signed the application;
- a document confirming that the respondent was sent a copy of the application for the recognition and enforcement of the judgment;
- an official document confirming payment of a state fee for consideration of the application for the recognition and enforcement of the judgment.

(a) If the applicant is a foreign company, it should submit to the court an extract from the trade register and/or other official documents confirming its legal status and capacity.

(b) There are no legal requirements for special allegations (e.g., that the judgment is not against public morality, that the judgment is no longer appealable, etc.) to be included in the application. The application should indicate the name and place of the foreign court, names and places of residences of the parties, a description of the foreign judgment itself and a precise request for the recognition and enforcement of the judgment or partial judgment.

(c) Faxed or photocopied supporting documents are not acceptable. The applicant must present either originals or certified copies of necessary documents to the court.

5. CONVENTIONS

The Republic of Belarus is party to the following Hague Conventions:

- The Hague Convention on Civil Procedure of 1 March 1954;
- The Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents of 5 October 1961;

- The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 15 November 1965;
- The Hague Convention on the Civil Aspects of International Child Abduction of 25 October 1980.

6. AUTHENTICATION OF DOCUMENTS

Documents issued in the territory of a foreign country have legal effect in the territory of Belarus only after consular legalization, unless an international treaty to which Belarus is party provides otherwise.

Documents certified with an Apostille according to the Hague Convention Abolishing the Requirement of Legalization for Foreign Public Documents of 5 October 1961 are not subject to consular legalization.

For official documents from Azerbaijan, Armenia, China, the Czech Republic, Cuba, Georgia, Hungary, Italy, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Poland, Russia, Ukraine, Tajikistan, Turkmenistan, Uzbekistan and Vietnam, neither consular legalization nor an Apostille is needed according to the relevant international treaties, provided that documents from these countries are certified with an official seal of the competent authority (court, notary public, etc.).

7. TRANSLATION OF DOCUMENTS

(a) There are two official languages in the Republic of Belarus: Russian and Belarusian. Thus, documents presented in Russian or Belarusian are recognized.

(b) All documents in foreign languages must be translated into Russian or Belarusian by an accredited translator whose signature must be certified by consul or a notary public. A translation can be done abroad; however, if the notary (consul) stamp or Apostille is not in Russian or Belarusian, the applicant must still have the document certified in Belarus or Russia. Therefore, it is advisable to translate documents and certify their translation either in Belarus or in Russia.

8. REOPENING OR REVIEW OF JUDGMENTS

(a, b) Foreign judgments are not to be reviewed *per se* by Belarusian courts, provided that all of the procedural requirements have been met. The courts are limited to examining the documents presented and the arguments of the parties and determining whether any grounds exist for refusal of recognition and enforcement.

(c) An allegation of fraud cannot be raised in proceedings before the Belarusian court because that would require a review of foreign judgments *per se*, which the Belarusian court is not entitled to exercise. However, it is theoretically possible to argue that the recognition and enforcement of fraudulent foreign judgements will be against public policy in Belarus.

9. PENDING PROCEEDINGS

(a) If any pending proceedings on the same subject and on the same grounds were instituted prior to institution of the proceedings that resulted in a foreign judgement for which recognition and enforcement is sought, the Belarusian court would refuse recognition and enforcement of a foreign judgment partially or entirely.

(b) If a foreign judgement for which recognition and enforcement is sought was appealed in the country of its origin and therefore did not come into legal force, the Belarusian court would refuse recognition and enforcement thereof. If the appeal was brought against a legally binding foreign judgment, the Belarusian court may suspend the proceedings on recognition and enforcement until the appeal is considered by a competent foreign court.

10. DEFENCES

The Belarusian court notifies the respondent of the date of proceeding although his absence does not prevent the court from deciding on the issue.

A respondent opposing application for recognition and enforcement of foreign judgment may not raise any 'defences' based on the merits of the case. The respondent may only argue that some of mandatory formal requirements have not been met by applicant or that there are one or more grounds for refusal of recognition and enforcement prescribed by law.

However, it should be noted that Belarusian courts have an obligation to verify whether a foreign judgment meets the requirements set forth in the legislation, even if all parties favour recognition and enforcement of the foreign judgment.

The local court will refuse recognition and enforcement of a foreign judgment only if:

- the judgment has not yet entered into force under the laws of foreign country where it was given;
- the losing party was not duly notified of the time and place of the proceedings or was unable to present its arguments before the court for other reasons;
- the case is within the exclusive jurisdiction of local courts or other organs according to Belarusian legislation or the international treaty to which Belarus is party;
- there is a judgment of the Belarusian court on the same subject and grounds between the same parties that came into full legal force;
- there is a pending case in the Belarusian court between the same parties and on the same subject and grounds, and the process was initiated in Belarus prior to bringing the claim in a foreign court;
- the application is time barred (*see* section 25);
- the enforcement of the foreign judgment would be against public policy of the Republic of Belarus.

A respondent may appeal the court's decision on recognition and enforcement of the foreign judgment under established cassation and/or supervisory procedures.

11. JURISDICTION

(a, b) The Belarusian court would accept jurisdiction of the foreign court, provided that the case is not within the exclusive jurisdiction of Belarusian courts according to Belarusian legislation or the international treaty to which Belarus is party.

Belarusian courts will have exclusive jurisdiction over the following disputes involving foreign parties:

- disputes concerning state property, including privatization or nationalization (confiscation, requisition);
- disputes concerning real estate located in Belarus;
- disputes concerning claims on nullity of registration records in Belarusian state registers;
- disputes concerning establishment, registration and liquidation of legal entities and private entrepreneurs in Belarus, as well as claims on nullity of corporate decisions;
- insolvency of legal entities and private entrepreneurs whose place of residence is the Republic of Belarus;
- disputes concerning personal or corporate status;
- appeals against decisions of the Belarusian state and municipal organs;
- tax, customs and administrative disputes;
- a prorogation agreement between the parties for jurisdiction of the Belarusian court, provided that such agreement does not conflict with the exclusive jurisdiction of foreign courts.

The foreign court's jurisdiction over the dispute may not be recognized if the principle of the state immunity of Belarus is breached or if a foreign court ignores a valid arbitration clause.

(c) The Belarusian court does not require consent to foreign jurisdiction, nor does it require the party against whom the judgment was granted to have had residence, citizenship, property ownership or domicile in the foreign country.

However, Belarusian courts would refuse recognition and enforcement of foreign judgements given in a dispute between two or more Belarusian parties.

(d) 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 respondent did not initially contest the jurisdiction of the foreign court.

(e) A foreign judgment granted by default is not treated any differently than any other kind of judgment, and the same requirements for recognition and enforcement are to be met. In particular, the applicant must provide the court

with satisfactory proof of the fact that the action was duly served to the respondent and that the respondent had the possibility to present his arguments to the foreign court.

(f) If the foreign court accepted a clause conferring exclusive jurisdiction on it, the Belarusian court does not review the judgment on that ground, provided that the matter is not within exclusive authority of Belarusian courts.

(g) The respondent does not have to be a citizen/resident, own assets or carry out business in the local country.

12. CONTRACTUAL WAIVER

(a, b) Contractual waivers of service or notice are not be recognized by Belarusian courts. Belarusian courts would refuse recognition and enforcement of foreign judgement granted after a contractual waiver if the applicant fails to provide the court with satisfactory proof that the action was effectively served to the respondent.

13. SERVICE REQUIREMENTS

The crucial condition for the enforcement of a foreign judgment is timely and proper notification to the respondent about the time and place of the hearing.

Belarusian courts would accept a method of service recognized by a foreign court, provided that the respondent had enough time to prepare his defence and had the possibility to present his arguments before the foreign court.

The respondent is deemed to be properly notified if the documents were served to him according to the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters of 15 November 1965 or any other applicable international treaty.

14. CESSION

(a) Belarusian legislation does separate material cession from procedural cession, and the former does not automatically entail the latter. From a material point of view, the rights constituted by foreign judgement can be transferred to another foreign or Belarusian party. From a procedural point of view, only the beneficiary of a foreign judgment may file an application for the recognition and enforcement thereof before a competent Belarusian court. Thus, the assignee will enjoy the right to apply for the recognition and enforcement of the foreign judgement only if the foreign court has approved of the cession and has procedurally substituted the original beneficiary of a foreign judgment with the assignee.

(b) The cession cannot confer any advantages on an assignee in the proceedings before the Belarusian court that arise from an international treaty with Belarus and cannot confer any other preferences on an assignee with regard to the general procedure on recognition and enforcement.

15. INTERIM RELIEF

(a) Interim relief may be granted to secure the enforcement of a foreign judgment before it has been recognized by the Belarusian court on the same grounds that it is done in local proceedings. Although not obliged, the court may grant seizure and/or any other kind of interim measures if the applicant proves that without undertaking such measures the enforcement of a foreign judgment would be in jeopardy or impossible. In order to avoid seizure of his assets, the respondent may deposit the claimed sum in the account of the court.

(b) Only civil courts may oblige the applicant to provide security for the recovery of possible damages by a respondent when granting interim relief. Commercial courts do not have such authority. In both cases, the respondent may claim damages caused by the interim relief if recognition and enforcement of the foreign judgment is refused.

16. INTEREST

The interest granted in a foreign judgment may be recognized by the Belarusian court. Because Belarusian courts are not to review foreign judgments *per se*, they would not grant any additional interest to the beneficiary of a foreign judgment.

The recovery of interest for the period after the date of recognition may be granted by the court upon separate application of the beneficiary of the foreign judgment in the course of the execution procedure.

17. TIME OF ENFORCEMENT AND SUBSEQUENT ACTION

(a) A Belarusian commercial court is to consider an application and decide on the recognition and enforcement of foreign judgment no later than one month from the date of filing the application, regardless of whether it is opposed or unopposed. Civil courts will decide on the issue within two months from the date of filing, with the exception of alimony and physical trespass issues. In the latter two instances, the decision of civil court is to be granted within one month from the date of filing the application.

The Cassation Instance of the Supreme Economic Court of the Republic of Belarus considers appeals against decisions on the recognition and enforcement of a foreign judgment within one month from the date of filing the appeal. The Cassation procedure in the Supreme Civil Court takes up to three months from the date of filing the appeal.

(b, c) If a foreign judgment is recognized and enforced by the Belarusian court, an enforcement order is to be issued. It will have the same legal effect and is executed in the same manner as orders issued under domestic judgements.

The procedure of enforcement includes two possible forms:

- submission of the enforcement order to the bank of respondent (for monetary judgements);
- submission of the enforcement order to the court's executor.

The executor undertakes actions on enforcement prescribed by Belarusian legislation (search of the debtor, calling the debtor or his representative to the court, attachment of the debtor's property/monetary funds, inspection of the debtor's premises, selling of the debtor's property, vindication of the debtor's property from third parties, obtaining necessary documents for the enforcement from additional parties) on the grounds of the enforcement order and under the supervision of the court.

18. EXPENSES, LEGAL FEES AND SECURITY FOR COSTS

(a) A state fee for the consideration of an application for the recognition and enforcement of a foreign judgment in the amount of 10 Basic Units (which is currently equivalent to BYR 310,000, or approximately USD 150) must be paid before filing the application with the court.

(b) Legal fees are negotiated by the attorneys or advocates and the clients, with consideration of effective rates approved by the law firm or the Bar, as well as consideration of the subject matter and value of the claim. An estimated attorney's fee for filing an application for the recognition and enforcement of a foreign judgment is USD 250,000. Representation before the court will range from USD 2,000 (if unopposed) to USD 5,000 (if opposed).

(c) Fee contingency agreements are not directly prohibited by Belarusian law, but their enforceability might be problematic if the client refuses to pay. An agreement which makes the attorney's fee contingent upon a positive court decision would be declared null and void by Belarusian courts.

(d) Only state fees paid by the applicant may be recovered if the Belarusian court decides to uphold the application and to recognize and enforce a foreign judgment. The attorney's fees cannot be recovered.

(e) The applicant does not have to provide security for costs.

19. BANKRUPTCY/LIQUIDATION

(a) In the event of bankruptcy, a foreign creditor enjoys the same rights as local creditors.

(b) Belarusian legislation does not contain any norms regarding the legal status of a foreign trustee. Hypothetically, after the recognition and enforcement of

a foreign judgment on bankruptcy case, a foreign trustee validly appointed by a foreign court should be able to exercise the rights given under the foreign judgement over the assets of the foreign party in the Republic of Belarus.

20. LAWYERS (WHO CAN APPEAR?)

The following persons may participate in court hearings on the recognition and enforcement of foreign judgments:

- parties (if individuals) and their legal representatives (parents, spouses, custodians, etc.);
- executive bodies and personnel of legal entities;
- advocates and attorneys, attested and/or licensed by the Ministry of Justice of the Republic of Belarus.

21. INTERNATIONAL TREATIES

Belarus is party (or successor) to the following bilateral treaties which provide for mutual recognition and enforcement of judgments:

- the Treaty between the Republic of Belarus and the Socialist Republic of Vietnam on legal relationship and legal assistance on civil, family, labour and criminal matters (Minsk, 14 September 2000);
- the Treaty between the Republic of Belarus and the Republic of Poland on legal assistance and legal relationship on civil, family, labour and criminal matters (Minsk, 26 October 1994);
- the Treaty between the Republic of Belarus and the People's Republic of China on legal assistance on civil and criminal matters (Peking, 11 January 1993);
- the Treaty between the Republic of Belarus and the Lithuanian Republic on legal assistance and legal relationship on civil, family and criminal matters (Vilnius, 20 October 1992);
- the Treaty between the Republic of Belarus and the Latvian Republic on legal assistance and legal relationship on civil, family and criminal matters (Minsk, 21 February 1992);
- the Treaty between the former USSR and the Republic of Cuba on legal assistance on civil, family and criminal matters (Havana, 28 November 1984);
- the Treaty between the former USSR and the Czech Republic on legal assistance and legal relationship on civil, family and criminal matters (Moscow, 12 August 1982);
- the Treaty between the former USSR and the Italian Republic on legal assistance on civil matters (Rome, 25 January 1979);
- the Treaty between the former USSR and the Hungarian People's Republic on rendering legal assistance on civil, family and criminal matters (Moscow, 15 July 1958).

Belarus has also ratified several multilateral treaties with CIS countries which also provide for mutual recognition and enforcement of State court judgments. These agreements are:

- the Agreement of Member States of Commonwealth of Independent States on order of settlement of disputes concerning economic activity (Kiev, 20 March 1992);
- the Convention on legal assistance and legal relations on civil, family and criminal matters (Minsk, 22 January 1993);
- the Convention on legal assistance and legal relations on civil, family and criminal matters (Kishinev, 7 October 2002).

According to the Agreement between the Republic of Belarus and the Russian Federation on order of mutual enforcement of judiciary acts of economic courts of the Republic of Belarus and arbitration courts of the Russian Federation (Moscow, 17 January 2001), judgements of Russian economic (arbitrage) courts do not require recognition in Belarus and can be enforced under the same conditions as judgments of Belarusian commercial courts.

Belarus is also party to the UN Convention on the recognition and enforcement of foreign arbitration awards (New York, 1958).

22. CROSS-EXAMINATION OF AFFIDAVIT'S DEPONENT

There is no such legal concept as 'Affidavit' in Belarus. Thus, neither respondent nor the court may request a cross-examination of the affidavit's deponent.

23. REQUIRED AFFIDAVIT

No. *See* section 22 *supra*.

24. NEW ACTION INSTEAD OF ENFORCEMENT

(a) A new action cannot be instituted on the original cause of action if it is possible for the beneficiary of a foreign judgment to apply for the recognition and enforcement thereof. The court should refuse initiation or terminate the proceedings when the knowledge of a foreign judgement granted in the dispute between the same parties on the same subject and grounds arises.

A new action on the same merits may be brought before the Belarusian court only if the recognition and enforcement of a foreign judgement was refused or if it is not possible in Belarus.

(b) The period of prescription is to be determined under material law, applicable to the substance of the dispute under private international law rules. The usual period of prescription in commercial matters is three years.

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25. PRESCRIPTION

According to Article 250 EPC and Article 561 of CPC, an application for the recognition and enforcement of a foreign judgment should be filed no later than three years after the foreign judgment came into force.

However, upon the motion of the applicant, the court may restore term for enforcement if it finds that the reasons for missing this date are justifiable.

26. STATES/CANTONS

Belarus is a unitary state, and rules for recognition and enforcement of foreign judgments are universal for the whole territory of the country.