



ICLG

The International Comparative Legal Guide to:

Enforcement of Foreign Judgments 2019

4th edition

A practical cross-border insight into the enforcement of foreign judgments

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EDITORIAL

Welcome to the fourth edition of *The International Comparative Legal Guide to: Enforcement of Foreign Judgments*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations relating to the enforcement of foreign judgments.

It is divided into two main sections:

Three general chapters. These are designed to provide readers with a comprehensive overview of key issues affecting the enforcement of foreign judgments, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in the enforcement of foreign judgments in 36 jurisdictions.

All chapters are written by leading lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Louise Freeman and Chiz Nwokonkor of Covington & Burling LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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1 Country Finder

- 1.1 Please set out the various regimes applicable to recognising and enforcing judgments in your jurisdiction and the names of the countries to which such special regimes apply.**

Applicable Law/ Statutory Regime	Relevant Jurisdiction(s)	Corresponding Section Below
Law on international private law	All countries	Section 2
Law on enforcement	All countries	Section 2
Law on international trade arbitration of the Republic of Macedonia	All countries	Section 2
New York Convention on the recognition and enforcement of foreign arbitral awards	All signatory countries of the convention	Section 2

2 General Regime

- 2.1 Absent any applicable special regime, what is the legal framework under which a foreign judgment would be recognised and enforced in your jurisdiction?**

Foreign judgments shall be recognised by the courts of the Republic of Macedonia in accordance with the provisions of the Law on international private law and enforcement of such judgments shall be conducted in accordance with the provisions of the Law on enforcement.

Furthermore, the Law on international trade arbitration of the Republic of Macedonia stipulates that the recognition and enforcement of foreign arbitral awards shall be subject to the provisions of the Convention on the Recognition and Enforcement of Foreign Arbitrary Decisions signed on June 10, 1958 in New York.

- 2.2 What constitutes a 'judgment' capable of recognition and enforcement in your jurisdiction?**

In accordance with the Macedonian Law on international private law, a 'judgment' capable of recognition and enforcement constitutes a judgment adopted by the court of a foreign country,

court settlement adopted by the court of a foreign country and decision adopted by other body of a foreign country which in the country of origin is considered equal to a court judgment or court settlement if such judgment regulates relations arising from personal (status), family, labour, property and other substantial legal relations with an international element.

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

The foreign judgment must be considered a 'judgment' in accordance with the Macedonian Law on international private law (as described in question 2.2 above).

The judgment shall be submitted in an original or certified copy alongside a confirmation claiming the judgment is final, provided by the foreign country court, or other competent body in accordance with the legislation in the country of origin. In addition, the court shall be provided with certified translation of the judgment in the official language of the court of recognition.

In order for the judgment to be enforceable in Macedonia, in addition to the above, the court of recognition shall also be presented with a confirmation of the judgment enforceability in accordance with the country of origin legislation.

In addition to the above, in order for the judgment to be recognised, the following conditions shall be satisfied: i) no violation of due process has occurred in the foreign proceedings in which such judgment is adopted; ii) there is no exclusive jurisdiction of a Macedonian court for the subject of the dispute; iii) there is no agreement stipulating jurisdiction of a Macedonian court for the subject of dispute; iv) there is no *res judicata* for the substantive case; and v) the foreign judgment is not deemed contrary to Macedonian public order.

In the process for recognition of a foreign arbitral award, the applicant shall submit an original or duly verified copy of the award as well as the original or duly verified copy of the arbitral agreement. If any of such is not made in the official language of the court of recognition, the applicant shall provide certified translation in the official language of the court of recognition.

- 2.4 What (if any) connection to the jurisdiction is required for your courts to accept jurisdiction for recognition and enforcement of a foreign judgment?**

In order for the courts to accept jurisdiction for recognition and enforcement, there should not be exclusive jurisdiction of a

Macedonian court for the subject of the dispute, no agreement stipulating jurisdiction of a Macedonian court for the subject of dispute, no prior judgment for the substantive case adopted by competent local courts as well as the foreign judgment should not be deemed contrary to Macedonian public order.

In addition to the above, the Law on international private law further provides for connections to jurisdiction, as follows:

■ *Foreign judgment regarding the personal state (status) of a Macedonian resident*

A foreign judgment regarding the personal state (status) of a Macedonian resident, in the event that foreign law was applied, shall be recognised and accepted if such judgment does not substantially deviate from the law of the Republic of Macedonia applicable to the relation in question, even if in accordance with the Macedonian Law on international private law, Macedonian legislative should be applied.

■ *Foreign judgment regarding the personal state (status) of a resident of the foreign country (country of origin of the judgment)*

Judgments adopted by a foreign country court regarding the personal state (status) of a resident of the country of the court, shall be recognised and accepted in the Republic of Macedonia without assessment by the recognition court regarding the rules of exclusive jurisdiction of Macedonian courts and the effect of the recognition of such judgment to the public order of the Republic of Macedonia. The above shall not be applicable in the event that the competent body of recognition in the Republic of Macedonia consider such judgment to be related to the personal state (status) of a Macedonian resident, and such decision shall be assessed in light of public order rules and requirements for recognition (as described in question 2.2).

■ *Foreign judgment regarding the personal state (status) of a foreigner non-resident of the country of origin of the judgment*

A foreign judgment regarding the personal state (status) of a foreigner non-resident of the country of origin of the judgment shall only be recognised and accepted in the event that such judgment fulfils the requirements for recognition of the country of residency of such person.

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

There is a difference between recognition and enforcement of judgments according to Macedonian legislative.

Foreign judgment recognised by the court of the Republic of Macedonia shall be deemed equal to judgment adopted by Macedonian courts and thus have full legal effect in the Republic of Macedonia.

Judgments submitted for recognition, shall be submitted alongside a confirmation stating such judgment is final in light of the country of origin legislation.

Foreign judgments recognised by Macedonian courts shall be enforced in the Republic of Macedonia thus enabling the creditor to collect their claim against the debtor as set by the foreign judgment.

In addition, for the purposes of enforcement of foreign judgment, the court of recognition shall also be presented with confirmation of enforceability of such judgment in the country of origin.

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

The procedure for recognition and enforcing a foreign judgment, in accordance with Macedonian law, is as follows:

- the procedure is initiated by filing a proposal with the competent Macedonian court;
- the competent court shall determine if conditions for recognition are fulfilled *ex officio*;
- should the court determine that the conditions for recognition are met, the court shall adopt a decision for recognition of the foreign judgment;
- the court shall then present the opposing party, as well as other participants in the procedure in which the foreign decision has been adopted, with the decision for recognition, instructing them regarding their right to object such decision within 15 calendar days as of the day of receipt of the decision for recognition;
- should such objection be filed, a counsel by the competent court, consisting of three judges, shall decide with regards to the objection and may schedule a hearing;
- the court shall reach a decision with regards to the filed objection;
- should any party be unsatisfied with the reached decision, such party shall have the right to appeal to the appellate court within eight calendar days as of the day of receipt of the decision; and
- the proceedings for recognition shall be finalised with the adoption of the appellate court decision offering the final conclusion with regards to appeals submitted by the parties.

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

■ Foreign judgment

The recognition of a foreign judgment can be challenged in case such judgment does not fulfil any of the required conditions as explained in question 2.3 above.

The opposing party may challenge the recognition by way of objection during the proceedings before the first instance court as well as appeal the decision reached by the three-member judicial council (please also see question 2.6 above).

■ Arbitral award

With regards to the procedure for recognition of a foreign arbitral award, such may be refused at the request of the party against whom it is invoked, only if that party furnishes to the competent authority where the recognition and enforcement is sought, proof that:

- the parties to the arbitration agreement under the law applicable to them are under some incapacity or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present their case; or
- the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced; or

- the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, such award was made.

Recognition and enforcement of an arbitral award may also be refused if the competent authority in the country where recognition and enforcement is sought finds that: (i) the subject matter of the difference is not capable of settlement by arbitration under the law of that country; or (ii) the recognition or enforcement of the award would be contrary to the public order of such country.

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

There is no legal framework applicable to recognising and enforcing foreign judgments relating to specific subject matters in the Republic of Macedonia.

2.9 What is your court's approach to recognition and enforcement of a foreign judgment when there is: (a) a conflicting local judgment between the parties relating to the same issue; or (b) local proceedings pending between the parties?

- a) If the Macedonian courts or other competent authorities have reached a final decision regarding the matter decided upon with the foreign judgment, such foreign judgment shall not be recognised as it shall be deemed that there is already a prior adopted judgment regarding the issue in question.
- b) Should there be pending local proceedings initiated before a competent court in Macedonia regarding the matter decided upon with the foreign decision, prior to initiating the proceeding for recognition of the foreign judgment, such proceedings for recognition shall cease until the proceedings before the Macedonian court is finished meaning a final decision by the Macedonian court is adopted.

2.10 What is your court's approach to recognition and enforcement of a foreign judgment when there is a conflicting local law or prior judgment on the same or a similar issue, but between different parties?

The existence of a conflicting local law may be considered an obstacle for recognition of a foreign judgment, as it may be considered that a foreign judgment conflicting to the local laws is contrary to Macedonian public order. Furthermore, the law does not specifically prescribe the existence of a prior judgment between different parties an obstacle for recognition; however, it cannot be excluded that a foreign judgment of sorts may be deemed contrary to Macedonian public order.

2.11 What is your court's approach to recognition and enforcement of a foreign judgment that purports to apply the law of your country?

Please see conditions listed in question 2.3 above.

2.12 Are there any differences in the rules and procedure of recognition and enforcement between the various states/regions/provinces in your country? Please explain.

The listed laws are applicable as such to the entire territory of the Republic of Macedonia, therefore there is no difference in the rules and the procedure of recognition and enforcement.

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

The Macedonian legislative does not prescribe a limitation period for recognition and enforcement of a foreign judgment.

On the other hand, the Macedonian Law on obligations provides for a limitation period for enforcement of claims determined with final court decisions or decisions adopted by other competent authorities. Namely, claims determined with final decisions shall be deemed obsolete unless enforced within a period of 10 years (as of the day the decision becomes final).

3 Special Enforcement Regimes Applicable to Judgments from Certain Countries

3.1 With reference to each of the specific regimes set out in question 1.1, what requirements (in form and substance) must the judgment satisfy in order to be recognised and enforceable under the respective regime?

The foreign judgment must be considered a 'judgment' in accordance with the Macedonian Law on international private law (as described in question 2.2 above). For the purposes of recognition and enforcement, the judgment shall be submitted in an original or certified copy alongside a confirmation claiming the judgment is final, as well as a confirmation of such judgment enforceability, provided by the foreign country court, or other competent body in accordance with the country of origin. In addition, the court shall be provided with certified translation of the judgment in the official language of the court of recognition.

In order for a judgment to be recognised the following conditions shall be satisfied: i) no violation of due process has occurred in the foreign proceedings in which such judgment is adopted; ii) there is no exclusive jurisdiction of a Macedonian court for the subject of the dispute; iii) there is no agreement stipulating jurisdiction of a Macedonian court for the subject of dispute; iv) there is no prior judgment by a competent local court for the substantive case; and v) the foreign judgment is not deemed contrary to Macedonian public order.

In the process for recognition of a foreign arbitral award, the applicant shall submit an original or duly verified copy of the award as well as the original or duly verified copy of the arbitration agreement. If any of such is not made in the official language of the court of recognition, the applicant shall provide certified translation in the official language of the court of recognition.

3.2 With reference to each of the specific regimes set out in question 1.1, does the regime specify a difference between recognition and enforcement? If so, what is the difference between the legal effect of recognition and enforcement?

A foreign judgment recognised by the court of the Republic of

Macedonia shall be deemed equal to judgment adopted by Macedonian courts and thus have full legal effect in the Republic of Macedonia. Furthermore, foreign judgments that have been recognised by Macedonian courts shall be enforced in the Republic of Macedonia thus enabling the creditor to collect their claim against the debtor as set by the foreign judgment.

3.3 With reference to each of the specific regimes set out in question 1.1, briefly explain the procedure for recognising and enforcing a foreign judgment.

The procedure for recognising and enforcing a foreign judgment does not differ in view of the applicable regimes set out in question 1.1. The procedure for recognition and enforcement as explained above in question 2.6 shall be conducted as follows:

- the procedure is initiated by filing a proposal with the competent Macedonian court;
- the competent court shall determine if conditions for recognition are fulfilled *ex officio*;
- should the court determine that the conditions for recognition are met, the court shall adopt a decision for recognition of the foreign judgment;
- the court shall then present the opposing party, as well as other participants in the procedure in which the foreign decision has been adopted, with the decision for recognition, instructing them regarding their right to object such decision within 15 calendar days as of the day of receipt of the decision for recognition;
- should such objection be filed, a council by the competent court, consisting of three judges, shall decide with regards to the objection and may schedule a hearing;
- the court shall reach a decision with regards to the filed objection;
- should any party be unsatisfied with the reached decision, such party shall have the right to an appeal to the appellate court within eight calendar days as of the day of receipt of the decision; and
- the proceedings for recognition shall be finalised with the adoption of the appellate court decision offering the final conclusion with regards to appeals submitted by the parties.

3.4 With reference to each of the specific regimes set out in question 1.1, on what grounds can recognition/enforcement of a judgment be challenged under the special regime? When can such a challenge be made?

There is no special regime referring to the grounds for challenging in addition to the grounds as listed in question 2.7 above.

4 Enforcement

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

Once the foreign judgment is recognised, the creditor is able to initiate enforcement proceedings in accordance with the Law on enforcements of the Republic of Macedonia.

In accordance with the Law on enforcement, the enforcement is conducted through authorised enforcement agents and is initiated upon submitted request by the creditor. Subject of enforcement shall be the debtor's assets – movable or immovable (monetary funds on active bank accounts in the authorised banks in the Republic of Macedonia, real-estate, movable assets such as vehicles, etc. as well as shares and other assets), as well as the debtor's claims to their debtors.

5 Other Matters

5.1 Have there been any noteworthy recent (in the last 12 months) legal developments in your jurisdiction relevant to the recognition and enforcement of foreign judgments? Please provide a brief description.

There have not been any recent developments in Macedonian legislative regarding the recognition and enforcement of foreign judgments in the last 12 months.

5.2 Are there any particular tips you would give, or critical issues that you would flag, to clients seeking to recognise and enforce a foreign judgment in your jurisdiction?

There are no particular critical issues to be flagged.

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Accepting the premise that no one can be equally versed in all fields of law, Debarliev, Dameski & Kelesoska Attorneys at Law (DDK) has been created as a company committed to be the leading business law firm in Macedonia.

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The quality of DDK rests mainly upon the quality of its attorneys, their accessibility and efficiency. DDK's attorneys at law share outstanding academic backgrounds, as well as a strong commitment to legal perfection.

The partners of DDK have more than 15 years' law practice experience and have exceeded clients' expectations by providing sophisticated and efficiently managed legal services.

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