

LEGAL INTELLIGENCE SERIES · CHILE CROSS-BORDER DISPUTES

Recognition & Enforcement *in Chile*

A Practitioner's Guide for U.S. Counsel

A comprehensive analysis of the legal frameworks, procedural pathways, and strategic considerations governing the recognition and enforcement of U.S. court judgments and institutional arbitral awards before Chilean courts – prepared exclusively for U.S. legal practitioners.

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JURISDICTION

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Table of Contents

I	Executive Summary	3
II	Recognition of U.S. Court Judgments	4
III	Recognition of Foreign Arbitral Awards	5
IV	Comparative Summary	6
V	Key Risks & Strategic Recommendations	7
VI	Step-by-Step Procedural Roadmap	8
VII	Arbitration Clause Drafting for Chile	9
VIII	Conclusions & Contact	10

This guide synthesizes Chilean legal framework, Supreme Court jurisprudence, and the practical enforcement experience of ACR Legal's dispute resolution team. Designed as a working reference for U.S. practitioners coordinating enforcement strategy with local counsel.

Executive Summary

I

2

DISTINCT LEGAL
REGIMES

2

SEQUENTIAL
COURT PHASES

18–36

MONTHS TOTAL
TIMELINE

The Two-Phase Structure

Chilean law bifurcates enforcement into two mandatory sequential phases, each before a different court:

1 Recognition — Exequatur

Before the **Supreme Court of Chile** (Corte Suprema), exclusive original jurisdiction. No merits review — procedural compliance only. Duration: 8–24 months.

2 Enforcement — Execution

Once exequatur is granted, a **lower court of first instance** handles actual execution. The foreign decision becomes a domestic *título ejecutivo* enabling asset seizure and liquidation.

Two Distinct Frameworks

U.S. Court Judgments are governed by Articles 242–251 CPC. In the absence of a bilateral treaty and given the unavailability of reciprocity, recognition turns on the four-part residual test of Article 245 CPC.

Institutional Arbitral Awards benefit from a significantly more favorable regime: the New York Convention (1958), Panama Convention (1975), and Law No. 19,971 (UNCITRAL Model Law) are the primary instruments. The Chile–U.S. FTA adds a supplementary layer exclusively for *investor-state* arbitral awards under its Investment Chapter (Ch. 10).

STRATEGIC INSIGHT

Where transactional structuring permits, arbitration before a recognized institution (ICC, AAA/ICDR, LCIA) offers a materially superior enforcement pathway in Chile. Chilean courts apply a consistently pro-enforcement approach to New York Convention awards.

U.S. Court Judgments in Chile

II

Chilean courts apply a three-tier hierarchy: (1) applicable treaties – none exist with the U.S.; (2) reciprocity – consistently found unavailable; (3) the **residual four-part test of Article 245 CPC**, which governs virtually all U.S. judgment petitions.

The Four Requirements — Article 245 CPC

NO CONFLICT WITH CHILEAN LAW

Applied with a "moderate criterion." The judgment need not conform to Chilean substantive law in every respect, only avoid manifestly violating fundamental legal principles.

1

NO CONFLICT WITH CHILEAN JURISDICTION

The foreign court must have had proper jurisdiction. Disputes over real property in Chile fall within exclusive Chilean jurisdiction and cannot be resolved by a foreign court.

2

DUE PROCESS — PROPER SERVICE

The respondent must have been duly served and had a genuine opportunity to defend. U.S. service by publication or informal mail without formal diplomatic channels may be challenged.

3

FINALITY (EJECUTORIADA)

The judgment must have res judicata force in the U.S. A certificate of finality from the issuing court, apostilled and translated into Spanish, is required.

4

Procedural Features

Exclusive Supreme Court jurisdiction. Filed directly before the Corte Suprema. The First (Civil) Chamber typically handles exequatur matters.

Adversarial proceeding. The respondent is served and may oppose within the standard complaint-answer period.

Fiscal Judicial report. A non-binding but influential report must be obtained before the Court rules.

No merits review / No appeal. Procedural compliance verification only. The exequatur ruling is final and unappealable.

Practical Challenges

CRITICAL RISK

Punitive damages are likely to be refused on public policy grounds. Consider petitioning only for the compensatory portion of the judgment.

TIMELINE

Exequatur: **12–24 months**. Post-exequatur enforcement: **6–18 months**. Total: **18–36 months**.

The exequatur petition **interrupts the statute of limitations**. The enforcement action must be filed within 3 years from the date the exequatur becomes final.

Foreign Arbitral Awards in Chile



ART. 35 NOTE Article 35 of Law No. 19,971 uses the term "**competent court**" (**tribunal competente**) without designating the Supreme Court expressly — following the UNCITRAL Model Law's neutral drafting. While this has prompted academic debate about whether recognition could proceed before a lower court of first instance, **established Chilean jurisprudence consistently maintains that exequatur jurisdiction resides exclusively with the Supreme Court**, applying Arts. 35–36 of Law No. 19,971 as the substantive standard. See the key distinction below.

A More Favorable Framework

Foreign arbitral awards benefit from multiple overlapping instruments creating a strongly pro-enforcement environment:

NEW YORK CONVENTION (1958)

Chile adhered in 1975. Provides exhaustive, narrowly construed grounds for refusal. Both Chile and the U.S. are parties — the reciprocity reservation does not affect U.S.-seated awards.

LAW NO. 19,971 — UNCITRAL MODEL LAW (2004)

Chile's domestic adoption of the UNCITRAL Model Law. Arts. 35–36 are the governing substantive standard for recognition in Chilean jurisprudence (14+ Supreme Court decisions since 2004), superseding the CPC's Art. 245 as *lex specialis*.

PANAMA CONVENTION (1975)

Inter-American Convention on International Commercial Arbitration. Both Chile and the U.S. are parties. The New York Convention prevails where both apply.

CHILE–U.S. FREE TRADE AGREEMENT (2004) — LIMITED SCOPE

Chapter 10 (Investment) contains express ISDS provisions requiring both parties to enforce investor–state arbitral awards. **Important limitation:** the FTA covers only investment arbitration — not ordinary commercial arbitral awards between private parties (which are fully covered by the NY Convention and Law No. 19,971). The FTA also creates *no obligations* regarding mutual recognition of court judgments, and does not qualify as a "treaty" for purposes of Art. 242 CPC's recognition hierarchy.

The Critical Distinction: Procedure vs. Substance

PROCEDURAL COURT

Supreme Court of Chile — exclusive jurisdiction maintained by consistent jurisprudence, regardless of Art. 35's neutral "tribunal competente" language.

SUBSTANTIVE STANDARD

Arts. 35–36 of Law No. 19,971 apply — not Art. 245 CPC. This is the key benefit: limited, taxative grounds for refusal and a restrictive public policy standard.

Grounds for Refusal — Exhaustive (Art. 36)

Party-raised defenses only — burden of proof on the opposing party:

- A In capacity or invalidity of the arbitration agreement
- B Lack of due process / improper notice to party
- C Award beyond the scope of submission (*ultra petita*)
- D Irregular composition of tribunal or procedure
- E Award not yet binding or set aside at seat of arbitration

Ex officio grounds (court-raised): (i) non-arbitrability; (ii) public policy — defined restrictively as violations of *fundamental principles* of Chilean law, not every mandatory norm.

SUPREME COURT — CONSISTENT PRO-ENFORCEMENT POSTURE

The Court has confirmed that the exequatur under Law No. 19,971 is not an appellate instance and that public policy must be interpreted narrowly. In *MBA Community Loans PLC* (Rol No. 1647–2025), facts and merits from the original proceedings were held not subject to relitigation. Typical

Comparative Analysis

IV

FACTOR	U.S. COURT JUDGMENTS	INSTITUTIONAL ARBITRAL AWARDS
Governing Law	Articles 242–251 CPC — residual Art. 245 test	New York Convention + Law No. 19,971 + Panama Convention (+ FTA for ISDS only)
Treaty Framework	No bilateral treaty on mutual recognition of judgments; FTA does not cover court decisions; reciprocity unavailable	NY Convention + Panama Convention (commercial arbitration); FTA Ch. 10 (ISDS/investment arbitration only)
Recognition Court	Supreme Court of Chile — exclusive jurisdiction	Supreme Court of Chile — exclusive jurisdiction
Grounds for Refusal	Four cumulative requirements; public policy broadly construed	Exhaustive, narrowly construed; public policy strictly limited
Punitive Damages	Significant public policy risk — likely partial refusal	Generally not applicable; contractual penalties enforceable
Merits Review	None — procedural verification only	None — same principle applies
Phase 1 Duration	12–24 months (exequatur)	8–18 months (exequatur)
Phase 2 Duration	6–18 months (lower court)	6–12 months (lower court)
Total Timeline	18–36 months	14–30 months
Documentary Requirements	Apostilled judgment + finality cert + Spanish translation	Apostilled award + arbitration agreement + Spanish translation
Overall Difficulty	Moderate — manageable, with specific risk points	Low to Moderate — pro-enforcement environment

PRACTITIONER'S BOTTOM LINE

Both pathways are viable with proper preparation. Where transactional structuring allows it, an arbitration clause designating a major institution (ICC, AAA/ICDR, LCIA) and a seat in a New York Convention contracting state provides Chile's most efficient enforcement route.

Key Risks & Recommendations



FOR U.S. COURT JUDGMENTS

<p>HIGH RISK</p> <p>PUNITIVE DAMAGES</p> <p>Most likely to be refused on public policy grounds. Petition only for compensatory components. Consider separate petitions if structurally feasible.</p>	<p>HIGH RISK</p> <p>SERVICE OF PROCESS</p> <p>Publication service or informal mail without formal channels may be challenged. Document all service from the outset of U.S. litigation.</p>	<p>MODERATE</p> <p>PROCEEDING ABANDONMENT</p> <p>If the exequatur stalls 6+ months without a useful step, the opponent may seek abandonment. Maintain active procedural management.</p>
<p>MODERATE</p> <p>FINALITY CERTIFICATION</p> <p>Obtain a certificate of finality from the issuing court, apostilled and translated. Do not rely solely on the judgment document itself.</p>	<p>MODERATE</p> <p>STATUTE OF LIMITATIONS</p> <p>The exequatur interrupts prescription but the underlying obligation must not have already prescribed at filing. Assess urgency immediately.</p>	<p>MANAGEABLE</p> <p>DEFAULT JUDGMENTS</p> <p>Not per se unenforceable, but face heightened scrutiny on service adequacy. Prepare detailed evidence of proper notice proactively.</p>

FOR INSTITUTIONAL ARBITRAL AWARDS

- 1 **Valid arbitration agreement in writing.** Both the New York Convention and Law No. 19,971 require a written agreement. Ensure it is clear, unambiguous, and designates an institutional body.
- 2 **Use institutional rules as safeguard.** Awards from ICC, AAA/ICDR, LCIA carry inherent procedural legitimacy, reducing the risk of challenges on procedural grounds.
- 3 **Seat selection matters.** Chile's reciprocity reservation is satisfied automatically if the seat is in another contracting state. The U.S. qualifies. Choose the seat deliberately.
- 4 **Monitor pending annulment proceedings.** If annulment is pending at the seat, the Supreme Court may adjourn enforcement. Manage timing and priority strategically.
- 5 **Invoke dual framework.** File the exequatur invoking both the New York Convention and Law No. 19,971. Activate the "more favorable right" rule of Article VII NYC.
- 6 **Pre-filing asset investigation.** Chilean law lacks formal post-judgment discovery. Conduct registry searches (real estate, corporate, vehicles, tax authority) before filing.

Procedural Roadmap

VI

PHASE 1 — PRE-FILING PREPARATION

- 01 **OBTAIN FINAL JUDGMENT / AWARD + FINALITY CERTIFICATE**
Request a certificate from the issuing court or arbitral institution confirming the decision is final and not subject to further appeal.
- 02 **APOSTILLE ALL DOCUMENTS**
Through the Secretary of State of the relevant U.S. state or the U.S. Department of State. Both countries are Hague Apostille Convention parties.
- 03 **CERTIFIED SPANISH TRANSLATIONS**
All documents must be translated by a sworn translator (traductor oficial) registered in Chile. Factor translation time and cost into pre-filing planning.
- 04 **RETAIN CHILEAN SUPREME COURT COUNSEL**
Grant a mandato judicial executed before a Chilean consul abroad or apostilled. Only authorized practitioners may appear before the Corte Suprema.
- 05 **PRE-FILING ASSET INVESTIGATION**
Search real estate, commercial, vehicle, and tax registries. Consider precautionary measures to freeze assets before service on the debtor.

PHASE 2 — EXEQUATUR BEFORE THE SUPREME COURT

- 06 **FILE EXEQUATUR PETITION WITH ALL DOCUMENTS**
Submit before the Supreme Court. The First (Civil) Chamber receives the filing and assigns a rol number.
- 07 **SERVICE ON RESPONDENT**
The Court orders service. Respondent domiciled abroad requires international channels and may extend timelines considerably.
- 08 **FISCAL JUDICIAL REPORT**
Non-binding but influential. Active engagement at this stage is advisable to present supporting arguments in writing.
- 09 **SUPREME COURT RULING — NO APPEAL**
The decision granting or denying exequatur is final. No appeal lies against the Corte Suprema's exequatur determination.

PHASE 3 — ENFORCEMENT (LOWER COURT)

CRITICAL THRESHOLD

Once exequatur is final, the foreign decision is vested with the same force as a domestic Chilean judgment — a valid *título ejecutivo*. The 3-year enforcement prescription runs from this date.

- 10 **FILE ENFORCEMENT ACTION (DEMANDA EJECUTIVA)**
Before the lower court with jurisdiction over the debtor's domicile. The claim must be liquid, enforceable, and not time-barred. Include the peso equivalent of any USD amounts.
- 11 **WRIT OF EXECUTION + DEMAND FOR PAYMENT**
Court issues the *mandamiento de ejecución*. A court officer (receptor judicial) personally demands immediate payment from the debtor.
- 12 **ATTACHMENT OF ASSETS — EMBARGO**
Bank accounts (freeze orders), real estate, vehicles, shares, accounts receivable, and other property may be seized immediately upon non-payment.
- 13 **DEBTOR'S DEFENSES — ART. 464 CPC**
Only the taxative list of Art. 464 CPC defenses applies. Defenses that should have been raised at the exequatur stage cannot be re-litigated.
- 14 **REALIZATION OF ASSETS & COLLECTION**
Real property sold at public auction. Bank funds transferred directly.

ANTI-EVASION TOOLS

If asset transfers are suspected: (i) **acción pauliana** to void fraudulent transfers — 1-year statute of limitations from date of transfer; (ii) **precautionary measures** may be requested pre-filing to freeze assets before service on the debtor.

Arbitration Clause

Drafting for Chile

VII

Enforceability of an arbitral award in Chile is only as strong as the underlying arbitration agreement. Pathological clauses — defective agreements that impair enforcement — are a primary source of refusal risk. Ten drafting recommendations:

- 1 **Use a recognized institutional clause.** Adopt the model clause of ICC, AAA/ICDR, or LCIA verbatim. Institutional designation provides default rules on all procedural gaps.
- 2 **Specify the seat of arbitration explicitly.** The seat determines the *lex arbitri*, supervisory courts, and applicable law to the agreement. It also determines New York Convention applicability in Chile.
- 3 **Define the scope of disputes broadly.** Cover: "existence, validity, interpretation, performance, breach, or termination." Chilean courts treat *ultra petita* as a non-waivable public policy ground.
- 4 **Specify the number of arbitrators.** Express designation avoids procedural disputes. Three arbitrators are standard for high-value disputes.
- 5 **Designate the language of arbitration.** If enforcement in Chile is anticipated, designating Spanish (or bilingual proceedings) reduces translation costs before the Corte Suprema.
- 6 **Specify governing law of the arbitration agreement.** Explicitly state the law of the seat governs the clause. Avoids invalidity challenges under Art. V(1)(a) NYC.
- 7 **Address multi-party and assignment scenarios.** Expressly bind assignees and affiliated entities to the arbitration clause if the contract may be assigned or involves related parties.
- 8 **Include sovereign immunity waiver** if a party is a state entity. Include express waivers of immunity from jurisdiction, execution, and prejudgment measures.
- 9 **Use mandatory language.** "Shall be settled" — not "may be submitted." Permissive clauses are vulnerable to jurisdictional challenges at the enforcement stage.
- 10 **If using escalation mechanisms,** make pre-arbitration steps conditions precedent with clear, self-executing timelines: "If no resolution within 30 days, either party may refer the dispute to arbitration without further notice."

Model Clause — U.S.–Chile Transactions (ICC-Based)

"Any dispute, controversy, or claim arising out of or relating to this contract, including any question regarding its existence, validity, interpretation, performance, breach, or termination, shall be finally settled by arbitration administered by the International Chamber of Commerce in accordance with its Rules of Arbitration."

"The seat of arbitration shall be [New York, New York / Miami, Florida / Santiago, Chile]. The arbitral tribunal shall consist of [one (1) / three (3)] arbitrator(s) appointed in accordance with the ICC Rules. The language of the arbitration shall be [English / Spanish / English and Spanish]. The governing law of this contract shall be [specify]. The governing law of this arbitration agreement shall be the laws of [seat jurisdiction]."

"The parties agree that the arbitral award shall be final and binding, and judgment upon the award may be entered in any court having jurisdiction thereof. The parties expressly waive any right to appeal the award, to the extent such waiver is permitted by applicable law."

Conclusions & Key Takeaways

VIII

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- Chile provides a **functional and well-established legal framework** for recognizing and enforcing both U.S. court judgments and arbitral awards. The Supreme Court exercises exclusive exequatur jurisdiction and applies a procedurally rigorous but commercially reasonable standard.
-
- For **U.S. court judgments**, the absence of a bilateral treaty and unavailability of reciprocity means recognition turns on the four-part Article 245 CPC test. Risk factors — particularly punitive damages and service of process — require early assessment and mitigation strategy.
-
- For **institutional arbitral awards**, the legal framework is significantly more favorable. The New York Convention, Panama Convention, and Law No. 19,971 create the primary pro-enforcement regime with exhaustive and narrowly construed grounds for refusal. The Chile–U.S. FTA adds a further layer, but its scope is limited to investor–state (ISDS) awards under Chapter 10 — it does not cover ordinary commercial arbitration, and it does not constitute a treaty for purposes of recognizing U.S. court judgments under Art. 242 CPC.
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- The **total estimated timeline** from filing the exequatur petition to actual enforcement is approximately 18–36 months for court judgments and 14–30 months for arbitral awards. Early engagement of Chilean Supreme Court counsel is essential.
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- **Key risk factors:** (a) punitive damages in U.S. judgments; (b) deficient service of process; (c) proceeding abandonment risk; (d) post-exequatur prescription of the enforcement action; (e) debtor asset dissipation before enforcement commences.
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- **Strategic recommendation:** Where a choice exists between U.S. court litigation and institutional arbitration, the arbitral route offers a materially superior enforcement pathway in Chile. Arbitration clauses should be drafted with Chilean enforcement in mind from the outset of contract negotiations.
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