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Enforceability of Foreign Judgments and Awards

Attorney John Osgathorpe

Moderator

TAYLOR DAY LAW FIRM

Jacksonville, Florida

jdo@taylordaylaw.com

Attorney Robin Alperstein

BECKER, GLYNN, MUFFLY, CHASSIN & HOSINSKI, LLP

New York, New York

RALperstein@beckerglynn.com

Introduction

Recalling that a contract is just a set of promises that the law lets you sue to enforce, even the most well-designed contract results merely in a paper judgment or award, which you then must enforce. Therefore, the viability of the court or arbitral process for cross-border commerce depends on the predictability that court judgments and arbitral awards rendered in one jurisdiction will be recognized and enforced in another jurisdiction – the “foreign” jurisdiction. While most legal systems provide pathways to enforcement, the applicable procedures, defenses, and “hometown” favoritism vary materially by forum.

Lawyers must navigate treaty regimes, domestic statutes, procedural rules, and sometimes a less than unbiased local enforcement regime, as well as strategic and evidentiary considerations, to convert a paper right obtained from a tribunal in one (1) forum into recoverable value in the foreign jurisdiction. With these realities in mind, of course, close attention must be paid to the jurisdiction and venue provisions at the time of contracting, but often overlooked – yet equally important – are the processes and procedures in the jurisdiction(s) in which you anticipate seeking to enforce (or to defend against enforcing) the judgment or award. Simply stated, even if you obtain a judgment or award in your contractual identified forum, that judgment or award’s practical value turns on the foreign jurisdiction’s enforcement regime.

Legal Frameworks

International Instruments on Foreign Court Judgments

The 2005 Hague Convention on Choice of Court Agreements promotes recognition and enforcement of judgments resulting from exclusive choice-of-court agreements in civil or commercial matters, subject to specific defenses. The more recent Convention of July 2, 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (“Hague Judgments Convention”) seeks broader recognition and enforcement of civil or commercial judgments with defined jurisdictional filters and refusal grounds. What’s more, enforceability depends on a country’s ratification and implementation status. In parallel, certain regions operate under regional instruments and bilateral treaties that may provide more streamlined enforcement between member states.

Treaty regimes typically coexist with, and may supplement, the domestic rules of participating countries, such that parties enforcing judgments in a member country often must satisfy requirements under both the domestic implementing legislation and the Hague Judgments Convention itself.

The Position of the United States

The United States is a Signatory to, but has not ratified, the Hague Convention on Choice of Court Agreements or the Hague Judgments Convention. Accordingly, U.S. enforcement of foreign judgments currently depends on an amalgam of state statutes, federal constitutional due process principles, and, in rare cases, international comity, rather than a unified treaty-based system. This fragmented approach creates additional complexity for practitioners seeking to enforce judgments across U.S. state lines.

International Conventions on Arbitral Awards

The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the “New York Convention”), which entered into force on June 5, 1959, establishes a broadly adopted regime for recognition and enforcement of international arbitration agreements and awards. The New York Convention represents one of the most widely adopted enforcement instruments, encompassing 170 countries, including the United States.

The New York Convention requires ratifying countries to recognize written arbitration agreements and to enforce awards subject to limited, enumerated defenses, including incapacity, invalidity of the agreement, lack of proper notice, excess of scope, procedural irregularity, award not yet binding or set aside at the seat, and contravention of public policy.

Therefore, and ideally at the time of contracting, you must be attentive to whether a country’s implementation has adopted so-called “reciprocity” or “commercial” reservations, which may impact the breadth of enforcement. Applications to enforce often require authenticated copies of the award and the underlying arbitration agreement, and strict adherence to local procedural conditions is critical for both recognition and execution.

Domestic Law and Reciprocity Regimes

In the absence of an applicable treaty, enforcement — as well as resistance to enforcement — typically rests on domestic statutes and common-law principles of comity. The majority of jurisdictions require the party seeking to enforce to demonstrate that the foreign court that entered the judgment or award had proper jurisdiction, that the judgment is final and conclusive, and that due process was afforded. Some systems incorporate reciprocity or equivalence tests as a basis to deny enforcement, while others rely on statutory lists of refusal grounds for denying enforcement. Procedural vehicles vary and may include registration, ex-parte recognition with notice, or plenary actions on the judgment.

The requirements for reciprocity may mean that a judgment will be enforced only if the awarding forum would, under equivalent facts, enforce a similar judgment from the enforcing country. This limitation introduces an additional diligence consideration at the contract formation stage, particularly where assets may be located in jurisdictions with restrictive reciprocity rules.

Originally promulgated in 1962 and revised in 2005, the Uniform Foreign-Country Money Judgments Recognition Act (the “UFCMJRA”) offers a statutory framework for the recognition and enforcement of foreign-country money judgments, but each state must independently decide whether to adopt it and, if so, in which iteration. The UFCMJRA has never operated as a truly uniform regime in the United States. As a result, several states continue to rely largely on common law, others have enacted only the 1962 version, and a growing number have aligned their statutes with the 2005 revisions. The majority of states now have some form of the Act in place, which has reduced—but by no means eliminated—interstate variation in both statutory language and judicial approach.

New York is a particularly instructive example of this staggered and partial harmonization. Article 53 of New York’s Civil Practice Law Rules (“CPLR”) governs the recognition of foreign-country money judgments and is commonly described as codifying the common-law principles that developed around recognition and enforcement. Historically, Article 53 tracked the 1962 Uniform Act, and

New York—despite its prominence as a global commercial forum—did not amend that framework to reflect the 2005 UFCMJRA until 2021. The 2021 amendments were intended to bring New York substantially into line with the revised Act, but they did not erase all divergences, and the interpretive gloss supplied by New York courts over time continues to matter in practice. For in-house counsel, the takeaway is that one cannot safely assume that a key enforcement jurisdiction is operating under the latest uniform template, even when it has “adopted” the Act.

Like the UFCMJRA, Article 53 furnishes plaintiffs with a relatively summary route to recognition and, once recognized, to enforcement—often via motion practice rather than a full plenary proceeding. Section 5304 of the CPLR is the fulcrum of that analysis. It enumerates three (3) mandatory grounds on which a New York court must refuse recognition of a foreign-country money judgment and nine (9) discretionary grounds on which the court may decline recognition. In functional terms, § 5304 defines the argument set for both sides: it structures the due process, jurisdictional, public policy, and other defenses available to judgment debtors and, correspondingly, the risk profile that a judgment creditor must underwrite when deciding where and how to enforce.

From an in-house perspective, these features have direct implications for enforcement planning and forum selection. The fact that most states have adopted some version of the Act simplifies the landscape to a degree, but the residual differences—between the 1962 and 2005 versions, between statutory text and common-law overlays, and among state-specific amendments such as New York’s 2021 revisions—still create meaningful variation in timing, predictability, and leverage. Where there is a realistic prospect of cross-border enforcement, it is therefore prudent to consider at the outset not only where counterparties’ assets are located, but also how the relevant state has implemented (or declined to implement) the UFCMJRA. New York’s regime under Article 53 should be a feature in that assessment, both because it is a natural enforcement forum and because its standards often influence expectations in other jurisdictions.

Finally, both the UFCMJRA and CPLR Article 53 are confined to foreign-country money judgments, so neither encompass injunctive nor other non-monetary relief. For non-monetary orders, parties may have to look to other doctrines, alternative causes of action, or specific contractual mechanisms rather than relying on the statutory recognition framework.

Challenges in Enforcement

Jurisdictional Objections

Judgment debtors frequently resist enforcement by contesting the rendering court’s jurisdiction or the arbitral tribunal’s authority. Counsel should anticipate allegations of insufficient jurisdiction, which may include challenges to or insufficiencies in: propriety of forum selection/choice-of-court clauses; the existence or scope of an arbitration agreement; notice, service, consent, or submission to jurisdiction; minimum contacts or analogous standards; and the judgment or award. For arbitral awards, challenges may focus on the existence, validity, and scope of the arbitration agreement or alleged absence of exceeding tribunal authority. All these issues present protracted threshold disputes in enforcement actions resulting in enforcement delays, or outright refusals to enforce, and, of course, increase the expenses of enforcement.

Public Policy and Due Process

Public policy defenses, though narrowly construed in many jurisdictions, can be a potent obstacle to enforcement. Skilled litigants may combine due process and public policy attacks—for example, alleging both a lack of appropriate notice and that resulting procedural unfairness offends “basic notions of justice” in the enforcing forum. The foreign court may refuse enforcement where the judgment or award offends fundamental notions of morality, procedural fairness, or core legal principles of the jurisdiction in which enforcement is sought, especially if that jurisdiction is the judgment debtor’s home base. Due process challenges often target notice, the opportunity to be heard, impartiality of the tribunal, and corruption or fraud. Both public policy and due process concerns may be more likely to prevail in situations where enforcement is sought against a judgment debtor in a home state.

Finality, Set-Aside, and Parallel Proceedings

Enforcement can be denied or stayed if a judgment is deemed not final by the foreign jurisdiction, or if an arbitral award has been set aside or suspended at the seat. Parallel proceedings — including appeals, annulment actions, or competing judgments — complicate timing and strategy, and may trigger stays or security requirements. Therefore, you must conduct a jurisdiction-specific analysis of what constitutes “finality” as part of finalizing the judgment or award and not wait until seeking enforcement in the foreign jurisdiction.

The absence of explicit “magic” language authorizing execution can render a judgment non-final and therefore unenforceable (or at least provide an excuse of non-enforcement) in the foreign jurisdiction. This circumstance can even impede enforcing judgments between states within the United States.

By way of specific example, in Florida, even a judgment from another state within the United States often will often not be considered “final” by a local Florida judge unless the judgment includes the language “For which let execution issue,” despite some case law supporting the position that “magic language” is not required. Very simply, a trial judge can flummox enforcement on the judge’s antiquated notion of law, which would require the judgment creditor either to return to the original jurisdiction for an amendment judgment or to appeal within the foreign jurisdiction in which enforcement is sought. *See DuBreuil v. Regnvall*, 527 So.2d 249, 249 (Fla. 3rd DCA 1988) (“While we do not believe that Mrs. Regnvall’s right to execute upon a judgment entered in her favor should depend upon the judgment containing the archaic—but, admittedly, customary—words ‘for which let execution issue,’ *cf. Chan v. Brunswick Corp.*, 388 So.2d 274 (Fla. 4th DCA 1980) (words ‘for which let execution issue’ not essential to finality of judgment), we are bound to follow *Murphy v. Murphy*, 378 So.2d 27 (Fla. 3d DCA 1979), in which this court construed the absence of these words as effectively granting the judgment debtor a stay of execution and denying the judgment creditor the right to execute on the judgment.”)

Non-Arbitrability and Scope

Certain subject matters may be deemed non-arbitrable or outside the permissible scope of adjudication by the enforcing jurisdictions, such as specific insolvency, competition, consumer law, family law, or public law issues, creating barriers to enforcement of awards addressing those subjects. Excess-of-scope objections also arise when relief granted exceeds or departs from the

submissions or arbitration agreement. It is imperative to conduct upfront diligence into the arbitrability of subject matter both at the seat of arbitration and in all likely enforcement jurisdictions to avoid subsequent objections.

Many jurisdictions have a strong bias toward an expensive view of scope a contract's arbitration provision during the arbitration itself, while the foreign enforcing jurisdiction might take a narrower perspective.

Differences in Substantive and Procedural Standards

Jurisdictional variations in damages law (*e.g.*, awards of punitive or multiple damages), interest, costs, and evidence can prompt resistance to enforcement. Some courts could scrutinize awards for disregard of the law or egregious procedural defects, even under deferential standards. Documentation and legalization requirements, translations, and authentication impose additional burdens on the party seeking enforcement.

The service of process in cross-border disputes is fraught with challenges, particularly when relying on international conventions like the Hague Service Convention or regional treaties (even though often these are the only way to effectuate valid service). Delays and procedural hurdles can arise, allowing parties to exploit these weaknesses to evade service or delay proceedings.

Certain countries, like Brazil, require the recipient of an arbitral award to initiate (and properly effectuate service on the judgment debtor of) a "Recognition Procedure" in a designated court (here the Brazilian Superior Court of Justice) and explicitly permit contestation of the award on relatively broad grounds other than the merits. These include, among standard due process and scope defenses, that the matter involves inalienable rights in Brazil that may not be arbitrated; the matter violates Brazilian *res judicata*, and that the award is an offense to public order, national sovereignty, or good customs. Thus, despite Brazil's ratification of the New York Convention, a party resisting recognition of enforcement there can substantially delay proceedings by opposing recognition and appealing any negative decision, and in the absence of a fee-shifting provision, impose substantial additional costs and delays on the party seeking enforcement. Other countries also have similar opportunities for delay. Accordingly, effective enforcement requires proactive measures to streamline service processes and mitigate the risk of procedural gamesmanship.

Jurisdictional variations in damages law, procedural requirements, and evidentiary standards can substantially affect enforcement outcomes. Enforcement is further complicated where foreign awards implicate punitive or non-compensatory damages, as some jurisdictions may sever unenforceable components, while allowing recognition of others. Notwithstanding, still other jurisdictions might treat the whole award as unenforceable due to these components. Clear evidence of amounts related to compensatory versus punitive elements may be determinative in realizing any value through enforcement. Certain legal systems may also decline to enforce based on a manifest disregard of local legal standards or for procedural irregularities, so careful compliance with evidentiary requirements is paramount.

Service of Process and Notice Requirements

The service of process in cross-border disputes is fraught with challenges and technical requirements. For example, in Brazil's regime, robust local recognition procedures—and opportunities to contest recognition—may extend the enforcement timeline, making service and notice records all the more vital. The complexity of these procedures can be weaponized by

judgment debtors to delay or totally frustrate recognition and recovery. Courts frequently reject enforcement applications because of technical defects in service, missing certifications, or failure to document that the debtor received an adequate opportunity to present its case.

Asset Location and Evasion Tactics

Even with recognition of the award or judgment, collection hinges on locating leviable assets. In practice, locating assets and linking them to the debtor can be as challenging as the legal steps themselves, especially where holdings are diversified globally and obstructed by banking secrecy rules or protective local law. Debtors may restructure holdings, interpose affiliates, or leverage sovereign or quasi-sovereign immunities. Piercing corporate veils, tracing assets, and navigating banking secrecy and blocking statutes can materially affect recoveries. Likewise, this reality can become particularly daunting and burdensome if you are seeking to enforce a judgment in the United States, where each state has its own laws, and if assets are located in multiple jurisdictions, thereby necessitate multiple parallel enforcement actions. Thus, proactive early mapping and action to preserve assets must be reviewed and updated throughout the process.

Finding A Debtor

Cross-border collection risk often turns less on merits and more on whether you can find the Defendant to sue, and from whom to collect, and whether you can produce a service/notice record that will withstand later recognition and enforcement scrutiny. This issue is worsening as online transactions (software, software as a service ["SaaS"], cloud/compute) increasingly close with higher values and little or no in-person contact, even at six- and seven-figure levels, meaning counterparties can be harder to physically locate when the transaction runs into issues go sideways. In other words, your current security measures and safeguards might not allow you to locate, properly serve with process, and enforce through collection a judgment against a defendant turned judgement debtor.

Practical Considerations

Record-Building and Notice

Practitioners must prioritize comprehensive record-building from the earliest stages of any dispute:

- Preserve a clean procedural record: service proofs, hearing notices, certified translations, and evidence of opportunity to be heard.
- Comprehensive preparation of these materials from the outset reduces the risk of technical dismissal and insulates against most "due process" objections.
- Maintain delivery confirmations and affidavits of service documenting compliance with both contractually selected and statutorily mandated procedures.
- Archive all evidence demonstrating that the judgment debtor received an adequate opportunity to present its case in the underlying proceeding.

Conclusion

The enforceability of foreign judgments and arbitral awards remains a critical component of international commerce, requiring practitioners to remain vigilant of not only the applicable legal standards, but also the evolving tactical landscape in enforcement forums. Mechanisms such as fee shifting, if available, directly reduce the effectiveness of dilatory conduct and can potentially increase ultimate client recovery. Success in enforcement depends on meticulous preparation, strategic planning, and careful attention to jurisdictional requirements and procedural minutiae.