

International Comparative Legal Guides



Practical cross-border insights into the enforcement of foreign judgments

Enforcement of Foreign Judgments 2022

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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
Multilateral treaties		
Hague Convention on Civil Procedure of 1 March 1954.	All countries signatory to the Convention.	Section 3.
Convention on the Contract for the International Carriage of Goods by Road of 19 May 1956 (“CMR”).	All countries signatory to the Convention.	Section 3.
Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960.	All countries signatory to the Convention.	Section 3.
Convention concerning International Carriage by Rail of 9 May 1980 (“COTIF”).	All countries signatory to the Convention.	Section 3.
Hague Convention on Choice of Court Agreements of 30 June 2005.	All countries signatory to the Convention.	Section 3.
Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters of 2 July 2019.	The Convention is not yet in force.	Question 5.1.
Bilateral treaties		
Convention between the Federal Republic of Germany and the United Kingdom for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters of 14 July 1960 (“German-UK Convention”).	The UK.	Section 3.
Treaty between Germany and Tunisia on Legal Protection, Legal Assistance and the Recognition and Enforcement of Judgments in Civil and Commercial Matters and on Commercial Arbitration of 19 July 1966 (“German-Tunisian Treaty”).	Tunisia.	Section 3.
Treaty between Germany and Israel on the Mutual Recognition and Enforcement of Judgments in Civil and Commercial Matters of 20 July 1977 (“German-Israeli Treaty”).	Israel.	Question 2.8.
Domestic law		
Code of Civil Procedure (“ZPO”).	All countries, unless specific regimes apply.	Question 2.8.
Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (“FamFG”).	All countries, unless specific regimes apply.	Questions 2.1 and 2.8.
Insolvency Statute (“InsO”).	All countries, unless specific regimes apply.	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?

The recognition of foreign judgments is governed by Section 328 ZPO, whereas Sections 722, 723 ZPO cover the enforcement of foreign judgments. Sections 107–110 FamFG contain special provisions for the recognition and enforcement of foreign judgments in family matters and matters of non-contentious jurisdiction.

2.2 What constitutes a ‘judgment’ capable of recognition and enforcement in your jurisdiction?

In principle, every foreign judgment containing a final ruling on a legal claim following legal proceedings is recognisable and enforceable. Consequently, cost-assessment decisions are also deemed judgments, since a court decides conclusively on the merits. By contrast, court settlements, with respect to which the court only exercises a recording function, are principally not deemed judgments, unless explicitly provided for in special regimes. The same applies to enforceable deeds.

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

Recognition

The requirements for recognition of foreign judgments are negatively defined as grounds for refusal, Section 328 (1) Nos 1–5 ZPO. Grounds for refusal are the following:

- the courts of the country in which the foreign judgment was issued (“country of origin”) did not have international jurisdiction to issue the foreign judgment, according to German law;
- the judgment debtor who did not enter an appearance in the foreign proceedings and invokes this fact was not served with the document initiating the proceedings properly or in sufficient time to ensure that he could adequately defend himself;
- the foreign judgment is incompatible with a judgment rendered in Germany or with an earlier judgment rendered abroad that is to be recognised, or if the proceedings on which the foreign judgment is based are incompatible with proceedings that have previously become pending in Germany;
- recognition of the foreign judgment would lead to a result that is obviously incompatible with essential principles of German law, in particular fundamental rights (also referred to as violation of public policy (*ordre public*)); and
- reciprocity between Germany and the country of origin is not guaranteed. Reciprocity is guaranteed if, taking into account the mutual recognition law and practice, the requirements for recognition of German judgments in the country of origin are essentially equivalent as *vice versa*.

Enforcement

Enforcement of foreign judgments under Sections 722, 723 ZPO requires that no grounds for refusal under Section 328 ZPO apply.

Additionally, the foreign judgment must have become legally binding and final under the law of the country of origin (*res judicata*). Accordingly, the judgment must be enforceable in the country of origin.

In order to have a foreign judgment enforced in Germany, it is further required that (i) the operative part of the foreign judgment orders specific performance, or (ii) in case the operative part is not sufficiently specific, the German exequatur court performs an *ex post* specification. However, such *ex post* specification of a foreign judgment in exequatur proceedings requires that the criteria for this specification be derived either from foreign law or similar circumstances that are equally accessible in Germany, and which can be ascertained with certainty.

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?

The international jurisdiction of the German courts must be established. Accordingly, the judgment debtor must either have his residence or (in the event of a company) registered seat in a German court district, or assets located in Germany.

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. Recognition of a foreign judgment means that all procedural effects that accrue from the foreign judgment under the law of the country of origin are extended to Germany, provided that the effects of the foreign judgment are recognised by German law. Recognition of the foreign judgment occurs *ipso iure* and therefore does not require any formal procedure.

By contrast, the enforcement of a foreign judgment requires (subject to prevailing regimes) exequatur proceedings, in which the judgment debtor has to file an action to obtain an exequatur judgment (“*Vollstreckungsurteil*”) declaring the foreign judgment enforceable in Germany. Following an exequatur judgment, the judgment creditor can pursue enforcement in the same way as a judgment creditor under a domestic judgment.

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

As stated above, recognition of a foreign judgment occurs *ipso iure* and therefore does not require any formal procedure.

In order to enforce a foreign judgment (subject to prevailing regimes), the judgment creditor must file an exequatur action and request to have the foreign judgment declared enforceable in Germany. Since exequatur proceedings are adversarial proceedings, the general procedural rules apply. Therefore, the proceedings require an oral hearing as well as a written judgment. Exclusive local jurisdiction lies with the court in the district of which the judgment debtor has its residence or registered seat or, alternatively, in which assets of the judgment debtor are located. If – as in most exequatur proceedings – the amount in dispute exceeds EUR 5,000, the subject-matter jurisdiction lies with the Regional Courts (“*Landgerichte*”); otherwise, the Magistrate Courts (“*Amtsgerichte*”) are competent. Importantly, in proceedings before the Regional Courts, the parties must be represented by lawyers.

The judgment creditor has to provide a certified copy of the foreign judgment as well as a certified translation of the judgment into German.

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

Due to its *ipso iure* effect, recognition cannot in principle be challenged by means of legal remedies. However, if a dispute arises between two parties as to whether a foreign judgment is to be recognised, either party may bring a declaratory action to clarify this issue in court.

The judgment debtor is not able to challenge the foreign judgment by arguing that the foreign court has incorrectly applied the law, since the German exequatur court must not review the merits of the foreign judgment (prohibition of a *revision au fond*). However, if the judgment debtor has objections in substance against the claim granted in the foreign judgment, which have occurred only after the foreign judgment was issued (such as, for example, fulfillment of the claim), the judgment debtor may raise this objection in the exequatur proceedings. In case such objections occur only after the conclusion of the oral hearings in the exequatur proceedings, the judgment debtor may file an action against enforcement of the foreign judgment pursuant to Section 767 ZPO (“*Vollstreckungsabwehrklage*”).

Once an exequatur judgment is issued, it can be challenged with an appeal (“*Berufung*”). Appeal courts are the Higher Regional Courts (“*Oberlandesgerichte*”) in case a Regional Court has handled the case in first instance. An appeal judgment can be subjected to a second appeal (“*Revision*”) to the Federal Court of Justice (“*Bundesgerichtshof*”) if the second appeal is admitted.

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

In family matters and matters of non-contentious jurisdiction, recognition and enforcement are governed by Sections 107–110 FamFG. As with civil matters in general, recognition of a foreign judgment in family matters and matters of non-contentious jurisdiction does not require any formal procedure, except for decisions on marriages and certain judgments concerning adoption. Section 109 (1) FamFG provides the requirements for recognition that are largely identical to those for civil matters in general under Section 328 (1) ZPO. Importantly, the guarantee of reciprocity is not required in principle, but is nonetheless required for certain matters such as those relating to family litigation. As in general civil matters under Sections 722, 723 ZPO, the judgment debtor must file an exequatur application to have the foreign judgment declared enforceable.

Furthermore, Section 343 InsO provides for the recognition of decisions in foreign insolvency opening proceedings. Recognition will be denied if:

- the courts of the country in which the proceedings were opened are not competent; or
- the opening decision violates public policy.

The enforcement of decisions issued in foreign insolvency proceedings require exequatur proceedings, pursuant to Section 353 InsO.

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?

Foreign judgments are neither recognised nor enforced if they are incompatible with a domestic judgment or a prior foreign judgment. Furthermore, recognition is denied if the subject

matter of the dispute has become pending before a German court prior to the commencement of the proceedings in which the foreign judgment was issued.

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?

Since a *revision au fond* is not permissible in exequatur proceedings, a conflicting local law or judgment on the same issue in itself does not create an obstacle for recognition and enforcement of a foreign judgment. However, if the foreign judgment violates public policy, *i.e.*, essential principles of German law, in particular fundamental rights (“*Grundrechte*”), recognition and enforcement must be denied.

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?

In principle, due to the prohibition of a *revision au fond*, the German exequatur court must not review whether the foreign court has applied German law correctly. Thus, even if the foreign court incorrectly applied German law, this would not necessarily establish a reason for denial of recognition or enforcement. However, if the incorrect application of German law violates public policy, enforcement must be denied.

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.

No. Recognition and enforcement of foreign judgments is governed by Federal law and thus applies uniformly to the entire German territory.

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

German law does not explicitly provide a time limit for the recognition and enforcement of foreign judgments. However, since claims under a legally binding German judgment lapse after 30 years, pursuant to Section 197 (1) No. 3 of the German Civil Code, it is broadly acknowledged that the 30-year period equally applies to claims under foreign judgments. The objection that the limitation period has lapsed is not considered *ex officio* in the exequatur proceedings, but has to be actively raised by the judgment debtor.

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?

Multilateral treaties

- **Hague Convention on Civil Procedure of 1 March 1954**
The Convention provides for the enforceability of decisions on costs that have been issued against a plaintiff or a party intervening who is exempted from the provision of

security, deposit or payment for costs under the Convention. Enforcement requires a copy of the decision on costs satisfying the conditions necessary to establish its authenticity under the law of the country of origin (Article 19 (2) No. 1). The decision must have acquired *res judicata* under the law of the country of origin (Article 19 (2) No. 2). In case the decisive part of the decision is not in German or in the language agreed between Germany and the country of origin, a certified translation is required (Article 19 (2) No. 3).

■ **Convention on the Contract for the International Carriage of Goods by Road of 19 May 1956**

The Convention provides for the enforceability of a judgment in a dispute arising from carriage of goods by road in vehicles for reward (Article 31 (3)). Enforcement requires that the judgment has been issued by the competent court or tribunal pursuant to Article 31 (1). Enforceability is also granted to judgments after trial, judgments by default and settlements confirmed by an order of the court. Further, the formal requirements for enforcing a foreign judgment in Germany, as set out under question 2.3, have to be met.

■ **Paris Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960**

Under Article 13 (d), judgments concerning liability in the field of nuclear energy are enforceable if they are enforceable in accordance with the law applied by the court of origin and meet the formal requirements for enforcing a foreign judgment in Germany, as set out under question 2.3. The judgment must have been issued by the competent court under Article 13 (a) to (c).

■ **Convention concerning International Carriage by Rail of 9 May 1980**

According to Article 12 Section 1, enforceable judgments in the field of international carriage of goods by rail rendered by the competent court or tribunal on the basis of the Convention are enforceable in Germany as a Contracting State. Further, the formal requirements for enforcing a foreign judgment in Germany, as set out under question 2.3, have to be met. Enforceability is also granted to judgments by default and judicial settlements.

■ **Hague Convention on Choice of Court Agreements of 30 June 2005**

Under the Convention, a judgment issued by a court that had jurisdiction under an exclusive choice of court agreement pursuant to the Convention is to be recognised in Germany as a Contracting State if the judgment has effect in the country of origin. Accordingly, enforceability of such judgment in Germany requires that the judgment is enforceable in the country of origin (Article 8 (3)). Article 9 stipulates several grounds for refusal of recognition and enforcement, e.g., the nullity of the choice of court agreement or the lack of capacity of a party to conclude the choice of court agreement.

Bilateral treaties

■ **German-UK Convention**

Under the Convention, final and binding judgments rendered by the Superior Courts of the UK shall be recognised and enforced in Germany. Judgments rendered by the County Courts of the UK are not subject to the Convention. The grounds for refusal of recognition and enforcement correspond to Section 328 ZPO (except for the requirement of guarantee of reciprocity). The relevance of the Convention may be revived by “*Brexit*”.

■ **German-Tunisian Treaty**

Under the Treaty, Tunisian judgments that are final and binding are recognised in Germany. Tunisian judgments

that are enforceable in Tunisia are equally enforceable in Germany. The grounds for refusal of recognition and enforcement correspond to Section 328 ZPO (except for the requirement of guarantee of reciprocity).

■ **German-Israeli Treaty**

The Treaty provides for the requirements of recognition and enforcement of Israeli judgments in civil and commercial matters that are final, binding and enforceable under the law of Israel. The grounds for refusal of recognition and enforcement (Article 5) essentially correspond to Section 328 ZPO (except for the requirement of guarantee of reciprocity). In addition, however, recognition and enforcement must also be refused in case the judgment was obtained as a result of fraudulent conduct in the proceedings, or if 25 years have elapsed since the judgment became final and binding (Article 24).

From a formal point of view, the party requesting enforcement must produce the following (Article 15 (1)):

- (1) the original judgment or a certified copy issued by the court of origin;
- (2) proof that the judgment is final;
- (3) proof that the judgment is enforceable under the law of Israel;
- (4) if the party requesting enforcement is not the creditor named in the judgment, proof of entitlement to enforce the claim under the judgment;
- (5) the original or certified copy of the affidavit of service or other document proving that the judgment has been served on the judgment debtor;
- (6) the original or certified copy of the document proving that the document initiating the Israeli proceedings in which the judgment was rendered has been served on the judgment debtor in accordance with the law of Israel, unless the judgment debtor has entered an appearance in the Israeli proceedings; and
- (7) a certified translation of the aforementioned documents into German.

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?

The Hague Convention on Choice of Court Agreements of 30 June 2005, the German-UK Convention, the German-Tunisian Treaty and the German-Israeli Treaty distinguish between recognition and enforcement. According to all of these treaties, recognition has the legal effect of an extension of the foreign judgment’s effects to Germany. Recognition does not require a specific formal procedure, but occurs *ipso iure*. By contrast, enforcement requires an approving decision in the course of a formal procedure (exequatur procedure).

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.

Only the following treaties contain deviations from the German law governing the procedure for recognition and enforcement of foreign judgments:

■ **Hague Convention on Civil Procedure of 1 March 1954**

Pursuant to Articles 18, 19 of the Convention and the respective implementation act, orders for costs shall be

declared enforceable free of charge without an oral hearing or the debtor being heard. The application can be filed either through diplomatic channels or directly with the district court. Local jurisdiction lies with the court in the district of which the judgment debtor has its residence/registered seat, or in which assets of the debtor are located.

- **German-UK Convention**

The Convention establishes a special procedure for enforcement. The judgment creditor needs to file an application for a declaration of enforceability with the Regional Court in the district of which the judgment debtor has his habitual residence or in which assets of the judgment debtor are located. The Regional Court may decide without an oral hearing. However, if the court decides to refrain from an oral hearing, the judgment debtor must be heard before the decision on enforceability is rendered.

- **German-Tunisian Treaty**

The Treaty establishes a special procedure for enforcement. The judgment creditor must file an application for a declaration of enforceability with the Regional Court in the district of which the judgment debtor has its seat or where enforcement is to be conducted. The Regional Court decides without an oral hearing. However, the judgment debtor must be heard before the decision is rendered.

- **German-Israeli Treaty/Hague Convention on Choice of Court Agreements of 30 June 2005**

Both regimes establish a special procedure for enforcement. The procedure is governed by the same implementation law. Under this law, the judgment debtor only needs to apply for an enforcement clause (“*Vollstreckungsklausel*”) with the Regional Court in the district of which the judgment debtor has its residence or where the enforcement will be conducted. Importantly, although in proceedings before a Regional Court, the judgment debtor is exempted from the obligation to be represented by a lawyer. The Regional Court’s decision is based on an *ex parte* decision, without the judgment debtor being heard.

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?

Only the following regimes contain provisions on challenging recognition and enforcement:

- **Hague Convention on Civil Procedure of 1 March 1954**

The judgment debtor may file an immediate complaint (“*sofortige Beschwerde*”) against the declaration of enforceability with the Regional Court. In the event of subsequent substantive objections against the cost claim, the debtor may continue to defend himself and avert enforcement by filing an action against enforcement under Section 767 ZPO.

- **German-UK Convention**

The judgment debtor may raise objections in substance against the claim granted in the foreign judgment already in the exequatur proceedings if the grounds on which the objections are based arose only after the foreign judgment was issued.

Further, the judgment debtor may file an immediate complaint (“*sofortige Beschwerde*”) with the competent Higher Regional Court against the exequatur decision of the Regional Court.

Once the UK judgment has been declared enforceable by the Regional Court, the judgment debtor may raise objections to the claim under the judgment by filing an action

against enforcement under Section 767 ZPO if the grounds on which the objections are based arose only:

- (i) after expiry of the period within which the judgment debtor could have lodged a complaint against the exequatur decision; or
- (ii) if the complaint has been lodged, after the conclusion of the related proceedings.

- **German-Tunisian Treaty**

The judgment debtor may file an immediate complaint (“*sofortige Beschwerde*”) against the exequatur decision of the Regional Court with the competent Higher Regional Court.

- **German-Israeli Treaty/Hague Convention on Choice of Court Agreements of 30 June 2005**

The judgment debtor may file a complaint (“*Beschwerde*”) against the decision of the Regional Court with the Higher Regional Court. With the complaint, the judgment debtor may raise objections in substance against the claim granted in the foreign judgment if the grounds the objections are based on occurred only after the foreign judgment was issued. The judgment debtor may also appeal, based on legal objections (“*Rechtsbeschwerde*”), to the Federal Court of Justice against a decision on the complaint by the Higher Regional Court. For objections in substance against the claim granted in the foreign judgment, the judgment debtor may also file an action against enforcement under Section 767 ZPO.

4 Enforcement

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

Regarding the most common payment claims, there are essentially three methods of enforcement available:

- Enforcement in movable assets, Sections 808 *et seq.* ZPO.
- Enforcement in claims to which the debtor is entitled against a third party, Sections 828 *et seq.* ZPO.
- Enforcement in immovable property, Sections 864 *et seq.* ZPO.

All enforcement measures are subject to the “principle of disposition” (“*Dispositionsgrundsatz*”) under civil law, and require an application by the judgment creditor to the competent enforcement body, Section 753 (1) ZPO.

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.

On 16 July 2021, the European Commission adopted a proposal for EU accession to the Hague Convention of 2 July 2019 on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters. The Convention facilitates recognition and enforcement of a foreign judgment if one of the requirements set out in Article 5 (1) of the Convention is met, e.g. with regard to residency of the judgment debtor, consent to jurisdiction clauses and place of performance. The Convention has already been signed by Costa Rica, Israel, Russia, Ukraine and Uruguay. However, as the Convention has not yet been ratified by any country through a consent act, it is not yet in force.

With a judgment dated 16 April 2021, the Saarbrücken Regional Court (file No. 5 O 249/19) ruled that reciprocity pursuant to Section 328 (1) No. 5 ZPO between Germany and the People's Republic of China is not guaranteed. The Court based its decision mainly on the fact that apparently, in recent years (since 2006), no German judgments have been recognised in China. This decision shows that without any special regime applicable, the required guarantee of reciprocity may be the decisive obstacle to recognition and enforcement of a foreign judgment. Unless a solid recognition practice of German judgments in the country of origin is deemed established in the German jurisprudence, the judgment creditor needs to demonstrate and prove such recognition practice, which can be quite difficult.

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?

Recognition and enforcement of foreign judgments, especially such that are not subject to special regimes, may pose some

difficulties. Courts have quite often intensively dealt with issues of proper service in the country of origin, violation of public policy and the guarantee of reciprocity. The court may be required to appoint an expert to prepare an expert opinion on, for example, questions of foreign law or an established recognition practice in the country of origin. Proceedings will, therefore, usually take a considerable amount of time. Furthermore, the costs that occur in connection with exequatur proceedings, including for expert opinions and comprehensive translations, have to be considered. Given the difficulties that may arise in the context of recognition and enforcement of foreign judgments, it is advisable to obtain comprehensive advice from a specialised German lawyer.



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Markus has extensive trial experience defending technology clients with a particular focus on tech, internet and social media law, involving intermediary liability, data protection and personality rights disputes, as well as cybersecurity issues.

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