

RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS AND AWARDS: PRELIMINARY REPORT

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I. Background

At its 90th regular session, held in Rio de Janeiro in March 2017, the Inter-American Juridical Committee decided on its own initiative, under powers granted to it in Article 12-C of its Statutes, to undertake a study of the circumstances within Member States with respect to the “enforcement (extraterritorial validity) of foreign judgments and arbitral awards,” in order to determine the internal procedural mechanisms in place to ensure the efficacy of judicial decisions, including arbitral awards, handed down in another State.

Following is the preliminary report, which covers United Nations regulations, international regulations in effect in the Americas, and a compilation of the regulations of certain States Parties to the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards.

II. Introduction

This paper seeks to determine the internal requirements imposed by States on a party interested in securing the efficacy of a foreign judgment. The legal problem posed in determining compliance with a foreign judgment is whether that judgment has the force and effectiveness of a judicial ruling in the country in which compliance with it is sought and whether it is binding on the party supposed to comply with it and execute it. In answer to that, *prima facie*, it may be said that the express provision made in international treaties and agreements recognizing States that establish an internal procedure to that end induces the parties to resort to it, more or less formally, without there being uniformity in that regard.

Thus, the effectiveness of a foreign judgment, that is to say, its validity, enforceability, and full effect of *res judicata* that gives rise to obligations and can be enforced in the territory of another State must be analyzed in the context of international law and of the internal regulations establishing the procedures to be followed to secure its efficacy.

This report seeks to present the Committee with a review of the current status of this issue so as to determine whether or not the discussion of it is satisfactory or whether changes should be made to the international rules currently in effect to facilitate the recognition and enforcement of foreign judgments and arbitral awards.

III. International rules and regulations

In the United Nations framework

The 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards, applicable to the judgments handed down by arbiters appointed for each case and judgments handed down by permanent arbitration bodies to which the parties have submitted (Article I.2), provides in Article III that:

Each Contracting State shall recognize arbitral awards as binding and enforce them in accordance with the rules of procedure of the territory where the award is relied upon,

under the conditions laid down in the following articles. There shall not be imposed substantially more onerous conditions...on the recognition or enforcement of arbitral awards to which this Convention applies than are imposed on the recognition or enforcement of domestic arbitral awards.”

For its part, Article IV establishes the requirements for obtaining recognition and execution:

1. To obtain the recognition and enforcement mentioned in the preceding article, the party applying for recognition and enforcement shall, at the time of the application, supply:

(a) The duly authenticated original award or a duly certified copy thereof;

(b) The original agreement referred to in article II or a duly certified copy thereof.

2. If the said award or agreement is not made in an official language of the country in which the award is relied upon, the party applying for recognition and enforcement of the award shall produce a translation of these documents into such language. The translation shall be certified by an official or sworn translator or by a diplomatic or consular agent.

In the European framework

Regulation (EU) No. 1215/2012 of the European Parliament and of the Council of 12 December 2012 “on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters”¹ abolished the exequatur as a mechanism for ensuring the efficacy of foreign judicial decisions, with the exception of those relating to tax, customs, or administrative matters or matters involving the liability of the State for acts or omissions in the exercise of its authority, and matters relating to the state and capacity of individuals, matrimonial property regimes or rules governing relations comparable to marriage under applicable law; bankruptcy, agreements between bankrupt parties and creditors, and other similar procedures; social security; arbitration; obligations derived from family relations, kinship, marriage, or affinity; wills and inheritance, including alimony obligations due to death.

To achieve the “*objective of maintaining and developing an area of freedom, security and justice, inter alia, by facilitating access to justice, in particular through the principle of mutual recognition of judicial and extrajudicial decisions in civil matters...*” the Union, facing “*certain differences between national rules governing jurisdiction and recognition of judgments [that] hamper the sound operation of the internal market,*”² opted in civil and commercial matters, to abolish the exequatur inasmuch as it provided as follows:

Article 36

1. A judgment given in a Member State shall be recognised in the other Member States without any special procedure being required.

2. Any interested party may, in accordance with the procedure provided for in Subsection 2 of Section 3, apply for a decision that there are no grounds for refusal of recognition as referred to in Article 45.

3. If the outcome of proceedings in a court of a Member State depends on the determination of an incidental question of refusal of recognition, that court shall have jurisdiction over that question.

¹ Which does not apply to arbitration.

² From Whereas paragraphs 3ff. of EU Regulation No. 1215/2012.

Article 37

1. *A party who wishes to invoke in a Member State a judgment given in another Member State shall produce: (a) a copy of the judgment which satisfies the conditions necessary to establish its authenticity; and*

(b) the certificate issued pursuant to Article 53.

2. *The court or authority before which a judgment given in another Member State is invoked may, where necessary, require the party invoking it to provide, in accordance with Article 57, a translation or a transliteration of the contents of the certificate referred to in point (b) of paragraph 1. The court or authority may require the party to provide a translation of the judgment instead of a translation of the contents of the certificate if it is unable to proceed without such a translation.*

Article 38

The court or authority before which a judgment given in another Member State is invoked may suspend the proceedings, in whole or in part, if:

(a) the judgment is challenged in the Member State of origin; or

(b) an application has been submitted for a decision that there are no grounds for refusal of recognition as referred to in Article 45 or for a decision that the recognition is to be refused on the basis of one of those grounds.

Article 39

A judgment given in a Member State which is enforceable in that Member State shall be enforceable in the other Member States without any declaration of enforceability being required...

In the American framework

1. *The Inter-American Convention on International Commercial Arbitration, signed in Panama on January 30, 1975.*

Signed and ratified by 19 OAS Member States,³ this Convention, as of Article 4, provides as follows with respect to the enforcement or recognition of arbitral awards:

Article 4 *“An arbitral decision or award that is not appealable under the applicable law or procedural rules shall have the force of a final judicial judgment. Its execution or recognition may be ordered in the same manner as that of decisions handed down by national or foreign ordinary courts, in accordance with the procedural laws of the country where it is to be executed and the provisions of international treaties.*

Article 5.

1. *The recognition and execution of the decision may be refused, at the request of the party against which it is made, only if such party is able to prove to the competent authority of the State in which recognition and execution are requested:*

a. That the parties to the agreement were subject to some incapacity under the applicable law or that the agreement is not valid under the law to which the parties have submitted it, or, if such law is not specified, under the law of the State in which the decision was made; or

³ Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, United States, Uruguay, and Venezuela.

- b. *That the party against which the arbitral decision has been made was not duly notified of the appointment of the arbitrator or of the arbitration procedure to be followed, or was unable, for any other reason, to present his defense; or*
 - c. *That the decision concerns a dispute not envisaged in the agreement between the parties to submit to arbitration; nevertheless, if the provisions of the decision that refer to issues submitted to arbitration can be separated from those not submitted to arbitration, the former may be recognized and executed; or*
 - d. *That the constitution of the arbitral tribunal or the arbitration procedure has not been carried out in accordance with the terms of the agreement signed by the parties or, in the absence of such agreement, that the constitution of the arbitral tribunal or the arbitration procedure has not been carried out in accordance with the law of the State where the arbitration took place; or*
 - e. *That the decision is not yet binding on the parties or has been annulled or suspended by a competent authority of the State in which, or according to the law of which, the decision has been made.*
2. *The recognition and execution of an arbitral decision may also be refused if the competent authority of the State in which the recognition and execution is requested finds:*
- a. *That the subject of the dispute cannot be settled by arbitration under the law of that State; or*
 - b. *That the recognition or execution of the decision would be contrary to the public policy ("ordre public") of that State.*

The Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards was signed in Montevideo, Uruguay on August 5, 1979 as a judicial cooperation instrument designed to ensure the extraterritorial efficacy of the judgments and arbitral awards issued in the States Parties' respective territorial jurisdictions.

Its signatories are: Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Panama, Paraguay, Peru, Uruguay, and Venezuela. However, this Convention was made subject to ratification and to the ratification documents being deposited with the OAS General Secretariat. Only Argentina, Bolivia, Brazil, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay, and Venezuela met that requirement.⁴

It was agreed that this Convention would apply to judicial judgments and arbitral awards issued in civil, commercial, or labor proceedings in one of the States Parties.

The Convention establishes the following conditions for foreign judgments, arbitral awards, and decisions:

- a. *They fulfill all the formal requirements necessary for them to be deemed authentic in the State of origin;*
- b. *The judgment, award or decision and the documents attached thereto that are required under this Convention are duly translated into the official language of the State where they are to take effect;*
- c. *They are presented duly legalized in accordance with the law of the State in which they are to take effect;*

⁴ <http://www.oas.org/juridico/spanish/firmas/b-41.html>

- d. *The judge or tribunal rendering the judgment is competent in the international sphere to try the matter and to pass judgment on it in accordance with the law of the State in which the judgment, award or decision is to take effect;*
- e. *The plaintiff has been summoned or subpoenaed in due legal form substantially equivalent to that accepted by the law of the State where the judgment, award or decision is to take effect;*
- f. *The parties had an opportunity to present their defense;*
- g. *They are final or, where appropriate, have the force of res judicata in the State in which they were rendered;*
- h. *They are not manifestly contrary to the principles and laws of the public policy (ordre public) of the State in which recognition or execution is sought.*

It also lists the documents of proof required to request recognition of judgments, awards and decisions as follows:

- a. A certified copy of the judgment, award or decision;
- b. A certified copy of the documents proving that the provisions of items (e) and (f) of the foregoing article have been complied with; and
- c. A certified copy of the document stating that the judgment, award or decision is final or has the force of *res judicata*.

As for procedure and the competence of the judicial bodies, it was left up to each State in which compliance is requested to establish procedures for securing the efficacy of foreign judgments, arbitral awards and decisions.

IV. Internal regulations in the countries bound by the Montevideo Convention. Each signatory country has rules of procedure in respect of the exequatur

In Argentina it is regulated in the Civil and Commercial Code of Procedure, Book Three – Enforcement Procedures, Title I –Enforcement of Judgments, Chapter II –Judgments of Foreign Courts. Awards of Foreign Arbitration Tribunals-, as follows:

Art. 517. Judgments of foreign courts shall be enforceable pursuant to the treaties entered into with the country they come from.

If there are no treaties, they shall be enforceable if they meet the following requirements:

1) That the judgment with force of res judicata in the State in which it was pronounced stems from a competent court according to Argentine rules of international jurisdiction and is the result of the exercise of a personal suit or action in rem in respect of movable property, if the property was transferred to the Republic during or after the proceedings conducted abroad.

2) That the respondent against whom enforcement of judgment is being sought has been personally summonsed and his defense has been assured.

3) That the judgment meets the requirements to be considered as such in the place it which it was handed down as well as the authenticity conditions required under domestic law.

4) That the judgment does not contravene ordre public principles in Argentine law.

5) That the judgment is not incompatible with another handed down previously or simultaneously by any (1) Argentine court.

COMPETENCE. SUPPORTING DOCUMENTS. HEARING

Art. 518. Enforcement of the judgment handed down by any (1) foreign court shall be requested of the corresponding lower court judge, that request being accompanied by legally certified and translated supporting documents accrediting res judicata and compliance with all other requirements, should that not transpire from the judgment itself.

For processing of the exequatur, interlocutory proceeding rules (las normas de los incidentes) shall apply.

If the enforcement is ordered, the procedure established for the judgments handed down by Argentine courts will be followed.

EFFICACY OF A FOREIGN JUDGMENT

Art. 519. When the authority of a foreign judgment is invoked during proceedings, that shall judgment shall only be effective if it meets the requirements of Article 517.

FOREIGN ARBITRATION TRIBUNAL AWARDS

Art. 519 BIS. Awards issued by foreign arbitration tribunals may be enforced using the procedure established in the foregoing articles provided that:

1) The relevant supporting documentation referred to in Article 517 was provided and, where applicable, extension of jurisdiction was admissible pursuant to Article 1.

2) The matters that were the subject of the commitment entered into have not been excluded from the arbitration pursuant to Article 737.⁵

In Bolivia the procedure is regulated in the Civil Code of Procedure, Title VIII –International Judicial Cooperation, Chapter Four –Enforcement of Foreign Judgments, as follows:

ARTICLE 502. (EFFECTS) Judgments and other judicial decisions handed down abroad shall be binding, probatory, and enforceable in the Plurinational State of Bolivia, subject to existing treaties and conventions and the provisions of the present Chapter.

ARTICLE 503. (RECOGNITION AND ENFORCEMENT). I. To be executed and complied with, foreign judgments must, where applicable, be recognized and enforced in the Plurinational State without review of the subject matter they address. II. Recognition is the act or consequence of procedural acts designed to establish whether the foreign judgment meets, in form and content, the prerequisites established in the present Chapter. III. Enforcement is the the act or consequence of procedural acts designed to comply with judgments handed down abroad.

ARTICLE 504. (RECIPROCITY PRINCIPLE). I. Should there be no international treaty or convention signed with the country in which the judgment to be enforced and complied with was handed down, by virtue of reciprocity it shall be given the same force as that recognized for judgments pronounced in the Plurinational State of Bolivia. II. Should the judgment have been handed down in a country in which decisions by Bolivian judicial authorities are not enforced, then it may not be enforced in the Plurinational State either.

ARTICLE 505. (REQUIREMENTS FOR VALIDITY). I Foreign judgments shall take effect in the Plurinational State provided that: 1.They comply with extrinsic formalities required for them to be considered authentic in the country of origin. 2. The judgment and documentation appended to it are duly legalized in accordance with Bolivian legislation, unless they were remitted via diplomatic or consular channels or through the competent administrative

⁵ <http://servicios.infoleg.gov.ar/infolegInternet/anexos/15000-19999/16547/texact.htm#10>

authorities. 3. They are duly translated, if they were issued in a language other than Spanish. 4. The judicial authority handing down the judgment has jurisdiction in the international sphere to hear the case in accordance with provisions under its domestic law, unless the subject matter falls within the exclusive jurisdiction of Bolivian judicial authorities. 5. The respondent was legally notified or summonsed in accordance with the law of the foreign court that handed down the judgment. 6. The principles of due process were observed. 7. The judgment has the force of *res judicata* in the legal system of the country of origin. 8. The judgment does not contravene international *ordre public*. II. A request for recognition of and compliance with a foreign judgment shall be accompanied by the following documents: 1. A legally certified or authenticated copy of the judgment. 2. Legally certified or authenticated copies of the documents needed for the proceedings, accrediting compliance with items 5 and 6 in the foregoing paragraph. 3. Certification by a competent authority accrediting issuance of final judgment.

ARTICLE 506. (ENFORCEMENT). I. Only foreign judgments ordering compliance with obligations shall be enforceable. II. When it is solely a matter of ensuring enforcement of the binding or probatory effects of a foreign judgment, the request must be accompanied by the documentation provided for in Paragraph II of the foregoing Article. III. The court asked to enforce the binding or probatory effects of the foreign judgment shall pronounce on the merits of said request after ascertaining compliance with the requirements of paragraph I of the foregoing Article, without the need to follow the procedure established in the following Article.

ARTICLE 507. (PROCEDURE). I. The foreign judgment whose enforcement is sought and the background documents supporting it shall be submitted to the Supreme Court of Justice. II. Once the request has been submitted, the Supreme Court of Justice shall issue instructions to summon the party against whom enforcement has been requested. That party may present whatever defense it deems pertinent within ten days of the date of its summons. III. With or without a reply, to be issued within no more than fifteen days, the plenary of the Supreme Court of Justice will issue an unappealable decision. IV. If the Court declares enforcement admissible, it shall remit the judgment to the competent judicial authority, which shall be the authority that would have been competent to hear the case in first instance, had the action been brought in the Plurinational State, in order for that judicial authority to follow the procedures corresponding to enforcement of judgments.

*ARTICLE 508. (NOTIFICATION AND SUMMONSING PROCEDURES). In order to perform notification or summonsing procedures ordered by foreign judges or courts via an application or letter rogatory, a Supreme Court *exequatur* shall not be necessary: presentation of the duly certified application or letter rogatory to the judicial authority of the place where the procedure is to be performed shall suffice.*

ARTICLE 509. (FOREIGN ARBITRAL AWARDS). The rules set forth in the foregoing Articles shall, for all relevant purposes, apply to the awards issued by foreign arbitration tribunals.”⁶

In Ecuador the procedure is regulated in the General Organic Code of Procedures, Book II, Title I, Chapter VII, as follows:

Article 102. Competence. For the recognition and ratification (homologación) of foreign judgments, arbitral awards, and mediation rulings (actas de mediación) with effects equivalent to those of judgments, the competent authority shall be the specialized Provincial Court of the district in which respondent is domiciled. For the enforcement of foreign judgments, arbitral awards, and mediation rulings, the competent authority shall

⁶ http://www.justicia.gob.bo/images/stories/pdf/codigo_procesal_civil.pdf.

be the court of first instance specializing in such cases in the domicile of the respondent. If the respondent is not domiciled in Ecuador, the competent authority shall be the court of first instance of the place where the property is located or where the judgment, arbitral award, or mediation ruling is to take effect.

Article 103.- Effects. Foreign judgments, arbitral awards, and mediation rulings that have been ratified and that have been pronounced in contentious or non-contentious proceedings shall have, in Ecuador, the force granted to them under international treaties and conventions currently in effect, without review of the merits addressed in the proceedings that gave rise to them. In matters relating to children and adolescents, the law regarding them and international treaties ratified by Ecuador shall apply.

Article 104.- Ratification of foreign judgments, arbitral awards, and mediation rulings. In order to ratify foreign judgments, arbitral awards, and mediation rulings, the competent division of the Provincial Court shall verify:

1. That they possess the extrinsic formalities required for them to be considered authentic in the State of origin

2. That the judgment has the force of res judicata under the laws of the country in which it was handed down and that the required documents has been legally certified.

3. That, where applicable, they have been translated.

4. That it is accredited, with the relevant records of the proceedings and certifications that the respondent was legally notified and that proper defense of the parties has been assured.

5. That the request indicates the place where the individual or legal entity against whom/which enforcement of the foreign decision has been requested is being summonsed.

For purposes relating to the recognition of judgments and arbitral awards against the State, given that they do not concern commercial matters, it must also be demonstrated that they would not contravene provisions in the Constitution or in laws and that they conform to international treaties and conventions currently in effect. If no international treaties or conventions are involved, they shall be complied with if they are mentioned in the letter rogatory or if domestic law of the country of origin recognizes their efficacy and validity.

Article 105.- Procedure for ratification. In order to ratify, the requesting party shall submit its application to the competent division of the Provincial Court which, having reviewed compliance with this Chapter, shall order the respondent to be summonsed at the place indicated for that purpose. Once the person against whom the judgment is to be invoked has been summonsed, that party shall have five days in which to present and substantiate its opposition to ratification.

The Court shall rule within thirty days from the date of summons. If opposition to ratification is duly substantiated and accredited, and the complexity of the case so warrants, the Court shall convene a hearing, which shall be conducted and resolved in accordance with the general rules of this Code. The hearing shall be convened within no more than twenty days from the date the opposition was submitted. The division shall issue a ruling at that hearing. Only "horizontal" appeals may be filed against the judgment of the division of the Provincial Court. Once ratification has been confirmed, foreign judgments, awards, and mediation rulings shall be complied with as provided for in this Code with respect to enforcement.

Article 106.- Probatory effects of a foreign judgment, arbitration award, or mediation ruling. The party within a proceeding seeking to ensure enforcement of the probatory

effects of a foreign judgment, arbitration award, or mediation ruling must first ratify them in the manner contemplated in this Code.”⁷

In Mexico, the Federal Code of Civil Procedures regulates this matter as follows:

ARTICLE 569.- Judgments, private non-commercial arbitration awards, and other decisions by foreign courts shall have effect and be recognized in the Republic in respect of everything that does not contravene domestic ordre public pursuant to this Code and other applicable laws, except the provisions of treaties and conventions to which Mexico is party.

In the case of judgments, awards, or judicial decisions that are only going to be used as evidence before Mexican courts, it will be sufficient for them to satisfy the requirements needed for them to be considered authentic.

The effects of foreign judgments, private non-commercial arbitral awards, and judicial decisions in the national territory shall be governed by the provisions of the Civil Code, this Code, and other applicable laws.

ARTICLE.- Compliance with foreign judgments, private non-commercial arbitral awards, and judicial decisions shall be mandatory in the Republic through ratification in accordance with the provisions of this Code and other applicable laws, except as provided for in treaties and conventions to which Mexico is party.

ARTICLE 571.- Foreign judgments, private non-commercial arbitral awards, and judicial decisions may be enforceable if they meet the following conditions:

I.- That they have satisfied the formalities envisioned in this Code with respect to foreign letters rogatory;

II.- That they were not handed down as a result of the exercise of an action in rem;

III.- That the judge or court handing down the judgment was competent to hear and try the case in accordance with rules recognized in international law compatible with those adopted in this Code. A foreign judge or court handing down a judgment shall not be competent if the legal documents giving rise to the decision for which enforcement is sought contain a clause of submission only to the jurisdiction of Mexican courts;

IV.- That the respondent was notified or summonsed personally with a view to assuring him a hearing and the exercise of his defense;

V.- That they have force of res judicata in the country in which they were handed down or there is no ordinary appeal against them;

VI.- That the action that gave rise to them is not the subject of a proceeding still pending between the same parties before Mexican courts in which the Mexican court has taken up jurisdiction or the request of letter rogatory for summoning have been processed or delivered to the Secretariat for Foreign Affairs or to the authorities of the State where the summons is to take place. The same rule shall apply when final judgment has been handed down.

VII.- That the obligation whose enforcement is sought does not contravene Mexican ordre public; and

VIII.- That they meet the conditions required for them to be considered authentic.

Even though the foregoing conditions may be met, the Court may deny enforcement if it is proved that foreign judgments or arbitral awards in similar cases are not enforced in the country of origin.

⁷<http://www.funcionjudicial.gob.ec/pdf/CODIGO%20ORGANICO%20GENERAL%20DE%20PROCESOS.pdf>

ARTICLE 572.- The application by the requesting Judge or court must be accompanied by the following documentation:

I.- A certified copy of the judgment, award, or judicial decision

II.- A certified copy of the records accrediting compliance with the conditions set forth in items IV and V of the foregoing Article:

III.- Such translations into Spanish as are needed; and

IV.- Evidence that the enforcing party has provided a domicile in the district of the ratification tribunal for receiving notifications.

ARTICLE 573.- The court competent to enforce a foreign judgment, arbitral award or judicial decision is that of the domicile of the party against whom enforcement of judgment is being sought or, failing that, the court of the district where his property is located in the Republic.

ARTICLE 574.- The proceeding for ratification of a foreign judgment, award, or decision shall begin with a personal summoning of the enforcing party and the other party, who shall each be given nine working days to defend their positions and exercise any rights they may have; and, should they offer relevant evidence, a date shall be set to receive any that are deemed admissible. Unless good reason is shown to the contrary, it shall be exclusively incumbent upon the party offering evidence to prepare it. In all cases, the Public Prosecutors' Office (Ministerio Público) shall be permitted to intervene to exercise any rights corresponding to it.

Any judgment handed down shall be appealable in both respects if enforcement is denied and with respect to a remand (efecto devolutivo) if enforcement is granted.

ARTICLE 575.- Neither the Court of first instance nor the appeals court may review or decide on the justice or injustice of the ruling, nor the motives or grounds of fact or law it is based on; they shall restrict themselves to examining its authenticity and whether or not it should be enforced in accordance with domestic law.

ARTICLE 576.- All matters relating to any embargo, seizure, deposit requirements (depositaria), appraisal, auctioning, and other actions relating to settlement and mandatory enforcement of a judgment handed down by a foreign court shall be resolved by the ratification court.

Distribution of the funds from the auction shall be decided upon by the foreign judge who handed down the judgment.

*ARTICLE.- " If a foreign judgment, award, or judicial decision cannot be rendered fully effective, the court may allow partial efficacy at the request of an interested party. "*⁸

In Paraguay the pertinent regulations are to be found in Law 1337, Code of Civil Procedure, which States:

Art.532. Admissibility. Judgments handed down by foreign courts shall be enforceable in accordance with the treaties entered into with the country of origin.

If there are no treaties, they shall be enforceable if the following requirements are met:

a) that the judgment with force of res judicata in the State in which it was handed down was pronounced by an internationally competent court and is the result of a personal action or action in rem in respect of movable property, if said property was transferred to the Republic during or after the proceedings conducted abroad;

⁸ <http://www.diputados.gob.mx/LeyesBiblio/pdf/6.pdf>

- b) that no litigation on the same matter and between the same parties is pending before a Paraguayan court;
- c) that the party against whom judgment was handed down and domiciled in the Republic was legally summonsed and represented at the proceedings, or was declared in contempt of court according to the law of the country in which the case was heard;
- d) that the obligation addressed by the proceedings is valid under our laws;
- e) that the judgment does not contain provisions contrary to domestic ordre public; instance on duty
- f) That the judgment meets the requirements needed to be considered as such in the place in which it was handed down as well as the conditions for authenticity required under domestic law; and
- g) that the judgment is not incompatible with any other judgment handed down previously or simultaneously by a Paraguayan court.

Art.533. Competence. Supporting documentation. Hearing. Enforcement of the judgment handed down by a foreign court shall be requested from the judge of first instance on duty, accompanied by legally certified testimony, duly translated as necessary, along with the documentation of the proceedings accrediting that final judgment was handed down and that all other requirements were met, should that not transpire from the judgment itself.

Art.534. Exequatur. Before announcing a decision the judge shall notify the person against whom judgment is to be handed down, by writ, over a period of six days, as well as the Public Prosecutors' Office, over the same period. If the decision is opposed, procedural regulations shall apply.

If the requested enforcement is ordered, said enforcement shall be processed pursuant to the provisions of Chapter I of this Title.

Art.535. If, during proceedings, the authority of a foreign judgment is invoked, it shall only take effect if it meets the requirements of Article 532.

Art.536. Arbitral awards. Arbitral awards issued by foreign courts shall be enforceable and effective in the Republic under the terms of treaties entered into with the State they come from. If there are no treaties, they shall be enforceable and effective if in the State they come from they have the same status as court judgments, in which case the provisions of this Chapter shall apply.

In the Civil Code of Peru recognition and enforcement of judgments and arbitral awards are regulated as follows:

Reciprocity Principle Article 2102°. – Judgments handed down by foreign courts have the same force in the Republic as that granted to them in the respective treaties. If there is no treaty with the country in which the judgment was handed down, then that judgment has the same force that that country gives to judgments handed down by Peruvian courts.

Negative reciprocity Article 2103°.- If the judgment comes from a country which does not enforce the rulings of Peruvian courts, it has no effect whatsoever in the Republic. The foregoing provision includes judgments from countries which examine the merits of decisions reached by Peruvian courts.

Requirements for Exequatur Article 2104°.- For foreign judgments to be recognized in the Republic, the following must apply, in addition to the provisions of Articles 2102° and 2103°. 1.- That they do not rule on matters for which Peru alone is competent; 2.- That the foreign court was competent to hear the matter according to its rules under Private

International Law and to the general principles governing international procedural competence; 3.- That the respondent was summonsed in accordance with the laws in effect in the place where the proceedings were; that a reasonable time was allowed for appear for the summonsed party to appear in court; and that that party was given procedural guarantees for his defense; 4.- That the judgment has the force of res judicata under the laws of the place of the proceedings; 5.- That no proceedings are pending in Peru between the same parties on the same subject that began prior to the filing of the suit that gave rise to the judgment; 6.- That the judgment is not incompatible with another judgment that meets the requirements for recognition and enforcement set forth in this Title and was already handed down; 7.- That it is not contrary to ordre public or sound customs; 8.- That reciprocity has been proven.

Foreign judgment regarding bankruptcy Article 2105°.- The Peruvian court hearing the case involving recognition of a foreign bankruptcy judgment may order pertinent preventive measures as soon as the application for recognition is filed. The recognition in Peru of a foreign bankruptcy judgment must comply with the requirements for notification and publicity provided for under Peruvian law in respect of Peruvian bankruptcy cases. The effects of a bankruptcy declared abroad and recognized in Peru shall be adjusted to conform to Peruvian law in respect of property located in Peru and creditors' rights. The judge shall proceed as established under Peruvian law with respect to the constitution, administration, and winding down of the bankrupt's estate in Peru, taking care to safeguard the rights of domiciled creditors and claims registered in Peru, following the order of precedence established in the bankruptcy law. If there are no domiciled creditors or claims in Peru, or if, after settling them in accordance with the foregoing paragraphs, a positive balance remains in the bankrupt's net worth, said balance shall be remitted to the receiver handling the bankruptcy abroad, after conducting an exequatur before the Peruvian judge regarding verification and prioritization of loans made abroad.

Enforcement of foreign judgment Article 2106°.- A foreign judgment meeting the requirements set forth in 2102°, 2103°, 2104°, and 2105° may be enforced in Peru at the request of the interested party

Formalities associated with a request for enforcement of a foreign judgment Article 2107°.- The request referred to in Article 2106° must be accompanied by a copy of the duly certified and officially translated complete judgment, along with the documents accrediting compliance with all the requirements established in this Title.

Procedure for declaring enforcement of a foreign judgment Article 2108°.- The procedure for declaring enforcement is that established in the Code of Civil Procedures. Once the procedure has been followed, the foreign judgment shall have the same force as domestic judgments. Foreign judgments on non-contentious matters for which jurisdiction is not compulsory (voluntary) shall not require an exequatur.

Probatory value of a legally certified foreign judgment Article 2109°.- Duly certified foreign judgments shall have the same probatory value as is recognized for authentic instruments, without the need for an exequatur.

The res judicata force of a foreign judgment may be asserted in a proceeding if it complies with the requirements established in this Title, without the need for an exequatur procedure.

Supplemental application (Aplicación supletoria) Article 2111°.- The provisions of this Title shall also cover, wherever applicable, foreign decisions putting an end to a proceeding, particularly in the case of criminal law judgments in respect of civil

reparation. For arbitral awards, only the provision of the General Law of Arbitration shall apply.”⁹

At the same time, the Peruvian Code of Civil Procedure establishes:

Article 837. Competence. The proceeding referred to in Title IV of Book X of the Civil Code is filed with the Civil Division on duty of the Higher Court with territorial competence in the district in which the party against whom the action is being brought is domiciled. Except where they contravene the General Law of Arbitration, the General Provisions of this Section shall apply to the process of recognition of foreign arbitral awards.

*Article 838. Relative presumption shall be presumed to exist with regard to the force accorded abroad to judgments or arbitral awards handed down in Peru. It shall be incumbent upon the party denying said reciprocity to prove that it does not exist.*¹⁰

Uruguay’s General Code of Procedure regulates this matter as follows:

"Article 537. General Rules

537.1 The present chapter shall apply to judgments handed down abroad in civil, commercial, family and labor law cases, and actions under administrative law; it shall also include judgments handed down in those fields by international courts, when those judgments refer to private persons or interests.

It shall also cover the civil effects of judgments handed down in criminal law cases.

537.2 The jurisdictional nature of a foreign judgment and the matter it covers shall be determined by the courts in the country in which the judgment originated and in accordance with that country’s domestic law.

Article 538. Effects of judgments

538.1 Foreign judgments shall have mandatory, probatory, and enforceability effects in the Republic in accordance with the provisions of the present Chapter.

538.2 Where applicable, foreign judgments shall be recognized and enforced in the Republic without a review of the merits of the cases giving rise to them.

538.3 Recognition is the the act or consequence of procedural acts undertaken merely to ascertain whether the foreign judgment meets the indispensable requirements established in this Chapter,

538.4 Execution is the act or consequence of procedural acts designed to obtain compliance with foreign judgments.

Article 539. Efficacy of judgments

539.1 Foreign judgments shall be effective in the Republic if they meet the following conditions:

1) They comply with the external formalities required to be regarded as authentic in the State of origin;

2) The judgment and any accompanying documents needed have been duly certified pursuant to the laws of the Republic, unless the judgment was remitted via diplomatic or consular channels or via the competent administrative authorities;

3) They are, where applicable, duly translated;

⁹ <http://spij.minjus.gob.pe/notificacion/guias/CODIGO-CIVIL.pdf>

¹⁰ <https://scc.pj.gob.pe/wps/wcm/connect/2e6fa4004d90af10858bf5db524a342a/C%C3%B3digo+Procesal+Civil.pdf?MOD=AJPERES&CACHEID=2e6fa4004d90af10858bf5db524a342a>

4) *The court issuing the judgment has, under domestic law, international jurisdiction to hear the case, unless the matter is subject to the exclusive jurisdiction of the courts of the Republic;*

5) *The respondent has been notified and summonsed in accordance with the laws and regulations of the State in which the judgment was handed down;*

6) *The parties were given due opportunity to defend their case;*

7) *They have force of res judicata in the State in which they were handed down;*

8) *They do not manifestly contravene the international ordre public principles of the Republic.*

539.2 The documents/certificates that are indispensable for requesting compliance with a foreign judgment are:

1) *Certified copy of the judgment;*

2) *Certified copies of the documentation accrediting compliance with items 5 and 6 of foregoing Article 539.1;*

3) *Certified copy of the document attesting that the judgment has the force of res judicata.*

Article 540. Mandatory and probatory effects. In cases in which it is solely a matter of asserting the mandatory and probatory effects of a foreign judgment, said judgment shall be presented to the pertinent court, together with the documentation listed in Article 539.2

In this case, the court shall pronounce, in any judgment it hands down, on the merits of the foreign judgment in respect of the desired effect, after allowing the Public Prosecutors' Office to state its view and ascertaining compliance with the conditions indicated in Article 539.1.

Article 541. Enforcement

541.1 Only final foreign judgments shall be enforceable.

541.2 The request for enforcement shall be made with the Supreme Court of Justice.

Once the petition has been filed, an order shall be issued to summons the party against whom it is being requested pursuant to the provisions of Section II, Chapter II, Title VI of Book I, with twenty days' legal notice.

The views of the Prosecuting Attorney shall then be heard, after which an unappealable ruling shall be handed down.

541.3 If enforcement is admitted, the judgment shall be remitted to the court competent for enforcing it for it to proceed in accordance with the proceedings corresponding to the nature of the judgment (Title V of Book II)./

Article 542. Voluntary jurisdiction decisions. Foreign voluntary jurisdiction rulings shall be effective in the Republic provided that they meet the requirements established in Article 539 in all applicable respects.

Article 543. Foreign arbitral awards. The provisions of this Chapter shall apply to the awards issued by foreign arbitration tribunals in all pertinent respects."¹¹

In Colombia, the regulations governing judgments are contained in the General Code of Procedure. Those governing arbitral awards are set forth in the National and International Arbitration Statute.

¹¹ <https://legislativo.parlamento.gub.uy/temporales/leytemp7685936.htm>

The General Code of Procedure States:

Article 605. Effects of foreign judgments. Judgments and other rulings of the same nature, handed down by foreign authorities in contentious or voluntary jurisdiction proceedings shall have effect in Colombia to the extent envisioned in existing treaties with that country and, if there are no such treaties, the same effect as is recognized in that country for judgments and decisions handed down in Colombia.

The exequatur of foreign arbitral awards shall be subject to the corresponding rules and regulations.

Article 606. Requirements. For a foreign judgment to be effective in the country, it must meet the following requirements:

1. That it does not deal with in rem rights to assets that were located on Colombian soil when the proceedings giving rise to the judgment began.

2. That it does not contravene Colombian laws or other ordre public provisions, except procedural provisions.

3. That it has final judgment force under the laws of the country of origin and has been submitted as a duly certified copy.

4. That the matter it addresses is not one for which Colombian judges have exclusive competence.

5. That no proceedings on the same subject are under way in Colombian and that no final judgment on that matter has been handed down by Colombian judges.

6. That, if the judgment was handed down in contentious proceedings, the requirement was met that the respondent be duly summonsed and heard in adversarial proceedings, in accordance with the laws of the country of origin, as is to be assumed given the final nature of the judgment.

7. That the exequatur requirement has been met.

Article 607. Exequatur procedure. The application for exequatur of a foreign judgment so that it is effective in Colombia shall be filed by the interested party with the Civil Cassation Division of the Supreme Court of Justice, unless, under international treaties, another judge is envisioned. The party affected by the judgment shall be summonsed to appear before that Division or judge, if the judgment was handed down in contentious (adversarial) proceedings.

Whenever a judgment or other original document is submitted in a language other than Spanish, it shall be accompanied by a legally acceptable translation.

The following rules shall apply to the exequatur:

1. All pertinent evidence must be requested in the application.

2. The Court shall reject the application if any of the requirements listed under items 1 to 4 of the foregoing Article are not met.

3. The party affected by and the judgment and the prosecutor assigned by virtue of the nature of the case pursuant to Article 91 shall be notified of the application with five (5) days' notice.

4. Once the five day notice period has expired, a ruling shall be issued on the evidence, and a hearing arranged for their submission, to hear the arguments of the parties, and to hand down judgment.

5. If the Court grants the exequatur and the foreign judgment needs to be enforced, the case shall be heard by the judge competent for enforcement in accordance with general rules.¹²

As regards recognition and enforcement of an arbitral award, Law 1563 (National and International Arbitration Statute) provides as follows:

ARTICLE 111. RECOGNITION AND ENFORCEMENT. Arbitral awards shall be recognized and enforced as follows:

1. An arbitral award shall be enforceable, regardless of the country in which it was issued, before the competent judicial authority at the request of the interested party.

2. The party invoking an award or requesting its enforcement shall submit the original award or a copy thereof. If the award is not in Spanish, the competent judicial authority may ask the party to present a translation of the award into that language.

2. Awards issued in international arbitrations based in Colombia shall be considered domestic awards and hence not subject to the recognition procedure. They may therefore be enforced directly without the need for said procedure. Recognition will, however, be required in cases in which an annulment appeal has been waived.

3. To enforce foreign arbitration awards, i.e., those issued by an arbitration tribunal not based in Colombia, prior recognition by the competent judicial authority shall be required.

ARTICLE 112. GROUNDS FOR DENYING RECOGNITION. *Regardless of the country in which an award was issued, recognition of it may only be denied in the cases and on the grounds specifically listed below:*

a) At the behest of the party against which it is invoked, when that party proves to the competent judicial authority of the country in which recognition or enforcement is being requested that:

i. At the time of the arbitration agreement it was affected by some disability; or that said agreement is not valid according to the law to which the parties submitted it, or if nothing had been indicated in that regard by virtue of the law of the country in which the award was issued; or

ii. That the party against which the award is being invoked was not duly notified of the appointment of an arbitrator or of the start of the arbitration proceedings, or, for any other reason, was unable to assert its rights; or

iii. That the award deals with a dispute not covered in the arbitration agreement or contains decisions that exceed the terms of the arbitration agreement. Nevertheless, if the provisions in the award that refer to matters submitted to arbitration can be separated from those that were not, the former may be recognized and enforced; or

iv. That the composition of the arbitration tribunal or the arbitration procedure did not conform to the agreement reached between the parties, or, failing such an agreement, failed to conform to the laws of the country in which the arbitration was conducted or processed; or

v. That the award is not yet binding for the parties or was annulled or suspended by a judicial authority in the country in which the arbitration was conducted; or

b) When the competent judicial authority ascertains:

i. That, under Colombian law, the subject matter of the dispute may not be resolved through arbitration; or

¹² http://www.secretariassenado.gov.co/senado/basedoc/ley_1564_2012_pr014.html#607

ii. *That recognition or enforcement of the award would contravene international ordre public in Colombia.*

If annulment or suspension of the award was requested before a judicial authority of the country in which the arbitration was conducted, the Colombian judicial authority may, if it deems it admissible, postpone its decision regarding recognition of the award and may, at the behest of the requesting party, also order the other party to grant appropriate surety.

ARTICLE 113. FUNCTIONAL JURISDICTION. The decision handed down by the competent judicial authority in processing the requests for recognition of awards filed with it pursuant to this Section shall be processed in single instance and shall be unappealable.

ARTICLE 114. REGULATIONS APPLICABLE TO RECOGNITION. Recognition of an arbitral award shall only be subject to application of the provisions contained in this Section and those contained in the treaties, conventions, protocols, and other international legal instruments signed and ratified by Colombia. Consequently, the provisions of the Code of Civil Procedure regarding grounds, requirements, and procedures for denying said recognition shall not be applicable; said provisions shall apply only to foreign judicial judgments.

ARTICLE 115. RECOGNITION PROCESS. The party requesting recognition shall submit its request to the competent judicial authority, together with the documents referred to in Article 111.

If the documentation is deemed to be complete, the competent judicial authority shall admit the application and notify the other party or parties thereof within ten (10) days.

Once the notification has expired and without further ado the competent judicial authority shall rule on the matter within the next 20 (twenty) days.

ARTICLE 116. ENFORCEMENT. Once the award has been recognized in whole or in part, the competent judicial authority shall decide on its enforcement.

V. Preliminary conclusions

Three major conclusions emerge from this survey of domestic regulations:

It is common for States' internal regulations to require an exequatur or judicial proceeding for requesting recognition of a foreign judgment, if those judgments are to take effect in the territory of a State. In other words, in the legislation reviewed above, there is no automatic obligation to enforce foreign decisions.

In general, domestic regulations are more flexible when it comes to ratification of the recognition and enforcement of a foreign arbitral award. That procedure is even handled by lower ranking officials than those involved in an exequatur procedure. This shows that there is greater recognition of judicial decisions prompted by private individuals, compared to recognition accorded to decisions made by judicial bodies in other States.

When it comes to invoking just the probatory effects of a foreign judgment, lawmakers choose to make requirements less stringent.