

# International **Comparative** Legal Guides



## Enforcement of Foreign Judgments **2020**

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

### Fifth Edition

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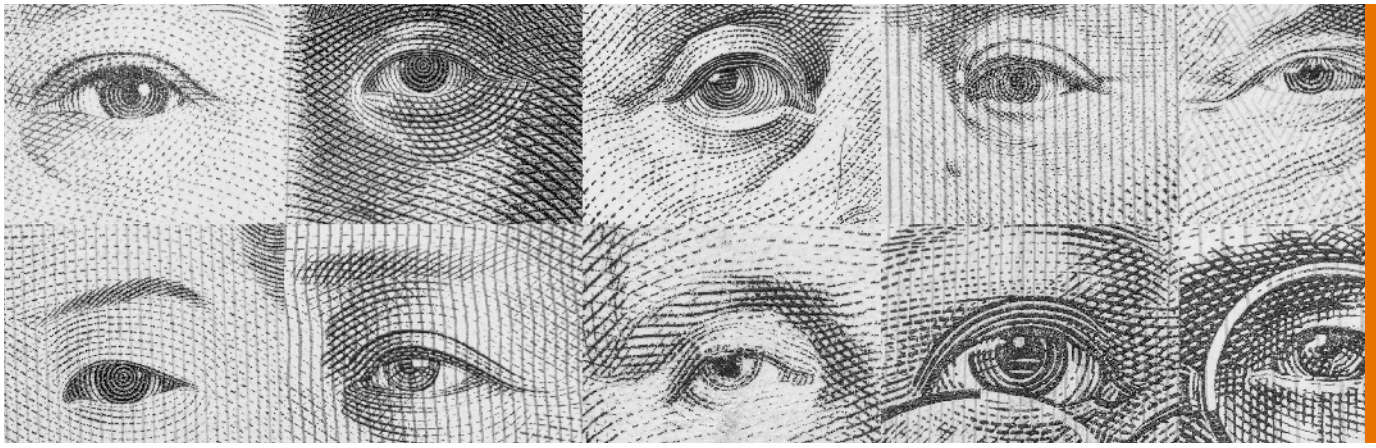
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## Enforcement of Foreign Judgments **2020**

**Fifth Edition**

**Contributing Editors:**

**Louise Freeman & Shivani Sanghi**

**Covington & Burling LLP**

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## Expert Chapters

1

**Enforcement Under the Hague Choice of Court Convention**  
Louise Freeman & Shivani Sanghi, Covington & Burling LLP

5

**European Union**  
Sébastien Champagne & Vanessa Foncke

12

**International Enforcement Strategy – An Overview**  
Andrew Bartlett, Osborne Clarke LLP

17

**The Personal Jurisdiction Filter in the Recognition and Enforcement of Foreign Judgments in the United States**  
David W. Ogden, David W. Bowker, Karin Dryhurst & Apoorva J. Patel, Wilmer Cutler Pickering Hale and Dorr LLP

## Q&A Chapters

24

**Australia**  
MinterEllison: Beverley Newbold & Evan Goldman

31

**Austria**  
Konrad Partners: Dr. Christian W. Konrad & Philipp A. Peters

39

**Belarus**  
Sorainen: Alexey Anischenko, Valeria Dubeshka & Katsiaryna Hashko

44

**Belgium**  
Simont Braun: Rafaël Jafferli & Fanny Laune

49

**Brazil**  
Machado Meyer Sendacz e Opice Advogados:  
Eduardo Perazza de Medeiros & Ariana Júlia de Almeida Anfe

55

**Canada**  
Blake, Cassels & Graydon LLP: Erin Hoults & Josianne Rocca

62

**China**  
Boss & Young, Attorneys-at-Law: Dr. Xu Guojian

69

**Croatia**  
Macesic and Partners LLC: Anita Krizmanic

76

**Cyprus**  
Montanios & Montanios LLC: Yiannis Papapetrou

82

**Ecuador**  
Quevedo & Ponce: Alejandro Ponce Martínez & María Belén Merchán

87

**England & Wales**  
Covington & Burling LLP: Louise Freeman & Shivani Sanghi

94

**France**  
Archipel: Jacques-Alexandre Genet & Michaël Schlesinger

100

**Germany**  
Herbert Smith Freehills LLP: Catrice Gayer & Sören Flecks

107

**Greece**  
Papadimitriou – Pimblis & Partners: Nikos L. Kanellias

113

**Hong Kong**  
Gall: Nick Gall, Ashima Sood & Kritika Sethia

119

**Italy**  
Portolano Cavallo: Filippo Frigerio, Martina Lucenti,  
Micael Montinari & Claudia Riviaccio

125

**Japan**  
Mori Hamada & Matsumoto: Yuko Kanamaru & Yoshinori Tatsuno

130

**Korea**  
Bae, Kim & Lee LLC: Seong Soo Kim & Yoo Joung Kang

136

**Liechtenstein**  
GASSER PARTNER Attorneys at Law: Thomas Nigg & Domenik Vogt

142

**Luxembourg**  
PIERRE THIELEN AVOCATS S.à r.l: Peggy Goossens

147

**Malaysia**  
Rahmat Lim & Partners: Jack Yow & Daphne Koo

153

**Malta**  
GVZH Advocates: Dr. Karl Briffa, Dr. Ariana Falzon & Dr. Nicole Sciberras Debono

158

**Myanmar**  
Allen & Gledhill (Myanmar) Co., Ltd.: Minn Naing Oo

162

**Netherlands**  
Van Oosten Schulz De Korte: Jurjen de Korte

167

**Nigeria**  
Roberts & Shoda: Adeniyi Shoda & Abolanle Davies

174

**North Macedonia**  
Debarliev, Dameski and Kelesoska, Attorneys at Law:  
Ivan Debarliev & Martina Angelkovic

179

**Poland**  
Kubas Kos Gałkowski: Dr. Barbara Jelonek-Jarco & Agnieszka Trzaska

188

**Portugal**  
CRA – Coelho Ribeiro e Associados: Rui Botica Santos & Mark Robertson

194

**Singapore**  
Allen & Gledhill LLP: Tan Xeauiwei & Melissa Mak

201

**Spain**  
King & Wood Mallesons: Alfredo Guerrero & Fernando Badenes

207

**Sweden**  
Advokatfirman Hammarösköld & Co:  
Sandra Kaznova & Caroline Bogemyr

213

**Switzerland**  
Bär & Karrer Ltd.: Saverio Lembo & Aurélie Conrad Hari

220

**Tanzania**

CRB Africa Legal: Rugambwa Cyril Pasha & Charles  
R.B. Rwechungura

226

**Turkey**

ESENYEL & PARTNERS LAWYERS AND  
CONSULTANTS: Selcuk Esenyel

231

**USA**

Williams & Connolly LLP: John J. Buckley, Jr. &  
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# Poland

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Poland

## 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)	Corres- ponding Section Below
Art. 1145 – Art. 115325 of the Act of 17 November 1964 – The Code of Civil Procedure (hereinafter: “CCP”).	Non-EU countries (separate regime for EU Member States – see chapter 2).	Section 2.
<b>Multilateral Conventions</b>		
Convention on the Recognition and Enforcement of Foreign Arbitral Awards (drafted in New York on 10 June 1958) (hereinafter: the “NY Convention”).	States which have ratified the Convention. The updated list is available at: <a href="http://www.newyorkconvention.org/list+of+contracting+states">http://www.newyorkconvention.org/list+of+contracting+states</a> .	Section 3.
The New Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, signed at Lugano on 30 October 2007. Legal dealings under the new Lugano Convention take place: ■ as of 1 January 2010, between Poland and Norway; ■ as of 1 January 2011, between Poland and Switzerland; and ■ as of 1 May 2011, between Poland and Iceland.	Norway, Iceland and Switzerland.	Section 3.

European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children of 20 May 1980.	States which have ratified the Convention. The updated list is available at: <a href="https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/105/signatures?p_auth=dTul-WoYI">https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/105/signatures?p_auth=dTul-WoYI</a> .	Section 3.
IMO – Poland. International Convention on Civil Liability for Bunker Oil Pollution Damage, adopted by the International Maritime Organisation in London on 23 March 2001.	States which have ratified the Convention. The updated list is available at: <a href="https://www.imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx">imo.org/en/About/Conventions/StatusOfConventions/Pages/Default.aspx</a> .	Section 3.
Convention of 2 October 1973 on the Recognition and Enforcement of Decisions Relating to Maintenance Obligations.	States which have ratified the Convention. The updated list is available at: <a href="https://www.hcch.net/en/instruments/conventions/status-table/?cid=85">https://www.hcch.net/en/instruments/conventions/status-table/?cid=85</a> .	Section 3.
Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance.	States which have ratified the Convention. The updated list is available at: <a href="https://www.hcch.net/en/instruments/conventions/status-table/?cid=131">https://www.hcch.net/en/instruments/conventions/status-table/?cid=131</a> .	Section 3.
Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.	States which have ratified the Convention. The updated list is available at: <a href="https://www.hcch.net/en/instruments/conventions/status-table/?cid=70">https://www.hcch.net/en/instruments/conventions/status-table/?cid=70</a> .	Section 3.

Convention of 1 June 1970 on the Recognition of Divorces and Legal Separations.	States which have ratified the Convention. The updated list is available at: <a href="https://www.hcch.net/en/instruments/conventions/status-table/?cid=80">https://www.hcch.net/en/instruments/conventions/status-table/?cid=80</a> .	Section 3.
Convention on proceedings in civil and commercial matters, drafted in Warsaw on 26 August 1931.	It is also applicable in relations with Australia, New Zealand, Canada, Kenya, Malta, Tanzania, Bahamas, Dominican Republic, Fiji, Lesotho, Swaziland and Tonga.	Section 3.
Morocco-Poland. Agreement of 21 May 1979 on judicial assistance in civil and criminal matters.	Poland and Morocco.	Section 3.
Ukraine-Poland. Agreement of 24 May 1993 on judicial assistance and legal relations in civil and criminal matters.	Poland and Ukraine.	Section 3.
Vietnam-Poland. Agreement of 22 March 1993 on Mutual Legal Assistance in Civil, Family and Criminal Matters.	Poland and Vietnam.	Section 3.
Turkey-Poland. Agreement of 12 April 1988 on judicial assistance in civil and commercial matters.	Poland and Turkey.	Section 3.
Cuba-Poland. Agreement of 18 November 1982 on judicial assistance in civil matters, family matters and criminal matters, signed in Havana.	States which have ratified the Convention. The updated list is available at: <a href="https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/105/signatures?p_auth=-98j1MJag">https://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/105/signatures?p_auth=-98j1MJag</a> .	Section 3.
Syria-Poland. Agreement of 16 February 1985 on judicial assistance in civil and criminal matters.	Poland and Syria.	Section 3.
Belarus-Poland. Agreement of 26 October 1994 on judicial assistance and legal relations in civil matters, family matters, employees' matters and criminal matters.	Poland and Belarus.	Section 3.

Serbia-Poland. Agreement between the Federal People's Republic of Yugoslavia and the People's Republic of Poland on Legal Assistance in Civil and Criminal Matters, signed in Warsaw on 2 February 1960.	Poland and Serbia.	Section 3.
Slovenia-Poland. Agreement between the Federal People's Republic of Yugoslavia and the People's Republic of Poland on Legal Assistance in Civil and Criminal Matters, signed in Warsaw on 2 February 1960.	Poland and Slovenia.	Section 3.
Montenegro-Poland. Agreement between the Federal People's Republic of Yugoslavia and the People's Republic of Poland on Legal Assistance in Civil and Criminal Matters, signed in Warsaw on 2 February 1960. Agreement of 23 April 2009 between Poland and Montenegro regulating bilateral treaty relations.	Poland and Montenegro.	Section 3.
Macedonia-Poland. Agreement between the Federal People's Republic of Yugoslavia and the People's Republic of Poland on Legal Assistance in Civil and Criminal Matters, signed in Warsaw on 2 February 1960. Agreement of 9 May 2007 between Poland and the Republic of Macedonia regulating bilateral treaty relations.	Poland and Macedonia.	Section 3.

Bosnia and Herzegovina-Poland. Agreement of 2 February 1960 between the Federal People's Republic of Yugoslavia and the People's Republic of Poland on Legal Assistance in Civil and Criminal Matters, signed in Warsaw on 2 February 1960. Agreement of 22 December 2006 between the Government of the Republic of Poland and the Council of Ministers of Bosnia and Herzegovina on legal succession of Bosnia and Herzegovina in respect of treaties concluded between the Republic of Poland and the Socialist Federal Republic of Yugoslavia.	Poland and Bosnia and Herzegovina.	Section 3.
Tunisia-Poland. Agreement of 22 March 1985 on judicial assistance in civil and criminal matters.	Poland and Tunisia.	Section 3.
Iraq-Poland. Agreement of 29 October 1988 on judicial assistance in civil and criminal matters.	Poland and Iraq.	Section 3.
Algeria-Poland. Agreement of 9 November 1976 on judicial assistance in civil and criminal matters.	Poland and Algeria.	Section 3.
DPRK-Poland. Agreement of 28 September 1986 on judicial assistance in civil matters, family matters and criminal matters.	Poland and North Korea.	Section 3.
Cuba-Poland. Agreement of 18 November 1982 on judicial assistance in civil matters, family matters and criminal matters.	Poland and Cuba.	Section 3.
Libya-Poland. Agreement of 2 December 1985 on judicial assistance in civil matters, commercial matters, family matters and criminal matters.	Poland and Libya.	Section 3.

## 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?

In the absence of any special regime, the foreign judgment would be recognised and enforced under the provisions of Book III of Part VI of the CCP.

Since 2008, the substantive and formal conditions for respecting the effectiveness or enforceability of foreign judgments and court settlements in Poland have been significantly liberalised. The new provisions were modelled on the solutions adopted in Regulation No. 44/2001 and Regulation No. 2201/2003 (see question 2.6 below).

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

As a rule, foreign judgments in civil matters may be recognised or enforced. Moreover, Art. 1149<sup>1</sup> and Art. 1151<sup>4</sup> of the CCP allow for the recognition and enforcement of judgments issued by other authorities of foreign countries (including administrative authorities), provided that they issue judgments on disputed civil cases and, in accordance with the law of a given country, are appointed to resolve such cases in specific proceedings. Settlements in civil cases concluded before courts and other authorities of foreign countries or approved by them are also enforceable if they are enforceable in the country of origin and are not contrary to the basic principles of the legal order of the Republic of Poland.

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

Firstly, a foreign judgment should be issued in a civil case. The CCP rules are not appropriate to determine the effectiveness of judgments and decisions in criminal and administrative matters.

In addition, a judgment or decision of another competent authority of a foreign State in civil matters should be final and legally binding in the State where it was issued.

At present, the legislator no longer requires that a given civil case decided by a foreign ruling should belong to court proceedings in Poland.

A person claiming recognition of a foreign judgment or applying for a declaration of enforceability shall be required to provide:

- an official copy of the judgment;
- the document certifying that the judgment is final unless it is evident from the content of the judgment that it is final and binding;
- (if the judgement was issued in proceedings in which the defendant did not enter a dispute as to the substance of the case) the document establishing that the pleading instituting the proceedings was served on the defendant; and
- translations of the above documents into Polish.

### 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?

There is no general rule in this respect. However, the law

regulates the jurisdiction of the court to decide whether or not a judgment is subject to recognition, and to decide on an application for a declaration of enforceability of a foreign judgment.

In cases concerning recognition, a regional court which i) would be territorially competent to hear a case settled by a judgment of a court of a foreign state, or ii) whose district has a territorially competent district court, or iii) in the absence of such a basis – the Regional Court in Warsaw would be competent. Therefore, the first step is to determine the competent court on the basis of the provisions of the CCP regulating the territorial jurisdiction of the court.

The district court of the debtor's domicile or registered office, or the court in whose jurisdiction enforcement is to be carried out, shall decide on the enforcement clause.

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

Yes, Polish law distinguishes between the recognition and enforcement of a foreign judgment.

The recognition refers to the enforceability of a judgment; enforceability of a judgment means the totality of its effects. The recognition therefore consists in respecting the effects which the foreign judgment has had in the State of origin and in 'transmitting' those effects to the territory of the State of recognition. Such effects include, in particular, the degree of *res judicata* and the binding force of the judgment. Thanks to the institution of the recognition of a foreign judgment, a given entity may count on legal protection from the Polish authorities. It also has the possibility to further pursue its claims in cases where the recognition of the judgment was a preliminary issue.

The concept of enforcement should be combined with a declaration of enforceability, and thus with giving the judgment only the execution power.

It should be noted that the recognition applies to **any** foreign judgment given in civil matters. It is irrelevant whether the foreign judgment will be enforced in the Republic of Poland. However, the declaration of enforceability is related only to those foreign judgments which **are suitable for enforcement by way of an execution**.

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

Since 2008, the CCP has been expressing a system of automatic **recognition** of foreign judgments. In such a case, there is no need to conduct special proceedings or issue a sovereign act by the Polish authority. The judgment, in principle, has legal effects at the same time as in the country of origin, unless the negative conditions for its recognition under Art. 1146<sup>1</sup> of the CCP are met (see question 2.7 below).

The system of automatic recognition is accompanied by the possibility of initiating proceedings to establish whether or not a specific judgment is subject to the recognition. Such a procedure is optional, i.e. it is not a formal condition for the recognition of a foreign judgment and in cases where there is no dispute or doubt about the recognition between the parties, it will probably not be initiated.

The procedure for determining whether a foreign judgment is subject to recognition is not fully regulated by the provisions of Part IV of the CCP. In the absence of autonomous regulations, the general rules of procedure should apply accordingly to such proceedings. The right to institute proceedings is granted by the provisions of the CCP not only to the parties to the proceedings in which the judgment of a foreign court or other competent

authority was made, but also to any entity which has a legal interest in doing so. A legal interest is understood as an objectively existing need (i.e. caused by a real need to protect a specific legal area) to obtain a judgment on whether a specific foreign judgment has any effect on the territory of Poland or not.

This procedure is a bilateral one – it cannot be conducted only with the participation of the applicant and it is of an adversarial nature.

The application for the establishment that the judgment of a court of a foreign state is or is not subject to recognition should meet the requirements for each pleading and should, moreover, be paid for.

After the application is filed, the court examines whether it meets the formal requirements applicable to each pleading instituting proceedings (Art. 126 of the CCP) and fiscal requirements. If the applicant fails to attach the documents specified in Art. 1147 of the CCP, the court will call to remove the defects.

If the application is free from defects or has been successfully completed, the court orders that the application be served on the other party or parties and informs them of the possibility to present their views within 14 days.

The court's determination as to whether the judgment is subject to recognition may be made in a closed session (there is no requirement to hold a hearing in the case).

Foreign judgments which may be enforced by way of execution become enforceable after issuance of a declaration of enforceability. The declaration of enforceability is given, at the request of the creditor, by a declaration of enforceability of the judgment of the court of a foreign State.

Similarly, an application for a declaration of enforceability must meet the requirements of the pleading instituting the proceedings and, moreover, it must be accompanied by the documents referred to in Art. 1147 of the CCP (see question 2.3 above). An application for a declaration of enforceability also requires the production of a document stating that the judgment is enforceable in the State of origin (unless enforceability is based on the content of the judgment or on the law of that State). The application is subject to a fee.

The right to file an application is vested on the creditor (the entity for which the foreign judgment awarded the benefit) or his legal successor under a general or special title. The passive right-holder is an entity against which the enforcement will be conducted; as a rule, it will be the entity against which the benefit has been awarded in a foreign trial.

The application is subject to preliminary examination by the court as to whether the abovementioned requirements have been met. Then the application is served on the other party, who can present a position on the application within 14 days.

The court shall examine the application at a closed session by issuing a judgment on awarding the enforcement clause or refusing to award the enforcement clause.

The proceedings concerning the determination of the recognition and the declaration of enforceability consist of two instances – the judgment of the regional court may be appealed against by the parties to the court of appeal.

In turn, an extraordinary appeal – a cassation appeal (which can be based on statutory grounds) – may be filed with the Supreme Court against the judgment of the court of appeal.

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

The provisions of the CCP (Art. 1146 of the CCP and Art. 1150 of the CCP) define the following obstacles for the recognition or enforcement of a foreign judgment, i.e. prerequisites, the occurrence of which excludes the principle of automatic recognition or leads to a refusal of a declaration of enforceability of a foreign judgment.

A judgment shall not be recognised or enforced if:

- I. it is not final and binding in the State of origin;
- II. it has been made in a case falling within the exclusive jurisdiction of the Polish courts;
- III. a defendant who did not enter a dispute as to the merits of the case was not duly served with the document instituting the proceedings in sufficient time to enable him or her to defend himself or herself;
- IV. a party was deprived of the opportunity to defend himself or herself during the proceedings;
- V. a case concerning the same claim between the same parties was pending in the Republic of Poland earlier than before a court of a foreign State;
- VI. it is contrary to a previously issued final judgment of a Polish court or a previously issued final judgment of a court of a foreign State, meeting the conditions for its recognition in the Republic of Poland issued in a case concerning the same claim between the same parties; or
- VII. the recognition/enforcement would be contrary to the fundamental principles of the legal order of the Republic of Poland.

Due to the model of automatic recognition of foreign judgments adopted in the Polish legal system, the changes made in the foreign judgment itself in its country of origin are not without impact on the validity of such a judgment in the Republic of Poland. If a recognised judgment is revoked or changed in the country of origin, it also loses its effectiveness in the Polish legal system.

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

The Republic of Poland is a party to many international conventions which have a direct impact on the issue of recognition and enforcement of foreign judgments. One of such legal acts is the NY Convention. It specifies the prerequisites for the recognition and enforcement of arbitral awards in disputes between natural persons and legal persons.

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

- (a) If the foreign judgment is contrary to a previously issued final judgment of the Polish court in a case concerning the same claim between the same parties, then this circumstance constitutes the so-called obstacle to recognition; such a judgment is not subject to recognition/enforcement pursuant to Art. 1146 § 1 point 6 of the CCP and Art. 1150 of the CCP.
- (b) If a case concerning the same claim between the same parties is pending before a Polish court earlier than before a court of a foreign State, a judgment originating from a foreign State shall not be subject to recognition pursuant to Art. 1146 § point 5 of the CCP. In such a case, the Polish court will refuse to recognise the foreign judgment and the case will continue to be pending between the same parties before a Polish court.

#### 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?

In the first scenario, when there is a conflicting local law, such

a judgment may be recognised or enforced as long as it is not contrary to the fundamental principles of the legal order of the Republic of Poland (*ordre public*). There is no requirement for the judgment to be fully compliant with all the provisions of the Polish law. Recognition/enforcement of a judgment is refused only if recognition or enforcement would be incompatible with the fundamental constitutional principles and the guiding principles governing individual areas of Polish law.

In the second scenario, when a prior judgment on the same or a similar issue but between different parties was issued, both recognition and enforcement is possible. A refusal to recognise/enforce a judgment is possible only if the judgment is inconsistent with a previously issued final decision of a Polish court or a previously issued final decision of a foreign court, meeting the conditions for its recognition in the Republic of Poland, issued in a case concerning the same claim between the same parties.

#### 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?

Polish courts are not entitled to control the correctness of foreign court judgments, hence, as a rule, they are not entitled to assess the correctness of the application of Polish law by a foreign court. Only in cases where the recognition or enforcement of a judgment from a foreign state applying Polish law would be contrary to the fundamental principles of the domestic legal order (the public policy clause) or contrary to the overriding mandatory provisions (such provisions regarded as being crucial by a country for safeguarding its public interests, such as its political, social or economic organisation) will the Polish court determine that the judgment is not subject to recognition or deny its enforceability.

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

The CCP is uniformly applied throughout the Republic of Poland.

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

The CCP does not introduce any specific regulation concerning the issue of the time limit within which a foreign court's judgment may be recognised and enforced in the Republic of Poland. Under Polish law, the institution of the time bar is a material law institution, not a procedural one.

### 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?

Poland is a party to numerous bilateral and multilateral international agreements which separately regulate the issues of the enforcement and recognition of judgments. Due to the scope of this study, it is not possible to discuss each of these legal

regimes in detail, hence the basic information concerning them is presented therein.

Some of these agreements relate to civil matters, others regulate separate family matters (divorce, separation, alimony and other issues).

Under the NY Convention, the arbitration judgments in commercial matters which are rendered in a State other than that in which recognition or enforcement is sought, or which are not considered as national judgments in that State, are subject to recognition and enforcement.

In the case of other international agreements to which Poland is a party, the scope of judgments subject to recognition is often broader than under the CCP.

For example, the agreement between Poland and China states that the following are subject to recognition and enforcement:

- a) judicial judgments in civil cases;
- b) judicial judgments in criminal cases relating to damage actions;
- c) decisions given by the authorities competent in succession cases; and
- d) judgments of arbitration courts, whereby the term “court judgement” within the meaning of the agreement includes court settlements in civil cases.

What is particularly important is that the agreement with China on arbitration judgments refers to the provisions of the NY Convention: “The Contracting Parties recognise and enforce arbitration judgments rendered in the territory of the other Contracting Party in accordance with the Convention on Recognition and Enforcement of Foreign Arbitral Awards done at New York on 10 June 1958”.

In accordance with the Agreement with Russia, the parties shall recognise and enforce in their territory the following judgments given in the territory of the other Contracting Party:

- 1) judgments of courts in civil cases; and
- 2) judgments of courts in criminal cases, in so far as they concern compensation for damage caused by criminal offences; court judgments within the meaning of paragraph 1 shall be deemed to be settlements reached (approved) before civil courts of a pecuniary nature and notarial deeds which have the force of execution under the law of the Contracting Party in whose territory they have been drawn up, and final judgments of commercial courts if they are binding and enforceable.

**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 agreements to which Poland is a party in principle differentiate between recognition and enforcement, without, however, explaining the substance of that difference. They also do not provide for separate special rules for recognition/enforcement of a judgment.

The agreement between Poland and China also distinguishes between the recognition and enforcement, but the conditions for recognition and enforcement are the same.

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

The rules specify which documents must be attached to the application for recognition and enforcement, while the rest is generally

governed by domestic law (both as regards the determination of the court having jurisdiction to make the application and the course of the proceedings). International agreements usually also regulate the scope and subject matter of the court’s jurisdiction in proceedings. For example, according to the agreement concluded with China, a court in proceedings for the recognition or authorisation to enforce a judgment is limited to examining whether the judgment complies with the conditions of this agreement.

Some agreements allow for contact with the court that issued the judgment even in the course of recognition/enforcement proceedings. For example, the Agreement with Russia states that when ruling a case for recognition and enforcement, the court may request clarification from the parties. The court may also request additional explanations from the court that issued the judgment.

However, what is particularly important is that these agreements (unlike the CCP) as a rule do not provide for the automatic recognition of judgments.

Pursuant to Art. IV of the NY Convention, the party requesting recognition and enforcement of the judgment should, together with this request, produce the duly certified original or a copy of the judgment, as well as the original or a certified copy of the agreement of the parties to the arbitration. Such documents should also be accompanied by a certified translation if the judgment or agreement is not in an official language of the State in which recognition or enforcement is sought.

**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?**

In fact, under each of the specific regimes, there are separate provisions regarding when the recognition or enforcement of a judgment cannot take place.

Thus, Art. V of the NY Convention lays down negative grounds for the recognition and enforcement of a foreign arbitral judgement. However, these grounds are taken into account only on application by the party against whom the judgement is made. Recognition and enforcement shall be refused if that party provides evidence that:

- I. the parties to the arbitration agreement were, under the law applicable to them, under some incapacity or the said agreement was not valid under the law governing it or under the law of the State in which the award was made;
- II. the party against whom against the judgment is invoked was not given proper notice of the appointment of the arbitrator or the arbitration proceedings or was otherwise unable to present his case;
- III. the judgment deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration (however, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognised and enforced);
- IV. the composition of the court or arbitration procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; and
- V. the judgment has not yet become binding on the parties or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made.

The refusal of recognition and enforcement may also occur when an authority of the State addressed with the request for recognition and enforcement establishes that:

- I. under the law of the concerned state, the subject matter of the dispute could not be submitted to an arbitration procedure; and
- II. recognition or enforcement would be contrary to public policy in the state concerned.

Furthermore, when discussing, for example, the agreement with China, it is worth pointing out that, according to its provisions, judicial judgments will not be recognised and will not be allowed to be enforced if:

- a) under the law of the Contracting Party in whose territory the judgment is to be recognised or enforced, the court that issued the judgment had no jurisdiction in respect of the case;
- b) under the law of the Contracting Party in whose territory the judgment was given, the judgment is not binding and enforceable;
- c) under the law of the Contracting Party in whose territory the judgment was given, the losing party has not been duly summoned by the court;
- d) the party was prevented from defending its rights or, in the event of limitation or lack of procedural capacity, from being duly represented;
- e) in the territory of the Contracting Party in which the judgment is to be recognised or enforced, a final judgment has already been passed on the same case between the same parties or proceedings are pending in respect of the same case or a final judgment has been passed by a court of a third State on the same case; and
- f) recognition or enforcement would be contrary to fundamental principles of law or public order in the Contracting Party in whose territory the judgment is to be recognised or enforced.

However, the conditions for recognition/enforcement are often defined in a positive way (see Art. 53 of the Agreement with Russia), but these requirements are also more far-reaching than in the CCP (again, referring to the example of the Agreement with Russia, the judgment is recognised if, in the case where the law of the other Contracting Party should have been applied, that law has been applied, unless the law of the Contracting Party whose authority has ruled is applied in the case in no material way different from the law of the other Contracting Party).

## 4 Enforcement

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

An entity which has obtained a declaration of enforceability of a foreign judgment in a procedure for the declaration of enforceability of a foreign judgment shall be able to use a state enforcement order to enforce the judgment.

Execution on the basis of a foreign court judgment may, however, only be commenced after the judgment granting the enforcement clause has become final. A longer period of time may lapse before a decision on granting an enforcement clause to a foreign decision becomes binding. In order to protect the creditor during this transitional period, the CCP provides a rule according to which until the lapse of the time limit for lodging a complaint against a decision of the regional court judgment granting an enforcement clause, and in case of lodging a complaint, until it is considered by the court of appeal, this decision constitutes the title of the security. Thus, an enforcement order which is not enforceable has the same effect as a national interim relief order. The method of securing the claim is determined by the creditor in the application for security, while separate methods of securing the claim are provided for in the

case of pecuniary and non-pecuniary claims. What is important, however, is that the execution of the security may be made conditional on the lodging of a security deposit by the creditor by the county court.

It should also be emphasised that a creditor may also apply for security before commencing proceedings for granting an enforcement clause to a foreign State court decision on the basis of the general rules provided for in the CCP. These, however, require from the applicant not only *prima facie* evidence that the claim whose future execution is to be secured exists, but also demonstration that the applicant has a legal interest in providing the security. Such action is necessary especially when there is a risk that the debtor will dispose of his assets.

The Polish law provides for separate regimes for the enforcement of monetary and non-monetary obligations.

The execution of monetary obligations is carried out by a judicial bailiff in one of the following ways:

- 1) execution against movable property;
- 2) execution against remuneration for work;
- 3) execution against bank accounts;
- 4) execution against other receivables;
- 5) execution against other property rights;
- 6) execution against immovable property; and
- 7) execution against seagoing vessels.

On the other hand, in the case of execution of non-monetary obligations, the competent authority to conduct proceedings is the district court, and the available methods of execution are:

- 1) release of movable property;
- 2) release of a document;
- 3) release of real estate;
- 4) release of a vessel;
- 5) emptying of premises;
- 6) the debtor's obligation to perform a substitutable act;
- 7) the debtor's obligation to perform a non-substitutable act; and
- 8) obligation to abandon a specific act or not to hinder the creditor's act.

In order to commence enforcement proceedings, the creditor must lodge a request for enforcement with the competent authority. The request in case of execution of non-monetary obligations is subject to a fee.

## 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.

During the last period, the provisions of Art. 1145 *et seq.* of the CCP have not been changed. The Act of 4 July 2019 amending the Act, the CCP and certain other acts (Journal of Laws of 2019, item 1460) introduced a number of changes in the Polish civil procedure, but not within these provisions.

### 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?

The introduced system of automatic recognition of foreign decisions is to a large extent a positive solution. No separate procedure is required for the recognition of a judgment. This undoubtedly makes it easier for a person who has obtained a favourable foreign judgment in his or her case. The entity may rely on this judgment before any authority in the Republic

of Poland without the need to initiate separate deliberation proceedings. Moreover, the system of automatic recognition does not hinder other pending proceedings in which recognition of a foreign judgment is a preliminary issue. This significantly reduces the waiting time for obtaining legal protection on the basis of a foreign judgment in the Republic of Poland.

On the other hand, however, the Code of Civil Proceedings indicates numerous cases in which a decision is not subject to recognition or enforcement. Therefore, a creditor who intends to take advantage of a decision issued in another country in the territory of the Republic of Poland should be aware of these cases and conduct proceedings before a foreign court in such a way that the obtained decision is enforceable in Poland.

Once enforcement proceedings are commenced, it is advisable to obtain security over the debtor's assets so that enforcement is possible at all (see question 4.1 above).



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