

GETTING THE
DEAL THROUGH 

Enforcement of Foreign Judgments 2019

Contributing editor

Patrick Doris

Gibson, Dunn & Crutcher UK LLP

Reproduced with permission from Law Business Research Ltd
This article was first published in September 2018
For further information please contact editorial@gettingthedealthrough.com

Publisher
Tom Barnes
tom.barnes@lbresearch.com

Subscriptions
James Spearing
subscriptions@gettingthedealthrough.com

Senior business development managers
Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com

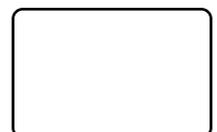


Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 3780 4147
Fax: +44 20 7229 6910

© Law Business Research Ltd 2018
No photocopying without a CLA licence.
First published 2012
Eighth edition
ISBN 978-1-78915-019-3

The information provided in this publication is general and may not apply in a specific situation. Legal advice should always be sought before taking any legal action based on the information provided. This information is not intended to create, nor does receipt of it constitute, a lawyer-client relationship. The publishers and authors accept no responsibility for any acts or omissions contained herein. The information provided was verified between July and August 2018. Be advised that this is a developing area.

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



CONTENTS

Austria	5	Nigeria	56
Katharina Kitzberger and Stefan Weber Weber & Co Rechtsanwälte GmbH		Etigwe Uwa SAN, Adeyinka Aderemi and Chinasa Unaegbunam Streamsowers & Köhn	
Bermuda	11	Norway	61
Delroy B Duncan Trott & Duncan Limited		Snorre Nordhus and John Paulsen Kvale Advokatfirma DA	
Cayman Islands	15	Panama	65
Jalil Asif QC, Pamela Mitchell and Peter Tyers-Smith Kobre & Kim		Jose Carrizo Morgan & Morgan	
Chile	19	Philippines	68
Francisco Aninat and Jorge Bofill Bofill Escobar Abogados		Ricardo Ma PG Ongkiko, Anthony RV Jacoba and Trisha Beverly C Flores SyCip Salazar Hernandez & Gatmaitan	
France	24	Russia	73
Anke Sprengel EBA Endrös-Baum Associés		Konstantin Krasnokutskiy and Alexey Drobyshev Lex Navicus Concordia	
Ghana	31	Switzerland	77
Thaddeus Sory Sory @ Law		Dieter A Hofmann and Oliver M Kunz Walder Wyss Ltd	
India	35	Turkey	83
Namita Chadha and Sakshi Arora Chadha & Co		Pelin Baysal and Beril Yayla Sapan Gün + Partners	
Ireland	39	United Arab Emirates	88
Julie Murphy-O'Connor and Gearoid Carey Matheson		Hassan Arab and Sara Koleilat-Aranjo Al Tamimi & Company	
Japan	46	United Kingdom	93
Masanobu Hara and Misa Takahashi TMI Associates		Patrick Doris, Rebecca Sambrook and Helen Elmer Gibson, Dunn & Crutcher UK LLP	
Korea	51	United States	102
Woo Young Choi and Ji Yun Seok HMP LAW		Scott A Edelman, Perlette Michèle Jura, Miguel Loza Jr and Nathaniel L Bach Gibson, Dunn & Crutcher LLP	

Preface

Enforcement of Foreign Judgments 2019

Eighth edition

Getting the Deal Through is delighted to publish the eighth edition of *Enforcement of Foreign Judgments*, which is available in print, as an e-book and online at www.gettingthedealthrough.com.

Getting the Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique **Getting the Deal Through** format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Ghana and Russia.

Getting the Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.gettingthedealthrough.com.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Getting the Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Patrick Doris of Gibson, Dunn & Crutcher UK LLP, for his continued assistance with this volume.

GETTING THE
DEAL THROUGH 

London
August 2018

Norway

Snorre Nordhus and John Paulsen

Kvale Advokatfirma DA

1 Treaties

Is your country party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments? What is the country's approach to entering into these treaties and what if any amendments or reservations has your country made to such treaties?

Foreign judgments are only recognised and enforceable in Norway to the extent this follows from treaty or statutory law.

Norway has entered into several international treaties for the reciprocal recognition and enforcement of foreign judgments. From a practical perspective, by the most important treaty with regard to the recognition and enforcement of foreign judgments is the Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 30 October 2007 (Lugano Convention) between the EU member states and Norway, Switzerland and Iceland.

Norway has also entered into a multilateral treaty with the other Nordic countries: the Convention between Norway, Denmark, Finland, Iceland and Sweden on the recognition and enforcement of judgments on civil matters of 11 October 1977. This treaty was further incorporated into national legislation by the respective member states. In Norway, it resulted in Act No. 71 of 10 June 1977 regarding the recognition and enforcement of Nordic judgments on civil matters. In addition, Norway has entered into bilateral treaties on recognition and enforcement of judgments on civil law matters with the United Kingdom (1961), West Germany (1977) and Austria (1984).

In addition, Norway has entered into several treaties on specific areas that include rules governing the recognition and enforcement of judgments. These treaties will in general take precedence over the Lugano Convention (article 67 of the Lugano Convention). Such treaties include (the list is non-exhaustive):

- the Convention of 19 May 1956 on the Contract for the International Carriage of Goods by Road;
- the Convention on Third Party Liability in the Field of Nuclear Energy of 29 July 1960, as amended by the Additional Protocol of 28 January 1964 and by the Protocol of 16 November 1982; and
- the Convention concerning International Carriage by Rail of 9 May 1980.

These treaties have all been incorporated into national legislation.

The most important treaty in practice in Norway is the Lugano Convention, and as such, the answers to recognition and enforcement lie within the scope of that convention.

2 Intra-state variations

Is there uniformity in the law on the enforcement of foreign judgments among different jurisdictions within the country?

There is uniformity in the law on the recognition and enforcement of foreign judgments in Norway. Different jurisdictions, as such, do not exist in Norway.

3 Sources of law

What are the sources of law regarding the enforcement of foreign judgments?

The primary sources of law are the aforementioned multilateral and bilateral treaties, if applicable, and Norwegian statutory law applicable to the recognition and enforcement of foreign judgments (the Norwegian Civil Procedure Act and the Norwegian Enforcement Act).

Norwegian case law will be relevant, and taken into consideration by the courts, when interpreting the treaties and legislation. In addition, case law from the European Court of Justice will be a relevant source of law when interpreting the Lugano Convention. Also, foreign judgments interpreting the Convention will be of interest.

4 Hague Convention requirements

To the extent the enforcing country is a signatory of the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, will the court require strict compliance with its provisions before recognising a foreign judgment?

Norway is not a signatory to the Hague Convention of 1 February 1971 on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

5 Limitation periods

What is the limitation period for enforcement of a foreign judgment? When does it commence to run? In what circumstances would the enforcing court consider the statute of limitations of the foreign jurisdiction?

There is no specific limitation period for the enforcement of foreign judgments in the Lugano Convention. We are not aware of any case where this question has been assessed in Norway. Our view is that the foreign judgment can be enforced in Norway, as long as it is enforceable in the country where the judgment was rendered, even though the limitation period has expired according to Norwegian law.

6 Types of enforceable order

Which remedies ordered by a foreign court are enforceable in your jurisdiction?

The Lugano Convention provides for enforcement of any decision rendered by a court in a signatory state, with the same effect in Norway as in the signatory state, regardless of what the decision is called in the signatory state. Article 32 of the Lugano Convention specifically lists decrees, orders, decisions and writs of execution, as well as the determination of costs or expenses by an officer of the court. A court in the context of the Convention shall be understood as any authority in the signatory state that has been appointed to have jurisdiction in matters that fall within the scope of the Convention. Also, provisional and protective measures are enforceable under the provisions of the Convention.

7 Competent courts

Must cases seeking enforcement of foreign judgments be brought in a particular court?

A plaintiff seeking enforcement of a foreign judgment must file a request for enforcement with the competent district court in Norway in order to receive a declaration of enforceability. The competent district court will be either the court of the opposing party's domicile, or the court where the enforcement will take place. These two alternatives apply equally.

Once the district court has ruled that the judgment is enforceable in Norway, the foreign judgment may be enforced in Norway in accordance with the provisions of the Norwegian Enforcement Act. The application for a declaration of recognition may be filed in conjunction with the petition for enforcement, and in the same document. After the judgment has been declared enforceable and the court has granted the petition for enforcement, the court will send its decision to the bailiff for execution.

8 Separation of recognition and enforcement

To what extent is the process for obtaining judicial recognition of a foreign judgment separate from the process for enforcement?

Enforcement of the foreign judgment is contingent upon receiving a declaration of enforceability from the competent district court. However, an application for a declaration of enforceability may be filed together with the petition for enforcement (see question 7).

9 Defences

Can a defendant raise merits-based defences to liability or to the scope of the award entered in the foreign jurisdiction, or is the defendant limited to more narrow grounds for challenging a foreign judgment?

A foreign judgment may, under no circumstances, be reviewed with respect to the substance of the judgment. Hence, the Norwegian court will not undertake any review of the facts or the law in the foreign judgment.

In accordance with article 34 of the Lugano Convention, the judgment can, however, be challenged on the following grounds:

- recognition is manifestly contrary to Norwegian public policy;
- the judgment was given in default of appearance of the defendant and the defendant was not served with the document that instituted the proceedings in sufficient time and in such a way as to enable it to arrange for a defence;
- the judgment is irreconcilable with a judgment rendered in Norway in a dispute between the same parties; or
- the judgment is irreconcilable with an earlier judgment rendered in another signatory or third state in a dispute between the same parties concerning the same subject matter.

There are some grounds for challenging the judgment in article 35 of the Lugano Convention. The practical grounds are that a judgment shall not be recognised if it conflicts with the following sections in the Convention:

- section 3, Jurisdiction in matters relating to insurance;
- section 4, Jurisdiction over consumer contracts; and
- section 6, Exclusive jurisdiction.

10 Injunctive relief

May a party obtain injunctive relief to prevent foreign judgment enforcement proceedings in your jurisdiction?

We are not aware of any Norwegian case where this question has been addressed, and in our opinion injunctive relief to prevent enforcement proceedings is not a usable legal remedy. The petition for enforcement must be contested and tried in the Norwegian courts and a decision in favour of the plaintiff is subject to appeal by the defendant.

11 Basic requirements for recognition

What are the basic mandatory requirements for recognition of a foreign judgment?

Under the Lugano Convention, a judgment from another signatory state is recognised and declared enforceable if certain formal requirements are met. In accordance with articles 53 and 54 of the Lugano Convention, the party seeking a declaration of enforceability is required to provide the following documents:

- a judgment that falls within the scope of application of the Convention in an original or authentic copy; and
- a confirmation on a standard form annexed to the Convention as Annex V, or an equivalent document, proving the enforceability of the judgment in the state of origin.

In this first step of the enforcement process the foreign judgment will be declared enforceable if the above-mentioned formalities are in order, and without any review of, *inter alia*, whether enforcement is manifestly contrary to Norwegian public policy or the other grounds listed under question 9. At this stage, the defendant is not entitled to make any remarks or objections to the application.

The defendant may appeal the decision declaring the judgment enforceable. The appeal must be submitted to the Court of Appeals. In this further step of the enforcement process, the defendant may raise one or more of the limited grounds against enforcement of the foreign judgment (see question 9).

12 Other factors

May other non-mandatory factors for recognition of a foreign judgment be considered and if so what factors?

The factors to be considered are exhaustively set out in the Lugano Convention.

13 Procedural equivalence

Is there a requirement that the judicial proceedings where the judgment was entered correspond to due process in your jurisdiction, and if so, how is that requirement evaluated?

There is no general requirement that the judicial proceedings correspond to due process in Norway as such. However, when considering whether recognition of the judgment would be manifestly contrary to Norwegian public policy, a breach of fundamental rules of civil procedure in Norway can be relevant (see questions 9 and 19). If the judgment was given in default of appearance of the defendant, it is a requirement that the document instituting the proceedings was duly served on the defendant (see questions 9 and 16). This requirement is also in line with fundamental principles of Norwegian procedural law.

14 Personal jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had personal jurisdiction over the defendant, and if so, how is that requirement met?

The main rule is that Norwegian courts will not review whether the foreign court that delivered the judgment had jurisdiction over the defendant (article 35(3) of the Lugano Convention). There are some exceptions to this main rule, set forth in article 35(1) of the Lugano Convention. The most practical exceptions, which allow a legal examination (not factual) of the court's assessment, concern the following matters:

- jurisdiction in matters relating to insurance;
- jurisdiction over consumer contracts; and
- exclusive jurisdiction, regardless of domicile.

15 Subject-matter jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had subject-matter jurisdiction over the controversy, and if so, how is that requirement met?

The Lugano Convention prohibits the review of the jurisdiction of the foreign court; Norwegian courts will therefore not examine whether

the foreign court had subject-matter jurisdiction over the dispute in question.

16 Service

Must the defendant have been technically or formally served with notice of the original action in the foreign jurisdiction, or is actual notice sufficient? How much notice is usually considered sufficient?

In accordance with article 34(1) of the Lugano Convention, the judgment will not be recognised if it was given in default of appearance, and:

- the defendant was not served with the document that instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable it to arrange for its defence; and
- the defendant commenced proceedings to challenge the judgment when it was possible to do so.

First, the defendant must have been served in sufficient time to enable it to arrange a defence. The assessment shall, as a main rule, be based on the time the defendant was officially served, not when it obtained factual knowledge of the document. What constitutes sufficient time will be determined on a case-by-case basis, and the applicable rule in Norway and the country of origin can provide guidance, but will not be decisive. In Norway, the main rule is that the defendant must submit its defence pleading within three weeks of being served.

Second, the document must be served in such a way as to enable the defendant to arrange a defence. This implies a review of the content of the document and it is not in itself sufficient that the service of the document was done in compliance with the law of the state of origin.

Third, it is also a condition that the defendant commenced proceedings to challenge the judgment if it was possible to do so.

17 Fairness of foreign jurisdiction

Will the court consider the relative inconvenience of the foreign jurisdiction to the defendant as a basis for declining to enforce a foreign judgment?

In the main, no. However, the defendant may argue that the inconvenience is relevant under the public policy rule.

18 Vitiating by fraud

Will the court examine the foreign judgment for allegations of fraud upon the defendant or the court?

In the main, no. However, the defendant may argue that fraud is relevant under the public policy rule.

19 Public policy

Will the court examine the foreign judgment for consistency with the enforcing jurisdiction's public policy and substantive laws?

If the foreign judgment is contrary to Norwegian public policy, this will be one of the grounds for contesting recognition of the judgment (article 34(1) of the Lugano Convention). The public policy rule can, in principle, be used as a merit-based defence, and a defence based on procedural grounds. The threshold for application is high and the rule will only be applicable in exceptional circumstances.

There is a debate in legal literature as to whether the courts shall examine the public policy rule on its their initiative or whether the party has to expressly invoke the said rule. The answer to this question is uncertain.

20 Conflicting decisions

What will the court do if the foreign judgment sought to be enforced is in conflict with another final and conclusive judgment involving the same parties or parties in privity?

That the foreign judgment conflicts with an existing judgment is one of the grounds for contesting recognition of the judgment. Articles 34(3) and (4) of the Lugano Convention provides that the judgment is irreconcilable with a judgment given in a dispute between the same parties in the state in which recognition is sought if:

- the judgment is irreconcilable with an earlier judgment given in another state bound by the Convention; or
- the judgment was given in a third state involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for recognition in the state addressed.

21 Enforcement against third parties

Will a court apply the principles of agency or alter ego to enforce a judgment against a party other than the named judgment debtor?

No. According to Norwegian law, the enforcement must be directed against the party that is named as debtor in the conclusion of the judgment. However, the judgment is also binding on third parties which are bound by a corresponding agreement on the subject matter of the action owing to their relationship with the party.

22 Alternative dispute resolution

What will the court do if the parties had an enforceable agreement to use alternative dispute resolution, and the defendant argues that this requirement was not followed by the party seeking to enforce?

If the parties have agreed to solve the dispute by arbitration, but one of them nevertheless, the plaintiff, files a law suit with the ordinary courts, the other party must raise an objection as soon as possible. If not, the said party is deemed to have accepted the ruling by the ordinary court. It raises the objection, but the court dismisses it and rules in favour of the plaintiff, the defendant must appeal. If not, the judgment becomes final. In both situations, the defendant cannot use the said agreement as an argument against the plaintiff's enforcement of the judgment.

23 Favourably treated jurisdictions

Are judgments from some foreign jurisdictions given greater deference than judgments from others? If so, why?

No. Foreign judgments are not enforceable in Norway, unless enforceability follows from bilateral or multilateral treaties or Norwegian statutory law.

24 Alteration of awards

Will a court ever recognise only part of a judgment, or alter or limit the damage award?

It follows from article 48 of the Lugano Convention that if a foreign judgment decides more than one claim, a Norwegian court will subject each claim to an individual assessment and may decide that one or more of the claims is not enforceable (eg, because it is deemed to be in conflict with the public policy rule). A plaintiff may also limit an application of enforcement to specific parts of a foreign judgment.

25 Currency, interest, costs

In recognising a foreign judgment, does the court convert the damage award to local currency and take into account such factors as interest and court costs and exchange controls? If interest claims are allowed, which law governs the rate of interest?

If the Norwegian court grants a petition for enforcement, the court will convert the monetary claim into Norwegian kroner and will include the foreign court costs and interest. The interest will be calculated in accordance with the interest that is set forth in the foreign judgment. However, interest on the enforcement costs in Norway will be calculated in accordance with Norwegian law.

26 Security

Is there a right to appeal from a judgment recognising or enforcing a foreign judgment? If so, what procedures, if any, are available to ensure the judgment will be enforceable against the defendant if and when it is affirmed?

The right to appeal a judgment that recognises a foreign judgment is set forth in article 43 of the Lugano Convention. The grounds for appeal are limited (articles 34 and 35 of the Lugano Convention).

According to the second paragraph of article 47 of the Lugano Convention, the plaintiff has a right to invoke protective measures as soon as the judgment has been declared enforceable.

27 Enforcement process

Once a foreign judgment is recognised, what is the process for enforcing it in your jurisdiction?

The most common and practical form of enforcement in Norway is enforcement with a petition for an execution lien.

After the judgment has been recognised, and the defendant has been given the possibility to raise objections against the petition for the execution lien, the court decides whether the petition shall be granted or denied. If the court grants the petition, the petition will be forwarded to the bailiff for execution. Only objections that are based on circumstances which arose so late that they could not have been raised against the recognition of the judgment can be raised as an objection in the enforcement proceedings.

28 Pitfalls

What are the most common pitfalls in seeking recognition or enforcement of a foreign judgment in your jurisdiction?

There are none.



**Snorre Nordhus
John Paulsen**

**sno@kvale.no
jpa@kvale.no**

Haakon VII's gate 10
0161 Oslo
Norway

Tel: +47 22 47 97 00
Fax: +47 21 05 85 85
www.kvale.no

Getting the Deal Through

Acquisition Finance
Advertising & Marketing
Agribusiness
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Appeals
Arbitration
Art Law
Asset Recovery
Automotive
Aviation Finance & Leasing
Aviation Liability
Banking Regulation
Cartel Regulation
Class Actions
Cloud Computing
Commercial Contracts
Competition Compliance
Complex Commercial Litigation
Construction
Copyright
Corporate Governance
Corporate Immigration
Corporate Reorganisations
Cybersecurity
Data Protection & Privacy
Debt Capital Markets
Dispute Resolution
Distribution & Agency
Domains & Domain Names
Dominance
e-Commerce
Electricity Regulation
Energy Disputes
Enforcement of Foreign Judgments
Environment & Climate Regulation
Equity Derivatives
Executive Compensation & Employee Benefits
Financial Services Compliance
Financial Services Litigation
Fintech
Foreign Investment Review
Franchise
Fund Management
Gaming
Gas Regulation
Government Investigations
Government Relations
Healthcare Enforcement & Litigation
High-Yield Debt
Initial Public Offerings
Insurance & Reinsurance
Insurance Litigation
Intellectual Property & Antitrust
Investment Treaty Arbitration
Islamic Finance & Markets
Joint Ventures
Labour & Employment
Legal Privilege & Professional Secrecy
Licensing
Life Sciences
Loans & Secured Financing
Mediation
Merger Control
Mining
Oil Regulation
Outsourcing
Patents
Pensions & Retirement Plans
Pharmaceutical Antitrust
Ports & Terminals
Private Antitrust Litigation
Private Banking & Wealth Management
Private Client
Private Equity
Private M&A
Product Liability
Product Recall
Project Finance
Public M&A
Public-Private Partnerships
Public Procurement
Real Estate
Real Estate M&A
Renewable Energy
Restructuring & Insolvency
Right of Publicity
Risk & Compliance Management
Securities Finance
Securities Litigation
Shareholder Activism & Engagement
Ship Finance
Shipbuilding
Shipping
State Aid
Structured Finance & Securitisation
Tax Controversy
Tax on Inbound Investment
Telecoms & Media
Trade & Customs
Trademarks
Transfer Pricing
Vertical Agreements

Also available digitally

Online

www.gettingthedealthrough.com