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Recognition and enforcement of foreign judgments: International best practices

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Abstract

The recognition and enforcement of foreign judgments across borders promotes international legal cooperation but also raises complex legal issues. Core principles include reciprocity between states, respect for due process in the original proceedings, procedural consistency with the enforcing jurisdiction, and denying claims tainted by fraud or violating public policy. While regional regimes like the EU have streamlined cross-border enforcement, broader global harmonization remains a work in progress.

Keywords: Foreign judgments, private international law, reciprocity, due process, public policy exception

Introduction

The globalization of business, travel, and communication means cross-border legal disputes are increasingly common. When a court judgment is obtained in one country, the successful party may seek to enforce it in another jurisdiction where the defendant has assets. However, states are reluctant to directly import rulings by foreign courts without scrutiny. Rules around the recognition and enforcement of foreign judgments balance facilitating international legal cooperation with sovereignty and public policy concerns. This article outlines some best practices that have emerged.

Key Principles and Best Practices

Reciprocity between states is a fundamental principle governing the recognition of foreign judgments ^[1]. Countries are more willing to recognize each other's rulings if they receive reciprocal treatment. Various bilateral and multilateral treaties facilitate this, such as the Hague Convention on Choice of Court Agreements ^[2]. Member states agree to recognize and enforce covered judgments from each other's jurisdictions subject to limited grounds for refusal. This promotes certainty for cross-border commercial transactions and disputes.

Due process considerations are also crucial ^[3]. The defendant must have had a fair opportunity to present their case in the foreign proceeding. If the process was fundamentally unfair or violated natural justice, enforcing the judgment may be denied. This upholds standards of procedural fairness and precludes importing unjust rulings. The precise due process requirements applied during recognition proceedings vary across jurisdictions.

Procedural consistency between the foreign judgment and local law can also be an important consideration ^[4]. Foreign procedures need not replicate domestic ones precisely, but major deviations may render the judgment unenforceable. For example, if a default judgment was obtained despite the defendant lacking proper notice or opportunity to participate, enforcing courts will likely refuse to recognize it. However, procedural differences alone do not necessarily justify non-enforcement if core standards of fairness and justice were upheld.

Fraud is another common barrier to recognition ^[5]. If it can be shown the foreign judgment was obtained by intentional dishonesty or deception, enforcement will usually be denied as a matter of public policy. Similarly, if recognizing the judgment would contravene fundamental public policy in the enforcing state, compliance may be excused ^[6]. This public policy exception is interpreted narrowly but allows states to protect vital political, social, or economic interests. For instance, foreign rulings that penalize free speech to an excessive degree may violate public policy protections for expression.

Some jurisdictions take a nuanced approach when faced with questionable foreign penalties or injunctions ^[7]. Where possible, they may enforce just the monetary or compensatory aspects of a judgment, while declining to impose foreign conduct remedies viewed as

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objectionable or extraterritorial overreach. This intermediate approach allows recognition in spirit while avoiding direct conflict with local public policy.

International and Regional Frameworks

The EU regime represents one of the most developed systems for streamlined cross-border enforcement^[8]. The Brussels I Regulation as well as the Lugano Convention mandate simplified enforcement of judgments across EU/EFTA states, subject to limited exceptions. This provides certainty and finality for disputes within the common market. By contrast, broader international efforts at harmonization have achieved partial but fragmented success.

At the global level, the Hague Conference's 1971 and 2019 Conventions address foreign judgment recognition but have limited membership^[9]. Regional regimes in Latin America, Africa, and the Caribbean also promote enforcement within respective spheres of integration^[10-12]. For example, the Gulf Cooperation Council (GCC) Convention facilitates recognition between member states. However, many states still fall through the cracks of current frameworks.

Conclusion

While the core principles underlying the recognition of foreign judgments are fairly universal, specific requirements and policies vary significantly across jurisdictions. The resulting inconsistencies continue to pose challenges for international business and disputes. Further bilateral and multilateral arrangements to harmonize standards could enhance certainty, reciprocity, and legal cooperation globally. But balancing sovereign sensitivities and public policy concerns means progress at broader multilateral levels will likely remain gradual.

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