ENFORCEMENT OF FOREIGN JUDGMENTS

Austria

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Enforcement of Foreign Judgments

Consulting editors

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Latham & Watkins LLP

Quick reference guide enabling side-by-side comparison of local insights into relevant treaties, conventions and other sources of law; limitation periods; types of enforceable order; competent courts; separation of recognition and enforcement; opposition; jurisdiction of the foreign court; awards and security for appeals; enforcement and pitfalls; and recent trends.

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LEGISLATION

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?

Austria has a positive approach to entering into international treaties for the reciprocal recognition and enforcement of foreign judgments. Austria is a signatory to numerous bilateral and multilateral treaties.

From a practical point, the most important treaty regarding the recognition and enforcement of foreign judgments is Regulation (EU) No. 1215/2012 (Brussels Ia Regulation Recast). The Brussels Ia Regulation Recast lays down uniform rules to facilitate the free circulation of judgments in the European Union. The Brussels Ia Regulation Recast replaces Regulation (EC) No. 44/2001 (Brussels I Regulation). The Brussels Ia Regulation Recast and the Brussels I Regulation (together, the Brussels Regime), remain applicable to all legal proceedings instituted before 10 January 2015. The Brussels Ia Regulation provided for certain changes regarding the recognition and enforcement of EU member state judgments in other EU member states. One of the key changes was the abolition of the exequatur procedure (the need to obtain a court order before enforcing a foreign judgment). Now, a judgment creditor simply has to present a copy of the judgment and a standard form certificate to begin the enforcement process. Also, the following treaties contain regulations on the recognition and enforcement of foreign judgments between EU member states:

- Regulation (EC) No. 2201/2003 (Brussels IIa) concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility;
- Regulation (EC) No. 805/2004 creating a European Enforcement Order for uncontested claims;
- Regulation (EC) No. 1896/2006 creating a European order for payment procedure;
- Regulation (EC) No. 861/2007 establishing a European Small Claims Procedure;
- Regulation (EC) No. 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations;
- Regulation (EU) No. 655/2014 establishing a European Account Preservation Order procedure to facilitate cross-border debt recovery in civil and commercial matters;
- Regulation (EU) No. 2015/848 on insolvency proceedings (which replaces the former Council Regulation (EC) No. 1346/2000 on insolvency proceedings); and
- Regulation (EU) No. 2016/1104 on implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of the property consequences of registered partnerships.

The Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters of 30 October 2007 (the Lugano Convention) between the EU member states and Iceland, Norway and Switzerland, which came into force on 1 January 2010, follows the legal framework of the Brussels Regime and facilitates the mutual recognition and enforcement of judgments handed down by the national courts of the EU member states and Iceland, Norway and Switzerland. In June 2021, the European Commission decided to block the UK's accession to the Lugano Convention; thus, it is not applicable to UK–EU litigation.

Further multilateral treaties to which Austria is a signatory are:

- 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;
- the Convention concerning International Carriage by Rail of 9 May 1980;

- the Convention on the Registration of Inland Navigation Vessels of 25 January 1965, including Protocols Nos. 1 and 2;
- the Convention of 5 October 1961 abolishing the Requirement of Legalisation for Foreign Public Documents;
- the Convention of 19 May 1956 on the Contract for the International Carriage of Goods by Road; and
- the Convention of 1 March 1954 on Civil Procedure.

Bilateral treaties between other EU member states, owing to the aforementioned multilateral treaties, are of no further relevance concerning the enforcement of foreign judgments of other EU member states. Bilateral treaties with non-EU member states are:

- the Convention on the Recognition and Enforcement of Judgments and Settlements in Civil and Commercial Matters of 23 May 1989 between Austria and Turkey and based on the exchange of notes regarding articles 17 and 18 of the Convention;
- the Treaty on the Recognition and Enforcement of Judgments and Public Deeds in Civil and Commercial Matters of 23 June 1977 between Austria and Tunisia;
- the Convention on the Recognition and Enforcement of Judgments, Arbitral Awards, Settlements and Public Deeds of 5 July 1973 between Austria and Liechtenstein; and
- the Convention on the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters of 6 June 1966 between Austria and Israel.

Law stated - 18 July 2022

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 enforcement of foreign judgments in Austria.

Law stated - 18 July 2022

Sources of law

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

The sources of law are the aforementioned regulations and international (bilateral and multilateral) treaties, if applicable, and Austrian statutory law relevant in connection with the recognition and enforcement of foreign judgments – namely, the Austrian Code of Civil Procedure , the Austrian Jurisdiction Act and the Austrian Enforcement Act . Austrian case law is not binding but is strongly taken into consideration by the courts.

Law stated - 18 July 2022

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?

Austria 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.

Law stated - 18 July 2022

BRINGING A CLAIM FOR ENFORCEMENT

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?

The statute of limitation is a question of substantive and not procedural law. Therefore, the limitation period varies depending on the claim in question and the law applicable to such a claim, which means that the limitation period and the interruption of the limitation period must be assessed under the law that governs the claim in question.

Under Austrian law, a judgment may be enforced within 30 years of its entry into legal force, irrespective of which limitation period was applied to the claim awarded in the judgment. The limitation period starts from the day the judgment becomes legally binding. It is interrupted where a motion for enforcement is filed with and finally granted by the competent court.

In the case of a final judgment of a foreign court, Austrian law differentiates between the following two scenarios, namely:

- if the foreign judgment is in principle enforceable in Austria, the statute of limitations must be assessed under the law applicable to the claim awarded in the judgment. Therefore, Austrian courts may reject the declaration of enforceability where, under the applicable foreign law, the right to enforce the judgment has already become time-barred; and
- if the foreign judgment is not enforceable in Austria, such a final judgment only interrupts the statute of limitations under the law applicable to the claim awarded in the judgment and causes the limitation period to start to run again.

Law stated - 18 July 2022

Types of enforceable order

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

In general, all remedies ordered by a foreign court are enforceable in Austria. It is essential that the foreign judgment represents a writ of execution in its country of origin, and that the foreign judgment is (at least temporarily) enforceable in the country in which it was rendered. The foreign judgment need not take the form of a domestic writ of execution within the meaning of the Austrian Enforcement Act (AEA). The foreign judgment must, however, meet certain requirements asserting its determinability and form as a writ of execution.

According to the Brussels Ia Regulation Recast and the Brussels I Regulation (together, the Brussels Regime), where a judgment contains an order that is not known to the law of the member state addressed, the measure or order should, to the extent possible, be adapted to one that has equivalent effects attached to it and pursues similar aims.

However, Austrian public policy must be considered when assessing whether remedies are enforceable in Austria. Only remedies that do not violate the fundamental principles of Austrian law will be enforceable. Austrian law, for example, does not countenance punitive damages. While there is no applicable case law; in literature, it is argued that the

concept of punitive damages could violate Austrian public policy and, therefore, will not be enforceable in Austria.

Law stated - 18 July 2022

Competent courts

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

Cases seeking enforcement of foreign judgments must be brought before the competent court in Austria. According to the AEA, the competent court for the declaration of enforceability, in general, is the district court of the opposing party's domicile. Once the declaration of enforceability becomes effective, the foreign judgment may be enforced equally to domestic enforceable titles.

The application for the declaration of enforceability may be filed in conjunction with the motion for enforcement. If, in such cases, the competent court for the declaration of enforceability and that for the motion for enforcement are different, the application must be filed with the court competent for the enforcement proceedings.

An amendment of the AEA entered into force on 1 July 2021 to make the enforcement procedure more efficient. The amended AEA applies to all motions of enforcement that are filed after 30 June 2021.

With the amended AEA the competent court for all enforcements directed towards the recovery of monetary claims is generally the opposing party's general place of jurisdiction. There are only a few exceptions from this general rule (eg, when land property is the object of enforcement the competent court will primarily be the court where the land is registered). Also, a transfer to the initiating court is possible if several proceedings are pending with different courts.

The new consolidation of competence leads to clarity and security since the decision of the competent court takes effect for all enforcement proceedings, leading to an understanding of whether the debtor is evidently insolvent resulting in the potential application of insolvency law at an early stage.

Jurisdiction clauses entered into between the parties are inadmissible and not to be considered regarding the declaration of enforceability and the motion for enforcement.

Law stated - 18 July 2022

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?

In general, the enforcement of foreign judgments in Austria is contingent upon the application and issuance of a declaration of enforceability. Once the declaration of enforceability becomes effective, the judgment may be enforced (ie, the process for enforcement may be initiated). The application for the declaration of enforceability may, however, be filed in conjunction with the motion for enforcement at the same time with the same court.

Contrary to this twofold process for obtaining recognition separate from the process of enforcement, the enforcement of EU member state judgments is subject to a simplified procedure. Under the Brussels Regime, as a general rule, a judgment rendered in an EU member state is recognised in other EU member states without any separate recognition proceeding. Further, a judgment given in an EU member state, which is enforceable in that EU member state, is enforceable in any other EU member state without any declaration of enforceability. This notwithstanding, there are several limited grounds on which the recognition and enforcement of a foreign judgment can be denied under the Brussels Regime. In terms of enforcement, a judgment was given in another EU member state and enforceable in that state shall be enforced in any other EU member state when it has been declared enforceable there upon the application of any interested party. The judgment creditor must only provide a copy of the judgment and a certificate certifying that

the judgment is enforceable and containing an extract of the judgment and relevant information on the recoverable costs of the proceedings and the calculation of interest.

Law stated - 18 July 2022

OPPOSITION

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?

In general, a foreign judgment may not be reviewed as to its substance. Besides the general requirements for the issuance of a declaration of enforceability (enforceability in the country of origin and reciprocity), the declaration of enforceability may be denied if:

- under the (hypothetically applied) Austrian rules on jurisdiction, the foreign court would not have jurisdiction over the legal matter;
- the right to be heard has been violated – namely, the opposing party could not properly participate in the foreign proceedings due to irregularities in the proceedings; or
- the judgment manifestly violates basic principles of Austrian law (public policy).

Simplified special rules apply regarding judgments of other EU member states. Under no circumstances may a foreign judgment of another EU member state be reviewed as to its merits (prohibition of the révision au fond). According to the Brussels Ia Regulation Recast and the Brussels I Regulation (together, the Brussels Regime), upon the opposing party's application, recognition and enforcement shall be refused if:

- the recognition or enforcement is manifestly contrary to Austrian public policy;
- the defendant was not served with the document that instituted the proceedings in sufficient time and in such a way as to enable the defendant to arrange for a defence;
- the recognition or enforcement is irreconcilable with a judgment given in a dispute between the same parties in Austria; or
- the recognition or enforcement is irreconcilable with an earlier judgment given in another EU or non-EU member state involving the same cause of action and the same parties.

Law stated - 18 July 2022

Injunctive relief

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

The parties to the proceedings may, within four weeks, file an appeal against the decision through which the declaration of enforceability was granted. However, such an appeal does not constitute a reason to stay the enforcement proceedings. If the opposing party has appealed the writ of execution, it can apply for a stay of the proceedings under the Austrian Enforcement Act.

If the writ of execution is modified or suspended in its country of origin after the declaration of enforceability becomes

legally effective, the opposing party may file for the suspension or alteration of the declaration of enforceability. This application may be filed in conjunction with a motion to close, restrict or at least stay the enforcement proceedings.

If the enforcement is already approved before the issuance of a final declaration of enforceability (because of a conjunct motion for a declaration of enforceability and enforcement), the enforcement proceedings must be initiated, but any realisation acts (eg, the foreclosure sale of property or real property or transfer of receivables) are not to be initiated until the declaration of enforceability becomes final and legally binding.

Law stated - 18 July 2022

REQUIREMENTS FOR RECOGNITION

Basic requirements for recognition

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

The basic mandatory requirements for the declaration of enforceability under Austrian law are that:

- the foreign judgment is enforceable in the country in which it was rendered; and
- reciprocity is ensured between the country of origin and Austria, either by bilateral or multilateral treaties or by other regulations (eg, regulations on reciprocity).

Notwithstanding the above, even in the case that reciprocity is ensured by one of the above-mentioned means, a declaration of enforceability may be refused if it is established that reciprocity is not practised by the country of origin.

Even if these mandatory requirements for enforceability are met, the declaration of enforceability may be refused under Austrian law if:

- under the Austrian rules on jurisdiction, the foreign court would not have jurisdiction over the legal matter;
- the opposing party could not properly participate in the foreign proceedings due to irregularities in the proceedings; or
- there has been a violation of Austrian public policy.

From a procedural point, the foreign judgment must be submitted in original or in a copy issued by the court that rendered the judgment. Further, a certified translation of the foreign judgment must be submitted. A judgment rendered in another EU member state is recognised in Austria with no special procedure.

Law stated - 18 July 2022

Other factors

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

No additional non-mandatory factors must be considered when filing for a declaration of enforceability of a foreign judgment of a non-EU member state.

Law stated - 18 July 2022

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?

When deciding upon whether the foreign judgment violates the fundamental principles of Austrian procedural law, the courts also take into consideration whether the judgment was rendered under due process. Austrian procedural public policy will be deemed as violated where the proceedings violated the basic principles of a fair trial. Examples of such violations include the denial of the party's right to be heard or the violation of the right to an appropriate legal defence (eg, lack of due service of procedural orders or inappropriately short preparation periods).

The same objections will be taken into consideration under the Brussels Regime when deciding upon an application of the opposing party for refusal of recognition or enforcement based on an alleged violation of Austrian public policy.

Law stated - 18 July 2022

JURISDICTION OF THE FOREIGN COURT

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?

When deciding upon the declaration of enforceability, Austrian courts will examine whether, under Austrian rules on jurisdiction, the foreign court had jurisdiction over the legal matter. When assessing this prerequisite, it is sufficient for the jurisdiction of the foreign court to have been established under any of the Austrian provisions on jurisdiction, no matter whether this legal ground was actually applied in the state of origin. The objection of missing jurisdiction, for example, may be successfully established in the case of a default judgment of a court that did not have jurisdiction over the controversy and to which the defendant did not submit at any stage of the proceedings.

Under the Brussels Ia Regulation Recast and the Brussels I Regulation (together, the Brussels Regime), the jurisdiction of the court of origin shall not be reviewed by the enforcing court. Further, Regulation (EU) No. 1215/2012 (Brussels Ia Regulation Recast) states that public policy tests may not be applied to the rules relating to jurisdiction. In exceptional cases (eg, consumers and employees) the court, in its examination of the grounds of jurisdiction, shall be bound by the findings of fact on which the court of the state of origin based its jurisdiction.

Law stated - 18 July 2022

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 enforcing court will examine whether the foreign court had subject-matter jurisdiction over the dispute.

Law stated - 18 July 2022

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?

The issuance of a declaration of enforceability of a foreign judgment may be declined if the defendant was not served with the document that instituted the proceedings and, therefore, did not have sufficient time to arrange a defence. Such an objection can be cured where the defendant actually participated in the subsequent proceedings. Also, under Austrian case law, the service of a document in a foreign language on an Austrian addressee is not deemed to be properly served if no translation of the document into German is attached. Such an objection may, however, be disregarded in the case that the defendant could understand the content of the respective document instituting the proceedings.

Under the Brussels Ia Regulation Recast, the recognition and enforcement of a judgment may be refused where the judgment was given in default of appearance if 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 a defence.

Law stated - 18 July 2022

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?

Austrian courts will not consider the fairness or the relative inconvenience of a foreign judgment when deciding upon the declaration of enforceability of the judgment, as long as the judgment does not violate Austrian procedural or substantive public policy. The same applies to the application of the opposing party to refuse recognition or enforcement under the Brussels Regime.

Law stated - 18 July 2022

EXAMINATION OF THE FOREIGN JUDGMENT

Vitiation by fraud

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

Where the opposing party establishes that the foreign judgment has suffered a violation by fraud, such violation may be deemed a violation of the basic principles of Austrian law. In the case that the declaration of enforceability would conflict with Austrian public policy, Austrian courts may refuse the issuance of the declaration of enforceability. The same applies to the application of the opposing party to refuse recognition or enforcement under the Brussels Ia Regulation Recast and the Brussels I Regulation (together, the Brussels Regime).

Law stated - 18 July 2022

Public policy

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

Generally, Austrian courts examine foreign judgments for their consistency with Austrian public policy (procedural and substantive public policy). However, according to Austrian case law, the public policy standard is defined very narrowly. Refusing the declaration of enforceability or the enforcement of foreign judgments only refers to the violation of the fundamental principles of Austrian jurisdiction (eg, the mandatory principles of the Constitution or criminal law). Under no circumstances may a foreign judgment be reviewed as to its merits.

Objections to enforcement are not observed ex officio but must be put forward by the parties. In practice, objections to enforcement based on this ground are fairly common but rarely successful.

Law stated - 18 July 2022

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?

Austrian courts may refuse the issuance of the declaration of enforceability if the foreign judgment contradicts other final and conclusive judgments involving the same parties. Under the Brussels Regime, the court may refuse the recognition and enforcement if the judgment is irreconcilable with:

- a judgment given between the same parties in the addressed member state; or
- an earlier judgment given in another member state or a third state involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition in the addressed member state.

Law stated - 18 July 2022

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?

Principles of agency or alter ego to enforce a judgment against a party that is not stated in the judgment do not apply in Austria. A foreign judgment can only be enforced against the party that is named as a debtor in the foreign judgment.

Law stated - 18 July 2022

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?

When deciding upon the declaration of enforceability, Austrian courts will examine whether, under the Austrian rules on jurisdiction, the foreign court had jurisdiction over the legal matter. In general, under Austrian law, the court must

dismiss a complaint if it relates to a matter that is subject to an arbitration agreement (unless the respondent makes submissions on the merits of the dispute or orally pleads before the court without raising objections to this effect, or the court establishes that the arbitration agreement is invalid or unenforceable). Therefore, depending on the circumstances of the case, Austrian courts may conclude that, under the Austrian rules on jurisdiction, the foreign court did not have jurisdiction over the legal matter and will thus reject the application for a declaration of enforceability.

Regulation (EU) No. 1215/2012 (Brussels Ia Regulation Recast) does not apply to arbitration proceedings. According to the Brussels Ia Regulation Recast recitals, an EU member state court ruling on the validity of an arbitration agreement is not subject to the rules on recognition and enforcement of the Brussels Regime, regardless of whether arbitration is a principal or incidental question. Therefore, an EU member state court is not required to recognise another EU member state court's judgment on the validity of an arbitration agreement. Further, EU member state courts may recognise and enforce arbitral awards under the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), which takes precedence over the Brussels Regime, even if the arbitral award conflicts with another EU member state court judgment (eg, if the court rules that the arbitration agreement was invalid).

Law stated - 18 July 2022

Favourably treated jurisdictions

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

Apart from legal facilitations and simplifications that go hand in hand with EU regulations, bilateral and multilateral treaties, and ultimately the principle of established reciprocity, there are no foreign judgments that are treated favourably in Austria.

Law stated - 18 July 2022

Alteration of awards

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

The declaration of enforceability may also recognise only parts of a judgment (eg, where parts of the judgment would violate Austrian public policy, but the other parts meet the prerequisites to be enforceable under Austrian law). For instance, the declaration of enforceability may be granted concerning the awarded capital, but not the awarded interest. However, such a separation only comes into question if it is possible to separate the admissible part clearly and distinctly from that which would violate public policy.

Law stated - 18 July 2022

AWARDS AND SECURITY FOR APPEALS

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?

When recognising a foreign judgment, Austrian courts do not convert the damage award into local currency. However, once realisation acts are being undertaken, the award must be converted into local currency.

Court costs and attorneys' fees, as well as interest claims, are usually considered when deciding upon the enforceability of a foreign judgment. The interest rate, generally, is governed by the law that also applies to the principal claim. However, it should be noted that rates that are not sufficiently determined may not be declared enforceable. Further, interest rates that violate Austrian public policy (eg, an interest rate of 100 per cent per annum) may not be declared enforceable. Under Austrian law, interest is a matter of substantive law. Under the Austrian Civil Code, the interest rate is determined as a basic percentage of 4 per cent per annum and, under the Austrian Commercial Code, in the case of disputes between non-consumers, as 9.2 per cent per annum above the base interest rate as published by the Austrian National Bank.

Law stated - 18 July 2022

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 decision on the declaration of enforceability may be appealed within four weeks (in certain cases within two months) of the decision being served to the parties to the proceedings. Where the opposing party files an appeal against the decision, the applicant is granted the right to file a reply to such an appeal within four weeks of being served with the appeal. The decision on the declaration of enforceability may be appealed partially or in its entirety. The appealing party is not bound by the prohibition of novation – namely, it is not restricted to supporting or confuting the facts that have already been brought forward during the first instance proceedings.

If the motion for enforcement has already been approved (because of a conjunct motion for a declaration of enforceability and enforcement) before the declaration of enforceability becomes legally binding, the enforcement proceedings must be initiated, but any realisation act must be refrained from until the declaration of enforceability becomes final and legally binding. This ensures that the foreign judgment will be enforceable against the opposing party insofar as the opposing party's assets may already be seized and attached, but not yet realised. Realisation acts (eg, foreclosure sales of property and immovable goods) may be initiated once the declaration of enforceability becomes final.

The enforcement of foreign judgments of other EU member states (being recognised in Austria without any special procedure) may be ensured under the Austrian Enforcement Act by filing a request for a pre-enforcement to secure monetary claims. This measure, however, applies only to monetary claims.

Law stated - 18 July 2022

ENFORCEMENT AND PITFALLS

Enforcement process

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

Once a foreign judgment has been declared enforceable in Austria, execution of said judgment follows the same rules as a domestic judgment. The enforcement of judgments is regulated by the Austrian Enforcement Act (AEA).

Austrian enforcement law provides for various types of enforcement. A distinction is made, on the one hand, as to whether the title to be enforced is directed at a monetary claim or at a claim for specific performance and, on the other, against which assets enforcement is to be levied. The usual methods for the enforcement of judgments are seizure of property and real property, attachment and transfer of receivables, compulsory leasing and judicial auction.

The competent court for enforcement proceedings is either the district court where the land property or other immovable property that is the object of enforcement is located or the district court of the opposing party's domicile, or, in the case of garnishment orders, the district court of the third party's domicile.

It takes approximately one to two months for a decision on recognition and enforcement to be rendered at first instance. This period may be extended by a further three to six months if the decision is appealed. The duration of the execution proceedings as such depends on whether the debtor opposes the execution measures and whether, and to what extent, the debtor possesses executable assets in Austria. Further, the parties to enforcement proceedings may request a stay of enforcement proceedings. The AEA enumerates certain grounds for such a stay of the proceedings, including an application to set aside the judgment or a motion for the suspension or alteration of the declaration of enforceability. If the stay of the enforcement proceedings might endanger the satisfaction of the enforcing creditor's claim, the court may order an appropriate security deposit from the applicant.

Law stated - 18 July 2022

Pitfalls

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

For companies acting on an international basis in particular, it is important to be able to set up an effective enforcement strategy across multiple jurisdictions once a dispute has arisen. The provisions on recognition and enforcement of foreign judgments determine whether a judgment can be passed in a country in which the debtor resides or possesses assets. But even at the very beginning of a business relationship, parties should think of possible enforcement in the event of a dispute. Even at the stage of the drafting of the contract, thought should be given as to where a possible judgment could be enforced.

Seeking enforcement of a foreign judgment in Austria requires assets to be located in Austria. Publicly available information on the debtor's assets is scarce in Austria, as publicly available registers contain information only on land property and company shares. There is no public information available regarding the existence of bank accounts or other movable property. Law firms (which often cooperate with private investigators) can be of help when recovering assets in Austria.

Law stated - 18 July 2022

UPDATE AND TRENDS

Hot topics

Are there any emerging trends or hot topics in foreign judgment enforcement in your jurisdiction?

There are no updates at this time.

Law stated - 18 July 2022

Jurisdictions

Austria	WEBER & CO.
Bahrain	Charles Russell Speechlys
Brazil	Kobre & Kim LLP
China	DeHeng Law Offices
Cyprus	N. Pirilides & Associates LLC
Egypt	Soliman, Hashish & Partners
Germany	Willkie Farr & Gallagher LLP
Greece	PotamitisVekris
Indonesia	Assegaf Hamzah & Partners
Italy	Ughi e Nunziante
Japan	TMI Associates
Jordan	Hammouri & Partners
Luxembourg	Pinsent Masons
Nigeria	Streamsowers & Köhn
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