

# Enforcement of Foreign Judgments

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Fundamental Principles [Monaco]

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**I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS)**

**A. Ability to Apply for Recognition and Enforcement of a Court Judgment**

**1. Is it possible to apply for enforcement of a foreign court judgment in your country?**

**Answer:** Yes. It is possible to apply for enforcement in the Principality of judgments rendered by foreign courts provided they meet the criteria for recognition and enforcement set forth under articles 13 and following of Monegasque Law n°1.448 of 28 June 2017 relating to private international law (hereinafter referred to as “Code of Private International Law”), which entered into force on 8 July 2017.

**B. Applicable Law: General Rules**

**1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?**

**Answer:** It would be either our new Code of Private International Law (articles 13 to 20) or specific multilateral or bilateral conventions on judicial cooperation concluded by the Principality of Monaco, when the judgment sought to be enforced was issued by a State Party to one of these conventions.

**C. Special Rules: European Union**

Please note, for the purpose of this section, that Monaco is a Third Party to the European Union; therefore, Monaco does not apply European regulations.

**1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?**

**Answer:** See above question B.1 above, no distinction is made in Monaco between recognition and enforcement of a judgment issued by a Member State of the European Union and a State which does not belong to the European Union. The only relevant factor from a Monegasque perspective is whether or not the country which issued the judgment concluded with Monaco a Convention facilitating recognition and enforcement of judgments.

**2. Does the European Union have a special procedure to enforce court judgments coming from its member states?**

**Answer:** A number of European regulations provide for simplified *exequatur* proceedings within Member States which may differ depending on the subject matter of the regulation (e.g. civil and commercial matters, divorce, maintenance, succession, matrimonial property regime and civil partnerships for Member States which participate to the enhanced cooperation on these matters). We will not get into the details of the

provisions of those regulations here, especially since Monaco is not a Member State to the European Union and, therefore, does not apply such European regulations.

**D. Average Duration of Enforcement Procedure**

**1. What is the average length of time for this kind of procedure?**

**Answer:** The average length of time may vary according to the circumstances. The decision could be rendered within a few months after the procedure was filed, if unopposed. However, if the enforcement is challenged, the procedure is more likely to take years.

**II. Denial of Recognition and Enforcement of a Foreign Court Judgment: Reasons**

**A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?**

**Answer:** Yes, according to Article 15 of our new Code of Private International Law,

*“A judgement rendered by a foreign court is neither recognised nor declared enforceable in the Principality if:*

*1. it has been rendered by a court which did not have jurisdiction within the meaning of article 17 ;*

*2. the rights of the defendant have not been respected, especially where the parties have not been duly summoned and been given the opportunity to defend themselves ;*

*3. the recognition or enforcement is clearly contrary to Monegasque public policy ;*

*4. it is contrary to a decision rendered between the same parties in the Principality or to a decision previously rendered in another State and recognised in the Principality ;*

*5. a litigation is pending before a court of the Principality which was petitioned first, between the same parties and regarding the same subject matter”.*

For the purpose of fully understanding Article 15.1, please note that Article 17 of the same Code provides that:

*“A foreign court which has delivered a judgement is considered as incompetent where the courts of the Principality had exclusive jurisdiction to hear the claim, or if the litigation did not have a sufficient connection with the State where the foreign court is located, in particular where the foreign court’s jurisdiction was based solely on the temporary presence of the defendant in the State where the foreign court is located, or relating to*

*the presence in that State of assets belonging to the defendant unrelated to the litigation or relating to the exercise by the defendant in such State of a commercial or professional activity which is unrelated to the litigation.*

*These provisions shall not apply where the jurisdiction of the foreign court has been accepted by the party opposing the recognition or enforcement of the judgement rendered by that court”.*

**B. Costs and expenses**

**1. What kind of cost and expenses can a claimant expect in this enforcement procedure?**

**Answer:** First of all, the claimant will need to advance the translation costs associated with the exhibits supporting the application.

He will also need to advance the bailiff’s fees for serving the application on the defendant, as well as court fees such as registration fees associated with filing the application with the court.

If the claimant succeeds in obtaining the enforcement, such judicial costs (called “*dépens*”) will then need usually to be covered by the losing party.

Please note in this respect that such “*dépens*” do not cover lawyer’s fees paid by the parties respectively to their lawyer. However, in addition to such legal fees (which remain borne by each party notwithstanding the outcome the case) a fraction of the “*dépens*” may correspond to an additional amount of fees paid to the adverse lawyer by the losing party (see Ordinance N° 15.173).

**III. FORMAL REQUIREMENTS**

**A. Time limit**

**1. Is there a time limit to apply for enforcement of a foreign court judgment?**

**Answer:** No, as long as the foreign court judgment is still enforceable in the country in which it was issued, one may apply for its enforcement in Monaco if he has an interest in doing so.

**B. Final and Definitive Court Judgment: Provisional Enforcement**

**1. Is it mandatory for the judgment to be a final and definitive court judgment?  
If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?**

**Answer:** Yes. In order to be enforceable in Monaco, the foreign decision must be final and enforceable in the foreign country in which it was issued (Article 14 of our Code of Private International Law). Consequently, if there are

any pending appeal or opposition proceedings filed by the defendant in the foreign country, the foreign judgment cannot be enforced in Monaco.

**C. Necessary Requirements**

**1. What necessary requirements must the foreign court judgment fulfill to be recognised and enforced?**

**Answer:** The foreign court judgment needs to meet the substantive and procedural criteria set forth in Article 15 of our Code of Private International Law (see question II. A above).

Besides, the application and supporting exhibits need to meet the formal requirements set forth in Article 18 of our Code of Private International Law (see question IV. C below).

**D. Other Formal Requirements: Court Fees**

**1. Is it mandatory to pay court fees for this kind of application?**

**Answer:** Yes. See question II. B. 1.

**E. Are there any other formal requirements in your country to enforce a court judgment?**

**Answer:** There are no other formal requirements than those detailed in question IV. B.1 and IV.C below.

**IV. PROCEDURE**

**A. Competent court**

**1. Which court or courts are competent to decide an enforcement application?**

**Answer:** The First Instance Court of Monaco.

**B. Informational Requirements for the Application to Enforce a Foreign Court Judgment**

**1. What information must be contained in the enforcement application of a foreign court judgment?**

**Answer:** The enforcement application is a petition served on the defendant and filed with the First Instance Court. It must provide all the necessary details and explanations as to the foreign order sought to be enforced in order to



establish before the Monegasque court that such order meets the criteria to be recognized and enforced within the Principality (see II. A above).

**C. What documents must be included with/attached to the application to enforce a foreign court judgment?**

**Answer:** Under Article 18 of our Code of Private international Law, the claimant seeking the judicial enforcement or recognition of a foreign order must provide the court with the following :

\*an authenticated original copy of the judgment;

\*the original of the deed of service or of any other deed serving as such in the State where the judgment was issued;

\*a certificate issued, either by the foreign court which issued the judgment, or by the registrar of that court, acknowledging that no appeal or opposition was made against the order, and that such order is enforceable within the territory of the State in which it was issued.

These documents have to be certified by a diplomatic agent in Monaco or a competent authority in the foreign country (through the formality of the legalization or of the *apostille*, depending on whether the foreign country is a Party to the Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents).

Besides, when they are drawn up in a foreign language, they must be translated into French by a certified translator.

**D. Phases of the Procedure**

**1. What are the phases of the procedure to enforce a foreign court judgment?**

**Answer:** Enforcement proceedings are governed by the provisions of Article 14 and following of the Monegasque Code of Private International Law.

Those are adversarial proceedings brought before the First Instance Court of Monaco.

They start with a writ of summons served on the defendant and filed with the court.

The parties are first summoned to a procedural hearing, at which a procedural calendar will be set in the framework of which the parties will exchange their submissions.

When the case is ready to be tried, the court sets a date of oral arguments.

**E. Opposition of the Defendant**

**1. Can a defendant oppose to this enforcement application?**

**Answer:** Yes within the framework of the adversarial proceedings described here above.

**2. Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons?**

**Answer:** Yes, see the limited grounds for opposing enforcement detailed in question II. A above.

**F. Appeal and its Consequences in this Procedure**

**1. Is it possible to appeal a court decision to recognise and enforce a foreign court decision?**

**Answer:** Yes. Such an appeal is governed by the provisions of Monegasque law applicable to ordinary appeals (Article 20 of the Monegasque Code of Private International Law, Article 422 and following of the Monegasque Code of Civil Procedure).

**2. Can this appeal suspend the enforcement?**

**Answer:** In principle, the appeal suspends the enforcement of the judgment unless it has been specifically ruled otherwise by the First Instance Court which may do so under limited specific circumstances, or in case of emergency, which command that its ruling be immediately enforceable (Articles 424 and 202 of the Monegasque Code of Civil Procedure).

**G. Recovery of judicial costs and expenses**

**1. Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?**

**Answer:** See question II. B. 1 above.

**V. RECOVERY OF THE DEBT**

**A. Means of Enforcement**

**1. What types of assets are subject to enforcement of the court's judgment?**

**Answer:** Any assets directly owned by the defendant (and not through a *trust* or another corporate or legal entity) located on Monegasque territory are subject to enforcement.

**VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION**

**A. Any other issues of interest in your jurisdiction**

**Answer:** Please note that our Code of Private International Law significantly modified the requirements for recognizing and enforcing a foreign judgment in Monaco.

Mainly, there is no longer a dual regime of enforcement of foreign orders depending on whether they were issued by a country which reciprocally enforces Monegasque orders or by another country. Under the new Code, under no circumstances can the Monegasque court, while ruling on the enforcement application, review the foreign judgment on the merits and alter it (former Article 474 of the Monegasque Code of Civil Procedure).

In this respect, please note that, under the current state of Monegasque case law rendered since the entry into force of our new Code, such Code shall apply even to foreign judgments issued before its entry into force.

Monaco

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