

Enforcement of Foreign Judgments

Fundamental Principles [Bosnia & Herzegovina]

2020



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I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS)¹

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, however, in order to be enforceable, a foreign court judgment must be recognized by the competent court in Bosnia and Herzegovina. Therefore, in BiH there are two separate proceedings, first being the process of recognition of foreign court judgment and the second being the enforcement proceedings. Once the foreign court judgment is recognized by the competent court in BiH, such judgment has the same legal force and effect as a domestic court judgment. So, in the further course of the text, when speaking of enforcement of the foreign court judgment, it is assumed that such judgment was already recognized.

B. Applicable Law: General Rules

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

Answer:

The law regulating the recognition of a foreign court judgment is the Law on Resolving Conflict of Laws (Official Gazette of SFRY, nos. 43/82, 72/82; and Official Gazette of Republic BiH, nos. 2/92, 13/94) while the enforcement of a foreign judgment, after being recognized by competent court, is the Law on Enforcement Proceedings of RS (Official Gazette nos. 59/03, 85/03, 64/05, 118/07, 29/10, 57/12, 67/13, 98/14, 5/17, 66/18) and Law on Enforcement Proceedings of FBiH (Official Gazette nos. 32/03, 33/06, 39/06, 39/09, 35/12, 46/16), respectively.

C. Special Rules: European Union

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

Answer:

No.

¹ The state Bosnia and Herzegovina (“**BiH**”) consists of two entities - Federation of BiH (“**FBiH**”) and Republika Srpska (“**RS**”), as well as one autonomous district - Brčko District (“**BD**”), where different legal regimes apply. The next level of the BiH's political subdivision is manifested in cantons - they are unique to the FBiH entity, which consists of ten of them. The municipalities and cities represent the final level of political division in BiH, with their local administrations.

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

Answer:

No.

D. Average Duration of Enforcement Procedure

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

Answer:

There is no official data on the average length of the procedure. However, based on our experience the timeframe for finalizing the procedure is around one and a half 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. The reasons for refusing the recognition of the foreign judgement are:

- There is an exclusive jurisdiction of BiH courts or other competent authority in connection with the subject matter;
- Recognition and enforcement of the court judgement violates BiH constitution or public policy rules;
- A lack of reciprocity in recognition of foreign judgment between the country in which the judgement has been granted and BiH;
- The party against which the judgment is invoked was unable to present their case due to irregularities in the proceedings;
- The award has not yet become final;
- If the BiH courts or other competent authority have already rendered a final decision or if some other foreign court decision on the same subject matter has already been recognized in BiH.

B. Costs and expenses

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

Answer:

The following costs and expenses can be associated with such recognition and enforcement procedure:

- Court fees for recognition of foreign court judgment;
- Translation fees;
- Lawyers fees (dependent on the complexity of the matter and whether the procedure is challenged by the other party);
- Process servers fees if the judgment is served on the other party by a process server;
- Court fees for enforcement proceedings (dependent on the method of enforcement used).

III. FORMAL REQUIREMENTS

A. Time limit

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

Answer:

There is no prescribed deadline to apply for recognition of a foreign court judgment, however, the limitation period for enforcement procedure is 10 years after the resolution on recognition has become final.

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. A court judgement has to be final and definite in order to be successfully recognized and enforced.

C. Necessary Requirements

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

Answer:

The conditions for recognition of foreign court judgments are set negatively, (see II. A. section.) Once the resolution on recognition becomes final, such resolution can be enforced by filing an enforcement application to the competent court.

D. Other Formal Requirements: Court Fees

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

Answer:

Yes. Court fees for application for recognition are being determined based on the value of the dispute as follows:

RS:

- 1) up to BAM 1,500 (approx. EUR 750) – BAM 50 (approx. EUR 25),
- 2) from BAM 1,500 to BAM 3,000 (approx. EUR 1,500) - BAM 100 (approx. EUR 50),
- 3) from BAM 3,000 to BAM 10,000 (approx. EUR 5,100) – BAM 200 (approx. EUR 100),
- 4) from BAM 10,000 to BAM 50,000 (approx. EUR 25,500)– BAM 500 (approx. EUR 250),
- 5) from BAM 50,000 to BAM 100,000 (approx. EUR 51,100)- BAM 1,000 (approx. EUR 500)
- 6) more than BAM 100,000 - 1% on the value of the dispute, but not more than BAM 10,000.

FBiH

As mentioned, the FBiH consist of 10 cantons. Each has jurisdiction/authority to regulate court fees, which are similar to those applicable in RS.

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

Answer:

Yes. The applicant must procure the certificate of a competent foreign court or another authority on finality and enforceability of a decision under the law of the state in which the decision was rendered in order to conduct the recognition process. Once the foreign court judgment is recognized, the applicant must obtain certificate on finality and enforceability of the resolution on recognition and subsequently initiate an enforcement proceeding by submitting the enforcement application to the competent court.

IV. PROCEDURE

A. Competent court

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

Answer:

RS: Resolution on the recognition of the foreign judgement falls under the jurisdiction of the District Courts, while the District Commercial Courts or District Courts are competent to decide on an enforcement application.

FBiH: Resolution on the recognition of the foreign judgement falls under the jurisdiction of the Cantonal Courts, while the Municipality Courts are competent to decide on an enforcement application.

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 must contain a request for enforcement which includes the enforceable or credible document upon which the enforcement is requested (which is, in this specific case, the resolution of the competent domestic court on the recognition of a foreign court judgement), and details of the enforcement creditor and enforcement debtor, the amount of claim, the means of enforcement, enforcement subject, as well as other data necessary for enforcement procedure. This is on the assumption that the foreign court judgment is recognized in BiH and is final.

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

Answer:

The applicant must attach all documents which supports the information contained in the enforcement application, such as a resolution on recognition, bank accounts of the debtor, and an excerpt from the land register relating to the debtor's property etc.

D. Phases of the Procedure

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

Answer:

The proceeding is initiated by submitting a proposal for recognition to the competent court accompanied by the original or certified copy of the foreign court judgement. The proposal is delivered to the debtor, who is entitled to provide its response. After the court issues a resolution on recognition of the foreign court judgment, the debtor has the right to file an appeal within 15 days to the second instance court. After the lapse of the 15-day period, (i.e. refusal of the appeal by the second instance court,) the resolution on recognition becomes valid and enforceable.

After obtainment of the final resolution on enforcement, the creditor may initiate an enforcement procedure as described in section B and C above.

E. Opposition of the Defendant

1. Can a defendant oppose to this enforcement application?

Answer:

Yes.

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. The defendant may submit an appeal on the resolution on enforcement based on the following reasons:

1. If the document upon which the resolution on enforcement was issued is not an enforceable document,
2. If the enforceable document upon which the resolution on enforcement was issued has been repealed, annulled, altered or in some other way rescinded;
3. if the parties, (based on a public document or legally certified document made after the issuance of the enforceable document,) have agreed in writing that they will not request an enforcement on the basis of the enforceable document, permanently or temporarily;
4. If the legal deadline within which the enforcement may be requested has expired;
5. If the enforcement was ordered on an asset which is exempt from enforcement, or on which the scope of enforcement is limited;
6. If the enforcement creditor is not authorized to seek enforcement on the basis of the enforceable document, or if s/he is not authorized to seek enforcement against the enforcement debtor;
7. If any conditions set forth in the enforceable document have not been met, unless otherwise provided by law;

8. If the claim ceased because of a fact that occurred at a time when the judgment debtor was not able to present it in the proceedings in which the decision was issued, or if the claim ceased because of an event that occurred subsequent to the conclusion of court or administrative settlement;
9. As a result of a fact that occurred at the time when the debtor was not able to present it in the proceedings in which the decision was issued, or if, as a result of a fact that occurred subsequent to court or administrative settlement, the enforcement of the claim was postponed, prohibited, altered or in some other way prevented, either permanently or temporarily;
10. If a claim decided on by an enforceable document has expired due to the statute of limitations.

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.

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

Answer:

Yes.

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:

In the process of recognition of foreign court judgment, each party bears its own costs. If the recognition process is successful, the opposing party will remunerate the applicant. The same principle applies to enforcement proceedings.

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 debtor's assets or proprietary rights can be subject to enforcement, except the assets which are not in commerce, objects, munitions and equipment for armed forces purposes and the police, as well as the funds secured for that purpose.

VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION

A. Any other issues of interest in your jurisdiction

Answer:

No.

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