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The International Comparative Legal Guide to:

Enforcement of Foreign Judgments 2018

3rd Edition

A practical cross-border insight into the enforcement of foreign judgments

Published by Global Legal Group, with contributions from:

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Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Stephens & George
Print Group
March 2018

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ISBN 978-1-911367-99-4
ISSN 2397-1924

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EDITORIAL

Welcome to the third edition of *The International Comparative Legal Guide to: Enforcement of Foreign Judgments*.

This guide provides corporate counsel and international practitioners with a comprehensive worldwide legal analysis of the laws and regulations relating to the enforcement of foreign judgments.

It is divided into two main sections:

Two general chapters. These chapters are designed to provide readers with a comprehensive overview of key issues affecting the enforcement of foreign judgments, particularly from the perspective of a multi-jurisdictional transaction.

Country question and answer chapters. These provide a broad overview of common issues in the enforcement of foreign judgments in 36 jurisdictions.

All chapters are written by leading lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors Louise Freeman and Chiz Nwokonkor of Covington & Burling LLP for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.com.

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1 Country Finder

1.1 Please set out the various regimes applicable to recognising and enforcing judgments in your jurisdiction and the names of the countries to which such special regimes apply.

Applicable Law/ Statutory Regime	Relevant Jurisdiction(s)	Corresponding Section Below
Las Leñas Protocol on Jurisdictional Cooperation and Assistance in Civil, Commercial, Labor and Administrative Matters (Legislative Decree No. 55, dated 19 April 1995, Decree No. 2,067, dated 12 November 1996, Legislative Decree No. 1,021, dated 24 November 2005 and Decree No. 6,891, dated 2 July 2009).	Brazil, Argentina, Paraguay, Uruguay, Bolivia and Chile.	Section 3.
OAS Inter-American Convention on International Commercial Arbitration 1975 – Panama Convention (Legislative Decree No. 90, dated 6 June 1995 and Decree No. 1,902, dated 9 May 1996).	All signatory countries to the Convention.	Section 3.
OAS Inter-American Convention on the Extraterritorial Validity of Foreign Judgments and Arbitral Awards 1979 – Montevideo Convention (Legislative Decree No. 93, dated 20 June 1995 and Decree No. 2,411, dated 2 December 1997).	All signatory countries to the Convention.	Section 3.

Applicable Law/ Statutory Regime	Relevant Jurisdiction(s)	Corresponding Section Below
United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 – New York Convention (Legislative Decree No. 52, dated 25 April 2002 and Decree No. 4,311, dated 23 June 2002).	All signatory countries to the Convention.	Section 3.
The MERCOSUL Accord on International Commercial Arbitration – Buenos Aires Convention 1998 (Legislative Decree No. 265, dated 29 December 2000 and Decree No. 4,719, dated 4 June 2003).	Brazil, Argentina, Paraguay and Uruguay.	Section 3.
Havana Convention on International Private Law 1928 – Bustamante Code (Decree No. 18,871, dated 13 August 1929).	Brazil, Peru, Uruguay, Panama, Ecuador, Mexico, El Salvador, Guatemala, Nicaragua, Bolivia, Venezuela, Colombia, Honduras, Costa Rica, Chile, Argentina, Paraguay, Haiti, Dominican Republic, United States of America and Cuba.	Section 3.
Brazil's Federal Constitution (article 105, item 1, letter i).	Brazil.	Section 2.
Law of Introduction to the Norms of the Brazilian Law – Decree-Law No. 4,657, dated 4 September 1942.	Brazil.	Section 2.
Brazilian Code of Civil Procedure 2015 – Federal Law No. 13,105, dated 16 March 2015 (effective as from 18 March 2016).	Brazil.	Section 2.

Applicable Law/ Statutory Regime	Relevant Jurisdiction(s)	Corresponding Section Below
Brazilian Arbitration Law 1996 – Federal Law No. 9,307, dated 23 September 1996 (as amended by Federal Law No. 13,129, dated 26 May 2015).	Brazil.	Section 2.
Internal Rules of the Brazilian Superior Court of Justice.	Brazil.	Section 2.

2 General Regime

2.1 Absent any applicable special regime, what is the legal framework under which a foreign judgment would be recognised and enforced in your jurisdiction?

Brazil's legal framework on the recognition and enforcement of foreign judgments and foreign arbitral awards comprises (i) Brazil's Federal Constitution (article 105, item I, letter i), (ii) the Law of Introduction to the Norms of the Brazilian Law – Decree-Law No. 4,657, dated 4 September 1942, (iii) the Brazilian Code of Civil Procedure 2015 – Federal Law No. 13,105, dated 16 March 2015, (iv) the Brazilian Arbitration Law 1996 – Federal Law No. 9,307, dated 23 September 1996 (as amended by Federal Law No. 13,129, dated 26 May 2015), and (v) the Internal Rules of the Brazilian Superior Court of Justice.

2.2 What constitutes a 'judgment' capable of recognition and enforcement in your jurisdiction?

Notwithstanding the fact that Brazilian law does not set forth a single and exact description or definition of what constitutes a "judgment" capable of recognition and enforcement in Brazil, the general rule in Brazil is that any final decisions rendered by foreign judicial authorities, as well as non-judicial decisions that hold a jurisdictional nature, will be subject to recognition and enforcement by Brazilian judicial authorities.

In practice, this means that the following "foreign judgments" will be subject to recognition and enforcement by Brazilian judicial authorities: (i) foreign judgments (*i.e.*, final decisions rendered by foreign judicial authorities); (ii) foreign judicial interlocutory decisions (which will generally be enforced through the rendering of an *exequatur* by the Brazilian Superior Court of Justice, through a rogatory letter); (iii) foreign arbitral awards, partial or final (*i.e.*, arbitral awards rendered outside of Brazil); and (iv) foreign arbitral interlocutory decisions (*i.e.*, arbitral interlocutory decisions rendered in arbitrations seated outside of Brazil, which will in principle – much like the foreign judicial interlocutory decisions – be executed through the rendering of an *exequatur* by the Brazilian Superior Court of Justice, through a rogatory letter).

2.3 What requirements (in form and substance) must a foreign judgment satisfy in order to be recognised and enforceable in your jurisdiction?

In Brazil, the basic formal and substantive requirements for the recognition and enforcement of foreign judgments or foreign arbitral awards are:

- (a) judgments or arbitral awards must have been rendered by a state court or arbitral tribunal that held jurisdiction over the matter, according to the law of the jurisdiction of origin;

- (b) as regards an arbitral award, it is necessary that the parties involved in the arbitral proceedings were legally capable of entering into arbitral agreements/clauses and the matter examined by the arbitral tribunal was indeed arbitrable under Brazilian Law;
- (c) defendants must have been duly served and processed and been given the opportunity to present their case, or, in case a default judgment occurs, it must be evidenced that it was carried out lawfully;
- (d) the content of the decision must not violate Brazil's public policy, national sovereignty or the dignity of the human person;
- (e) there must be no conflict between the decision to be recognised and a previous final domestic decision on the same matter and involving the same parties (please refer to question 2.9 below for further details);
- (f) the decision must be valid, lawful and enforceable in the jurisdiction where it was rendered (as a rule, the Brazilian Superior Court of Justice only ratifies foreign decisions that became *res judicata*; however, said Court has precedents granting *exequatur* to rogatory letters issued by foreign authorities based on interim decisions, as discussed in question 2.2 above);
- (g) an original or certified copy of the foreign judgment to be recognised must be presented together with a sworn translation and must have been previously authenticated by the competent Brazilian consular authority (unless such formality is dispensed by international treaties); if it is a foreign arbitral award, the original or a certified copy of the arbitration agreement should be presented as well, accompanied by a sworn translation; and
- (h) the foreign judgment or foreign arbitral award must, in principle, be sufficiently reasoned.

2.4 What (if any) connection to the jurisdiction is required for your courts to accept jurisdiction for recognition and enforcement of a foreign judgment?

As a rule, there is no connection requirement under Brazilian law in order for the Brazilian Superior Court of Justice to accept jurisdiction to recognise a foreign judgment or foreign arbitral award. Under exceptional circumstances, the Brazilian Superior Court of Justice may inquire as to the interest of the creditor of the judgment in having it recognised and enforced in Brazil, especially as to whether the debtor of the award is domiciled in Brazil or there are any obligations to be enforced in this jurisdiction.

2.5 Is there a difference between recognition and enforcement of judgments? If so, what are the legal effects of recognition and enforcement respectively?

Yes, recognition and enforcement are different concepts under Brazilian law. In general terms, recognition may be defined as the admission and acknowledgment as to the existence, validity and enforceability of the relevant foreign decision by Brazil's judicial authority responsible for such ratifications (*i.e.*, the Brazilian Superior Court of Justice). The recognition of a foreign judgment has the effect of legally transforming said decision into an enforceable decision within the Brazilian territory. In its turn, the enforcement of foreign judgments or awards may be defined as the process through which an interested party puts in force (enforces) the provisions contained in the – previously recognised – foreign judgment or award.

Considering the above, it is unlikely that a judgment creditor would be interested in solely seeking the recognition of the relevant

foreign decision, without carrying out its subsequent enforcement. Notwithstanding, once the Brazilian Superior Court of Justice recognises a foreign judgment, it technically starts producing its effects in Brazil immediately, without the need for subsequent enforcement proceedings. In that sense, and especially when it comes to declaratory awards, it is possible that interested parties could solely pursue the recognition of the judgment.

2.6 Briefly explain the procedure for recognising and enforcing a foreign judgment in your jurisdiction.

The recognition and enforcement of foreign judgments in Brazil commences with the interested party presenting a recognition request (in the form of a petition/application in writing) to the Brazilian Superior Court of Justice, and providing the necessary documents to demonstrate the fulfilment of the formal and substantive requirements for ratification.

Recognition requests filed before the Brazilian Superior Court of Justice must be accompanied by the following documents:

- (i) the original or a certified copy of the judgment to be recognised;
- (ii) for the recognition of arbitral awards, also the original or a certified copy of the arbitral agreement; and
- (iii) any other documents necessary to demonstrate the fulfilment of the formal and substantive requirements for recognition.

As a rule, documents presented in recognition proceedings must **(a)** be accompanied by a sworn translation of their content into Portuguese, and **(b)** have been previously authenticated by the competent Brazilian consular authority.

After the filing of the recognition request, the President of the Court may demand that the interested party presents additional documents and/or amend its initial application. Should the Court interpret that the documents presented by the plaintiff are sufficient and the request is formally adequate, it will determine that service of process be effected on the defendant, who will then have the opportunity to present its response.

If the defendant assents to the recognition request, the President of the Court himself or herself decides the case. Should the defendant oppose the request, the case is remitted to the Superior Court of Justice's Special Court (composed of the most senior Justices of the Court). During the course of the proceedings, the Court may determine the plaintiff and defendant to provide, respectively, a reply and a rebuttal, as well as any additional documents it may deem necessary. In addition, the Federal Public Prosecutors' Office will be summoned to present an opinion on the case. After these developments, the Superior Court of Justice's Special Court proceeds to render its final decision on the case.

The length of the proceedings may vary considerably, depending on whether the opposite party agrees with the recognition request or opposes it, thus increasing the procedure's complexity. A time estimate for the Brazilian Superior Court of Justice to recognise a foreign judgment or a foreign arbitral award may vary, on average, between six months (when the defendant does not oppose the recognition request) to three-and-a-half years. On average, recognition proceedings before the Brazilian Superior Court of Justice tend to last around 30 (thirty) months.

In the instance whereby a final decision is against recognising a foreign judgment or foreign arbitral award rendered by the Superior Court of Justice, the parties involved may present, in very specific circumstances, an extraordinary appeal, directing the case to the Federal Supreme Court of Brazil.

Once the recognition is granted by the Superior Court of Justice, the foreign judgment becomes *res judicata* in Brazil, and the interested party may present a request for enforcement before the competent Brazilian Federal Courts.

It is possible for the Brazilian Superior Court of Justice to recognise only a part of the judgment in matter. This may occur either because the Court understands that only a part of the judgment is recognisable, or because the parties, for any given reason, requested the recognition of only part of the decision.

2.7 On what grounds can recognition/enforcement of a judgment be challenged? When can such a challenge be made?

Formal and substantive oppositions may be presented with the purpose of challenging requests for recognition of foreign decisions in Brazil. These oppositions may be presented before the Superior Court of Justice during the recognition proceedings.

The main grounds for opposing recognition consist in alleging that:

- (a) the process was not duly served on the defendant;
- (b) the decision in matter was issued by an incompetent state court or arbitral tribunal;
- (c) the decision in matter fails to fulfil the requirements for it to be considered valid, lawful and enforceable in its jurisdiction of origin;
- (d) the interested party failed to observe the procedural requirements and/or provide the necessary documents for the recognition proceeding;
- (e) the decision did not become *res judicata* and/or is not, for any given reason, enforceable in its jurisdiction of origin; and/or
- (f) the decision in matter violates Brazil's public policy, its national sovereignty or the dignity of the human person.

Concerning arbitral awards, certain specific defences may also be presented, such as:

- (a) the parties lacked capacity to enter into/sign arbitral agreements/clauses;
- (b) the arbitration agreement/clause that led the parties to arbitration is invalid according to the law of the jurisdiction in which the proceedings were seated and the award was rendered;
- (c) one or some of the parties was/were not given the opportunity to participate in the selection of arbitrators or in other relevant aspects of the proceedings and/or did not have the chance to present its case;
- (d) the arbitral proceedings are, for any given reason, invalid under the law of the jurisdiction where the award was rendered;
- (e) the arbitral award is, for any given reason, not binding and/or enforceable in the jurisdiction where it was rendered (for example, when the award has been set aside or suspended by state courts of the jurisdiction of origin);
- (f) the award settles disputes related to matters that are not arbitrable according to Brazilian law (which admits arbitration only for the resolution of conflicts involving disposable patrimonial rights); and/or
- (g) the arbitral award violates Brazil's public policy, its national sovereignty or the dignity of the human person.

2.8 What, if any, is the relevant legal framework applicable to recognising and enforcing foreign judgments relating to specific subject matters?

In Brazil, there are no particular legal provisions applicable for the recognition and enforcement of foreign judgments or arbitral awards related to specific subject matters.

2.9 What is your court's approach to recognition and enforcement of a foreign judgment when there is: (a) a conflicting local judgment between the parties relating to the same issue; or (b) local proceedings pending between the parties?

In Brazil, there is no *lis pendens* between domestic and foreign proceedings. Therefore, the first decision (domestic or foreign) to become *res judicata* in Brazil will be enforceable in the country, and subsequent judgments on the matter are considered not enforceable. For these purposes, a foreign judgment may only be considered *res judicata* within the Brazilian territory when the corresponding decision of recognition granted by the Brazilian Superior Court of Justice becomes final and not subject to appeal (also, therefore, *res judicata*).

2.10 What is your court's approach to recognition and enforcement of a foreign judgment when there is a conflicting local law or prior judgment on the same or a similar issue, but between different parties?

As a rule, the Brazilian Superior Court of Justice does not review the merits of the judgment or arbitral award. Therefore, the recognition of foreign judgments in Brazil depends solely on the fulfilment of the necessary legal requirements (see question 2.3 above).

One relevant factor pertaining to this topic is that Brazilian law establishes that Brazilian courts hold exclusive jurisdiction over certain subject matters. Therefore, any foreign judgment that decides on such matters is unrecognisable and unenforceable within the Brazilian jurisdiction.

2.11 What is your court's approach to recognition and enforcement of a foreign judgment that purports to apply the law of your country?

The Brazilian Superior Court of Justice does not review the merits of the judgment or arbitral award. Therefore, the recognition of foreign judgments in Brazil depends solely on the fulfilment of the necessary legal requirements (see question 2.3 above).

One relevant factor pertaining to this topic is that Brazilian law establishes that Brazilian courts hold exclusive jurisdiction over certain subject matters. Therefore, any foreign judgment that decides on such matters is unrecognisable and unenforceable within the Brazilian jurisdiction.

2.12 Are there any differences in the rules and procedure of recognition and enforcement between the various states/regions/provinces in your country? Please explain.

There are no differences in the rules and procedure of recognition and enforcement between states/regions/provinces in Brazil.

2.13 What is the relevant limitation period to recognise and enforce a foreign judgment?

Although this issue is still not settled under Brazilian law, some scholars are of the opinion that: (a) the limitation period for the

enforcement of a foreign judgment is the same as the one applicable to the filing of the procedure in which the state court or arbitral tribunal rendered the relevant decision; and (b) during the course of recognition proceedings, limitation periods should remain suspended.

3 Special Enforcement Regimes Applicable to Judgments from Certain Countries

3.1 With reference to each of the specific regimes set out in question 1.1, what requirements (in form and substance) must the judgment satisfy in order to be recognised and enforceable under the respective regime?

- **Las Leñas Protocol.** Judgments must: (a) adequately meet the formal requirements provided by the law of their jurisdiction of origin; (b) have been duly translated into the language of the jurisdiction where they are to be recognised and enforced; (c) have been rendered by a competent state court or arbitral tribunal; (d) have been rendered in a proceeding where service of process was duly provided and the defendant had the opportunity to present its case; (e) be enforceable in their jurisdiction of origin; and (f) not violate public order principles of the jurisdiction in which recognition/enforcement is sought.
- **Panama Convention.** Arbitral awards that are not appealable according to the applicable law shall have the force of a final judgment.
- **Inter-American Convention on the Extraterritorial Validity of Foreign Judgments and Arbitral Awards (Montevideo Convention).** Judgments must: (a) fulfil the formal requirements to be considered authentic in the jurisdiction of origin; (b) have been officially translated into the language of the jurisdiction where they are to be recognised/enforced; (c) have been legalised under the law of the jurisdiction where they are to be recognised/enforced; (d) have been rendered by a competent state court or arbitral tribunal; (e) have been rendered in a proceeding in which the plaintiff was duly summoned or subpoenaed; (f) have been rendered in a proceeding in which the parties had the chance to present their case; (g) be final or have become *res judicata* in the jurisdiction of origin; and (h) not be contrary to principles of public order of the jurisdiction where they are to be recognised/enforced.
- **New York Convention.** Arbitral awards must be preceded by a valid arbitration clause or arbitration agreement, which must have been made in writing.
- **The MERCOSUL Accord on International Commercial Arbitration.** Arbitral awards must be given in writing, be reasoned and completely decide the controversy. Arbitral awards shall contain: (a) date and place where they were rendered; (b) the grounds that support their conclusions; (c) a decision that encompasses all matters submitted by the parties; and (d) information on the arbitration's expenses.
- **Havana Convention (Bustamante Code).** Judgments rendered in one of the signatory jurisdictions may be executed in the others provided that: (a) they were rendered by a competent authority; (b) parties were duly notified to participate in the proceedings; (c) they do not violate the public policy or public laws of the jurisdiction in which recognition/execution is sought; (d) they are enforceable

in their jurisdiction of origin; (e) they are duly translated into the language of the jurisdiction in which recognition/enforcement is sought; and (f) they fulfil the authenticity requirements set out by the laws of the jurisdictions involved.

3.2 With reference to each of the specific regimes set out in question 1.1, does the regime specify a difference between recognition and enforcement? If so, what is the difference between the legal effect of recognition and enforcement?

- **Las Leñas Protocol.** There is no explicit differentiation between recognition and enforcement, but it is possible to argue that such distinction is implicit.
- **Panama Convention.** There is no explicit differentiation between recognition and enforcement, but it is possible to argue that such distinction is implicit.
- **Inter-American Convention on the Extraterritorial Validity of Foreign Judgments and Arbitral Awards (Montevideo Convention).** There is no explicit differentiation between recognition and enforcement, but it is possible to argue that such distinction is implicit.
- **New York Convention.** There is no explicit differentiation between recognition and enforcement, but it is possible to argue that such distinction is implicit.
- **The MERCOSUL Accord on International Commercial Arbitration.** There is no explicit differentiation between recognition and enforcement.
- **Havana Convention (Bustamante Code).** There is no explicit differentiation between recognition and enforcement.

3.3 With reference to each of the specific regimes set out in question 1.1, briefly explain the procedure for recognising and enforcing a foreign judgment.

- **Las Leñas Protocol.** Proceedings for the recognition and enforcement of foreign judgments are disciplined by the law of the jurisdiction where such decision is to be recognised and enforced. Recognition and enforcement required by judicial authorities are to be carried out through rogatory letters and between central authorities designated by each signatory state.
- **Panama Convention.** Provides that the recognition/enforcement of arbitral awards should be carried out in the same manner as judgments rendered by state courts, according to the law of the jurisdiction where they are to be recognised/enforced.
- **Inter-American Convention on the Extraterritorial Validity of Foreign Judgments and Arbitral Awards (Montevideo Convention).** Proceedings for recognition/enforcement, including discussions related to jurisdiction, must be governed by the law of the jurisdiction in which the decision is to be recognised/enforced.
- **New York Convention.** Proceedings for the recognition/enforcement of arbitral awards must be carried out in accordance with the applicable rules of procedure laid out within the jurisdiction in which recognition/enforcement is sought. Conditions, fees and charges may not be substantially more onerous in comparison with the recognition/enforcement of domestic awards. The interested party should supply, when presenting its request for recognition, (a) the arbitral award (in its original version or a certified copy thereof), (b) the arbitral agreement/clause (in its original version or a certified copy thereof), and (c) if necessary, translations of said documents into the official language of the jurisdiction in which the award is to be recognised/enforced.

- **The MERCOSUL Accord on International Commercial Arbitration.** In what regards procedure for the recognition/enforcement of awards, the document refers to the rules provided by other international conventions.
- **Havana Convention (Bustamante Code).** The interested party should present its request for recognition/enforcement before the competent state court. The opposing party and prosecuting attorney are heard within a term of 20 (twenty) days (through rogatory letters, if necessary), after which the court renders its ruling on the case. If recognition is granted, its execution is carried out as if it were a domestic judgment.

3.4 With reference to each of the specific regimes set out in question 1.1, on what grounds can recognition/enforcement of a judgment be challenged under the special regime? When can such a challenge be made?

- **Las Leñas Protocol.** The defendant may challenge recognition/enforcement if, in the jurisdiction where the decision is to be recognised/enforced, (a) a previous decision was rendered, involving the same parties, facts and object, thus being incompatible with the judgment to be recognised/enforced, or (b) there is a pending procedure involving the same parties, facts and object.
- **Panama Convention.** Recognition/enforcement may be challenged on the grounds that: (a) the arbitral agreement is invalid and/or parties lacked capacity for signing it; (b) the defendant was not duly notified of the proceedings, of the appointment of arbitrators or in any way was denied the opportunity to present its case; (c) the award decides on matters not comprised in the scope of the arbitral agreement; (d) the arbitral proceeding – and/or the constitution of the arbitral tribunal – was carried out in a way that is incompatible with the terms of the arbitral agreement; (e) the relevant decision is not binding or has been suspended or set aside in the jurisdiction of origin; (f) the subject matter of the dispute is not arbitrable under the law of the jurisdiction in which the decision is to be recognised/enforced; or (g) the recognition/enforcement of the relevant decision would violate the public order of the jurisdiction in which it is to be recognised/enforced.
- **Inter-American Convention on the Extraterritorial Validity of Foreign Judgments and Arbitral Awards (Montevideo Convention).** Recognition/enforcement may be challenged based on the non-fulfilment of any of the requisites described in question 3.1 above.
- **New York Convention.** Recognition/enforcement may be challenged on the same grounds provided by the Panama Convention, referred to above.
- **The MERCOSUL Accord on International Commercial Arbitration.** Regarding the procedure for the recognition/enforcement of awards, the document refers to the rules provided by other international conventions.
- **Havana Convention (Bustamante Code).** Recognition/enforcement may be challenged based on the non-fulfilment of any of the requisites described in question 3.1 above.

4 Enforcement

4.1 Once a foreign judgment is recognised and enforced, what are the general methods of enforcement available to a judgment creditor?

Under Brazilian law, enforcement proceedings can only start after

the recognition of the foreign decision is granted by the Brazilian Superior Court of Justice. The following list provides examples of some of the characteristics that may be found during the process of enforcement of a duly recognised foreign judgment:

- (a) imposition of fines in case the defendant fails to pay the debt after service of process is completed and/or refuses to present information related to assets that could serve for the payment of the debt;
- (b) attachment of the defendant's assets, according to a preferential order stipulated by Brazilian procedural law;
- (c) online attachment of the defendant's funds; and
- (d) in very specific – and extraordinary – circumstances, disregarding of the corporate entity and redirection of the enforcement proceedings towards the defendant's shareholders.

It is relevant to mention that, in certain specific circumstances, parties interested in the recognition of foreign judgments and arbitral awards may file requests for interim relief during the course of recognition proceedings. Generally, such a request is granted when the interested party is able to demonstrate: (i) the probability (*i.e.*, plausibility) of its right(s); and (ii) that there is a concrete risk of damage to said right(s) or to the practical result of the proceedings at hand.

5 Other Matters

5.1 Have there been any noteworthy recent (in the last 12 months) legal developments in your jurisdiction relevant to the recognition and enforcement of foreign judgments? Please provide a brief description.

In the last 12 months, there were no relevant legal developments related to the recognition and enforcement of foreign judgments and foreign arbitral awards in Brazil.

Still, it is relevant to note that, on 18 March 2016, a new Code of Civil Procedure – Federal Law No. 13,105, dated 16 March 2015 – entered into force in Brazil, bringing about significant changes to the Brazilian civil procedure system and important improvements related to the recognition and enforcement of foreign judgments (articles 960 to 965). Among these relevant developments, it is worth mentioning the enactment of specific provisions pertaining to:

- (a) the concession of interim relief and/or provisional enforcement in the context of recognition proceedings (article 961, §3); and
- (b) the enforcement of foreign decisions – including interlocutory decisions – ordering the fulfilment of urgent measures (article 962).

5.2 Are there any particular tips you would give, or critical issues that you would flag, to clients seeking to recognise and enforce a foreign judgment in your jurisdiction?

Critical issues and red flags may vary significantly from case to case. Notwithstanding, certain points of attention may be considered commonplace when it comes to the recognition of foreign judgments in Brazil:

- seeking assistance and advice from Brazilian counsel when the foreign judicial or arbitral proceedings are still ongoing can help guarantee the future success of subsequent recognition proceedings and the actual enforcement of the decision in Brazil;
- parties interested in recognising and enforcing foreign judgments in Brazil should be aware that recognition proceedings might vary significantly in length and complexity, depending on each specific case;
- parties should keep in mind that, in Brazil: (a) recognition proceedings are centralised in one single judicial authority, as opposed to the decentralised model adopted in other jurisdictions; and (b) contested recognition proceedings – *i.e.*, recognition proceedings in which the responding party presents an objection to the recognition request – are adjudicated by the Brazilian Superior Court of Justice's Special Court (as opposed to non-contested proceedings, which are subject to a simpler procedure and adjudicated directly by the President of the Court); and
- plaintiffs should be aware that, in recognition proceedings carried out in Brazil, respondents who fail to appear or present an answer will be represented by a member of the Brazilian Federal Public Defenders' Office, and an objection raised by such representative will suffice for the recognition proceedings to be classified as contested.

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