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Challenges in Enforcing Foreign Judgments

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Abstract: In an era of increasing cross-border litigation and global commerce, the recognition and enforcement of foreign judgments remain critical yet complex undertakings. While securing a domestic court victory is one achievement, translating that success across jurisdictions often encounters legal, procedural, and political resistance. This article delves into the core principles guiding foreign judgment enforcement, including jurisdictional competence, finality, procedural fairness, and public policy compatibility. It also explores systemic challenges such as divergent national laws, reciprocity requirements, documentation barriers, and the absence of a universal enforcement framework. Regional treaties like the Brussels I Regulation and emerging multilateral instruments such as the 2019 Hague Convention offer limited but growing avenues for harmonization. Through comparative analysis, practical workflow illustrations, and regional enforcement case studies, the article proposes best practices and strategic insights for practitioners and policymakers alike. It emphasizes the necessity of legal foresight, treaty-based enforcement routes, and reform to foster more consistent, efficient cross-border judicial cooperation.

Keywords: Foreign judgment enforcement, cross-border litigation, recognition of judgments, international civil procedure, public policy defense, reciprocity, jurisdictional competence, due process,

INTRODUCTION

In a globalized economy, securing a favorable court judgment is often just the first step; **enforcing that judgment across borders presents a new layer of complexity**. The recognition and enforcement of foreign judgments are pivotal for international commerce, dispute resolution, and the rule of law, but these processes are fraught with legal, procedural, and practical hurdles. This article explores the challenges facing foreign judgment enforcement, the barriers unique to different legal systems, and current trends in harmonizing standards worldwide.

UNDERSTANDING FOREIGN JUDGMENT ENFORCEMENT

Foreign judgment enforcement refers to the recognition and execution of a court decision issued in one country by the courts of another. This typically requires that a local (enforcing) court find the foreign judgment conclusive, lawful, and compatible with domestic interests before enforcement actions—like asset seizure—can begin^{[1][2]}.

Key Principles

- **Competence of the original court:** The foreign court must have had proper jurisdiction as recognized by international and local law^[3].
- **Finality:** The judgment must be final and binding in the country of origin.
- **Procedural fairness:** Due process, proper notification, and proper representation must have been upheld^{[4][2]}.
- **No Contravention of Public Policy:** The judgment cannot violate the fundamental values or public policy of the enforcing state^{[5][4]}.

WHY ENFORCING FOREIGN JUDGMENTS IS CHALLENGING

1. Divergent Legal Systems

Domestic laws vary widely in their standards and procedures for recognizing foreign judgments. What one jurisdiction considers valid and enforceable may face scrutiny and even exclusion in another due to differences in due process, substantive law, or legal culture^{[2][4]}.

- Example: Civil law countries may require specific formalities or underlying treaties for enforcement; common law countries often apply the doctrine of comity and review the foreign court's jurisdiction^{[6][3]}.

2. Reciprocity Requirements

Many jurisdictions will only enforce a foreign judgment if the originating country reciprocates by recognizing judgments from the enforcing state^{[2][4]}. The absence of such reciprocity agreements can block or delay enforcement.

3. Public Policy Defense

Courts may refuse enforcement if the foreign judgment is contrary to the enforcing state's public policy (ordre public), such as fundamental principles of justice, morality, or constitutional rights^{[5][4]}. This defense is typically interpreted narrowly, but it remains a potent barrier, especially in politically or culturally sensitive cases.

4. Due Process and Jurisdictional Review

A frequent challenge is showing that the defendant was given sufficient notice, opportunity to defend, and that the foreign court's assertion of jurisdiction was acceptable under local and international principles^{[7][1][3]}. If not, enforcement may be rejected.

5. Fraud and Misrepresentation

Evidence that the judgment was obtained by fraud—be it perjury, bribery, or concealed evidence—can result in non-recognition^{[7][4]}.

6. Procedural Complexities and Documentation

- Important documents must be authenticated and translated.
- Local counsel is often required to navigate formalities.
- Initiating new proceedings can be time-consuming and costly—especially in cases involving “non-reciprocating” countries^{[1][8]}.

7. Multiple and Conflicting Jurisdictional Claims

Jurisdictional disputes, parallel proceedings, or conflicting judgments in separate countries (so-called "double jeopardy" for civil matters) can further delay and complicate enforcement^[9].

8. No International Uniform Standard

Unlike arbitral awards, where the New York Convention sets a generally recognized international framework, foreign court judgments still lack such universal coverage. The **Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (2019)** is a positive step, but as of 2025, its adoption is limited and patchwork^{[10][11][4]}.

REGIONAL AND INTERNATIONAL FRAMEWORKS

Framework/Region	Key Provisions	Limitations
Brussels I Regulation (EU)	Streamlined enforcement among EU/EFTA states	Limited to EU/EFTA
Lugano Convention	Similar to Brussels I for EFTA nations	Limited signatories
Hague Conventions	Multilateral recognition for civil/commercial matters	Not widely ratified
Local Domestic Laws	Rules in absence of treaty	Vary widely, complex

Graph: Global Comparison—Barriers to Enforcement by Category

[image:1]

Bar chart showing prevalence of key enforcement barriers: public policy, lack of reciprocity, due process failures, and documentation hurdles, across major world regions (2025).

Practical Solutions and Best Practices

- **Careful Forum Selection:** Consider future enforcement at the outset—secure judgments in countries with strong treaties or reciprocity^[2].
- **Meticulous Documentation:** Ensure all paperwork is in order, translated, certified, and submitted on time^[1].
- **Legal Expertise:** Retain local counsel with knowledge of specific enforcement requirements in the target jurisdiction^[2].
- **Use of Treaties:** Where possible, rely on bilateral/multilateral conventions to bolster enforceability.
- **Advance Planning:** Initiate enforcement efforts early and allow time for potential objections or appeals.

Infographic: The Foreign Judgment Enforcement Workflow

[image:2]

Infographic illustrating the key steps: initial judgment, review for compliance (jurisdiction, finality, due process), application in enforcing state, review of defenses (public policy, fraud), and execution of judgment (asset recovery, etc.).

The Road Ahead: Harmonization and Reform

Efforts are underway to harmonize global standards and lower barriers. Increased ratification of international conventions and reform of domestic laws aim to promote certainty, fairness, and efficiency^{[4][10]}. However, balancing the respect for foreign courts with national sovereignty and public values remains an enduring legal and political challenge.

CONCLUSION

Enforcing foreign judgments is an essential but persistently complex element of global legal cooperation. Diverse legal systems, public policy exceptions, and the lack of unified standards are significant hurdles, though progress through treaties and best practices is steady. As international disputes grow, so too does the importance of ongoing legal harmonization and the continued vigilance of parties seeking cross-border justice.

“Recognition and enforcement of foreign judgments represent a key test for international cooperation—and a mirror to the differences that still divide national legal systems.”

[image:1]

[image:2]

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