

Chile

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1 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?

Chile is party to the following treaties regarding the recognition and enforcement of foreign judgments and arbitral awards (although this chapter does not specifically refer to foreign or international arbitral awards, it is worth noting the relevant regulation on the matter):

- the Treaty on International Procedural Law 1889 (Montevideo Treaty);
- the Agreement on Cooperation and Jurisdictional Assistance in Civil, Commercial, Labour and Administrative Matters between the States Parties of Mercosur (Mercosur Agreement);
- the Pan-American Convention on Private International Law (Bustamante Code); Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention);
- the Inter-American Convention on International Commercial Arbitration (Panama Convention); and
- the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention).

Chile included one reservation to the Bustamante Code, which is that its rules are applicable as long as they do not oppose current or future Chilean laws. Chile's approach, set forth mainly in legislation, is to allow the recognition of foreign judgments as long as they meet minimum requirements of international due process in order to protect Chilean sovereignty, public policy and the rule of law.

Chile's approach to entering into treaties related to recognition and enforcement of foreign or international arbitral awards is to recognise the value of international commerce, to promote arbitration as a useful mechanism for dispute resolution, and to promote Chile as a seat of arbitration.

2 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 within Chile. Chile is a unitary state. Chile's legislation and ratified treaties apply to all Chilean territory.

3 Sources of law

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

In Chile, the main source of law regarding the recognition and enforcement of foreign judgments is legislation. Specifically, Title XIX Book I of the Code of Civil Procedure regulates the recognition of foreign judgments. However, these rules indicate that, when there is a treaty between Chile and the country that rendered the foreign judgment, the treaty will prevail over national legislation. Title I Book III of the Code of Civil Procedure regulates the enforcement of foreign judgments through an expedited proceeding, and Book II of the same Code regulates the enforcement through an ordinary proceeding.

Also, the Code of Civil Procedure provides that its rules on recognition of foreign judgments are applicable to recognition of foreign arbitral awards, which also means that the treaties on foreign awards (ie, the New York Convention) prevail over the rules set forth in the Code. The recognition and enforcement of awards rendered in international commercial arbitration are governed by Law 19.971 on International Commercial Arbitration.

4 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?

Chile is not party to the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters. Also, Chile has not ratified the Inter-American Convention on Extraterritorial Validity of Foreign Judgments and Arbitral Awards.

5 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?

In Chile, there is no explicit rule with regard to the limitation period to enforce a foreign judgment. This means that the general rules regarding limitations to enforce Chilean judgments also apply to foreign judgments. According to these rules, a foreign judgment could be enforced in Chile through an expedited proceeding within three years of it becoming final, and through an ordinary proceeding within five years of it becoming final. Nevertheless, there is no rule clarifying whether the limitation period should run from the moment the foreign judgment became final in the country of origin or from when the judgment was recognised in Chile. Some scholars state that the limitation period should run from when the foreign judgment became final in the country of origin. (See, for example, Carlos Anabalón, *Tratado Práctico de Derecho Procesal Civil Chileno*, 2nd edition, p. 311.) However, a recent decision by the 3rd Civil Court of Santiago stated that the limitation period should run from when the judgment becomes enforceable within Chile (ie, after the recognition decision has been issued and served) (see 3rd Civil Court of Santiago, Case No. 19625-2011).

6 Types of enforceable order

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

In principle, remedies such as money judgments, permanent injunctions or orders for specific performance issued by a foreign court are enforceable in Chile, although the proceeding to pursue its enforcement might be different. However, if the remedy contravenes Chilean public policy it will not be enforceable (eg, punitive damages).

Additionally, Chilean courts tend to refuse the recognition of foreign interim measures issued by international arbitral tribunals or foreign courts. This also applies to interim injunctions. As the exequatur is conceived to recognise 'final decisions', the Supreme Court has ruled in the

past that such procedure applies only to final awards, and not to interim measures or provisional orders. For example, in one case the Supreme Court denied the recognition of an interim measure issued by an arbitral tribunal under the auspices of the American Arbitration Association (see Supreme Court, Case No. 5468-2009).

7 Competent courts

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

Unless otherwise provided by an international treaty, a petition for the recognition of a foreign judgment or a foreign or international arbitral award, must be brought before the Chilean Supreme Court through an exequatur proceeding. If the Supreme Court grants the exequatur, the enforcement of such a recognised judgment must be requested before the first instance civil court that would have had jurisdiction to rule on the case had it been brought before a first instance civil court in Chile.

An example of a treaty that provides that a petition for recognition is not needed for decisions issued pursuant to it is the ICSID Convention. This Convention provides that '[e]ach Contracting State shall recognise an award rendered pursuant to this [ICSID] Convention as binding and enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State' (ICSID Convention, article 54).

8 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?

As indicated above, the process for obtaining judicial recognition of a foreign judgment (an exequatur) is separate from the process for enforcement of a recognised foreign judgment. The purpose of the exequatur proceeding is to determine whether the foreign judgment should be recognised.

Unless otherwise provided by a treaty, a petition for the recognition of a foreign judgment must be brought before the Chilean Supreme Court through an exequatur proceeding. If the judgment is recognised, the petition for enforcement can be brought before a lower civil court. The same applies for foreign and international arbitral awards.

9 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?

Chilean law places no restrictions on the defences that may be filed by the defendant. However, due to the scope of the exequatur proceeding the defences should be related to the set of criteria defined by Chilean law for recognition of foreign judgments (ie, minimum requirements for international due process). Then, if the enforcement is requested within three years of it becoming final (and is thus carried out according to the expedited proceeding), the defences are limited to those indicated by article 464 of the Code of Civil Procedure. But, if the enforcement is requested between the third and fifth year after it became final (and is thus carried out according to the ordinary proceeding), there are no limits with regard to the defences the defendant can raise.

If the recognition is governed by an international treaty, such as the New York Convention, the defendant will be able to file only those defences allowed by the treaty to challenge the recognition of the foreign judgment or foreign award. With regard to the recognition of international arbitration awards, the defendant will be able to challenge the recognition based upon the grounds indicated in Chapter VIII, Law 19.971, which are those of the 1985 Model Law. In a recent decision, the Supreme Court indicated that, in the context of an exequatur proceeding of an arbitral award, is not possible to discuss legal and factual issues that were discussed before the tribunal that issued the award, as well as to discuss defences that can be filed in the enforcement proceeding, but only to review the legal requirements established in Law 19.971 to determine whether to recognise the award. This because the purpose of recognition proceedings is limited to determining whether or not to authorize the enforcement of awards rendered in foreign countries (Supreme Court, Case No. 7854-2013).

10 Injunctive relief

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

There is no injunctive relief to prevent foreign judgment recognition and enforcement proceedings in Chile. However, Chilean law allows defendants the right to present an opposition during the recognition proceeding as well as during the enforcement proceeding.

11 Basic requirements for recognition

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

The Chilean Code of Civil Procedure has established a system to allow the recognition of foreign judgments comprised of three alternative criteria that must be followed in the sequence established by the law. First, if an international treaty regarding recognition of foreign judgments exists with the country of origin of the foreign judgment, the analysis of recognition will be done according to that treaty. Second, in the absence of any treaty, Chilean law looks to whether Chilean judgments are recognised by the country of origin of the foreign judgment whose recognition is sought. In practice, even if there is a treaty or reciprocity with the country of origin, the Chilean Supreme Court might not recognise the foreign judgment if it, or the proceeding from which it resulted, goes against Chilean public policy or the rule of law according to the next criteria.

Third, when those criteria cannot be applied, the Code of Civil Procedure lists four minimum requisites that a foreign judgment must meet to be recognised and ultimately enforced in Chile (this is known as international regularity or the minimum international due process standard):

- (i) that it contains nothing contrary to Chilean laws (with the exception of the procedural laws under which the judgment would have been issued in Chile);
- (ii) that it does not oppose Chilean national jurisdiction;
- (iii) that the party against whom the judgment is invoked has been duly served with the action. However, this party could prove that, for other reasons, it was prevented from presenting a defence; and
- (iv) that it is final and irrevocable in accordance with the laws of the country in which it was rendered.

The first and second requisites are aimed directly at the protection of Chilean public policy and the rule of law. The first requires that the foreign judgment is issued pursuant to the procedural laws of the foreign country (following the principle *lex locus regit actum*) and, at the same time, that it does not violate Chilean substantive laws. The second means that the foreign judgment cannot decide on matters over which, according to Chilean law, Chilean courts have exclusive jurisdiction. The third requisite intends to ensure that the underlying judicial proceeding respects the principle of due process of law, especially the right to a defence. This requisite goes beyond the formality of having served the defendant; it allows the party against whom the foreign judgment is invoked to demonstrate that, despite being served, it was unable to exercise a meaningful defence. The fourth requisite, that the foreign judgment has to be final and irrevocable in the country of origin, responds to the need for legal certainty. This requisite is met when the foreign judgment is not subject to any additional appeal or recourse in the country of origin.

Regarding international commercial arbitration awards, Law 19.971 provides limited grounds for refusing recognition or enforcement which are included in the 1985 UNCITRAL Model Law.

12 Other factors

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

As mentioned above, factors such as reciprocity and international minimum due process must be considered in the absence of a treaty between Chile and the country of origin of the foreign judgment. When reviewing whether a foreign judgment meets the minimum requirements for recognition, the Supreme Court has stated, among other things, that it will not recognise judgments issued procured by fraud (Supreme Court, Case No. 24.097-2014).

13 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?

The Chilean Supreme Court might not recognise a foreign judgment if it, or the proceeding from which it resulted, goes against Chilean public policy or the rule of law. However, that does not mean that the foreign proceeding should have followed the Chilean proceeding. In fact, the criterion of international regularity, when applied, requires that the foreign judgment must be issued pursuant to the procedural laws of the foreign country. The foreign judgment must not violate Chilean substantive laws.

14 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?

During the recognition proceeding, the Supreme Court may analyse whether the judgment was issued by a court with jurisdiction over the defendant. Among other things, the foreign judgment cannot have decided a matter over which, according to Chilean law, Chilean courts have exclusive jurisdiction. Also, when analysing whether the court where the judgment was entered assured due process and the right to a defence, the Chilean Supreme Court may analyse whether that court had personal jurisdiction over the defendant.

With regard to the availability of this defence during the enforcement proceeding, Chilean law is silent. However, if the enforcement takes place through an expedited proceeding the personal jurisdiction defence regarding the court where the judgment was issued should not be available because the available defences are listed by article 464 of the Code of Civil Procedure. If the enforcement takes place through an ordinary proceeding, the personal jurisdiction defence regarding the court where the judgment was issued could be raised, as the defences are not regulated by the law. Nevertheless, if personal jurisdiction regarding the court where the judgment was issued was discussed and decided during the exequatur proceeding, it is likely that the defence will be rejected due to the res judicata effect of the exequatur decision.

With regard to international commercial arbitration, Law 19.971 does not include the defence of personal jurisdiction regarding the court where the judgment was issued among the defences. To raise it, the party against whom the award is being enforced would need to prove that the award violates Chilean public policy.

15 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?

During the recognition proceeding, the Supreme Court may analyse whether the judgment was issued by a court with subject-matter jurisdiction. Principally, the foreign judgment cannot decide a matter over which, according to Chilean law, Chilean courts have exclusive jurisdiction. In connection with this point, it is worth noting that the Chilean Supreme Court has interpreted article 16 of the Chilean Civil Code, which provides that assets located in Chile are subject to Chilean 'law', to mean that they are also subject to Chilean jurisdiction (see, for example, Supreme Court, Case No. 1419-2010 and Case No. 7480-2013).

According to Law 19.971, recognition or enforcement of an international commercial arbitration award may be rejected if it was not an arbitrable matter according to Chilean law (eg, criminal law matters).

16 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 defendant must have been given notice of the original action in the country of origin according to the procedural rules of that country. However, the mere formality of having served the defendant is not enough. Article 245 of the Chilean Code of Civil Procedure requires that 'the party against whom the judgment has been invoked has been duly notified of the

action. But [this party] could prove that, due to other reasons, it was prevented from presenting a defence'. Chilean law intends to ensure that the underlying judicial proceedings respected the right of defence.

In 2011 the Chilean Supreme Court rejected the petition for recognition of a foreign judgment in a case where the defendant had not been served. In the opinion of the Court, the service of process needs to provide certainty that the defendant knew the content of the action, so he or she could understand it and react to it (see Supreme Court, Case No. 1393-2012).

17 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?

Allegations in relation to forum non conveniens principles do not provide a basis for opposing the recognition or enforcement of judgments under Chilean law. However, a foreign judgment, and the proceedings by which it originated, must not contravene Chilean public policy and international minimum standards of due process (which include the right to a meaningful defence).

18 Vitiating by fraud

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

Chilean courts will neither recognise nor enforce a foreign judgment that was procured by fraud. Fraud prevents the judgment from meeting the requirements of not violating Chilean public policy and assuring due process and the right to a meaningful defence.

19 Public policy

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

If an international treaty applies, it would depend on what the treaty provides. In the absence of an applicable treaty, the Chilean Supreme Court will examine the foreign judgment to assure consistency with Chile's public policy. Chilean law establishes a requirement that the judgment for which recognition is sought must not contain anything contrary to Chilean law.

20 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?

The court could reject the recognition or enforcement of a foreign judgment if it conflicts with another final and conclusive judgment involving the same parties, as long as its recognition, for example, contravenes the principle of res judicata.

21 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?

Under Chilean law, a court's decision has no binding force except between the parties and in respect of that particular case. Thus, a foreign judgment is only enforceable against the parties to whom it is directed, and with regard to which it is possible to evaluate whether the legal requirements for recognition were met (eg, service, meaningful defence etc). Enforcing a judgment against a party other than the named judgment debtor would violate Chilean public policy, as well as the requirement to assure a meaningful defence in the proceeding where the judgment was entered to the party against whom the enforcement is sought.

Update and trends

On 30 August 2016, the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents entered into force in Chile. As its article 1 states, this Convention applies to all public documents which have been executed in the territory of one Contracting State and which have to be produced in the territory of another Contracting State. The Convention was ratified by Chile on 16 December 2015 and implemented into Chilean law through Law 20.711 (and its Regulation), which modified the Code of Civil Procedure, the Code of Judicial Organisation and other legal bodies. With regard to recognition and enforcement of foreign judgments it will be enough to submit the foreign judgment with its apostille rather than a legalised copy of such judgment.

With regard to Chile's efforts to enact a new Code of Civil Procedure, the current Administration has not made it a priority during 2016. Thus, we do not anticipate that a new code will be enacted within the next year. The new Code, if and when enacted by the Chilean Congress, will establish new rules regarding the recognition and enforcement of foreign judgments. As of now, however, the new rules would not change the current requirements that a foreign judgment must meet in order to be recognised and enforced in Chile. Nevertheless, the new code would allow the judge to verify ex officio the fulfilment of the recognition requirements, and to request evidence.

22 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?

If the parties had a valid and enforceable agreement to use alternative dispute resolution, and the defendant proves that this requirement was violated by the party seeking to enforce the foreign judgment, Chilean courts would not recognise the judgment (perhaps unless there was a discussion over the matter in the proceeding that originated the foreign judgment). Under Chilean law, parties who had agreed to use alternative dispute resolution are prevented from bringing an action in an ordinary court, unless both parties, explicitly or tacitly, consent to do so.

23 Favourably treated jurisdictions

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

Judgments from countries that recognise and enforce Chilean judgments are given greater deference. However, the Chilean Supreme Court has always strictly analysed foreign judgments to determine whether they meet the requirements set forth by the treaty or by Chilean law to be recognised, regardless of their place of origin.

24 Alteration of awards

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

The Chilean Supreme Court can recognise only part of a foreign judgment. For example, the Chilean Supreme Court once rejected the part of a foreign judgment that referred to divorce because at that time divorce was not allowed by Chilean law, but recognised the part of the same foreign judgment that referred to custody and care of the children (see Gutiérrez, Cristián, *El exequátur y su evolución jurisprudencial*, p. 130.) It is also very likely that the Chilean Supreme Court would refuse to recognise part of a foreign judgment that demands punitive damage award, since punitive damages are not permitted by Chilean law.

25 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?

The recognition proceeding does not have specific requirements in this regard. However, the damage award must be converted into local currency to initiate an enforcement proceeding. It is not a duty of the court to make the conversion. In accordance with article 20 of Law 18.010, '[d]ebts denominated in foreign currency shall be converted to its equivalent in Chilean currency at the selling rate of the payment day [...]'. In its petition for enforcement, the party seeking enforcement shall indicate in equivalent Chilean currency the selling rate of the liquid amount in the foreign currency for which enforcement is required (Law 18.010, article 22). The party seeking enforcement must submit a certificate issued by a bank operating in the Chilean market referring to the day the application was filed or any of the preceding 10 days (Law 18.010, article 21). According to the provisions of article 22, prior appraisal by the court is not required. The same article provides some important rules: for example, discussion on the equivalence of foreign currency may not be grounds for opposing enforcement.

The Chilean Supreme Court has refused to recognise foreign judgments when the amount of compensation cannot be determined on the basis of that judgment (see Supreme Court, Case No. 1753-2010).

The rate of interest, as well as the court costs generated in the foreign process, are governed by the foreign judgment. Interest and cost claims are enforceable in Chile unless they violate public policy (eg, if the foreign judgment established a greater rate of interest than allowed by Chilean law). If the foreign judgment did not establish a rate of interest, interest may be requested before the enforcement court. Under Chilean law any money debts generate interest.

The costs arising in the recognition or enforcement proceedings are governed by Chilean law. If the party against whom the judgment is enforced opposes the recognition or enforcement and is defeated, the court will decide whether it should be ordered to pay the costs depending on whether the party had plausible grounds to litigate.

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26 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?

There is no appeal against the decision recognising a foreign judgment. Regarding the enforcement proceeding, the decision of the courts is subject to the general challenges contained in Chilean law.

27 Enforcement process

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

According to Chilean law, the judgment should be enforced through an expedited proceeding if the enforcement petition is filed and served to the defendant within three years of it becoming final. If the requirements to initiate an expedited proceeding are not met, and the petition for enforcement is filed and served to the defendant within five years of it becoming final, the foreign judgment must be enforced through an ordinary proceeding. Foreign judgments against the state must be enforced through a special proceeding called a treasury lawsuit.

The enforcement proceeding of arbitral awards will vary depending on the applicable treaty (eg, if an international treaty is applicable, the

enforcement proceeding will follow the rules of that treaty). For example, the ICSID Convention provides that '[e]ach Contracting State shall [...] enforce the pecuniary obligations imposed by that award within its territories as if it were a final judgment of a court in that State' (ICSID Convention, article 54). It is worth mentioning that in the ICSID case between Chile and MTD (ICSID Case No. ARB/01/7) the state of Chile was sentenced to pay compensation to MTD, which was paid by Chile without the need to start an enforcement proceeding (through an administrative decree). If the treaty makes no provision regarding the enforcement or if there is no applicable treaty, Chilean law provisions should be applied.

28 Pitfalls

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

In general, the Chilean exequatur proceeding works as a reliable means of getting recognition for those foreign decisions that were procured upholding minimum requirements of international due process. A potential pitfall is the Supreme Court's interpretation that assets located in Chile are subject to Chilean jurisdiction exclusively. This interpretation seems to go beyond the letter of article 16 of the Civil Code, and presents a problem for recognising foreign judgments that were issued by foreign courts applying Chilean law to the assets located in Chile. Another pitfall is the Supreme Court's tendency not to recognise interim measures and interim injunctions.