

ENFORCEMENT OF FOREIGN JUDGMENTS

Indonesia



Enforcement of Foreign Judgments

Consulting editors

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Quick reference guide enabling side-by-side comparison of local insights into relevant treaties, conventions and other sources of law; limitation periods; types of enforceable order; competent courts; separation of recognition and enforcement; opposition; jurisdiction of the foreign court; awards and security for appeals; enforcement and pitfalls; and recent trends.

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LEGISLATION

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?

For foreign court judgments, Indonesia is not a party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign court judgments. Therefore, any foreign court judgments are not enforceable in Indonesia. However, specifically for the foreign arbitration award, Indonesia is a party to the 1958 New York Convention. Indonesia has ratified this convention and made it enforceable through local regulation, as the President Decree No. 34 of 1981. By virtue of this regulation, Indonesia can recognise and enforce foreign arbitral award.

Law stated - 25 August 2022

Intra-state variations

Is there uniformity in the law on the enforcement of foreign judgments among different jurisdictions within the country?

Yes. In Indonesia there are similar laws applicable with respect to the enforcement of a foreign arbitral award, namely Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution and the 1958 New York Convention. This law is applicable throughout all regions in Indonesia.

Law stated - 25 August 2022

Sources of law

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

For foreign court judgments, there is no positive law or prevailing source in Indonesian jurisdiction on the enforcement of foreign court judgments. For foreign arbitral award, the enforcing party can rely on statutory law and legal cases. The statutory law can be found in Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution and the New York Convention of 1958. This party can also refer to case law to support their enforcement application.

Law stated - 25 August 2022

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?

Indonesia is not a party to the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters. Therefore, the court will not be able to refer to any provisions under such convention. In Indonesia, if the winning party wishes to enforce a foreign court judgment against the losing party, the winning party must initiate a new case or fresh claim in relevant Indonesian district courts, where the foreign court judgment may be submitted as evidence. The panel of judges in Indonesia will then decide on the probative value of the judgment.

BRINGING A CLAIM FOR ENFORCEMENT

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?

Under Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, the arbitral tribunal or their representative needs to register a foreign arbitral award at Central Jakarta District Court before a party can apply for enforcement. In the enforcement guideline issued by the Supreme Court, the requirement under Article 59 of Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution on the timeline for registering a national arbitral award, which is 30 days upon the issuance of the award, will also apply for a foreign arbitral award. Nevertheless, in practice, we note that the Central Jakarta District Court, as the authorised court, still receives some registration of a foreign arbitral award that has been issued for more than 30 days. The enforcing party needs to apply for enforcement to obtain an exequatur order (enforcement order). There is no specific timeline within which to submit the enforcement petition after the registration date.

Law stated - 25 August 2022

Types of enforceable order

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

Foreign court judgment is not enforceable in Indonesian jurisdiction. Remedies that are available include: monetary judgment, declaration of legal status and order for specific performance. In practice, Indonesian courts tend to enforce a final and binding arbitral award but are reluctant to enforce interim injunctions.

Law stated - 25 August 2022

Competent courts

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

Yes. For foreign arbitration award, Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution stipulates that the Central Jakarta District Court is the court vested with the authority to handle the registration and the issuance of exequatur order of foreign arbitration awards. However, specifically for cases that involve the Republic of Indonesia as a conflicting party, the issuance of the exequatur order can only be requested to the Supreme Court. Subsequent to the above registration and obtaining an exequatur order, the local court with jurisdiction over the asset may continue the enforcement process by confiscating the losing party's asset.

Law stated - 25 August 2022

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?

Please be advised that foreign court judgment is not enforceable within Indonesia's jurisdiction. As for foreign arbitration awards, Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution separates the process of obtaining judicial recognition and the enforcement process. To be recognised in Indonesian jurisdiction, the foreign arbitration award must first be registered at the Central Jakarta District Court and, subsequently, the enforcing party must apply for an exequatur order stating that the award can be enforced (passing certain criteria, for instance, whether the subject matter of dispute falls under commercial law and whether it does not violate Indonesian public order). The enforcing party may then continue with the enforcement process, namely filing a request for the court to warn the losing party to comply with the foreign arbitral award (this is called an *aanmaning* process), filing an application to the court to confiscate any assets and then initiating auction processes to sell the assets in order to obtain the proceeds.

Law stated - 25 August 2022

OPPOSITION

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?

A defendant is barred from raising merits-based defences to challenge a foreign arbitral award because Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution recognises the principle of finality of the arbitral award. Nevertheless, Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution provides that the Chief of the Central Jakarta District Court may reject a recognition and enforcement petition, if: (1) the disputing parties did not agree to settle their dispute through an arbitration forum, (2) there is no written agreement in settling the dispute through an arbitration, (3) the object of the dispute is not a commercial matter or (4) the award is against Indonesian public order.

Law stated - 25 August 2022

Injunctive relief

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

In practice, the losing party is not restricted to file a new lawsuit against the winning party. In this lawsuit, the losing party may request an injunctive relief to prevent the enforcement of a foreign arbitral award.

Law stated - 25 August 2022

REQUIREMENTS FOR RECOGNITION

Basic requirements for recognition

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

According to Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution and guidelines issued by the Indonesian Supreme Court, the following are basic requirements for the recognition of a foreign arbitral award in Indonesia:

- The foreign arbitral award is rendered in a country that has a mutual international agreement with Indonesia on the recognition and enforcement of a foreign arbitral award.
- The subject matter falls within the scope of a commercial dispute under Indonesian law (general trade, banking, finance, investment, industrial and intellectual property).
- The parties have agreed to settle the dispute through arbitration.
- The arbitration clause is made in writing.
- The foreign arbitration award complies with Indonesian public order. Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution does not provide a definition of public order. According to the Supreme Court No. 1 of 1990 on the Guideline for the Execution of Foreign Arbitral Award, the public policy is defined as a 'violation against basic principles of the entire legal system and society in Indonesia'; however, this definition is still subject to multiple interpretations. In practice, public order may be defined, for example, as being conditional on the award not violating the principle of propriety or statutory law, and on the subject matter of the dispute being legal in Indonesia.

Law stated - 25 August 2022

Other factors

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

Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution has regulated that the foreign arbitration award must be registered to the Central Jakarta District Court in order to be recognised. In addition to this, the registration process must be equipped with the official copy of the award, the underlying agreement (which appoints arbitration institution as the dispute forum), and a reciprocity statement from the Indonesian Embassy or Consulate General from the country in which the foreign arbitration institution resides. It is also to be noted that, under the enforcement guidelines in Indonesia, the foreign arbitral award must be registered within 30 days upon issuance from the Arbitral Tribunal.

Law stated - 25 August 2022

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?

Considering that the foreign arbitral award needs to be registered and enforced in Indonesia, there will be an examination of this award against public order. The public order definition may very well include the due process as governed by local procedural law (for instance obligation to hear all parties during the arbitration proceedings, proper summon of the parties, etc). The Chief of the Central Jakarta District Court, in issuing the exequatur order (enforcement order), will evaluate whether there is a violation of public order, including whether due process in the original action was indeed violated.

Law stated - 25 August 2022

JURISDICTION OF THE FOREIGN COURT

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?

The enforcing court will not be likely to examine whether the court where the judgment entered had personal jurisdiction. The enforcing court will likely assume that if an arbitral tribunal had been issued, then it had decided on its own jurisdiction over the parties. In the context of a foreign arbitral award, the Central Jakarta District Court is the only authorised court to issue any registration and enforcement order on such award, even if the defendant resides in another jurisdiction from the Central Jakarta District Court. Upon the issuance of the enforcement order, the Central Jakarta District Court can delegate the enforcement process to the relevant court that covers the jurisdiction of the defendant and its assets.

Law stated - 25 August 2022

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?

The Indonesian legal system does not recognise any foreign court judgments. However, for foreign arbitration awards, the Central Jakarta District Court will require the official copy of the underlying agreement (which appoints arbitration institution as the dispute forum), in order for the foreign arbitral award to be recognised. There will be examination over the subject matter jurisdiction over the dispute, including whether the merits of the case were legal in Indonesia and fall under the commercial law. After registration, the enforcing party may apply for enforcement in order to obtain an exequatur order (enforcement order), and during the examination of this application, the court will examine over the subject matter of the arbitral award. The issuance of this exequatur order is one of the requirements to enforce a foreign arbitral award in Indonesia. Should the enforcing court be of the view that the subject matter is illegal in Indonesia or does not fall under commercial law, the court may reject the application.

Law stated - 25 August 2022

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?

Yes. The defendant must be properly served with written summons during the original action in the foreign jurisdiction. This formality is mandatory as per Indonesian civil procedural law. The summons must be served at least two to three notifications to the latest designated address. In this regard, the enforcing court may take into account the above in considering whether the award violates public order. The public order can include the question of whether formal notice requirement has been properly conducted.

Law stated - 25 August 2022

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?

It is a rule that foreign court decision is neither recognisable nor enforceable in Indonesia.

Law stated - 25 August 2022

EXAMINATION OF THE FOREIGN JUDGMENT

Vitiating by fraud

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

In the context of foreign arbitral award enforcement, the enforcing court would not single-handedly examine allegation of fraud. However, the enforcing court may postpone the enforcement process if the fraud allegation is being examined before another local court of law. Allegation of fraud is also relevant when either party initiates an annulment process against an arbitral award. Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution provides that the disputing parties may file an annulment petition against the arbitration award, if the award contains several elements, as below:

- letters or documents submitted in the hearings are acknowledged to be false or forged or are declared to be forgeries after the award has been rendered;
- after the award has been issued, decisive documents were found, and they were deliberately concealed by the opposing party; or
- the award was rendered as a result of fraud committed by one of the parties to the dispute.

Law stated - 25 August 2022

Public policy

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

For foreign court judgments, there will be no such examination because Indonesian law does not acknowledge the enforceability of a foreign court's decision. However, a foreign arbitral award will be examined against public policy in Indonesia. The definition of public policy in Indonesia is extensive. Therefore, the court is vested with the authority to examine whether the foreign arbitral award violates public policy or not. According to previous cases and the opinion of scholars, public policy includes compliance with the principle of propriety, statutory law and whether the subject matter of the dispute is legal in Indonesia. The above examination will be conducted by the court before the issuance of an exequatur order, a process initiated by the enforcing party after the registration of the foreign arbitral award.

Law stated - 25 August 2022

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?

Foreign court judgments cannot be enforced in Indonesia. Therefore, if an Indonesian court has rendered a final and binding decision concerning the same subject matter as the foreign court judgment, the court will choose to enforce the Indonesian court's judgment. However, if the conflicting judgments are both issued by a foreign court, both should not be enforced in Indonesia. A foreign arbitral award must be registered and the exequatur order obtained first before the enforcement process. Upon that, this award will have the same quality as an Indonesian court decision. If the award conflicts with other Indonesian court judgments or arbitral awards that have been registered, the court may stop this enforcement process in light of the legal certainty principle. However, if the award conflicts with a foreign court's decision or a foreign award that was not registered in Indonesia, the court may continue the enforcement process.

Law stated - 25 August 2022

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?

No. Indonesian law will only punish the named debtor under the judgment.

Law stated - 25 August 2022

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?

In order for a foreign arbitration award to be recognised and later enforced, the party seeking enforcement must first obtain an exequatur order. Based on the Guideline of Enforcement, to grant an exequatur order, the court must consider whether:

- the foreign arbitral award violates public order;
- the foreign arbitration award has been registered to the court within 30 days upon the pronouncement of the said award; and
- the issuing country of the award is a party to a bilateral or multilateral treaties with Indonesia on the recognition and enforcement foreign arbitration award.

If the court learns that the arbitration was not conducted according to the requirement provided under the agreement, for example the appointment of arbitrators violates the requirement under the Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, then it may potentially be deemed as a violation of public order. The definition of public order itself is quite extensive, to the extent of whether it violates statutory law. The losing party may assert that Indonesian arbitration law requiring parties to undergo an amicable settlement (alternative dispute resolution) first before proceeding to arbitration has not been satisfied, and thus it amounts to a violation of public policy. Consequently, it is possible the court does not grant the exequatur order, as per the requirement under the Guideline of Enforcement.

Law stated - 25 August 2022

Favourably treated jurisdictions

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

There is no special treatment given by Indonesia to any particular country.

Law stated - 25 August 2022

Alteration of awards

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

Considering the court will examine whether such decision is in line with law and regulation in Indonesia, the Indonesian court will decide whether such a decision may be granted or rejected. This includes the possibility of the court limiting the heads of damage. For instance, the enforcing court may refuse to enforce an order to reimburse an attorney's fee because, under Indonesian law, such a fee may not be reimbursable. Each party must bear their own legal representative's fees.

Law stated - 25 August 2022

AWARDS AND SECURITY FOR APPEALS

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?

There is no specific law or regulation governing this conversion; however, according to Article 21 of Law No. 7 of 2011 on Currency, any payment of the obligation in Indonesian jurisdiction must be performed using Indonesian currency, namely the rupiah. In respect to this, we are aware of jurisprudence issued by the Indonesia Supreme Court No. 2992 K/Pdt/2015, in which the court converted the previous court decision issued by the High Court that granted compensation in US dollars into rupiah. In its legal consideration, the Supreme Court used the exchange rate determined by Bank Indonesia when the plaintiff carried out its payment obligations. The same legal interpretation may be performed by the Indonesian court against the foreign arbitral award that grants compensation under the foreign currency. Nevertheless, we also note that, in practice, the court may also use other interpretation by not converting the compensation into rupiah.

Law stated - 25 August 2022

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?

Based on Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution, if the exequatur order has been granted, there is no appeal to be made against the exequatur order. However, if the exequatur petition is rejected, then

the winning party may file an appeal against such rejection to the Supreme Court. The appeal must be concluded within 90 days.

Law stated - 25 August 2022

ENFORCEMENT AND PITFALLS

Enforcement process

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

In Indonesia, a foreign court's judgment will not be recognised in any manner. As for foreign arbitral awards, the award needs to be registered at Central Jakarta District Court by the Arbitral Tribunal or their proxies. Then, the Chief of the Central Jakarta District Court may issue an exequatur order to recognise that the award can be enforced in Indonesia. To obtain the exequatur order, the winning party must first submit an application to the Chief of Central Jakarta District Court. However, if the award involves the Republic of Indonesia as one of the disputed parties, such a request should be submitted to the Supreme Court. Subsequently, the enforcing party can continue the enforcement by requesting an enforcement application to the court to issue a warning (*aanmaning*). This process, in a nutshell, is when the court summons all the parties and order the losing party to voluntarily perform the foreign arbitral award. According to the guideline for enforcement issued by the Supreme Court, a request for this warning (*aanmaning*) must contain:

- the identity of the enforcing party and enforced party;
- the verdict of the award;
- the Deed of Registration issued by the Central Jakarta District Court;
- a summary of the case and grounds of the request;
- the disputed object; and
- the date of registration of the foreign arbitral award.

In addition to the above, the warning (*aanmaning*) request also needs to be equipped with the following documents:

- a copy of the deed of registration of the foreign arbitral award;
- a copy of exequatur; and
- a copy of the arbitral award.

Upon the above request, the court will issue a summon and order the enforcing party and enforced party to attend the hearing addressing the awards contained in the arbitral decision. However, if, upon a hearing, the losing party refuses to perform its obligations, the enforcement process may be resumed by submitting an application to the court for a seizure of asset of the losing party. The enforcing party can then request the asset to be sold (in public or private auction) and its proceeds will be transferred as compensation for the foreign arbitral award. Any excess of the proceeds will be returned to the losing party.

Law stated - 25 August 2022

Pitfalls

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

In practice, the losing party may frustrate the enforcement process of a foreign arbitral award. There are typical efforts from the losing party that can be pursued, such as:

- filing a fresh lawsuit with similar merit that was already decided by the foreign arbitral award in question; or
- filing a new lawsuit before a civil court for the annulment of the underlying contract, aiming to render the foreign arbitral award to be non-enforceable.

In both attempts above, the defendant may request the court to issue an injunctive relief or final verdict, essentially aiming to temporarily postpone to the extent of stopping the enforcement of the foreign arbitral award indefinitely. The enforcing court may postpone the enforcement process until there are outcomes of new lawsuits.

- upon the issuance of the arbitral award, the losing party immediately transfers the ownership of its asset to other parties before being enforced by the court; and
- other third parties (typically controlled or under the directions of the losing party) may file a new lawsuit against the enforcement of the asset, asserting that the enforcement should not be conducted against that asset on the claim that they are owned by the third parties.

Apart from the above, the party seeking to enforce the arbitral award may face other difficulties in the enforcement process, including identifying and locating the assets. This party is required to present this information to the enforcing court because it does not have such data.

Law stated - 25 August 2022

UPDATE AND TRENDS

Hot topics

Are there any emerging trends or hot topics in foreign judgment enforcement in your jurisdiction?

There was a recent case where an Indonesian commercial court recognised, in its legal consideration, a foreign court's proceedings and judgment involving a bankruptcy petition against an Indonesian company. In the consideration, the judges stated that, due to this foreign court's insolvency decision, the bankruptcy application filed before the Indonesian court must be rejected. While it is yet to be seen whether other Indonesian courts will follow or extend this decision, it is important for all interested parties to observe any developments because generally Indonesian law does not recognise, let alone allow, the enforcement of foreign judgments.

Law stated - 25 August 2022

Jurisdictions

	Austria	WEBER & CO.
	Bahrain	Charles Russell Speechlys
	Brazil	Kobre & Kim LLP
	China	DeHeng Law Offices
	Cyprus	N. Piriides & Associates LLC
	Egypt	Soliman, Hashish & Partners
	Germany	Willkie Farr & Gallagher LLP
	Greece	PotamitisVekris
	Indonesia	Assegaf Hamzah & Partners
	Italy	Ughi e Nunziante
	Japan	TMI Associates
	Jordan	Hammouri & Partners
	Luxembourg	Pinsent Masons
	Nigeria	Streamsowers & Köhn
	Philippines	SyCip Salazar Hernandez & Gatmaitan
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	United Kingdom	Latham & Watkins LLP
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