

International **Comparative** Legal Guides



Enforcement of Foreign Judgments **2020**

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

Fifth Edition

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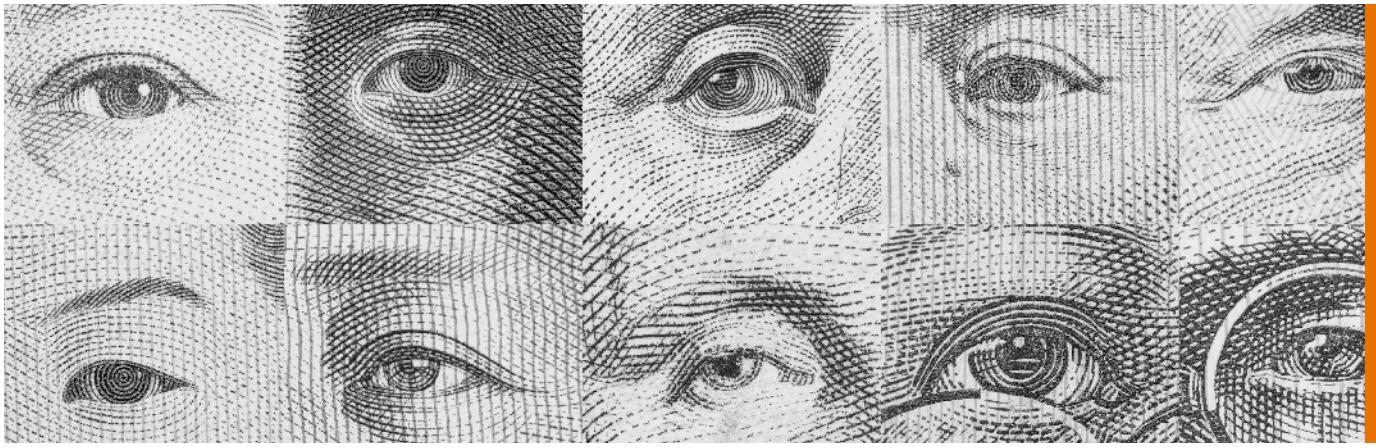
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United Kingdom

+44 207 367 0720

info@glgroup.co.uk

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Group Publisher

Rory Smith

Publisher

Jon Martin

Senior Editors

Suzie Levy

Rachel Williams

Editor

Oliver Chang

Creative Director

Fraser Allan

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Contributing Editors:

Louise Freeman & Shivani Sanghi

Covington & Burling LLP

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Netherlands

Van Oosten Schulz De Korte



Jurjen de Korte

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
Direct effect of judgments within the Kingdom of the Netherlands: art. 40 Statute	Aruba Curaçao Sint Maarten	N/A
Bilateral treaties	Belgium (1925) Italy (1959) Germany (1962) Austria (1963) United Kingdom (1967) Surinam (1976)	Section 3
Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (1971)	Albania Cyprus Kuwait Portugal	Section 3
Hague Convention on Choice of Court Agreements (2005)	Denmark EU Member States Mexico Montenegro Singapore United Kingdom and Gibraltar (in case of Brexit)	Section 3
Multiple treaties with relatively narrow scope (e.g. child support, transport by air, by road, by rail)	Dependent on the treaty	Section 3

If no treaty applies: art. 431 Dutch Code of Civil Procedure	Cases where no treaty applies	Section 2
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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?

If no treaty applies, the recognition and enforcement of a foreign court judgment in civil and commercial matters is governed by art. 431 of the Dutch Code of Civil Procedure.

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

In general: a decision on the merits in a civil or commercial dispute. Some treaties provide explicitly that they do not apply to judgments of certain forums (e.g. administrative bodies) or in certain forms (e.g. penalties, provisional and protective measures) or on certain subjects (e.g. employment, product liability, consumer protection). Despite such treaty exclusions, recognition and enforcement may still be possible under the general regime of art. 431 of the Dutch Code of Civil Procedure. It is still to be tested whether, absent an applicable treaty, a foreign court judgment imposing an administrative penalty (e.g. penalties imposed by a foreign anti-trust authority) may qualify in the Netherlands as a foreign court judgment in a civil or commercial matter, especially since under Dutch law an administrative penalty creates a civil liability (art. 4:124 Awb).

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

A complete and authenticated copy of the foreign judgment and a legal opinion confirming enforceability of the judgment in the country of origin is usually sufficient in terms of evidence. Unless an applicable treaty (e.g. the 1961 Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents) provides otherwise, the court may require those documents to be legalised and to be translated into Dutch by a sworn translator.

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?

None of the parties needs to be domiciled or to even have assets in the Netherlands for recognition and enforcement of a foreign judgment. Reciprocity (*i.e.* recognition of judgments of Dutch courts in the country of origin) is also not a requirement.

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

If the foreign judgment concerns the establishment of a certain status (*e.g.* divorce), it is sufficient to seek recognition of that status but it is not necessary to also seek court leave to enforce in the Netherlands. If the foreign judgment concerns an order to perform a certain act (*e.g.* make a payment, transfer title), one should not only seek recognition of the foreign judgment but also seek from the Dutch courts leave to enforce.

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

Even though the procedure of art. 431 of the Dutch Code of Civil Procedure (*i.e.* absent an applicable treaty) does not formally entail recognition or enforcement of a foreign state court judgment, it does in effect result in giving binding effect in the Netherlands to a foreign court judgment. If no treaty applies, then art. 431 of the Dutch Code of Civil Procedure can be used to initiate (new) simplified proceedings in the Netherlands, seeking the same outcome as the foreign court judgment without review of the merits of the foreign judgment. Depending on the subject matter and amount of the claim, the proceedings are initiated either at the *Kantongerecht* or the District Court in the first instance. The proceedings are initiated by summons (*dagvaardingsprocedure*) and are *inter partes*, the outcome of which is subject to appeal and cassation.

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

Recognition and enforcement may be refused if (i) the foreign judgment is not based on an internationally recognised ground for jurisdiction, (ii) principles of due process were violated in the proceedings that resulted in the foreign judgment, (iii) recognition and enforcement would violate Dutch public order, (iv) the foreign judgment is incompatible with a Dutch judgment between the same parties, (v) the foreign judgment is incompatible with an earlier foreign judgment between the same parties that is recognisable in the Netherlands, (vi) the foreign judgment is by its terms not, no longer or not yet enforceable, or (vii) the foreign judgment has already been satisfied. It is up to the judgment creditor to establish that the foreign judgment is by its terms enforceable in the country of origin (under (vi)), while other grounds for refusal may be raised by the Dutch courts *ex officio* (*e.g.* violation of Dutch public order) or have to be asserted and evidenced by the judgment debtor. The judgment debtor must be given an opportunity to be heard before the request for recognition and enforcement is decided upon.

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

Under the regime of art. 431 of the Dutch Code of Civil Procedure

(*i.e.* absent an applicable treaty), there are no additional requirements for specific subject matters. The Netherlands is a member of a number of treaties on the recognition and enforcement of foreign judgments, some with a relatively broad scope and some with a relatively narrow scope (for instance: child support, shipping, transport by road, by air and by rail). Significant differences may apply depending on the applicable treaty.

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?

A conflicting local judgment between the parties relating to the same issue is a ground for refusal (see under question 2.7 (iv)). Local proceedings pending between the same parties may be a ground to suspend the proceedings pending the outcome of the local proceedings.

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?

Recognition and enforcement of a foreign judgment may be refused if that would violate Dutch public order (for example, U.S. treble damages). Certainly not every conflict with Dutch laws and regulations or with an earlier judgment between other parties amounts to a potential violation of Dutch public order. If the foreign judgment does not fit nicely into the Dutch public order (*e.g.* types of security rights that are foreign to the Dutch legal system), the Dutch court will seek to assimilate the foreign judgment into the Dutch legal system as much as possible. As regards cases where a foreign judgment conflicts with a prior Dutch judgment between different parties on the same or a similar issue, it should also be noted that, although the courts do seek to be consistent, there is no system of binding precedent in the Netherlands.

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?

A Dutch court will not, in principle, review the merits of the foreign judgment, and that is no different if the foreign court has applied Dutch substantive law. However, recognition and enforcement of a foreign judgment may be refused if that would violate Dutch public order.

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.

No, there are not.

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

In the 2014 *Gazprombank* decision, the Dutch Supreme Court held that expiration of a leave to enforce in and under the laws of the country of origin is no cause to refuse recognition and enforcement in the Netherlands of that foreign judgment. In other words, the foreign statute of limitations is of no

consequence for the recognition and enforcement of a foreign judgment in the Netherlands. That decision has raised the question whether the Dutch statute of limitations or no statute of limitations at all applies to recognition and enforcement of a foreign state court judgment in the Netherlands. In any event, the limitation period of a Dutch court leave to enforce (including a court leave to enforce a foreign court judgment) is 20 years.

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?

The answers in this section do not necessarily apply under EU Regulations and the Lugano Treaty.

The procedural rules applicable to seek recognition of and leave to enforce a foreign judgment in the Netherlands on the basis of a treaty are set out in arts 985–990 of the Dutch Code of Civil Procedure.

The request should be accompanied by a complete and authenticated copy of the foreign judgment and evidence of formal enforceability in the country of origin. Unless an applicable treaty (e.g. the 1961 Hague Convention Abolishing the Requirement of Legalisation for Foreign Public Documents) provides otherwise, the court may require those documents to be legalised and to be translated into Dutch by a sworn translator. Some of the treaties that the Netherlands is party to also require that the foreign judgment cannot or can no longer be appealed in the country of origin, and evidence of the same. Some treaties require, for the recognition and enforcement of a foreign default judgment, that the party seeking recognition and enforcement thereof evidences proper notification of the initiation of the foreign proceedings to the defendant. In addition, the party seeking recognition and enforcement in the Netherlands must evidence that the counterparty was properly notified of the request to recognise and enforce the foreign judgment.

Some points to note with respect to the Hague Convention on Choice of Court Agreements (2005) are that it only applies in case of an exclusive choice of court of a Member State, if that agreement was concluded after the convention entered into force and if the proceedings were instituted after the convention entered into force.

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?

Even though arts 985–990 of the Dutch Code of Civil Procedure formally only apply to treaty-based requests for enforcement of a foreign judgment, some authorities hold that these provisions may also (have to) be followed for a treaty-based request to recognise a foreign judgment. Some of the treaties referred to do not apply to recognition of foreign judgments as to a certain status.

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.

The request should be filed at the District Court. The proceedings

are *inter partes*. The decision of the District Court is subject to appeal (within one month, unless an exception applies). The decision of the Court of Appeal is subject to cassation appeal at the Supreme Court (within one month, unless an exception applies). Unless the court decides otherwise, a leave to enforce is not suspended by the mere lodging of an appeal or cassation appeal.

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?

Although the grounds for refusal are formulated differently in the various treaties, they typically include some form of the following grounds for refusal: (i) the foreign judgment is not based on an internationally recognised ground for jurisdiction; (ii) principles of due process were violated in the proceedings that resulted in the foreign judgment; (iii) recognition and enforcement would violate Dutch public order; (iv) the foreign judgment is incompatible with a Dutch judgment between the same parties; (v) the foreign judgment is incompatible with an earlier foreign judgment between the same parties that is recognisable in the Netherlands; (vi) the foreign judgment is by the terms of that judgment not, no longer, or not yet enforceable; or (vii) the foreign judgment has already been satisfied. Some treaties define additional categories for refusal, such as invalidity of or lack of capacity to enter into the agreement giving rise to the foreign judgment, or fraud in the foreign court proceedings. Under most treaties, it is up to the judgment creditor to establish that the foreign judgment is by its terms enforceable in the country of origin (under (vi)) while other grounds for refusal may be raised by the Dutch courts *ex officio* (e.g. violation of Dutch public order) or have to be asserted and evidenced by the judgment debtor. The Dutch courts will not review the merits of the foreign judgment.

4 Enforcement

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

All physical actions pursuant to a leave to enforce (other than imprisonment) can only be initiated by a bailiff (*deurwaarder*). The bailiff may enlist the assistance of the police. The available actions include collection of receivables (e.g. trade receivables, bank balances, insurance proceeds) and involuntary sale of stock, inventory and other movables, real estate and shares. Certain assets may be immune from enforcement (e.g. certain foreign state-owned assets) or subject to a special regime (e.g. aircraft) and certain enforcement actions may amount to an abuse of right (e.g. satisfaction of the claim can also be achieved in a way that is substantially less burdensome to the debtor). Judgments other than payment orders may be strengthened with a monetary penalty (*dwangsom*). In extreme circumstances, a person may be imprisoned as long as the judgment is not satisfied (*lijfswang*).

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.

The Hague Convention on Choice of Court Agreements (2005) will enter into force between the Netherlands and United

Kingdom and Gibraltar in case the United Kingdom ceases to be a member of the EU.

On 18 January 2019, the Dutch Supreme Court confirmed that the 1 August 2006 judgment of the Moscow Arbitrazh Court declaring Yukos Oil bankrupt cannot be recognised in the Netherlands as that would violate Dutch public order.

On 2 July 2019, the Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters was adopted in the Hague, the Netherlands, and signed by Uruguay. This treaty has not yet entered into force.

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?

In case the United Kingdom ceases to be a member of the EU, not only the Hague Convention on Choice of Court Agreements (2005) should be considered for recognition and enforcement of judgments between the Netherlands and the United Kingdom but also the 1967 bilateral treaty. The Hague Convention on Choice of Court Agreements (2005) only applies in case of an

exclusive choice of court of a Member State, if that agreement was concluded after the convention entered into force and if the proceedings were instituted after the convention entered into force. The United Kingdom has also made a reservation with respect to certain (re)insurance matters under that treaty. In comparison, the 1967 bilateral treaty between the United Kingdom and the Netherlands has a wider scope.

It is possible to attach assets (as security for satisfaction of a claim) in the Netherlands even before the proceedings on the merits have been initiated and even if the proceedings on the merits have to be initiated abroad (provided there is a treaty in force between the Netherlands and that foreign country on enforcement of judgments). In most instances, court leave to effect such attachment can be obtained *ex parte*, within a matter of hours, without the need to post a bond and on the basis of a *prima facie* showing of a claim. None of the parties needs to be domiciled in the Netherlands. The attachment of assets in the Netherlands can in certain situations even be used to create jurisdiction of the Dutch state courts to hear the case on the merits (*i.e.* if proceedings would otherwise need to be initiated in a foreign country with which the Netherlands has not entered into a treaty on the enforcement of judgments).



Jurjen de Korte joined Van Oosten Schulz De Korte Advocaten in 2017. Previously, Jurjen worked at the Amsterdam office of Stibbe, the Abu Dhabi office of Herbert Smith and at Eversheds Sutherland in Amsterdam. Jurjen graduated in Dutch law at the Utrecht University (1998) and completed a Master of Laws degree at New York University (1999). He was admitted to the Dutch Bar in 1999, the New York State Bar in 2001 and has rights of audience at the DIFC Courts (2010). Jurjen has extensive experience in cross-border litigation and arbitration with a particular focus on international commercial arbitration. Jurjen has handled disputes in a wide range of sectors, including construction, automotive, oil and gas, M&A and banking and finance. He frequently publishes and lectures in the field of international arbitration and private international law.

Van Oosten Schulz De Korte
Vondelstraat 41
1054 GJ Amsterdam
The Netherlands

Tel: +31 20 6060 680
Email: dekorte@vosdk.nl
URL: www.vosdk.nl

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