



*Recognition and Enforcement of Foreign
Orders and Judgments in Brazil*

LONDON
September 2012

INTRODUCTION

2

- For a foreign judgment or arbitration award to be legally enforced in Brazil, such decision should be previously scrutinized and ratified by the Superior Court of Justice – STJ.
- The legal requirements and provisions that regulate the enforcement proceedings are established by Resolution no. 9 of the STJ; the Brazilian Civil Code; the Brazilian Civil Procedural Code and other related legislation.
- Brazil is a party to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards - the "New York" Convention.
- A foreign decision will only be validly enforced in Brazil after the STJ grants it an **“exequatur”**

LEGAL REQUIREMENTS

3

- The legal requirements for the enforcement of foreign judgments are :
 - I - the judgment must be issued by a competent judge/court;
 - II - the defendants must have been duly summoned or their default legally ascertained;
 - III - the decision must have become final and in compliance with the necessary formalities to be enforced, in the place where it was rendered;
 - IV - the decision must be legalized by the Brazilian Consulate and accompanied by a sworn translation.

LEGAL REQUIREMENTS

4

IMPORTANT NOTE REGARDING THE SUMMONING OF A BRAZILIAN PARTY:

- The Brazilian defendant must be summoned in Brazil by letter rogatory to be processed through diplomatic channels.

“The only form of summoning admitted to a defendant domiciled in Brazil is the one held by the means of a letter rogatory. Precedents.”

(SEC 1.483/LU, Justice Ari Pargendler, judged 29.04.2010)

“Foreign decision challenged. Ratification. Divorce. Spouse domiciled in Brazil at the time the lawsuit was filed abroad. Summoning through announcement or through mail service. Impossibility. Necessity of a letter rogatory. Precedents of the Superior Court of Justice and of the Federal Supreme Court. Request for ratification denied.”

(SEC 3383 / US, Justice Teori Albino Zavascki, judged 02.09.2010)

LEGAL REQUIREMENTS

5

IMPORTANT NOTE REGARDING THE SUMMONING OF A BRAZILIAN PARTY:

- Summoning via mail, post, DHL, courier, or any other nature rather than through an official letter rogatory are not considered valid in the Brazilian Legal System and may jeopardize the enforcement of the foreign judgment.
- The summoning issue will be overcome if the defendant enters the proceedings and exercise the right of defence without challenging the service order.
- In arbitration proceedings the Brazilian Arbitration Act deems valid the summoning of a Brazilian party following the terms of the Arbitration Agreement or in accordance with the procedural law of the country where the arbitration was held.

LEGAL PROCEDURE

6

- The enforcement of the foreign decision should be requested through a formal proceedings to be instituted by the interested party before the Superior Court of Justice. The enforcement application must contain:
 - ▣ - The facts and grounds of the enforcement and claimed amount.
 - ▣ - A certified copy of the full text of the foreign judgment, together with a statement issued by the judge confirming that the decision is final (*res judicata*).
 - ▣ - Other documents that are essential to support the claim must also be presented.

All the foreign documents must be duly legalized by the Brazilian Consulate and accompanied by a sworn translation.

LEGAL PROCEDURE

7

- Once the application is presented, the Presiding Justice of the Superior Court (STJ) will summon the opposite party.
- The defendant will have the opportunity to challenge the enforcement of the foreign decision.
- Any challenges to the request shall be limited only to the fulfilling of the requirements for the enforcement of the foreign decision.
- The defendant will not be able to discuss the merits of the case.

LEGAL PROCEDURE

8

“Foreign decision challenged. (...) Ratification granted.

1. The act of ratification of a foreign decision is restricted to the analysis of its formal requirements, reason why it is not admitted the examination of the merits of the foreign decision to which the claimant seeks to put into effect in this country.

2. In the opportunity of the challenge to the ratification request, it is not possible for the defendant to raise any discussion regarding the underlying substantive law, because it would exceed the limits set by art. 9, caput of Resolution # 9 of 04/05/05, of the Superior Court of Justice. Precedents.

3.. The request for ratification of foreign judgments does not serve to investigate the breach of the foreign decision. However, the ratification allows the claimant to file the appropriate legal action before the Brazilian Courts aiming the fulfillment/enforcement of what is established in the foreign judgment.

4. Ratification granted (...).”

(SEC 6577 / EX, Justice Arnaldo Esteves Lima, judged on 20/06/2012)

LEGAL PROCEDURE

9

- After the defendant's summoning the Federal General Attorney will render his opinion on the legality of the judgment/award at stake.
- If no challenges are made and the Federal General Attorney does not pose any objections, the Presiding Justice should grant the **exequatur**.
- If, however, there are objections either by the defendant or by the Federal General Attorney, the proceedings will go to trial by the full Bench of the Superior Court.
- The Superior Court of Justice will not review the facts and merits of the case that has been decided by the foreign court/arbitrator, but simply examine the presence of the legal formal requirements for the enforcement.

LEGAL PROCEDURE

10

- The Superior Court will not ratify the foreign decision in case it offends the Brazilian public policy.
- Likewise, the Superior Court will refuse to ratify the foreign decision if it does not fulfill the requirements above referred.
- By the same token, the Superior Court will not ratify the decision that has been declared void or its effectiveness has been suspended by a court of the country where it has been rendered.

THE ENFORCEMENT

11

- Once the Superior Court of Justice ratifies the foreign decision, the *exequatur* will be granted.
- The foreign decision will become valid and effective in Brazil.
- The enforcement of the decision against the debtor will be performed by a letter of judgment issued by the Superior Court to the local federal court where the defendant is domiciled in Brazil.
- The local federal judge will then issue a new summoning order on the defendant, for the satisfaction of the decision within fifteen days.

THE ENFORCEMENT

12

- When an obligation of payment is involved the summoning of the defendant will incorporate a payment order.
- If the defendant does not voluntarily pay, his assets will be immediately attached by the court and a 10% fine will be imposed.
- The judge may also order the on line attachment of funds existing in any Brazilian bank account registered under the name of the debtor. Such order is forwarded on line by the Judiciary authority to all banking and financial institutions through the Brazilian Central Bank.
- Once the assets are attached, the defendant is still entitled to challenge the execution at the local federal court.

THE ENFORCEMENT

13

- In case the debtor starts frittering away his assets, in an attempt to fraud the execution or make it unfeasible, such conduct can be considered as a justifiable cause for the disregard of the legal entity so that the creditor can seek the enforcement of the credit against any of the company's shareholders.
- The creditor may also attempt to pierce the debtor's corporate veil in when the means for fulfillment of the credit against debtor's assets were exhausted and the total executed amount has still not been fulfilled.
- During the developments of the enforcement request it is possible to seek urgent provisional measures as long as the applicant can demonstrate a reasonable ground for such request and a justifiable reason for the need of urgency, as for instance if the debtor is disposing of his assets to compromise the payment of the debt.

CONCLUSION

14

- The enforcement of a foreign judgement in Brazil is a formal proceedings that entails a time estimate that may vary between 6 months to 2 years, depending on the circumstances of each case and especially on whether the opponent will present any challenges to the enforcement request.
- The court costs for the request for ratification of the foreign decision/award before the Superior Court of Justice are approximately USD 70.00.
- The court costs for the enforcement proceedings before the local federal court may vary from state to state and will be in general of 0,5% of the amount claimed, generally with a cap of approximately USD 1,000.00.
- Further to the court fees, sworn translation of all documents written in foreign language will be necessary.



THANK YOU!

Godofredo Mendes Vianna
godofredo@kincaid.com.br



. Rio de Janeiro

Av. Rio Branco, 25 - 1 andar
Rio de Janeiro – RJ
Cep: 20090-003
Tel: (55 21) 2276 6200
Fax: (55 21) 2253 4259

. Brasília

SHS, Quadra 06, Conjunto A,
Bloco E, Sala 918, Ed. Brasil XXI
Brasília – DF
Cep: 70322-150
Tel: (55 61) 3039 9232
Fax: (55 61) 3039 9135

. São Paulo

Rua Vergueiro, 2087 – Conjunto 501
Paraíso - São Paulo - SP
Cep: 04101-000
Tel: (55 11) 3045 2442 – 5084 5911
Fax: (55 11) 5084 5913

. Vitória

Rua Prof.Almeida Cousin, 125, salas 1202, 1203 e 1204
Ed. Enseada Trade Center - Enseada do Suá -Vitória-ES
Cep: 29050-565
Tel/Fax: (55 27) 3201-4775

WWW.KINCAID.COM.BR