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Enforcement of Foreign Judgments 2020

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

Fifth Edition

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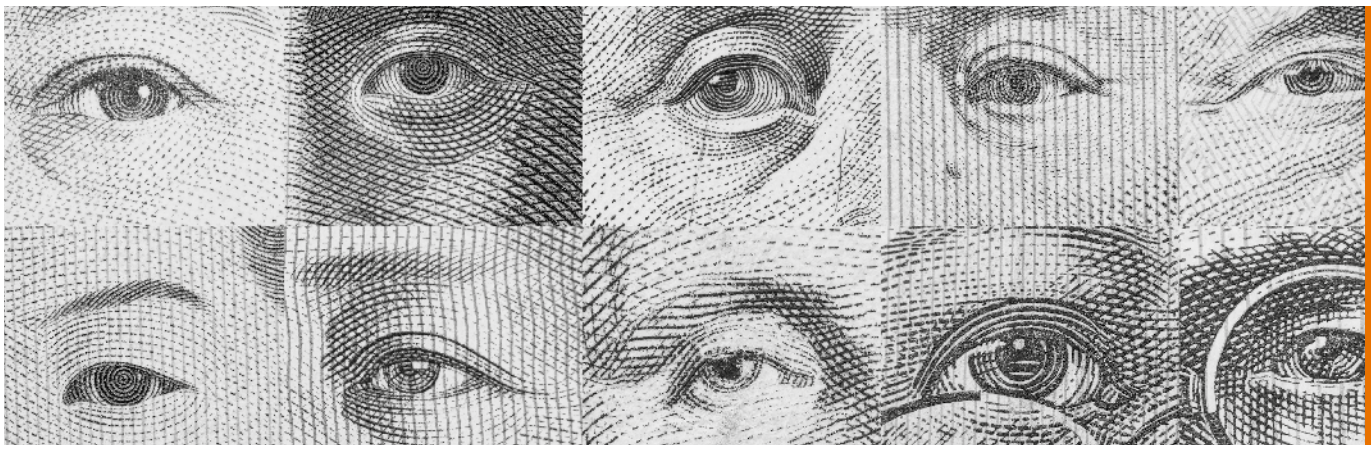

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1 Country Finder

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
Domestic provisions:		
Austrian Enforcement Act (AEA).	All jurisdictions (to the extent that AEA provisions are not superseded by special regimes).	Section 2, question 3.1 and section 5.
Austrian Insolvency Code (IC).	All jurisdictions (to the extent that IC provisions are not superseded by special regimes).	Questions 2.8 and 3.1.
Law on Non-Contentious Matters (ALNM).	All jurisdictions (to the extent that ALNM provisions are not superseded by special regimes).	Questions 2.8, 2.9, 3.1, 3.3 and 3.4.
Multilateral conventions on litigation and arbitration:		
Convention on Civil Procedure (1954 Hague Convention).	All parties to the Convention.	Question 2.8.
Convention on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters (2007 Lugano Convention).	Iceland, Norway and Switzerland.	Questions 2.8, 2.10, 3.1, 3.2 and 3.4.
Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958 New York Convention).	All parties to the Convention.	Questions 2.8, 3.1 and 3.3.
Multilateral conventions on family matters and the civil status of individuals:		
Hague Conventions on matters of family law and civil status of 1958, 1961, 1980, 1996, 2000 and 2007.	All parties to the Conventions.	Questions 2.8, 3.1, 3.3 and 3.4.
Convention on the Recognition of Decisions Relating to the Validity of Marriages.	Turkey and the Netherlands (to the extent that this Convention is not superseded. by special regimes, such as EU Regulations).	Question 2.8.
European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children.	All parties to the Convention.	Question 2.8.
Multilateral conventions on the carriage of passengers and goods:		
CMR, CIM, CIV, COTIF, Multilateral Convention on the Registration of Invalid Navigation Vessels.	All parties to the Conventions.	Questions 2.8, 3.1 and 3.3.

Bilateral treaties:		
Bilateral treaties and Austrian regulations regarding individual jurisdictions with respect to the recognition and enforcement of judgments and/or arbitral awards.	Belgium, British Columbia, Croatia, Finland, France, Germany, Israel, Italy, Kosovo, Liechtenstein, Luxembourg, Montenegro, North Macedonia, Norway, Serbia, Slovenia, Spain, Sweden, Switzerland, the Netherlands, Tunisia, Turkey and the United Kingdom.	Questions 2.8, 2.9, 2.10, 3.1, 3.2, 3.3 and 3.4.

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?

The general regime governing the recognition and enforcement of foreign judgments in Austria is enshrined in Sections 403 *et seqq.* of the Austrian Enforcement Act (***AEA***). Pursuant to Section 416(1) AEA, these provisions apply to foreign executory titles to the extent that they are not superseded by international treaties or the law of the European Union.

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

The scope of application of the aforementioned domestic provisions is not confined to foreign judgments. It extends to all foreign executory titles. Foreign executory titles are defined in Section 403 AEA as documents and deeds drawn up abroad. Documents and deeds issued by Austrian authorities abroad or by agents of such authorities are considered domestic. Notably, foreign executory titles need not be of the same nature as any Austrian domestic executory title as enumerated in Section 1 AEA, *i.e.*, need not fit into any of the categories specifically known to Austrian law in order to be capable of recognition and enforcement. However, they must be regarded as executory titles in their jurisdictions of origin.

This broad definition encompasses all foreign judgments, orders, interim measures, court settlements, public deeds, declarations of commitment issued by foreign notaries and arbitral awards issued by arbitral tribunals having their seat abroad.

The term "judgments" includes partial judgments, judgments by default and complementary judgments.

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

To be granted leave for enforcement, *i.e.*, to be declared enforceable in Austria, pursuant to Section 406 AEA, foreign executory titles must satisfy the following basic conditions.

Firstly, they must be enforceable in their jurisdiction of origin. Notably, their enforceability may precede their entry into legal force, which means that an (provisionally) enforceable foreign executory title may be enforced in Austria while still being subject to appellate proceedings in its jurisdiction of origin.

Secondly, such foreign executory titles must be sufficiently specific, *i.e.*, the content of their orders must be determinable without any further assessment. Such is the case, for example, with an executory title providing for payment in a foreign currency.

Moreover, an international treaty or domestic regulation must expressly stipulate the principle of reciprocity with respect to the enforcement of executory titles between the state of origin of the relevant foreign executory title and Austria. Notably, Austrian enforcement courts are not authorised to assess the actual practice of enforcing executory titles in the particular state. Reciprocity must therefore be warranted by international treaty and/or domestic regulations and not just by factual practice. However, the requirement of reciprocity does not apply to executory titles regarding a person's civil or marital status.

Section 407 AEA provides additional requirements. Notably, its scope of application is different from Section 406 AEA, as it is confined to judgments, settlements and public deeds. Executory titles falling within the scope of this provision must originate in a state whose authorities would be competent to issue such documents and deeds not just within their jurisdiction but also under Austrian law on international jurisdiction. Furthermore, they must stem from proceedings in which the document initiating action (*e.g.*, the claim or the request for arbitration) has been served upon the party opposing the enforceability of the executory title in Austria (*i.e.*, the defendant). The opposing party must thus have been put in a position to make use of its procedural rights before the executory title has been rendered. Finally, Section 407 establishes the requirement that the title may not be subject to any further challenge or appellate proceedings suspending enforceability in its country of origin. The fulfilment of this requirement must be confirmed by the authority which has rendered the title.

The party seeking leave for enforcement must submit the original executory title or a copy issued by the same authority which rendered the foreign title. Furthermore, a full certified translation of the writ of execution must be submitted.

Even if all preconditions enshrined in Sections 406 and 407 AEA are fulfilled, a foreign executory title may not be declared enforceable if there are any grounds for refusal as enumerated in Section 408 AEA. These grounds are discussed in more detail in our answer to question 2.7.

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?

With respect to foreign executory titles, Section 409 AEA provides for the jurisdiction of the district courts. In particular, the creditor has to request leave for enforcement from the district court at the seat or domicile of the debtor. However, where the creditor prefers to combine its request for leave for enforcement with a request for enforcement authorisation, Section 409 AEA effectively allows a choice between the district court at the seat or domicile of the debtor and the district court within whose territorial jurisdiction the assets of interest for the purpose of enforcement are located.

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

Under the rules of the AEA, the enforcement of a foreign

executory title is contingent upon the application and issuance of a leave for enforcement. By means of this procedure it can be avoided that different courts decide differently on whether to grant the execution on the basis of a foreign title. Once the leave for enforcement has become effective, the executory title is declared enforceable once and for all. It is to be noted that such request for a leave for enforcement can be submitted together with an actual request for enforcement authorisation.

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

A party seeking enforcement of a foreign executory title has to first request a leave for enforcement from the competent court (see the answer to question 2.4 for information regarding the territorial jurisdiction of the district courts). The party may combine such a request with a request for an enforcement authorisation. Where this is the case, the court will decide on both issues simultaneously.

The court will examine the aforementioned grounds for granting leave for enforcement (see the answer to question 2.3) as well as the grounds for refusing enforcement in *ex parte* proceedings, and will decide based only on documents, *i.e.*, without conducting a hearing or otherwise involving the debtor. This procedure was designed to grant the creditor an advantage when initiating and executing enforcement.

Both parties may raise an appeal against the district court's order on the request for leave for enforcement. Since the first instance proceedings are conducted without the debtor being granted the right to be heard, Section 411(2) no. 2 allows for the debtor to introduce new facts in the course of such appeal proceedings. Notably, the debtor is required to raise all grounds for refusing the creditor's requests already with the appeal. Any grounds not invoked in the appeal will be precluded with the exception of grounds that the debtor could not have been aware of. The competent regional court will hear the appeal in *inter partes* proceedings. Generally, an appeal may be filed within four weeks from the day the decision on the request for leave for enforcement is served upon the debtor personally or at his habitual residence. However, if the debtor's seat or habitual residence is not in Austria and the appeal is their first chance to participate in the proceedings, this time period amounts to eight weeks. Nonetheless, this does not affect the time period for the creditor's reply to the appeal, which will not exceed four weeks.

As discussed above, a leave for enforcement and an enforcement authorisation may be ordered by an Austrian court regardless of whether the respective executory title is subject to appellate proceedings in its jurisdiction of origin. Therefore, the debtor may request the respective enforcement court of second instance to stay the appellate proceedings until the executory title becomes final and binding in the jurisdiction in which it has been rendered. During such a stay of the proceedings, the creditor may have the debtor's assets seized but not liquidated. The Austrian enforcement court may order the creditor to provide security for any permitted enforcement measure the creditor takes during the stay.

Section 414(1) AEA allows for the debtor to request the Austrian enforcement court to set aside or amend the leave for enforcement if the executory title has been set aside or amended in its jurisdiction of origin. The debtor may also combine this request with a request to stop or limit the enforcement measures.

The regional court's decision on the appeal may, in turn, be brought before the Austrian Supreme Court. Notably, however, the Austrian Supreme Court's review is limited to points of law and issues of material importance to the uniformity, certainty and development of the Austrian legal order.

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

The debtor may challenge the leave for enforcement where: (i) any of its preconditions has not been met; (ii) the debtor was not provided with an opportunity to participate in the initial (foreign) proceedings resulting in the executory title due to procedural irregularities; (iii) the leave for enforcement would result in the enforcement of an action which is not admissible or not enforceable under Austrian law (for example, the enforcement of an action constituting a criminal offence under Austrian law); and (iv) the recognition or enforcement would effectively violate the fundamental principles of Austrian law (*ordre public*).

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

With a view to specific subject matters, Sections 403 *et seqq.* AEA are often superseded by specific domestic provisions, international treaty law and European legislation.

For example, Sections 91a to 91d of the Law on Non-Contentious Matters (***ALNM***) govern the recognition of foreign decisions on adoption. Foreign decisions on certain matrimonial matters related to the validity, persistence and end of marriage are recognised in Austria in accordance with Sections 97 to 100 ALNM. Similarly, Sections 112 to 116 relate to the enforcement of foreign decisions on parental custody and the parental right of access to the child. Sections 131a to 131g ALNM govern the recognition and enforcement of foreign decisions on the protection of vulnerable adults and their property. It should be noted that the provisions of the ALNM apply only to the extent that they are not superseded by international treaties or EU legislation. In addition, Section 240 of the Insolvency Code (***IC***) applies to the recognition of foreign insolvency proceedings and the decisions made within their framework. Notably, the wording of all these legal provisions refers to "foreign decisions" as their object. This term is narrower than that of "documents and deeds" as used in the AEA. Finally, Section 614 of the Austrian Code of Civil Procedure (***ACCP***) governs the recognition and enforcement of arbitral awards (though referring further to the AEA, international treaties and instruments of EU law). All these domestic provisions are *leges speciales* with respect to Sections 403 *et seqq.* AEA and thus supersede the general framework of the AEA.

Pursuant to Section 416 AEA, European law and international treaties also supersede Sections 403 *et seqq.* AEA to the extent that they govern the recognition and enforcement of executory titles differently. This is relevant for the Hague Conventions of 1954, 1958, 1961, 1980, 1996, 2000 and 2007 referred to in the answer to question 1.1.

The same applies for the following multilateral treaties to which Austria is a party:

- Convention on the Contract for the International Carriage of Goods by Road (***CMR***) of 19 May 1956.
- Convention on the Recognition and Enforcement of Foreign Arbitral Awards of New York 1958 (***New York Convention***).
- International Convention Concerning the Carriage of Passengers (***CIM***).
- International Convention Concerning the Carriage of Passengers and Luggage by Rail (***CIV***).
- Multilateral Convention on the Registration of Invalid Navigation Vessels concluded at Geneva on 25 January 1965.
- Convention Concerning International Carriage by Rail (***COTIF***).

- Convention on the Recognition of Decisions Relating to the Validity of Marriages of 8 September 1967. Austria, the Netherlands and Turkey are members to this treaty.
- European Convention on Recognition and Enforcement of Decisions concerning Custody of Children and on Restoration of Custody of Children.

In addition, Austria has concluded a number of bilateral treaties governing the recognition and enforcement of foreign executory titles; namely with: Belgium; Finland; France; Germany; Israel; Italy; Liechtenstein; Luxembourg; the Netherlands; Norway; Sweden; Switzerland; Spain; Tunisia; Turkey; and the United Kingdom. An Austrian domestic regulation governs the recognition and enforcement of judicial decisions and arbitral awards issued in the Canadian province of British Columbia. Many of these treaties, *i.e.*, those concluded with countries which have since acceded to the European Union, have been superseded by EU law.

In 1960, Austria signed a bilateral treaty on the enforcement of commercial arbitration awards with Yugoslavia, which Austria continues to consider applicable with respect to Croatia, Montenegro, North Macedonia, Serbia and Slovenia.

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?

Sections 91a(2) no. 3 and 97(2) no. 3 ALNM apply to foreign decisions, on adoption and on matrimonial matters related to the validity, persistence, and end of marriage, respectively. They provide that Austrian authorities shall refuse to recognise a decision that is irreconcilable with an Austrian decision or with an earlier foreign decision fulfilling the preconditions for recognition in Austria.

Similarly, Section 113(1) no. 3 ALNM governs the enforcement of foreign decisions on parental responsibilities and provides that enforcement shall be refused if such a decision is irreconcilable with a subsequent Austrian decision or a subsequent foreign decision if such decision fulfils the preconditions for recognition in Austria. The same is true with respect to Sections 131b and 131e ALMN, which govern the recognition and enforcement of foreign decisions on the protection of vulnerable adults and their property.

Bilateral treaties typically provide that recognition of a foreign executory title may be refused due to a pending domestic proceeding on the same subject matter which was commenced in Austria before it was commenced in the other state, *e.g.*, Article 5 no. 3 of the bilateral treaty between Austria and Israel and Article 4 no. 3 of the respective treaty with Tunisia.

The AEA itself does not address the circumstance of an earlier executory title as a separate ground for rejecting the creditor's request for a leave for enforcement. However, pursuant to Section 411(2) in conjunction with Section 230(3) ACCP, the *res judicata* effect of an executory title applies at any stage of the proceedings conducted in Austria, *i.e.*, it must be considered even by an appellate court reviewing a conflicting first instance decision. Recently, the Austrian Supreme Court expressly confirmed that this also applies with respect to recognised foreign executory titles (see also question 5.1 below).

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?

A conflict with Austrian law does not in itself constitute a ground for refusing the recognition or enforcement of a foreign executory title unless it amounts to a breach of the fundamental principles of substantive or procedural Austrian law. This is a common provision. It is expressly stipulated in Section 408 no. 3 AEA, Article 45(1)(a) of the Brussels I Regulation (recast), Articles 22(a) and 23(a) of the Brussels II Regulation, Article 34 no. 1 of the Lugano Convention as well as in many of Austria's bilateral treaties on the recognition and enforcement of executory titles.

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?

Foreign executory titles applying Austrian law are enforceable in Austria under the general conditions applicable to all foreign executory titles as set forth above.

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.

Austria is a federal republic consisting of nine regional states (*Bundesländer*), each with a parliament competent to pass laws within the scope of subject matters that the Federal Constitution prescribes. The remaining subject matters are regulated by the Austrian federal parliament, the National Council.

The AEA is a federal law enacted by the National Council, and it applies equally in all nine regional states.

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

In general, a recognised and enforceable foreign executory title has the same legal effects as a domestic executory title. However, contrary to the approach typically taken in common law jurisdictions, in Austria, limitation periods are an issue of substantive and not procedural law; thus, the limitation period of an executory title is governed by the law applicable to the merits of a dispute. As a consequence, the law governing the limitation period of the executory title may be foreign. Pursuant to Section 1478 of the Austrian Civil Code (***ACC***), where Austrian law is applicable, judgments may be enforced within 30 years from the date on which the judgment became final and binding.

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?

Section 240 IC provides that effects of insolvency proceedings opened abroad shall be recognised in Austria if the centre of the debtor's main interests is situated in that foreign state, the insolvency proceedings are similar to insolvency proceedings in Austria (in particular, if Austrian creditors are treated equally with creditors from the state where the proceedings are taking place) and none of the grounds for rejecting recognition apply.

With respect to the matters governed by the ALNM, the preconditions for recognising a foreign decision on adoption or

matrimonial matters related to the validity, persistence, and end of marriage are satisfied where the foreign decision has entered into legal force in its state of origin. Also, the party requesting recognition must have a legal interest in the recognition. Foreign judicial decisions, foreign court settlements and foreign public deeds on parental custody may only be recognised and granted a leave for enforcement in Austria if they are enforceable in the jurisdiction of their origin and no ground for rejecting their enforceability in Austria exists. Pursuant to Sections 131b(1) and 131e(2) ALNM, the preconditions for the recognition and enforcement of a measure for the protection of vulnerable adults and their property are governed by the Hague Convention of 2000.

Under the Lugano Convention, if an executory title is enforceable in the state of its origin and none of the grounds for rejection apply, it shall be declared enforceable also in the state where enforcement is sought. The New York Convention obliges the contracting states to recognise and enforce arbitral awards provided that none of the grounds enumerated in Article V of the convention apply.

Typically, Austria's bilateral treaties on recognition and enforcement provide that executory titles shall be recognised and/or enforced where three conditions are fulfilled: (i) the executory title does not violate Austria's public policy; (ii) the debtor has been granted the right to be heard; and (iii) there is no proceeding on the same subject matter pending before a court in the country where recognition and/or enforcement is sought.

CMR, CIM, CIV, and COTIF do not stipulate any substantive law on the recognition and enforcement of the relevant executory titles. Therefore, they only supersede Section 403 AEA, while Sections 404 *et seqq.* AEA remain applicable.

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?

The bilateral and multilateral conventions listed in the answer to question 1.1 typically distinguish between recognition and enforcement (see, *e.g.*, Articles 32 *et seqq.* of the Lugano Convention). They do not convey in the terms "*recognition*" and "*enforcement*" meanings that differ from those under Austrian law as discussed in answer to question 2.5.

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.

With respect to adoption and certain matrimonial matters related to the validity, persistence, and end of marriage, Sections 91b and 98 ALNM provide that a party requesting the recognition of a foreign decision has to furnish: (i) the original decision or a copy issued by the same authority accompanied by a certified translation thereof; (ii) proof that the decision has entered into legal force in its jurisdiction of origin; and (iii) where the decision was given in the absence of the opponent, evidence that the opponent either agreed to the proceedings to be conducted in his or her absence or that he or she was at least served the document by which the proceedings were commenced. An appeal against the recognition must be filed within one month unless the habitual residence of the opponent is abroad, in which case the time period is two months.

With respect to matters of parental responsibility, under Section 114 ALNM the request for recognition of a foreign decision must be accompanied by: (i) the respective decision and a translation thereof; (ii) a document showing that it has entered into legal force in its jurisdiction of origin; and (iii) proof that it was served. Again, where the decision resulted from proceedings in the absence of the opponent, the party seeking recognition must show that the opponent was served the document with which the foreign proceedings were commenced or that the opponent agreed to the proceedings in his or her absence. An appeal must be filed within one or two months depending on whether the habitual residence of the opponent is abroad or not.

Section 131c ALNM provides for a similar procedure for the recognition of foreign decisions on the protection of individuals and the protection of vulnerable adults and their property. With respect to enforcement, in addition, the applicant has to furnish proof that the decision is enforceable in the state of its origin.

The bilateral and multilateral treaties listed in the answer to question 1.1 typically provide that the enforcement proceedings shall be governed by the law of the state where enforcement is sought, with the exception of individual procedural matters governed by the respective treaty (see, *e.g.*, Article 18(1) COTIF, Article 28 of the Hague Convention of 1996, Article 27 of the Hague Convention of 2000, and Article 12(1) of the bilateral treaty between Austria and Israel).

Some treaties, *e.g.* the Lugano Convention, expressly govern the documentation that a party seeking enforcement has to furnish. The Lugano Convention requires a judgment to be provided in an original or an authentic copy. Further, the party seeking enforcement has to produce a certificate in accordance with the standard form in Annex V to the Convention.

With respect to the recognition and enforcement of arbitral awards, Article III of the New York Convention provides that the procedural rules of the enforcing state shall apply. While Article IV(1) of the Convention requires the creditor to furnish both an authenticated original award (or a certified copy thereof) and the original arbitration agreement (or a certified copy thereof), Section 614(2) ACCP does not require the creditor to furnish the arbitration agreement unless the enforcement court specifically requests it. In accordance with Article VII(1) of the New York Convention, the Austrian provision, being more liberal, supersedes the more restrictive one in the New York Convention.

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?

With respect to foreign insolvency proceedings, their effects may not be recognised if domestic insolvency proceedings have already been opened or if interim measures have already been ordered in Austria. Also, the recognition may be refused if this would contradict Austrian public policy.

Pursuant to Section 91a(2) and Section 97(2) ALNM, the recognition of decisions related to adoption and certain matrimonial matters related to the validity, persistence and end of marriage may be refused if this would be manifestly irreconcilable with Austrian public policy (and where adoptions are concerned, with the child's well-being), if the parties have not been granted the right to be heard, if the decision irreconcilably contradicts an Austrian decision or a previous foreign decision which fulfils the preconditions for recognition in Austria; and where the authority that has given the decision would not have been competent to decide the matter if Austrian rules on international jurisdiction had been applicable. With respect to adoptions, in particular, Section 91a(3) ALNM further provides that recognition may be refused if a person's approval rights under the applicable law have been breached.

The grounds for refusing recognition as laid down in Sections 113 and 131b(4) ALNM mirror the grounds under Section 91a(2) ALNM with the exception that the foreign decision may not be recognised due to an irreconcilable contradiction with an Austrian decision (or a recognisable foreign decision) that was given after the decision to be recognised. Section 113(2) ALNM further provides that recognition shall be refused if the person responsible for the parental custody did not have a chance to participate in the foreign proceedings.

The grounds for refusing recognition and/or enforcement of foreign executory titles laid down in bilateral and multilateral treaties may differ significantly. Typically, a foreign executory title will not be recognised if it (manifestly) contradicts the public policy of the state where recognition and/or enforcement is sought (see, *e.g.*, Article 34 no. 1 of the Lugano Convention, Article 22(a) of the Hague Convention of 2007). Another common ground for rejecting a request for recognition and/or enforcement is a conflicting domestic decision (see, *e.g.*, Article 34(4) of the Lugano Convention, and Article 5 no. 3 of the bilateral treaty between Austria and Israel). An appeal against the decision recognising a foreign decision or declaring it enforceable is to be raised within one month (see, *e.g.*, Article 43 no. 5 of the Lugano Convention) or 30 days (see, *e.g.*, Article 23(6) of the Hague Convention of 2007).

4 Enforcement

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

With respect to immovable property, there are three types of enforcement measures, namely: compulsory mortgage; compulsory administration with the goal to generate revenue to satisfy the claim; and compulsory sale of the immovable asset. The creditor may apply for each of these measures or for a combination of them.

As far as enforcement against movable property is concerned, Austrian law distinguishes between attachment of receivables, attachment of tangible and moveable objects, attachment of claims for delivery against third-party debtors and attachment of other property rights (such as trademarks, patents, copyrights, licences, and shares).

The creditor may request the attachment of receivables owed to the debtor by third parties. Austrian law does not allow the attachment of certain specific receivables such as nursing allowance, rent aid, family allowance, and scholarships. Other receivables may only be attached to a certain extent or only under specific conditions in order to guarantee that the debtor's income stays above the subsistence minimum.

Finally, the enforcement court may compel the debtor to perform or refrain from specific actions.

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.

On 11 June 2018, the Austrian Supreme Court handed down a decision (4 Ob 88/18x) confirming that the *res judicata* effect of a foreign judgment applies at all stages of proceedings conducted in Austria. In particular, the decision expressly clarifies that the *res judicata* effect also affects pending appellate proceedings. Thus, even where a foreign executory title becomes final and binding after the rendering of a conflicting domestic decision, the Austrian appellate court by reviewing such domestic decision must, *ex officio*, acknowledge the *res judicata* effect it might have. Any infringement of *res judicata* would constitute a ground for nullity which must be observed at all stages of the proceedings. As emphasised by the Court, the nullification applies to both, the exclusivity ("*Einmaligkeitswirkung*") and the binding effect ("*Bindungswirkung*") of a preliminary foreign judgement.

In arriving at its decision, the Austrian Supreme Court ruled that the way in which foreign judgements are recognised is governed by the *lex fori*, *i.e.*, Austrian law, whereas the objective and subjective limits of its legal effect are governed by the law of the jurisdiction where the executory title was rendered. Likewise, the Supreme Court stated that the question whether the *res judicata* effect must be considered by Austrian courts *ex officio* or only upon a respective party plea pertains to the procedural modality of recognition and is therefore governed by the *lex fori*, *i.e.* Austrian law. Further, the Supreme Court clarified that the interdiction of novation in appellate proceedings applies only to new facts and new evidence and, therefore, does not preclude the appellate court from considering the *res judicata* effect of a new foreign decision.

In a decision issued in April 2019 (4 Ob 230/18d), the Austrian Supreme Court determined that the substantive effects of a foreign decision do not follow the procedural recognition of that decision, but are governed by the substantive law determined by the conflict rules of the *lex fori* as applicable law.

With respect to recent legislation, amendments to the AEA, which entered into force on 1 January 2019, now grant access to data about pending enforcement proceedings. The database is available online and yields instantaneous results. Attorneys and public notaries may access information about the enforcement court, the case number and the amount of the debt subject to the enforcement proceedings. It also shows whether there have been attempts to seize the debtor's moveable assets and whether the debtor has been ordered to prepare an inventory of their property within the last year. However, the database does not show proceedings which have taken less than a month to conclude since their respective leave for enforcement or in which the creditor has not taken an action to actively pursue enforcement within the last two years.

To gain access to this information, attorneys and public notaries must merely attest the existence of a receivable their clients have against a debtor and reasonable doubts as to that debtor's solvency. Most importantly, the new provisions do not require exhibiting an executory title; they instead seek to assist potential claimants in evaluating the creditworthiness of prospective respondents before commencing court or arbitral proceedings.

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?

Initiating recognition and enforcement procedures may only result in payment if the debtor owns assets of sufficient value. However, publicly available information regarding this issue is scarce.

The Austrian land register does not permit a search by a specific person's name but only by specific properties. Therefore, it would only provide useful information as to the registered immovable assets owned by a debtor if such assets have already been identified. Nonetheless, once a foreign executory title has become enforceable in Austria, an attorney representing the creditor is entitled to information as to whether the debtor owns such immovable assets and their identity.

The website of Austria's Patent Office offers freely available information as to national and European patents, trademarks, designs, and protections.

Austria's commercial register lists each business entity's shareholders and its management. The database is searchable by company name.

It is also recommended to inquire whether there are pending enforcement proceedings against a debtor or a prospective respondent. Creditors and prospective claimants may make use of the recent amendments to the AEA as discussed above in the answer to question 5.1. In addition, creditors may request information from service providers such as "*Kreditschutzverband* 1870", "*Creditreform*" and "*Compass Gruppe*". They provide data about a person's or a company's creditworthiness and annual accounts. Where possible, they also provide information on shares in (other) companies or even bank accounts.

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Konrad Partners is an international law firm delivering premier international arbitration services. The firm has offices in Vienna, Prague, Bratislava, Skopje, and London. The lawyers of Konrad Partners serve both as advocates and arbitrators in *ad hoc* and institutional proceedings, are qualified in multiple jurisdictions and have extensive expertise in handling high-profile arbitration cases before a wide range of international bodies.
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