Enforcement of Foreign Judgments 2018

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1 Treaties
Is your country party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments? What is the country’s approach to entering into these treaties and what, if any, amendments or reservations has your country made to such treaties?

The Philippines is not a party to any bilateral or multilateral treaty for the recognition and enforcement of foreign judgments. Philippine case law, however, recognises that recognition and enforcement of foreign judgments are generally accepted principles of international law because of widespread practice and the embodiment of procedures for recognition and enforcement of foreign judgments in the rules of law, whether statutory or jurisprudential, adopted in foreign jurisdictions (BPI Securities Corporation v Guevara, 752 SCRA 342, 365 (2015), citing Mijares v Ranada, 455 SCRA 397, 421-422 (2005), and considers as an established international legal principle 'that final judgments of foreign courts are reciprocally respected and rendered efficacious subject to certain conditions that vary in different countries' (BPI Securities Corporation v Guevara, 752 SCRA 342 (2015), citing St Aviation Services Co Pte Ltd v Grand International Airways, Inc, 505 SCRA 30, 34 (2006)).

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

Yes. The Philippines does not have a federal system and accordingly there is uniformity in the law and procedure within the jurisdiction in respect of the enforcement of foreign judgments. The Philippine Constitution requires the uniform application of the Rules of Court for all courts of the same grade (Const., article VIII 5(5)), which, as will be discussed below, is the primary source of law for the enforcement of foreign judgments. The Rules of Court apply in all courts, except as otherwise provided by the Supreme Court (Rules of Court, Rule 1, section 2).

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

Foreign judgments may be enforced in the Philippines under procedural rules or jurisprudence (Mijares v Ranada, 455 SCRA 397 (2005)). Rule 39, section 48 of the Rules of Court primarily governs the enforcement of foreign judgments. Under this rule, the foreign judgment merely creates a right of action, and its non-satisfaction is the cause of action by which a suit can be brought upon for its enforcement (BPI Securities Corporation v Guevara, 752 SCRA 342 (2015)). The rule creates a distinction between a foreign judgment in an action in rem and one in personam. For the former, 'the foreign judgment is deemed conclusive upon the title to the thing', while for the latter, the foreign judgment is merely 'presumptive, and not conclusive, of a right as between the parties and their successors in interest by a subsequent title' (BPI Securities Corporation v Guevara, 752 SCRA at 367 (2015), citing Mijares v Ranada, 455 SCRA 397, 409 (2005)). In either case, the foreign judgment 'may be repelled by evidence of want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact' (Rules of Court, Rule 39, section 48, last paragraph).

Decisions of the Supreme Court applying or interpreting the rule on enforcement of foreign judgments form part of the legal system of the Philippines (Civil Code, article 8).

4 Hague Convention requirements
To the extent the enforcing country is a signatory of the Hague Convention on the 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?

The Philippines is not a signatory to the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

5 Limitation periods
What is the limitation period for enforcement of a foreign judgment? When does it commence to run? In what circumstances would the enforcing court consider the statute of limitations of the foreign jurisdiction?

As discussed above, the foreign judgment merely gives rise to a right of action. Under Article 1144(3) of the Civil Code, an action upon a judgment must be brought within 10 years 'from the time the right of action accrues'. The provision applies to local and foreign judgments because it does not make any distinction between the two (Mijares v Ranada, 455 SCRA 397 (2005), where the Supreme Court ruled that '(w)here the law does not distinguish, we shall not distinguish'). The right of action commences to run from the date of finality of the foreign judgment (PNB v Bondoc, 14 SCRA 770 (1965)).

The foreign law becomes relevant if it provides for a shorter period (ie, less than 10 years) of limitation (see Salonga, Private International Law, p554 (1995)). If the foreign law is not proven, Philippine courts will apply Philippine law, and assume that foreign law is similar to Philippine law under the doctrine of processual presumption (Asiavest Limited v Court of Appeals, 296 SCRA 339, 552 (1998)).

6 Types of enforceable order
Which remedies ordered by a foreign court are enforceable in your jurisdiction?

Rule 39, section 48 of the Rules of Court does not limit the foreign judgment, whether in an action in rem or in personam, to a particular type. Therefore, any remedy ordered by a foreign court may be enforceable in the Philippines. For example, the Philippine Supreme Court upheld a foreign money judgment in Asiavest Merchant Bankers v Court of Appeals (361 SCRA 489, (2001)). The Philippine Supreme Court also ruled that a foreign divorce decree may be recognised in Corpuz v Sto. Tomas (658 SCRA 266 (2010)), and as a consequence of such ruling, it is reasonable to assume that the foreign divorce decree may be enforced as to the conjugal assets of the spouses, if there are any in the Philippines. However, since there is a requirement that the judgment must be final (Salonga, Private International Law, p553 (1995) citing II Beagle,
7 Competent courts
Must cases seeking enforcement of foreign judgments be brought in a particular court?
Yes. The Regional Trial Court has jurisdiction over cases seeking enforcement of foreign judgments (section 19(6) Batas Pambansa Blg. 129 or the Judiciary Reorganization Act of 1980, as amended).

8 Separation of recognition and enforcement
To what extent is the process for obtaining judicial recognition of a foreign judgment separate from the process for enforcement?
Unlike in other jurisdictions, there is no requirement of special recognition or registration process of a foreign judgment before it can be enforced in the Philippines. As such, the procedures for recognition and enforcement are generally indistinguishable and accomplished in one proceeding. The Philippine Supreme Court has ruled that ‘recognition and enforcement of a foreign judgment or final order requires only proof of fact of the said judgment or final order’ and that once proven, the said foreign judgment enjoys a disputable presumption of validity (BPI Securities Corporation v Guevara, 752 SCRA at 371 (2015)).

9 Defences
Can a defendant raise merits-based defences to liability or to the scope of the award entered in the foreign jurisdiction, or is the defendant limited to more narrow grounds for challenging a foreign judgment?
The defendant is limited to raising narrower grounds for challenging a foreign judgment. As discussed in question 8, the foreign judgment enjoys a presumption of validity. Thus, the defendant is ‘asked with the burden of overcoming its presumptive validity’ (BPI Securities Corporation v Guevara, 752 SCRA at 371 (2015)). Under Rule 39, section 48 of the Rules of Court, a defendant may raise the following to repel, by evidence, the foreign judgment: want of jurisdiction; want of notice to the party; collusion; fraud; or clear mistake of law or fact. According to the Philippine Supreme Court, “the rule on limited review embodies the policy of efficiency and the protection of party expectations, as well as respecting the jurisdiction of other states” (Fujiki v Marinay, 700 SCRA 69, 92 (2013), citing Mijares v Ranada, 455 SCRA at 411-412 (2005)).

Philippine case law has shown, though, that the ground ‘clear mistake of law or fact’ is used by defendants to raise merit-based defences. In Nagarmull v Binalbagan-Izahela Sugar Company, Inc (36 SCRA 46 (1970)), the Philippine Supreme Court resolved the merit-based defences to declare that the foreign judgment was repelled on the ground of ‘clear mistake of law’. The merit-based defences were considered in determining whether the High Court of Malaya in Malaysia committed a ‘clear mistake of law or fact’ but these defences were determined to be ‘mere conjectures and specious observations’ and ‘contradicted by the evidence on record’ in Asiavest Merchant Bankers v Court of Appeals (361 SCRA 489, 504 (2001)). More recently, however, the Philippine Supreme Court recognised the defendant’s attempt to raise merit-based defences and ruled that it is not necessary to look into the merits of the foreign judgment. The Supreme Court ruled that ‘a Philippine court will not substitute its own interpretation of any provision of the law or rules of procedure of another country, nor review and pronounce its own judgment on the sufficiency of evidence presented before a competent court of another jurisdiction’. The Supreme Court further clarified that ‘if every judgment of a foreign court were reviewable on the merits, the plaintiff would be forced back on his/her original cause of action, rendering inmaterial the previously concluded litigation’ (BPI Securities Corporation v Guevara, 752 SCRA at 369 (2015), citing Mijares v Ranada, 455 SCRA at 411-412 (2005)).

Finally, a defendant may also raise the defence that the foreign judgment is contrary to public policy (see Bayot v Court of Appeals, 570 SCRA 472 (2008), citing Lorenito v Court of Appeals, 245 SCRA 592 (2000) and Mijares v Ranada, 455 SCRA 397 (2005)).

10 Injunctive relief
May a party obtain injunctive relief to prevent foreign judgment enforcement proceedings in your jurisdiction?
We are not aware of any law, rule or jurisprudence that prohibits a party to try to obtain injunctive relief to prevent foreign judgment enforcement proceedings. In this connection, we believe that it is possible for a party to obtain preliminary and permanent injunctive relief, if there are compelling reasons to do so, and so long as the requisites for its issuance are present. The essential requisites for the issuance of injunctive relief are as follows:
- the applicant must have a clear and unmistakable right;
- there must be a material and substantial invasion of such right;
- there is an urgent need for the writ to prevent irreparable injury to the applicant; and
- no other ordinary, speedy and adequate remedy exists to prevent the infliction of irreparable injury (Marquez v Sanchez, 315 SCRA 577, 588 (2007)).

11 Basic requirements for recognition
What are the basic mandatory requirements for recognition of a foreign judgment?
The mandatory requirements for recognition of a foreign judgment are set forth in Asiavest Merchant Bankers v Court of Appeals (361 SCRA 489 (2001)), where the Supreme Court ruled that ‘in this jurisdiction, a valid judgment rendered by a foreign tribunal may be recognised insofar as the immediate parties and the underlying cause of action are concerned so long as it is convincingly shown that there has been an opportunity for a full and fair hearing before a court of competent jurisdiction; that trial upon regular proceedings has been conducted, following due citation or voluntary appearance of the defendant and under a system of jurisprudence likely to secure an impartial administration of justice; and that there is nothing to indicate either a prejudice in court and in the system of laws under which it is sitting or fraud in procuring the judgment.’ (Asiavest Merchant Bankers v Court of Appeals, 361 SCRA at 497 (2001)). The foreign judgment must not have been obtained by fraud, collusion or clear mistake of fact or law (Rules of Court, Rule 39, section 48). The foreign judgment must not be contrary to the public policy or the good morals of the Philippines (Mijares v Ranada, 455 SCRA 397 (2005)). The judgment must be final and executory (Salonga, Private International Law, 555 (1995) citing II Beagle, 1390; see also PNB v Bondoc, 14 SCRA 770 (1965)).

12 Other factors
May other non-mandatory factors for recognition of a foreign judgment be considered and if so what factors?
Yes, there may be other factors that may be considered by the courts such as the following: (i) reciprocity (Asiavest Merchant Bankers v Court of Appeals, 361 SCRA at 497 (2001)); and (ii) the foreign court was a seriously inconvenient forum for the trial of the action (Philsec Investment Corporation v Court of Appeals, 724 SCRA 101, 113 (1997)).

There is still no Supreme Court decision on this point, but a view is taken that the following may be considered as discretionary factors for recognition of a foreign judgment: (i) the foreign judgment conflicts with another final and conclusive judgment; and (ii) the proceeding in the foreign country was contrary to an agreement between the parties under which the dispute in question was settled other than the proceeding in that court (eg, the existence of an arbitration agreement) (Coquia and Aguiling-Pangalangan, Conflict of Laws: Cases, Material and Comments, p557 (2000)).

13 Procedural equivalence
Is there a requirement that the judicial proceedings where the judgment was entered correspond to due process in your jurisdiction, and if so, how is that requirement evaluated?
No. The recognition to be accorded a foreign judgment is not necessarily affected by the fact that the procedure in the courts of the country in which such judgment was rendered differs from that of Philippine courts. The Philippine Supreme Court has held that ‘matters of remedy and procedure are governed by the lex fori or the internal law of the
The Philippine Supreme Court has considered whether, under the principle of forum non conveniens, the defendant must overcome the presumption by showing evidence of fraud (Rules of Court, Rule 39, section 48). As discussed above, the foreign judgment enjoys the presumption of regularity (BPI Securities Corporation vs Guerra, 732 SCRA at 371 (2015)), hence, the defendant must overcome the presumption by showing evidence that the court had no subject-matter jurisdiction. If the defendant was unable to overcome the burden, the Philippine court will presume that the foreign court had subject-matter jurisdiction.

16 Service

Must the defendant have been technically or formally served with notice of the original action in the foreign jurisdiction, or is actual notice sufficient? How much notice is usually considered sufficient?

Generally, matters of remedy and procedure such as those relating to the service of process upon a defendant are governed by the lex fori or the internal law of the forum or the country that promulgated the foreign judgment (St Aviation Services Co vs Grand International Airways Inc, 505 SCRA 30, 35 (2006)). Therefore, the implication in St Aviation Services is that, so long as service is made in compliance with the rules of the foreign jurisdiction, it will be considered as sufficient. In the old case of Boudart, et al vs Tait (67 Phil. 70 (1939)), however, the Philippine Supreme Court, citing US jurisprudence, ruled that in actions in personam, 'there must be actual service within the state of notice upon him or upon someone authorised to accept service for him'.

17 Fairness of foreign jurisdiction

Will the court consider the relative inconvenience of the foreign jurisdiction to the defendant as a basis for declining to enforce a foreign judgment?

As discussed in question 12, the relative inconvenience of the foreign jurisdiction to the defendant may be one of the non-mandatory grounds for non-recognition of foreign judgments (Philsec Investment Corporation vs Court of Appeals, 274 SCRA 102, 113 (1997)).

The Philippine Supreme Court has considered whether, under the principle of forum non conveniens, even if the exercise of jurisdiction is authorised by law, a foreign judgment may nonetheless be refused enforcement for any of the following practical reasons:

- the belief that the matter can be better tried and decided elsewhere, either because the main aspects of the case transpired in a foreign jurisdiction or the material witnesses have their residence there;
- the belief that the non-resident plaintiff sought the forum, a practice known as forum shopping, merely to secure procedural advantages or to convey or harass the defendant;
- the unwillingness to extend local judicial facilities to non-residents or aliens when the docket may already be overcrowded;
- the inadequacy of the local judicial machinery for effectuating the right sought to be maintained; and
- the difficulty of ascertaining foreign law.

The Philippine Supreme Court explained that 'the issue of whether a suit should be entertained or dismissed on the basis of the principle of forum non conveniens depends largely upon the facts of each case and on the sound discretion of the court' (Puyat vs Zabarte, 352 SCRA 738, 751-752 (2001)).

18 Vitiation by fraud

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

When raised as an issue, Philippine courts will examine the foreign judgment for allegations of fraud since the foreign judgment may be repelled by evidence of fraud (Rules of Court, Rule 39, section 48). Whether or not there was fraud is decided by the court where enforcement of the foreign judgment is sought on the basis of its own internal law (Coquia and Aguiling-Pangalangan, Conflict of Laws: Cases, Material and Comments, 956 (2000)).

Fraud, to hinder the enforcement within this jurisdiction of a foreign judgment, must be extrinsic, ie, fraud based on facts not controverted or resolved in the case where judgment is rendered, or that which would go to the jurisdiction of the court or would deprive the party against whom judgment is rendered a chance to defend the action to which he has a meritorious case or defence. In contrast, intrinsic fraud, that is, fraud that goes to the very existence of the cause of action - such as fraud in obtaining the consent to a contract - is deemed already adjudged, and it, therefore, cannot militate against the recognition or enforcement of the foreign judgment (PAWI vs FASGI Enterprises, Inc, 342 SCRA 72, 737 (2000)). Although there appears to be no specific ruling by the Supreme Court on the matter, Philippine courts may look into the defence of collusion, which is akin to fraud, under the express provisions of Rule 39, section 48 of the Rules of Court.
of public policy negating the enforcement of a foreign judgment is when an absolute divorce decree is secured by a Philippine national married to another Philippine national. According to the Philippine Supreme Court, this is contrary to the concept of public policy and morality and will not be recognised in the Philippines (Bayot v Court of Appeals, 570 SCRA 472 (2008), citing Llorente v Court of Appeals, 345 SCRA 592 (2000)).

20 Conflicting decisions

What will the court do if the foreign judgment sought to be enforced is in conflict with another final and conclusive judgment involving the same parties or parties in privity?

As discussed in question 12, while there is no Philippine Supreme Court decision on this point, a view is taken that a conflicting decision is one of the discretionary grounds for non-recognition of foreign judgments (Coquia and Aguiling-Pangalangan, Conflict of Laws: Cases, Material and Comments, 9557 (2000)).

21 Enforcement against third parties

Will a court apply the principles of agency or alter ego to enforce a judgment against a party other than the named judgment debtor?

Yes. In case of a judgment or final order upon a specific thing, the foreign judgment is conclusive upon the title to the thing, hence, if the thing is being held by a party other than the judgment debtor, the foreign judgment is still enforceable upon the third party because the foreign judgment related to the thing (Rules of Court, Rule 39, section 48). On the other hand, in a judgment or final order against a person, the foreign judgment is presumptive evidence of a right between the parties and their successors-in-interest by a subsequent title (Rules of Court, Rule 39, section 48), which is an express statement that the foreign judgment may be enforced against third parties provided the third party is a successor in interest of the judgment debtor by a subsequent title. Although it appears that the Philippine Supreme Court has yet to resolve a foreign judgment case involving piercing of the corporate veil, we believe that the principles behind piercing may allow the enforcement of a foreign judgment against a party other than the judgment debtor. For instance, if the veil of corporate fiction is being used: (i) to defeat public convenience, as when the corporate fiction is used as a vehicle for the evasion of an existing obligation; (ii) in fraud cases or when the corporate entity is used to justify a wrong, protect fraud or defend a crime; or (iii) in alter ego cases, where a corporation is merely a farce since it is a mere alter ego or business conduit of a person, or where the corporation is so organised and controlled and its affairs are so conducted as to make it merely an instrumentality, agency, conduit or adjunct of another corporation, then piercing may be allowed (Sarona v NLRC, 679 Phil. 394 (2012)).

22 Alternative dispute resolution

What will the court do if the parties had an enforceable agreement to use alternative dispute resolution, and the defendant argues that this requirement was not followed by the party seeking to enforce?

While there appears to be no Supreme Court case that directly resolves this point, the answer here may depend on whether or not the defence that the agreement to resort to alternative dispute resolution was not followed was raised in the foreign court proceedings. In case the party raising the defence of non-compliance with the agreement to resort to alternative dispute resolution participated, but did not raise the issue, in the foreign court proceedings, we believe that the defence may be defeated under the doctrine of waiver of rights. Under Rule 4 of the Special Rules of Court on Alternative Dispute Resolution, a party to a pending action filed in violation of the arbitration agreement may request a court to refer the parties to arbitration in accordance with such agreement until the pre-trial conference. After the pre-trial conference, the court will only act upon the request for referral if it is made with the agreement of all the parties to the case. Applying this principle, if a party failed to invoke an agreement to resort to alternative dispute resolution in the foreign court proceedings, Philippine courts will consider such party to have waived the right to resort to alternative dispute resolution.

If the defence of non-compliance with the agreement to resort to alternative dispute resolution was raised in the foreign court proceedings but the foreign court ignored said defence and proceeded to hear the case and render a foreign court judgment, there may be a different approach by Philippine courts depending on the mode of alternative dispute resolution chosen by the parties. If the mode is arbitration, we believe that the defence of non-compliance with the agreement to resort to alternative dispute resolution may be raised in light of the 1938 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, which was ratified by the Philippine Senate; Republic Act No. 9285, or the Alternative Dispute Resolution Act of 2004; and the declared public policy of actively encouraging and promoting the use of alternative dispute resolution (RA No. 9285, section 1). On the other hand, if the mode chosen is mediation or other similar modes, which, unlike arbitration, does not result in a binding award or decision rendered by a third party, we believe that the defence of non-compliance with the agreement to resort to alternative dispute resolution will not be successful because the nature of the mode chosen by the parties may only cause the suspension of the court proceedings (to allow the parties to go through the alternative dispute resolution process agreed upon), but may not invalidate a court judgment rendered after due proceedings.

23 Favourably treated jurisdictions

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

No.

24 Alteration of awards

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

The Philippine Supreme Court has yet to rule on a matter involving the recognition of only part of a judgment, or an alteration or limitation of the damage award, but we believe it is possible for Philippine courts to recognise only part of a judgment, or alter or limit the damage award on, among others, public policy or clear mistake of law or fact grounds (Rules of Court, Rule 39, section 48).

25 Currency, interest, costs

In recognising a foreign judgment, does the court convert the damage award to local currency and take into account such factors as interest and court costs and exchange controls?

If interest claims are allowed, which law governs the rate of interest?

We are not aware of any law, rule or jurisprudence that requires the conversion of the award to local currency. In fact, in several cases, the Philippine Supreme Court affirmed the foreign judgment in foreign currency without converting the amounts to the local currency (Payat v Zabarte, 352 SCRA 718 (2001) and Asianet Merchant Bankers v Court of Appeals, 361 SCRA 489, 505 (2001)). The payment of debts in money shall be made in the currency stipulated, and if it is not possible to deliver such currency, then in the currency that is legal tender in the Philippines (Civil Code, Article 1249).
As to interest claims, the Philippine courts generally respect the interest rate stipulated in the foreign judgment because of the presumption of validity. In Asiavest Merchant Bankers v Court of Appeals, 361 SCRA 489, 505 (2001), the Supreme Court merely affirmed and did not even touch the award by the Malaysian Court of 12 per cent per annum interest on the judgment award until payment. If the interest rates are unconscionable, however, the award may be vulnerable to a public policy defence. If the rates are struck down, the Philippine legal rates will apply, which is presently 6 per cent per annum until fully paid (Nacar v Gallery Frames, 703 SCRA 439 (2013)).

Yes, there is 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?

If the judgement is affirmed, the judgment creditor may file a motion for execution with the Regional Trial Court where the petition for recognition and enforcement in certain courts. The motion is granted, the Philippine court shall issue the writ of execution. If only questions of law will be raised, the decision of the Regional Trial Court may be appealed all the way to the Supreme Court, and thereafter, a motion for execution under Rule 39, section 1 of the Rules of Court is filed in the Regional Trial Court upon finality of the judgment recognising the foreign judgment. The Philippine Supreme Court has consistently held that the grant of a motion for execution upon finality of the judgment is mandatory and considered as ministerial on the part of the trial court (Leonardo Lim De Mesa v Hon. Court of Appeals (231 SCRA 772, 781 (1994))). Once the motion is granted, the Philippine court shall issue the writ of execution requiring the court’s sheriff or other proper officer to enforce the writ according to its terms (Rules of Court, Rule 39, section 8). To illustrate, if the judgment is a money award, the sheriff shall demand, in writing, the payment from the judgment debtor of the judgment award by cash or certified bank cheque payable to the judgment creditor (upon proper receipt) (Rules of Court, Rule 39, section 9). If the judgment debtor cannot pay all or part of the obligation in cash, certified bank cheque or other acceptable modes of payment, the sheriff shall levy upon the properties, whether real or personal, of the judgment debtor, which may be disposed of for value, sufficient to satisfy the judgment award (Rules of Court, Rule 39, section 9(b)).

What are the most common pitfalls in seeking recognition or enforcement of a foreign judgment in your jurisdiction? The most common pitfall in seeking recognition or enforcement of a foreign judgment in the Philippines is the delay of the proceedings due to the heavy caseload of the courts. Despite reform efforts, there may also be the possibility of corruption to influence the resolution of the petition for recognition and enforcement in certain courts. The delay is prevalent even at the execution or implementation stage. The judiciary’s efforts to promote efficiency in the resolution of cases has not gone unnoticed, however, including its programmes to ensure the integrity of the judges and court personnel under its supervision.