

Brazil

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1. What are the basic criteria for the courts of your jurisdiction to allow enforcement of a foreign judgment?

In order for a foreign decision to be enforceable in Brazil, it must first undergo a 'ratification' proceeding before the Superior Court of Justice (STJ). This proceeding may be unnecessary if there is a specific treaty between Brazil and another state providing for exceptions. To be eligible for enforcement, a foreign judgment or foreign arbitral award must comply with certain requirements outlined in article 963 of the Brazilian Code of Civil Procedure (CPC) and articles 216-D and 216-F of the Rules of Procedure of the Superior Court of Justice:

- (i) the decision must have been issued by a foreign authority with proper jurisdiction. The STJ will examine whether the authority that rendered the decision was competent according to the laws of the jurisdiction where it was rendered. Additionally, the case must not fall under the exclusive jurisdiction of Brazilian courts, as defined in article 23 of the Brazilian Code of Civil Procedure (CPC).
- (ii) the defendant must have been regularly summoned in accordance with the laws of the jurisdiction.
- (iii) the decision must be effective, meaning it should be final and unappealable in the jurisdiction where it was rendered.
- (iv) the decision cannot contradict Brazilian *res judicata*. In other words, the foreign decision will not be "ratified" if it conflicts with a Brazilian decision that is final and unappealable at the time ratification is sought.
- (v) The applicant must present an official and certified translation of the foreign decision unless stipulated differently in an international convention.
- (vi) the decision cannot violate Brazilian public policy, national sovereignty, or human rights. As a general rule, the foreign decision cannot undermine the fundamental principles and objectives of the Brazilian Republic (notably those in articles 1 and 4 of the Brazilian Constitution), fundamental individual and collective rights, and entrenched constitutional clauses (article 60, § 4 of the Constitution).

Once the request for ratification is received, the President of the STJ will review if the initial complaint fulfills the formal requirements or if there are any irregularities preventing a decision on the merits. If any deficiencies are found, the plaintiff will be given time to rectify them. Failure to comply with the given timeframe will result in dismissal of the request without further consideration.

After this initial phase, the opposing party will have 15 business days to oppose the request. The defense must focus solely on the fulfillment of the formal requirements listed above, as the STJ will not review the merits of the foreign decision. If there is such an opposition, the case will be referred to the highest panel of the STJ — known as the 'Special Court' — for a ruling. The plaintiff will have a chance to respond to the

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| | <p>opposition. The Federal Public Prosecutor's Office will have access to the case records and can object or agree with the ratification.</p> <p>A decision from the STJ granting <i>exequatur</i> to the foreign decision renders it effective in Brazil, allowing the plaintiff to initiate enforcement proceedings before the competent federal trial court.</p> |
| <p>2.</p> | <p>What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, e.g. notice provisions?</p> |
| | <p>If the STJ grants <i>exequatur</i> to a foreign decision against a state, the subsequent enforcement proceedings will follow the standard rules applicable to any case of enforcing a judicial decision against a defendant in Brazil.</p> <p>According to the STJ's case law, there is an additional step in cases where a state is the defendant. After the claim is filed for enforcement, the state must be formally approached to determine whether it waives its sovereign immunity and consents to be subject to the jurisdiction of the Brazilian courts. This communication will take place through the relevant foreign relations authorities (see STJ, RO 99/SP, 2012). If the state agrees to waive its immunity, it will be formally summoned to either pay the debt or present a defense in the enforcement proceedings.</p> |
| <p>3.</p> | <p>What special considerations apply where the defendant/debtor in enforcement proceedings is a state, e.g. doctrine of sovereign immunity?</p> |
| | <p>The defense of a foreign state against the enforcement of a foreign decision in Brazil is based on its sovereign immunity, also known in Brazil as “enforcement immunity” to differentiate it from ‘jurisdictional immunity’. According to the current understanding of the Brazilian Supreme Court (STF), foreign states enjoy absolute enforcement immunity, which can only be set aside in cases of express waiver (see, <i>e.g.</i>, STF, ARE 1292062 AgR, 2021). Consequently, while a foreign decision issued against a state can be ‘ratified’ by the STJ, and the plaintiff can even initiate enforcement proceedings, actual enforcement will only occur if the foreign state expressly waives its enforcement immunity.</p> <p>In cases where the foreign state has not expressly waived its enforcement immunity, either in its judicial defense or through any prior act, the judge is authorized to recognize said immunity <i>ex officio</i> and subsequently dismiss the lawsuit.</p> |
| <p>4.</p> | <p>What exceptions may apply where the claim results from improper actions of the defendant state, e.g. wars of aggression?</p> |
| | <p>As previously discussed in response to question 3, the prevailing understanding in Brazil is that enforcement immunity is absolute. This means that foreign states cannot be subject to enforcement proceedings in the country unless they expressly waive their immunity, and there are no recorded exceptions for improper actions. It is important to note that a recent decision by the Supreme Court did establish that unlawful acts committed by states in violation of human rights within Brazilian</p> |

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| | <p>territory do not enjoy immunity from jurisdiction (STF, ARE 954.858 ED, 2022). However, this decision specifically addressed the issue of jurisdictional immunity, not enforcement immunity. Therefore, the principle of absolute enforcement immunity for foreign states in Brazil remains intact and unaffected by this ruling.</p> |
| <p>5.</p> | <p>What due process standards and exceptions may apply in proceedings for enforcement of judgment against a state?</p> |
| | <p>The STJ holds the authority to examine whether foreign proceedings comply with due process standards when considering if foreign decisions comply with Brazilian public policy within ratification proceedings. Specific due process standards for cases where the defendant is a state are not registered in the STJ's case law, and thus, these cases will likely follow the same standards applicable to ordinary cases.</p> <p>Apart from the legal conditions for ratification, there are no other objective due process standards that a foreign decision must meet to be enforceable in Brazil. When assessing compliance with the legal conditions for ratification, the STJ will usually defer to the rules of the jurisdiction where the decision was rendered.</p> <p>However, the requirement that the foreign decision does not violate Brazilian public policy also has a procedural aspect, which relates to whether the foreign proceeding assured the minimum guarantees of the due process clause. On this ground, the STJ may examine whether the procedural rules applied in the foreign proceeding allowed the defendant to effectively influence the outcome of the decision through the opportunity to present a defense and produce evidence (STJ, HDE 278/EX, 2018). Ratification might be denied only in exceptional cases where foreign procedures are deemed entirely incompatible with the legal principles adopted by Brazilian law (STJ, SEC n. 8.425/EX, 2014). For instance, an arbitral award issued by an arbitrator with a relationship to the parties or the dispute that impacts their impartiality contradicts Brazilian public policy (STJ, SEC 9412, 2017). There is also case law stating that a foreign decision without a statement of reasons cannot be ratified in Brazil (STF, SE 2521, 1980).</p> <p>Regarding the burden of proof, it is the applicant's responsibility to demonstrate that the foreign decision complies with the objective requirements specified in law, including the regularity of summons in the foreign procedure. The defendant will have the opportunity to present a defense and raise arguments related to the violation of Brazilian public policy. Nonetheless, the STJ will independently analyze whether the objective requirements of the law have been met, including regular summons and compatibility with public policy, which encompasses the general clause of due process.</p> |
| <p>a.</p> | <p><i>What standard will the court apply in the enforcement proceedings when assessing whether the service requirements have been met in the original proceedings against a state?</i></p> |
| | <p>As previously mentioned, the examination of compliance with due process standards takes place in the ratification proceedings before the STJ and not in the enforcement of the already ratified foreign decision. Since there are no objective standards for the cases where the defendant is a state, the parameters to assess whether the service</p> |

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| | <p>requirements have been met should follow the general rules applicable to ordinary cases.</p> <p>The STJ will primarily consider whether the foreign service procedures allowed the defendant to present an adequate defense (STJ, HDE 6527/EX, 2023). The regularity of service will typically be evaluated based on the law of the jurisdiction where the proceedings took place (STJ, HDE 89/EX, 2017).</p> <p>However, the STJ may decline to grant <i>exequatur</i> to a foreign decision if, despite complying with the foreign jurisdiction’s law, the rules applied in the foreign proceeding violate Brazilian public policy. This may include ensuring that the defendant had a reasonable amount of time to respond to the allegations (STJ, HDE 4174/EX AgInt, 2023) and that the defendant had the means to understand the content of the claims against it. For example, the STJ has indicated in <i>obiter dictum</i> that it would not grant <i>exequatur</i> to a decision that was not preceded by formal summons of the defendant, even if the laws of the foreign jurisdiction so allowed (STJ, SEC 10370/EX, 2016).</p> <p>When assessing the foreign decision’s compliance with the laws of its jurisdiction, the STJ may rely on the terms of the decision itself or on certification by a qualified lawyer practicing in the jurisdiction where the judgment was rendered (STJ, HDE 5141/EX AgInt, 2023).</p> |
| <p>b.</p> | <p><i>What exceptions may apply where conventional forms of service against a state are impossible, e.g. due to absence of diplomatic relations?</i></p> |
| | <p>In the case law of the STJ, there is no objective parameter to address situations where conventional forms of service against a state are not possible in a foreign proceeding. In such cases, the STJ is likely to analyze whether the solution provided in the foreign proceeding complied with the laws of the jurisdiction where the decision was rendered. Additionally, the court will probably assess whether the chosen solution aligns with Brazilian standards of due process, ensuring that the defendant had a fair opportunity to present an adequate defense.</p> |
| <p>c.</p> | <p><i>What standard will the court apply in the enforcement proceedings when assessing whether the right to representation requirements have been met in the original proceedings against a state?</i></p> |
| | <p>In the case law of the STJ, there is no formal parameter specifically designed to assess whether the right to representation requirements have been fulfilled in the original proceedings against a state. However, as a general practice, if the defendant alleges any irregularities or impropriety in the representation, the STJ may examine whether there is sufficient evidence that the powers of representation were validly granted by legitimate parties (STJ, SEC 15977/EX, 2017).</p> <p>Moreover, the STJ may also consider whether the applicable laws governing the representation of parties in the foreign proceedings were respected (STJ, SEC 3709/EX,</p> |

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| | 2012). This scrutiny aims to ensure that the defendant had a fair opportunity to defend itself effectively in the foreign proceedings. |
| d. | <i>What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?</i> |
| | <p>In the case law of the STJ, there is no objective parameter to address situations where the defendant in a foreign proceeding cannot secure legal representation. In such instances, the STJ is likely to examine whether the foreign proceeding complied with the laws of the foreign jurisdiction, and whether it aligns with Brazilian standards of due process, ensuring that the defendant had a fair opportunity to defend itself adequately.</p> <p>The STJ has previously ruled that the absence of legal representation for the defendant in a foreign proceeding does not, by itself, impede the recognition of the foreign judgment. The court's understanding in the specific case (STJ, SEC 7137/EX, 2012) was that the laws of the foreign jurisdiction were followed and that the defendant, if it so wished, could have been represented by a public defender, since it was properly served.</p> |
| 6. | What assets may be subject of enforcement if the claim is against a state and what are the requirements, e.g. enforcement against assets of state owned entities? |
| | <p>The prevailing understanding of the Brazilian Supreme Court is that enforcement immunity is absolute. As a rule, no assets of a foreign state will be subject to enforcement unless the state voluntarily waives its immunity.</p> <p>It is important to note that labor courts have issued decisions stating that when dealing with debts arising from employment contracts, only the assets connected to consular and diplomatic activities should be protected. According to this interpretation, it would be possible to reach assets not directly linked to diplomatic activities. However, the Supreme Court has consistently overturned such decisions (see, for instance, STF, RE 1423229, 2023), reiterating their stance that enforcement immunity is absolute, thereby safeguarding even the assets of foreign states not associated with the diplomatic activities.</p> |