

## El Salvador

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

The exequatur is a figure of International Law. When there are bilateral or multilateral treaties or agreements that establish the procedures and requirements to homologate the decisions of courts or other bodies exercising jurisdiction abroad, the provisions of such agreements must be followed, based on article 144 of the El Salvador's Constitution: *"International treaties entered into by El Salvador with other States or with international organizations, constitute laws of the Republic when they enter into force, in accordance with the provisions of the same treaty and of this Constitution"*.

In the same sense, article 556 of El Salvador's Civil and Commercial Procedural Code, establishes that the recognition of a foreign judgment occurs in accordance with the applicable international treaties or norms that are part of the Salvadoran legal system.

When there are no international treaties or rules applicable to the recognition of a foreign title as a title of execution in El Salvador, such recognition may be produced if at least the following requirements are met:

- 1° The judgment, with the authority of res judicata in the State where it has been pronounced, emanates from the competent court according to the Salvadoran rules of international jurisdiction.
- 2°. The defendant, against whom the execution is sought, has been legally summoned, even if declared in default, provided that he has been guaranteed the possibility of exercising his defense and that he has been legally notified of the decision.
- 3°. The judgment meets the necessary elements to be considered as such in the place where it was issued, as well as the conditions of authenticity required by the national law.
- 4°. The sentence does not affect the constitutional principles or public order of Salvadoran law, and the fulfillment of the obligation it contains is lawful in El Salvador.
- 5°. There does not exist in El Salvador a process in process, nor a sentence executed by a Salvadoran court that produces res judicata.

### 2. What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, e.g. notice provisions?

Notification Provisions:  
For the performance of procedural acts of mere formality abroad, such as notifications, subpoenas or summonses, as well as for the receipt and collection of evidence and reports, the courts shall issue letters rogatory.

	<p>The same solution will be observed with respect to letters rogatory from foreign courts.</p> <p>Letters rogatory may be transmitted by the interested parties themselves, through consular or diplomatic agents or through the competent administrative authority or, failing that, through the courts. When the letters rogatory are processed through consular or diplomatic channels or through the administrative authority, the requirement of legalization shall not be necessary. Letters rogatory shall be processed in accordance with the procedural laws of the State of execution. The courts, at the request of the requesting court, may observe special formalities or procedures in the execution of the letter rogatory, provided that this is not contrary to national law. The letters rogatory and the attached documents shall be accompanied, if necessary, by the respective translation.</p> <p>The compliance in El Salvador of the letter rogatory from foreign courts shall not imply the recognition of the international competence of such courts nor the effectiveness of the sentence they issue.</p> <p>Legal grounds: Art 151, 152 and 153 of of El Salvador’s Civil and Commercial Procedural Code.</p>
<p><b>3.</b></p>	<p><b>What special considerations apply where the defendant/debtor in enforcement proceedings is a state, e.g. doctrine of sovereign immunity?</b></p>
	<p><b>The representative of the State of El Salvador:</b>  According to Article 193 clause 1 and 5 of the Constitution of the Republic of El Salvador the Attorney General of the Republic defends the interests of the State and society. The Prosecutor as well defends the fiscal interests and represents the State in all kinds of lawsuits and in contracts on the acquisition of real estate in general and movable property subject to bidding, and others determined by law.</p> <p><b>Institutional competence:</b>  It is the competence of the Second Instance Chambers to hear claims against the State; Art. 29 of El Salvador’s Civil and Commercial Procedural Code.</p> <p>Salvadoran law does not regulate sovereign immunity; however, since El Salvador is a party to different International Treaties, special considerations would be taken into account when suing the State, such as, for example:</p> <p>a) Code of Private International Law (“Bustamante Code”)</p> <p>Art. 314 “Bustamante Code” - The law of each Contracting State shall determine the jurisdiction of the courts, as well as their organization, the manner of trial and enforcement of judgments, and the remedies against their decisions.</p> <p>Art. 318 “Bustamante Code” - The judge to whom the litigants expressly or impliedly submit shall have jurisdiction in the first instance to hear litigation arising out of the exercise of civil and commercial actions of any kind, provided that at least one of them is a national of the Contracting State to which the judge belongs or has his domicile there, and subject to local law to the contrary.</p>

	<p>Art. 323 “Bustamante Code” - Apart from the cases of express or tacit submission, and in the absence of local law to the contrary, the judge having jurisdiction for the exercise of personal actions shall be that of the place of performance of the obligation, or that of the domicile of the defendants, and subsidiarily that of their residence.</p>
<p><b>4.</b></p>	<p><b>What exceptions may apply where the claim results from improper actions of the defendant state, e.g. wars of aggression?</b></p>
	<p>Salvadoran law does not regulate the exceptions to be applied in relation to this issue. However, since the Constitution of the Republic of El Salvador recognizes in its Art. 144 that "<i>International treaties entered into by El Salvador with other States or international organizations constitute laws of the Republic when they enter into force, in accordance with the provisions of the same treaty and of this Constitution</i>", those treaties must be applied.</p> <ul style="list-style-type: none"> <li>• The exceptions of fortuitous event or force majeure, which makes execution impossible.</li> <li>• The exceptions that El Salvador’s Civil and Commercial Procedural Code supports in the enforcement of judgments.</li> <li>• Vienna Convention on the Law of Treaties, PART III, 27. Domestic law and enforcement of treaties. A party may not invoke the provisions of its internal law as justification for its failure to perform a treaty.</li> <li>• Código de Derecho Internacional Privado (Código De Bustamante)</li> <li>• Code of Private International Law (Código De Bustamante) Chapter, ii. Exceptions to the General Rules of Jurisdiction: Art. 333 - The judges and courts of each Contracting State shall have no jurisdiction to hear civil or commercial cases in which the other Contracting States or their Heads are defendants, if a personal action is brought, except in the case of express submission or counterclaims. Art. 335 - If the foreign Contracting State or its Head has acted as a private individual or private person, the judges or courts shall have jurisdiction to hear matters in which actions <i>in rem</i> or mixed actions are brought, if such jurisdiction corresponds to them in accordance with this Code.</li> </ul>
<p><b>5.</b></p>	<p><b>What due process standards and exceptions may apply in proceedings for enforcement of judgment against a state?</b></p>
	<p>International treaties and the legislation of El Salvador’s Civil and Commercial Procedural Code shall apply first,</p> <p>Art. 555. Foreign enforcement instruments. Civil and Commercial Procedural Code: "<i>Once a foreign enforcement title is recognized, it shall be enforced in accordance with the rules of enforcement contained in this code, unless otherwise provided by international treaties</i>".</p> <p>Article 559 of the Civil and Commercial Procedural Code considers an exception to non-enforceable titles, which states that "<i>No application for compulsory execution shall be</i></p>

	<i>processed with respect to judgments of mere declaration or constitutive judgments, without prejudice to their registration or annotation in public registries when their content so requires, without the need to open the compulsory execution. Notwithstanding the foregoing, when these judgments contain condemnatory pronouncements, he may request the forced execution of the same.”</i>
<b>a.</b>	<b><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></b>
	The regulations of the treaties or those related to the El Salvador’s Civil and Commercial Procedural Code.
<b>b.</b>	<b><i>What exceptions may apply where conventional forms of service against a state are impossible, e.g. due to absence of diplomatic relations?</i></b>
	The same exceptions of common law, in a macro scenario. Except for lack of jurisdiction. These exceptions are: <ul style="list-style-type: none"> <li>• Just impediment, fortuitous event or force majeure;</li> <li>• Statute of limitations (prescription), in accordance with Article 553 of El Salvador’s Civil and Commercial Procedural Code; and</li> <li>• All the exceptions allowed by article 579 of El Salvador’s Civil and Commercial Procedural Code, through opposition: <ol style="list-style-type: none"> <li>a) Lack of character or quality of the executor or the executed party, or of representation of the same.</li> <li>b) Lack of legal requirements in the title.</li> <li>c) Payment or fulfilment of the obligation, justified by documents.</li> <li>d) Prescription of the claim for enforcement.</li> <li>e) That a transaction or agreement of the parties, recorded in a public instrument, has been executed.</li> </ol> </li> </ul>
<b>c.</b>	<b><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></b>
	Article 426 of the Code of Private International Law (Bustamante Code) shall apply, which states that <i>"The judge or court to whom enforcement is requested shall hear the party against whom it is directed and the Prosecutor or Public Prosecutor before decreeing or denying it, and for a term of 20 days"</i> .  The rules of the El Salvador’s Civil and Commercial Procedural Code regarding the enforcement of a foreign title shall also apply.
<b>d.</b>	<b><i>What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?</i></b>
	No exceptions. Since the representation of the State falls on the Attorney General of the Republic, the person who exercises that function will be the one who must assume the representation, and although - due to political factors - there could be a lack of election

	of the Attorney General, there will always be a person who is carrying out that function, even if it is on an adjunct or provisional basis.
<b>6.</b>	<b>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?</b>
	The Law of El Salvador does not enable the possibility of seizing assets of the State, however, it does allow the enforcement order to obligate the State to reserve the amount of money claimed in enforcement from the budget line and thus generate payment orders in favor of the enforcing party; and if the issuance of payment orders is not possible, the immediate obligation is that at the time of requesting the approval of the general budget of the nation, the necessary budget allocations and line items to cover the debt are included. In other words, even though the seizure of assets is not authorized, the obligation to allocate funds is authorized to be included in the general budget, which will have to be approved with this budgetary charge