

Guatemala

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

The Code of Civil and Commercial Procedures (*Código Procesal Civil y Mercantil*) states the following conditions for the enforcement of a foreign judgment:

1. The judgment must originate from the exercise of a personal, civil, or commercial action.
2. The judgment has not been rendered *in absentia* or against an absent person who has his domicile in Guatemala. Both parties must have the opportunity to present their arguments so that they can have a fair trial, and therefore a fair judgment.
3. The obligation in the claim has to be lawful in Guatemala.
4. The judgment must not be subject or have any remedies pending in accordance with the law of the country in which it was issued.
5. The judgment must meet the necessary requirements to be considered authentic. (Art 345 of Guatemala's Civil Procedures Code)

The Code also requests for enforcement that the Country of origin of the ruling allows Guatemalan rulings to be enforced in reciprocity (Art 344 of Guatemala's Civil Procedures Code).

Guatemala is not a party to any international convention for the enforcement of foreign rulings with the exception of the Inter-American Convention on Support. Foreign rulings are directly executable under the terms of Article 11 of the Convention.

2. What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, (eg, notice provisions)?

It is important to note that the criteria stated in the response to Question 1 above, apply to every foreign judgment that will be enforced in Guatemala, there is no special regulation for the enforcement of judgments against a state.

The competent judge to enforce a foreign judgment is the judge who would have been competent to hear it if the litigation would have taken place in Guatemala. Once the enforcement has been requested, the court shall proceed as if the foreign judgment was a national judgment. It is purely a court process, and it does not need the consent of a political body (Art 346 of the Code of Civil and Commercial Procedures, and Art 156 and 157 of the Law of the Judicial Branch). Article 158 of the Criminal Procedure Code states the requests received from a foreign court or authority shall be served through diplomatic channels in the manner established by international treaties and customs, or by the laws of the country.

	<p>Most judgments against the state are arbitration awards and they are enforced based on the regulation governing the award and the Code of Civil and Commercial Procedures.</p> <p>The Law of the Judicial Branch states that any foreign document that shall be used or enforced in Guatemala has to be legalised by the Ministry of Foreign Affairs (Art 37 Law of the Judicial Branch). Such a document shall be apostilled in accordance with the Hague Convention.</p>
<p>3.</p>	<p>What special considerations apply where the defendant/debtor in enforcement proceedings is a state, (eg, doctrine of sovereign immunity)?</p>
	<p>Guatemalan law does not regulate sovereign immunity. However, it is used on the basis of customary international law. The theory of sovereign immunity states that a foreign sovereign could not, without their consent, be made a defendant in the courts of another sovereign, but a newer and restrictive theory states that the exemption has been recognised only with respect to sovereign or public acts of a state and not necessarily with respect to private act. In regards to the state immunity, the traditional absolute theory of immunity exempted a state in every way from the jurisdiction of the other countries, its government could not be sued abroad without its consent, its public property could not be attached, and its public vessels could not be arrested, boarded, or sued. The jurisdiction of a state within its own territory is necessarily exclusive and absolute, and all exceptions must be traced to the consent of the national itself. (Gerard Von Glahn, <i>Law Among Nations: An Introduction to Public International Law</i>, 17th edn). It is important to mention that Guatemala is part of the of the Vienna Convention on the Law of Treaties, which regulates <i>pacta sunt servanda</i>, which means the judgments should be enforced in good faith and reciprocity.</p> <p>Article 314 of the Code of International Private Law (Bustamante Code), an inter-American convention, states that the law of each party shall determine the jurisdiction of the courts, as well as their organisation, the way judgments will be enforced, and the remedies against the decisions. Additionally, Article 315 states that jurisdiction <i>ratione loci</i> is subordinate, in the matter of international relations, to the law of the of the contracting party.</p> <p>The United Nations Convention on Jurisdictional Immunities of States and Their Property states in Article 7 that a state cannot invoke immunity form jurisdiction in a proceeding before a court of another state if it has expressly consented to the exercise of jurisdiction by the court by international agreement, or in a written contract, or by a declaration before the court or by written communication in a specific proceeding. Article 8 states that a state cannot invoke immunity if it has itself instituted the proceeding, or intervened in the proceeding or taken any other step relating to the merits.</p> <p>Exceptions to enforcement are claimed based on treaties and not on provisions of local laws.</p>

<p>4.</p>	<p>What exceptions may apply where the claim results from improper actions of the defendant state, (eg, wars of aggression)?</p>
	<p>There are no exemptions regulated in Guatemalan law. However, the courts will apply provisions of a treaty allowing for an exemption based on foreign immunity which are treaty based.</p> <p>Nevertheless, wars of aggression can be considered as an exception to sovereign immunity considering that it violates the jurisdiction and sovereignty of another country; and it is not based on self-defence or has been provoked in any way, therefore it can be considered as a conquest that has no legal basis. Additionally, crimes against humanity and human rights violations are considered as exceptions to the immunity. Human rights are inherent and any act from a state that disregards them should not be left unpunished. In regards to the breach of international law is also considered an exception to the immunity. The Vienna Convention on the Law of Treaties states in Article 27 that a party cannot invoke domestic law as justification for its failure to act according to the stipulations in a treaty.</p> <p>In case of monetary compensation in cases of human rights violations for rulings in the Inter-American Court of Human Rights, the obligation of the government to comply with the ruling is clearly stated in the Convention and the Government of Guatemala has been compliant with the Court's rulings.</p> <p>There is no case law in which a foreign government has been granted immunity or attempts have been made for enforcement of a foreign judgment in Guatemala.</p>
<p>5.</p>	<p>What due process standards and exceptions may apply in proceedings for enforcement of judgment against a state?</p>
	<p>According to Article 344 of the Code of Civil and Commercial Procedures foreign judgments shall have, in the absence of a treaty the states their effectiveness, the value assigned by the law of the place of origin to judgments issued by Guatemalan courts. Here the principle of reciprocity can be observed. If the judgment meets all the requirements stated in Article 345 (see the response to Question 1, above), then it can be enforced by the judge who should have jurisdiction to hear the trial in which the judgment was rendered. Once the request has been submitted, translated into Spanish if required, with the signatures authenticated, then the judgment shall be enforced as if it were a judgment issued by a Guatemalan court.</p> <p>It is important to note that there is no special regulation for the enforcement of judgments against the state, the law regulates the matter in general terms, which therefore includes the enforcement of such judgments. Additionally, Article 426 of the Bustamante Code (applicable to the countries in the Americas which are parties to the Convention) states that the judge or tribunal shall grant a hearing, for 20 days, to the party against whom the enforcement is being requested. The summons shall be done by Letters Rogatory. It is important to remember that the Code of Civil and Commercial Procedures states that a foreign judgment will not be enforced if it was render <i>in abstentia</i> or against an absent person.</p>

	<p>The Code of Civil and Commercial procedures do not allow for <i>in absentia</i> rulings to be executed in Guatemala, which is a due process protection.</p>
5a.	<p>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?</p>
	<p>Generally, the standard is that of Article 345 of the Civil Procedures Code cited above, which is that the obligation contained in the ruling is lawful in Guatemala. Due process is in general a standard of lawfulness of the ruling. Appropriate service of process is to be considered and provision of the opportunity for defence with adequate timing including the consideration for distance.</p>
5b.	<p>What exceptions may apply where conventional forms of service against a state are impossible, (eg, due to absence of diplomatic relations)?</p>
	<p>There are no exceptions.</p>
5c.	<p>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?</p>
	<p>Article 426 of the Bustamante Code states that the judge or tribunal shall grant a hearing, for 20 days, to the party against whom the enforcement is being requested. The summons shall be done by Letters Rogatory. Additionally, the Code of Civil and Commercial Procedures states that a foreign judgment will not be enforced if it was render <i>in absentia</i> or against an absent person. Both parties must have the opportunity to present their arguments so that they can have a fair trial, and therefore a fair judgment. In this hearing the judged can make sure the state was duly represented in the original proceeding.</p> <p>The Code however only covers nationals of signatories of the Code which is also known as <i>Código de Derecho Internacional Privado</i>, approved in the Inter-American Conference in Havana in 1926.</p> <p>Case law does not contain allegations for impossibility to obtain representation.</p>
5d.	<p>What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?</p>
	<p>Once the term has been set by the judge for the hearing mentioned above, the judge will continue with the proceedings, whether or not the state has a legal representation. In issues relating to commercial proceedings against a government entity, if the ruling was entered <i>in absentia</i>, the ruling will not be enforceable in Guatemala.</p>

6.	What assets may be subject of enforcement if the claim is against a state and what are the requirements, (eg, enforcement against assets of state-owned entities)?
	<p>The traditional absolute theory of immunity exempted a state in every way from the jurisdiction of the other countries, its government could not be sued abroad without its consent, its public property could not be attached, and its public vessels could not be arrested, boarded, or sued. The jurisdiction of a state within its own territory is necessarily exclusive and absolute, and all exceptions must be traced to the consent of the national itself. In general, personal and real property of a foreign sovereign located in another state is immune from suit and seizure. (Gerard Von Glahn, <i>Law Among Nations: An Introduction to Public International Law</i>, 17th edn).</p> <p>No local provision states that foreign assets may not be subject to enforcement against assets, except those excluded by ‘Special Laws’. The assets related to diplomatic and consular uses are subject to inviolability which suggests specifically the impossibility of seeking enforcement against those assets.</p> <p>Assets of state-owned entities have been subject to attachment and enforcement of local rulings in operations they may have in Guatemala.</p>