

Peru

Jose Domingo Rivarola Reisz
Cuatrecasas, Lima
domingo.rivarola@cuatrecasas.com

Elody Malpartida
Cuatrecasas, Lima
elody.malpartida@cuatrecasas.com

Camila Mendoza
Cuatrecasas, Lima
camilafernanda.mendoza@cuatrecasas.com

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

Enforcing a foreign judgment in Peru requires an exequatur procedure (Book X of the Peruvian Civil Code). The basic statutory requirements are the following:

- *Reciprocity* – according to Article 838 of the Peruvian Civil Procedural Code, reciprocity is presumed. It is presumed that the state where the judgment was issued, recognises judgments issued by Peruvian courts. Therefore, the burden of proof is inverted and lies on the defendant denying reciprocity.
- *Jurisdiction* – foreign judgments must not decide on matters of Peruvian exclusive jurisdiction and the foreign court shall have personal and subject matter jurisdiction to hear the case and enter judgment.
- *Pending litigation* – no prior pending trial shall exist in Peruvian courts between the same parties and over the same issue or claim.
- *Preclusion* – no prior foreign judgment between the same parties and over the same issue or claim shall exist.
- *Due process* – notice to the defendant and a reasonable time to submit affirmative defences and offer discharge evidence is required. These requirements shall be met according to the law of the state where the judgment was issued.
- *Finality* – the judgment shall have the status and force of *res judicata* according to the law of the state where the judgment was issued.
- *Public policy* – the judgment must not be contrary to public policy according to laws of Peru.

Peru has concluded treaties on enforcement of foreign judgments. The most noteworthy being the Inter-American Convention on Extraterritorial Validity of Foreign Judgements and Arbitral Awards (1979).

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

	There are no special considerations provided for in the Peruvian legal framework for enforcing a foreign judgment against a state. The general provisions that apply to any party would also apply to a state.
3.	What special considerations apply where the defendant/debtor in enforcement proceedings is a state, (eg, doctrine of sovereign immunity)?
	Peru does not have specific legal considerations which apply when the defendant/debtor in the enforcement proceedings is a state. However, the general international doctrine of immunity from jurisdiction and execution is followed. Therefore, a state will be subject to Peruvian enforcement jurisdiction when it has waived its immunity or when there is an international agreement to that effect.
4.	What exceptions may apply where the claim results from improper actions of the defendant state, (eg, wars of aggression)?
	There are no legal exceptions to the general rules providing for exceptions resulting from war of aggression or any other. Exceptions in international law may apply.
5.	What due process standards and exceptions may apply in proceedings for enforcement of judgment against a state?
	There are no due process standards and exceptions for enforcing a judgment against a state in Peru. The general provisions stated in the response to Question 1 must be followed.
5a.	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?
	The standard that Peruvian courts will apply when assessing whether the service requirements have been met is the standard provided for in the procedural law of the state in which the proceedings were held (Art 2104.3 of the Peruvian Civil Code).
5b.	What exceptions may apply where conventional forms of service against a state are impossible, (eg, due to absence of diplomatic relations)?
	There are no general exceptions contemplated. One would have to evaluate on a case-by-case basis and review if there is an applicable treaty on the matter.
5c.	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?
	The standard that Peruvian courts will apply when assessing whether the right to representation requirements have been met in the original proceedings against a state is that of the law of the place where the original proceedings were held. This according to article 2104.3 of the Peruvian Civil Code.

5d.	What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?
	<p>The standard that Peruvian courts will apply when assessing whether the right to representation requirements have been met is that of the law of the state where the original proceedings were held. There are no regulated exceptions to this. However, the right to representation is a matter of public policy in Peru. Article 132 of the Peruvian Civil Procedure Code states that written submissions shall be authorised by a lawyer registered in the Lima Bar or any other city bar.</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>Peru is a signatory of the Vienna Convention on Diplomatic Relations (1961). According to Article 22: ‘3. The premises of the mission, their furnishings and other property thereon and the means of transport of the mission shall be immune from search, requisition, attachment or execution.’</p> <p>Following international law standards, public domain goods destined to the satisfaction of governmental needs will not be subject to enforcement. The burden of proof lies on the state resisting enforcement.</p>