



NEWS, LATEST, CURRENT TOPICS

HOW TO ENFORCE A FOREIGN COURT ORDER IN PORTUGAL

“(...) in several situations there may exist a need to enforce the decision issued by the foreign court in Portugal.”

Whether you are a Portuguese citizen or a national of any other country, for various reasons you may require the assistance of a court outside of Portugal – for instance in matters of divorce, non-compliance of a contract, child adoption, etc.

Even in cases where the entirety of those court proceedings occur out of Portugal, in several situations there may exist a need to enforce the decision issued by the foreign court in Portugal.

This is the case for example with divorce, whenever one of the spouses has Portuguese citizenship or when the matrimonial assets pool comprised real estate assets in Portugal. In both situations, registering the divorce in Portugal shall be paramount.

In order for a foreign court order to hold effect in Portugal, as a general rule it will be necessary to carry out a specific procedure for this purpose. The major exception is in regard to some decisions issued in other Member States of the European Union, which as per specific EU legislation is automatically recognized by all Member States.

Whenever an automatic recognition mechanism is not in place, the proceedings to be carried out in Portugal are that of Revision and Confirmation of Foreign Decision.

These proceedings are carried out in court, by way of a petition for the Portuguese courts to grant efficacy to the foreign judgement.

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These requests are filed with the Appeals Court of the area where the defendant is domiciled (if the same is domiciled abroad, jurisdiction will fall with the Appeals Court of Lisbon).

In order for the request to be successful, the foreign court order must abide by certain requisites as follows:

- There cannot be any doubts regarding the authenticity of the document – for this purpose, it is important to obtain a certified copy of the decision in its country of origin and legalise this certified copy for use in Portugal. In the countries that are signatories of the Convention of 5 October 1961 Abolishing the Requirement of Legalisation for Foreign Public Documents (Hague 1961 Convention), legalization is achieved by apposing an official stamp called the Hague Apostille;
- Equally essential is that the court order can no longer be appealed, being a definitive judgement on the case;
- Thirdly, the matter at hand cannot correspond to subjects that are exclusively assigned to Portuguese courts;
- It is additionally required that no definitive court order has been given in Portugal on the same subject and with the same parties;
- It is paramount that the foreign court order explicitly reflects that the defendant was duly summoned to participate in the proceedings and that the court process respected the principles of adversarial procedure, granting sufficient rights to be heard and equal means of defense;
- Lastly, it is imperative that the recognition of the judgement in Portugal does not lead to a result that is manifestly incompatible with the principles of the international public order of the Portuguese State.

“(….) These proceedings are carried out in court, by way of a petition for the Portuguese courts to grant efficacy to the foreign judgement.”

Once a petition is filed with the Appeals Court, the opposite party in the foreign proceedings shall be summoned to indicate whether they have any cause to oppose the confirmation of the order, to be enforceable in Portugal.

Among the arguments that may be invoked by the defendants, to stop the validation of the judgement by the Portuguese court, are the following:

- That the foreign jurisdiction was fraudulently secured (for instance, by claiming a local domicile that did not really exist);
- The incomprehensibility of the foreign court order;
- Litis pendens: the existence of ongoing court proceedings in Portugal with the same parties, the same reasoning and the same request – although this circumstance may not be enough to override the jurisdiction that was accepted by the foreign court, being something to be ascertained on a case-by-case basis;
- Non-fulfillment of any of the requisites listed above.

The proceedings to review and confirm foreign decisions are concluded in writing, without a trial hearing. On average, a decision by the Appeals Court is given within a few months.

