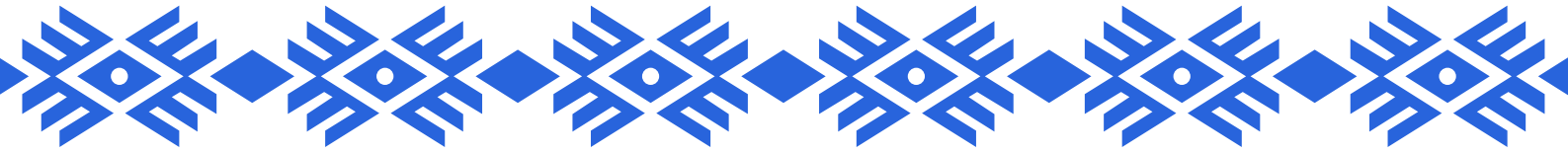


# RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS AND FOREIGN ARBITRAL AWARDS IN MOLDOVA



**GRATA**  
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# RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS AND FOREIGN ARBITRAL AWARDS IN MOLDOVA



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The purpose of each arbitration court, the same as the purpose of judicial instances, is dispute resolution with the adoption of a valid and performable decision. Deducting that every state is independent and sovereign, we can't impose a foreign law on a state, in order to perform or enforce on its territory foreign judicial decisions. Although, this fact is really possible when the states conclude or adhere to a convention that regulates these situations, and then where international private law provides this possibility. In the Republic of Moldova, the procedure of recognition and enforcement of foreign judgments and foreign arbitral awards is provided by the Civil Procedure Code starting with Article 467.

## I. Recognition and enforcement of foreign judgments

According to the Moldovan legislation, the judgment of a foreign court means the judgment issued by a common law court or a specialized court on the territory of a foreign state for example on the territory of Ukraine. The judgments issued by foreign courts shall be recognized and enforced in the Republic of Moldova if it is stipulated by international treaties to which the Republic of Moldova is a party or under the principle of reciprocity in regard to the effects of foreign judgments.

Further, we will analyse the recognition and enforcement of a foreign judgment and a foreign arbitral award based on a case study.

*A legal entity from Ukraine (or can be another state, for example, Germany, Kazakhstan, Italy etc.) paid in advance 40,000 \$ to buy 10,000 bottles of wine from a Moldovan winery. The Moldovan wine producer has not fulfilled its contractual obligation to deliver the wine within the established deadline. The court or the arbitration tribunal from Ukraine decided that the Moldovan wine producer must return the entire amount of money plus 4,000 \$ for court costs. The Moldovan wine producer refuses to voluntarily execute the decision of the Ukrainian court or arbitration tribunal.*

Therefore, the Ukrainian legal entity must come to Moldova to request the recognition and enforcement of the Ukrainian judgment or arbitral award. According to the Moldovan legislation, the judgment issued by the Ukrainian court or arbitration tribunal may be submitted for enforcement in the Republic of Moldova **within 3 years** of entry into force of the judgment in accordance with the law of the issuing state.

## APPLICATION FOR RECOGNITION OF A FOREIGN JUDGMENT

The judgment from Ukraine (hereinafter the foreign judgment) has not been executed voluntarily by the Moldovan winery (hereinafter debtor). Therefore, the judgment from Ukraine may be enforced on the territory of the Republic of Moldova, at the request of the Ukrainian legal entity (hereinafter creditor) based on the approval of the court in the district where the judgment must be enforced. If the debtor does not have his/her domicile or headquarters in the Republic of Moldova, or if the domicile is not known, the judgments shall be enforced at the location of his property.

### CONTENT OF THE APPLICATION FOR RECOGNITION AND ENFORCEMENT OF THE FOREIGN JUDGMENT

**In the application for recognition of the foreign judgment the Ukrainian legal entity must indicate:**



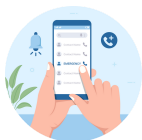
the name of the creditor, as well as his representative if the application is filed by a representative, the domicile (residence) or the headquarters;

the name of the debtor, the domicile (residence) or the headquarters;



request for the approval to enforce the judgment, the term from which the execution of the judgment is requested;

in order to properly and rapidly solve the case, the application also includes phone numbers, fax numbers, email addresses and other information.



The application shall enclose the documents specified by the international treaty to which the Republic of Moldova is a party. If the international treaty stipulates no such documents, the creditor must attach the following documents:

- a copy of the foreign judgment from Ukraine whose approval for enforcement is required, duly certified by the issuing court;
- the official document confirming that the foreign judgment becomes final under the law of Ukraine, if the judgment does not entail this fact;
- the document confirming that the party against whom the judgment was issued, I mean the Moldovan winery, although duly summoned, did not participate in the trial;
- the act confirming the previous execution of the judgment on the territory of Ukraine.

The general rule states that the documents listed above from countries that do not have bilateral treaties with the Republic of Moldova are accompanied by authorized and superlegalized Romanian translations. But between the Republic of Moldova and Ukraine, there is a treaty regarding legal assistance and legal relations in civil and criminal matters, concluded in Kyiv on 13.12.1993 (in force from 24.04.1995). According to art. 15 para. 1 of the above treaty "Documents drawn up or legalized by the corresponding body of one of the Contracting Parties, provided with an official seal and the signature of the authorized person, are valid on the territory of another Contracting Party without any other legalization. This refers to copies and translations of documents that are legalized by the appropriate body." Therefore, the Ukrainian court decision only needs a certified translation in the Romanian language and doesn't need apostillation and supralegalization.

## EXAMINATION PROCEDURE OF THE APPLICATION

The court shall examine the application on recognition and enforcement of the foreign judgment after summoning the debtor about the place, date and time of the hearing. Failure of the debtor to participate due to unjustified reasons does not preclude examination of the application. The court, examining the application on recognition of the foreign judgment, must immediately inform the Ministry of Justice and, if necessary, the National Bank of Moldova, when it comes to one of its licensed financial institutions, with the transmission of the application and of the attached documents. Participation of the representative of the Ministry of Justice and, if necessary, of the National Bank of Moldova at the hearing of the application on recognition of a foreign judgment is mandatory.

During the trial the court examines the evidence submitted and may request explanations from the creditor and interrogate the debtor regarding the submitted application or request explanations from the Ukrainian court. The Moldovan court may not review the foreign judgment on its merits and amend it.

At the end of the trial the court shall issue a ruling on the enforcement of the foreign judgment or rejecting enforcement. Based on the foreign judgment and the ruling, after both became irrevocable, the court issues a writ of execution that shall be transmitted to the judicial executor appointed by the creditor.

### The court may refuse to approve enforcement of the foreign judgment in the following cases:

the judgment, under the legislation of the issuing state, in our case study Ukraine, has not become irrevocable or is not enforceable;

the party against whom the judgment was issued, I mean the Moldovan winery, was not given the opportunity to participate in the trial, due to the fact that it was not duly notified of the place, date and time of the hearing;

examination of the case falls within the exclusive jurisdiction of the courts of the Republic of Moldova;

there is a judgment of the Moldovan court issued in the dispute between the same parties, regarding the same object and having the same grounds or the case is pending in the procedure of the Moldovan court;

the enforcement of the judgment could cause harm to the sovereignty or would threaten the security of the Republic of Moldova or would be contrary to the Moldovan public order;

the deadline for submission the judgment for enforcement has expired;

the foreign judgment is the result of a fraud committed under the proceedings abroad;

The ruling may be challenged to a higher court.

## II. Recognition and enforcement of foreign arbitral awards

### According to the Moldovan legislation, an arbitral award is considered as being foreign if:

it is pronounced on the territory of a foreign state; or

it is issued on the territory of the Republic of Moldova, but the law applied to the arbitration procedure belongs to a foreign state.

A foreign arbitral award may be recognized and enforced in the Republic of Moldova if it is issued in accordance with an arbitration agreement on the territory of a foreign State which is party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, adopted in New York on 10 June 1958, as well as a foreign arbitral award whose recognition and enforcement are regulated either by the international treaty to which the Republic of Moldova is a party or on the basis of the principle of reciprocity regarding the effects of the foreign arbitral award. According to the Moldovan legislation, the foreign arbitral award from Ukraine may be submitted for forced execution in the Republic of Moldova [within 3 years](#) from the date of its finality.



## REQUEST FOR RECOGNITION AND ENFORCEMENT OF THE FOREIGN ARBITRATION AWARD

The request for recognition and enforcement of the foreign arbitral award must be submitted by the legal entity from Ukraine to the court of appeal in whose district is located the domicile/residence or headquarters of the party against whom the foreign arbitral award is invoked, the Moldovan winery, and if the debtor does not have the domicile/residence or headquarters in the Republic of Moldova or his domicile/residence or headquarters are not known - the court of appeal where his assets are located.

**The legal entity from Ukraine must indicate in the request for recognition and enforcement of the foreign arbitral award the following things:**

- the name of the creditor, or his representative if the request is submitted by a lawyer, the domicile (residence) or the headquarters;
- the name of the debtor, the domicile (residence) or the headquarters;
- the date on which the foreign arbitral award became enforceable for the parties, if this does not result from the text of the judgment;
- for the fair and prompt settlement of the case, the creditor should indicate the telephone numbers, fax, e-mail, and other relevant data.

**The creditor must attach to the request for recognition and enforcement of the foreign arbitral award the following documents:**

- the original of the arbitral award or a legalized copy;
- the original of the arbitration agreement or a legalized copy.

As I mentioned before, the Ukrainian arbitral award only needs to be translated into Romanian and doesn't need apostillation and supralegalization. The request for recognition and enforcement of the foreign arbitral award is subject to state tax under the Moldovan law.

## EXAMINATION PROCEDURE OF THE REQUEST

The request for recognition and enforcement of the foreign arbitral award shall be examined in public session, with the notification of the parties regarding the place, date and time of the examination. If the debtor does not come to the trial for unfounded reasons, this does not prevent the examination of the application. The court must inform without delay the Ministry of Justice and and as the case may be the National Bank of Moldova, in case a financial institution licensed by it is targeted, about the case in process of examination. The presence of the representative of the Ministry of Justice and the National Bank of Moldova at the court hearing is mandatory.

During the trial the court examines the presented evidence and may request explanations from the creditor and interrogate the debtor regarding the submitted application or request explanations from the issuing foreign arbitration tribunal I mean the arbitration tribunal from Ukraine. At the end of the trial the court pronounces a decision that approves the forced execution of the foreign arbitration award or the court can refuse to authorize the forced execution of the foreign arbitration award. On the basis of the foreign arbitration award and the decision of Moldovan court that approves the forced execution, an executory title is issued, which is sent to the bailiff appointed by the creditor. The court decision can be appealed to the Supreme Court of Justice of the Republic of Moldova.

**The Moldovan court may refuse to recognize and enforce the foreign arbitral award in the following cases:**

- 1 one of the parties to the arbitration agreement did not have full capacity to exercise or the arbitration agreement is not valid according to the law to which the parties have subordinated it or, in the absence of its establishment, according to the law of the country where the award was issued;
- 2 the party against whom the award is issued was not properly informed about the appointment of the arbitrator or about the arbitration procedure or, for other reasons, was not able to present its means of defense;
- 3 the judgment has been pronounced on a dispute which is not provided by the arbitration agreement or the judgment contains provisions on matters that exceed the limits of the arbitration agreement;
- 4 the arbitration tribunal or the arbitration procedure was not consistent with the agreement of the parties or in the absence thereof did not comply with the law of the country where the arbitration took place;
- 5 the arbitral award has not become binding for the parties or has been abolished or its execution has been suspended by the court or by a competent authority of the country in which or according to the law of which it was pronounced.

**The court may also refuse to recognize and approve the enforcement of the foreign arbitral award in the following cases:**

- the object of the dispute cannot be resolved by arbitration according to the law of the Republic of Moldova; or
- the recognition or approval of the enforcement of the arbitral award is contrary to the Moldovan public order.

To sum up, GRATA International Moldova has many successful cases regarding the recognition and enforcement of foreign judgments and foreign arbitral awards in the Republic of Moldova.

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