
INTERNATIONAL EXECUTION AGAINST JUDGMENT DEBTORS

LATVIA

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A. INTRODUCTION

As of 1 May 2004, Latvia became a member state of the European Union (EU). Latvia's EU membership has had a significant impact on a wide spectrum of legal issues. Ongoing coordination of Latvian national laws with EU laws and uncertainties related to prospective application of EU laws in Latvia in a transitional period makes analysis of many legal issues difficult.

Recognition and enforcement of foreign judgments is a field of law very sparsely regulated in Latvia, and it can be considered underdeveloped. The practice of the courts thus far has not been extensive, and very little doctrine has been published on the issue.

B. LEGAL FRAMEWORK FOR EXECUTION AGAINST JUDGMENT DEBTORS IN LATVIA

i. Civil Procedure Law

The Civil Procedure Law of 14 October 1998 (effective 1 March 1999) is the primary source providing a consolidated legal framework for all forms of civil proceedings in Latvia.

Recent amendments to the Civil Procedure Law (effective 7 April 2004) were intended to coordinate the Civil Procedure Law with EU law. Section 77 of the Civil Procedure Law, governing recognition of foreign court judgments, has been revised to provide a more detailed regulation for recognition proceedings. However, the Civil Procedure Law still contains relatively few provisions expressly dealing with the recognition of foreign judgments and their enforcement. General provisions of the Civil Procedure Law applicable to all forms of civil proceedings still govern many procedural issues related to recognition and enforcement matters.

The lack of detailed and specific provisions results in uncertainty regarding issues that are not expressly dealt with in the Civil Procedure Law. As a matter of practice, any unclear issues of proper procedure and application of the Civil Procedure Law will be left to the discretion of the judge.

ii. Application of European Law

Consolidated EU legislation regarding recognition and enforcement of foreign judgments is applicable in Latvia and includes:

1. Council Regulation 44/2001 of 22 December 2000 on Jurisdiction and the Recognition and Enforcement of Judgments in Civil and Commercial Matters;
2. Council Regulation 1346/2000 of 29 May 2000 on Insolvency Proceedings; and
3. Council Regulation 2201/2003 of 27 November 2003 Concerning Jurisdiction and the Recognition and Enforcement of Judgments in Matrimonial Matters and the Matters of Parental Responsibility (repealing Regulation 1347/2000).

There is still too little case law to assess the impact of EU legislation on recognition and enforcement of foreign judgments in Latvia. It appears that introduction of the EU laws has not resulted in any significant changes in the national legislation or in the court practice in the short term.

iii. International Conventions and Treaties

a. Multilateral Conventions and Treaties

Latvia has joined a number of international conventions and treaties regulating international and crossborder civil matters. Latvia is a party to the following international agreements:

1. The Hague Convention on Civil Procedure of 1 March 1954 (binding on Latvia as of 16 September 1992);
2. The Hague Convention Abolishing the Requirement of Legalization of Public Documents of 5 October 1961 (binding on Latvia as of 18 February 1995);
3. The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters of 15 November 1965 (binding on Latvia as of 1 November 1995);
4. The Hague Convention on International Access to Justice of 25 October 1980 (binding on Latvia as of 24 November 1999); and

5. The Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Cooperation in Respect of Parental Responsibility and Measures for the Protection of Children of 19 October 1996 (binding on Latvia as of 1 April 2003).

Latvia has not yet joined the Brussels Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 27 September 1968 or the Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters of 16 September 1988.

The conventions and treaties joined by Latvia have a priority over national laws.

b. Bilateral Treaties on Legal Assistance

Latvia has entered relatively few treaties regulating legal assistance and legal relations issues which deal with the recognition and enforcement of judgments. The following bilateral treaties have been entered into by Latvia:

1. The Treaty between Latvia and Poland on Legal Assistance and Legal Relations in Civil, Employment, and Criminal Matters of 15 February 1994 (effective as of 17 March 1994);
2. The Treaty between Latvia, Estonia, and Lithuania on Legal Assistance and Legal Relations of 11 November 1992 (effective as of 3 April 1994);
3. The Treaty between Latvia and Belarus on Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters of 21 February 1994 (effective as of 7 February 1995);
4. The Treaty between Latvia and the Russian Federation on Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters of 3 February 1993 (effective as of 28 March 1995);
5. The Treaty between Latvia and Moldova on Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters of 14 April 1993 (effective as of 4 October 1995);
6. The Treaty between Latvia and Ukraine on Legal Assistance and Legal Relations in Civil, Family, Work, and Criminal Matters of 23 May 1995 (effective as of 31 October 1995);
7. The Treaty between Latvia and Uzbekistan on Legal Assistance and Legal Relations in Civil, Family, Employment, and Criminal Matters of 23 May 1996 (effective as of 27 September 1996); and

8. The Treaty between Latvia and the Republic of Khirgizstan on Legal Assistance and Legal Relations in Civil, Family, and Criminal Matters of 10 April 1997 (effective as of 24 March 2001).

These treaties facilitate recognition and enforcement procedure in relation to the judgments made in the countries parties to them (e.g., the requirement to apostille or legalize foreign documents to be submitted to the Latvian courts is abolished).

The scope of application of bilateral treaties with the countries that have joined EU simultaneously with Latvia, i.e., Poland, Estonia, and Lithuania, is limited due to application of EU laws to the reciprocal relations regarding procedures for recognition and enforcement of foreign judgments, as well as other procedural issues. The treaties are valid and applicable only to the extent they deal with issues not regulated by EU laws.

iv. Impact of Origin of Judgment

If the judgment subject to the recognition and enforcement procedure in Latvia is made by the court of another member state of the EU, various sources of law apply in the following order of priority:

1. The applicable EU laws and conventions and treaties between EU member states;
2. The applicable international conventions and treaties; and
3. The Civil Procedure Law.

If the foreign court judgment submitted for recognition and enforcement to a Latvian court originates in a non-EU country which has not entered into a bilateral treaty on legal assistance with Latvia, the sources of law apply in the following order of priority:

1. The applicable international conventions and treaties; and
2. The Civil Procedure Law.

If the judgment submitted for recognition and enforcement to a Latvian court originates in a non-EU country which has entered with Latvia bilateral treaty on legal assistance, the sources of law apply in the following order of priority:

1. The applicable bilateral treaty;
2. The applicable international conventions and treaties; and
3. The Civil Procedure Law.

C. COURT SYSTEM AND JURISDICTION

i. Court System

a. Current Court System

Latvia has a three-level court system. The first level is the District (City) Courts, the second level is the Regional Courts, and the third level is the Supreme Court of Latvia. At the first two levels, there are multiple courts, each court acting within a particular region or district.

The District Courts are courts of first instance. The Regional Courts sit both as the courts of first instance (for claims in excess of certain threshold) and as appeal courts, hearing appeals from the District Courts. The Supreme Court has three divisions, i.e., Civil, Administrative, and Criminal, as well as the Senate. The Supreme Court divisions hear *de novo* appeals from the Regional Courts on issues of both law or fact, while the Senate hears appeals on the issues of law only (a procedure called “cassation”) from both the Regional Courts and the Supreme Court.

b. Reform of the Court System

A bill has been submitted for review by the parliament of Latvia (*Saeima*), providing for reform of the existing court system. It is planned that the court system will be modified as follows:

1. The District Courts will sit as first instance courts in all cases;
2. The Regional Courts will sit as the appeal instance courts in all cases; and
3. The Supreme Court will consist only of the Senate hearing appeals on the issues of laws only.

ii. Judges

No jury system exists in Latvia. Civil cases are tried by a single judge in the District Courts. When the Regional Courts are sitting as trial courts, cases are tried by a single judge.

Appeals to the Regional Courts are heard by a panel of three judges. At the Supreme Court level, *de novo* appeals are heard by three judges from a panel of 10, and cassation is heard in the Senate by three judges from a panel of seven.

iii. Jurisdiction for Recognition and Enforcement

The application for recognition and enforcement of foreign court judgments must be filed with the District Court.

When an application is filed, the judge will determine whether it has been filed in the appropriate court (i.e., whether the court has jurisdiction over the case). If the court does not have jurisdiction over the case, the judge will refuse to accept it.

iv. Venue

The application must be filed with the court of the region in which the foreign judgment will be enforced or the court of the defendant's residence or legal address of the defendant against which the enforcement is sought.

The applicant can submit the application directly or via the foreign court of the first instance which has rendered judgment. The latter option is exercisable only if it is provided for in a bilateral treaty between Latvia and the foreign country.

Most bilateral treaties entered by Latvia stipulating recognition and enforcement of foreign court judgments provide that the application must be submitted to the court of the first instance in the country of origin of the judgment to be recognized and enforced. The application is processed and delivered to the competent Latvian court according to the procedures stipulated by the treaties for service of judicial documents (by mediation of the Ministry of Justice of Latvia and competent authorities of foreign country).

D. RULINGS SUBJECT TO RECOGNITION AND ENFORCEMENT PROCEDURES

i. Concept of Foreign Court Ruling

According to article 636 of the Civil Procedure Law, a "foreign court ruling" is defined as "a binding ruling passed by a foreign court, irrespective of title of the ruling". Thus, any type of foreign court decision or judgment may be recognized and enforced in Latvia, provided there is no basis for refusal to recognize such decision or judgment (see text, below).

ii. Validity of Foreign Court Judgment without Recognition or Enforcement Procedure

The Civil Procedure Law does not contain a provision stating that foreign court rulings in cases the nature of which does not require enforcement (e.g., cases of non-economic character) will be recognized in Latvia without compliance with the respective recognition and enforcement procedures. Nevertheless, such principle having its source in international treaties is accepted and applied in Latvia. The criteria are the character of the ruling of

the foreign court or other competent authority and lack of need for execution and enforcement in Latvia.

The above exception from the general requirement for compliance with recognition and enforcement procedures is found in all bilateral treaties on legal assistance entered into by Latvia.

E. FORM AND CONTENT REQUIREMENTS

i. Application

The application must be made in writing and must contain the following:

1. The name of the court to which the application is addressed;
2. If an individual applicant, his name, surname, personal code (or other identification data), and place of residence and, if a legal entity, its name, registration number, and location (registered address);
3. If an individual defendant, his name, surname, personal code (or other identification data), and place of residence and, if a legal entity, its name, registration number, and location (registered address);
4. The subject matter of the application and the circumstances serving as the basis for application (i.e., validity and enforceability of the foreign court judgment and the location of the defendant and/or certain assets of the defendant against which the enforcement can be made in Latvia);
5. A request by the applicant to recognize and enforce the particular foreign court decision or judgment against the particular person(s) and to issue a writ (court order);
6. The authorized representative and his address if a representative has been appointed to conduct the case in Latvia;
7. A list of the documents enclosed with the application; and
8. The date of the application.

The application must be signed by the applicant or the authorized representative of the applicant.

ii. Enclosures

a. Primary Enclosures

The application must have the following enclosures:

1. The original or a duly certified copy of the judgment of the foreign court, together with a certification indicating that the judgment has become

effective and is enforceable and a document issued by the foreign court, certifying that a defendant who has not participated in the court proceedings has been duly and timely notified on the time and place of the court proceedings;

2. A document issued by the foreign court or competent authority on the enforcement of the court decision or judgment if it has already been fully or partially enforced;
3. Duly certified translations of the application and the documents enclosed with the application submitted in a language other than Latvian;¹ and
4. A document certifying payment of state duty.²

b. Documents Certifying Identity and Authority of the Applicant

If the applicant is a legal entity or an individual represented by another individual or legal entity, documents must be enclosed with the application to enable the court to verify the identity and authority of the applicant (representative).

The documents presented to the court must reveal both the basis and source of authority of the representative. If the applicant is a foreign legal entity and the application is signed by an officer or authorized representative of such legal entity, the following documents must be presented to the Latvian court:

1. A current excerpt (certificate) issued by a company, trade, or similar registry of the applicant's domicile country, certifying incorporation or foundation and existence of the applicant and indicating the requisites of the applicant (name, registration number, and registered address), as well as indicating the person(s) authorized to represent the legal entity and the scope of their authority;
2. A current copy of the charter (articles of association or similar) of the applicant (if the registry excerpt does not make sufficiently clear reference to the competence of the person(s) representing the legal entity);
3. If, according to the laws of domicile country of the applicant or internal procedures of the applicant, the decision to apply for recognition and

1 The translation to Latvian must be made by a sworn translator and must be certified by a notary public.

2 Civil Procedure Law, article 638, paragraph 3.

enforcement is within the competence of the management board, board of directors, council, or other governing body of the applicant, the decision of the body to refer the application to the Latvian court; and

4. If the application is not signed by officers whose right to sign on behalf of the legal entity has been registered, a power of attorney, proxy agreement, management agreement, or other document indicating the authority of the signatory of the application.

Due care must be taken to ensure that relevant documents are current. No strict timeframe has been established by law. However, the excerpts (certificates) from the registry and other documents showing corporate details should not be older than one year to avoid risk that the court may treat them as unreliable and request that they be resubmitted.

If applicant is an individual, he may be requested to submit to the court a copy of his passport, duly certified and translated into Latvian.

iii. Authentication Requirement for Foreign Documents

To be recognized by a Latvian court, documents issued abroad and submitted to the court must be authenticated³ or legalized.

Excepted are documents issued or certified in EU member states and countries with which Latvia has entered bilateral treaties on legal assistance.

F. NO STATUTE OF LIMITATION

The Civil Procedure Law does not provide for a particular term for submission of an application for the recognition and enforcement of a foreign court decision or judgment in Latvia. Thus, the Latvian law does not establish a statute of limitation for such an application.

G. TRIAL

i. In General

The Civil Procedure Law contains few provisions expressly governing the trial of the application for recognition and enforcement of foreign judgment. Therefore, other (general) procedure provisions apply.

³ Hague Convention of 5 October 1961 Abolishing the Requirement of Legalization for Foreign Public Documents.

ii. Acceptance for Review and Dismissal without Review

After receipt of the application, the chairman of the court will appoint a judge to review the application. Within three days after receipt of the application, the judge must decide whether to:

1. Accept the application for review; or
2. Dismiss the application (on formal grounds).

The judge may refuse to review application if the application does not comply with content and form requirements. The decision to dismiss the application on formal grounds must be notified to the applicant, providing at least 20 days to rectify any discrepancies. If the applicant rectifies the defects within the term established by the court, the application will be deemed submitted on the date it was first received by the court. If the applicant does not rectify the defects within the established term, the application will be returned to the applicant without review. This does not, however, prevent the applicant from applying to the court again. The applicant may appeal the decision to accept or dismiss the application through a side claim.

iii. Decision on Recognition

According to article 640 of the Civil Procedure Law, within 10 days from the date the application has been submitted to the court, the judge must render a motivated decision whether to:

1. Recognize the foreign court decision or judgment; or
2. Dismiss the application.

The 10-day term will be deemed suspended if the application is dismissed on formal grounds and the applicant has been provided with a term for rectification of discrepancies.

The recognition proceedings at this stage are written proceedings. There is no court hearing, and the parties are not invited to participate in the proceedings. The defendant is not notified when the recognition application is submitted. The case is decided by the judge on the basis of the information included in the application and the documents accompanying the application.

The court decision will be notified to both the applicant and the defendant who then will have an opportunity to appeal the decision (see text, below). The Latvian court neither reviews the foreign court judgment or decision on the merits nor verifies whether the judgment is legal and substantiated.

Paragraph 2 of article 637 of the Civil Procedure Law contains an exhaustive list of circumstances under which the foreign court decision or judgment will not be recognized, to wit:

1. The foreign court which has issued the decision or judgment, in accordance with Latvian law, did not possess authority to review the particular dispute or the particular dispute between the parties is within exclusive competence of Latvian courts;
2. The decision or judgment of the foreign court has not become valid and enforceable;
3. The defendant has been deprived of the right to defend its interests, in particular, if the defendant who has not participated in the court hearing was not duly and timely notified as to the court hearing, except where the defendant has not appealed the decision or judgment although it has had such an opportunity;
4. The foreign court decision or judgment is not compatible with a Latvian court decision or judgment which has been issued and has become valid and enforceable in the same dispute between the same parties, or is not compatible with court proceedings already initiated in Latvia in the same dispute;
5. The foreign court decision or judgment is not compatible with such other foreign court decision or judgment which has been issued and has become valid and enforceable in the same dispute between the same parties and which should be, or has already been, recognized in Latvia;
6. The recognition of the foreign court decision or judgment contradicts Latvian public order; or
7. In issuing the foreign court decision or judgment, the court has not applied the laws of the country which laws would be applicable in accordance with Latvian conflict of laws provisions.

In all other cases, the foreign court decision or judgment will be recognized. In issuing the decision on recognition or refusal to recognize, the Latvian court must take into account circumstances established by the respective foreign court decision or judgment.

iv. Securing the Application and Enforcement

Latvian law does not provide a possibility to the applicant for recognition of a foreign court judgment to secure such application. Likewise, there are no provisions to this effect in the international treaties entered into by Latvia.

However, according to article 643 of the Civil Procedure Law, if and once the court recognizes the foreign court decision or judgment and if the applicant has so requested in its application, the court may provide for securing the enforcement of the foreign court decision or judgment. The decision to secure the enforcement will be executed irrespective of the recognition decision being not yet valid and enforceable (before the expiry of the appeal term). The securing measures that may be requested include seizure of the bank accounts of the defendant and registration of the prohibition to dispose of real estate, shares, or other property of the defendant registered with special registries.

Until the foreign court decision or judgment is recognized by the Latvian court (even if the recognition decision is not yet valid and enforceable), the applicant has no possibility to take precautions (such as seizure of the debtor's bank accounts) before the recognition procedure is accomplished. Thus, if procedure is initiated with a view to certain assets of the debtor located in Latvia, the applicant faces a risk that the defendant will dispose of such assets or transfer them outside the jurisdiction of Latvia as soon as the defendant becomes aware of the recognition procedure being initiated.

v. Costs of Recognition Procedure

There are no specific provisions under the Civil Procedure Law regarding court and other relevant costs of the parties incurred in the course of the recognition procedure. According to the general provisions of the Civil Procedure Law, the costs of litigation are divided into two categories, namely:

1. Court costs; and
2. Costs related to proceedings.

The court costs are comprised of:

1. The state duty for submission of claim;
2. The chancellery duties; and
3. The costs incurred to hear the case at the court.

The application for recognition and enforcement of a foreign court judgment is subject to payment of state duty in the amount of LVL 10. The costs related to proceedings are comprised of:

1. Legal fees;
2. Costs for traveling to the court hearings; and
3. Costs incurred to collect evidence.

The court orders the losing party to pay the winning party's court costs. In addition to the recovery of the court costs, the costs related to proceedings are to be paid to the winning party. However, the defendant may recover its costs only if the plaintiff's claim is rejected entirely. The following limitations apply to recovery of the costs related to proceedings:

1. Legal fees can be recovered in their actual amount, however, not to exceed five per cent of the sum of the claim granted in the claims of economic character or the amount calculated according to the officially established rates for services of attorneys-at-law in claims of non-economic character; and
2. Traveling costs are recoverable in accordance with the rates established under Latvian laws.

H. APPEAL OF THE DECISION

i. Appeal Court and Term for the Appeal

There are two stages of appeal available to the parties to the recognition proceedings. The decision of the District Court on recognition of the foreign court decision or judgment or rejection of recognition can be appealed to the Regional Court. The decision of the Regional Court, in turn, can be appealed to the Senate of the Supreme Court.

The appeal is initiated by submission of a side claim. The side claim must be submitted to the court which has rendered the decision and will be addressed to the court of appellation instance. The terms for the submission of a side claim differ, depending on the place of residence (registered address) of the defendant, namely:

1. Thirty days after the date of the receipt of the court decision if the place of residence (registered address) is in Latvia; or
2. Sixty days after the date of receipt of the court decision if the place of residence (registered address) is outside Latvia.

If any of the parties to the proceedings submits a side claim appealing the court decision, the decision will not come into force and will not be enforceable until the final decision on the appeals court is rendered.

ii. Hearing of the Side Claim

The side claim will be heard according to the general appeal procedure established by the Civil Procedure Law. It will be heard at a court hearing with participation of the applicant and the defendant.

The law does not established formal limits or deadlines for the review of the side claims in the appeals instance court. Generally, the terms tend to be longer than terms for trial at the first instance court.

iii. Request for Explanations and Additional Information

If the appeals court considers information contained in the documents submitted to the court insufficient, the court may:

1. Request the applicant, as well as the defendant, to provide explanations;⁴
or
2. Request additional information from the foreign court that has rendered the decision or judgment that is requested to be recognized.⁵

Requests by local courts to foreign courts are processed by the Ministry of Justice, and exchange of information and documents takes place in accordance with bilateral treaties and international treaties to which Latvia is a party (in particular, the Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters).

iv. Representation of Parties

The parties generally will act in the proceedings and execute all their procedural rights through attorneys. Such representation, however, is not compulsory. The exception is at the court of cassation where it is requested by the Civil Procedure Law that the parties conduct the matter through attorneys.

Except as otherwise indicated above, any individual (party to the proceedings) may act before the court in person. Legal entities may act through their officers possessing authority on the basis of law and charter (articles of association) of the legal entity or be represented by an employee acting on the basis of power of attorney or other relevant document. The identity and authority of the representative will be verified by the court (see text, above). The participation of the parties in person or through their legal or other representatives does not preclude the parties simultaneously to be represented by an attorney-at-law.

⁴ Such a request can be made by the judge at any time during the proceedings. Thus, the judge may request the relevant explanations prior to the date of the court hearing (e.g., simultaneously with the notice on the scheduled court hearing), in which case the explanations will be submitted in written form. The request also may be made during the court hearing, in which case the explanations would be provided by the representative(s) of the parties orally.

⁵ The request can be made at the sole discretion of the court at any time during the proceedings. If such request is made, it will significantly increase the time frame of the hearing.

v. Rights of Parties

During the court proceedings, the parties may execute the following procedural rights:

1. Review the case materials and obtain extracts and copies from the case materials;
2. Participate at the court hearing;
3. Plead for dismissal of the judge;
4. Submit evidence;
5. Submit requests;
6. Participate in examination of evidence;
7. Provide the court with written and oral explanations;
8. Express the arguments and considerations;
9. Object to the requests, arguments, and considerations of other parties to proceedings;
10. Appeal the decision(s) of the court; and
11. Obtain copies of the decision(s) and other case documents.

The procedural rights of the parties may be executed directly or through representatives (see text, above).

vi. Court Hearing and Trial of Application

The appeal proceedings are oral and public. Both the applicant and the defendant are expected to participate at the court hearing; however, failure by a party to appear before the court does not preclude trial of the case.

Nevertheless, the practice of the courts is to adjourn the court hearing at least once if one of the parties fails to appear without submitting an application for hearing of the case without its presence. Most often, a case is dealt with in a single court sitting lasting less than a day, save for the most complex cases.

vii. Appeal Court Decision on Side Claim

Having reviewed the side claim, the appeal court must:

1. Leave the first instance court decision unchanged and dismiss the side claim;

2. Cancel the decision of the first instance court fully or partially and render a new decision; or
3. Change the decision of the first instance court.⁶

The decision on the side claim rendered by the Regional Court becomes effective after the expiry of the term for the appeal to the Senate (30 or 60 days). The decision of the Senate on the side claim cannot be appealed, and it becomes effective as of the date rendered.

viii. State Duty

Submission of a side claim on the decision of the first instance court is not subject to state duty.

ix. Review by the Senate for Substantial Violations of Law

a. Statutory Grounds for New Trial

The case on recognition and enforcement of foreign court judgment can be re-initiated and reviewed by the Civil Department of the Senate of the Supreme Court even after it has been closed by a valid and enforceable Latvian court decision in recognition proceedings if all of the following circumstances are present:

1. There have been material violations of procedural or substantive law;
2. The case has been tried only by the court of the first instance (District Court); and
3. The decision of the court of first instance has not been appealed due to circumstances beyond the control of the parties or the court decision concerns the interests of the state or self-government entities or the rights of persons who are not participants in the case.

The new trial can be initiated exclusively on the basis of protest submitted by the Chairman of the Supreme Court, the Chairman of the Civil Department of the Supreme Court, or the General Prosecutor. The statute of limitation for a new trial on the basis of the above is 10 years after the date the decision comes into force.

b. Court Practice

There have been very few cases on recognition and enforcement of foreign court judgments tried by the Senate (in particular because, until recent

⁶ Civil Procedure Law, article 642.

amendments to the Civil Procedure Law, the Senate did not act as an appeal court in recognition proceedings).

In Case Number SPC-71 of 16 November 1999 (initiated by the General Prosecutor of Latvia), the Senate of the Supreme Court cancelled the decision of the first instance court to recognize and enforce a judgment of a Russian Federation court because:

1. When the application was reviewed, court proceedings were initiated and underway in Latvia between the same parties and in the same matter;
2. The first instance court ignored the fact that the judgment of the Russian Federation court was not accompanied by certification indicating that the judgment was valid and enforceable; and
3. The first instance court did not consider the fact that the applicant had a permanent place of residence in Latvia and, according to the bilateral treaty between Latvia and the Russian Federation, the venue of the case in which the judgment of the Russian Federation court was rendered had to be in Latvia.

In Case Number SPC-4 of 19 January 2000, initiated by the Chairman of the Civil Department of the Supreme Court, the Senate cancelled the decision of the first instance court to recognize and enforce a Russian Federation court judgment because:

1. The lower court erroneously assumed that the judgment had to be recognized and executed in Latvia and certain changes had to be made to the individuals' registry, irrespective of the fact that the Russian Federation court judgment did not make proper reference to activities that would require recognition; and
2. The judgment of the Russian Federation court was rendered in relation to a certain individual, although the applicant for recognition was another individual who did not present to the court documents certifying her authority.

x. Review of the Case Due to Newly Discovered Circumstances

A recognition case closed with a valid court decision can be re-initiated if there are "newly discovered circumstances". "Newly discovered circumstances" include material circumstances that existed during the proceedings of which the applicant for re-initiation of the case was not, and could not have been, aware and the judgment of another court or the decision of another body had been dismissed on the same basis on which the decision was approved in the respective recognition case.

An application must be submitted within three months from the date when the applicant has learned of the existence of the newly discovered circumstances. However, the application cannot be submitted if more than 10 years have passed since the decision in the recognition case became valid and enforceable. The application must be submitted to the higher instance court (e.g., an application regarding newly discovered circumstances in a recognition case closed by a District Court decision must be submitted to the Regional Court).

I. ENFORCEMENT PROCEDURE

i. In General

Articles 539 and 644 of the Civil Procedure Law provide that judgments and decisions of foreign courts will be enforced according to the general enforcement procedure set forth in the Civil Procedure Law.

Enforcement takes place on the basis of a writ issued by the court, with the writ to be issued as soon as the recognition decision becomes effective.

ii. Form of Writ

A writ must include:

1. The name of the court which issues the writ;
2. A reference to the court case in which the writ is issued;
3. The date of the decision;
4. A summary of the decision (i.e., that the particular foreign court judgment is recognized by the court and will be enforced in Latvia);
5. The date on which the decision becomes effective (i.e., the date when the decision has been rendered);
6. The date of the writ; and
7. Data on the applicant and the defendant (i.e., name, registration number, and address).

The writ must bear the signature of the judge and stamp of the court. If the writ is destroyed, stolen, or lost, the court, at the request of the applicant or the court bailiff, may issue a duplicate of writ. The court will evaluate circumstances under which the writ has been destroyed, stolen, or lost and will order a special court hearing to decide on the issue.

iii. Court Bailiffs

a. *In General*

The enforcement of any decisions or judgments of Latvian courts is carried out by court bailiffs. After the applicant has received a writ from the court, it must submit the writ to the court bailiff. The court bailiff may not refuse the writ if the enforcement venue is correct (i.e., the territory of the Regional Court where the particular court bailiff operates).

According to the general rule set forth by the Court Bailiffs Law, the court bailiff must take all the actions permitted by law and use all methods provided by law to procure fast and proper performance of the court decision.

The sworn court bailiffs are independent professionals appointed by the Minister of Justice for life, and they possess the authority of a state official. The professional activities of court bailiffs are supervised and managed by the Latvian Sworn Court Bailiffs Council. The activities of court bailiffs are controlled by the Minister of Justice and the courts.

On 1 January 2003, Latvia introduced a concept of the court bailiffs as independent professionals (having a status similar to notaries and attorneys-at-law). The effects of the reform have been considered mixed, and it is uncertain whether the reform will contribute to the improvement of the enforcement process.

b. *Statute of Limitation*

A writ can be submitted for enforcement within 10 years after the date of the court decision or judgment for which the writ is issued.⁷

The term cannot be extended or renewed. If the debtor makes voluntary but only partial payment, the term will resume anew from the date of voluntary payment. If the enforcement procedure is initiated (a writ is submitted to the court bailiff) but terminated (suspended) before full payment of the claim and the court bailiff has returned the writ to the applicant, the term will be calculated anew from the date the writ is returned to the applicant.

c. *Authority of Court Bailiffs*

Court bailiffs have vast authority vested by law in relation to the enforcement of court decisions and judgments. The instructions and orders of a court bailiff made within the scope of his competence are binding and compulsory for all persons and entities in Latvia.

⁷ Civil Procedure Law, article 546.

In case of failure to comply with lawful instructions and orders of a court bailiff, the court may impose a fine of up to LVL 250 on individuals and LVL 500 on officers of legal entities. During enforcement proceedings, the court bailiff is entitled to request any information necessary for the performance of his duties from any persons and entities in Latvia (state and self-government authorities and private legal entities and individuals), subject to limitations established by special laws (e.g., information containing state secrets or commercial secrets).

During enforcement proceedings, a court bailiff is entitled, without permission from the debtor, to open and enter premises of the debtor, as well as premises where property of the debtor is located, subject to the procedures established by the Civil Procedure Law. A court bailiff is entitled to request the assistance of the police for the performance of his duties.

d. Dismissal of Court Bailiff

The Civil Procedure Law and the Court Bailiffs Law provide that, if one of the parties to the enforcement procedure is the court bailiff, his spouse or former spouse, or his relative or his spouse's relative, the court bailiff may not conduct the enforcement procedure.

The claimant and the debtor are entitled to request dismissal of the court bailiff in other cases if there are circumstances causing reasonable doubt regarding the impartiality of the court bailiff. A request for dismissal must be submitted to the court bailiff himself, and it must be reviewed immediately. If the court bailiff considers the request unsubstantiated and declines it, the applicant may appeal the decision of the court bailiff to the District Court. The decision of the court to decline the request for dismissal of the court bailiff can be further appealed by a side complaint to the Regional Court. If the court bailiff is dismissed, he must transfer the enforcement case to another court bailiff.

iv. General Principles of Enforcement Procedure

a. Proposal for Voluntary Performance

When a court ruling will be enforced immediately (as with a decision on the recognition and enforcement of a foreign judgment) the court bailiff, after receipt of writ and initiation of the enforcement procedure, must within three days deliver to the debtor a proposal to voluntarily comply with and perform the judgment.

b. *Seizure of Properties and Assets of Debtor*

Immediately after the initiation of the enforcement procedure, the court bailiff is entitled to:

1. Seize the property of the debtor, including financial resources in current and deposit accounts with commercial banks and financial resources and properties deposited with third parties; and
2. Notify enforcement procedures to the Land Register, Register of Enterprises of Latvia (Commercial Register), and other public registries in order to prohibit disposal of the assets and properties of the debtor registered with such registries.

c. *Methods of Recovery by Court Bailiff*

Recovery is commenced after the expiry of the term for voluntary performance of the decision or judgment. Latvian law provides for the following recovery methods:

1. Sale of movable properties and assets of the debtor, including properties and assets deposited with third parties;
2. Recovery against financial resources due to the debtor from third parties (e.g., income of the debtor and deposits in banks);
3. Sale of real estate of the debtor;
4. Taking possession of and handing over to the applicant of certain items provided for by the decision or judgment and performance of activities provided for by the decision or judgment;
5. Eviction of persons, properties, and items from the premises as indicated in the decision or judgment;
6. Transfer of possession to the claimant; and
7. Other methods provided for in the decision or judgment.

In carrying out the above methods, court bailiffs must comply with the procedures and rules established by the Civil Procedure Law, the Court Bailiffs Law, and the Instructions of the Ministry of Justice.

d. *Duration and Suspension of Enforcement Procedure*

Latvian laws do not fix deadlines for the duration of the enforcement proceedings. The enforcement of a foreign judgment must be commenced by the court bailiff not later than on the next business day after the receipt of writ.

Under certain circumstances, the enforcement procedure may be suspended (e.g., if a complaint has been submitted regarding the activities of the bailiff).

v. Complaint on Activities of Bailiff and Liability

a. Complaints on Activities of Court Bailiff

The applicant or the defendant may submit a complaint regarding activities of the court bailiff during the enforcement procedure (e.g., if the court bailiff undertakes illegal activities or fails to perform activities requested by the applicant and considered important for recovery).

The complaint must be submitted to the Regional Court in the area where the bailiff is operating. The complaint will be reviewed in a special court hearing with participation of the applicant or the defendant and bailiff.

b. Disciplinary Liability

Disciplinary liability can be imposed on a court bailiff by the Latvian Sworn Court Bailiffs Council or the Ministry of Justice for failure to comply with the law or Instructions binding on bailiffs. The Minister of Justice is entitled to dismiss a court bailiff.

vi. Enforcement Costs

a. Types of Payment

Enforcement costs include:

1. State duty of LVL 1; and
2. Remuneration of the court bailiff and costs involved in the execution of enforcement activities.

b. Remuneration of Court Bailiffs

The rates for remuneration for services of the court bailiffs currently are fixed by the Instruction of the Ministry of Justice of 10 January 2003. The Instruction provides for two sets of rates.

First, the instruction sets a fixed fee for each separate activity of the court bailiff. For example, preparing of the calculation for enforcement costs, preparing of the act on seizure of assets, and organization of auctions carry fees ranging from LVL 3.50 to LVL 63.

Second, the Instruction provides for remuneration for services of the bailiff as a percentage of the amount actually recovered. The rates are the following:

1. Fifteen per cent of the amount recovered from the debtor if the recovered amount does not exceed LVL 3,000;

2. LVL 450, plus 10 per cent of the recovered amount in excess of LVL 3,000, if the recovered amount is between LVL 3,001 and LVL 10,000;
3. LVL 1,150, plus five per cent of the recovered amount in excess of LVL 10,000, if the recovered amount is between LVL 10,001 and LVL 100,000; and
4. LVL 5,650, plus three per cent of the recovered amount in excess of LVL 100,000, if the recovered amount exceeds LVL 100,000.

The remuneration of court bailiffs is calculated as an aggregate under both sets of fees.

c. Payment by Applicant

The applicant, on submission of the writ to the court bailiff, must pay the state duty and such amount of the costs related to enforcement as considered by the bailiff necessary for the initial stage of the enforcement proceedings. The amount of the latter payment is determined by the bailiff at his own discretion. Further costs must be paid by the applicant to the court bailiff as they are incurred.

d. Recovery of Costs from Debtor

The debtor has an obligation to cover the enforcement costs on the basis of a calculation and bill issued by the court bailiff. If payment is not made voluntarily, the enforcement costs are recovered from the monies received from the debtor in the process of enforcement. The claim for enforcement costs has priority over other claims of the applicant, and enforcement costs must be covered in the first instance.

As indicated above, the part of the remuneration of the court bailiffs is fixed depending on the amount of monies actually recovered by the bailiff. Nevertheless, the current practice of court bailiffs is to calculate and bill for remuneration as soon as the enforcement procedure is initiated on the basis of the amount indicated in the court decision and judgment.

e. Exceptions

According to paragraph 2 of article 644 of the Civil Procedure Law, costs relating to the enforcement of the foreign court decision or judgment will be covered in the rank established by law.

International and bilateral treaties also may include certain provisions regarding enforcement costs. For example, according to the bilateral treaty with Belarus, individuals and legal entities of the contracting states will benefit in the other state from the same allowances in relation to enforcement costs as the citizens and legal entities of the latter.