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Country Report
REPUBLIC OF THE PHILIPPINES

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A  RECOGNITION AND ENFORCEMENT UNDER TREATY

1 Discussions on judicial jurisdiction refer to either direct jurisdiction of the rendering court or indirect jurisdiction of the recognising court. The former is called *compétence directe* since only the court before which a case is filed decides, in the first place, that it can and should exercise jurisdiction. In contrast, indirect jurisdiction or *compétence indirecte* pertains to a decision that must be made by the court to whom the request for recognition is made.1

2 The Philippines is a party to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, otherwise known as the New York Convention. Aside from this, there is no other treaty in respect of the recognition and enforcement of foreign judgments to which the Philippines is a party. However, the Philippines' Rules of Court2 provide that a foreign judgment may be recognised and enforced in the Philippines through an independent action.3 Section 48 of rule 39 provides:

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2 Rules of Civil Procedure (Bar Matter No 803 (1997)).
3 BPI v Guevara GR No 167052 (11 March 2015) and Hung Lung Bank, Ltd v Saulog GR No 73765 (26 August 1991). A judgment or final order of a foreign court cannot be enforced simply by execution. A foreign judgment or order merely creates a right of action, the non-satisfaction of which is the cause of action by which a suit can be brought in the Philippines for its enforcement. An action for the enforcement of a foreign judgment or final order in the Philippines is governed by section 48 of rule 39 of the Rules of Civil Procedure (Bar Matter (continued on the next page))
Effect of foreign judgments or final orders.

The effect of a judgment or final order of a tribunal of a foreign country, having jurisdiction to render the judgment or final order is as follows:

(a) In case of a judgment or final order upon a specific thing, the judgment or final order is conclusive upon the title to the thing; and

(b) In case of a judgment or final order against a person, the judgment or final order is presumptive evidence of a right as between the parties and their successors in interest by a subsequent title.

In either case, the judgment or final order may be repelled by evidence of a want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact.

3 While the above rule provides that foreign judgments, may generally be recognised and enforced, if there is evidence of a lack of jurisdiction, absence of notice, collusion, fraud or clear mistake of law or fact or if it is found to be contrary to the laws, customs or public policy of the Philippines, the court may refuse its recognition and enforcement. However, there is a disputable presumption that “a court, or judge acting as such, whether in the Philippines or elsewhere, was acting in the lawful exercise of jurisdiction”.

4 In recognising and enforcing foreign judgments, Philippine courts can only consider them as facts which must be proven according to the Rules of Evidence. The Philippine courts cannot, \textit{motu proprio}, take judicial notice of the foreign judgments. Rather, compliance with section 24 of rule 132 is required:

The record of public documents referred to in paragraph (a) of Section 19, when admissible for any purpose, may be evidenced by an official publication thereof or by a copy attested by the officer having the legal custody of the record, or by

No 803 (1997)). An action for recognition of a foreign judgment is thus also an action for enforcement of the foreign judgment.

4 Article 17 of the Civil Code of the Philippines (Republic Act No 386 (1949)) provides that “[p]rohibitive laws concerning persons, their acts or property, and those which have for their object public order, public policy and good customs shall not be rendered ineffective by laws or judgments, or by determinations or conversations agreed on in a foreign judgment”.

5 Revised Rules of Evidence (adopted on 14 March 1989) r 131, s 3(n).

Recognition and Enforcement of Foreign Judgments in Asia

his deputy, and accompanied, if the record is not kept in the Philippines, with a certificate that such officer has the custody. If the office in which the record is kept is in foreign country, the certificate may be made by a secretary of the embassy or legation, consul general, consul, vice consul, or consular agent or by any officer in the foreign service of the Philippines stationed in the foreign country in which the record is kept, and authenticated by the seal of his office. [emphasis added]

5 As discussed in *Corpuz v Tomas*,

[T]he starting point in any recognition of a foreign … judgment is the acknowledgment that our Courts do not take judicial notice of foreign judgments and laws. As a rule, no sovereign is bound to give effect to a judgment rendered by a tribunal of another country. This means that the foreign judgment and its authenticity must be proven as facts under our rules on evidence, together with the alien’s applicable national law to show the effect of the judgment on the alien himself or herself. This may be made in an action instituted specifically for the purpose or in another action where a party invokes the foreign decree as an integral aspect of his claim or defense.

6 For a foreign judgment to be recognised and enforced in the Philippine jurisdiction, one must bring it before the courts in a civil action and prove the authenticity and validity of such foreign judgment together with the laws and jurisprudence under which the foreign judgment was rendered. Should there be a failure in proving the foreign procedural law, the doctrine of processual presumption will apply – where a foreign law is not properly pleaded or proven, the presumption is that that foreign law is the same as forum law.

7 One of the underlying principles allowing for recognition and enforcement revolves around the principle of comity founded on mutuality and reciprocity. In *St Aviation Services v Grand International*

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7 GR No 186571 (11 August 2010).
8 For the avoidance of doubt, the Philippine courts do not review the merits of the case: Jorge Rioflorido Coquia & Elizabeth Aguling-Pangalangan, *Conflict of Laws: Cases, Materials and Comments* (Central Professional Books, 2000) at p 533.
9 *EDI-Staffbuilders Inc v NLRC* GR No 145587 (26 October 2007) 537 SCRA 409 at 430.
The court said that “under the rules of comity, utility and convenience, nations have established a usage among civilised states by which final judgments of foreign courts of competent jurisdiction are reciprocally respected and rendered efficacious under certain conditions that may vary in different countries”.

8 The case of *Mijares v Ranada* enunciated another theoretical underpinning for recognition and enforcement of foreign judgments in general:

There is no obligatory rule derived from treaties or conventions that requires the Philippines to recognise foreign judgments, or allow a procedure for the enforcement thereof. However, generally accepted principles of international law, by virtue of the incorporation clause of the Constitution, form part of the laws of the land even if they do not derive from treaty obligations. The classical formulation in international law sees those customary rules accepted as binding result from the combination of two elements: the established, widespread, and consistent practice on the part of States; and a psychological element known as the opinion *juris sive necessitates* (opinion as to law or necessity) …

*While the definite conceptual parameters of the recognition and enforcement of foreign judgments have not been authoritatively established, the Court can assert with certainty that such an undertaking is among those generally accepted principles of international law.* As earlier demonstrated, there is a widespread practice among states accepting in principle the need for such recognition and enforcement, albeit subject to limitations of varying degrees. The fact that there is no binding universal treaty governing the practice is not indicative of a widespread rejection of the principle, but only a disagreement as to the imposable specific rules governing the procedure for recognition and enforcement.

This is a significant proposition, as it acknowledges that the procedure and requisites outlined in Section 48, Rule 39 derive their efficacy not

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10 GR No 140288 (23 October 2006).
11 *Hilton v Guyot* 159 US 113 at 163–164 (1895) defined comity as “neither a matter of absolute obligation, on the one hand, nor of mere courtesy and goodwill, upon the other. But it is the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience and to the rights of its own citizens or of other persons was are under the protection of its laws. It is not the comity of the courts, but comity of the nation”.
12 GR No 139325 (12 April 2005).
merely from the procedural rule, but by virtue of the incorporation clause of the Constitution … [t]he Supreme Court is obliged, as are all State components, to obey the laws of the land, including generally accepted principles of international law which form part thereof, such as those ensuring the qualified recognition and enforcement of foreign judgments. [emphasis added]

B FACTORS CONSIDERED BY COURTS

9 The requested court will consider recognising or enforcing a foreign judgment depending on several factors, as discussed below.

i Jurisdiction of foreign court

10 In deciding whether or not to recognise a foreign judgment, the court whose recognition is sought considers whether the rendering court had competent jurisdiction as determined by the rendering court's procedural rules. Where jurisdiction was improperly exercised by the rendering court, the requested court will not recognise such decision.

11 One of the requisites for recognition and enforcement is that the foreign judgment should have been rendered by a judicial or a quasi-judicial tribunal, which had jurisdiction over the parties and the case. A court asserts jurisdiction in proceedings in personam through valid service of summons, following the traditional approach to jurisdiction or where standards of fair play and substantial justice parties are met. In in rem proceedings, the court acquires jurisdiction over properties within its territory. On the other hand, subject matter jurisdiction is determined by the Philippine Constitution and statutory laws “according to the

13 Dacudao v DOJ GR No 188056 (8 January 2013), where it was stated that a “quasi-judicial body is an organ of government other than a court of law or a legislative office that affects the rights of private parties through either adjudication or rulemaking”.

nature of the controversy, thereby determining the competence of the
court to try a case and render a judgment”.15

12. Thus, the Philippine courts can refuse to recognise and enforce a
foreign judgment for being rendered by a foreign court which lacked
jurisdiction.16 This statement finds support in section 48 of rule 39 of the
Rules of Court.

13. The court in *Northwest Orient Airlines v CA*,17 discussed that
“a foreign judgment is presumed to be valid and binding in the country
from which it comes, until the contrary is shown. It is also proper to
presume the regularity of the proceedings and the giving of due notice
therein”. Further:18

Under Section 50, Rule 39 of the Rules of Court, a judgment in an action
in personam of a tribunal of a foreign country having jurisdiction to
pronounce the same is presumptive evidence of a right as between the
parties and their successors-in-interest by a subsequent title. The judgment
may, however, be assailed by evidence of want of jurisdiction, want of notice
to the party, collusion, fraud, or clear mistake of law or fact.

... Consequently, the party attacking a foreign judgment has the burden
of overcoming the presumption of its validity.

[emphasis added]

14. In determining whether the foreign court had jurisdiction, the
Philippine courts require the foreign procedural law of the acquiring
jurisdiction to be proved by evidence (*ie*, it is the internal laws of the
foreign court which matters of remedy and procedure have to be
determined in accordance with). In case of failure to prove such law, the
doctrine of processual presumption is followed. In *Suntay v Suntay*,19 the

16 See *Spouses Belen v Hon Chavez* GR No 175334 (26 March 2008) and *St Aviation Services v Grand International Airways* GR No 140288 (23 October 2006).
17 GR No 112573 (9 February 1995).
18 *Northwest Orient Airlines v CA* (GR No 112573) (9 February 1995).
19 GR Nos L-3087 and L-3088 (31 July 1954).
court refused to grant the petition for probate for failure of the plaintiff to prove that the court in China was a probate one.

15 Philippine law requires reciprocity of recognition and enforcement on the part of the foreign court, for the latter court’s judgment to be recognised and enforced in the Philippines, under internationally accepted doctrines including the principle of international comity. In St Aviation Services, involving a contract between a Singaporean corporation and a Philippine corporation, the court held that although a sovereign state is not bound to give effect to a foreign judgment “under the rules of comity, utility and convenience, nations have established a usage among civilised states by which final judgments of foreign courts of competent jurisdiction are reciprocally respected and rendered efficacious under certain conditions that may vary in different countries”.

ii Fraud

16 Under section 48 of rule 39, the proof of fraud or collusion may prevent the enforcement of foreign judgment.

17 However, it must be noted that there are two types of fraud, governed by different rules, recognised under Philippine law – intrinsic fraud and extrinsic fraud. To hinder the enforcement of a foreign judgment, the fraud must be extrinsic. To impeach a prior judgment, the material fraud must be based on facts not controverted or resolved in the case where judgment was rendered; or there must have been “collusion by the parties, suppression of an important document or the presentation in evidence of a forged will or falsified affidavit which goes to the

21 St Aviation Services v Grand International Airways GR No 140288 (23 October 2006).
22 These are facts which do not affect the presence or absence of cause of action. For example, as distinguished from fraud of facts which make up the cause of action, extrinsic fraud may pertain to the act of the party in depriving the other of his day in court.
jurisdiction of the court or deprived the party against whom judgment was rendered of a chance to defend the action to which he had a meritorious defense. This is distinguished from intrinsic fraud which goes to the very existence of the cause of action, deemed already adjudged.24

iii Public policy

18 The Philippine courts view public policy “as a defence to the recognition of judgments serves as an umbrella for a variety of concerns in international practice which may lead to a denial of recognition” and one that “can safeguard against possible abuses to the easy resort to offshore litigation if it can be demonstrated that the original claim is noxious to our constitutional values”.25

19 Article 17 of the Civil Code of the Philippines provides a ground for repelling a foreign judgment when it is contrary to public policy.26

20 Since public policy is based on the principle that no person can “lawfully commit any act which has a tendency to be injurious to the public or against the public good”,27 Philippine courts have used the public policy exception as a basis for non-recognition of foreign judgments.

21 In Pakistan Airlines v Ople,28 the employment agreement entered between the foreign corporation doing business in the Philippines and Filipino flight attendants, provided for choice of law and choice of court clauses in favour of Karachi, Pakistan. The Philippine Supreme Court held that:29

26 Republic Act No 386 (1949).
27 Jorge Rioflorido Coquia & Elizabeth Aguiling-Pangalangan, Conflict of Laws: Cases, Materials and Comments (Central Professional Books, 2000), citing Ferevzeni v Guell 34 Phil 697 (1916); Lichaco v De Gazman 18 Phil 283 (1911).
28 GR No 61594 (28 September 1990).
29 Pakistan Airlines v Ople GR No 61594 (28 September 1990).
[P]arties may not contract away applicable provisions of law especially peremptory provisions dealing with matters heavily impressed with public interest. … the relationship is much affected with public interest and that the otherwise applicable Philippine laws and regulations cannot be rendered illusory by the parties agreeing upon some other law to govern their relationship.

22 The award of exemplary damages is provided for in Article 2229 of the Civil Code of the Philippines. Thus, it cannot be considered as contrary to public policy. Nevertheless, it can only be awarded under certain conditions, thus:30

First, they may be imposed by way of example or correction only in addition, among others, to compensatory damages, and cannot be recovered as a matter of right, their determination depending upon the amount of compensatory damages that may be awarded to the claimant. Second, the claimant must first establish his right to moral, temperate, liquidated or compensatory damages. Third, the wrongful act must be accompanied by bad faith, and the award would be allowed only if the guilty party acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.

iv Due process

23 When the defendant did not receive timely notice of the proceedings to enable him to defend himself, this is deemed an egregious disregard for due process which will lead the receiving court to deny the foreign judgment recognition and enforcement.31 As stated in section 48 of rule 39, if the court rendering the judgment lacked jurisdiction; or if the judgment was tainted by fraud, collusion, want of notice or clear mistake of law or fact, then there would be disregard for due process.

24 The case of El Blanco v Palanca32 enumerated the requisites to satisfy due process, namely “(1) There must be a court or tribunal clothed with judicial power to hear and determine the matter before it;

30 Mendoza v Gomez GR No 160110 (18 June 2014).
32 GR No L-11390 (26 March 1918).
(2) jurisdiction must be lawfully acquired over the person of the defendant or over the property which is the subject of the proceeding; (3) the defendant must be given an opportunity to be heard; and (4) judgment must be rendered upon lawful hearing. In determining whether there is compliance with these requisites, foreign law must be proven before the Philippine courts, and failing that, the doctrine of processual presumption applies where Philippine laws on due process determine compliance with due process requirements.

v Finality of the foreign proceedings

25 A judgment sought to be recognised must be final and executory and must constitute res judicata in another action. It is deemed final or executory “only after expiration of the time allowed by law for appeal therefrom, or, when appeal is perfected, after the judgment is upheld in the appellate court”. As an example, in the Philippines, when the 15-day period for appeal expires, the judgment rendered by a Philippine court becomes final. If the foreign judgment can still be appealed to a higher court in the foreign state, the Philippine courts shall refuse its recognition and enforcement. Otherwise, the Court of Appeals or Supreme Court in the state from which the decision originated may reverse the judgment that in the meantime the Philippine court may already have recognised.

26 The foreign judgment cannot be recognised or enforced if it is interlocutory or provisional, contemplating a fuller investigation leading to a later final decision. In Querubin v Querubin, the court ruled that because the decree is interlocutory, it is not final and “is subject to change with the circumstances”. Such a decree cannot be implemented given that the determination of the question by the court which rendered it did not settle and adjudge finally the rights of the parties.

33 Perez v Zulueta GR No L-10374 (30 September 1959).
34 See r 39 of the Judiciary Reorganization Act of 1980 (Batas Pambansa Blg 129).
36 GR No L-3693 (29 July 1950).
37 Querubin v Querubin GR No L-3693 (29 July 1950).
27 A default judgment\(^{38}\) can be considered final when it is no longer subject to appeal. In *Borthwick v Castro*,\(^{39}\) the court held that the default judgment issued by courts in Hawaii is enforceable in the Philippines unless it is shown that the declaration of default is incorrect, which Borthwick was unable to do. In *St Aviation Services*,\(^{40}\) the court ruled that “the judgment of default rendered by the court against respondent is valid considering that the writ of summons was served upon respondent in accordance with our Rules”.

**vi Res judicata**

28 *Res judicata* is a ground for non-recognition. For *res judicata* to apply, its elements must be satisfied, as follows:

(a) the former judgment or order must be final;
(b) the judgment or order must be on the merits;
(c) it must have been rendered by a court having jurisdiction over the subject matter and the parties;
(d) there must be, between the first and the second action, identity of parties, subject matter, and cause of action.\(^{41}\)

29 When the foreign judgment conflicts with another final and conclusive judgment, the court can refuse to recognise and enforce said foreign judgment. Between a foreign judgment and a Philippine judgment, the author considers that in all likelihood, the Philippine court will uphold its own judgment.

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\(^{38}\) Section 3 of the Rules of Civil Procedure (Bar Matter No 803 (1997)) states that:

If the defending party fails to answer within the time allowed therefor, the court shall, upon motion of the claiming party with notice to the defending party, and proof of such failure, declare the defending party in default. Thereupon, the court shall proceed to render judgment granting the claimant such relief as his pleading may warrant, unless the court in its discretion requires the claimant to submit evidence. Such reception of evidence may be delegated to the clerk of court …

\(^{39}\) GR No L-57338 (23 July 1987).

\(^{40}\) *St Aviation Services v Grand International Airways* GR No 140288 (23 October 2006).

\(^{41}\) *Taganas v Emuslan* GR No 146980 (2 September 2003).
30 With respect to two conflicting foreign judgments, the Philippine courts will most likely uphold the judgment that is more akin to Philippine law. The author considers that if one foreign judgment relating to successional rights is from a civil law country and one from a common law country, the Philippine courts will more likely uphold the foreign judgment coming from the civil law country. The author arrived at this conclusion on the basis of the Philippines' legal history where its private law was borrowed from the Civil Code of Spain.42

vii Merits review

31 In recognising a foreign judgment, Philippine courts do not review the merits of the case. This is because foreign laws under which the foreign judgment was rendered are not within the judicial knowledge of the courts. The courts are in no position to substitute their judgment on the legal issue heard and decided by the courts of another state. Thus, Philippine courts are limited to deciding whether or not to recognise the foreign judgment as a fact according to the Rules of Court.

32 In respect of a “clear mistake of law or fact”, a Philippine court will not substitute its own interpretation of the law or the evidence for that of the foreign court. If the foreign court errs in fact or law, it can be corrected by a timely appeal.43 The Philippine courts will only refuse to recognise and enforce a foreign judgment where the clear mistake of fact or law “would work an obvious injustice” on the other party.44

33 Section 48(b) of rule 39 of the Rules of Court provides that a foreign judgment or final order against a person creates a “presumptive evidence of a right as between the parties and their successors in interest by a subsequent title”. Thus, Philippine courts exercise limited review on foreign judgments. Courts are not allowed to delve into the merits of a foreign judgment. Once a foreign judgment is admitted and proven in a Philippine court, it can only be repelled on grounds external to its merits,

42 Approved by Royal Decree of 24 July 1889.
43 BPI Securities Corp v Guevara GR No 159786 (15 August 2006).
44 Soorajmull Nagarmull v BISCOM GR No L-22470 (28 May 1970).
ie, “want of jurisdiction, want of notice to the party, collusion, fraud, or clear mistake of law or fact”.  

34 The reason why Philippine courts refuse to try the case anew is also based on the policy of preclusion, as discussed in Mijares v Ranada:

Otherwise known as the policy of preclusion, it seeks to protect party expectations resulting from previous litigation, to safeguard against the harassment of defendants, to insure that the task of courts not be increased by never-ending litigation of the same disputes...

As crafted, Rule 141 of the Rules of Civil Procedure avoids unreasonableness, as it recognises that the subject matter of an action for enforcement of a foreign judgment is the foreign judgment itself, and not the right-duty correlatives that resulted in the foreign judgment.

[emphasis added]

viii Monetary judgments

35 Monetary judgments, for whatever purpose (ie, payment of debt, damages, including damages awarded pursuant to foreign penal, revenue or other public law, interest), obtained from foreign courts may be recognised or enforced in the Philippines, provided that the judgment must be for a sum certain in money.

36 In BPI v Guevara, the Court granted the enforcement of a foreign judgment made by the US District Court of Texas. This foreign judgment ordered the Bank of the Philippine Islands to pay the respondent the sum of US$49,500 with legal interest, attorney’s fees, and litigation expenses in favour of the respondent.

45 BPI v Guevara GR No 167052 (11 March 2015) citing Minoru Fujiki v Marinay GR No 196049 (26 June 2013).
46 GR No 139325 (12 April 2005).
48 GR No 167052 (11 March 2015).
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37 Foreign judgments based on foreign penal, revenue or other public law is entitled to recognition and enforcement, provided that such foreign law is proven, along with the fact of the foreign judgment.

ix Non-monetary judgments

38 Non-monetary, in personam judgments can also be enforced in the Philippines, following the same rule for recognition and enforcement governing money judgments. In an action in personam, the foreign judgment is presumptive, and not conclusive, of a right as between the parties and their successors in interest by a subsequent title. However, the foreign judgment is susceptible to impeachment in our local courts on the grounds of want of jurisdiction or notice to the party, collusion, fraud, or clear mistake of law or fact.49

39 In the 2016 Revised Implementing Rules and Regulations of Republic Act No 9160, one of the functions of the Anti-Money Laundering Council is to “receive and take action in respect of any request from foreign states for assistance in their own anti-money laundering operations as provided in the AMLA”.50 Thus, under Philippine jurisdiction, foreign assets may be subject to freeze orders provided that the procedure specified by Anti-Money Laundering Act of 200151 and its implementing rules and regulations, are followed.

x Breach of agreement

40 Another ground for non-recognition is that the proceeding in the foreign country was contrary to an agreement between the parties under which the dispute must be settled elsewhere.52 However, the courts have

50 2016 Revised Implementing Rules and Regulations of Republic Act No 9160, r 7B(8).
ruled that despite such agreement, the courts can still take cognizance of
the case as held in *Hong Kong and Shanghai Banking Corp v Sherman*.53

41 In this case, the respondents guaranteed Eastern Book Supply’s
loan obligation to the petitioner the Hong Kong and Shanghai Banking
Corporation (“HSBC”). When the principal debtor defaulted, HSBC
filed suit before the Quezon City courts to enforce the guarantee. The
respondents in turn invoked the choice of forum clause in the guarantee
agreement in favour of Singapore. The Philippine court ruled that said
clause did not oust the Philippine courts of jurisdiction absent the
stipulation “that only the courts of Singapore, to the exclusion of all
the rest, has [sic] jurisdiction”.54

42 In another case,55 the court discussed that “contractual choice of law
is not determinative of jurisdiction. Stipulating on governing law of a
contract does not preclude the exercise of jurisdiction by tribunals
elsewhere. The reverse is equally true: the assumption of jurisdiction by
tribunals does not *ipso facto* mean that it cannot apply and rule on the
basis of the parties’ stipulation”. Indeed, jurisdiction over subject matter
is conferred by law, not by the parties.

43 In summary, Philippine courts will not automatically refuse to
recognise and enforce a foreign judgment rendered in breach of an agreed
choice of law or choice of court clause. To illustrate, if a contract between
Party A and Party B included a choice of forum clause in favour of
arbitration, but Party A instead filed a case in a court in State X and won,
the Philippine court (State Y) whose recognition of State X judgment is
sought, will not look beyond that State X’s jurisdiction to hear the case.
If it decided that a contractual choice in favour of arbitration was not
sufficient to oust their courts of jurisdiction and proceeded with hearing
the case, the Philippines court will give it recognition and enforcement.

53 GR No 72494 (11 August 1989).
54 *Hong Kong and Shanghai Banking Corp v Sherman* GR No 72494 (11 August
1989).
55 *Saudi Arabian Airlines v Rebesencio* GR No 198587 (14 January 2015).
The Philippines has not acceded to the Hague Convention of 30 June 2005 on the Choice of Court Agreements.

In rem judgments

The Philippines allows for recognition and enforcement of a foreign judgment against property, subject to the exception that the controlling law for real properties is the lex situs. To illustrate, in circumstances where a contract is entered into in State A, whereby an unpaid contract of loan between a Canadian creditor and a Filipino debtor results in the foreclosure of a mortgage on real property located in the Philippines, the Philippine courts will not recognise a foreign judgment upholding this agreement due to the constitutional limitations on ownership of real property by foreigners.

The effect of an in rem judgment is different from that of an in personam judgment. In Mijares v Ranada, the court said:

For an action in rem, the foreign judgment is deemed conclusive upon the title to the thing, while in an action in personam, the foreign judgment is presumptive, and not conclusive, of a right as between the parties and their successors in interest by a subsequent title. However, in both cases, the foreign judgment is susceptible to impeachment in our local courts on the grounds of want of jurisdiction or notice to the party, collusion, fraud, or clear mistake of law or fact.

It is clear that generally, the grounds for refusing recognition and enforcement in an in personam judgment are the same as the grounds for refusing recognition and enforcement in an in rem judgment. However, with respect to judgments against real properties, an additional ground is if the judgment goes against the prohibitions on foreign judgments in the

56 Under Art XII of the 1987 Constitution of the Republic of Philippines, there is prohibition with respect to ownership of foreign investors over real properties – they are not allowed to own more than 40% of the real property. With respect to the exploitation, development and utilisation of natural resources, only Filipino corporations – at least 60% of which should be owned by Filipinos – are allowed to engage in such activities.

57 GR No 139325 (12 April 2005).
1987 Constitution reserving certain business, industries and properties to Filipino citizens.

58 See ss 2 and 7 of Art XII of the 1987 Constitution of the Republic of Philippines.