



# Enforcing Lease Guarantees Against Foreign Guarantors: Practical Challenges When the Guarantor Is Abroad: Practical Challenges

Insights • April 27, 2026

Commercial [landlords](#) frequently rely on personal or corporate guarantees to backstop tenant lease obligations. These guarantees are particularly important when the tenant entity is thinly capitalized, newly formed, or part of a larger corporate group. However, enforcing lease guarantees against foreign guarantors can be significantly more complex and costly when the guarantor is domiciled outside the United States.

Even where a lease and guaranty are governed by New York law and provide for New York courts, collection often requires a multi-step cross-border process involving jurisdiction, service of process, and enforcement abroad.

Understanding these challenges at the outset can influence how guarantees are structured, negotiated and evaluated by both landlords and lenders.

## Jurisdiction and Service of Process for Foreign Guarantors

Even when a guaranty includes a New York forum selection clause, the landlord must still properly serve the guarantor abroad.

Service outside the United States is typically governed by the Hague Service Convention, which requires formal transmission of documents through designated government authorities in the guarantor's home country. Depending on the jurisdiction, service may require translated documents and can take several months.

Foreign defendants also frequently challenge:

- the sufficiency of service
- personal jurisdiction

- enforceability of the forum selection clause

These issues can delay litigation before the merits are even addressed.

## **Default Judgments May Have Limited Value**

Foreign guarantors sometimes choose not to participate in U.S. litigation. In those circumstances, landlords may obtain a default judgment in New York relatively quickly.

However, the judgment itself may provide little immediate recovery.

If the guarantor's assets are located outside the United States, the landlord must typically recognize and enforce the [U.S. judgment](#) in the foreign jurisdiction where the assets are located, often requiring a new legal proceeding abroad.

## **Recognition of U.S. Judgments Abroad**

Unlike judgments between U.S. states, which are automatically recognized under the Constitution's Full Faith and Credit Clause, there is no universal treaty requiring foreign courts to recognize U.S. judgments.

Recognition rules vary widely among countries and may require:

- proof that the U.S. court had proper jurisdiction
- evidence that the guarantor received adequate notice
- confirmation that the judgment is final and enforceable
- a determination that enforcement would not violate local public policy

In some jurisdictions, courts effectively conduct a mini-trial before recognizing the judgment.

## **Asset Location and Collection Challenges for Foreign Guarantors**

Even once a judgment is recognized abroad, collection against foreign guarantors can remain difficult.

Common obstacles include:

- opaque corporate ownership structures
- lack of centralized asset registries
- bank secrecy or privacy laws
- asset transfers to affiliated entities
- unfamiliar local enforcement procedures

Landlords must typically retain local counsel in the guarantor's home jurisdiction, which can significantly increase enforcement costs.

## Recent Illustrative Examples

Recent litigation and industry experience illustrate how these issues arise in practice.

### Foreign Parent Guarantee of a New York Lease

In *59th Street Associates v. Reliance MediaWorks Ltd.*, a New York landlord sued an Indian media company that had guaranteed a New York commercial lease. The guarantor argued that U.S. courts lacked jurisdiction.

The federal court concluded that jurisdiction existed because the guarantor had purposefully entered into a guaranty tied to a New York lease and landlord. While the landlord cleared the jurisdiction hurdle, the case illustrates a broader issue: even after obtaining jurisdiction, collecting against a foreign guarantor may require enforcement proceedings in the guarantor's home country.

### International Retail Tenant Failures During the Pandemic

The retail downturn during the COVID-19 pandemic created a number of situations in which international retailers with U.S. subsidiaries defaulted on high-profile leases.

In several cases involving luxury and fashion retailers:

- the U.S. tenant entity ceased operations or filed bankruptcy
- the guarantor was a foreign parent company
- landlords obtained U.S. judgments but faced additional litigation abroad to pursue recovery

Practitioners reported that the cost of cross-border enforcement sometimes exceeded the remaining value of the guarantee, leading to negotiated settlements instead of full recovery.

### Cross-Border Enforcement Against European Retail Groups

In disputes involving European retail groups that guaranteed leases for U.S. subsidiaries (particularly in Manhattan retail corridors) landlords encountered practical enforcement issues such as:

- lack of U.S. assets held by the guarantor
- the need to commence recognition proceedings in European courts
- delays associated with international service and translation requirements

Even where the landlord prevailed in New York litigation, enforcement ultimately depended on the willingness of foreign courts to recognize and enforce the judgment.

## Jurisdiction Versus Enforcement

Recent federal court decisions in New York have also highlighted an important distinction between recognition of a judgment and enforcement against assets.

Courts may recognize a judgment without having personal jurisdiction over the debtor, but actual collection requires jurisdiction over the debtor or its assets. When a guarantor's assets are located exclusively overseas, landlords may still need to pursue enforcement proceedings in the foreign jurisdiction.

## Considerations for Mortgage Lenders and Legal Opinions

Foreign guaranties also raise issues in the commercial [real estate finance](#) context, particularly where a mortgage lender relies on the credit support of a tenant guaranty.

In many loan transactions involving significant leases, lenders request a legal opinion from borrower's counsel regarding the enforceability of material leases and related guarantees, often with the lender named as a reliance party.

Where the guarantor is domiciled outside the United States, opinion counsel typically consider several additional factors, including:

- whether the guaranty is governed by New York law
- whether the guarantor has submitted to New York jurisdiction
- whether service of process provisions are effective internationally
- whether enforcement would realistically require proceedings in a foreign jurisdiction

Because [opinion practice](#) generally addresses legal enforceability rather than practical collectability, opinion counsel may include customary qualifications noting that enforcement of judgments may be subject to:

- principles of comity
- foreign recognition proceedings
- limitations imposed by foreign law

In transactions where a tenant guaranty represents a significant component of the lender's underwriting, lenders sometimes seek additional structural protections, such as U.S. co-guarantors, domestic collateral or letters of credit, rather than relying solely on a foreign guaranty.

## Structuring Guarantees to Reduce Enforcement Risk

Because cross-border enforcement can be unpredictable and expensive, landlords and lenders should consider risk-mitigation strategies when negotiating guarantees from foreign parties.

Common approaches include:

- **Requiring U.S. Assets:** Require the guarantor to maintain attachable assets within the United States.
- **Letters of Credit:** A standby letter of credit issued by a U.S. bank often provides far more reliable security than a foreign guaranty.
- **Domestic Co-Guarantors:** Requiring a U.S. affiliate or principal to join the guaranty can

significantly improve enforceability.

- **Collateral or Security Interests:** Obtaining collateral located within the United States can provide a more direct path to recovery.
- **Financial Reporting Covenants:** Periodic financial disclosures can help landlords and lenders monitor the guarantor's creditworthiness and asset location.

## Key Takeaways on Enforcing Lease Guarantees Against Foreign Guarantors

A foreign guaranty can appear strong on paper but prove difficult to enforce in practice. The true value of the guarantee depends less on its language and more on where the guarantor's assets are located and whether a judgment can realistically be converted into cash.

For landlords and lenders involved in transactions with internationally domiciled guarantors, early attention to enforcement mechanics (particularly jurisdiction, service, and asset location) can significantly improve recovery prospects if the tenant defaults.

In many cases, the key question is not whether a landlord can win a judgment in New York, but whether that judgment can ultimately be collected.

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## FAQs: Enforcing Lease Guarantees Against Foreign Guarantors

### Why is it difficult to enforce a lease guaranty against a foreign guarantor?

Enforcement often requires international service of process, recognition of a U.S. judgment abroad, and collection proceedings in the jurisdiction where assets are located.

### Can a U.S. judgment be enforced in another country?

It depends on the jurisdiction. Some countries recognize U.S. judgments relatively easily, while others require additional proceedings or do not recognize them at all.

### Does a default judgment guarantee recovery?

No. A default judgment may establish liability but does not ensure recovery if the guarantor's assets

are located outside the United States.

**Why does asset location matter in enforcing a guaranty?**

Recovery typically requires enforcement where assets are located. If assets are abroad, local legal procedures will govern enforcement.

**How can landlords reduce enforcement risk with foreign guarantors?**

Common approaches include requiring U.S.-based assets, letters of credit, domestic co-guarantors, or collateral located in the United States.

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