



GLOBAL ENFORCEMENT AND ASSET RECOVERY SERIES

ARTICLE 1: RECOGNITION AND ENFORCEMENT OF JUDGMENTS
AND ARBITRAL AWARDS

Introduction

Getting a judgment or award does not automatically mean getting paid. Particularly where judgment or award debtors are in less familiar jurisdictions, there can be a strong incentive to delay or avoid payment. From the perspective of the debtor, there is little difference between being in default under a contract and being in default under a judgment or award. In such cases, obtaining judgment is simply the first step toward recovery. It is critical, therefore, for claimants and their legal representatives to consider recognition and enforcement at the outset of proceedings to ensure that the judgment can be monetized effectively.

Frequently, effective enforcement will take place not where the debtor is located, but where their assets are. Before issuing proceedings, claimants should identify whether the defendant has sufficient assets to satisfy a judgment and, if so, whether such assets are available for the purposes of enforcement. In this regard, claimants should be aware that in a number of jurisdictions, they can seek a wide range of injunctive relief that can help to: (i) identify and locate the defendant’s assets; and (ii) prevent the defendant from moving, dissipating, or concealing their assets. Certain forms of relief are available before judgment is handed down, so this can be a powerful tool for claimants in identifying and preserving assets for the purposes of enforcement. These interim measures will be the focus of articles later in the series.

It is often the case that debtors hold assets across multiple jurisdictions, adding a further layer of complexity to the recovery process. This paper aims to simplify this issue and summarizes some of the key enforcement considerations and procedures in several major jurisdictions.

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England and Wales

Overview

England and Wales has long had a reputation for being an enforcement-friendly jurisdiction. Indeed, English courts have historically shown their willingness to assist judgment creditors in their efforts to enforce unpaid judgments against recalcitrant debtors at every opportunity. Below, we take a look at the enforcement tools at the disposal of the English courts and how English judgment creditors can seek to export and monetize their judgments/awards internationally.

The landscape for recognition and enforcement of foreign judgments in England and Wales, and vice versa, has changed dramatically since Brexit. After leaving the European Union, England and Wales (and the rest of the United Kingdom) lost the benefits of the judgment enforcement regimes provided by Regulation (EU) No 1215/2012 (“Brussels Recast”) as well as the Lugano Convention on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters 2007 (“Lugano Convention”) in relation to proceedings issued after the end of the transition period (December 31, 2020). Prior to Brexit, Brussels Recast offered the United Kingdom a simplified procedure for the mutual recognition and enforcement of non-excluded judgments issued by the courts of any European Union Member State. Further, the Lugano Convention, to which the United Kingdom was subject via its membership in the European Union, operated in a similar manner to Brussels

Recast but also included Switzerland, Norway, and Iceland as members. The United Kingdom applied to join the Lugano Convention in its own right on April 8, 2020, but its accession was blocked by the European Union in May 2021.

Following Brexit, the recognition and enforcement of English judgments in EU Member States, and vice versa, has become more complex, with parties having to navigate several different legal systems and procedural requirements. In England and Wales, this takes the form of common law rules on recognition and enforcement of judgments (described below), which offer judgment creditors less certainty and can lead to additional costs. There are also a handful of more niche statutory enforcement regimes available to the English courts but, as explained further below, they are very limited in scope.

The United Kingdom has also acceded to a multilateral recognition and enforcement treaty: Hague Convention of June 30, 2005, on Choice of Court Agreements (“Hague 2005”). The benefits and limitations of this Convention are set out below.

The position in respect of recognition and enforcement of arbitral awards is completely different to that of judgments. Enforcement of arbitral awards in England and Wales (and internationally) is primarily governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York, June 10, 1958) (“New York Convention”).



Regimes for Recognition and Enforcement

Judgments

Brussels Recast and Lugano Convention

Following Brexit, Brussels Recast and the Lugano Convention will apply only to the mutual recognition and enforcement of judgments between the United Kingdom and any other contracting state in circumstances where the underlying proceedings were issued before the end of the transition period. These regimes are addressed in more detail in the “France” section.

Common Law

Aside from the various statutory schemes that give effect to judgments of certain foreign countries in England, there are also the common law rules and principles that currently govern the vast majority of recognition and enforcement proceedings before the English courts. The key difference between the common law and statutory regimes is that, as a matter of common law, a foreign judgment cannot be enforced or executed upon in England—only an English judgment can. Under the common law, the principal function of a foreign judgment is that it provides a cause of action that may be relied upon in English proceedings to obtain an English judgment. It is this English judgment that may then be enforced in England.

For a judgment to be entitled to be recognized in England and Wales, it must be final and binding, on the merits and handed down by a court considered as competent under English law. In order to be enforceable as a debt, the judgment must also be for a fixed sum of money.

1920 and 1933 Acts

Judgments from certain foreign countries may be enforced under the Administration of Justice Act 1920 and the Foreign Judgments (Reciprocal Enforcement) Act 1933 (the “1920 Act” and “1933 Act” respectively). Where these enforcement procedures are available, there is no need to bring an action at common law; rather, the foreign judgment itself will be recognized

and enforced in England and Wales (as if it were an English judgment). That said, procedurally, the provisions of the 1920 Act and 1933 Act largely reflect the common law, with an improved mechanism for enforcement.

The 1920 Act applies to the enforcement of certain judgments from the courts of several British Overseas Territories and Commonwealth jurisdictions. Pursuant to Section 12 of the 1920 Act, the judgment to be enforced must be made in civil proceedings and be for a fixed sum of money.

The 1933 Act applies to the recognition and enforcement of judgments from countries with which a bilateral treaty is in place (and that has been enacted into domestic law), including certain European countries. As the arrangements for each country are made on the basis of a bilateral treaty, the treaty itself must be analyzed to determine precisely which courts are covered.

1982 Act: Hague 2005 and Hague 2019

The Civil Jurisdiction and Judgments Act 1982 (the “1982 Act”) was primarily devised for judgments to which Brussels Recast and the Lugano Convention applied, but it now provides a basis for giving effect to judgments falling under Hague Conventions and other international instruments.

Section 4B of the 1982 Act provides for the registration of judgments that fall within the scope of Hague 2005. Hague 2005 applies to judgments on the merits from a court that was designated by an exclusive choice of court agreement made in writing after the Convention entered into force for the relevant contracting country. The jurisdiction agreement must have been exclusive, i.e., binding on the parties in relation to the particular claim that was before the foreign court. Further, the judgment must have been given by the designated court in civil or commercial proceedings, which were issued after Hague 2005 came into effect for that country.

On January 12, 2024, the United Kingdom also signed up to the Hague Convention of July 2, 2019, on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (“Hague 2019”). Hague 2019 promises to be a significant global enforcement framework, and will come into effect for the United Kingdom on July 1, 2025. For more information on Hague 2019, please read our recent [Commentary](#).

Bilateral Treaties

The United Kingdom has signed several bilateral treaties with various other countries that govern the mutual recognition and enforcement of judgments. While not covered in detail in this paper, when considering which regime applies to foreign judgments, one must consider whether the United Kingdom has signed a bilateral treaty with the country in which the judgment was handed down.

Arbitration

New York Convention

Unlike litigation, international arbitration benefits from a wide-reaching, comprehensive recognition and enforcement regime in the form of the New York Convention. With more than 170 countries as signatories, the New York Convention is considered not only one of the most effective enforcement regimes in the world, but also one of the most effective private international law instruments in history. The Convention provides for, *inter alia*, the mutual recognition and enforcement of international arbitral awards by signatory states, containing a general obligation on each state to recognize arbitral awards of other contracting states as binding and to enforce them in accordance with domestic laws. In England and Wales, the New York Convention has been implemented into national legislation under sections 100 to 104 of the Arbitration Act 1996 (the “1996 Act”).

Section 66 of the 1996 Act

Section 66 provides for enforcement of all domestic and foreign awards, regardless of the seat. It provides that an award may be enforced in the same manner as a judgment or order of the court. Section 66 is most frequently used in respect of awards made in England but is also available with respect to an award made outside of the New York Convention.

Enforcement under this summary procedure is more tricky than under the New York Convention, which has far more limited grounds for refusing recognition and enforcement. It is generally accepted that a party should consider applying for enforcement under Section 66 only if it is not possible to bring enforcement proceedings under the New York Convention.

Other International Enforcement Regimes

Although not covered in detail in this paper, there are some very limited circumstances in which the New York Convention does not apply to the enforcement of arbitral awards.

- 1 There are a small number of countries that are not signatories to the New York Convention but are signatories to the Geneva Convention on the Execution of Foreign Arbitral Awards 1927.
- 2 The New York Convention does not apply to ICSID awards, which have their own mechanisms for challenge and enforcement.



Judgments

Common Law

At common law, a foreign judgment gives rise to an obligation that can be enforced in English legal proceedings by issuing a new claim under CPR Part 7. Once these fresh proceedings have been issued, to the extent there is no defense to the claim, the judgment creditor typically will be able to obtain summary judgment pursuant to CPR Part 24. Summary judgment is an expedited procedure whereby the English court can determine the claim without a trial on the basis that the defendant has no reasonable prospect of defending the claim.

Once judgment has been obtained, the judgment creditor will be able to utilize all of the usual execution procedures (which will be covered in a later paper).

1920 and 1933 Acts

The procedure under these statutory regimes does not require the commencement of a new claim and is therefore considered generally quicker and cheaper than the common law procedure. Applications for registration of judgments must be made within 12 months of the date of the judgment under the 1920 Act and six years under the 1933 Act.

The procedure for both statutory regimes is governed by CPR Part 74. The judgment creditor must make an application

without notice to the debtor(s) pursuant to CPR Part 23 for an order registering the judgment. The application must include a certified copy of the judgment, a certified translation and statement confirming its accuracy (if applicable), and written evidence giving details of the judgment and the information requested by CPR r. 74.4(2) to (4). A Master will then decide whether to grant the registration order. The registration order must then be served on the judgment debtor(s), who will be given an opportunity to challenge registration of the order. The creditor may take steps to execute the judgment only once either: (i) the period for applying to set aside the registration has expired; or (ii) the debtor(s)' set aside application has been dismissed.

1982 Act: Hague 2005

Recognition and enforcement of judgments under Hague 2005 is also governed by CPR Part 74 and follows the same procedure as the 1920 and 1933 Acts. There are additional documents that must be included in the application for registration, including: the exclusive choice of court agreement; for default judgments, a document proving that the defaulting party was notified of the issuing document; documents necessary to establish that the judgment has effect or is enforceable in the originating state; any other documents the enforcing court may require in order to verify that the conditions for enforcement have been met; and certified translations of these documents if they are not in an official language of the enforcing state.

Arbitration

New York Convention and Section 66

The procedure for enforcement is the same under the New York Convention and Section 66.

The procedure for enforcing arbitral awards under the New York Convention is governed by each contracting state's own procedural rules. In England and Wales, the procedure is set out in CPR 62. In summary, the award creditor applies without notice and on the papers in an arbitration claim form for permission to enforce the award (CPR 62.18(1)). The application must be supported by written evidence that: (i) exhibits the arbitration agreement and original award (or certified copies);

(ii) states the name and last known place of residence or business of the claimant and of the person against whom it is sought to enforce the award; and (iii) states that the award has not been complied with or the extent to which it has not been complied with at the date of the application (CPR 62.18(6)).

If the court grants the order for permission to enforce on a without-notice basis, the applicant must then serve the order on the award debtor (with the appropriate permissions, as applicable). The order will grant the judgment debtor a limited time in which to apply to set it aside (CPR 62.18(10)(a)).

If there is no set aside application or a set aside application fails, the court may then grant an enforcement order, following which the award creditor will be able to utilize all of the usual execution procedures.



Available Defenses

Judgments

Common Law

Under the common law regime, there are a handful of limited defenses that may enable a judgment debtor to resist enforcement:

- 1 If the original court lacked jurisdiction according to the rules that English law applies in such cases. It is not enough for the original court to have lacked jurisdiction under its own internal rules;
- 2 The judgment was not final and conclusive, e.g., if the judgment can be reopened and reconsidered in the same court, it cannot be said to be final and conclusive;
- 3 The judgment was not on the merits of the matter adjudicated. The judgment must be a decision that establishes certain facts proved, states the relevant principles of law applicable to such facts, and expresses a conclusion on such application;
- 4 The judgment was made contrary to a valid dispute resolution agreement (s. 32 of the 1982 Act), e.g., a binding and applicable arbitration agreement or choice of court clause;

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- 5 The foreign judgment was obtained by fraud. The fraud must have caused the judgment in the terms in which it was given;
- 6 The foreign proceedings were in breach of the rules of natural or substantial justice, which typically means that the judgment debtor was not given due notice or an opportunity to be heard;
- 7 Recognition would be contrary to English public policy, for example where the foreign judgment has been obtained in defiance of an English anti-suit injunction or where the judgment breaches the principle of the finality of litigation;
- 8 Recognition of the judgment is barred by the Human Rights Act 1998, i.e., if a party has been deprived of a right to a fair trial under Article 6 of the ECHR;
- 9 The foreign judgment is inconsistent with an English judgment on the same subject matter and between the same parties; or
- 10 The judgment is for multiple damages and is therefore unenforceable under the Protection of Trading Interests Act 1980.

1920 and 1933 Acts

Most of the common law defenses to enforcement proceedings are reflected in the statutory defenses provided in Section 9(2) of the 1920 Act and Section 4(1) of the 1933 Act (with only a handful of minor differences in interpretation).

There is one further defense under the 1920 Act that is not mirrored under common law, namely that if an appeal is pending or anticipated, the judgment shall not be registered (Section 9(2)(e)). Under the 1933 Act, this is not a defense to registration but may be used as a ground for set aside (Section 5(1)).

1982 Act: Hague 2005

Article 9 of Hague 2005 sets out the defenses to enforcement:

- 1 The agreement was null and void under the law of the chosen court;
- 2 A party lacked capacity to conclude the agreement under the law of the chosen court;
- 3 Lack of notice of the proceedings or invalid service;
- 4 The judgment was obtained by fraud;
- 5 Recognition would be contrary to English public policy;

- 6 The judgment is inconsistent with an earlier English judgment in a dispute between the same parties; or
- 7 The judgment is inconsistent with an earlier judgment of another contracting state between the same parties.

Arbitration

New York Convention

The defenses to enforcement of New York Convention awards are implemented in Section 103 of the 1996 Act. Section 103 states that recognition and enforcement of an award “shall not be refused” except where:

- 1 A party to the arbitration agreement lacked capacity;
- 2 The arbitration agreement was not valid under the law to which the parties subjected it or under the law of the country where the award was made;
- 3 A party was not given proper notice of the appointment of the arbitrator or the arbitral proceedings, or was not given the opportunity to present its case;
- 4 The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission;
- 5 The tribunal composition or arbitral procedure was not in accordance with the agreement of the parties or the law of the country in which the arbitration took place;
- 6 The award is not yet binding or has been set aside or suspended;
- 7 The award is in respect of a matter not capable of settlement by arbitration; or
- 8 The award is contrary to English public policy.

Section 66

The defenses under Section 66 are much broader and less closely defined than those under the New York Convention. There are both mandatory and discretionary defenses.

The one mandatory ground for refusing enforcement is where the defendant shows that the tribunal lacked substantive jurisdiction to make the award (Section 66(3)).

The discretionary grounds are similar to those provided under the New York Convention and include the public policy, non-arbitrability, invalidity, and estoppel defenses.



What Relief Is Available to Claimants in a Post-Judgment Context?

Judgments


Section 37(1) of the Senior Courts Act 1981 (“SCA 1981”) grants the court a broad jurisdiction to grant a wide range of injunctive relief “in all cases in which it appears to the court to be just and convenient to do so.” Such injunctive relief may include:

- 1 Freezing orders (both domestic and worldwide in scope);
- 2 Asset disclosure orders;
- 3 Search and/or imaging orders;
- 4 Delivery-up orders; and
- 5 Third-party disclosure orders.

In a post-judgment context, the court is likely to be more willing to grant wider-ranging relief to assist the judgment creditor in identifying and preserving assets that are amenable to enforcement.

Arbitration

The English courts have similar powers to grant injunctive relief in support of arbitral proceedings as they have for the purposes of legal proceedings pursuant to Section 44 of the 1996 Act. In a post-award context, there has been debate as to whether the jurisdiction to grant such relief in aid of enforcement of award arises from Section 44 of the 1996 Act or Section 37(1) of the SCA 1981. It is therefore advisable for award creditors to apply for relief under both jurisdictional gateways.



Key Practical Considerations for Claimants

In any case where a claimant has obtained a judgment or award, seeking recognition and enforcement is useful only if there are assets in the jurisdiction. Without locating and identifying such assets, the award/judgment is of no practical or financial value.

As such, it is critical for creditors to instruct counsel to consider enforcement from an early stage to ensure that the judgment/award can be effectively monetized. Failing to do so at the outset can result in challenges, including significant delays and increased costs in recovering the awarded amounts.

Jones Day’s capability lies not only in obtaining judgments and awards against debtors, but crucially in monetizing them through, where necessary, multifaceted enforcement strategies. Our overriding philosophy and the question we ask ourselves in respect of any enforcement mandate is: “Where, anywhere in the world, can we achieve the highest recoveries, in the fastest possible time, using the most efficient means, whether legal, political, or commercial?” As such, while we have 40 offices across five continents, our strategy is never defined by our office locations. We regularly act as global coordinating counsel in relation to matters that do not involve the Firm’s office locations.

In claims involving recalcitrant debtors, it is often the case that the creditor is not aware of any assets that are amenable to enforcement. It is also important, therefore, to instruct corporate intelligence and asset-tracing investigators to identify assets. This will assist in devising an efficient and innovative enforcement strategy, and provide an alternative method of exerting pressure on the debtor.

It is also important to remember the limitation periods for seeking to recognize and enforce judgments/awards:

- 1 Section 7 of the Limitation Act 1980 provides that an action to enforce an award shall not be brought after the expiration of six years from the date on which the cause of action accrued. It is generally accepted that the cause of action accrues when the award debtor fails to satisfy the relevant award debt.

- 2 Section 24 of the Limitation Act 1980 provides that an action to enforce a judgment shall not be brought after the expiration of six years from the date on which the judgment became enforceable.



United States (New York and California)

Overview

There is no federal law governing the recognition and enforcement of foreign judgments in the United States. The enforcement process, therefore, is determined on a state-by-state basis, but is largely similar across all 50 states. This section looks at the enforcement regimes in place in New York and California.

As to arbitral awards, recognition and enforcement is primarily governed by the New York Convention, to which the United States is a contracting state.



Regimes for Recognition and Enforcement

Judgments

The United States is not presently party to any binding multi-lateral treaties relating to the recognition and enforcement of foreign judgments. The applicable legal framework must be found by reference to the laws of the state where a recognition or enforcement proceeding is commenced.

The laws of the individual states govern the enforcement of foreign judgments in the United States. Both New York and California have codified their rules on recognition following the Uniform Foreign Money Judgments Recognition Act 1962 and the Uniform Foreign-Country Money Judgments Recognition Act 2005 (together, the “Uniform Acts”).

In order for a foreign judgment to be recognized, it must be final, conclusive, and enforceable where rendered.

The U.S. court must also generally have: (i) personal jurisdiction over the judgment debtor or jurisdiction over the judgment debtor’s assets; and (ii) subject matter jurisdiction over the action.

To have a foreign judgment enforced in the United States, the judgment must first be “recognized”—i.e., converted into a U.S. judgment. A judicially recognized foreign judgment is enforceable as a domestic judgment and entitled to full faith and credit in other U.S. courts.

Arbitration

The United States is also a signatory to the New York Convention.

The Federal Arbitration Act (“FAA”), 9 U.S.C. § 1, *et seq.*, provides that the New York Convention will be enforced in U.S. courts. See 9 U.S.C. § 201. Where it conflicts, the FAA preempts state law. See *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333 (U.S. 2011). Therefore, courts generally enforce arbitral awards pursuant to and in accordance with the procedures outlined

under the FAA. However, courts may also have additional procedures that control where they do not conflict with the FAA.

California

The California Arbitration Act (the “CAA”) supports the enforcement of foreign arbitral awards by allowing such awards to be confirmed by California state courts, Cal. Civ. Proc. Code § 1286, and provides that the judgment “may be enforced like any other judgment of the court in which it is entered, in an action of the same jurisdictional classification.” *Id.* § 1287.4.

New York

Article 75 of the New York Civil Practice Law and Rules (“NY CPLR”) confers additional authority on state and federal courts applying New York law to recognize and enforce arbitral awards, providing that any arbitration agreement confers jurisdiction upon such courts to enforce it and enter judgment on an award. See NY CPLR § 7501.



Procedure

Judgments

The procedure for recognizing and enforcing foreign judgments in California and New York is as follows.

California

Domesticate Foreign Judgment

- 1 Foreign judgments must be domesticated (registered) in California before taking enforcement measures. Cal. Civ. Proc. Code § 1718(a); see also *Blizzard Energy, Inc. v. Schaefers*, 71 Cal. App. 5th 832, 844 (2021).
- 2 Requirements of the Uniform Acts must be adhered to, the foreign judgment must grant or deny recovery of a sum of money, and is under the law of the foreign country where rendered that is final, conclusive, and enforceable. Cal. Civ. Proc. Code § 1715(a). Further, the judgment cannot be for taxes, a fine, or other penalty, or a domestic relations judgment. *Id.* § 1715(b). The burden rests with the judgment creditor to establish that the foreign judgment is amenable to recognition. Cal. Civ. Proc. Code § 1715(c); *AO Alfa-Bank v. Yakovlev*, 21 Cal. App. 5th 189, 199 (2018).

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- 3 The creditor must file an action seeking recognition or raise the issue of recognition in a pending action. Cal. Civ. Proc. Code § 1718. Such action for recognition must be commenced by the earlier of: (i) the time in which the judgment is effective in the foreign country; or (ii) 10 years from the date on which the judgment became effective in the foreign country. Cal. Civ. Proc. Code § 1721.

Create Judgment Lien. A judgment lien must be created on the judgment debtor's property in California to preserve the judgment creditor's priority to the debtor's property over other creditors. Public notice of the creditor's interest must also be served. The lien is extinguished 10 years after the money judgment is entered or registered. Cal. Civ. Proc. Code § 683.020(c).

Locate Debtor's Assets

- 1 The judgment creditor must locate the judgment debtor's assets.
- 2 Effectively locating the debtor's assets may involve direct written discovery and direct or third-party examinations.

New York

- 1 A judgment creditor is required to initiate legal proceedings against the debtor. A request for recognition of a foreign judgment should be raised by filing either a complaint or a motion for summary judgment in lieu of a complaint. See NY CPLR § 5303(b).
- 2 In circumstances where recognition is sought within an existing proceeding, the issue of recognition may be raised by counterclaim, cross-claim, or affirmative defense. See NY CPLR § 5403(c).
- 3 A motion for summary judgment in lieu of a complaint must be accompanied by: (i) summons; (ii) notice of motion; and (iii) supporting papers, which often include an affirmation, affidavit, memorandum of law, and exhibits. See NY CPLR § 3213.
- 4 The foreign judgment must be authenticated and filed within 90 days from the authentication date. See NY CPLR § 5402(a).
- 5 In New York state court, the judgment creditor must promptly submit a Request for Judicial Intervention. See NY Comp. Codes R. & Regs. Tit. 22 § 202.6. In federal court, the actions are generally filed as *ex parte*, miscellaneous actions and will be assigned a judge without request.
- 6 To the extent the foreign judgment was issued in a foreign language, a certified English translation must also be filed.

- 7 The judgment holder must also file an affidavit from a legal expert in the judgment's home jurisdiction that the judgment is final, conclusive, and enforceable in the home jurisdiction. See NY CPLR § 5402(a).

Arbitration

The New York Convention preempts state law, and therefore any U.S. court, including federal and state courts in New York, must recognize and enforce a foreign arbitral award in accordance with the provisions of the FAA. States may set forth procedures for recognition and enforcement of arbitral awards to the extent that they do not conflict with the FAA.

California

- 1 A judgment creditor must file a petition under the FAA seeking to enforce the award within three years of the award. See 9 U.S.C. § 207. To file in a federal court in California, the exercise of personal jurisdiction must comport with due process, and if the judgment creditor can identify property owned by the debtor in California, the petitioner may seek enforcement based on *quasi-in-rem* jurisdiction. See *Glencore Grain Rotterdam B.V. v. Shivnath Rai Harnarain Co.*, 284 F.3d 1114, 1127 (9th Cir. 2002). In a California state court, the action can be filed in any county where any party to the court proceeding resides or has a place of business. Cal. Civ. Proc. Code § 1292(b). If there is not a county that meets the above criteria, then the judgment creditor may file in any county in California where there is personal jurisdiction over the debtor. Cal. Civ. Proc. Code § 1292(c). While the action may be filed in state court, any defendant has the right to remove the action to federal court given subject matter jurisdiction under the FAA. See 9 U.S.C. § 205.
- 2 The judgment creditor must serve notice of the motion to confirm the award on the adverse party. See 9 U.S.C. § 9. If the debtor is a resident of the district where the award was made, the service shall be made under the law for service of notice of motion in an action in the same court; if the debtor is a nonresident, then the notice of the application shall be served by the marshal of any district within which the debtor may be found. *Id.*; see also *Voltage Pictures, LLC v. Gussi, S.A. de C.V.*, 92 F.4th 815, 825–26 (9th Cir. 2024). Federal procedural law generally governs service when a party files action in federal district court. *Voltage Pictures*, 92 F. 4th at 824.
- 3 The judgment creditor must file: (i) the agreement; (ii) the award; and (ii) any necessary notices, affidavit, or other paper. See 9 U.S.C. § 13.

The court will decide the application as it would a motion. See 9 U.S.C. § 6.

New York

1 A judgment creditor must file a petition under the FAA seeking to enforce the award within three years of the award. See 9 U.S.C. § 207. In New York court, the action will be filed as a special proceeding in the county where the party seeking arbitration resides or is doing business. See NY CPLR § 7502(a). While the action may be filed in state court, any defendant has the right to remove the action to federal court given subject matter jurisdiction under the FAA. See 9 U.S.C. § 205.

2 The judgment creditor must serve notice of the motion to enforce the award on the adverse party. See 9 U.S.C. § 12. Neither the FAA nor the New York Convention mention service requirements, but New York courts have held that a summons is not required to properly effect service, only notice of the motion. See *Commodities & Minerals Enterprise Ltd. v. CVG Ferrominera Orinoco, C.A.*, 48 F.4th 802, 813–14 (2d Cir. 2022).

3 The judgment creditor must file: (i) the agreement; (ii) the award; and (iii) any necessary notices, affidavit, or other paper. See 9 U.S.C. § 13.

4 The court will decide the application as it would a motion. See 9 U.S.C. § 6. The court, however, has no power to fashion its own remedies or direct its own parties should it deny enforcement, as the confirmation of an arbitration award is a summary proceeding. See *Encyclopedia Universalis S.A. v. Encyclopedia Britannica, Inc.*, 403 F.3d 85, 92 (2d Cir. 2005).

Court must refuse to recognize a foreign judgment if:

- 1 The foreign court did not have jurisdiction over the subject matter;
- 2 The foreign court did not have personal jurisdiction over the defendant; or
- 3 The judgment did not comply with due process of law.

California

California state courts have nine discretionary grounds under Cal. Civ. Proc. Code § 1716(c) on which they can refuse to recognize a judgment. *Naoko Ohno v. Yuko Yasuma*, 723 F.3d 984, 991 (9th Cir. 2013). The discretionary grounds include situations where the judgment debtor did not receive proper notice, the judgment was obtained by fraud or violated public policy, or the foreign court lacked due process or was an inconvenient forum. Additionally, if the judgment was rendered in questionable circumstances or contrary to an agreement between the parties, it will also be denied recognition. Cal. Civ. Proc. Code § 1716(c).

New York

New York courts have nine discretionary grounds on which they can refuse to recognize a judgment, which include (among others): (i) failure to provide notice of the proceedings to the judgment debtor in the foreign court; (ii) the judgment was obtained by fraud or goes against New York's public policy; and (iii) the judgment conflicts with another final, conclusive judgment. See NY CPLR § 5304. Notably, a trial court may not refuse recognition on the ground that the New York court lacks personal jurisdiction over the judgment debtor. See *Abu Dhabi Commercial Bank PJSC v. Saad Trading, Contracting and Financial Services Co.*, 117 A.D.3d 609, 611 (N.Y. App. Div. 1st Dep't 2014).

Arbitration

The FAA incorporates the enumerated exceptions or defenses under the New York Convention by providing that a U.S. court "shall confirm" a foreign arbitral award "unless it finds one of the grounds for refusal or deferral of recognition or enforcement of the award specified in the said Convention." 9 U.S.C. § 207.



Available Defenses

Judgments

In all states, recognition of a foreign judgment can be opposed by raising defenses based on comity, such as where recognizing the foreign judgment would be prejudicial to the interests of the United States or where such judgment was obtained in a manner that did not follow due process.

Where one of the Uniform Acts have been adopted by a U.S. state, such state will have mandatory and discretionary grounds to refuse recognition of a foreign judgment.

California

Courts must confirm an arbitral award under the New York Convention unless one of the enumerated defenses is established. *Polimaster Ltd. v. RAE Sys., Inc.*, 623 F.3d 832, 835–36 (9th Cir. 2010). The party seeking to avoid the enforcement of the award has the burden of showing the existence of a New York Convention defense. *Id.* at 836. Further, the courts may look to authority under the FAA when interpreting the defenses to confirmation of an arbitral award under the New York Convention. *Id.*

New York

A court may decline to confirm an arbitral award under the New York Convention only if it finds one of the grounds for refusal or deferral of recognition or enforcement of the award in the Convention. See *Encyclopaedia Universalis*, 403 F.3d at 91. Therefore, the defenses available to New York courts are the same as those of the other signatories to the convention, with the only difference being a court may decline to recognize or enforce the award if it would be contrary to U.S. public policy.

Note, however, that enforcement of a judgment that confirms a foreign arbitral award is governed by state law rather than the Convention. Therefore, enforcement is governed by the principles of comity above.

What Relief Is Available to Claimants in a Post-Judgment Context?

Recognition of a foreign judgment converts it into an enforceable domestic judgment and grants the judgment creditor access to the full suite of state law judgment enforcement remedies, including:

- 1 Injunctions;
- 2 Notices of pendency;
- 3 Attachment orders; and
- 4 Receivership orders.

The same is true for an arbitral award. 9 U.S.C. § 13; see also NY CPLR § 7514 (“A judgment shall be entered upon the confirmation of an award.”); *Smagin v. Yegiazaryan*, 37 F.4th 562, 567 (9th Cir. 2022), cert. granted, 143 S. Ct. 645 (2023), and cert. granted sub nom. *CMB Monaco v. Smagin*, 143 S. Ct. 646 (2023), and *aff’d and remanded*, 599 U.S. 533 (2023) (affirming that once a foreign arbitration award is confirmed by a federal district court under the New York Convention, the judgment has the same force and effect of a judgment in a civil action and may be enforced by the means available to enforce any other judgment).

Attachment orders are often the top choice for enforcing foreign judgments, as they preserve assets for the purposes of enforcement.

California

California’s enforcement laws govern the enforcement of money judgments issued by a federal court in California, unless a federal statute applies. See *Peterson v. Islamic Republic Of Iran*, 627 F.3d 1117, 1130 (9th Cir. 2010).

California Enforcement of Judgments Law governs most enforceable judgments. See Cal. Civ. Proc. Code §§ 680.010–724.260. Once the judgment has been recognized, a judgment creditor seeking to enforce a judgment may elect to:

- 1 Execution: Seize and sell the judgment debtor’s assets. The execution procedures may vary based on the specific property being levied.
- 2 Garnishment: Seek the judgment debtor’s assets held by third parties. Cal. Civ. Proc. Code § 701.010.
- 3 Changing Order: Access the judgment debtor’s interest in a partnership or LLC. Cal. Civ. Proc. Code § 708.310; *Hellman v. Anderson*, 233 Cal. App. 3d 840, 849 (1991).
- 4 Turnover Order: Obtain a court order directing the judgment debtor to turn over property or funds. Cal. Civ. Proc. Code §§ 699.040 and 708.205.
- 5 Assignment Order: Request the court to assign the judgment debtor’s right to future payment from a third party to the judgment creditor. Cal. Civ. Proc. § 708.510.

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- 6 Creditor's Suit: Initiate an action against a third party that possesses or controls property in which the judgment debtor has an interest. Cal. Civ. Proc. § 708.210.

- 7 Independent Action: Bring a new action on the judgment. Cal. Civ. Proc. Code § 683.050.

- 8 Appointment of Receiver: Request court to appoint a receiver to oversee the judgment debtor's property or business. Cal. Civ. Proc. Code §§ 564(b)(3), (4), and 708.620; see also *Gold v. Gold Realty Co.*, 114 Cal. App. 4th 791, 803-04 (2003).

- 9 Request restraining order or injunction against the judgment debtor. Cal. Civ. Proc. Code § 708.520(a).

- 10 Pursue out-of-state assets, though this option may be more limited. See, e.g., *Koh v. Inno-Pac. Holdings, Ltd.*, 114 Wash. App. 268, 273 (2002) (judgment creditor registered a California judgment in Washington and obtained a charging order for property located in Washington).

New York

In New York, the enforcement methods are set out in New York's CPLR and include devices such as:

- 1 Restraining notices to freeze property (see NY CPLR § 5222);

- 2 Subpoenas to inquire into the existence and location of property (see NY CPLR § 2302);

- 3 "Turn-over" orders, which can require turn-over of a judgment debtor's assets held by a third party subject to the state's jurisdiction (see NY CPLR § 5225(b));

- 4 Attachments to the debtor's property, including: (i) in connection with enforcement of an arbitral award, attachment, or preliminary injunction if the award might otherwise be rendered ineffectual (see NY CPLR § 7502(c)); and (ii) attachment while a motion is pending to recognize a foreign money judgment under Article 53 (see NY CPLR § 6201(5)).



Key Practical Considerations for Claimants

The concerns as to identifying assets as set out in the "England and Wales" section and the creditor's ability to monetize the judgment/award are equally applicable here.

It is also worth reiterating that the party seeking recognition and enforcement bears the burden of establishing that the judgment should be recognized.

Further, taxes, fines, and monetary penal judgments are generally considered to be matters of public law and so are outside of the scope of recognition and enforcement of judgments in private civil suits.

As to New York specifically, claimants should be aware of any limitation periods on the basis that a New York court may enforce only a foreign judgment that is still "effective in the foreign country." If there is no limitation period, recognition must be sought within 20 years of the date that the judgment became effective in the foreign country.



France

Overview

The French legal framework is very favorable to the recognition and enforcement of foreign judgments, as French courts never review the merits of the case.

Practically speaking, the legal requirements for seeking the recognition and enforcement of a foreign judgment depend on the country where the judgment was rendered. European law provides for a fast-track proceeding for judgments rendered within the European Union, via Brussels Recast, and for judgments rendered in Switzerland, Denmark, Norway, and Iceland via the Lugano Convention.

Judgments falling outside the scope of Brussels Recast or the Lugano Convention have to comply with either: (i) bilateral or multilateral treaties ratified with the country in which the judgment was handed down; or (ii) rules set out in French civil law.

As to arbitral awards, recognition and enforcement is governed by the New York Convention, to which France is a contracting state (with the reservation that France will apply the New York Convention only to awards issued in other contracting states), and by provisions contained in the French Code of Civil Procedure (the “CPC”). The latter generally take precedence on account of the fact that they are more favorable to arbitration than is the New York Convention.



Regimes for Recognition and Enforcement

Judgments

Brussels Recast

Brussels Recast regulates the mutual recognition and enforcement of judgments in civil and commercial matters for EU Member States.

Brussels Recast provides that: (i) a judgment handed down in an EU Member State shall be automatically recognized in the other Member States; and (ii) a judgment handed down in an EU Member State and enforceable in that State shall be enforced in another Member State without any declaration of enforceability being required (Brussels Recast, Articles 36 and 39).

Lugano Convention

The Lugano Convention regulates judgments issued in countries that are contracting parties to the Lugano Convention (i.e., Norway, Iceland, Denmark, Switzerland, and the European Union). French courts will therefore apply the Lugano Convention to judgments rendered in Norway, Iceland, Denmark, and Switzerland.

Judgments falling within the scope of the Lugano Convention are automatically recognized by contracting states. However, enforcement should be sought before French courts through a simplified procedure (Lugano Convention, Article 38).

Hague 2005

France is also a party to Hague 2005; see the “England and Wales” section for more information.

Hague 2019

France has signed up to Hague 2019, which applies to the recognition and enforcement of judgment on the merits handed down by a court of a Contracting State in the territory of another Contracting State (Hague 2019, Articles 1 and

3). Arbitral awards and provisional measures are expressly excluded from the scope of the Convention (Hague 2019, Articles 2 and 3).

Hague 2019 sets out the rules under which a judgment rendered in civil or commercial matters may circulate in a Contracting State (Hague 2019, Articles 4 and 5) and the limited grounds on which recognition and enforcement may be refused (Article 7).

To this date, Hague 2019 is in effect in the European Union, Ukraine, and Uruguay. The United Kingdom has signed and ratified Hague 2019, which will enter into force on July 1, 2025.

Civil Law Process

Where a judgment is handed down in a jurisdiction that is not an EU Member State, the key legal framework governing recognition and enforcement is provided by the French civil law process, namely:

- 1 The French CPC; and
- 2 The French Code of Civil Enforcement Procedures, which sets out enforcement measures available to creditors.

These Codes are supplemented by case law, as there are various matters on which the Codes remain silent. Case law is not formally binding but is highly persuasive for the courts.

Bilateral Treaties

France has signed several bilateral treaties with various other countries that govern the mutual recognition and enforcement of judgments. While not covered in detail in this paper, when considering which regime applies to foreign judgments, one must consider whether France has signed a bilateral treaty with the country in which the judgment was handed down. A comprehensive list of the treaties concluded by France can be found on the [website of the French Ministry of Foreign and European Affairs](#).

Arbitration

France has set a more favorable regime for the recognition and enforcement of arbitral awards in Book IV “Arbitration” of the CPC than the one set in the New York Convention. As such,

several French law provisions take precedence over the New York Convention, as detailed below (New York Convention, Article VII, I).



Judgments

Brussels Recast

As EU judgments are automatically recognized and deemed enforceable within the European Union without any specific procedure being required (Brussels Recast, Articles 36 and 39), the creditor may rely on the ordinary French enforcement procedures, as described below, provided that:

- 1 The applicant shall submit to the competent authority responsible for enforcement a copy of the judgment and of the certificate issued by the court of origin in accordance with Article 53 of Brussels Recast (Brussels Recast, Article 42); and
- 2 The debtor has been served with the abovementioned documents prior to the application for enforcement (Brussels Recast, Article 43).

Lugano Convention

Contrary to Brussels Recast, judgments issued by contracting states are recognized but are not enforceable in the contracting state. The creditor must apply for an enforcement order (*“déclaration constatant la force exécutoire”*), through the following procedure governed by the Lugano Convention:

Obtain an Enforcement Order

- 1 The judgment creditor shall file a request (*“requête”*) with the director of the registry of the first instance court (*“directeur du greffe du tribunal judiciaire”*) (CPC, Article 509-2).
- 2 The request may be brought before the court of the debtor’s domicile or the court of the place where the enforcement is contemplated (Lugano Convention, Article 39, 2)
- 3 The requesting party must provide a copy of the judgment and the certificate issued by the court of origin in accordance with Article 53 of the Lugano Convention.
- 4 The judgment is enforceable upon completion of these formalities.

Service. The copy of the original judgment and the decision on enforcement must be served on the debtor (Lugano Convention, Article 42); see below for more details on the service of court decisions in France.

Appeal. An appeal may be lodged against a decision granting enforcement within: (i) one month of its notification to the debtor; or (ii) two months where enforcement is sought against a debtor domiciled in a Member State other than that in which the enforcement order was issued (Lugano Convention, Article 43).

Civil Law

For foreign judgments that do not fall within the scope of Brussels Recast or the Lugano Convention, the creditor shall obtain an enforcement order (*“jugement d’exequatur”*) as set by French civil law:

Obtain an Enforcement Order

- 1 The judgment creditor summons the opposing party before a court of first instance (*“tribunal judiciaire”*) (Code for Judicial Organization (*“CJO”*), Article R. 212–8, 2°).
- 2 The request may be brought before the court of the opposing party’s domicile (CPC, Article 42) or the court of the place where the enforcement is contemplated.
- 3 The requesting party must provide a certified copy of the foreign judgment together with a translation if the judgment is not issued in French. A sworn translation is not required unless the translation provided by the requesting party is disputed.
- 4 A ruling as to whether an enforcement order should be granted will be made by a single judge unless parties expressly require a three-judge panel (CJO, Article R. 212–8).

Service

- 1 Service is generally initiated by the prevailing party.
- 2 It is carried out by bailiffs when the recipient is domiciled in France.
- 3 A special procedure applies when the recipient is domiciled abroad.

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- 4 Unless provided otherwise by special conventions on international service, the bailiff must hand over the act to be served to the public prosecutor who, in turn, will transfer it through the Ministry of Justice and the Ministry of Foreign Affairs to the relevant authority in the recipient's country (CPC, Articles 684 et seq.).

Appeal

- 1 Enforcement decision may be appealed within one month of being notified by one party to the other; this time period is extended by two months if the parties are domiciled abroad (CPC, Articles 538 and 643).
- 2 The appeal period runs only from the effective receipt by the recipient (CPC, Article 528).

Arbitration

The procedure for the recognition and enforcement of international arbitral awards on French territory is governed by Book IV—"Arbitration" of the CPC and differs depending on whether the seat of arbitration was located in French or abroad:

Foreign Award

Obtain an Enforcement Order

- 1 The award creditor applies for the enforcement of the award before the Paris civil court of first instance ("*tribunal judiciaire de Paris*"), without notifying the other party (CPC, Article 1516).
- 2 The application shall be supported by the copy of the arbitration agreement and of the award (CPC, Article 1516).

Service. The award creditor must serve the decision on the award debtor; see above for more information.

Appeal. The decision may be appealed by either party within one month of service of the order (CPC, art. 1525).

Domestic Award

In the case of a domestic award, the creditor can either apply for an enforcement order or serve the award on the debtor in order to trigger the one-month period for the debtor to initiate set-aside proceedings.

Obtain an Enforcement Order

- 1 The creditor makes an *ex parte* application for the enforcement of the award before the French court with territorial jurisdiction over the place where the award was issued (CPC, Article 1516).
- 2 The application shall be supported by copies of the arbitration agreement and the award (CPC, Article 1516).

Service. The award creditor must serve the order on the award debtor; see above for more information.

Appeal. An appeal may be lodged only if the application was rejected. In this case, the decision shall be appealed within one month of service of the decision, extended by two months if the applicant is domiciled abroad (CPC, Art. 1523 and 643). If the enforcement order was granted, an application for set aside is the only recourse left to the debtor (CPC, Articles 1518 et seq.). In both cases, the decision of a court of appeal rejecting an application to set aside an award (for awards issued in France) or rejecting an appeal against an enforcement order (for awards issued abroad) leads to the immediate enforcement of the award (CPC, Article 1527).



Available Defenses

Judgments

Brussels Recast

Recognition and enforcement applications can be challenged under Brussels Recast on the following grounds (Brussels Recast, Articles 38, 45, et seq.):

- 1 Recognition/enforcement is manifestly contrary to public policy in the state in which recognition is sought;
- 2 The order was given in default of appearance, if the defendant was not served with the document that instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defense, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so;

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- 3 If it is irreconcilable with a judgment given in a dispute between the same parties in the state in which recognition/enforcement is sought;
- 4 If it is irreconcilable with an earlier judgment given in another contracting state or in a third state involving the same cause of action and between the same parties, provided that the earlier judgment fulfils the conditions necessary for its recognition/enforcement in the state; or
- 5 The judgment conflicts with: (i) Sections 3, 4, and 5 of Chapter II of Brussels Recast; or (ii) Section 6 of Chapter II, which are provisions dedicated to consumers, insurance, employment law, and exclusive jurisdiction.

Lugano Convention

In addition to the five grounds provided for by Brussels Recast (Lugano Convention, Articles 34 and 45), the Lugano Convention provides for two additional defenses (Lugano Convention, Article 35):

- 1 The decision was issued on the basis of a jurisdiction rule that is different from that of the Lugano Convention; however, this possibility is excluded if the decision can be recognized or enforced under the law of the state in which enforcement is sought; or
- 2 The jurisdiction of the state of origin is based on a special convention to which the state in which enforcement is sought is not a party, provided that the party against whom the decision was issued is domiciled in the state in which enforcement is sought.

Civil Law

French case law sets out the following grounds on which a foreign judgment may be challenged:

- 1 It does not qualify as a court judgment and is not enforceable in its jurisdiction according to the law of that jurisdiction;
- 2 It is incompatible with French international public policy;
- 3 It was procured by fraud; or
- 4 The foreign judgment was not issued by a court that had jurisdiction to hear the case.

Arbitration

Under French law, international arbitral awards can be challenged (whether through an application for annulment, for France-issued international arbitral awards; or an appeal

against an enforcement order, for foreign arbitral awards) only on the five following grounds (CPC, Articles 1520 and 1525):

- 1 The arbitral tribunal wrongly upheld or declined jurisdiction;
- 2 The arbitral tribunal was not properly constituted;
- 3 The arbitral tribunal ruled without complying with the mandate conferred upon it;
- 4 Due process was violated; or
- 5 Recognition or enforcement of the award is contrary to international public policy.

French civil law takes precedence over the New York Convention in this respect (New York Convention, Article VII, I). For instance, the fact that the award has been set aside or suspended by a national court does not prevent its enforcement in France, contrary to what is provided in Article V, e of the New York Convention.



What Relief Is Available to Claimants in a Post-Judgment Context?

Creditors may resort to the usual methods of enforcement available under domestic judgments, provided that the appropriate requirements are met, such as:

Interim Measures (“Mesures conservatoires”)

France permits creditors to carry out interim enforcement measures on the basis of a foreign judgment or international arbitral award even before beginning the recognition/enforcement court proceedings in the jurisdiction, provided it can rely on the existence of a “threat to the recovery of its claim” (CPCE, Article L. 511-1).

To be valid, these measures usually require evidence that the debtor has hidden its assets, or is likely to disappear or become insolvent. The interim attachment is executed by a bailiff without prior notice to the debtor and without the need for a court order (unless the debtor is a foreign state, in which

case, the creditor must seek *ex parte* prior judicial authorization) (CPCE, Articles L. 111-1-1 et seq.).

Attachments may be executed on movable or immovable assets, whether tangible or intangible, including the following specific categories: real estate; bank accounts; claims; dividends; royalties; vehicles of different types (cars, coaches, aircraft, boats, etc.); art; and any movables whatsoever stored in bank safes, etc. The French Code of Civil Enforcement Procedures provides specific attachment rules for each category (CPCE, Articles L. 521-1 et seq.).

Further, third-party debtors may be compelled to disclose all their financial commitments to the judgment debtor and provide supporting documentation upon service of an attachment order (CPCE, Article L. 211-3).

With regard to sophisticated debtors, a judgment creditor may seek injunctive relief against third parties or the debtor himself and may even, in certain circumstances, be authorized to carry out searches with the assistance of a bailiff, akin to search orders.

Enforcement Orders (“*Mesures d’exécution*”)

Once arbitral awards or foreign judgments are enforceable on French territory, the creditor can obtain enforcement orders, which are different from interim measures in that they enable the latter to obtain payment. Such orders include:

- 1 Enforcement orders on material assets (“*saisie mobilière*”), such as tangible or intangible assets (CPCE, Article L. 222-1 et seq.); and/or
- 2 Enforcement orders on immovable assets (“*saisie immobilière*”) such as (CPCE, Article L. 311-1 et seq.).



Key Practical Considerations for Claimants

In addition to the concerns regarding asset identification and location, there are a number of factors for claimants to consider when seeking to enforce a judgment or award.

Delays vis-à-vis Service

Claimants must be mindful that enforcement proceedings in France are often slowed down by service processes. These can be extremely lengthy in the case of service on debtors domiciled abroad (as they often are), and even more so when the debtor is a foreign state.

Judgment creditors would therefore be well advised to closely monitor the service process with the relevant authorities, both to ensure its formal validity and to prevent undue delays.

Appointing and Working with Bailiffs

All enforcement-related acts are performed by bailiffs, who will need to be hired by the parties themselves rather than appointed by the court.

French bailiffs have jurisdiction over a limited geographical area, so enforcement attempts in France can require the commission of several bailiffs, depending on the location of the assets.

Not all bailiffs may be familiar with enforcing foreign judgments.



Singapore

Overview

The legal regime for the recognition and enforcement of foreign judgments is governed by the common law and various statutes, including the Reciprocal Enforcement of Foreign Judgments Act 1959 (“REFJA”) and the Choice of Courts Agreement Act 2016 (which incorporates the 2005 Hague Convention on Court of Court Agreements) (“CCAA”).

As to arbitral awards, recognition and enforcement is primarily governed by the New York Convention, to which Singapore is a contracting state.



Regimes for Recognition and Enforcement

Judgments

Foreign judgments can be enforced in Singapore through the CCAA and REFJA. The REFJA does not apply to judgments that may be recognized or enforced under the CCAA (see Section 2A, REFJA). The REFJA applies to judgments from Hong Kong and specified courts in the Reciprocal Enforcement of Foreign Judgments (United Kingdom and the Commonwealth) Order 2023 (“UK and Commonwealth Order”). These are the courts of Brunei Darussalam, Australia, India, Malaysia, New Zealand, Pakistan, Papua New Guinea, Sri Lanka, and the United Kingdom.

REFJA is a consolidated statute for the statutory recognition and enforcement of foreign judgments, further to the repeal of the Reciprocal Enforcement of Commonwealth Judgments Act 1921 with effect from March 1, 2023.

Foreign judgments that are not governed by the REFJA or CCAA may be enforced under the common law.

Common Law

At common law, a judgment is capable of recognition and enforcement if it is: (i) a decision on the merits that is final and conclusive; (ii) obtained from a court of competent jurisdiction; and (iii) issued by a foreign court with international jurisdiction over the party sought to be bound at the time of commencement of the foreign proceedings. If a foreign judgment will also be enforced, the judgment must also be one for a fixed or ascertainable sum of money.

International Jurisdiction. The foreign court must have had international jurisdiction, which is established if there is: (i) presence in the foreign country; (ii) filing a claim or counterclaim before the foreign court; (iii) voluntarily submitting to the jurisdiction of the foreign court by appearing in the proceedings; and (iv) agreeing to submit to the jurisdiction before the commencement of proceedings.

Final and Conclusive. The judgment cannot be set aside, varied, or reopened by the court that delivered it.

REFJA

The regime under REFJA is intended to replace the common law regime for enforcing foreign judgments. Consequently, the requirements under the common law generally apply to the enforcement of judgments from Hong Kong and specified courts in the UK and Commonwealth Order. These are the courts of Brunei Darussalam, Australia, India, Malaysia, New Zealand, Pakistan, Papua New Guinea, Sri Lanka, and the United Kingdom.

REFJA also extends to interlocutory judgments, judicial settlements, and non-monetary judgments. However, the enforcement of non-monetary and interlocutory judgments does not apply to judgments from courts outside those listed in the UK and Commonwealth Order.

CCAA

A foreign judgment is enforceable under CCAA if it is: (i) handed down by a court of a contracting state that is party to Hague 2005; (ii) effective and enforceable in the state of the relevant court; and (iii) a final decision on the merits, a consent judgment, or a default judgment.

The CCAA also extends to non-monetary judgments and judicial settlements, but not interlocutory judgments.

Arbitration

Singapore is also a signatory to the New York Convention, which has been implemented into Singapore law pursuant to Part 3 of the International Arbitration Act 1994 (Second Schedule). The procedure for enforcing arbitral awards under the New York Convention is governed by each contracting state's own procedural rules. In Singapore, the procedure is set out in Order 48 rule 6 of the Rules of Court 2021 (“ROC”), and sections 19 (Singapore-seated awards) and 29 (foreign awards) of the International Arbitration Act 1994.



Procedure

Judgments

Common Law

At common law, the usual court processes to commence a civil claim apply. Accordingly, an applicant must file an originating claim and the statement of claim under Order 6 of the ROC process in the General Division of the High Court. Once the court has approved the originating claim and the statement of claim, the applicant must personally serve the same on the defendant.

If there is no defense to the claim, the applicant may apply for a summary judgment to expedite the procedure (Order 9 Rule 17 ROC).

REFJA

Under the REFJA regime, the applicant must first register the foreign judgment in the General Division of the High Court by an originating application without notice, supported by an affidavit (Order 60 ROC). The supporting affidavit must exhibit the judgment or a verified copy. Where the judgment is not in English, a certified translation must accompany the affidavit.

If the application is successful, the applicant must draw up an order of registration and serve this on the judgment debtor. An order of registration must state the period within which an application may be made to set aside the registration and must contain a notification that an enforcement order to enforce the judgment will not be issued until after the expiration of that period (Order 60 Rule 5 ROC).

Additionally, a notice of registration must be served on the judgment debtor. Within three days, the notice of registration or a copy of it must be endorsed by the person who served it with the date on which the notice was served (Order 60 Rule 7 ROC).

CCAA

Under the CCAA regime, the applicant must make an originating application without notice, supported by an affidavit (Order 37 ROC). The supporting affidavit must (among other things) exhibit: (i) a certified copy of the whole foreign judgment; (ii) the relevant exclusive choice of court agreement; and (iii) any other documents necessary for establishing the matters in the supporting affidavit (Order 37 Rule 2(3) ROC).

A certified translation that includes a certificate by the translator stating their name, address, and qualifications must accompany any part of a supporting affidavit that is not in English (Order 37 Rule 5 ROC).

Lastly, an applicant must draw up the court order and, within 28 days, serve it—together with a copy of the foreign judgment—personally on every party to the proceedings in which the foreign judgment was obtained (Order 37 Rule 6 ROC).

Enforcement

Under these regimes, an applicant may apply for an enforcement order under Order 22 Rule 2 of the ROC to obtain relief. An applicant can also apply for an order to examine the judgment debtor under oath pursuant to Order 22 Rule 11 of the ROC to ascertain what assets it has available to satisfy the debt owed. If ordered, the judgment debtor may be examined orally in court and/or required to make an affidavit on the assets it owns.

Arbitration

New York Convention

In Singapore, the procedure for enforcing arbitral awards is set out in Order 48 Rule 6 of the ROC, and Sections 19 (Singapore-seated awards) and 29 (foreign awards) of the International Arbitration Act 1994.

For both Singapore-seated awards and foreign awards, permission of the General Division of the High Court is required for enforcement and may be made without notice. The application requires an originating application and a supporting affidavit which sets out: (i) the arbitration agreement and original award (or certified copies thereof), and any translations, if required; (ii) the name and usual/last known place

of residence or business of the applicant and respondent-debtor; and (iii) the extent of noncompliance with the award at the date of the application.

If permission to enforce the award is granted, the order giving permission must be drawn up by the creditor and served on the debtor by delivering a copy to the debtor personally or by sending a copy to the debtor at the debtor's usual or last known place of residence or business or in such other manner as the court may direct (Order 48, rule 6(3) ROC).

Service of the order out of Singapore is permissible without permission (Order 48 rule 6(4), ROC).

The debtor will have 14 days after service of the order, or any other period the court may fix for orders served outside Singapore, to set aside the order. The award must not be enforced until after the expiration of that period or until any application to set aside the order is finally disposed of (Order 48 Rule 6(5), ROC).



Available Defenses

Judgments

Under the common law and statutory regimes (Section 5 REFJA and Sections 14–16 CCAA), a defendant may raise the following defenses:

- 1 It was not served with the process of the original court;
- 2 The judgment was obtained fraudulently;
- 3 The judgment was obtained in breach of a settlement agreement;
- 4 The judgment was obtained in breach of natural justice;
- 5 The judgment is contrary to public policy;
- 6 The judgment conflicts with an earlier judgment by the Singapore courts or an earlier foreign judgment recognizable under Singapore law; or
- 7 The judgment would amount to the enforcement of foreign penal, revenue, or public laws.

Under the CCAA regime, the court possesses other discretionary grounds to refuse to recognize or enforce a foreign judgment (Section 15 CCAA). These include instances where: (i) the choice of court agreement is void under the law of the foreign jurisdiction; and (ii) a party to the choice of court agreement has no capacity under Singapore law to enter into the agreement.

Arbitration

Similar to the regime in England and Wales, foreign awards may be refused enforcement in Singapore on the following discretionary and exhaustive grounds under Section 31 of the International Arbitration Act 1994:

- 1 A party to the arbitration agreement was, under the law applicable to the party, under some incapacity at the time when the agreement was made;
- 2 The arbitration agreement is not valid under the law to which the parties have subjected it or, in the absence of any indication in that respect, under the law of the country where the award was made;
- 3 The party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present the party's case in the arbitration proceedings;
- 4 The award deals with a difference not contemplated by, or not falling within the terms of, the submission to arbitration or contains a decision on the matter beyond the scope of the submission to arbitration;
- 5 The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;
- 6 The award has not yet become binding on the parties to the arbitral award or has been set aside or suspended by a competent authority of the country in which, or under the law of which, the award was made;
- 7 The subject matter of the difference between the parties to the award is not capable of settlement by arbitration under the law of Singapore; or
- 8 Enforcement of the award would be contrary to the public policy of Singapore.



What Relief Is Available to Claimants in a Post-Judgment Context?

Claimants have recourse to the usual methods of enforcement available under domestic judgments pursuant to Order 22 of the ROC, which include enforcement orders for:

- 1 The seizure and sale of property;
- 2 The delivery or possession of property;
- 3 The attachment of debts; and
- 4 An examination of the enforcement respondent.

A further option is commencing winding up or bankruptcy proceedings where the money judgment exceeds the statutory threshold—\$15,000 and \$10,000 respectively—for commencing such actions.

The aforementioned enforcement options are equally applicable to arbitral awards that have undergone the recognition and enforcement process.

Committal proceedings under Order 23 of the ROC and Administration of Justice (Protection) Act 2016 are an option for noncompliance with judgments and awards that have been entered into a judgment.



Key Practical Considerations for Claimants

Costs of Enforcement

The costs of enforcement (such as the legal fees incurred in preparing and serving relevant court documents) are generally recoverable from the judgment debtor. However, certain categories of costs (including the costs of instructing counsel) are not typically awarded by the court.

Judgments of the Courts of the People's Republic of China ("PRC")

A claimant seeking to enforce a judgment of the courts of the PRC under common law should have regard to the Memorandum of Guidance on the Recognition and Enforcement of Money Judgments in Commercial Cases (the "MOG"). Although it is not binding, the MOG guides claimants on how a judgment issued by the courts of the PRC may be recognized and enforced in Singapore.

Limitation Periods

Common Law. There is no limitation period for recognition of a foreign judgment under common law. However, the limitation period for enforcement is six years from the date the judgment is final and conclusive under foreign law (Section 6(1)(a) Limitation Act).

REFJA. The limitation period for registration under the REFJA regime is six years from the date of the foreign judgment (Section 4(1) REFJA).

CCAA. A foreign judgment remains recognizable as long as it remains enforceable in its country of origin (Section 13(2) CCAA).



China

Overview

The legal regime for the recognition and enforcement of foreign judgments in China encompasses the following: (1) Civil Procedure Law (“CPL”) and the interpretations of the Supreme People’s Court on Application of the Civil Procedure Law Fa Shi [2022] No. 11 (“SPC Judicial Interpretation”); and (2) Various bilateral treaties with other countries.

As to arbitral awards, recognition and enforcement is primarily governed by the New York Convention, to which China is a contracting state.



Regimes for Recognition and Enforcement

Judgments

CPL and SPC Judicial Interpretation

This recognition and enforcement regime applies to judgments handed down in jurisdictions that are not parties to any treaty and/or convention with China.

Bilateral Treaties

China has signed several separate treaties with other countries based on reciprocity in the recognition and enforcement of judgments (Algeria, Argentina, Belarus, Bosnia-Herzegovina, Brazil, Bulgaria, Cuba, Cyprus, the Democratic People's Republic of Korea, Egypt, Ethiopia, France, Greece, Hong Kong, Hungary, Italy, Kazakhstan, Kuwait, Kyrgyzstan, Laos, Lithuania, Macau, Mongolia, Morocco, Peru, Poland, Romania, Russia, Spain, Taiwan, Tajikistan, Tunisia, Turkey, Ukraine, United Arab Emirates, Uzbekistan, Vietnam).

While not covered in detail in this paper, when considering which regime applies to foreign judgments, one must consider whether China has signed a bilateral treaty with the country in which the judgment was handed down.

Arbitration

China is also a signatory to the New York Convention. According to Article 304 of the CPL, the Chinese courts shall handle the application to enforce a foreign arbitral award in accordance with the treaty China has concluded or acceded to or under the principle of reciprocity.

China acceded to the New York Convention in 1986, and ratified the New York Convention in 1987, with two reservations:

- 1 Reciprocity Reservation—China will apply the New York Convention only to recognition and enforcement of awards made in the territory of another contracting state; and
- 2 Commercial Reservation—China will apply the New York Convention only to differences arising out of legal relationships, whether contractual or not, that are considered commercial under Chinese law.



Procedure

Judgments

CPL and SPC Judicial Interpretation

Under Article 298 and 299 of the CPL, Article 541, 544–546 of the SPC Judicial Interpretation, the procedure for recognition and enforcement of foreign judgments is as follows:

- 1 An application must first be submitted to the Intermediate People's Court with jurisdiction. The applicant shall submit a letter of application, accompanied by the original foreign judgment or a certified copy, and its Chinese translated version.
- 2 The Chinese court shall serve the letter of application to the respondent, and the respondent may make statements on the application.
- 3 Having accepted the application, the Chinese court will first make a ruling on the recognition of the judgment. Once recognized, the Chinese court will subsequently rule on its enforcement.
- 4 The Chinese court will form a panel to make a ruling on the recognition and enforcement of the foreign judgment.
- 5 The ruling made by the Chinese court will take effect upon delivery.

Arbitration

CPL and SPC Judicial Interpretation

According to Article 304 of the CPL and Article 544-546 of the SPC Judicial Interpretation, the recognition/enforcement process of foreign arbitral awards in China is as follows:

- 1 The party to an arbitral award shall file the application with an Intermediate People's Court at the place of domicile of the party subject to enforcement or at the place where the property is located. If such domicile or place mentioned above is not located in China, the application may be filed at the place of domicile of the applicant or at the place that has appropriate connections with the dispute involved in the award.

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- 2 The Chinese court shall serve the application to the respondent, and the respondent may make statements on the application.
- 3 Having accepted the application, the Chinese court will first make a ruling on the recognition of the award. Once recognized, the Chinese court will subsequently rule on its enforcement.
- 4 The Chinese court will form a panel to make a ruling on the recognition and enforcement of the foreign arbitral award.
- 5 The ruling made by the Chinese court will take effect upon delivery.



Available Defenses

Judgments

CPL and SPC Judicial Interpretation

Under Article 300 of the CPL, the following defenses may be raised:

- 1 The foreign court that made the judgment had no jurisdiction over the case;
- 2 The defendant had not been legitimately summoned or had been but was not given a reasonable opportunity to make representation, or the party without the capacity to action is not properly represented;
- 3 The judgment was obtained by fraud or bribery;
- 4 The People's Court made a judgment or ruling on the same dispute, or has recognized the judgment made by a court of a third country for the same dispute; or

Arbitration

According to Article 304 of the CPL, the Chinese court shall handle the application to enforce a foreign arbitral award in accordance with the New York Convention, including the defenses to enforce a foreign arbitral award stipulated in Article 5 of the New York Convention.



What Relief Is Available to Claimants in a Post-Judgment Context?

A party may apply for reconsideration against a ruling on recognition and enforcement or non-recognition and non-enforcement to the People's Court at the next higher level within 10 days after the ruling is served (Article 303 CPL).

Pursuant to Article 544 of the SPC Judicial Interpretation, the Chinese court shall enforce a foreign judgment or arbitral award in accordance with Chapter 3 of the CPL.

According to Chapter 3 of the CPL, in support of recognition and enforcement proceedings, the Chinese courts can order any of the following:

- 1 An inquiry into the assets of the judgment debtor in Mainland China by: (i) compelling the judgment debtor to disclose its current asset status or its asset status for one year before receiving the enforcement notice; (ii) making inquiries with relevant entities about the property of the party subject to enforcement; (iii) ordering a search order of the residence or office premises of the judgment debtor and any other places where its assets might be kept (Articles 252, 253, and 259 CPL).
- 2 Withhold or withdraw a portion of the relevant party's income corresponding to the party's obligations to be performed (Article 254 CPL).
- 3 Seizure, freezing, transfer, or sale of assets (Articles 253, 255, and 256 CPL).
- 4 Sale of assets through auction (Articles 255, 258 CPL).
- 5 Compulsory eviction of the judgment debtor from a building or land (Article 261 CPL).
- 6 Transfer of licenses or certificates conferring rights on the judgment debtor (Article 262 CPL).
- 7 For the party failing to perform any obligation of pecuniary payment, such party shall pay double interest for the debt for the period of deferred performance (Article 264 CPL).
- 8 Imposition of restrictions on the judgment debtor (e.g., informing relevant government departments to restrict the judgment debtor from leaving Mainland China) (Article 266 CPL).
- 9 A media announcement of the judgment debtor's failure to perform its obligations under the judgment (Article 266 CPL).



Key Practical Considerations for Claimants

A default judgment may be recognized and enforced only if the applicant submits documents proving that the judgment debtor was duly served or the judgment expressly stated the fact of proper service in China. Accordingly, an applicant should pay close attention to the due service requirements (Article 541 SPC Judicial Interpretation).

As to limitation, the applicant has a time period of two years to seek recognition and enforcement of a judgment (Article 250 CPL).



India

Overview

All courts in India have jurisdiction to recognize and enforce a foreign judgment, and there is no requirement to establish any connection to the jurisdiction except that the court in India in which a foreign judgment is being enforced has both territorial and pecuniary jurisdiction to enforce it.

In India, the Supreme Court holds original, appellate, and advisory jurisdiction. Its decisions are binding on all other courts/tribunals in the country. High courts hold jurisdiction over the states/union territory in which they are located. Primarily, a High Court can exercise only writ and appellate jurisdiction, but a few High Courts in the country can also try suits (called original jurisdiction). High court decisions are binding on all the Lower Courts of the state over which it has jurisdiction. District and Lower Courts preside over judicial matters at the district level and are subordinate to their respective High Courts of each state.

As to arbitral awards, recognition and enforcement is primarily governed by the New York Convention, to which India is a contracting state.



Regimes for Recognition and Enforcement

Judgments

Reciprocating Territories

Section 44-A of the Code of Civil Procedure 1908 (“CPC”) provides that money judgments passed by the superior courts of reciprocating territories may be enforced in India as though they were decrees of Indian courts, subject to compliance with other requirements of the Code. The United Kingdom is among 13 territories notified by India as “reciprocating territories” under the CPC.

Non-Reciprocating Territories

Where the foreign judgment was handed down in a non-reciprocating territory, the judgment may be enforced only by issuing a civil suit on the judgment pursuant to Orders 5, 6, and 7 of the Civil Procedure Code 1908.

Arbitration

India is also a signatory to the New York Convention.

Chapter I of Part II of the Arbitration and Conciliation Act 1996 contains provisions regarding the enforcement of the New York Convention Awards. Sections 44–52 enlist conditions under which a foreign award is recognized and enforced in accordance with the New York Convention.

Section 48 of the Arbitration and Conciliation Act 1996 sets forth the grounds under which Indian courts can refuse the enforcement of foreign arbitral awards. These conditions can also be understood as defenses available to the party who is opposing the enforcement of the foreign award in question.



Procedure

Judgments

There is no separate process for the recognition and enforcement of a foreign judgment. The court enforcing the foreign judgment first recognizes the foreign judgment and proceeds with its enforcement if such judgment does not fall within the exceptions of Section 13 of the CPC.

The process of enforcement for a reciprocating territory is different from the process for a non-reciprocating territory.

Reciprocating Territories

The various stages in an execution proceeding instituted in India in order to enforce a decree under Section 44A of the CPC are as follows:

- 1 Application for execution: The decree holder must file an application for execution of the decree before the competent court in terms of territorial and pecuniary jurisdiction.
- 2 Notice to show cause: The court will then issue notice to the person against whom execution is sought, requiring such person to show cause as to why the decree should not be executed.
- 3 No contest: If the person against whom the decree is to be executed does not appear or show cause as to why the decree should not be executed, the court will order the decree to be executed.
- 4 Where the defendant contests under Section 44A, read with Section 13 (“when foreign judgment not conclusive”) of the Code of Civil Procedure, it can argue why the decree should not be enforced. In this case, the court will consider the application and determine whether the foreign judgment falls under any of the exceptions under Section 13 (which include a court of competent jurisdiction and a judgment not given on the merits of a case). While this order is not appealable, a review or revision may be sought.
- 5 Issuance of process: If there is no contest or if the court holds that none of the exceptions under Section 13 apply, it will issue a process and appoint an appropriate officer, including a judge, to execute the decree.

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- 6 Once the process is issued, the decree holder can apply to the court to provide directions to the judgment debtor, instructing it to disclose any assets and liabilities. If these assets are disclosed, the court will proceed with the attachment and sale of such assets.

Non-Reciprocating Territories

When enforcement is sought for an award passed by a non-reciprocating country, a fresh suit in the court is required to be filed having appropriate jurisdiction in terms of Orders 5, 6, and 7 of the Civil Procedure Code 1908. Thereafter, the suit will run like a routine civil suit. Upon filing of a fresh suit, the foreign award annexed with the suit shall be treated as evidence by the court in terms with Section 86 of the Evidence Act 1872. Only once the suit is allowed and decreed can it be executed as a domestic decree in terms of Order 21 of the Code of Civil Procedure.

The foreign judgment is considered evidentiary. The time limit to file such a suit in India is within three years of the foreign judgment.

It can take two to three years before the foreign judgment is confirmed by an Indian court.

Arbitration

New York Convention

Chapter I of Part II of the Arbitration and Conciliation Act 1996 contains provisions regarding the enforcement of the New York Convention Awards. Sections 44–52 enlist conditions under which a foreign award is recognized and enforced in accordance with the New York Convention. As such, the process for enforcing New York Convention arbitral awards is as follows:

- 1 The award creditor must file an application for enforcement in the appropriate court where enforcement is sought.
- 2 The creditor must provide the following documents with the application: (i) original or certified copy of the arbitration agreement; (ii) original or certified copy of the arbitral award; and (iii) evidence showing the award is either a domestic or foreign award.
- 3 Notice is then issued by the court to the party against whom enforcement is sought.

- 4 The award debtor may raise objections or challenges to the enforcement that will be considered by the court.
- 5 The court then examines the award to ensure it meets the appropriate enforcement requirements.
- 6 If satisfied, the court will pass an enforcement order in favor of the award creditor.
- 7 The winning party can enforce the arbitral award as if it were an Indian judgment.



Available Defenses

Judgments

Recognition and enforcement applications can be challenged by objecting that the judgment falls within the exceptions set out in Section 13 of the CPC on the following grounds:

- 1 The foreign judgment does not conform with public policy and is fraudulent;
- 2 The foreign judgment was not issued by a court of competent jurisdiction;
- 3 The foreign judgment is not based on the merits of the case;
- 4 The foreign judgment was passed in disregard of Indian law or is based on an incorrect view of international law;
- 5 The foreign judgment contravenes the principles of natural justice or is in breach of any law in force in India; or
- 6 The application is time-barred.

Arbitration

The scope of Section 48(1) of the Arbitration and Conciliation Act 1996 has significantly narrowed, leaving only five conditions for refusing the enforcement of foreign arbitral awards, including that the arbitration agreement is not valid and the award is not yet binding.

Section 48(2) deals with the refusal of enforcement of foreign arbitral awards on the grounds of subject matter or public policy.

Section 48(2)(a) outlines provisions concerning disputes over subject matter. It states that the enforcement can be refused if the subject matter of the dispute is not capable of settlement by arbitration under Indian law.

What Relief Is Available to Claimants in a Post-Judgment Context?

In India, injunctive relief is available in some circumstances when enforcing foreign judgments, depending on whether the territory where the judgment has been given is reciprocating or non-reciprocating.

Reciprocating Territories

In these cases, judgments are enforceable as domestic decrees. The decree holder can apply for execution of the decree, and attendant relief may be available to execute the decree, such as a warrant of arrest and attachment and sale of the property.

Non-Reciprocating Territories

In these cases, the applicant must file a new suit in India based on the foreign judgment to seek relief. The applicant may, for instance, seek an injunctive order to prevent the sale of property while the suit is pending.

The recognition or enforcement of a foreign judgment can also be challenged (Section 13 CPC) if the judgment meets certain exceptions, such as fraud/non-conformity to public policy, issuance by court without proper jurisdiction, judgment not based on merits, incorrect interpretation of foreign law, or violation of natural justice.

Arbitration

In India, the process for challenging a foreign award is similar to the process for challenging a domestic award. The award debtor must wait for the award holder to file for enforcement proceedings, and then file objections to the award. The court will then direct the parties to complete pleadings and hear oral arguments on the award's enforceability.

Interim Measures/Relief

The Bombay High Court ruled in *Hsbc Pi Holdings (Mauritius) Limited vs. Avitel Post Studioz Limited* (2014), that in the absence of a direct enforcement mechanism for foreign-seated arbitrations under the Arbitration and Conciliation Act 1996, parties must approach an Indian court by filing an application under Section 9 of the Act to seek relief in terms of the interim orders (or final award) granted by the foreign seated tribunal. Section 9 of the Act gives the court the power to grant interim relief to the parties. It is important to note that if an arbitral tribunal is already constituted, special reasons need to be provided to the court to justify why the parties did not seek the remedy for interim measures under Section 17(1) (in the case of a domestic Indian arbitration) before the arbitral tribunal. In the case of foreign interim awards, the special reason to seek interim relief under Section 9 is that there is no express statutory provision for such a remedy.

Once an interim order is granted by the court, it will be enforced in accordance with the enforcement procedures of an order as given in the Code of Civil Procedure 1908.

The High Court, in exercise of its ordinary original civil jurisdiction, would be the proper court to seek such reliefs. (*Jaycee Housing (P) Ltd. vs. High Court of Orissa* (2023)).

Section 37(1)(b) enables a party to seek an appeal against the order passed under Section 9 of the Act. A second appeal cannot be sought. However, nothing stops a party from appealing to the Supreme Court.



Key Practical Considerations for Claimants

Under Indian law, a foreign judgment is not enforceable if it is subject to appeal in the foreign jurisdiction.

Further, the limitation period for enforcement must be that of the "cause country" (i.e., the reciprocating territory whose judgment is sought to be enforced); see *Bank of Baroda v Kotak Mahindra Bank* (2020 SCC Online 324).

The CPC does not set time limits for the execution of either domestic or foreign decrees. Execution can take anywhere between one month to several years from the date of filing the execution application, depending on a number of factors including:

- 1 Whether notice is given to the judgment debtor.

- 2 The nature of the objections raised by the judgment debtor.

- 3 The nature of interim reliefs sought.

- 4 The caseload of the executing court.

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