# Enforcement of Foreign Judgments

*Contributing editor*
**Patrick Doris**

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GETTING THE DEAL THROUGH

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**Patrick Doris**

**Gibson, Dunn & Crutcher LLP**

Publisher
Gideon Roberton
gideon.roberton@lbresearch.com

Subscriptions
Sophie Pallier
subscriptions@gettingthedealthrough.com

Senior business development managers
Alan Lee
alan.lee@gettingthedealthrough.com

Adam Sargent
adam.sargent@gettingthedealthrough.com

Dan White
dan.white@gettingthedealthrough.com

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# India

**Namita Chadha and Sakshi Arora**
Chadha & Co

## 1 Treaties

**Is your country party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments? What is the country's approach to entering into these treaties and what, if any, amendments or reservations has your country made to such treaties?**

India is party to bilateral treaties with the reciprocating countries notified under the Code of Civil Procedure 1908 (the Code) for the purpose of recognition and enforcement of foreign judgments, namely the United Kingdom, Aden, Fiji, Republic of Singapore, the United Arab Emirates, Federation of Malaya, Trinidad and Tobago, New Zealand, the Cook Islands (including Niue) and the Trust Territories of Western Samoa, Hong Kong, Papua and New Guinea and Bangladesh.

India follows the basic and customary principles of international law for entering into these treaties, including the principles of comity and res judicata.

## 2 Intra-state variations

**Is there uniformity in the law on the enforcement of foreign judgments among different jurisdictions within the country?**

In India, there are no states that have a separate legislative scheme for recognition and enforcement of foreign judgments. The Code, being the central statute, is uniformly applicable throughout the country.

## 3 Sources of law

**What are the sources of law regarding the enforcement of foreign judgments?**

There are three primary sources of law in relation to enforcement of foreign judgments in India:

- legislation enacted by Parliament (ie, the Code) – section 44A of the Code illustrates a legal fiction whereby a judgment rendered by a superior court of a reciprocating territory (as notified by the Central Government in the official gazette) is enforced in India as if it were a decree passed by Indian district courts. However, a judgment emanating from a non-reciprocating territory cannot be directly enforced in the same manner and a new suit must be filed for its enforcement in which such judgment holds only evidentiary value. Furthermore, it may be noted that both the aforementioned categories of judgments are required to comply with the conditions elucidated in section 13 of the Code which provides for a foreign judgment to be conclusive in nature. However, section 14 of the Code raises a presumption in favour of the competency of jurisdiction of the foreign court rendering the concerned judgment;
- bilateral treaties with the reciprocating countries with regard to recognition and enforcement of foreign judgments to which India is a party; and
- judicial precedents – the landmark case of *Moloji Nar Singh Rao v Shankar Saran* reads that a foreign judgment not emanating from a superior court of a reciprocating territory cannot be executed in India without the filing of a new suit in which the said judgment has only evidentiary value.

## 4 Hague Convention requirements

**To the extent the enforcing country is a signatory of the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, will the court require strict compliance with its provisions before recognising a foreign judgment?**

India is not a signatory to the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

## 5 Limitation periods

**What is the limitation period for enforcement of a foreign judgment? When does it commence to run? In what circumstances would the enforcing court consider the statute of limitations of the foreign jurisdiction?**

As per the provisions of the Code, foreign judgments from reciprocating territories are executable in India as decrees passed by Indian district courts. The Limitation Act 1963 prescribes the time limit for execution of a decree and for filing of a suit in the case of a foreign judgment.

As per the provisions of the statute of limitation, the following time period is prescribed for the execution of decrees:

- three years in the case of a decree granting a mandatory injunction commencing from the date of the decree or where a date is fixed for performance; or
- 12 years for execution of any other decree commencing from the date when the decree becomes enforceable or where the decree directs any payment of money or the delivery of any property to be made at a certain date or in a recurring period, when default in making the payment or delivery in respect of which execution is sought takes place (provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation).

A judgment obtained from a non-reciprocating territory can be enforced by filing a new suit in an Indian court for which a limitation period of three years has been specified under the Limitation Act 1963, commencing from the date of the said foreign judgment.

## 6 Types of enforceable order

**Which remedies ordered by a foreign court are enforceable in your jurisdiction?**

Remedies granted by courts of non-reciprocating territories are not directly enforceable in India and for that purpose a new civil suit has to be filed. Remedies awarded by superior courts of reciprocating territories, however, are enforceable under section 44A of the Code, provided such decrees are money decrees (not including taxes or other charges of a similar nature, in a fine or other penalty or a sum payable under an arbitral proceeding).

Furthermore, judgments granting injunction (mandatory or prohibitory) and judgments passed in default (ie, ex parte foreign judgments) that are final and conclusive in nature, are executable in India.

**7 Competent courts**

**Must cases seeking enforcement of foreign judgments be brought in a particular court?**

As per the provisions of the Code, a judgment from a reciprocating territory seeking enforcement in India must be filed before the district court having jurisdiction to entertain the matter in dispute.

If the judgment or decree has been passed by a court of a non-reciprocating territory, then a suit must be filed before the competent Indian court. Once the Indian court is satisfied that the foreign judgment is binding and conclusive between the parties, the court will pass a judgment and decree in relation to the suit.

**8 Separation of recognition and enforcement**

**To what extent is the process for obtaining judicial recognition of a foreign judgment separate from the process for enforcement?**

Recognition is a precondition for enforcement of foreign judgments, which may be accorded on the basis of international treaties with regard to recognition and enforcement of foreign judgments. Recognition involves acceptance of a judicial decision by courts of a foreign jurisdiction in materially identical terms without rehearing the substance of the original lawsuit. Recognition alone precludes relitigation of the same issues in domestic proceedings, invoking the principle of res judicata. Enforcement, on the other hand, envisages filing an execution petition where a foreign judgment is from a reciprocating territory under section 44A of the Code (in case of fulfilment of conditions), or a suit where a foreign judgment is obtained from a non-reciprocating territory.

**9 Defences**

**Can a defendant raise merits-based defences to liability or to the scope of the award entered in the foreign jurisdiction, or is the defendant limited to more narrow grounds for challenging a foreign judgment?**

As per section 13 of the Code, a judgment cannot be recognised unless it is given on the merits of the case, among other factors. The defendant can therefore raise merits-based defences to liability or to the scope of the award entered in the foreign jurisdiction. For instance, a judgment where the defence is struck off without investigation is held to be not on merits and hence not conclusive. In addition to merits-based defences, a defendant can also challenge the foreign judgment on grounds of competency of jurisdiction; incorrect view of international law or a refusal to recognise applicable Indian law; denial of natural justice; fraud; or if it sustains a claim founded on breach of law enforced in India.

**10 Injunctive relief**

**May a party obtain injunctive relief to prevent foreign judgment enforcement proceedings in your jurisdiction?**

Enforcement of judgments from reciprocating territories being executable in India as domestic decrees cannot be challenged by an injunction. Such enforcement may be challenged, however, by way of an appeal or by an application for stay of execution as laid down under the provisions of the Code.

Judgments from non-reciprocating territories are enforceable by the filing of a new suit; injunctive relief cannot be obtained against the filing of the suit.

**11 Basic requirements for recognition**

**What are the basic mandatory requirements for recognition of a foreign judgment?**

As one of the fundamental requirements of recognition, a foreign judgment must not be inconclusive under the Code. As per section 13 of the Code, a foreign judgment will be inconclusive if it:

- is pronounced by a court that was not of competent jurisdiction;
- is not given on the merits of the case;
- appears to be founded on an incorrect view of international law or a refusal to recognise Indian law (where applicable);
- is in violation of principles of natural justice;
- is obtained by fraud; or
- sustains a claim founded on a breach of Indian law.

The Code presumes in favour of the competency of jurisdiction of the foreign court unless proved to the contrary. The landmark judgment of *Ramanathan Chettyar and Another v Kalimuthu Pillay and Another* elucidates the following circumstances in which the foreign court is said to have competent jurisdiction:

- where the defendant is a subject of the country in which the judgment was passed;
- where the defendant is a resident of the country in which the action was commenced;
- where the defendant has in a previous case filed a suit in the same forum;
- where the defendant has voluntarily appeared; and
- where the defendant has contracted to submit himself to the jurisdiction of the foreign court.

Recognition of a foreign judgment also depends upon the conditions of reciprocity which are the foundation of international treaties governing the recognition and enforcement of foreign judgments in India.

**12 Other factors**

**May other non-mandatory factors for recognition of a foreign judgment be considered and if so what factors?**

The provisions of the Code with regard to recognition and enforcement of foreign judgments are mandatory in nature. There appear to be no other non-mandatory provisions.

**13 Procedural equivalence**

**Is there a requirement that the judicial proceedings where the judgment was entered correspond to due process in your jurisdiction, and if so, how is that requirement evaluated?**

The Code sets out the conditions to make a foreign judgment conclusive and thereby enforceable in India. Such a judgment is required to be in consonance with the principles of natural justice, substantive and procedural laws in India delivered by a court of competent jurisdiction and not obtained by fraud. The foreign court that delivers the judgment must fulfil the above-mentioned conditions to be in conformity with the judicial proceedings of the country.

**14 Personal jurisdiction**

**Will the enforcing court examine whether the court where the judgment was entered had personal jurisdiction over the defendant, and if so, how is that requirement met?**

The Code precludes enforcement of a foreign judgment if it has not been pronounced by a court of competent jurisdiction, while also raising a presumption in favour of competency of jurisdiction of the foreign court. The conditions to determine competency of jurisdiction have been expounded in the case of *Ramanathan Chettyar* (see question 11). Therefore, the enforcing court would examine issues of personal jurisdiction in terms of whether the parties voluntarily submit to the jurisdiction of the court or whether the defendant has, in an earlier case, initiated an action in the same forum.

**15 Subject-matter jurisdiction**

**Will the enforcing court examine whether the court where the judgment was entered had subject-matter jurisdiction over the controversy, and if so, how is that requirement met?**

The Code precludes enforcement of a foreign judgment if it has not been pronounced by a court of competent jurisdiction, while also raising a presumption in favour of competency of jurisdiction of the foreign court. The conditions to determine competency of jurisdiction have been expounded in the case of *Ramanathan Chettyar* (see question 11). Therefore, it is required to examine subject-matter jurisdiction only to the extent of its applicability as per the law of the country in which the decree is passed. Furthermore, it may be required to determine the subject-matter jurisdiction in terms of whether the decree is passed

by a superior court of a reciprocating country, in which case it can be enforced as if it were passed by a domestic district court.

**16 Service**

**Must the defendant have been technically or formally served with notice of the original action in the foreign jurisdiction, or is actual notice sufficient? How much notice is usually considered sufficient?**

A defendant is required to be served with a reasonable notice of the original action. However, there are no definite criteria to determine reasonableness of the notice; it must be deduced simply from the peculiar facts and circumstances of each case. The issuance of prior notice of the institution of the suit to the defendant is an essential component of the principles of natural justice which is to be complied with for a judgment to be conclusive. Execution of the decree cannot be restrained on the grounds of non-compliance with technical and procedural formalities with respect to rendering of the notice to the defendant.

**17 Fairness of foreign jurisdiction**

**Will the court consider the relative inconvenience of the foreign jurisdiction to the defendant as a basis for declining to enforce a foreign judgment?**

The relative inconvenience of the foreign jurisdiction to the defendant would only be considered if the defendant:

- has not submitted him or herself to the jurisdiction of the foreign court;
- has not appeared voluntarily; or
- does not reside in the country where the decree was passed.

If these conditions, as elucidated by the Indian judiciary in the case of *Ramanathan Chettyar*, have not been satisfied or if the defendant has in a previous case filed a suit in the same forum that has granted the decree, then the competency of foreign jurisdiction is upheld and the defendant is precluded from raising the issue of inconvenience of the jurisdiction.

**18 Vitiation by fraud**

**Will the court examine the foreign judgment for allegations of fraud upon the defendant or the court?**

Section 13 of the Code makes a foreign judgment obtained by fraud unenforceable in India. The Supreme Court of India in the case of *Satya v Teja Singh* has interpreted section 13 to the effect that fraud as to the merits of the case may be ignored but fraud as to the jurisdiction of the foreign court delivering the judgment is a vital consideration in the recognition of the decree passed by that foreign court.

**19 Public policy**

**Will the court examine the foreign judgment for consistency with the enforcing jurisdiction's public policy and substantive laws?**

The Code makes a foreign judgment unenforceable in India if it breaches the domestic substantive laws, as has also been upheld in various judicial precedents. In order to be enforceable in India, a foreign judgment must also conform to Indian public policy as elucidated by the Supreme Court of India in the case of *Satya v Teja Singh*. Since it is a settled law that a foreign judgment cannot be enforced in India if it contravenes the domestic substantive laws, it is implicit that it must comply with the public policy of India that forms the constitutional foundation for Indian legislation.

**20 Conflicting decisions**

**What will the court do if the foreign judgment sought to be enforced is in conflict with another final and conclusive judgment involving the same parties or parties in privity?**

The principle of res judicata embodied in the Code prohibits a court of competent jurisdiction from trying a suit on a matter that has been substantially and finally decided in a prior suit between the same parties. Hence, a decree passed by a superior court of a foreign country cannot be enforced in India if it contravenes an earlier conclusive judgment passed by a competent court in a suit between the same parties, as it is enforced as a domestic decree. A foreign judgment passed by a court of a non-reciprocating country can only be enforced by filing a new suit in India where the foreign decree is merely a piece of evidence with persuasive value. In such a case, the judgment debtor can raise the claim of res judicata and forestall the suit at the preliminary stage.

**21 Enforcement against third parties**

**Will a court apply the principles of agency or alter ego to enforce a judgment against a party other than the named judgment debtor?**

Principles of agency or alter ego cannot be applied to enforce a foreign judgment against a person other than the named judgment debtor, or a party who has not been represented in the proceedings, as such enforcement would be contrary to the principles of natural justice and hence inconclusive under the Code. However, Order 21 Rules 46-A to 46-I of the Code deal with the 'garnishee order', which is an order passed by an executing court directing or ordering the debtor of the judgment debtor (ie, the garnishee) to repay the debt directly to the court in favour of the judgment creditor, and not to the judgment debtor. A garnishee order is an order of the court to attach money or goods belonging to the judgment debtor in the hands of a third person.

**22 Alternative dispute resolution**

**What will the court do if the parties had an enforceable agreement to use alternative dispute resolution, and the defendant argues that this requirement was not followed by the party seeking to enforce?**

If the foreign judgment has been fraudulently obtained by withholding the arbitration agreement from the court delivering the judgment, the enforcing court will uphold the objection raised by the defendant and refuse enforcement of the concerned judgment. Furthermore, the Arbitration and Conciliation Act 1996 upholds the right of a party to refer a matter to arbitration as a contractual right and binds a judicial authority to refer for arbitration a matter which is the subject of an arbitration agreement when an objection is raised in that regard by either party. An objection raised in relation to violation of the aforesaid legislation would also preclude the enforcement of the judgment by the Indian courts. These principles are also enumerated in section 13 of the Code.

**23 Favourably treated jurisdictions**

**Are judgments from some foreign jurisdictions given greater deference than judgments from others? If so, why?**

In India, judgments obtained from superior courts of reciprocating territories are directly enforceable under the Code. However, judgments of courts from non-reciprocating territories are enforceable only after filing a new civil suit in India, wherein the foreign judgment simply has evidentiary value. Such deference given by Indian courts to judgments from reciprocating territories owes itself to subsisting bilateral treaties with such territories based on the customary international law principle of pacta sunt servanda (every treaty entered into must be observed).

**24 Alteration of awards**

**Will a court ever recognise only part of a judgment, or alter or limit the damage award?**

A judgment from a superior court in a reciprocating territory may be partially enforced based on the principle of severability as if it were passed by an Indian court. A judgment passed by a court in a non-reciprocating territory may be enforced only by the filing of a new suit in which only that part of the judgment that is in consonance with Indian law will be accorded evidentiary value for the purpose of its recognition and enforcement.

**25 Currency, interest, costs**

**In recognising a foreign judgment, does the court convert the damage award to local currency and take into account such factors as interest and court costs and exchange controls? If interest claims are allowed, which law governs the rate of interest?**

The landmark judgment of the Supreme Court of India in *Forasol v Oil & Natural Gas Commission* has placed reliance on the contract between international parties to determine the currency in which damages are to be paid, in concurrence with the international principle of conflict of laws. It was held that as a practice to be followed by the judiciary, the plaintiff may be allowed to claim the damages either in Indian currency at the conversion rate prevailing on the date the decree or foreign judgment is delivered or in the foreign currency only upon an authorisation by the Foreign Exchange Department in this regard.

**26 Security**

**Is there a right to appeal from a judgment recognising or enforcing a foreign judgment? If so, what procedures, if any, are available to ensure the judgment will be enforceable against the defendant if and when it is affirmed?**

Foreign judgments pronounced by superior courts of reciprocating territories are enforceable in India in the same manner as a judgment from a domestic district court. Therefore, a right to appeal against such judgments exists in the same manner as the right to appeal from the judgment of an Indian court. The judgment, once affirmed, will be executed in accordance with section 51 of the Code, whereby the court may order measures such as attachment and sale of property or attachment without sale, or delivery of property specifically decreed, and in some cases arrest (if needed) in enforcement of a decree.

Judgments emanating from courts of non-reciprocating territories may be enforced by filing a new suit in which the original judgment only has persuasive value. Therefore, issues of enforcement and appeal do not arise in respect of such judgments till they have been affirmed by the domestic civil court.

**27 Enforcement process**

**Once a foreign judgment is recognised, what is the process for enforcing it in your jurisdiction?**

A recognised foreign judgment can be enforced in India in two ways. The Code permits enforcement of a judgment from a superior court of a reciprocating territory in the same manner as a decree passed by a domestic district court. Section 51 of the Code will then apply whereby the court may order measures such as attachment and sale of property or attachment without sale, or delivery of property specifically decreed, and in some cases arrest (if needed) in enforcement of a decree. However, the Code does not permit direct enforcement of judgments from non-reciprocating territories without the filing of a new civil suit in which the said judgment only has evidentiary value.

**28 Pitfalls**

**What are the most common pitfalls in seeking recognition or enforcement of a foreign judgment in your jurisdiction?**

Recognition and enforcement are accorded only to the judgments from the few reciprocating territories with which India has signed reciprocal agreements and not to judgments from any other jurisdiction. Further, foreign judgments that are inconclusive under section 13 of the Code, even if they are from reciprocating territories, would not be enforced in India.

Chadha & Co.
Advocates and Legal Consultants

**Namita Chadha** **nchadha@chadha-co.com**
**Sakshi Arora** **sakshi@chadha-co.com**

S-327
Greater Kailash – II
New Delhi 110 048
India

Tel: +91 11 4383 0000
Fax: +91 11 4163 9295
www.chadha-co.com

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