

RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS AND AWARDS IN INDIA

This document summarizes the key provisions and procedures governing the recognition and enforcement of foreign judgments and arbitration awards in India.

Foreign Judgments

Enforceability:

A foreign judgment can be enforced in India only if it meets the requirements outlined in Section 13 of the Code of Civil Procedure (CPC). This section sets out seven exceptions where a foreign judgment will not be recognized or enforced. These exceptions include:

The judgment was not issued by a court with proper jurisdiction.

The judgment was not based on the merits of the case.

The judgment reflects a misunderstanding of international law or refuses to recognize applicable Indian law.

The proceedings that led to the judgment violated principles of natural justice.

The judgment was obtained through fraud.

The judgment is based on a breach of Indian law.

Reciprocating Territories:

For judgments originating from countries designated as "reciprocating territories" by the Indian government, enforcement is a simpler process. If a

judgment from a reciprocating territory complies with Section 13 of the CPC, it can be directly executed in India as if it were an Indian court judgment.

Section 44A of the CPC outlines the specific procedure for enforcing judgments from reciprocating territories. This involves filing a certified copy of the judgment along with a certificate from the issuing court in a District Court in India. The certificate should detail the extent to which the judgment has been satisfied or adjusted. The District Court will then enforce the judgment as per Indian procedures, unless the judgment falls under one of the exceptions in Section 13.

Non-Reciprocal Territories:

For judgments from countries not designated as reciprocating territories, the enforcement process is more complex. In such cases, the judgment creditor (the party seeking enforcement) cannot directly execute the judgment. Instead, they must file a fresh lawsuit in an Indian court based on the original foreign judgment. This new lawsuit is subject to Indian laws and procedures. The Limitation Act, 1963, specifies a three-year limitation period from the date of the foreign judgment for filing such a lawsuit.

Foreign Arbitration Awards

Governing Legislation:

The enforcement of foreign arbitration awards in India is governed by Part II of the Arbitration and Conciliation Act, 1996 (ACA). This Act incorporates the provisions of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.

Evidence Requirements:

The party seeking to enforce a foreign award must submit specific evidence to the Indian court. This includes:

The original award or a duly authenticated copy.

The original arbitration agreement or a certified copy.

Evidence proving the award's status as a foreign award.

If the documents are in a foreign language, a certified English translation.

Conditions for Enforcement:

The court may refuse to enforce a foreign award if the opposing party demonstrates one or more of the following:

The arbitration agreement was invalid or the parties lacked capacity to enter into it.

The opposing party was not properly notified of the arbitration proceedings.

The award deals with a dispute not covered by the arbitration agreement or exceeds its scope. (However, if separable, the enforceable portion can still be enforced.)

The arbitral tribunal's composition or the arbitration process violated the agreement or applicable law.

The award is not yet binding, has been set aside, or suspended in the country of origin.

Additional Grounds for Refusal:

The court can also refuse enforcement if:

The dispute is not arbitrable under Indian law.

Enforcement would violate India's public policy. (This includes awards obtained through fraud or corruption.)

Enforcement Procedure:

If the court is satisfied that the award meets the enforcement criteria, it will be treated as a decree of the Indian court. This allows for its enforcement using the same procedures as domestic judgments.

Dispute Resolution:

If an application to set aside or suspend the award is pending in the country of origin, the Indian court may adjourn the enforcement decision. It can also order the party seeking enforcement to provide security.

The recognition and enforcement of foreign judgments and awards in India involve specific legal procedures. Understanding the applicable legislation and exceptions is crucial for navigating these processes effectively. This summary provides a general overview, and it's always recommended to consult with a legal professional for specific advice on enforcing a foreign judgment or award in India.