

International **Comparative** Legal Guides



Enforcement of Foreign Judgments **2021**

A practical cross-border insight into the enforcement of foreign judgments

Sixth Edition

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India

1 Country Finder

1.1 Please set out the various regimes applicable to recognising and enforcing judgments in your jurisdiction and the names of the countries to which such special regimes apply.

Applicable Law/ Statutory Regime	Relevant Jurisdiction(s)	Corresponding Section Below
India is not part of any regime or convention on enforcement of foreign judgments.		
Reciprocating Bilateral Agreements: India has executed bilateral treaties with various countries in respect of reciprocal arrangements in enforcement of judgments and decrees.	The United Kingdom, Aden, Fiji, the Republic of Singapore, the Federation of Malaya, Trinidad and Tobago, New Zealand, the Cook Islands (including Niue), the Trust Territories of Western Samoa, Hong Kong, Papua New Guinea, Bangladesh and the United Arab Emirates.	Sections 13 and 44-A of the CPC.
General Regime: Code of Civil Procedure, 1908 (CPC).	All countries with which bilateral agreements have not been executed.	Sections 13 and 44-A of the CPC.

2 General Regime

2.1 Absent any applicable special regime, what is the legal framework under which a foreign judgment would be recognised and enforced in your jurisdiction?

Section 44-A read with Section 13 of the CPC govern the recognition and enforcement of foreign judgments and decrees in India. A foreign judgment which does not fall under the exceptions given in Section 13 of the CPC can be enforced by instituting

execution proceedings under Section 44-A in case of reciprocating territories. If the judgment has not originated from a reciprocating territory, such foreign judgment can be enforced by instituting a civil suit on the judgment.

2.2 What constitutes a 'judgment' capable of recognition and enforcement in your jurisdiction?

Any judgment, which is "conclusive" as to any matter directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title, is capable of recognition and enforcement in India. The law on foreign judgments in India does not specify the types of judgments that are regarded as "conclusive". Rather, Section 13 provides the types of judgments that are not considered as conclusive and, thus, precluded from enforcement. The following judgments are not conclusive:

- where it has not been pronounced by a court of competent jurisdiction;
- where it has not been given on the merits of the case;
- where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of India in cases in which such law is applicable;
- where the proceedings in which the judgment was obtained are opposed to natural justice;
- where it has been obtained by fraud; and
- where it sustains a claim founded on a breach of any law in force in India.

From the various decisions of courts in India, interlocutory orders on costs, jurisdiction, divorce decrees, monetary judgments, mandatory injunctions and anti-suit injunctions are enforceable in India. Even *ex parte* decisions are enforceable if the procedure of the trial has been followed and the judgment holder proved its case even in the absence of a defence.

On the other hand, default judgments, judgments from summary or special procedures, formal judgments and judgments imposing punitive damages and penalties or quasi-judicial orders have been held to be unenforceable in India.

2.3 What requirements (in form and substance) must a foreign judgment satisfy in order to be recognised and enforceable in your jurisdiction?

As noted above, the foreign judgment must be conclusive and must not fall within any of the exceptions set out in Section 13 of the CPC.

2.4 What (if any) connection to the jurisdiction is required for your courts to accept jurisdiction for recognition and enforcement of a foreign judgment?

All courts in India have jurisdiction to recognise and enforce a foreign judgment. 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. For example, the courts having territorial jurisdiction over the place of business or residence of the defendant would have jurisdiction to enforce a foreign judgment against that defendant.

2.5 Is there a difference between recognition and enforcement of judgments? If so, what are the legal effects of recognition and enforcement respectively?

Recognition and enforcement of foreign judgments have different legal effects. Recognition of a foreign judgment is accomplished once the court determines such judgment as conclusive by confirming that it does not fall within the exceptions provided in Section 13 of the CPC as noted above. Recognition of a foreign judgment can have the legal effect of *res judicata* and as a pre-requisite for enforcing the same. It must, however, be enforced by a separate legal process as provided in Section 44A of the CPC for reciprocating territories or by filing a civil suit if the foreign judgment was not issued in a reciprocating territory.

2.6 Briefly explain the procedure for recognising and enforcing a foreign judgment in your jurisdiction.

There is no separate process for recognition of a foreign judgment. The court enforcing the foreign judgment first recognises the foreign judgment and if such judgment does not fall within the exceptions of Section 13 of the CPC, proceeds with its enforcement. The process of enforcement for a reciprocating territory is different from the process for a non-reciprocating territory as follows:

Reciprocating territory: the decree holder must file an application for execution of the foreign judgment or decree in the competent Indian court (Order 21 of the CPC). A certified copy of the decree and a certificate from the superior court of the foreign country stating the amount, if any, that has been satisfied under the decree must also be submitted.

Following the application, the executing court will call on the judgment debtor to show cause against execution of the decree. At this stage, the judgment debtor has the right to object to enforcement on the ground that the judgment offends any of the conditions specified in Section 13 of the CPC.

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:

- Application for execution: the decree holder must file an application for execution of the decree before the competent court under Order 21 of the CPC.
- Notice to show cause: the court will then issue notice to the person against which execution is sought, requiring it to show cause as to why the decree should not be executed.
- No contest: if the person against which the decree is to be executed does not appear or show cause as to why the decree should not be executed, the court will recognise and enforce the foreign decree as if it were a judgment of the Indian court and will allow the decree holder to execute the judgment against the assets of the judgment debtor.

- 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 territory: the judgment holder must file suit on the foreign judgment or decree. Only once the suit is allowed and decreed can it be executed as a domestic decree in terms of Order 21 of the CPC.

2.7 On what grounds can recognition/enforcement of a judgment be challenged? When can such a challenge be made?

Recognition/enforcement of a foreign judgment can be challenged by objecting that the judgment falls within the exceptions set out in Section 13 of the CPC as follows:

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

2.8 What, if any, is the relevant legal framework applicable to recognising and enforcing foreign judgments relating to specific subject matters?

There are no separate legal frameworks applicable to recognising and enforcing foreign judgments relating to specific subject matters.

2.9 What is your court's approach to recognition and enforcement of a foreign judgment when there is: (a) a conflicting local judgment between the parties relating to the same issue; or (b) local proceedings pending between the parties?

In case there exists a conflicting local judgment between the parties relating to the same issue, the principle of *res judicata* shall apply. If a local judgment has already decided an issue, the court may refuse to recognise the later foreign judgment in view of public policy and also on the ground that it contravenes the principles of natural justice or is in breach of any law in force in India.

Even in case local proceedings are pending between the parties, the principle of *res judicata* would apply equally where the issue has already been adjudicated by the foreign judgment.

2.10 What is your court's approach to recognition and enforcement of a foreign judgment when there is a conflicting local law or prior judgment on the same or a similar issue, but between different parties?

As noted above, an Indian court may refuse to recognise a foreign judgment if it is in disregard of Indian law or is in breach of any law in force in India. This is one of the grounds under Section 13 of the CPC, which provides exceptions to recognition of a foreign judgment in India.

Judgments of High Courts and the Supreme Court of India have precedence value on inferior courts. Thus, if there is a prior judgment on the same or similar issue albeit between different parties passed by any High Court or the Supreme Court of India,

it may become a ground to refuse recognition of a foreign judgment by an inferior court or another concurrent High Court.

2.11 What is your court's approach to recognition and enforcement of a foreign judgment that purports to apply the law of your country?

A foreign judgment that purports to apply Indian law would have the same effect as any other foreign judgment applying law of some other country. The only exceptions to recognition of a foreign judgment by an Indian court are enumerated in Section 13 of the CPC.

2.12 Are there any differences in the rules and procedure of recognition and enforcement between the various states/regions/provinces in your country? Please explain.

No, there are no differences in the rules and procedures of recognition and enforcement between the various states in India.

2.13 What is the relevant limitation period to recognise and enforce a foreign judgment?

In *Bank of Baroda v Kotak Mahindra (Civil Appeal no. 2175 of 2020)*, the Hon'ble Supreme Court of India has observed that the limitation period will be based on the statute of limitations that prevails in the country where the judgment has been passed, i.e. *ex causae*. In case the decree holder first takes step to execute the decree in the country where it has been passed and the decree is not fully satisfied, a petition for execution in India can be filed within three years of finalisation of the execution proceedings in the country where judgment has been passed.

For a non-reciprocating territory, a foreign judgment may be enforced by filing a new suit in an Indian court within a period of three years as specified under the Limitation Act, 1963, commencing from the date on which the judgment was passed by the foreign court.

3 Special Enforcement Regimes Applicable to Judgments from Certain Countries

3.1 With reference to each of the specific regimes set out in question 1.1, what requirements (in form and substance) must the judgment satisfy in order to be recognised and enforceable under the respective regime?

As noted above, India is not a party to any specific regime or convention on enforcement of foreign judgments. By way of bilateral agreements, India has reciprocal arrangements with few countries by which a foreign judgment can be directly enforced by way of execution, provided the judgment does not fall within the exceptions mentioned in Section 13 of the CPC as enumerated hereinabove.

3.2 With reference to each of the specific regimes set out in question 1.1, does the regime specify a difference between recognition and enforcement? If so, what is the difference between the legal effect of recognition and enforcement?

Same as above.

3.3 With reference to each of the specific regimes set out in question 1.1, briefly explain the procedure for recognising and enforcing a foreign judgment.

Same as above.

3.4 With reference to each of the specific regimes set out in question 1.1, on what grounds can recognition/enforcement of a judgment be challenged under the special regime? When can such a challenge be made?

Same as above.

4 Enforcement

4.1 Once a foreign judgment is recognised and enforced, what are the general methods of enforcement available to a judgment creditor?

In case the foreign judgment arises from a reciprocating territory, a judgment creditor has same methods available to enforce the judgment as if the foreign judgment had been passed by an Indian court. That is to say, the judgment creditor can directly file an execution petition.

In case the foreign judgment arises from a non-reciprocating territory, a judgment creditor can file a civil suit and once a judgment is passed by an Indian court in favour of the judgment creditor, the judgment creditor can enforce the decree in the same way by filing an execution petition.

By way of execution, the judgment creditor can apply to the court to provide directions to the judgment debtor, instructing it to disclose any assets and liabilities and the court will proceed with the attachment and sale of such assets.

5 Other Matters

5.1 Have there been any noteworthy recent (in the last 12 months) legal developments in your jurisdiction relevant to the recognition and enforcement of foreign judgments? Please provide a brief description.

There has been a recent noteworthy development regarding enforcement of an anti-suit injunction passed by a court in China. In this recent case, *Interdigital Technology v Xiaomi Corporation & Ors.*, the Delhi High Court refused to enforce the anti-suit injunction granted by the Chinese court. In fact, the Delhi High Court granted an "anti anti-suit injunction". In other words, the question before the Delhi High Court was not whether an anti-suit injunction may be enforced. Rather, the Plaintiff, Interdigital Technology, requested to injunct the defendants beforehand from enforcing the anti-suit injunction granted by the Chinese court.

The Court held that in issuing the anti anti-suit injunction, the court in India does not interfere with the sovereign jurisdiction of a foreign judicial authority. It merely injuncts such enforcement, within its territories, of the order passed by the foreign judicial authority, by one of the parties before it, which divests the other party of a constitutional right, available to such other party under the laws of this country.

5.2 Are there any particular tips you would give, or critical issues that you would flag, to clients seeking to recognise and enforce a foreign judgment in your jurisdiction?

In case of reciprocating territories, it is simple to enforce a judgment. However, it is crucial to ensure that the foreign judgment does not fall within any of the exceptions listed in Section 13(a) to (f) of the CPC. For non-reciprocating territories, since a civil suit is to be filed first, there is a possibility that it may take two to three years before the foreign judgment is confirmed by an Indian court. It is important that all relevant documentation is provided by the judgment creditor and a specialised legal counsel is appointed for this purpose.



Manisha Singh is a co-founder and the Managing Partner of the firm. She overviews and supervises all practice groups at the firm. Manisha is known and respected for her deep expertise on prosecution and enforcement of all forms of IP rights and for strategising and managing global patents, trademarks and designs portfolios of large global and domestic companies. Her keen interest in using and deploying the latest technology tools and processes has immensely helped the firm to develop efficient IP service delivery models and to provide best-in-class services. She is also known for her sharp litigation and negotiation skills. She has been involved in and has successfully resolved various trademarks, copyright and design infringement and passing-off cases in short timeframes and in the most cost-efficient manner, applying out-of-box strategies and thinking. She is a member of several international IP associations, such as AIPLA, AIPPI, APAA, ECTA, FICPI, INTA, LESI and MARQUES, and actively participates in the committee works of these organisations.

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