

## HOW TO ENFORCE A JUDGMENT IN INDIA

### (A) What is the applicable law?

In India, the execution or enforcement of a foreign or a domestic decree is governed by the Civil Procedure Court, 1908.

**Domestic**: Execution or enforcement of a domestic decree is governed by order 21 of the Civil Procedure Court, 1908. Once the decree is awarded, the decree holder can apply for execution or enforcement after 90 days of passing of award. The decree may be executed either by the court which passed it, or by the court to which it is sent for execution. The limitation for filing an execution Application under Order 21 of the CPC, must be filed before the competent court within 12 years from the date of passing of the Decree.

**Foreign**: The enforcement of a foreign decree in India is governed by Section 44 A of the Civil Procedure Code, which provides the direct mechanism and procedure for Execution of decrees passed by Courts in reciprocating territory. A reciprocating territory means any country or territory outside India which the Central Government may, by notification in the Official Gazette, declare or notify for the purposes of the said section. As of now, the Government of India has notified a few countries as reciprocal territories, wherein the latest addition to the list is the United Arab Emirates (UAE), which was added by way of an Extraordinary Gazette Notification, issued by the Ministry of Law and Justice in 2020.

Where a certified copy of a decree of any of the superior Courts of any reciprocating territory has been filed in a District Court in India, the decree may be executed as if it had been passed by the said District Court.

For a foreign award to be enforced in India, it is necessary that the judgement, decree or award is “Conclusive” i.e it is passed by examining the merits of the case by a superior court having competent jurisdiction and must satisfy the conditions of section 13 of the CPC to be enforceable in India. A decree can be invalidated under certain circumstances eg. if has not been pronounced by a Court of competent jurisdiction, where it has not been given on the merits of the case, where the proceedings in which the judgment was obtained are opposed to natural justice etc.

Together with the certified copy of the decree shall be filed a certificate from such superior Court stating the extent, if any, to which the decree has been satisfied or adjusted and such certificate shall, for the purposes of proceedings under this section, be conclusive proof of the extent of such satisfaction or adjustment.

For executing the awards of Countries which are not recognised as Reciprocating Territories by the Government, a mechanism for direct execution/enforcement is not established. In such

cases, a suit is to be filed before the appropriate court seeking recognition and then enforcement of the decree passed by a non-reciprocal territory or a separate suit on the original cause of action itself.

**(B) What international conventions and agreements is your jurisdiction a party to?**

India is a signatory to the Geneva Convention on the Execution of Foreign Arbitral Awards, 1927 (“Geneva Convention”) and the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (“New York Convention”). The arbitral award would be enforceable in India, if the courts in India receive an arbitral award from a country, which has signed the Geneva Convention or New York Convention, and the award is made in a territory, which has been notified as a convention country by India.

**(C) What types of judgments in commercial matters are enforceable?**

**Domestic:** All types of judgments in commercial matters including Money judgements, Summary judgements, Ex-Parte Judgements or default judgements are enforceable in India, provided the said judgements are passed on the merits of each case.

**Foreign:** According to Explanation 2 to Section 44 A, CPC, only such foreign judgements are enforceable under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty. Foreign judgments in commercial matters must be final, conclusive and satisfy the conditions of section 13 of the CPC to be enforceable in India.

Foreign arbitral awards are not enforced unless an application for enforcement is made under section 48 of the Arbitration and Conciliation Act, 1996

**General outlines:**

**(D) Are the lawyers and procurator needed? - Yes**

**(E) Is a security for costs needed? No.** Security for costs are generally applicable on Suits only, as per the Civil Laws of India, and not on Execution applications.

**(F) Which court is the competent court? -** The court which passed the order or the court to which it is sent for execution.

**(G) Can the debtor oppose to the enforcement? - Yes**

**Measures to secure the effectiveness of enforcement:**

**(H) Is it possible to obtain an automatic freezing order of bank accounts?** Generally, No.

**(I) How do you secure the effectiveness of an immovable property?**- It is important to identify the owner of the Immovable property. Once the same is established and if it belongs to the Judgement debtor, the same can be attached.

**(J) Is there a Bailiff in your jurisdiction?**- Yes

**(K) Can one freely choose the person of the bailiff?**- No. It is appointed by the Court.

**(L) How much does this cost?** Since bailiff acts on behalf of the court, there are no costs as such, however, the decree holder is directed to pay a nominal diet money to the bailiff for getting the order executed.

**(M) In which field they work?** Attaching properties under orders of a court of law, Receiving the attachment from the court, Visiting the site of the property to be attached, Arranging for publicity by beating of drum or otherwise, Collecting a responsible witnesses of the locality in whose presence the attachment proceedings are conducted or the inventory of attached property is made, if such a provision is made in the court's order.

**(N) How do they work?** The court appointed bailiff accompanies the Decree holder to get the order executed by means of attachment. They also have the power of breaking open locks, if specifically mentioned in the order of attachment by the executing court.

**(O) Is the judgment creditor entitled to interest? If so, on what basis is it calculated?**

No additional interest can be claimed in an execution petition. Interest can only be granted by the trial court (in domestic decrees) or the foreign court (in foreign decrees) and not the executing court in India, however it takes care of the fact that the interest granted till realization of directed amount is fully calculated and paid.

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