

A legal insight into the Enforcement of foreign judgments in Iraq

by Jawad Khalaf - j.khalaf@tamimi.com - Baghdad

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Whether a judgment is foreign can be determined by numerous criterias, among which, is the geographical criterion which is adopted by the Iraqi law in 1928 when it was explicitly detailed in Article 1 of the Enforcement of Foreign Judgments Law (number 30 of 1928) (the "Foreign Enforcement Law").

This states that "a foreign judgment is the judgment issued by a court situated outside Iraq".

Before 1928 foreign judgments were not enforced or recognized because this was seen as an infringement on the sovereignty of the state, an attitude shared by most countries at that time. Views however began to change and other considerations became important, such as the preservation of rights regulated under foreign judgments and the importance of not harming people's commercial interests. As a response to this many countries, including Iraq, began to permit the adoption and enforcement of foreign judgments issued by non-national courts either by virtue of enacted legislation or through many multinational conventions which were entered into for this purpose.

Enforcement under the Foreign Enforcement Law

Article 16 of the Iraqi Civil Code 1951 states that "foreign judgments issued by foreign courts are not subject to enforcement in Iraq unless it was deemed otherwise by a specific Law". In order to understand how foreign judgments are enforced we therefore need to look at the Foreign Enforcement Law which is the main law addressing the issue.

Article 6 of Foreign Enforcement Law details the conditions to be met by a foreign judgment for it to be enforceable in Iraq, and as follows:

1. The judgment is issued by a competent foreign court, which pursuant to article 7 of the Foreign Enforcement Law, the foreign court is competent to decide a lawsuit if:
 - The lawsuit is related to movable or immovable property situated in the foreign country;
 - The lawsuit related to a contract signed in the foreign country or to be executed in the foreign country (in whole or in part);
 - The lawsuit related to works carried out, in full or in part, outside Iraq;
 - The defendant is normally resident in that foreign country or conducts his business mainly from the foreign country at the time the case was filed before the foreign courts; or,
1. The defendant attended the hearing willingly and did not object to the jurisdiction of the foreign court.
2. The defendant is adequately notified;
3. The judgment must relate to a debt or defined amount of money, or civil compensation if the judgment was issued on a criminal claim;
4. The cause of the claim must not be in violation of Iraqi public order;
5. The foreign judgment must attain execution in the foreign country; and,
6. Pursuant to Article 11 of Foreign Enforcement Law, the foreign courts must conform to the

principle of reciprocity of treatment (i.e. the foreign court will recognise Iraqi court judgments).

In the light of the above definition of the foreign judgment and conditions of the enforceability, there are also other conditions which, if met, render the relevant judgment unenforceable inside Iraq. These include:

- That the judgment was issued by virtue of a summary procedure;
- That the judgment was a preliminary decision issued by the court during their consideration of the claim; or,
- The award was issued by Arbitration Board of a non-signatory in Riyadh Convention for judicial Cooperation of 1983.

Process for Enforcing Foreign Judgments

In accordance with Article 3 of the Foreign Enforcement Law, any person wishing to enforce a foreign judgment in Iraq must submit a request to the Court of First Instance. The court to be used should be the competent court closest to the residence of the defendant, or that which is closest to the asset which was the subject to the claim.

The Court of First Instance has the jurisdiction to issue a decision enforcing a foreign judgment. The court can also refuse to enforce a foreign award if to the defendant can prove that the judgment was concluded through deceit or if the foreign court did not abide by the rules of justice.

Arbitral Awards

Iraq is not a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958. Foreign arbitral awards are only enforceable in Iraq if:

1. They were issued in a country that is a signatory to the Riyadh Convention for judicial Cooperation of 1983; or
2. They were issued in a country that has a specific treaty on judicial cooperation with Iraq, such as Egypt and Jordan.

Conclusion

As shown above, judgments issued by foreign courts are not enforceable in Iraq until a claim has been submitted to Iraqi courts requesting the enforcement of the judgment, and the criteria for enforcement has been met. It is the responsibility of the court to check the fulfillment of the applicable conditions, and if they are met the foreign judgment will be enforced.