

Enforcement of Foreign Judgments in Jordan

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In a world in which persons and assets can easily be moved across borders, the concept of the recognition and enforcement of foreign judgments is necessary to make it stricter for losing defendants to avoid liability.

That being the case, in 1952, Jordan issued the Enforcement of Foreign Judgments Law No. (8) of 1952 ("Enforcement of Foreign Judgments Law") under which any judgment given by a court outside of Jordan (including religious courts) in civil proceedings, which orders the payment of a sum of money or passes judgment in respect of moveable property located in Jordan, including awards in arbitral proceedings, may be enforced against a judgment debtor that resides, or has assets, in Jordan.

The process for recognizing and enforcing foreign judgments around the world is generally uniform. Similar to various definitions in other legal systems, Article (2) of the Enforcement of Foreign Judgments Law defines a "foreign judgment" as:

"every judgment given by a court outside the Hashemite Kingdom of Jordan (including religious courts) in civil proceedings and ordering the payment of a sum of money or giving judgment in respect of moveable property or for the settlement of an account, including awards in arbitral proceedings should such awards be deemed enforceable as a court decision under the laws of the country in which it was issued."

Overview of Enforcement Procedures

Foreign judgments may be enforced in Jordan through an application to be submitted before the competent court; the Court of First Instance ("Competent Court") which is not required to re-examine of the merits of the foreign decision.

In summary of the articles of the Enforcement of Foreign Judgments Law, the Competent Court will enforce a foreign judgment if the judgment is final (i.e. not subject to appeal) between the parties; the court that granted the judgment was competent and had jurisdiction over the parties; regular proceedings were followed that allowed the losing party a chance to be heard; no fraud was worked upon the foreign tribunal court; and enforcement will not violate the public policy of the enforcing state.

Although the concept of enforcement of foreign judgments has been used and adopted to avoid resources spent on re-litigation and to harmonize international court decisions and judgments, the Competent Court, by virtue of Article (7) of the Enforcement of Foreign Judgments Law, is afforded discretion to deny foreign judgments if the foreign procedure may be viewed as deficient, or the outcome of the foreign litigation is considered objectionable. By virtue of such reasons, the application of enforcing the foreign award must be disapproved by the Competent Court, sua

sponte. These reasons are:

1. If the tribunal that issued the foreign judgment lacked jurisdiction;
2. If the judgment debtor had not carried his/her business within the jurisdiction of the tribunal that issued the foreign judgment or if he/she was not residing within its jurisdiction and did not voluntarily appear before it and did not submit to its jurisdiction;
3. If the judgment debtor was not served with a notice to attend by the tribunal that issued the foreign judgment and did not appear before the court although he was residing or carrying his/her business within its jurisdiction;
4. If the foreign judgment has been obtained by means fraud;
5. If the judgment debtor established to the satisfaction of the Jordanian courts that the foreign judgment has not yet become final (and conclusive);
6. If the foreign judgment was issued in a cause of action that will not be entertained by Jordanian courts because it is either contradictory to public order or to public morality; or
7. If the foreign judgment was issued by a court that does not allow the enforcement of judgments issued by Jordanian courts.

“Any judgment given by a court outside of Jordan ... may be enforced against a judgment debtor that resides in Jordan...”

Attachment

Subject to Jordanian law, a foreign judgment may be used by the judgment creditor to collect damages. The applicable laws allow for creation of broad range of security interests over a wide range of assets; the legal framework recognizes both possessory and non-possessory pledges and attachments over movable assets and rights in addition to the ability to place a lien over real-estate and properties, garnishing the judgment debtor’s salary, or attaching the judgment debtor’s personal property.

Similar to other counties, the Jordanian legal system entitles the judgment debtor to seize property to ensure satisfaction of a judgment. Article (141) of the Civil Procedures Law No. (24) of the year 1988 as amended (“Civil Procedures Law”) allows for the judgment creditor to request the provisional attachment of assets belonging to the judgment debtor based on the foreign judgment, as it states:

“1- A creditor may apply to the judge of urgent matters or the court based on what it has in the form of evidence and documentation or based on a foreign judgment or arbitral award for the provisional attachment, whether before filing a claim, at the time of filing, or while it is being reviewed, of the debtor’s moveable and immovable assets and assets in the possession of third parties until a judgment is issued in the claim..”

Such request is conditional upon the judgment creditor providing monetary insurance legal guarantee, or bank guarantee by a capacitated guarantor the amount and type of which is

determined by the Court or the Judge of Urgent Matters. Such insurance or guarantee is for the purposes of guaranteeing any harm or damage that may be incurred by the judgment debtor should it be proven that the judgment creditor is not entitled to enforce its foreign judgment.

The decision regarding the application for the provisional attachment is done *ex parte*, whereby the judgment creditor files said application along with its supporting evidence with the Judge of Urgent Matters.

Of course, not every kind of property owned by the judgment debtor is subject to attachment. The Civil Procedures Law provides for exemptions for certain household items, clothing, tools, and other essentials. Additionally, and although the judgment debtor's salary may be subject to attachment, but a certain amount is exempt in order to allow for personal support or for family support.

Execution

Once recognized, a foreign judgment gets enforced in Jordan in the same manner as any other judgment. For example, enforcement can be effected through seizure and sale of real or personal property, garnishment of debts payable to the judgment debtor and, in certain cases, an order for the appointment of an equitable receiver.

Subject to the Execution Law No. (25) of 2007, once a final and conclusive decision is issued by the Competent Court regarding the application of enforcing a foreign judgment, such decision can then be executed against the judgment debtor via the Execution Department.

Under the Jordanian enforcement system, each court has its own enforcement department that is located in each city's Court of First Instance. This department is solely responsible for the enforcement of decisions that have been issued in its jurisdiction.

At this stage, the provisional attachment (if any) may be converted into an executory attachment (following the submission of an application to the Execution Department for such conversion) and the judgment debtor's assets are transferred upon the court's instructions to the judgment creditor. Principles of agency or alter ego would not be applied to permit enforcement against a third party who is not a judgment debtor. A judgment creditor who seeks to impose liability on a third party under principles such as agency or alter ego is required to do so before the foreign tribunal prior to the conclusive issuance of the foreign judgment and to the issuance of the decision of such enforcement by the Competent Court. After a judgment has been issued, the Competent Court has no power to amend or vary the foreign judgment.

In conclusion and in light of the above, it may be observed that in spite of a number of grounds the Competent Court has to refuse the enforcement of a foreign judgment, the process appears reasonable. And although arbitration is generally more favoured in cross-border transactions, especially with the adoption of New York Convention on the Recognition and the Enforcement of Foreign Arbitral Awards by almost 160 countries, the concept of enforcing foreign judgments still gives rise to international litigation proving that its awards, similar to arbitral awards, can similarly be enforced in Jordan.