

Enforcement of Foreign awards in Jordan

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Introduction

The principle of 'sovereignty of the state' has dominated international relations for the better part of the last century. Whilst the ability to enforce the awards issued in a particular state within the boundaries of that state has hardly ever been contested, the enforcement of awards outside the boundaries of that state is far less straightforward; such enforcement was often viewed as an encroachment on the sovereignty of the state in which the award was to be enforced.

However, the development of commercial and legal relationships between members of different countries has lead many countries to review their outlook on the enforcement of foreign awards, and to accept that such awards should be granted the same treatment as domestic awards with regard to their legality and enforceability. Within this framework, we hereby examine the enforcement of foreign awards in Jordan and in accordance with Jordanian laws and regulations.

"Foreign Award"

The first point to take into consideration is that for the purposes of enforcement in Jordan, foreign arbitral awards are granted the same treatment as foreign judicial awards. The Enforcement of Foreign Awards Law No.8 of 1952 defines a "foreign award" as (rough translation) "any award issued by a court outside of the Hashemite Kingdom of Jordan (including Religious courts) relating to civil proceeding and which provides for the payment of monies or in-kind assets or liquidation of accounts and which includes decisions of arbitrators in arbitral proceedings if the award has become, by virtue of the laws of the country which issued the award, enforceable as an award issued by the courts in the aforementioned country."

Conditions for Enforcing the Award

In order to enforce a foreign award in Jordan, the following criteria must be satisfied:

1. For the court that issued the foreign award to have jurisdiction

The court that issued the foreign award should have the competence to do so, including having both the geographic and specific jurisdiction to view the case. Further, the above means that decisions issued by administrative bodies are not enforceable.

In accordance with Article 7 of the aforementioned Law, the award is not enforceable in Jordan in the following circumstances: If the defendant did not have his place of business or was not resident in an area under the jurisdiction of the court; or if the defendant did not attend the court by his own choice and has not acknowledged its jurisdiction.

2. The award should be final, binding and enforceable in the country in which it was issued

For a decision to be final, binding and enforceable, it must not be open to challenge (on whatever grounds and for whatever reason) in the country that issued the decision. We note that the burden of proving that the foreign award is not binding and enforceable lies with the defendant. If the defendant is able to prove the decision does not satisfy the above conditions then the award is not enforceable. Additionally, if the award is contested in the country of issued, the claim to enforce the award before the Jordanian courts is stayed.

3. Notifications

Provided that the issuing court has the jurisdiction to hear the case, Jordanian laws further provides conditions with regard to notifying the defendant; so that Article 7 of the aforementioned Law provides that the Jordanian court can refuse to enforce the award if the defendant was not served notice to attend the court who issued the said ruling, and he did not appear before the said court despite the fact that he has his place of business or is resident in an area under the jurisdiction of the said court. What is crucial here is not whether or not he attended the session, but rather whether or not he was properly notified, and as such, whether he could have attended the session.

4. Fraud

In order to enforce a foreign award in Jordan, the award must not have been obtained fraudulently.

5. Breach of Public Order or Morals

Similarly, and in order to enforce the award, the award must not contravene public order or public morals. The principle of public order and public morals is a relative concept, varying according to time and place and is specific to each country in accordance with its customs, traditions, and legal standards. The criteria to be used here is that of the state in which the award is to be enforced (i.e. Jordan). Please note that in accordance with Court of Cassation Decision No.2549/99, the burden of proving that the award contravenes public order or morals lies with the defendant.

6. Reciprocity

In accordance with the principle of reciprocity of treatment, a Jordanian court may refuse to hear a claim to enforce a foreign award, if the award was issued in a country that does not allow the enforcement of Jordanian awards in its country.

Procedure for Enforcing the Award

Provided that the above conditions are satisfied, in order to enforce a foreign award in Jordan against a Jordanian, a case will be filed with the Court of First Instance in whichever jurisdiction the defendant resides, or if he resides outside Jordan, the Court of First Instance whose jurisdiction includes the assets of the defendant against which the award is to be enforced. The claim should include a certified copy of the award if it is in Arabic, or a certified translated copy of the award if it is in any other language. The defendant is then notified of the same, and the Court, provided that the above decisions are satisfied, issues a judgment to enforce the award in Jordan. The Court's competence in this case is limited to reviewing whether the foreign award satisfies the above conditions. In particular, it cannot review the merits of the award, nor alter it in any manner.