

Enforcement of Foreign Judgments

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Quick reference guide enabling side-by-side comparison of local insights into relevant treaties, conventions and other sources of law; limitation periods; types of enforceable order; competent courts; separation of recognition and enforcement; opposition; jurisdiction of the foreign court; awards and security for appeals; enforcement and pitfalls; and recent trends.

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LEGISLATION

Treaties

Is your country party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments? What is the country's approach to entering into these treaties, and what, if any, amendments or reservations has your country made to such treaties?

Bahrain is a signatory to a number of bilateral and multilateral reciprocal recognition treaties. These include:

- The Hague Convention for the Pacific Settlement of International Disputes 1907;
- The Convention on the Settlement of Investment Disputes between States and Nationals of other States 1965;
- The Riyadh Arab Agreement for Judicial Cooperation 1983 (the Riyadh Convention);
- The Gulf Cooperation Council Convention for the Execution of Judgments, Delegations and Judicial Notifications 1995 (the GGC Convention); and
- various bilateral investment treaties and free trade agreements.

As a general rule, the Bahraini courts will enforce foreign judgments without requiring prior recognition proceedings as long as the judgment originates from a country that is also a signatory to one of the same treaties.

Where reciprocal recognition is not established via treaty between Bahrain and the foreign country, the recognition of foreign judgments is governed by the Bahrain Civil and Commercial Procedures Act 1971 (the CCPA) and foreign judgments may still be recognised following an application to the High Civil Court that the judgment be recognised. This is essentially a fresh claim in which the court may choose to re-examine the issues should the defendant submit a defence.

Law stated - 25 August 2021

Intra-state variations

Is there uniformity in the law on the enforcement of foreign judgments among different jurisdictions within the country?

Yes, all judgments capable of being enforced in accordance with Bahrain law requirements are treated the same for the purpose of enforcement. This is subject to the caveats on the subject matter discussed below.

Law stated - 25 August 2021

Sources of law

What are the sources of law regarding the enforcement of foreign judgments?

In Bahrain, the primary source of law for civil procedure is the Bahrain Civil and Commercial Procedures Act 1971. This governs the treatment of foreign judgments and the limitations on enforcement of foreign judgments.

The recognition of foreign judgments may be subject to principles of Islamic law to the extent that the enforcement of such may risk contradicting Islamic Law provisions in Bahrain.

Law stated - 25 August 2021

Hague Convention requirements

To the extent the enforcing country is a signatory of the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, will the court require strict compliance with its provisions before recognising a foreign judgment?

Bahraini courts will not enforce a foreign judgment unless the foreign court that handed down the judgment is competent in accordance with the international rules of jurisdiction set down in the laws of that country. The court judgment must also be final in accordance with the law of the jurisdiction of the court handing down the judgment. Subject to this, and other public policy requirements, the Bahraini courts would be willing to enforce a foreign judgment.

Law stated - 25 August 2021

BRINGING A CLAIM FOR ENFORCEMENT

Limitation periods

What is the limitation period for enforcement of a foreign judgment? When does it commence to run? In what circumstances would the enforcing court consider the statute of limitations of the foreign jurisdiction?

There are no specific provisions in the Civil and Commercial Procedures Act (CCPA) regarding the limitation periods for enforcement of a foreign judgment.

Under Bahraini law, all civil claims are subject to the general statute of limitations, which prescribes a general limitation period of 15 years (from the date the cause of action arose) unless the law provides for another period. There are shorter limitation periods applicable that vary depending on the nature of the claim.

Any judgment being enforced in Bahrain must be enforceable in accordance with the laws of its originating country or courts.

Law stated - 25 August 2021

Types of enforceable order

Which remedies ordered by a foreign court are enforceable in your jurisdiction?

All judgments must be final to be recognised and enforced by the Bahraini courts. Provided that a certificate of final judgment or enforceability can be obtained from the country in which the judgment was obtained, default and summary judgments can also be recognised and enforced in Bahrain.

Enforcement of an interim judgment will be difficult to enforce in Bahrain as it would not be deemed 'final' for the purposes of article 252 of the CCPA (see below).

As to the remedies ordered in a foreign judgment, provided that these do not constitute a breach of public order or policy in Bahrain, there is no restriction on the type of remedy that the Bahrain courts can enforce.

Once recognised, as per article 256 of the CCPA, a judge of the Execution Court may issue orders and decisions in respect of the following matters:

- placement of attachment on the property of a convicted party or lifting of such attachment;
- sale of property that is under attachment;

- imprisonment of a convicted party;
- payment of amounts collected from the convicted party to the litigant in whose favour the judgment is issued or surrender of the disputed items to the latter party;
- precautionary or provisional measures such as freezing orders; or
- authorising the use of force whenever required and seeking the assistance of the police, if necessary.

Law stated - 25 August 2021

Competent courts

Must cases seeking enforcement of foreign judgments be brought in a particular court?

Applications for recognition of foreign judgments and enforcement orders are made to the High Court. Recognised judgments or enforcement orders are then enforced, together with local court judgments, by the Court of Execution.

Under article 244 of the CCPA: 'The Courts of Execution shall have competence to execute judgments and decisions made by the Civil Courts in their various kinds and degrees. Execution shall take place under the supervision and control of the Judge of the Court of Execution unless the law determines otherwise.'

This applies to foreign judgments being enforced under any applicable treaty or agreement, foreign judgments that have been recognised by the Bahrain courts and foreign judgments confirmed by the Bahraini courts following them being heard as a fresh case.

Law stated - 25 August 2021

Separation of recognition and enforcement

To what extent is the process for obtaining judicial recognition of a foreign judgment separate from the process for enforcement?

The recognition procedure is started by application to the foreign judgment before the Bahraini High Civil Court, requesting that such judgment is recognised, paying the prescribed court fees and requesting an enforcement order.

Once recognised, enforcement of the judgment is then undertaken by the Bahraini Court of Execution. Domestic authorities must execute the foreign judgments as issued (ie, not in-part) provided that they do not constitute a breach of public policy.

Law stated - 25 August 2021

OPPOSITION

Defences

Can a defendant raise merits-based defences to liability or to the scope of the award entered in the foreign jurisdiction, or is the defendant limited to more narrow grounds for challenging a foreign judgment?

If there is reciprocity then, as per articles 259 to 260 of the Civil and Commercial Procedures Act (CCPA), the role of the Execution Court is to enforce the judgments received without entertaining objections by a party to the judgment itself. If there appears to be any element of a judgment that is practically unenforceable, an Execution Court Judge must not offer any opinion as to resolution and instead seek a clarification of the relevant section in writing from the trial Judge. Moreover, the Execution Court judge has the ability to advise the interested parties to approach the relevant court if it

appears to them, in the course of enforcement, that there are certain matters that require resolution.

In short, where there is reciprocity, the merits of the judgment (provided the judgment is final, obtained in accordance with the laws of the originating country, the defendant was properly notified and the content does not constitute a breach of public policy) are not to be revisited by the Bahraini courts.

Where this is not the case is in the event of a party seeking recognition of a judgment issued in a jurisdiction where there is no reciprocity. In this case, a defendant is able to submit a defence on the merits of the matter for the court's consideration.

Law stated - 25 August 2021

Injunctive relief

May a party obtain injunctive relief to prevent foreign judgment enforcement proceedings in your jurisdiction?

Various enforcement or injunctive relief procedures are available against individuals or companies and their assets. These forms of relief are most commonly sought domestically through either the Court of Urgent Matters (at the beginning or during proceedings) or from the Execution Court when enforcing a final judgment.

Law stated - 25 August 2021

REQUIREMENTS FOR RECOGNITION

Basic requirements for recognition

What are the basic mandatory requirements for recognition of a foreign judgment?

Under article 252(3) of the CCPA, no enforcement order of a foreign country judgment may be passed except after ascertaining the following:

- that the Bahrain law courts are not competent to hear the case in respect of which the court judgment or order was passed and that the foreign courts that passed it are competent in accordance with the international rules of jurisdiction set down in the laws thereof.
- that the litigants to the case in respect of which the judgment was issued were duly summoned and properly represented.
- that the court judgment or order has become final in accordance with the law of the court that passed it.
- that the court judgment is in no way inconsistent with any judgment or order previously passed by the Bahrain courts and does not provide for anything that constitutes a breach of public policy.

These issues are considered at the recognition stage before the Bahraini High Civil Courts and prior to enforcement taking place.

Law stated - 25 August 2021

Other factors

May other non-mandatory factors for recognition of a foreign judgment be considered and, if so, what factors?

The treatment of foreign judgments may depend on the country from which the judgment originates and whether a treaty exists between Bahrain and that country.

A party seeking recognition of a foreign judgment in Bahrain must be aware that, while the Civil and Commercial Law of Bahrain is not governed primarily by Islamic law, the courts will consider certain principles of Islamic law as forming part of Bahrain's public policy, and therefore may use article 252(3)(4) (mentioned above) to justify rehearing the case.

Law stated - 25 August 2021

Procedural equivalence

Is there a requirement that the judicial proceedings where the judgment was entered correspond to due process in your jurisdiction and, if so, how is that requirement evaluated?

Other than certain limited provisions for reciprocal recognition and enforcement proceedings, there is no requirement for the due process under a foreign jurisdiction to correspond with that in Bahrain for a judgment to be enforceable.

The due process that must, however, have been complied with in all cases is that litigants to the case in respect of which the judgment was issued were duly summoned and properly represented. Evidence of this will need to be provided to the High Court as part of any application for recognition.

Law stated - 25 August 2021

JURISDICTION OF THE FOREIGN COURT

Personal jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had personal jurisdiction over the defendant and, if so, how is that requirement met?

The Bahraini High Civil Court will evaluate whether the foreign courts that handed down the judgment were competent in accordance with the international rules of jurisdiction set down in the laws of that country. They will not allow a judgment to be enforced before overcoming this hurdle.

Law stated - 25 August 2021

Subject-matter jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had subject-matter jurisdiction over the controversy and, if so, how is that requirement met?

Part of the Bahraini High Civil Court's assessment of competency of the issuing court may involve a subject matter jurisdiction assessment, however, as mentioned, insofar as the judgment overcomes the steps listed in articles 252(3) of the Bahrain Civil and Commercial Procedures Act, the Court will not retry the merits of the case.

Law stated - 25 August 2021

Service

Must the defendant have been technically or formally served with notice of the original action in the foreign jurisdiction, or is actual notice sufficient? How much notice is usually considered sufficient?

The defendant must have been properly served with notice of the original action in accordance with the laws governing service in that country. The Bahraini High Civil Court will evaluate whether the litigants in the case in respect of which the judgment was issued were duly summoned and evidence of such should be presented together with any recognition application.

Law stated - 25 August 2021

Fairness of foreign jurisdiction

Will the court consider the relative inconvenience of the foreign jurisdiction to the defendant as a basis for declining to enforce a foreign judgment?

Provided the Bahrain courts are satisfied that the foreign court, and not the local courts, had jurisdiction to hear the matter, an inconvenience to the defendant vis-à-vis foreign jurisdiction is not a consideration of the Bahrain courts when deciding on a recognition and enforcement application.

Law stated - 25 August 2021

EXAMINATION OF THE FOREIGN JUDGMENT

Vitiation by fraud

Will the court examine the foreign judgment for allegations of fraud upon the defendant or the court?

The Bahrain High Civil Courts will evaluate the foreign judgment on certain terms, including whether it contains anything that constitutes a breach of public policy, and if so, it will not be recognised. Where there is reciprocity, the merits and the arguments made in the judgment are not assessed by the Bahrain courts.

Law stated - 25 August 2021

Public policy

Will the court examine the foreign judgment for consistency with the enforcing jurisdiction's public policy and substantive laws?

The 4th paragraph of article 252(3) allows for the Bahrain High Civil Courts to ensure that the foreign judgment would not be inconsistent with the 'public order or ethics' of Bahrain as well as the principles of Islamic law.

This principle is established in the Gulf Cooperation Council (GCC) and enshrined in some treaties themselves. For example, recognition of a foreign judgment is also capable of rejection under the Riyadh Convention (of which Bahrain is a member) if such recognition would contradict the principles of Islamic law or the constitution and public order of the requested country.

Law stated - 25 August 2021

Conflicting decisions

What will the court do if the foreign judgment sought to be enforced is in conflict with another final and conclusive judgment involving the same parties or parties in privity?

One of the pillars of enforcement by the Bahrain Execution Courts for foreign judgments is they will not enforce any foreign judgment that conflicts with a previous decision or order of a Bahraini court. The party seeking enforcement will effectively have to seek to rehear the case in the Bahraini High Civil Court.

Law stated - 25 August 2021

Enforcement against third parties

Will a court apply the principles of agency or alter ego to enforce a judgment against a party other than the named judgment debtor?

It will be within the discretion of the Court of Execution whether the enforcement against a third party would be effective. However, this may depend upon whether that third party was duly summoned and properly represented.

Law stated - 25 August 2021

Alternative dispute resolution

What will the court do if the parties had an enforceable agreement to use alternative dispute resolution, and the defendant argues that this requirement was not followed by the party seeking to enforce?

Under article 252 of the Bahrain Civil and Commercial Procedures Act 1971 (CCPA), the Bahraini High Civil Court must be satisfied that the foreign courts that passed the judgment were competent to have heard the case and the procedural rules of that jurisdiction were followed, this may include whether the original judgment was heard by the correct means and forum.

Law stated - 25 August 2021

Favourably treated jurisdictions

Are judgments from some foreign jurisdictions given greater deference than judgments from others? If so, why?

The GCC-Convention (article 1) states that each of the GCC countries (of which Bahrain is a member) shall:

Enforcement under the Riyadh Convention (article 32) requires the competent judicial body to establish that the judgment complies with the provisions of the Riyadh Convention and to confirm this in its judgment. The competent body will then order appropriate measures be taken to give the judgment the same enforceable status as it would have had if it had been made by the requested party.

In the absence of a Treaty such as the GCC or Riyadh Conventions, or in the absence of a principle of reciprocity between Bahrain and the jurisdiction in which the foreign judgment originates, a fresh claim must be filed before the competent court requesting that it acknowledges and recognises such judgment – the foreign judgment may be used as evidence in support of this application.

It may be said, therefore, that judgments subject to reciprocal treaties, such as the GCC or Riyadh Conventions, are given greater deference than non-treaty jurisdiction judgments.

Law stated - 25 August 2021

Alteration of awards

Will a court ever recognise only part of a judgment, or alter or limit the damage award?

If the award is recognised, a party must seek enforcement from the Bahraini Court of Execution. Domestic authorities must execute the foreign judgments as issued (ie, not in-part) provided that they do not contradict Shari'ah law and public policy. In essence, if a part of an award is deemed unenforceable due to it being contradictory to public policy, this will not render the entirety of the award unenforceable.

Law stated - 25 August 2021

AWARDS AND SECURITY FOR APPEALS

Currency, interest, costs

In recognising a foreign judgment, does the court convert the damage award to local currency and take into account such factors as interest and court costs and exchange controls? If interest claims are allowed, which law governs the rate of interest?

Judgment amounts are determined by the Court of Execution in the currency of the country in which the judgment originates or its equivalent in Bahraini dinars. Interest is recoverable in Bahrain and the rates of interest are enforced in accordance with the provisions for the same as set out in the judgment.

Law stated - 25 August 2021

Security

Is there a right to appeal from a judgment recognising or enforcing a foreign judgment? If so, what procedures, if any, are available to ensure the judgment will be enforceable against the defendant if and when it is affirmed?

To appeal a foreign judgment that has been enforced by a Bahraini Court of Execution a party must submit an application to the Bahrain High Civil Court.

To protect the recovery position, concurrent applications can be made to freeze a defendant's assets at the time of filing recognition proceedings. Appeals to recognition and enforcement orders do not usually have the effect of staying the enforcement proceedings.

Law stated - 25 August 2021

ENFORCEMENT AND PITFALLS

Enforcement process

Once a foreign judgment is recognised, what is the process for enforcing it in your jurisdiction?

Enforcement of final judgments in Bahrain is carried out predominantly by the Execution Court. As with any jurisdiction, the length of time it takes for a judgment to be settled is almost entirely reliant on the availability of the debtor's assets.

The Bahrain Execution Court is efficient and dependable; with systems in place for timely recovery should assets be

available.

The swiftest recovery option is, of course, liquid assets held by the banks in Bahrain. The Execution Court requests the debtor's cash asset position from the Central Bank of Bahrain and, should there be monies held, the Execution Court will issue an order that an amount up to the value of the judgment be frozen and transferred to the court account. In these circumstances, enforcement can take as little as eight weeks.

If, however, there are no liquid assets available, and property is required to be seized and auctioned, or judicial receivers appointed to manage property (for example, in the case of a business or rental property), the time period for enforcement can extend considerably. There is, of course, no fixed amount of time for recovery in these circumstances and they are dealt with on a case-by-case basis.

The Execution Court fees are governed by Legislative Decree No. (3) of 1972 (as amended) (the Judicial Fees Law). In accordance with this legislation, the Execution Court charges a fee per enforcement order – this means that each application for a freeze or a seizure of assets is charged separately in accordance with the value of the claim.

The length of time it takes for a judgment to be settled is almost entirely reliant on the availability of the debtor's assets and the costs are subject to the Judicial Fees Law on an application basis.

Law stated - 25 August 2021

Pitfalls

What are the most common pitfalls in seeking recognition or enforcement of a foreign judgment in your jurisdiction?

Parties seeking to enforce foreign judgments in Bahrain should be aware of the following:

- parties cannot undertake this either themselves or using their foreign jurisdiction lawyers as there is no right of audience for non-Bahrain qualified lawyers in the Bahrain courts relevant to recognition and enforcement of foreign judgments. Bahraini counsel will need to be engaged to file proceedings and appear at court;
- all original documents will need to be legalised or apostilled (depending on whether the originating country is a party to the Apostille Convention); and
- all documents will need to be translated into Arabic by a court-certified translator.

Law stated - 25 August 2021

UPDATE AND TRENDS

Hot topics

Are there any emerging trends or hot topics in foreign judgment enforcement in your jurisdiction?

In relation to enforcement and recovery, Ministerial Order No. 83 of 2020 Regarding Criteria, Conditions and Rules Governing the Disclosure of Ultimate Beneficial Owner (UBO Regulation) was passed recently in Bahrain. This requires UBO's to be registered and identified on publicly accessible listings.

Article 5 of the UBO Regulation requires any holder of controlling interests (10 per cent or more) in a company to submit an electronic statement confirming the details of the ultimate beneficial owner of that company and related shareholders.

This submission must be made either during the request to register their interest in the commercial register or within three working days from any amendment regarding such interest.

While the collection of this data is not yet complete, it is ongoing and will allow greater visibility over a party's assets for the purpose of enforcement procedures in Bahrain.

In addition to foreign court judgments, Bahrain established its own arbitration institution in 2009, the BCDR-AAA, ranking among the most competitive in the region and in 2015 issued legislative Decree No. 9 of 2015 (the Bahrain Arbitration Law), which adopts the provisions of the United Nations Commission on International Trade Law (UNCITRAL) Model Law (the Model Law) in its entirety. The Arbitration Rules of the BCDR (the BCDR Rules) were developed in partnership with the American Arbitration Association, with the most recent amendment to these rules taking effect in 2017.

Bahrain is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) since 6 April 1988.

Arbitration has gained in popularity and many in this region are now choosing it as a means of dispute resolution over litigation due to its flexibility, confidentiality and speed of enforcement.

Law stated - 25 August 2021

Coronavirus

What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The impact of covid-19 on litigation (and arbitration) in Bahrain was largely positive in that the courts were forced to update their policies on remote hearings and electronic filing. The Supreme Judicial Council and the Ministry of Justice, therefore, issued a set of decisions updating electronic and remote litigation procedures.

Domestic cases are now administrated through an e-filing system and parties can submit their pleadings and memoranda without the need for physical attendance.

The pandemic has shown that, while technology can be challenging, hearings perhaps do not require physical attendance if the litigants are able to attend via video link. This will present future challenges in relation to the security of conducting confidential hearings and perhaps the heightened risk that physical attendance at an enforcement hearing may allow for a judgment debtor to evade the obligations if he or she is not located in the jurisdiction.

Law stated - 25 August 2021

Jurisdictions

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	Bermuda	Trott & Duncan
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	Ireland	Matheson
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	Japan	TMI Associates
	Jordan	Hammouri & Partners
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	Nigeria	Streamsowers & Köhn
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