

Enforcement of Foreign Judgements in Egypt

Introduction

With the overwhelming increase of globalization and international investments nowadays, numerous cross-border disputes are settled in one jurisdiction whilst requiring enforcement in another. When it comes to recognition and enforcement of foreign judgements, each state has its own laws and rules that govern such matters to protect its sovereign prerogatives and public policy. This makes it essential to study the laws and treaties of the jurisdiction that one intends to enforce a judgement in, prior to the selection of the dispute resolution route and jurisdiction. In this article, we will provide for the fundamental provisions that govern the recognition and enforcement of foreign judgements in the Arab Republic of Egypt.

In the first section, we will cover the conventions and treaties that govern the reciprocal recognition and enforcement of foreign judgments in Egypt. In the second and third sections, we will tackle the recognition and enforcement of foreign judgements in accordance with the provisions of Egyptian Law. In the fourth section, we will provide for the fundamental principles of Egyptian public policy concerning the enforcement of foreign judgements in Egypt. In the fifth section, we will discuss whether arbitration clauses governing the dispute of the foreign judgement affect its recognition and enforcement by Egyptian Courts, while in the sixth section we will cover the limitation periods for filing for enforcement of foreign judgements. Finally,

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in the seventh section we will provide an overview of precedents of the Egyptian Court of Cassation regarding the enforcement and non-enforcement of foreign court judgements.

I. Conventions and Bilateral treaties for the reciprocal recognition and enforcement of foreign judgments

While the Egyptian Code of Civil Procedures provides for the requirements for recognition and enforcement of foreign judgements in Egypt, the provisions of the conventions and bilateral treaties that Egypt has entered into, concerning reciprocal recognition and enforcement of foreign judgements shall prevail in the case of any contradiction with the provisions of the Code of Civil Procedures.

The most notable convention on this matter, in the region of the Middle East, is the Riyadh Convention on Judicial Cooperation which was signed by the countries of the League of Arab States in 1983. However, since Egypt has not ratified this convention, the provisions of the Arab League Convention on the Enforcement of Foreign Judgments and Arbitral Awards, which was signed in 1953 (the "**LAS Convention**"), shall apply in its stead.

Under the LAS Convention, Egyptian courts must recognize and enforce the judgements of other member states, and refrain from adjudicating them on the merits, given that certain requirements are met by the foreign judgement. For instance, the judgement must be issued from a competent court of the member state that enjoys jurisdiction over the dispute. Another important requirement is that the parties must be notified properly in accordance with the provisions of the laws of the member state whose court issued the judgement; this requirement also pertains to Egyptian public policy as we will cover in the coming sections. Moreover, Egyptian courts will not enforce any foreign judgements that they find in breach of public policy, or if they find that the same issue was brought before Egyptian courts by the

same parties prior to the submission of the claim before the foreign court. Finally, the foreign judgement must not involve the Egyptian government or its employees, or breach Egypt's obligations under any convention or treaty.

Furthermore, the LAS Convention provides that the enforcement request of the foreign judgement must be accompanied by the following documents:

1. An official exequatur of the judgement certified from the competent authority.
2. The original notice of claim or an official certificate proving the proper notification of the parties, in case of absentia.
3. The original notice of the judgement or an official certificate attesting the proper notification of the judgement to the parties.
4. An official certificate from the competent authority attesting that the judgement is final and binding.

Other than the LAS Convention, Egypt is also a member of numerous treaties with varying states, which govern the reciprocal recognition and enforcement of judgements between them. In the below table, we will provide for all such treaties that Egypt is a member of:

Member(s) of the Treaty	Year of signing
League of Arab States	1953
Algeria	1964
Bahrain	1989
China	1994
France	1982
Germany	1969
Hungary	1996
Iraq, Yemen and Jordan	1989
Italy	1977

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Jordan	1986
Kuwait	2017
Libya	1992
Morocco	1989
Oman	2002
Poland	1992
Romania	1976
Syria	1998
Tunisia	1976
United Arab Emirates	2000

II. Recognition of Foreign Court Judgments under Egyptian Law

Firstly, we need to distinguish between enforcement and recognition of judgements in Egypt. The Egyptian Court of Cassation has introduced a clear distinction between recognition and enforcement of foreign court judgments in Egypt.

As for recognition of foreign court judgments in Egypt, Egyptian courts can recognize the effect of such foreign court judgments as long as the following conditions are satisfied:

1. The foreign court issuing such a judgment enjoys jurisdiction in accordance with its own rules governing international judicial jurisdiction;
2. The foreign court judgment does not violate Egyptian Public Policy;
3. No prior Egyptian court judgment having *res judicata* has been issued between the same parties and with respect to the same subject matter of the dispute.

It should be noted that this case did not reflect upon the reciprocity requirement explicitly, however, this case concerned a Dubai court judgment issued in 1995 and at such time there was no bilateral reciprocal treaty between Egypt and the UAE. Further, Dr. Fouad Riad, the leading Egyptian jurist, in

private international law has taken the position that foreign court judgments should be recognized in Egypt with no need for the reciprocity requirement, as long as such judgments satisfy the above-mentioned conditions.

However, even foreign judgements that do not meet the abovementioned conditions could still affect the outcome of the judgements of Egyptian courts. In this regard, the Egyptian Court of Cassation refused to recognize a foreign judgement, however the court relied upon the foreign judgement as evidence of the occurrence of fraud by one of the parties. On this issue, the Court stated the following:

“Even if the foreign judgement cannot be recognized before Egyptian courts, it can still be used as evidence of the fraud and unauthenticity of the submitted documents”.

III. Enforcement of Foreign Court Judgements under Egyptian Law

In this section, we will cover the procedures and requirements for enforcement of foreign court judgements in accordance with the Egyptian Code of Civil Procedures.

a) The Competent Egyptian Court for requesting the Enforcement of a Foreign Court Judgement:

A party seeking to enforce a foreign court judgement in Egypt shall file a claim before the Court of First Instance of the region where the judgement is to be enforced.

b) Requirements for the Enforcement of Foreign Court Judgements:

For a foreign judgement to be enforced in Egypt, the judgement must comply with certain conditions and requirements. To enforce a foreign judgement, one must obtain an exequatur from the aforementioned competent Egyptian court. However, to obtain such order, the foreign judgement must be issued from a jurisdiction that has judicial reciprocity with Egypt, as we will cover in Sub-section (I). Moreover, there are certain requirements that the foreign judgement must meet to be granted the exequatur, as we will provide for in Sub-section (II).

I. Reciprocity between the Foreign Jurisdiction and the Egyptian Jurisdiction:

A foreign court judgment can only be enforced in Egypt in the case of reciprocity between Egypt and the country where such a foreign court judgment was issued. In 1990, the Egyptian Court of Cassation adopted a wide interpretation of the term “reciprocity” and extended the term to both “diplomatic reciprocity” and “legislative reciprocity.” In this regard, the court defined the term “legislative reciprocity” as reciprocity that is not based upon international conventions and treaties but rather based upon the internal legislation of both countries. In this case, there was a treaty between Egypt and Yemen, however such a treaty was not ratified yet, and therefore did not have any valid effect. Despite that, the court went on and held that there was “legislative reciprocity” between both countries as the Yemeni Code of Civil Procedures mirrored the Egyptian Code of Civil Procedures with respect to the conditions for enforcing foreign court judgments.

However, it must be noted that a 2008 Court of Cassation Judgment seems to have adopted a narrow interpretation of the term “reciprocity” limiting the latter to “diplomatic reciprocity” that is based upon international conventions and treaties between the concerned countries.

II. Exequatur requirements:

In addition to the reciprocity requirement, foreign court judgments can only be enforced in Egypt after being granted an order of enforcement and execution (i.e., an exequatur). Before issuing the exequatur, the judge must ensure that the foreign judgment meets the following requirements:

1. The dispute does not fall within the exclusive jurisdiction of Egyptian Courts;
2. The foreign court issuing such a judgment has jurisdiction in accordance with its own rules;
3. The foreign judgment enjoys the power of *res judicata*;
4. The foreign judgment does not contradict with any previous judgment issued by Egyptian courts; **and**
5. The enforcement of the foreign judgment would not entail any contravention to public policy or morals in Egypt.

IV. The effects of arbitration clauses on the enforcement of foreign judgements in Egypt:

One of the requirements for the enforcement of a foreign judgement in Egypt, is that the judgement is issued by the competent courts that have the jurisdiction to settle the dispute. Whether the existence of an arbitration clause to settle the dispute will affect the enforceability of the foreign judgement or not shall depend upon whether the issuing court has jurisdiction under its own rules. In 1969, the Egyptian Court of Cassation ruled that a Khartoum Supreme Court judgement was enforceable, even though there was an arbitration clause, due to the fact that the court had jurisdiction to rule on the matter in accordance with the Sudanese Law.

V. Limitation periods for enforcement of foreign judgements

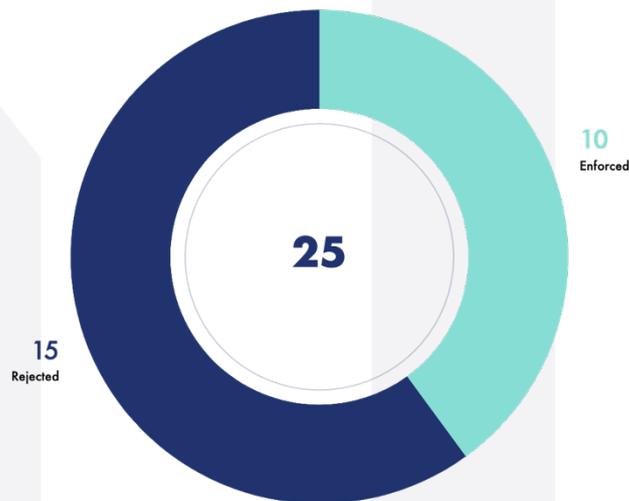
The Egyptian Law does not provide for a limitation period *specifically* for the enforcement of foreign judgements. It does however provide for limitation

period of 15 years for enforcement of judgements in civil matters, and for a period of 10 years for enforcement of judgements in commercial matters.

VI. Empirical Overview on the Precedents of Enforcement of Foreign Court Judgement in Egypt:

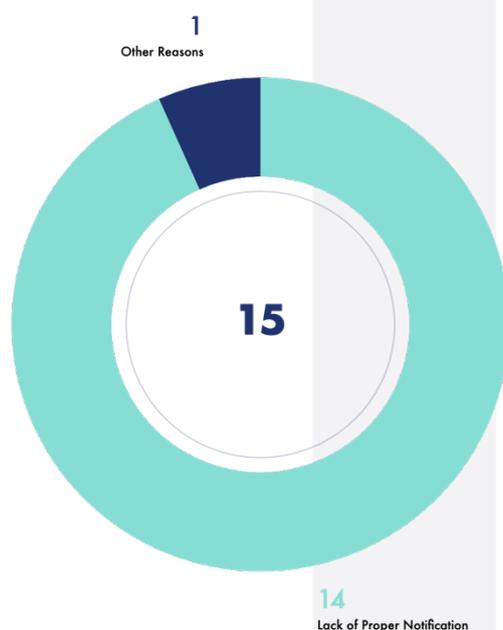
Under this section, we will provide an overview of some of the precedents whereby the Court of Cassation has tackled the issue of recognition and enforcement of foreign court judgements. This section reviews the judgments that were issued by jurisdictions that have reciprocal treatment with Egypt. In this regard, 60% of these foreign judgments were rejected enforcement (15 out of 25 judgments). In turn, 40% of the foreign judgments were enforced (10 out of 25 judgments).

Enforcement of Foreign Judgments



The main reason behind non-enforcement was the lack of proper notification as it pertains to Egyptian public policy; in its absence, the parties are deprived of their right to a fair and just trial. In this respect, 14 out of the 15 rejected foreign judgments were rejected due to the lack of proper notification (93%). The remainder foreign judgment was rejected due to the fact that Egyptian courts considered themselves as the exclusive jurisdiction to adjudicate such a dispute.

Reasons for Non-Enforcement



Conclusion:

In conclusion, the provisions for the recognition and enforcement of foreign court judgements will vary depending upon the relevant treaties between the states. Thus, it is essential that investors be aware of the provisions of such treaties, in addition to the provisions of Egyptian Law and its court precedents, before selecting the jurisdiction for the dispute resolution as it will

immensely affect the eligibility of the enforcement of such a foreign judgment in Egypt.