



GUIDE TO THE ENFORCEMENT  
OF FOREIGN MONEY JUDGMENTS  
AND ARBITRAL AWARDS IN AFRICA

2017/2018



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# LEX AFRICA

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# INTRODUCTION

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# PREFACE

Increased globalisation and international trade have resulted in the increasingly common situation where a party succeeds in obtaining a judgment in one country but is compelled to enforce it in another country where the defendant's assets are located.

Africa is a good example where the latter – day scramble for its assets and investment opportunities has left in its wake the inevitable commercial disputes that are bound to follow.

Against this background courts throughout Africa are increasingly seized with applications to recognize and enforce foreign judgments. So too are they increasingly seized with applications to enforce foreign arbitral awards as more and more African states adopt the UNCITRAL Model Law on international arbitration and accede to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards.

Although many of the requirements for the enforcement of foreign judgments and arbitral awards are common to many African countries, each country has its own unique practices, procedures and pitfalls in the field.

It is with great pleasure that we bring you the first LEX Africa Guide to the Enforcement of Foreign Money Judgments and Arbitral Awards in Africa which we trust you will find informative and practical.

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# ALGERIA



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### ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

#### What Laws Regulate Enforcement

Foreign judgments are enforced in terms of article 605 et seq. of the Algerian Code of Civil Procedure.

#### Treaties

Algeria is not party to any multilateral treaty concerning the enforcement of foreign money judgments. Algeria is however party to a bilateral treaty with France, entered into on 29 July 1965, regarding the issuing of exequaturs on foreign judgments (an exequatur is an order enforcing a foreign judgment and authorizing its execution).

#### Jurisdiction over Foreign Judgment Debtors

There are no specific rules under Algerian law governing the jurisdiction of its courts over foreign judgment debtors. An Algerian court will exercise jurisdiction in enforcement proceedings merely on the basis that the foreign judgment debtor has assets within the jurisdiction of the court.

#### Requirements for Enforcement

Foreign judgments are enforced in terms of the exequatur procedure set out in the Algerian Code of Civil Procedure. A court will issue an exequatur over a foreign judgment if the following conditions are fulfilled:

- The jurisdiction rules in the country where the judgment was handed down must have been observed. In other words, the foreign court must have had jurisdiction over the subject matter of the dispute and over the defendant.
- The judgment must be final in the sense that all appeal remedies in the foreign jurisdiction must have been exhausted. The Algerian courts will require a certificate from the foreign court confirming that there are no appeals pending.
- The foreign judgment must not conflict with Algerian public policy (i.e. mandatory provisions of Algerian law) or sense of morality.

#### Authentication and Translation of Judgment

A plaintiff is required to produce to an Algerian court the judgment certified by the Registrar of the foreign court. If it is in a language other than Arabic, it is required to be translated into Arabic by a certified translator.

#### Procedure

Once an exequatur has been obtained, the judgment creditor may request enforcement of it in the court where the defendant resides or where the defendant has assets to be executed against.

#### How long does Enforcement take

Enforcement of a foreign judgment in Algeria usually takes 3 to 6 months.

#### Judgments in a Foreign Currency

If the judgment is in a foreign currency, it will not be converted into Algerian Dinars. However, transfer of the judgment amount out of Algeria is subject to stringent foreign exchange control rules. Only a limited category of currency may be transferred. Amounts awarded by a court do not fall within the permitted categories. A judgment creditor can however apply to the Central Bank of Algeria for permission to transfer the money out of Algeria. There are no fixed criteria to determine whether such approval will be granted.

#### Interest

The Algerian court is not competent to grant additional interest on the interest awarded under the foreign judgment, as this would be construed as a review of the merits of the judgment, which is impermissible.

#### Merits

An Algerian court is not permitted to review the merits of the case giving rise to the foreign judgment.

#### Limitation

There are no specific limitation periods for the enforcement of a foreign judgment in Algeria. However, once enforced the judgment creditor has 15 years from the date of enforcement within which to execute the judgment against the defendant's assets.

#### Security for Costs

Under Algerian law a defendant opposing enforcement may not require the plaintiff to provide security for its costs, or for any other purpose.



## ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

### Relevant laws and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Algeria is party to the New York Convention which it acceded to without reservation. The New York Convention is given effect to by article 1039 et seq. of the Algerian Code of Civil Procedure.

### Requirements for Enforcement

- The party applying for recognition and enforcement of the foreign award is required to provide proof that the arbitral award exists by providing the court with –
  - The authenticated original award or a certified copy of it;
  - The original agreement to arbitrate or a certified copy of it.
- If the award is in a language other than Arabic it is required to be translated into Arabic by a certified translator.
- The award must not be contrary to Algerian Public Policy.
- The parties to the arbitration agreement under the foreign law must have had capacity to contract and the agreement must be valid under the foreign law.
- The defendant must have received notice of the arbitrator's appointment or of the proceedings and must have been able to present his case.
- The award must deal with disputes which fall within the reference to arbitration.
- The constitution of the arbitration tribunal and the proceedings must be in accordance with the relevant arbitration agreement or with the law of the country in which the arbitration took place.
- The award must be binding on the parties and must not have been set aside or suspended by a competent authority of the country under the governing law of the arbitration.

The Algerian court may refuse to enforce a foreign award if one of the above requirements is not met.

### Procedure

Enforcement is by way of an application to the relevant Algerian court having jurisdiction. The court will require a certified copy of the award issued by the arbitral tribunal.

### Limitation

There is no specific limitation period for the enforcement of foreign arbitral awards. However, under Algerian law once

enforced, the award must be executed within 15 years from the date of enforcement.

### How long will Enforcement take

Enforcement of a foreign arbitral award will take approximately 3 to 6 months.

### Security for Costs

A defendant opposing enforcement cannot require the plaintiff to provide security for its costs or for any other purpose.



# ANGOLA

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### ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

#### What Laws Regulate Enforcement

Foreign judgments are enforced under the Angolan Civil Procedural Code.

#### Treaties

Angola is not party to any treaty concerning the enforcement of foreign money judgments.

#### Jurisdiction over Foreign Judgment Debtors

Under the Angolan Civil Procedural Code, Angolan courts have jurisdiction to enforce a foreign judgment against a foreign defendant if:

- The contract which gave rise to the claim was executed in Angolan territory.
- The plaintiff is Angolan and where the courts of the country of the foreign defendant accord Angolan citizens reciprocal treatment.
- There is a connecting factor between the claim and the Angolan courts, such as the defendant's residence or location of his assets in Angola.
- The foreign defendant has been resident in Angola for more than six months prior to enforcement.

#### Requirements for Enforcement

The following are the requirements for enforcement of foreign money judgments in Angola:

- The judgment must not have been obtained by fraud.
- The foreign judgment must be enforceable in its country of origin.
- The foreign court must have had jurisdiction in accordance with the rules regulating conflicts of jurisdiction under Angolan law.
- The foreign judgment must be final in the sense that it must not be pending appeal before the foreign courts.
- The foreign judgment must not conflict with an earlier Angolan or foreign judgment concerning the same matter between the same parties.
- The foreign judgment must not conflict with Angolan public policy.
- The foreign judgment must not offend the provisions of Angolan private law or Angolan conflict of law rules.

- The defendant must have received notice of the foreign proceedings against him. This entails the formal service of the summons commencing the action under the foreign law.

#### Authentication and Translation of Judgment

Foreign judgments are required to be authenticated at the Angolan Embassy in their country of origin in order to be enforceable in Angola.

Judgments in a foreign language are required to be translated into Portuguese.

#### Procedure

The enforcement procedure is by way of application to the Supreme Court of Angola which will afford the defendant ten days within which to oppose enforcement. Both parties are entitled to appear before the Civil Public Prosecutor and to make submissions. The court will then either grant or refuse enforcement. In certain instances the Supreme Court will examine the foreign judgment to ensure that it does not contravene any Angolan public order principle.

In the Angolan civil courts the Civil Public Prosecutor has specific powers, first, to defend the interests of the State, and, secondly, to defend the rights of minors under the age of 18. The Civil Prosecutor's role is to ensure fair process and prevent the abuse of rights.

#### How long does Enforcement take

Until recently the enforcement procedure took in excess of one year. The Supreme Court however has recently increased the number of judges and the procedure should now be quicker.

#### Judgments in a Foreign Currency

Foreign judgments will usually be awarded in the local currency, Kwanza. However the court may enforce it in the foreign currency. When doing so however the court has the power to convert it to the local currency in order to calculate the amount of Angolan Justice Tax levied on legal proceedings, but only to that extent.





**Interest**

The foreign judgment will be enforced together with any interest owing in terms of the judgment. In addition, interest under Angolan Law will commence to run from the date of enforcement to the date of payment of the judgment amount.

**Merits**

An Angolan Court will not review the merits of the case giving rise to the foreign judgment.

**Limitation**

A plaintiff has 20 years from the date of the judgment within which to enforce it.

**Security for Costs**

The Angolan Court is not empowered to grant security for costs on any basis.

**ENFORCEMENT OF FOREIGN ARBITRAL AWARDS****Relevant laws and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards**

Angola acceded to the New York Convention in August 2016 by Resolution 38/16 passed by the Angolan Parliament. The accession is subject to the reservation that only awards emanating from countries which are party to the Convention, and as specifically designated by Angola, may be enforced. It is not yet clear which foreign states will be so designated. The accession to the convention was ratified by the president in December 2016 and will come into force in Angola 90 days after the instrument of ratification has been deposited with the Secretary General of the United Nations.

Other applicable laws are the Enforcement of Arbitral Awards Law 16/03 (Voluntary Arbitration) and the Civil Procedure Code of Angola.

**Requirements for Enforcement**

Once the Convention is adopted into Angolan domestic law, it is expected that the usual requirements for enforcement under the Convention will apply, namely:

- The plaintiff will be required to provide to the court the original arbitration agreement and the award, or certified copies of them. If these documents are in a language other than Portuguese, they are required to be translated into Portuguese.

- The award must not be contrary to Angolan public policy
- The parties to the arbitration agreement must under the governing law have had capacity to contract and the agreements themselves must be valid under the governing law.
- The defendant must have received notice of the arbitrator's appointment or of the proceedings and must have been able to present his case.
- The award must deal with disputes which fall within the reference to arbitration.
- The constitution of the arbitration tribunal and the proceedings must be in accordance with the relevant arbitration agreement or with the law of the country in which the arbitration took place.
- The award must be binding on the parties and must not have been set aside or suspended by a competent authority of the country in which the award was made.

**Procedure**

Foreign arbitral awards will be enforced after the plaintiff has applied to the court for enforcement in terms of the rules under the Procedural Civil Code. The plaintiff will be required to initiate execution proceedings in the provincial court having jurisdiction. The court will notify the defendant of the enforcement and require him to identify the assets to be sold in order to satisfy the enforced award.

**Limitation**

A plaintiff armed with a foreign arbitral award has 20 years from the date of the granting of the award in which to enforce it in Angola.

**How long will Enforcement take**

It has until recently taken from one to three years to enforce a foreign arbitral award in Angola. The situation will improve however with the establishment of new courts and the appointment of new judges.

**Security for Costs**

The Angolan courts are not empowered to order security for costs.



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### ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

#### What Laws Regulate Enforcement

The enforcement of foreign judgments in Botswana is regulated under the Judgments (International Enforcement) Act [SAP 11.04]

#### Treaties

Botswana is not party to any treaty concerning the enforcement of foreign money judgments.

#### Jurisdiction over Foreign Judgment Debtors

Botswana courts will have jurisdiction in enforcement proceedings against foreign judgment debtors in the following circumstance:

- Where the foreign defendant was resident within the Botswana court's area of jurisdiction at the commencement of the enforcement proceedings;
- Where the defendant submitted to the jurisdiction of the foreign court; or
- Where the plaintiff has attached the assets belonging to the foreign debtor which are located in the jurisdiction of the Botswana court seized with enforcement.

#### Requirements for Enforcement

The following requirements must be fulfilled before a foreign judgment will be enforced in Botswana:

- The foreign court must have had international jurisdiction to decide the case giving rise to the judgment. The foreign court will have had the requisite international jurisdiction where:
  - The defendant submitted to the jurisdiction of the foreign court by voluntarily appearing in the proceedings. Appearance only to secure release of the attached property or to contest the jurisdiction of the foreign court, will not amount to submission; or
  - The judgment debtor counterclaimed in the proceedings in the foreign court; or
  - The judgment debtor at the commencement of the institution of the proceedings in the foreign court, was resident in, or in the case of a body corporate had its principal place of business in the country of the court; or
  - The judgment debtor had an office in the country of the foreign court and the proceedings in that court concerned a transaction effected through or at that office or place.

- The foreign judgment must be final and conclusive. A foreign judgment pending appeal in the foreign jurisdiction will not be final for enforcement purposes.
- Although the Judgments (International Enforcement) Act does not specifically require notice of enforcement to the judgment debtor, it is advisable to ensure that the foreign judgment debtor is given notice of the enforcement proceedings.
- Enforcement of the foreign judgment must not offend Botswana public policy.
- The foreign judgment must not concern the payment of taxes, fines or other penalties.

#### Authentication and Translation of Judgment

The foreign judgment should be authenticated or certified by a judge or Registrar of the originating court.

Judgments which are not in the English language are required to be translated into English by a sworn translator and duly authenticated by an apostille.

#### Procedure

The Plaintiff is required in the first instance to make application to the High Court for registration of the foreign judgment in that court. The registration process entails the following:

- The judgment creditor must apply to the Botswana High Court for recognition of the foreign judgment.
- The court must satisfy itself that the foreign judgment is one to which the Judgments (International Enforcement) Act applies.
- The court must satisfy itself that the foreign judgment is capable of being enforced in Botswana.
- Once the court is so satisfied, a judge will issue an order recognising the foreign judgment and authorising its enforcement and execution.

Once registered, the foreign judgment is deemed to be a judgment of the registering court which will exercise its powers of execution over it as if it were a judgment of the local court.



**How long does Enforcement take**

Enforcement of a foreign judgment will take approximately 18 months.

**Judgments in a Foreign Currency**

Foreign judgments in a foreign currency are required to be converted to the currency of Botswana at the rate of exchange prevailing at the date of the judgment.

**Interest**

The court will enforce any interest awarded under the foreign judgment up to the time of its registration in the Botswana court. In addition the court will enforce any costs awarded by the foreign court.

Where the foreign judgment does not include interest, interest may be claimed at the rate of 10% on the capital amount of the judgment in terms of the Prescribed Rate of Interest Act. Interest will run from the date of the judgment to the time that the judgment is satisfied.

**Merits**

Generally, the Botswana court will deem a final judgment of the foreign court to be conclusive between the parties and will not allow any evidence on the merits of the foreign proceedings.

There have been cases where the Botswana courts have considered the merits but only for the purpose of determining whether the judgment is one which falls within the purview of the Judgments (International Enforcement) Act.

**Limitation**

A judgment creditor has 6 years from the date of the judgment within which to register it for enforcement in Botswana.

**Security for Costs**

The Judgments (International Enforcement) Act empowers the High Court to order the party registering a foreign judgment to pay security for the costs of the defendant in the event that the defendant succeeds in opposing enforcement.

**ENFORCEMENT OF FOREIGN ARBITRAL AWARDS****Relevant laws and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards**

Botswana is party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The convention was adopted without reservation and is given effect to by the Judgments (International Enforcement) Act.

**Requirements for Enforcement**

The requirements for the enforcement of a foreign arbitral award are the same as those required for the enforcement of foreign judgments.

**Procedure**

The procedure is similar to that for enforcement of foreign judgments. The plaintiff must apply to the high court for registration of the foreign award. Once the court is satisfied that the requirements for enforcement have been met, the court will issue an order enforcing it. It will thereafter have the effect of a judgment of the court.

**Limitation**

A plaintiff is required to register the foreign arbitral award in the high court within a period of six years from the date of the award.

**How long will Enforcement take**

Enforcement of a foreign arbitral award will take approximately 18 months.

**Security for Costs**

Botswana courts are empowered to grant a defendant security for his costs in the event that he succeeds in opposing enforcement.



# DEMOCRATIC REPUBLIC OF THE CONGO (DRC)

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### ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

#### What Laws Regulate Enforcement

The enforcement of foreign judgments in the DRC is regulated by statute, namely the law 13/001B of 11 April 2013, which also regulates the DRC courts' system generally.

#### Treaties

The DRC is party to an agreement of cooperation on judicial matters with the Republic of Congo Brazzaville.

#### Jurisdiction over Foreign Judgment Debtors

The geographical location within the DRC of the asset sought to be executed against will alone determine whether a DRC court has jurisdiction to enforce a foreign judgment against assets in the DRC belonging to a foreign judgment debtor. It is not a jurisdictional requirement that the judgment debtor must be resident or present in the DRC.

#### Requirements for Enforcement

Before a foreign judgment can be executed against the assets in the DRC of the judgment debtor, the judgment creditor is first required to obtain an exequatur from the competent DRC court.

An exequatur is an order from the court enforcing a foreign judgment and authorizing its execution.

An exequatur will only be issued if the following requirements are met:

- The foreign judgment must be final in the sense that the judgment debtor must have exhausted all the appeal remedies available in the foreign courts.
- The foreign court must have had jurisdiction over the judgment debtor. The foreign court will have had the requisite jurisdiction over the defendant if
  - The Defendant was domiciled or resident within the foreign court's jurisdiction;
  - The defendant submitted by agreement to the jurisdiction of the foreign court;
  - The foreign judgment concerned a contract the execution of which took place in the jurisdiction of the foreign court;
  - In the case of succession matters, if the estate was administered within its jurisdiction;

- In judgments concerning immovable property, if the property was situated in its jurisdiction.
- The foreign court will not be considered to have the requisite jurisdiction by reason only of the fact that the judgment debtor was a citizen of the country of the foreign court.
- The judgment debtor must have received notice of the proceedings against him in the foreign jurisdiction according to the laws of that foreign jurisdiction.
- Enforcement of the foreign judgment must not offend against the public policy of the DRC.

#### Authentication and Translation of Judgment

Foreign judgments in a language other than French, are required to be translated into French by a translator certified by a competent DRC court.

#### Procedure

The foreign judgment must be lodged with the Judge President of the competent DRC court who will determine whether the requirements for enforcement have been met.

The Judge President has the power to refuse enforcement, to grant full enforcement or only partial enforcement. If enforced, the judgment must be published in the Government Gazette.

#### How long does Enforcement take

Under the prevailing law a judge has a period of 8 days within which to decide whether or not to enforce the foreign judgment. In practice however the enforcement procedure usually takes about 6 months.

#### Judgments in a Foreign Currency

The DRC courts will convert the foreign currency of the foreign judgment to Congolese Francs.

#### Interest

The DRC court will enforce interest amounts awarded in terms of the foreign judgment but will not award any additional interest.



**Merits**

The DRC court will not review the merits of the case which give rise to the foreign judgment, in other words it will not sit as a court of appeal on the foreign judgment.

**Limitation**

There is no time limit imposed on a plaintiff seeking to enforce a foreign judgment in the DRC.

**Security for Costs**

The DRC courts are not empowered to grant any security for a party's costs.

**ENFORCEMENT OF FOREIGN ARBITRAL AWARDS****Relevant laws and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards**

The DRC acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards in February 2015.

The DRC however acceded to the Convention with four reservations namely:

- Reciprocity. The DRC will not recognise arbitral awards emanating from countries that are not party to the New York Convention.
- Only foreign arbitral awards concerning commercial disputes will be recognised and enforced in the DRC.
- The DRC will not recognise foreign arbitral awards made before the accession of the DRC to the New York Convention.
- The DRC will not recognise foreign arbitral awards relating to fixed property located in a foreign country, or relating to any rights relating to that property.

**Requirements for Enforcement**

The requirements for enforcement of a foreign arbitral award are essentially the same as that for enforcement of a foreign judgment.

**Procedure**

Application is made to the Judge President of the competent DRC court who must ensure that the requirements for enforcement have been met. The Judge President has the power to refuse enforcement, grant full enforcement or only partial enforcement

**Limitation**

A plaintiff armed with a foreign arbitral award generally has 30 years within which to enforce it in the DRC. For enforcement of awards relating to fixed property, a party has 15 years within which to enforce a foreign arbitral award in the DRC.

**How long will Enforcement take**

Enforcement of a foreign arbitral award will take about 12 months.

**Security for Costs**

The DRC courts are not empowered to order any security for costs.



# GHANA

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### ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

#### What Laws Regulate Enforcement

Enforcement of foreign money judgments is regulated in Ghana by statute and subsidiary legislation.

Enforcement of foreign judgments is generally governed by the following:

- Courts Act, 1993 (Act 459), which regulates the procedure for the registration and setting aside of foreign judgments;
- Foreign Judgments and Maintenance Orders (Reciprocal Enforcement) Instrument, 1993 (L.I 1575), which lists countries whose judgments are enforceable in Ghana on a reciprocity basis; and
- High Court (Civil Procedure) Rules, 2004 (C.I 47), which in detail sets out the procedure for the enforcement and registration of foreign judgments.

#### Treaties

Ghana is not presently a signatory to any international treaty or convention governing the recognition and enforcement of foreign money judgments. However, the Foreign Judgments and Maintenance Orders (Reciprocal Enforcement) Instrument, 1993 (L.I 1575) lists the countries whose judgments will be enforced in Ghana on the basis of reciprocity. They are: Brazil, France, Israel, Italy, Japan, Lebanon, Senegal, Spain and the United Kingdom.

#### Jurisdiction over Foreign Judgment Debtors

Jurisdiction to enforce any foreign judgment (regardless of whether the defendant is foreign or not) is established on the basis of reciprocity.

The President determines with which countries Ghana will have a reciprocal agreement for the enforcement of foreign judgments. The President also has the power to withdraw any reciprocal treatment particularly in instances where Ghanaian judgments are treated unfavourably in those countries.

Where a foreign judgment cannot be enforced on the basis of reciprocity, an original action may be brought in Ghana for a full retrial to be conducted and the foreign judgment relied on in evidence.

### Requirements for Enforcement

The following are the requirements for enforcement of a foreign money judgment in Ghana:

- The judgment must emanate from a country which has a reciprocal enforcement agreement with Ghana.
- The foreign judgment must be made by a Superior Court not exercising its appellate jurisdiction.
- The foreign judgment must be final and conclusive between the parties. A judgment is final and conclusive if it was delivered by a court of competent jurisdiction as its final judgment on the matter, and is incapable of alteration by that court. A judgment pending appeal in the foreign court is therefore final for enforcement purposes in Ghana.
- A foreign judgment must not have been wholly satisfied and must be capable of enforcement in the foreign country.
- The court of origin must have had jurisdiction over the parties and over the subject matter of the original action. A foreign court will be deemed to have had jurisdiction where the judgment debtor -
  - Was a plaintiff or counter claimant in the proceedings in the original court;
  - Was a defendant in the original action and voluntarily submitted to its jurisdiction;
  - Submitted to the jurisdiction of that court by contract;
  - Was at the time the proceedings were commenced resident in, or in the case of a body corporate, had its principal place of business in that country;
  - Had an office or place of business in that country and the proceedings in that court were in respect of a transaction effected through or at that office or place.
- The defendant must have received proper notice of the proceedings against him. Such notice must have been given in accordance with the law of that country.
- Enforcement of the judgment must not be contrary to Ghanaian public policy. The basic principle of public policy applied in Ghana is that the courts will not lend their aid to a person whose cause of action is based on an immoral or illegal act.



**Authentication and Translation of Judgment**

A foreign judgment must be certified by a notary public or must be authenticated by an affidavit signed by the deponent (who may either be a lawyer or a representative of the judgment creditor) and it must be sworn before a Judge, Magistrate, Registrar, or a Commissioner for Oaths. If the judgment is in a language other than English, it must be translated into English.

**Procedure**

Enforcement is by way of an ex parte application to the High Court to have the foreign judgment registered there. The application must be supported by an affidavit to which the relevant supporting documents must be attached, including the judgment itself and documents evidencing that it is a final judgment from a court of competent jurisdiction.

When leave to register the foreign judgment is granted by the court, the order giving leave to register the judgment must be served personally on the judgment debtor.

A registered judgment has the same force and effect as a judgment of a Ghanaian court, for the purposes of execution.

**How long does Enforcement take**

The length of time to enforce a foreign judgment depends on a number of factors, including the number of matters awaiting hearing before the court. Generally, however, enforcement will not take less than 3 months.

**Judgments in a Foreign Currency**

The currency of the foreign judgment will on enforcement be converted to Ghanaian currency at the rate prevailing at the date the judgment was delivered in its originating court.

**Interest**

A judgment creditor is entitled to interest on the original judgment amount as if the foreign judgment had been a judgment originally given in the Ghanaian court. The Ghanaian courts will award interest up to the time of the application for registration of the judgment but not thereafter.

**Merits**

In enforcement proceedings, a court may not review the merits of the foreign judgment. However, where a judgment is not enforceable on the basis that there is no reciprocity, the creditor may bring fresh proceedings in the Ghanaian court for a retrial of the merits of the matter and the foreign judgment may be relied on in evidence at the hearing.

**Limitation**

A foreign judgment must be registered in the High Court within 6 years after the date of the judgment, or in the case of an appeal, after the last judgment given in the appeal proceedings.

**Security for Costs**

Ghanaian courts are empowered to order the judgment creditor to give security for the costs of the judgment debtor in any proceedings brought by him to set aside the registration of the judgment.

**ENFORCEMENT OF FOREIGN ARBITRAL AWARDS****Relevant laws and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards**

Ghana is party to the New York Convention which is given effect to by the Alternative Dispute Resolution Act, 2010 (Act 798).

Ghana has nominated 26 countries whose awards are enforceable with leave of the court under Act 798. These countries include: Austria, Bulgaria, Cambodia, Central African Republic, Ceylon, Czechoslovakia, Ecuador, Germany, Finland, France, Greece, Hungary, India, Israel, Japan, Madagascar, Morocco, Norway, Poland, Romania, Syria, Thailand, Ukraine, Russia.





### Requirements for Enforcement

The following are the requirements for enforcement of a foreign arbitral award in Ghana:

- The foreign award must have been made in accordance with the laws of its country of origin and must be made by a competent tribunal.
- The foreign arbitral award must emanate from a country where a reciprocal arrangement exists between it and Ghana. However, awards from a state that is “non – reciprocal” at the time the award was given, will be recognised and enforced if at the time of enforcement that state has become a reciprocal state.
- The award must not have been annulled or set aside in its country of origin.
- The defendant must have been given sufficient notice of the arbitration proceedings and must have been able to present his case.
- The defendant must have had legal capacity to contract.
- The award must deal with the issues contained in the reference to arbitration.
- The award must deal only with issues that fell within the reference to arbitration.

If the requirements for enforcement are met, the plaintiff seeking enforcement must produce the original award or a copy authenticated under the laws of the country of origin. The parties seeking enforcement must also provide the court with the original agreement to arbitrate, or a copy authenticated under the governing law. Awards in a foreign language are required to be translated into English.

### Procedure

Enforcement is by way of application to court by motion with a supporting affidavit to which the arbitration agreement and the award, or certified copies of them, are attached.

Once enforced, an award has the same effect as a judgment of the Ghanaian court, for execution purposes.

### Limitation

A foreign arbitral award must be enforced within 6 years after it was made.

### How long will Enforcement take

A number of factors influence the length of time it takes to enforce a foreign arbitral award, including the state of the court roll (number of matters awaiting hearing). However, enforcement will not take less than 3 months.

### Security for Costs

Under Order 24 (1) of the High Court (Civil Procedure) Rules, 2004, a court may order a Ghanaian plaintiff to give security to the defendant for the costs of the proceedings.





# KENYA

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### ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

#### What Laws Regulate Enforcement

The primary legislation regulating the enforcement of foreign judgments in Kenya is The Foreign Judgments (Reciprocal Enforcement) Act.

#### Treaties

Kenya has adopted the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

#### Jurisdiction over Foreign Judgment Debtors

A Kenyan court will exercise jurisdiction in enforcing a foreign judgment against assets in Kenya belonging to a foreign defendant if the country of the judgment's origin affords reciprocal treatment in respect of Kenyan judgments.

If there is no reciprocity between the two countries, the judgment creditor will have to commence a fresh action in Kenya.

#### Requirements for Enforcement

The following are the main requirements for enforcement of a foreign judgment in Kenya:

- The foreign judgment must be final. A foreign judgment is final for enforcement purposes even if an appeal is pending against it in the foreign jurisdiction.
- The foreign court must have had jurisdiction over the defendant. The foreign court would have had jurisdiction if the cause of action arose within its jurisdiction, if the defendant voluntarily submitted to the court's jurisdiction or if he resided there or had a place of business there, or, in the case of a contract, if performance of it took place there.
- The defendant must have been given notice of the court proceedings against him.
- Notice should have been given in conformity with the laws of that foreign court.
- Enforcement must not offend Kenyan public policy. Anything inconsistent with the Kenyan Constitution or Kenyan law will be deemed contrary to Kenyan public policy.

#### Authentication and Translation of Judgment

A foreign judgment is required to be authenticated by a competent authority in its country of origin. If the judgment is in a language other than English, it is required to be translated into English by a sworn translator.

#### Procedure

Enforcement of a foreign judgment is by way of a formal application to the High Court in a prescribed form. The application must be supported by various documents including a certified copy of the judgment and an affidavit confirming that the judgment has not been satisfied.

A certificate under the seal of the foreign judge certifying the status of the court may be required.

#### How long does Enforcement take

Enforcement of a foreign judgment can take between 1 to 2 years, depending on the complexity of the defences to enforcement.

#### Judgments in a Foreign Currency

The Kenyan court may convert the currency of the foreign judgment to Kenyan currency. The court however is not obliged to do so and may enforce a foreign judgment in a foreign currency.

#### Interest

A Kenyan court will enforce the interest portion of a foreign judgment and may award further interest depending on the circumstances of the case.

#### Merits

A Kenyan court may not re-examine the merits of the case giving rise to the foreign judgment unless the judgment is inconsistent with a provision of Kenyan law.

#### Limitation

A judgment creditor has a period of six years from the date of the judgment in which to enforce it in Kenya before it becomes time barred.

#### Security for Costs

Kenyan courts may order a foreign plaintiff to provide security for the defendant's costs in the event that the defendant succeeds in opposing enforcement.



## ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

### Relevant laws and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Kenya is a party to the New York Convention which it adopted with a reciprocity reservation.

### Requirements for Enforcement

The requirements for enforcement include the following:

- The original arbitration agreement and the award, or certified copies of them must be provided. If these documents are in a language other than English, they are required to be translated into English by a sworn translator of the High Court of Kenya.
- The award must not be contrary to Kenyan public policy.
- The parties to the arbitration agreement under the foreign law must have had capacity to contract and the agreements must be valid under the foreign law.
- The defendant must have received notice of the arbitrator's appointment or of the proceedings and must have been able to present his case.
- The award must deal with disputes which fall within the reference to arbitration.
- The constitution of the arbitration tribunal and the proceedings must be in accordance with the relevant arbitration agreement or with the law of the country in which the arbitration took place.
- The award must be binding on the parties and must not have been set aside or suspended by a competent authority of the country in which the award was made.

### Procedure

Enforcement of a foreign arbitral award is by way of an application to the Kenyan High Court. The original arbitration agreement and award, or copies of them, must be provided to the court.

### Limitation

A plaintiff with a foreign arbitral award has a period of 6 years from the date of the award to enforce it in Kenya before enforcement becomes time barred.

### How long will Enforcement take

Enforcement may take between 1 to 2 years depending on the complexity of the defences to enforcement.

### Security for Costs

A Kenyan court has the power to order a plaintiff to provide security for the defendant's costs in the event that the defendant succeeds in opposing enforcement.



# LESOTHO

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### ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

#### What Laws Regulate Enforcement

Enforcement of foreign money judgments in Lesotho is governed by the common law and by statute, the Reciprocal Enforcement of Judgments Proclamation 2 of 1922.

#### Treaties

Lesotho is not party to any treaty regarding the reciprocal enforcement of foreign commercial judgments.

#### Jurisdiction over Foreign Judgment Debtors

The High Court of Lesotho will exercise jurisdiction over a foreign defendant who is resident in its area of jurisdiction. It will also have jurisdiction in enforcement matters if the foreign defendant has assets within its jurisdiction.

#### Requirements for Enforcement

The following are the common law requirements for enforcement:

- The foreign court which granted the judgment must have had jurisdiction in the matter.
- The foreign judgment must be final in the sense that no appeal must be pending before the foreign court.
- Enforcement of the foreign judgment must not be contrary to Lesotho's public policy or the principles of natural justice.
- The foreign judgment must not have been obtained fraudulently.
- The foreign judgment must not have become prescribed under the laws of the foreign court which granted it.
- The defendant must have received proper notice of the proceedings giving rise to the foreign judgment.

The following are the requirements for enforcement under the Reciprocal Enforcement of Judgments Proclamation:

- Any judgment obtained in the High Court of England or Ireland or in the Court of Session in Scotland may be registered in the High Court of Lesotho within 12 months after the date of the granting of the judgment, or such longer period as the High Court may allow.
- If in all the circumstances of the case, the High Court is of the view that it is just and convenient that the judgment should be enforced in Lesotho, the court will order the judgment to be registered in Lesotho, (the Proclamation does not define when it will be "just and convenient" to have the foreign judgment registered.)

- Once registered the judgment has the effect of an order of the High Court of Lesotho and may be executed as such.
- In terms of section 3(2) of the Proclamation, no judgment shall be ordered to be registered if:
  - The original court acted without jurisdiction.
  - The judgment debtor was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, or did not voluntarily appear or otherwise agree to submit to the jurisdiction of that court, or the judgment debtor was not duly served with the process of the original court and did not appear, notwithstanding that he may have agreed to submit to the jurisdiction of that court.
  - The judgment was obtained by fraud.
  - The judgment debtor satisfies the court either that an appeal is pending in the foreign court or that he is entitled and intends to appeal against the judgment.
  - The judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court.

#### Authentication and Translation of Judgment

Judgments emanating from South African courts do not require to be authenticated. Judgments from other countries require authentication in terms of the laws of their origin. Foreign judgments in a foreign language are required to be translated into English by a sworn translator.

#### Procedure

At common law:

- The procedure for enforcement is by way of application to the Lesotho court having jurisdiction over the defendant, or over the defendant's assets.
- Enforcement can also be by way of ordinary summons.

By Proclamation:

- Application under the Proclamation can be made ex parte, or by summons in the High Court of Lesotho.



- The application must be supported by an affidavit setting out the relevant facts of the judgment and the requirements for enforcement, and must be accompanied by an authenticated copy of the judgment.
- The judgment creditor is required to state that to the best of his knowledge and belief, he is entitled to enforce the judgment and that the judgment does not fall within any of the cases in which the judgment debtor is entitled to set aside the registered judgment.

#### **How long does Enforcement take**

The time that it takes to enforce a foreign judgment will depend on a number of factors including whether enforcement is opposed or not. The complexity of the grounds on which it is opposed may also have a bearing on the time that it takes. Generally however it will take a number of months for enforcement.

#### **Judgments in a Foreign Currency**

The court will at the request of the judgment creditor grant judgment in the foreign currency of the judgment or convert it to the local currency.

#### **Interest**

The Lesotho courts will recognise any interest granted by a foreign judgment but will not grant additional interest. The *in duplum* rule will however apply to the interest awarded in terms of the original foreign judgment so that the interest component may not exceed the capital component of the judgment.

#### **Merits**

The Lesotho court will not review the merits of the case giving rise to the foreign judgment.

#### **Limitation**

In terms of the Proclamation an application must be brought within 12 months after the date on which the judgment was granted by the foreign court, or during such extended time as the court may allow.

#### **Security for Costs**

The court has the power to order the plaintiff to provide security for the defendant's costs should the defendant succeed in opposing enforcement.

### **ENFORCEMENT OF FOREIGN ARBITRAL AWARDS**

#### **Relevant laws and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards**

Lesotho has acceded to the New York Convention without reservation.

- The authenticated original award, or a certified copy of it.
- The original agreement to arbitrate, or a certified copy of it.

#### **The following are the requirements for enforcement under Lesotho law:**

- The party applying for recognition and enforcement of the foreign award is required to provide proof that the arbitral award exists by providing the court with:

- If the award is in a language other than English it is required to be translated into English by a certified translator.
- Enforcement of the award must not be contrary to Lesotho Public Policy.
- The parties to the arbitration agreement under the foreign law must have had capacity to contract and the agreement must be valid under the foreign law.
- The defendant must have received notice of the arbitrator's appointment or of the proceedings and must have been able to present his case.
- The award must deal with disputes which fall within the reference to arbitration.
- The constitution of the arbitration tribunal and the proceedings must be in accordance with the relevant arbitration agreement or with the law of the country in which the arbitration took place.
- The award must be binding on the parties and must not have been set aside or suspended by a competent authority of the country under the governing law.

#### **Procedure**

Enforcement is by way of an application to the Lesotho High Court for the foreign award to be recognised.

#### **Limitation**

The Lesotho prescription legislation does not expressly deal with prescription in relation to the enforcement of foreign arbitration awards.

#### **How long will Enforcement take**

An unacceptable delay may be a ground for enforcement to be refused. Moreover, an award more than 30 years old will not be enforced.

#### **Security for Costs**

The court may order a foreign plaintiff to provide security for the defendant who is a Lesotho resident.



# MAURITIUS

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### ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

#### What Laws Regulate Enforcement

The statutes regulating the enforcement of foreign money judgments in Mauritius are as follows:

- The Foreign Judgments (Reciprocal Enforcement) Act 1961;
- The Reciprocal Enforcement of Judgments Act 1923; and
- Article 546 of the Mauritian Code of Civil Procedure (“exequatur” proceedings).

#### Treaties

Mauritius is not party to any treaty regarding the reciprocal enforcement of foreign commercial judgments.

#### Jurisdiction over Foreign Judgment Debtors

The Mauritius court will enforce a foreign judgment in favour of a local plaintiff against the assets of a foreign judgment debtor in Mauritius by virtue of the assets being located in Mauritius alone. Where the applicant seeking enforcement is also a foreigner, however, there must be a link between the matter giving rise to the foreign judgment and Mauritius. For example a breach of a contract subject to the laws of Mauritius, or a judgment in respect of shares held in a Mauritian entity.

#### Requirements for Enforcement

The general requirements for enforcement under the Reciprocal Enforcement of Judgments Act 1923 are as follows:

- The foreign court must have had jurisdiction over the parties and the subject matter of the action.
- The judgment debtor must have appeared voluntary in the proceedings in the foreign court or must have carried on business or have been ordinarily resident there, or the defendant must have submitted to the jurisdiction of that court by contract.
- The defendant must have been served with notice of the proceedings in the foreign court.
- The judgment must not have been obtained by fraud.
- The judgment must be final in the sense that an appeal must not be pending in the foreign jurisdiction.
- Enforcement must not offend Mauritian public policy.

Special enforcement regimes are applicable to judgments emanating from certain countries.

Under the Reciprocal Enforcement of Judgments Act 1923,

a judgment obtained in the Superior Courts of England and Wales will be enforced by the Mauritian Supreme Court if those courts had jurisdiction in terms of their own laws, and if -

- The judgment was not obtained by fraud.
- The judgment debtor was duly served with the process of the original court and appeared either voluntarily in the proceedings or submitted to the jurisdiction of the court by contract.
- The judgment debtor either carried on business or was ordinarily resident within the jurisdiction of the court or voluntarily appeared in the proceedings before the original court, or agreed to submit itself to the jurisdiction of the court.
- The judgment is final and conclusive. In this sense final means unalterable by the court which gave the judgment.

Enforcement under the Foreign Judgments (Reciprocal Enforcement) Act 1961 can be sought in respect of any judgment of a superior court of a foreign country as proclaimed by the President, and if -

- It is final and conclusive between the parties.
  - It is not in respect of taxes, a fine or a penalty.
- However, it should be noted that as yet no such proclamation has been made.

#### Authentication and Translation of Judgment

A foreign judgment must be authenticated by a competent official in the foreign jurisdiction. If it is in a language other than French, it is required to be translated into French by a sworn translator.

#### Procedure

Enforcement is by way of an action before the Supreme Court of Mauritius supported by affidavit requesting the court to make the foreign judgment executory.

An authenticated copy of the foreign judgment must be annexed to the affidavit and, where possible, an authenticated certificate from the foreign court confirming that the judgment has not been appealed must be provided.



Once in receipt of the application, the court will fix a time limit (a maximum of 2 months) within which the defendant may apply to set aside the application for registration.

If no such application is made within the time limit, the judge will order the registration of the judgment and it will be declared executory in Mauritius.

If the defendant is a foreigner, an order authorising initial service outside the jurisdiction of Mauritius together with an order fixing the time in which the judgment debtor should appear before a judge in chambers in Mauritius should be served on the defendant. The judge in chambers will normally fix the period during which the enforcement papers must be served on the defendant and the time in which he must respond. On the return day the court may declare the foreign judgment executory in Mauritius after satisfying itself that the requirements for enforcement have been met.

The procedure for registration of judgments emanating from the United Kingdom under the Reciprocal Enforcement of Judgments Act 1923 is as follows:

- Leave must first be obtained to register the judgment in the Supreme Court of Mauritius. The application is made ex parte or by summons to a judge. If the application is made ex parte, the judge seized with the matter may direct that summons be issued.
- The application must be supported by an affidavit containing the facts concerning the obtaining of the judgment and must be accompanied by an authenticated copy of the judgment. The plaintiff seeking enforcement is required to state that according to the information available and to the best of his belief, he is entitled to enforce the judgment and that the judgment does not fall within any of the cases for which a judgment cannot properly be registered. The affidavit must also contain, as far as the plaintiff can give them, the full name, title, trade or business and usual or last known place of abode or business of the judgment creditor and the judgment debtor.

#### **How long does Enforcement take**

The duration will depend largely on whether the application is opposed or not. Usually, enforcement takes between 6 to 18 months.

#### **Judgments in a Foreign Currency**

The Mauritian Court has the power to enforce a foreign judgment in its foreign currency.

#### **Interest**

The Mauritian courts will enforce the interest portion of a foreign judgment. However, it will not award additional interest as the matter was not heard on the merits before it.

#### **Merits**

A Mauritian court will not re-examine the merits of the case giving rise to the foreign judgment.

#### **Limitation**

Under the Reciprocal Enforcement of Judgments Act, there is a requirement that the application for enforcement must be lodged with the Supreme Court within a period of 12 months from the date of the judgment.

#### **Security for Costs**

A respondent opposing enforcement is entitled to seek security for costs if the applicant is a foreign entity.

### **ENFORCEMENT OF FOREIGN ARBITRAL AWARDS**

#### **Relevant laws and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards**

Mauritius is party to the New York Convention and gives effect to it by the Convention on the Recognition and Enforcement of Foreign Arbitral Awards Act 2001 ("Enforcement Act").

Mauritius acceded to the New York Convention without reservation.

#### **Requirements for Enforcement**

A Mauritian court may enforce a foreign arbitral award if the following requirements are fulfilled:

- The parties to the arbitration agreement must, under the applicable law, have had capacity to contract and the agreement must have been valid under the governing law.
- The defendant must have had proper notice of the appointment of the arbitrator or of the arbitration proceedings, or must otherwise have been able to present his case.
- The award must deal with an issue contemplated by or falling within the terms of reference to the arbitration and it must contain only decisions within the scope of the arbitrator's mandate.
- The composition of the arbitral tribunal must have been in accordance of the arbitration agreement, or failing that in accordance with the governing law.
- The award must have become binding on the parties and must not have been set aside or suspended by a competent authority in the country of origin.
- The plaintiff seeking enforcement must provide the original agreement to arbitrate and the award, or authenticated copies of them.

#### **Procedure**

Enforcement is by way of motion before the Supreme Court of Mauritius supported by affidavit requesting the court to make the foreign award executory.

An authenticated copy of the foreign award must be annexed to the affidavit.

#### **Limitation**

No limitation or prescription period applies to the enforcement of foreign arbitral awards in Mauritius.

#### **How long will Enforcement take**

Depending on whether the application is opposed or not, enforcement can take anywhere between 6 to 18 months

#### **Security for Costs**

A respondent is entitled to claim from an applicant security for costs if such applicant is a foreign entity.





# MOZAMBIQUE

## COUTO, GRAÇA & ASSOCIADOS, LDA



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### ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

#### What Laws Regulate Enforcement

The Mozambican Code of Civil Procedure governs the enforcements of foreign money judgments in Mozambique.

#### Treaties

Mozambique is party to the following treaties concerning the enforcement of foreign money judgments:

- Convention on Conflicts of Laws Relating to the Form of Testamentary Dispositions of 1961.
- Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters of 1971.
- Convention on the Recognition of Divorce and Separation of 1917.
- Convention on International Administration.

#### Jurisdiction over Foreign Judgment Debtors

Jurisdiction is obtained in matters concerning the enforcement of foreign judgments against foreign defendants under Section 65 of the Mozambican Procedure Code.

Under the Code, a Mozambican court will exercise jurisdiction in enforcement proceedings against a foreign judgment debtor if the foreign court would have exercised jurisdiction in similar circumstances. In addition, there has to be a connecting factor between the case giving rise to the foreign judgment and Mozambique. For example, if the matter concerned immovable property, the property must have been situated in Mozambique, or if it concerned a contract the contract must have been concluded in Mozambique, or its breach must have occurred there.

#### Requirements for Enforcement

The following requirements must be met before a foreign judgment will be enforced in Mozambique:

- The judgment must be final and conclusive in the sense that it must be res judicata between the parties and no appeal must be pending in the foreign jurisdiction.
- The foreign court must have had international competence (jurisdiction) as recognised under Mozambican law.
- Proper notice must have been given to the defendant in the foreign proceedings, unless the cause of action is one which does not require notice under Mozambican law. Where notice is required, any notice of the proceedings that

is consistent with international treaties and conventions will suffice.

- Enforcement should not be contrary to Mozambican public policy and must not offend Mozambican law.

#### Authentication and Translation of Judgment

A foreign judgment is required to be authenticated by the foreign court, which must also issue a certificate confirming that the judgment is final and res judicata.

Judgments in a language other than Portuguese must be translated into Portuguese by a sworn translator and certified by the Mozambican High Commissioner in the foreign country.

#### Procedure

Enforcement is by way of an application to the Supreme Court of Mozambique.

The plaintiff is required to pay initial court fees of 0.6% of the value of the judgment debt. If the judgment is in a foreign currency it is converted to local meticaís for the purpose of the calculation.

The defendant may give notice of intention to oppose enforcement proceedings within 10 calendar days of receipt of the application and must file a statement of defence within 8 days after notice of intention to oppose is given.

Once the defendant has lodged a reply in defence, the parties are given a further opportunity to make written submissions to the court.

#### How long does Enforcement take

Enforcement of a foreign money judgment in Mozambique can take between 1 to 3 years, depending on the complexity of the defences and whether there are any appeals.

#### Judgments in a Foreign Currency

The exchange control laws of Mozambique require the foreign judgment to be converted to the local currency, meticaís, for the purpose of enforcement.



**Interest**

The Mozambique Supreme Court is obliged to enforce the interest component of foreign judgments. However it is not empowered to grant additional interest from the date of enforcement to the date of payment.

**Merits**

A Mozambique court may not review the merits of the case giving rise to the foreign judgment.

**Limitation**

A plaintiff armed with a foreign judgment has 20 years within which to enforce it in Mozambique.

**Security for Costs**

The Mozambique Supreme Court does not have the power to order the plaintiff to provide security for the defendant's costs in the event that the defendant succeeds in opposing enforcement.

**ENFORCEMENT OF FOREIGN ARBITRAL AWARDS****Relevant laws and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards**

Mozambique is party to the New York Convention but has reserved the right to enforce foreign awards on the basis of reciprocity. Mozambique acceded to the New York Convention in June 1998 and it is given effect to by the Code of Civil Procedure and Law n 11/99, 8 July (Arbitration Law).

**Requirements for Enforcement**

The following are the requirements for the enforcement of a foreign arbitral award in Mozambique:

- The plaintiff is required to provide to the court the original arbitration agreement and the award with a res judicata confirmation, or certified copies of them. If these documents are in a language other than Portuguese, they are required to be translated into Portuguese by a sworn translator approved by the high commissioner of Mozambique in the country of origin of the foreign award.
- The award must not be contrary to Mozambican public policy.
- The parties to the arbitration agreement under the foreign law must have had capacity to contract and the agreements must be valid under the foreign law.
- The defendant must have received notice of the arbitrator's appointment or of the proceedings and must have been able to present his case.
- The award must deal with disputes which fall within the reference to arbitration.
- The constitution of the arbitration tribunal and the proceedings must be in accordance with the relevant arbitration agreement or with the law of the country in which the arbitration took place.
- The award must be binding on the parties and must not have been set aside or suspended by a competent authority of the country in which the award was made.

**Procedure**

Enforcement is by way of an application to the Supreme Court of Mozambique by the judgment creditor requesting that the judgment be recognised and enforced.

The plaintiff is required to pay initial court fees of 0.6% of the value of the award. If the judgment is in a foreign currency it is converted to local meticaís for the purpose of the calculation. The defendant may give notice of intention to oppose enforcement proceedings within 10 calendar days of receipt of the application and must file a statement of defence within 8 days after notice of intention to oppose is given.

Once the defendant has lodged a reply in defence, the parties are given a further opportunity to make written submissions to the court.

**Limitation**

A party armed with a foreign arbitral award has 20 years within which to enforce it in Mozambique before it becomes time barred.

**How long will Enforcement take**

Enforcement, depending on the complexity of the matter, may take between 1 to 3 years.

**Security for Costs**

The Mozambique Supreme Court is not empowered to order the plaintiff to provide security for the costs of the defendant in the event that the defendant is successful in opposing the enforcement.





# NAMIBIA

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### ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

#### What Laws Regulate Enforcement

Enforcement of foreign judgments in Namibia is generally regulated by the common law. The Enforcement of Foreign Civil Judgments Act 28 of 1994 ("the Enforcement Act") applies only to judgments emanating from designated countries. At this stage only South Africa is listed as a designated country under the Enforcement Act. For other countries the common law will apply.

#### Treaties

Namibia is not party to any treaty concerning the enforcement of foreign money judgments.

#### Jurisdiction over Foreign Judgment Debtors

Under the Enforcement Act and at common law, a court (in the case of the Enforcement Act, a Magistrate's Court) will have jurisdiction over a foreign judgment debtor in enforcement proceedings if:

- The judgment debtor resides, carries on business or is employed in Namibia; or
- The Judgment debtor's property or assets are situated in Namibia.

Generally, the attachment of property to found jurisdiction is not required in the Republic of Namibia.

#### Requirements for Enforcement

A Namibian court will enforce a foreign judgment in terms of the Enforcement Act if the following documents are prepared and submitted to the Clerk of the Magistrates Court:

- A copy of the foreign judgment certified by an officer of the court to be a true copy.
- An affidavit on behalf of the judgment creditor who must confirm:
  - The amount of interest due, the appropriate rate of interest and how the amount of interest has been calculated; and
  - Whether the judgment debtor has made any payments since judgment was granted and if so, whether such amount has been deducted from the capital amount of the judgment debt or from the interest or costs.
- The appropriate notice which was given to the judgment debtor drawn in terms of the Magistrates Court Rules.

- An allocatur for any taxed legal costs awarded by the foreign court.

Under the common law, a foreign money judgment may be enforced by way of summons or motion proceedings if the following requirements are met–

- The foreign court must have had international competence. This means that the foreign court must have had jurisdiction over the defendant in terms of its own laws according to the principles of Namibian laws. For example, the defendant must have been resident or present in the foreign jurisdiction at the commencement of the action, or must have submitted to its jurisdiction by contract or by conduct (for example by defending the merits of the action in that court).
- The judgment must be final and conclusive and must not have become superannuated. A judgment is deemed to be final if it is unalterable by the court which gave it. This means that judgments pending appeal in the foreign jurisdiction are final for the purpose of enforcement. In such instances the Namibian court has a discretion to enforce it.
- The judgment must not be contrary to Namibian public policy (which includes the rules of natural justice).
- The judgment must not have been obtained by fraud.
- The judgment must not involve the enforcement of a penal or revenue law of the foreign state.

#### Authentication and Translation of Judgment

Where proceedings based on a foreign judgment are instituted in Namibia and the judgment is in a language other than English, the judgment must be translated and authenticated by a competent authority in its country of origin.

#### Procedure

Foreign Judgments emanating from South Africa are enforced under the Enforcement Act which provides a simplified procedure entailing registration of the judgment in the Magistrates Courts of Namibia. The procedure requires the documents listed under the Requirements for Enforcement above to be lodged with the Clerk of the Magistrates Court for the issuing of the required notice to be given to the judgment debtor.



Once the foreign judgment is registered, the issued notice is dispatched to the relevant Messenger of Court for service on the judgment debtor.

The judgment creditor may proceed to execute the registered Judgment after the 21 days in terms of the notice has lapsed.

Enforcement of foreign judgments emanating from other countries are recognised and enforced by way of application or action proceedings in the Namibian High Court.

#### **How long does Enforcement take**

The registration of the foreign judgment in the Magistrates Court will take approximately 30 days.

The recognition and enforcement proceedings in the High Court will take approximately 30 days, if undefended.

Where a judgment debtor seeks to set aside the registered judgment in the Magistrates court or seeks to oppose or defend the High Court proceeding for enforcement the process will take between 3 to 12 months.

#### **Judgments in a Foreign Currency**

Namibian courts are empowered to enforce judgments in their foreign currency. A foreign judgment may therefore be satisfied in Namibia by payment in the foreign currency or by payment of its equivalent in Namibian dollars.

#### **Interest**

A Namibian Court will enforce the interest awarded by the foreign court.

A foreign judgment registered in the Magistrates Court will bear interest from the date of registration of the judgment until the date of payment, calculated at the rate prescribed under the Prescribed Rate of Interest Act, or at the rate determined by the court of the designated country which granted such foreign judgment, whichever rate is the lower.

For foreign judgments from countries other than South Africa, the provisions of the Prescribed Rate of Interest Act will apply. The Act provides that every judgment debt shall bear interest from the day on which the judgment debt is payable, unless the judgment provides otherwise.

Although the definition of 'judgment debt' does not specifically refer to foreign judgments, it may be assumed that the Act also applies to foreign judgments, unless the court directs otherwise.

#### **Merits**

A Namibian court may not reassess the merits of the case giving rise to the foreign judgment

#### **Limitation**

A plaintiff seeking to enforce a foreign judgment will have a period of 30 years from the date of the granting of the judgment in which to do so before enforcement becomes time barred.

#### **Security for Costs**

A Namibian court is empowered to order a plaintiff seeking enforcement to provide security for the defendant's costs in the event that the defendant succeeds in opposing enforcement.

### **ENFORCEMENT OF FOREIGN ARBITRAL AWARDS**

#### **Relevant laws and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards**

Namibia is not party to the New York Convention. Foreign awards are enforced under the common law.

#### **Requirements for Enforcement**

The following are the requirements for the enforcement of a foreign arbitral award in Namibia:

- The application for enforcement must comply with all the procedural formalities of the Rules of the High Court of Namibia 2014.
- The foreign award must relate to companies or events that took place in Namibia.
- The foreign award must comply with the doctrine of effectiveness which means that the award must be capable of being enforced and given effect to in Namibia.
- The arbitrator must not have exceeded his powers agreed to by the parties to the arbitration.
- The award must have been validly obtained in accordance with the law governing the arbitration.
- Enforcement of the foreign arbitral award should not be contrary to Namibian public policy.
- The foreign arbitral award must not have been obtained fraudulently.
- The principles of natural justice should have been followed in that the defendant was duly notified of the arbitration proceedings.

#### **Procedure**

Enforcement is by way of application to the High Court on notice of motion with a founding affidavit setting out the relief applied for and the grounds on which the award should be enforced.

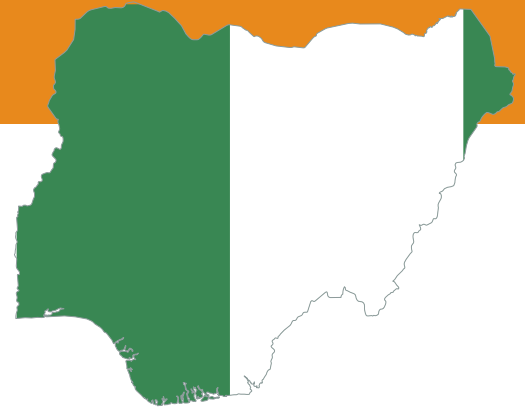
#### **Limitation**

A foreign judgment is regarded as an ordinary debt under Namibian prescription law. As such, it must be enforced in Namibia within three years of having been granted.



# NIGERIA

## GIWA-OSAGIE & COMPANY



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### ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

#### What Laws Regulate Enforcement

The primary sources of law regulating the enforcement of foreign judgments in Nigeria are: Foreign Judgments (Reciprocal Enforcement) Act (Cap F35, Laws of the Federation of Nigeria, 2004), the common law, The Sheriffs Civil Processes Act and the various Civil Procedure Rules of the courts before which the registration and enforcement is sought.

Judgments from countries listed in the Reciprocal Enforcement Act which accord reciprocal treatment to Nigerian judgments (generally countries of The Commonwealth) may be enforced under the Act by registration of the judgment in the Nigerian court.

#### Treaties

Nigeria is not a party to any bilateral or multilateral treaty for the reciprocal recognition and enforcement of foreign money judgments.

#### Jurisdiction over Foreign Judgment Debtors

The superior courts of Nigeria (The High Court of a State, or of the Federal Capital Territory, Abuja or the Federal High Court) will have jurisdiction over a foreign judgment debtor for enforcement of a foreign judgment if the foreign judgment debtor has assets in Nigeria.

#### Requirements for Enforcement

A Nigerian court will enforce a foreign judgment if the following requirements are met:

- The judgment must be a judgment of a superior court in the foreign country.
- The judgment must be final and conclusive between the parties. A judgment pending appeal in the foreign jurisdiction is not final for enforcement purposes in Nigeria.
- The judgment must be for a fixed monetary amount.
- The judgment must not have been obtained by fraud.
- The foreign court must have had personal jurisdiction over the defendant. The foreign court is deemed to have had jurisdiction over the defendant for enforcement purposes in the following circumstances:
  - If the judgment debtor, being a defendant in the original court, submitted to the jurisdiction of the foreign Court by voluntarily appearing in the proceedings otherwise than

for the purpose of protecting, or obtaining the release of property seized, or threatened with seizure, in the proceedings or of contesting the jurisdiction of that court; or

- If the judgment debtor was the plaintiff, or counterclaimed in, the proceedings in the original court; or
  - If the judgment debtor, before the commencement of the proceedings had agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of the country of that court; or
  - If the judgment debtor was at the time when the proceedings were instituted resident in, or in the case of a body corporate had its principal place of business, in the country of that court;
  - If the judgment debtor had an office or principal place of business in the country of that court and the proceedings in that court were in respect of a transaction effected through that office or place;
  - In the case of a judgment given in an action where the subject matter was immovable property, or in an action in rem where the subject matter was movable property, if the property was at the time of proceedings in the jurisdiction of that court.
- The judgment debtor must have received actual notice of the proceedings in the foreign court and must have been given sufficient time to enable him to appear and defend the proceedings.
  - Enforcement of the foreign judgment must not be contrary to the public policy of Nigeria. This means that enforcement must not offend the public morals, health, safety, welfare and the like of Nigeria.
  - The foreign judgment must not have been wholly satisfied elsewhere.
  - The foreign judgment must be capable of being executed upon in its country of origin.
  - The foreign judgment must emanate from a country whose courts afford reciprocal treatment to the enforcement of Nigerian judgments.



### Authentication and Translation of Judgment

A Nigerian court will usually enquire about the authenticity of the foreign judgment. This is proved by a certification as a true copy of the original by an official seal of the foreign court.

If the judgment is in a foreign language, it must be translated into English.

### Procedure

There are a number of ways that a foreign judgment can be enforced in Nigeria including by garnishee proceedings, by writ, by writ of sequestration, by writ of attachment or by judgment summons. A party seeking enforcement must bring an action on the judgment which requires suing on the foreign judgment in a Nigerian court.

The judgment creditor may, if the defendant opposes enforcement in such a case, apply for summary judgment.

### How long does Enforcement take

The enforcement process can take between 6 months to 1 year. If the defendant opposes enforcement on complex grounds. If there is an appeal the process will take longer.

### Judgments in a Foreign Currency

Under the Exchange (Monitoring and Miscellaneous Provisions) Decree 17 of 1995 foreign judgment creditors may enforce foreign arbitral awards or judgments in their favour in the foreign currency of the foreign award or judgment.

### Interest

A Nigerian court is empowered to enforce the interest portion of foreign judgments, and may add the reasonable costs of and incidental to the registration of the judgment including the costs of obtaining a certified true copy of the judgment from the original court. However, the Nigerian court is not empowered to award additional interest from the date of enforcement to the date of payment.

### Merits

The Enforcement Act does not specifically direct that the enforcing court may review the merits of the case giving rise to the foreign judgment. This is however implied in limited circumstances. Such re-examination of the merits is limited only to certain instances, for example where it is alleged that the foreign judgment was obtained by fraud or where the foreign judgment concerns movable property, the Nigerian court will have to determine whether there was fraud or where the movable property was located at the time proceeding were instituted in the foreign jurisdiction.

### Limitation

A plaintiff has a period of 6 years from the date of the granting of the foreign judgment in which to enforce it in Nigeria, after which enforcement becomes time barred.

### Security for Costs

A Nigerian court is empowered to order the plaintiff seeking enforcement to provide security for the defendant's costs in the event that the defendant succeeds in opposing enforcement.

## ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

### Relevant laws and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Nigeria is party to the New York Convention which is given effect to by the Arbitration and Conciliation Act (Cap A18, Laws of the Federation of Nigeria, 2004).

Nigeria acceded to the convention with reciprocity reservations. Therefore only awards made in contracting states that undertake to recognise and enforce awards made in Nigeria will be recognised and enforced in Nigeria.

### Requirements for Enforcement

A Nigerian court may enforce a foreign arbitral award if the following requirements are met:

- The plaintiff is required to provide to the court the original arbitration agreement and the award, or certified copies of them. If these documents are in a language other than English, they are required to be translated into English by a sworn translator of the High Court of Nigeria.
- The award must not be contrary to Nigeria public policy.
- The parties to the arbitration agreement under the foreign law must have had capacity to contract and the agreements must be valid under the foreign law.
- The defendant must have received notice of the arbitrator's appointment or of the proceedings and must have been able to present his case.
- The award must deal with disputes which fall within the reference to arbitration.
- The constitution of the arbitration tribunal and the proceedings must be in accordance with the relevant arbitration agreement or with the law of the country in which the arbitration took place.
- The award must be binding on the parties and must not have been set aside or suspended by a competent authority of the country in which the award was made.

### Procedure

Enforcement of a foreign arbitral award may be enforced in one of three ways:

- Under the Arbitration and Reconciliation Act, 1990 which provides that a foreign arbitral award shall be recognised as binding and shall upon application in writing to the court be enforced by the court. The party seeking enforcement must provide the original arbitration agreement and award or certified copies of them, and if they are in a foreign language they are required to be translated into English.



- Under the Foreign Judgments (Reciprocal Enforcement) Act, 1990 a foreign arbitral award may be enforced within 12 months of the date of the award. The award must be registered first in the Nigerian court having jurisdiction. However, only awards emanating from countries which accord reciprocal treatment to Nigeria, as designated by the Minister of Justice, will be recognised under this Act. Ordinarily this is the fastest procedure but it is of limited application because of a requirement that the award must have become enforceable as a judgment of the court in which the award was made.
- Foreign Arbitration Awards may also be enforced by action upon the award. This process entails enforcement by suing upon the award in Nigeria, even when there is no reciprocal treatment in the country where the award was obtained. The plaintiff is required to prove the existence of the arbitration agreement, due and proper conduct of the arbitration tribunal in accordance with the agreement, and the validity of the award. Suing upon an award is a means by which foreign arbitral awards can be enforced even where there is no reciprocal treatment in its country of origin. The Nigerian Court is not obliged to examine the merits of the case giving rise to the award. There have, however, been instances where the losing party in the arbitration may re-open the case in defence.

#### **Limitation**

No specific time limit for the enforcement of a foreign arbitral award is prescribed in the Arbitration and Conciliation Act or the New York Convention.

#### **How long will Enforcement take**

The Supreme Court of Nigeria has declared that the limitation period for the enforcement of foreign arbitral awards is 6 years from the date that the cause of action arose giving rise to the arbitration, and not from the date of the making the arbitration award.

#### **Security for Costs**

A defendant is entitled to apply to court for the plaintiff to provide security for his costs where the defendant believes that the plaintiff may not be able to pay his costs in the event that the plaintiff fails in his attempt to enforce the award.



# SENEGAL

## MAME ADAMA GUEYE & ASSOCIÉS



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### ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

#### What Laws Regulate Enforcement

In Senegal, the enforcement of foreign money judgments is governed by the Civil Procedure Code, in particular by Article 787 to 792.

#### Treaties

Senegal has signed bilateral conventions on judicial cooperation (which includes the enforcement of foreign judgments), with the following countries: France, Gambia, Guinea Bissau, Cap Vert and Mali.

#### Jurisdiction over Foreign Judgment Debtors

The jurisdiction of the Senegalese Court in enforcement proceedings is established merely by the fact that there are assets in Senegal belonging to a foreign judgment debtor which are capable of attachment.

#### Requirements for Enforcement

Any final judgment of a foreign court may be enforced if an exequatur is issued by the Senegalese court. An exequatur is an order enforcing a foreign judgment and authorizing its execution.

A Senegalese court will not examine the merits of the case giving rise to the foreign judgment. It will, however, before issuing an exequatur have to satisfy itself that:

- The foreign court that gave the judgment had jurisdiction in terms of its own rules or by submission of the defendant to its jurisdiction.
- The defendant must have had notice of the foreign proceedings against him. The form of notice must comply with the law of that foreign jurisdiction.
- The judgment must not have been obtained by fraud and must not have been made on the basis of a clear mistake of law or fact.
- The judgment must not be contrary to the Civil Procedure Code which requires that enforcement must not offend against the public policy and morality of Senegal.
- The foreign judgment must be final. If it is pending appeal in the foreign jurisdiction it is not final for enforcement purposes.

#### Authentication and Translation of Judgment

There is no specific requirement that the foreign judgment must be authenticated. The defendant will bear the onus of proving that the judgment is not authentic.

Judgments in a foreign language must be translated into French by a sworn Senegalese translator and the judgment must be certified by the Ministry of Foreign Affairs of Senegal.

#### Procedure

The plaintiff must make application to the Senegalese court for an exequatur. The process is commenced by a summons requiring the defendant to appear in court. Once an exequatur is granted, the foreign judgment will have the same effect as if it were granted by a Senegalese court. The bailiff will then execute the judgment against the assets of the judgment debtor on behalf of the judgment creditor.

#### How long does Enforcement take

Enforcement of a foreign judgment will take approximately 2 to 9 months depending on the complexity of the case.

#### Judgments in a Foreign Currency

The court will not convert the foreign currency of the foreign judgment into Senegalese currency. The court simply pronounces that it is enforceable in Senegal in the foreign currency.

When it comes to execution of the judgment by the bailiff however, the judgment debtor will be required to pay the equivalent of the judgment amount in local currency.

#### Interest

The court will enforce the interest portion of the foreign judgment granted by the foreign court. No additional interest is granted by Senegalese courts.

#### Merits

A Senegalese court will not review the merits of the case giving rise to the foreign judgment.





**Limitation**

There are no limitation periods for the enforcement of a foreign judgment.

**Security for Costs**

A Senegalese defendant (a national or company registered under the Senegalese Law) can require a foreign plaintiff seeking enforcement to provide security “caution judicatum solvi” which is required to be deposited at the “Caisse de dépôt et de Consignation du Sénégal” before the court will hear the enforcement action. Certain foreign plaintiffs are exempt from providing security under certain judicial cooperation conventions with a number of countries.

The amount of security is fixed by the court.

**ENFORCEMENT OF FOREIGN ARBITRAL AWARDS****Relevant laws and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards**

Senegal acceded to the New York Convention in 1994, without reservation. The convention is given effect to by the Uniform Act on Arbitration of the Organisation for the Harmonisation of Business Law in Africa (OHADA) and the Arbitration Rules of The Joint Court of Justice and Arbitration.

**Requirements for Enforcement**

Foreign arbitration awards made outside the OHADA zone are enforced in accordance with the requirements of Senegalese law. Foreign arbitral awards granted in the OHADA zone are enforced under the arbitration rules of the Joint Court of Justice and Arbitration in Abidjan. These rules provide that the plaintiff seeking enforcement must present the original arbitration agreement and the award, or certified copies of these documents to the court.

A Judge may refuse to enforce a foreign arbitration award where:

- The arbitrator acted without the authority of the parties.
- The arbitrator is guilty of misconduct.
- The rules of natural justice have been breached.
- Enforcement of the award would be contrary to Senegalese Public Policy.

**Procedure**

Enforcement is by way of motion to the court. Once enforced by a Senegalese court it becomes enforceable in all other OHADA member states.

Notice of the enforcement of the award must be given to the defendant who can deliver notice of opposition within 15 days after receiving it.

**Limitation**

There is no limitation period for the enforcement of a foreign arbitral award.

**How long will Enforcement take**

Enforcement of a foreign arbitral award will take between 2 to 9 months depending on the complexity of the defence.

**Security for Costs**

A defendant opposing enforcement has no right to require the plaintiff to provide security for its costs.



# SOUTH AFRICA

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### ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

#### What Laws Regulate Enforcement

Enforcement of foreign judgments is governed in South Africa by the common law generally and in specific cases by the Enforcement of Foreign Civil Judgments Act 32 of 1988. The Act provides for the enforcement of foreign judgments of designated countries by registration in the magistrates courts of South Africa. The purpose of the Act was to simplify enforcement by registration of certified copies of foreign judgments in the magistrates' court in the area in which the defendant resides, is employed, carries on business or owns immovable property. Once the judgment has been registered and the defendant notified, it has the effect of a civil judgment of that court and operates as an interdict against the judgment debtor preventing removal of any assets if it would prejudice the judgment creditor. However, only one country (Namibia) has been designated in the Act in nearly 30 years of its existence. There is currently no indication that further countries will be designated.

#### Treaties

South Africa is not party to any treaty regarding the reciprocal enforcement of foreign commercial judgments.

#### Jurisdiction over Foreign Judgment Debtors

South African courts have jurisdiction in enforcement proceedings against South African judgment debtors by virtue of their residence (or in the case of a body corporate, by registration) in South Africa.

However, in the case of foreign judgment debtors, a South African court will only exercise jurisdiction in enforcement proceedings on the following grounds:

- In the case of a South African plaintiff seeking enforcement, where the plaintiff has attached an asset in South Africa (of any value) belonging to the foreign defendant;
- Where the plaintiff seeking enforcement is also a foreigner, in addition to the attachment of an asset of the defendant in South Africa, there is a factor which links the matter to the South African court (for example the conclusion of a contract, its breach or performance in South Africa).

#### Requirements for Enforcement

A foreign judgment is not directly enforceable in South Africa but constitutes a cause of action that will be enforced by South African courts if the following requirements are met:

- The foreign court must have had international competence as determined by South African Law. This means that the foreign court must have had jurisdiction over the defendant in terms of its own laws, and in addition that the defendant was either resident or present in the foreign jurisdiction at the commencement of the action, or submitted to its jurisdiction by contract or by conduct (for example by defending the merits of the action in that court).
- The judgment must be final and conclusive and must not have become superannuated. A judgment is deemed to be final if it is unalterable by the court which gave it. This means that judgments pending appeal in the foreign jurisdiction are final for the purpose of enforcement. In such instances the South African court has a discretion whether or not to enforce it.
- Enforcement must not be contrary to South African public policy (which includes the rules of natural justice).
- The judgment must not have been obtained by fraud.
- The judgment must not involve the enforcement of a penal or revenue law of the foreign state.
- Enforcement must not be precluded by the Protection of Businesses Act 99 of 1978. This Act requires ministerial consent for enforcement of foreign judgments relating to transactions directly concerning raw materials. In all other instances ministerial consent is not required.

#### Authentication and Translation of Judgment

A foreign judgment is required to be authenticated by a competent authority in the foreign jurisdiction. If it is in a language other than English, it is required to be translated into English by a sworn translator of the High Court of South Africa.





**Procedure**

In instances where a dispute of fact is not anticipated the enforcement process is by way of an application, on affidavit, to court. Enforcement in cases where a dispute of fact may be anticipated is by way of summons in a trial action or by way of Provisional Sentence summons. The latter is a unique remedy limited to the enforcement of instruments clearly evidencing an easily ascertainable debt (such as a judgment).

Provisional Sentence allows a plaintiff to obtain a provisional judgment for enforcement which becomes final unless the defendant pays the judgment debt (against security provided by the plaintiff) and enters into a principal case which involves a trial of the requirements for enforcement and strictly not the merits of the case giving rise to the foreign judgment.

**How long does Enforcement take**

Depending on the complexity of the defence, enforcement can take between 4 to 12 months.

**Judgments in a Foreign Currency**

South African courts have the power to grant a judgment in a foreign currency. A judgment debt may therefore be satisfied in South Africa by payment in a foreign currency (or by payment of its equivalent in South African Rand when paid).

**Interest**

A South African Court will enforce any foreign interest awarded up to the date that the judgment is satisfied, and any court awarded costs.

**Merits**

A South African court may not review the merits of the case giving rise to the foreign judgment.

**Limitation**

In terms of Section 11(d) of the Prescription Act 68 of 1969, claims are extinguished by prescription 3 years after they arise.

Prescription begins to run in terms of section 12(3) from the date of which the creditor has knowledge of the identity of the debtor and the facts from which the debt arose.

According to South African private international law, procedural matters are governed by the domestic law of the country in

which the relevant proceedings were instituted (the Lex Fori). Matters of substantive law, however, are governed by the law which applies to the underlying transaction (the Lex Causae). In South African law, prescription is regarded as substantive. Therefore, a South African court seized with the question of whether a claim to the enforcement of a foreign judgment has prescribed will apply the relevant foreign law.

**Security for Costs**

South African courts are empowered to require a foreign plaintiff to provide security for the costs of the defendant in the event that the defendant succeeds in opposing the enforcement.

**ENFORCEMENT OF FOREIGN ARBITRAL AWARDS****Relevant laws and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards**

South Africa is party to the New York Convention, having acceded to it without reservation in 1976.

The New York Convention is given effect to in South Africa by the Recognition and Enforcement of Foreign Arbitral Awards Act 40 of 1977.

**Requirements for Enforcement**

- The plaintiff is required to provide to the court the original arbitration agreement and the award, or certified copies of them. If these documents are in a language other than English, they are required to be translated into English by a sworn translator of the High Court of South Africa.
- The award must not be contrary to South African public policy.
- The parties to the arbitration agreement under the foreign law must have had capacity to contract and the agreements must be valid under the foreign law.
- The defendant must have received notice of the arbitrator's appointment or of the proceedings and must have been able to present his case.
- The award must deal with disputes which fall within the reference to arbitration.



- The constitution of the arbitration tribunal and the proceedings must be in accordance with the relevant arbitration agreement or with the law of the country in which the arbitration took place.
- The award must be binding on the parties and must not have been set aside or suspended by a competent authority of the country in which the award was made.
- The award must not fall foul of the Protection of Businesses Act 99 of 1978. This Act requires ministerial consent for the enforcement of foreign arbitral awards relating to transactions directly concerning raw materials. In all other instances ministerial consent is not required. The Enforcement Act will soon be repealed and incorporated into the International Arbitration Act which is due to be passed in early 2017. The International Arbitration Act will also repeal the Protection of Business Act insofar as it relates to foreign arbitral awards.

### **Procedure**

Enforcement is by way of application to court to which the original arbitration agreement and award, or certified copies, are annexed. Enforcement will take approximately 4 to 9 months depending on the complexity of the defences.

### **Limitation**

As with the enforcement of foreign judgments, a South African court seized with the question of whether a foreign arbitral award as presented, will apply the governing foreign law.

### **How long will Enforcement take**

Depending on the complexity of the defence, enforcement can take between 4 and 12 months.

### **Security for Costs**

South African courts are empowered to require a foreign plaintiff to provide security for the costs of the defendant in the event that the defendant succeeds in opposing the enforcement.



# SWAZILAND



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### ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

#### What Laws Regulate Enforcement

The following laws regulate the enforcement of foreign judgments in Swaziland:

- The common law.
- The Enforcement of Judgments Act No.4 of 1922 S.3 (l).
- The Constitution S.252 (l).

#### Treaties

Swaziland is not a party to any treaty concerning the enforcement of foreign money judgments.

#### Jurisdiction over Foreign Judgment Debtors

A Swazi court will exercise jurisdiction in enforcement proceedings against a foreign defendant where:

- The cause of action giving rise to the foreign judgment arose in Swaziland; or
- The judgment debtor has submitted to the jurisdiction of the Swazi court by contract.

#### Requirements for Enforcement

A Swazi court will enforce a foreign judgment if the following requirements are met:

- The foreign court must have been competent to grant the judgment. Such competence will exist where the defendant was resident in the foreign court's jurisdiction, or in the case of a company, if it was operating in that jurisdiction at the commencement of the action, or where the defendant submitted to the jurisdiction of the foreign court by contract.
- The foreign judgment must be final in the sense that no appeal against it must be pending in the foreign jurisdiction.
- The defendant must have received notice of the proceedings in the foreign court.
- Enforcement of the judgment must not be contrary to Swazi public policy and the foreign judgment must not conflict with any Swazi statute.

#### Authentication and Translation of Judgment

A certified copy of the judgment must be attached to the application for enforcement (registration).

If the judgment is in a foreign language, it is required to be translated into English.

Rule 60 of the High Court Rules 20 of 1954 provides that any document (which includes a foreign judgment) in a language other than English shall be accompanied by a translation certified to be correct by a sworn translator.

#### Procedure

Enforcement of a foreign judgment is by way of registration in the High Court of Swaziland. Once registered in the court, the defendant will receive notice of registration and will be given an opportunity to oppose enforcement.

The Rules of Court under the Reciprocal Enforcement of Judgments Rules provide that an application for the registration of a foreign judgment may be made ex parte or by summons. The application must be supported by an affidavit setting the relevant facts and the fulfilment of the requirements for enforcement. The affidavit must be accompanied by a duly authenticated copy of the judgment.

#### How long does Enforcement take

Registration of a foreign judgment normally takes between 14 to 21 days.

#### Judgments in a Foreign Currency

Under S.3 (3) of the Reciprocal Enforcement of Judgments Act, a foreign judgment shall be of the same force and effect as if it had been granted by a Swazi court. A foreign judgment in a foreign currency will usually therefore have to be converted into Swazi currency when enforced. However, there have been a number of cases in which the court has enforced foreign judgment in the foreign currency.

#### Interest

A Swazi court will enforce the interest portion of a foreign judgment. A court will not grant any additional interest.

#### Merits

A Swazi court will not review the merits of the case giving rise to the foreign judgment.



**Limitation**

A plaintiff armed with a foreign judgment has a period of 12 months from the date of the granting of the judgment within which to enforce it in Swaziland.

**Security for Costs**

Under the High Court Rules a defendant has the right to require a plaintiff seeking enforcement to provide security for the defendant's costs in the event that the defendant succeeds in opposing enforcement.

**ENFORCEMENT OF FOREIGN ARBITRAL AWARDS****Relevant laws and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards**

Swaziland is not a signatory to the New York Convention and enforcement is under the common law.

**Requirements for Enforcement**

- The award must not violate Swazi law.
- Enforcement must not be against Swazi public policy.
- The award must have been given by a tribunal which had jurisdiction to determine the disputes.
- The arbitration procedure must have been valid in accordance with the rules and procedures agreed by the parties.
- There must be no pending process challenging the award.

**Procedure**

The award must be registered with the High Court and served on the defendant by way of summons with the award attached to the summons.

**Limitation**

A party armed with a foreign arbitral award has a period of 12 months from the date the award was made to have it enforced in Swaziland.

**How long will Enforcement take**

Enforcement of a foreign arbitral award usually takes between 14 to 21 days.

**Security for Costs**

The court has the power to order the plaintiff to provide security for the defendant's costs in the event that the defendant succeeds in opposing enforcement.



# TANZANIA



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### ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

#### What Laws Regulate Enforcement

In Tanzania the enforcement of foreign money judgments is principally regulated by two statutes:

- The Reciprocal Enforcement of Foreign Judgments Act [Cap.8 R.E 2002], which provides for the registration and execution of foreign money judgments with certain countries with which Tanzania has reciprocal enforcement agreements.
- Civil Procedure Code [Cap 33 R.E 2002], which regulates the execution of the judgments.

#### Treaties

Tanzania is not party to any treaty concerning the enforcement of foreign money judgments. Certain countries are however designated for reciprocal enforcement in terms of the Reciprocal Enforcement of Foreign Judgments Act.

#### Jurisdiction over Foreign Judgment Debtors

The jurisdiction of Tanzanian courts in enforcement proceedings against a foreign defendant from a country with which Tanzania has reciprocal enforcement arrangements is created simply by the registration of the foreign judgment in the High Court of Tanzania.

#### Requirements for Enforcement

A foreign judgment will only be enforced in Tanzania if the following requirements are met -

- Under the Reciprocal Enforcement of Foreign Judgments Act, foreign judgments are only eligible for registration (and hence enforcement) if they are final and conclusive between the parties. The only exception to this finality requirement is (as stated below) in circumstances in which the judgment debtor may seek the setting aside of the registration if it offends Tanzanian public policy or if it is repugnant to the morality and customs of Tanzania.
- The foreign court must have had international competence or jurisdiction over the defendant. The foreign court will have been competent if: the judgment debtor either submitted to the jurisdiction of the foreign court by voluntarily appearing in the proceedings, by counterclaiming in those proceedings, or by contract; if the defendant was resident in that country at the time of the institution of the proceedings or if the defendant had an office or place of business in

that country at the commencement of the proceedings. In matters concerning immovable property, the foreign court would have been internationally competent if the property was situated in the area of the foreign court at the time the proceedings were instituted.

- It is of paramount importance that the defendant must have received notice of the proceedings in the foreign court. Any formal notice (including summons) will suffice. The mode of service of the notice must be in accordance with the law of the foreign court.
- Enforcement of the foreign judgment must not conflict with Tanzanian public policy.
- A foreign judgment will only be enforced if the court which gave the foreign judgment reciprocally enforces Tanzanian judgments.

#### Authentication and Translation of Judgment

The foreign judgment must be authenticated by the court of its origin and apostilled by the Ministry of Foreign Affairs of that country.

Foreign judgments in a language other than English must be translated into English by a certified translator before enforcement takes place.

#### Procedure

The procedure for enforcement is by way of an application for registration of the judgment in the courts of Tanzania. The application is in the form of an originating summons supported by an affidavit setting out the facts which prove that the requirements for enforcement have been met. Once registered, the judgment becomes a decree of the Tanzanian court capable of being executed as such.

#### How long does Enforcement take

Enforcement of a foreign judgment will take about four weeks in Tanzania.

#### Judgments in a Foreign Currency

Tanzanian courts will enforce foreign judgments expressed in the foreign currency.



**Interest**

The Tanzanian court will enforce the interest portion of a foreign judgment up to the date of payment of the judgment amount but will not grant additional interest.

**Merits**

Because enforcement can only take place after all appeals in the foreign jurisdiction have been exhausted, the Tanzanian court will not review the merits of the case giving rise to the foreign judgment.

**Limitation**

Under Tanzania's statute of limitation, the judgment creditor must enforce it within sixty days of the granting of the judgment.

**Security for Costs**

A defendant opposing enforcement has no right to seek security for costs from the plaintiff.

**Procedure**

Enforcement is by way of petition to the High Court of Tanzania. The process is commenced by the filing of the original award, or a certified copy, in the court by the arbitrator, or a person nominated by the arbitrator.

**Limitation**

A plaintiff in whose favour an award has been made has a period of six months from the date that the arbitrator filed the award in court to have it enforced.

**How long will Enforcement take**

The enforcement procedure will take about six months.

**Security for Costs**

A defendant opposing enforcement is not entitled to seek security for costs from the plaintiff.

**ENFORCEMENT OF FOREIGN ARBITRAL AWARDS****Relevant laws and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards**

Tanzania is party to the New York Convention, having acceded to it in 1964 without reservation. However, the New York Convention has not been given effect to in Tanzania by legislation. Tanzania is party to the Convention on Execution of Foreign Awards, 1923 (the Geneva Convention which is a Schedule to the Tanzanian Arbitration Act).

**Requirements for Enforcement**

A foreign award is enforceable in Tanzania if:

- It has been made pursuant to an arbitration agreement considered valid under its governing law.
- It was made by the arbitral tribunal provided for in the arbitration agreement or constituted in a manner agreed upon by the parties.
- It was made in conformity with the law governing the arbitration procedure.
- It has become final in its country of origin.
- It concerns a matter which may lawfully be referred to arbitration under the laws of Tanzania.
- Enforcement of the award is not contrary to Tanzanian public policy or the laws of Tanzania.

A Tanzanian court will refuse to enforce a foreign award if:

- The award has been set aside in the country in which it was made.
- The party against whom enforcement is sought was not given notice of the arbitration proceedings in sufficient time to enable him to present his case, or if he was under some legal incapacity or was not properly represented.
- The award does not deal with all the questions referred to by arbitration or contains decisions on matters beyond the scope of the agreement to arbitrate. In the latter case the Tanzanian court is empowered to postpone the enforcement of the award or order that its enforcement is subject to the giving of security by the person seeking the enforcement.



# UGANDA

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### ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

#### What Laws Regulate Enforcement

The following laws regulate enforcement of foreign money judgments in Uganda:

- The Constitution of the Republic of Uganda 1995.
- The Judgment Extension Act, CAP 46 of the Laws of Uganda, 1908. The Act empowers Uganda courts to execute decrees and warrants for any debt, damages or costs issued by the Superior Courts of Kenya, Malawi and Tanzania. The Act also empowers the court to enforce warrants of arrest issued by the superior or subordinate courts of those countries, on a defendant in a civil case.
- The Reciprocal Enforcement of Judgments Act, CAP 47 of the Laws of Uganda, 1922 which regulates the enforcement of judgments emanating from the United Kingdom and other commonwealth countries, including the Republic of Ireland. It was subsequently extended to include Seychelles, Mauritius, Swaziland and New South Wales.
- The Foreign Judgments (Reciprocal Enforcement) Act, CAP 48 of the Laws of Uganda, 1961 which regulates the enforcement of judgments emanating from foreign countries which accord reciprocal treatment to judgments emanating from Uganda.
- The foreign judgments (Reciprocal Enforcement) (General Application) order No. 35 of 2002.

#### Treaties

Uganda is not party to any treaty concerning the enforcement of foreign money judgments.

#### Jurisdiction over Foreign Judgment Debtors

The Ugandan Courts have the power to enforce a foreign judgment against property in Uganda belonging to a non-resident foreign judgment debtor.

#### Requirements for Enforcement

The following are the requirements for enforcement of a foreign money judgment in Uganda:

- The judgment must be final in the sense that it is not pending appeal in the foreign jurisdiction.
- The judgment must have been obtained in the courts of a commonwealth territory.
- Judgments from other foreign countries will be enforced only if those countries reciprocally enforce Uganda judgments.

- Only foreign money judgments obtained after 1 January 2001 will be enforced.
- The judgment must not have been wholly satisfied. Where a foreign judgment has been partially enforced elsewhere the balance of a foreign judgment will be enforced.
- The foreign judgment will only be enforced if the plaintiff is unable to enforce it in its country of origin.
- The foreign court must have had the requisite jurisdictional competence, which means that the judgment debtor must have submitted to the jurisdiction of that court either contractually or by appearing in the proceedings, must have counter-claimed in the original proceedings, must have been resident in that country or, in the case of a body corporate, must have had its principal place of business in that country.
- The judgment debtor must have received notice of the process in the foreign court.
- The judgment must not have been obtained by fraud.
- The judgment must not conflict with Ugandan public policy.
- The foreign court must have had jurisdiction over the defendant in terms of its own law.

#### Authentication and Translation of Judgment

Ugandan Law requires a foreign judgment to be authenticated by the seal of its court of origin.

If the judgment is in language other than English, it has to be translated into English and notarised before enforcement.

#### Procedure

Enforcement is by way of application for registration of the foreign judgment

Under the Reciprocal Enforcement of Judgment Rules under the Reciprocal Enforcement of Judgments Act, CAP 47 (i.e. for judgments obtained in the superior courts in the UK, Republic of Ireland or the parts of the Commonwealth) to which the Act applies, application for registration must be made to the High Court:





- Ex parte by summons to a Judge.
- The application must be accompanied by an affidavit to which the authenticated judgment is attached.
- The affidavit must explain why the judgment creditor is entitled to enforce the judgment and why it does not fall within any of the categories under the Act which prohibits registration / enforcement.
- The affidavit must set out the name, title, trade or business and last known place of the residence or business of the judgment creditor and the judgment debtor respectively.

Once the judgment has been registered, the judgment debtor must be given notice of the registration and the judgment debtor may within the time limit allowed by the notice apply to set aside the registration or to suspend the execution of the judgment.

### How long does Enforcement take

Though the time taken to enforce a foreign judgment in Uganda is heavily dependent on the aggressiveness, vigilance and diligence of the particular advocate handling the matter and the Judge allocated the matter, the process of enforcement of foreign judgments in Uganda on average, takes between two to three months.

### Judgments in a Foreign Currency

A foreign judgment must first be converted into the local currency before it can be enforced. The exchange rate is the prevailing rate of exchange as at the date of the granting of the judgment in the original court.

### Interest

A Ugandan court will enforce the interest portion of a foreign money judgment. In addition it has the power to include interest up to the date of registration of the judgment and to add the reasonable costs of and incidental to registration, including the costs of obtaining a certified copy of the judgment from the original court.

### Merits

A Ugandan court may not reassess the merits of the case giving rise to the foreign judgment.

### Limitation

The limitation period for the registration of a foreign money judgment is 6 years from the date of the judgment.

### Security for Costs

A Judge of the High Court of Uganda has discretionary powers to order the judgment creditor to furnish security for the costs of the debtor should the judgment debtor succeed in opposing the enforcement procedure.

## ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

### Relevant laws and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Uganda is party to the New York Convention, having acceded to it on the 12 February, 1992.

The following laws regulate the enforcement of foreign arbitral awards in Uganda:

- The Reciprocal Enforcement of Judgments Act, CAP47 of 1922.
- The Arbitration and Conciliation Act, CAP 4 of 2000, which gives effect to the New York Convention.

### Requirements for Enforcement

- The plaintiff is required to provide a duly authenticated original arbitral award and arbitration agreement, or duly certified copies. If these documents are in a language other than English, they must be translated into English.
- The award must have been made pursuant to a valid arbitration agreement under the governing law.
- The award must have been made by a tribunal constituted in terms of the agreement to arbitrate.
- The award must conform with the law governing the arbitration procedure.
- The award must be final in the country in which it was made.
- The enforcement of the award must not be contrary to Ugandan public policy.
- The subject matter of the award must be one which may be lawfully referred to arbitration under Ugandan law.
- The arbitration award must not have been set aside in the seat of the arbitration.

### Procedure

A foreign arbitral award is enforced as a decree of the court. On the registration of the foreign arbitral award, it is given a serial number in the Civil List and the party registering it is required to serve a notice of the registration upon the opposite party. The party registering the award is required thereafter to file in the High Court evidence on affidavit of service on the opposing party.

A party who objects to the registration of the award in court, is required within ninety days after the notice of registration has been served upon him, to apply to have the award set aside by lodging objections. The parties on whom the objections are served, may within fourteen days after the date of service of the objections, lodge cross objections which must be served on the original objector.





It is important to note that an application to enforce an award as a decree of the court is commenced by Chamber summons supported by an affidavit and cannot be made, if no objections to the award are lodged, until after the expiry of ninety days after notice of registration of the award has been served upon the party against whom the award is to be enforced, and if any objections have been made, then until after objections have been dealt with by the court.

### **Limitation**

Under the Uganda Limitation Act, CAP 80 a party wishing to enforce a foreign arbitral award can only do so within a period of six years from the date on which it became “registrable”. This means from the date the award was made.

### **How long will Enforcement take**

The enforcement procedure takes between five to seven months on average

### **Security for Costs**

The arbitration rules made under the Arbitration and Conciliation Act, CAP 4, entitle a party interested in the award to apply to the court for an order directing the person who objects to the enforcement of the award, to give security for the enforcement of the award and for any costs that may be ordered in the objection hearing.



# ZAMBIA

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### ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

#### What Laws Regulate Enforcement

The laws that govern the enforcement of foreign judgments in Zambia are the Foreign Judgments (Reciprocal Enforcement) Act, Chapter 76 of the Law of Zambia, and the English common law.

#### Treaties

Zambia is a party to the Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, 1971. However, this has yet to be adopted into Zambian domestic law by statute.

#### Jurisdiction over Foreign Judgment Debtors

The Zambian Courts will exercise jurisdiction in enforcement proceedings against the assets in Zambia belonging to a foreign defendant on the basis that the assets are located in Zambia, irrespective of the fact that the defendant is not resident or present in Zambia.

#### Requirements for Enforcement

Foreign judgments may be enforced under the Foreign Judgments (Reciprocal Enforcement) Act where Zambia has a reciprocal agreement with the country in which the judgment was obtained. At present Zambia has only extended the Foreign Judgment (Reciprocal Enforcement) Act to two countries, namely Gilbert and Ellice Islands Colony, and the British Solomon Islands.

Once reciprocity is established, the foreign judgment must meet the following conditions before it is enforceable:

- It must be final. A judgment pending appeal in the foreign jurisdiction is deemed to be final for enforcement purposes.
- The judgment must not be in respect of a revenue or penal amount.
- The judgment must have been rendered by a court of competent jurisdiction. The fact that a judgment has been issued by a foreign court is prima facie evidence that it has been issued by a competent court and a Zambian court will enquire no further.
- Notice of the proceedings before the foreign court must have been given to the defendant in accordance with the laws of that country. The defendant should have received notice of the proceedings in sufficient time to enable him to defend the proceedings.

- Enforcement of the foreign judgment must not be contrary to Zambian public policy. It will be contrary to public policy if it concerns subject matter that is illegal or immoral in Zambia.
- Judgments to which the Enforcement Act does not apply, can be enforced at common law.
- Reciprocity is not a requirement if a foreign judgment is enforced under the common law.

#### Authentication and Translation of Judgment

The foreign judgment must be authenticated by the seal of the foreign court which gave it. If the judgment is in a language other than English, it must be translated into English and the translation must be certified by a notary public.

#### Procedure

Enforcement under the Foreign Judgment (Reciprocal Enforcement) Act is by way of registration in the High Court of Zambia. Application may be made ex parte and accompanied by an affidavit setting out the relevant facts.

The court may direct that the defendant be given an opportunity to oppose enforcement.

Registration may be denied if the foreign judgment has been wholly satisfied or if it cannot be enforced by execution in the country of origin.

Enforcement at common law is by commencement of proceedings in court. The judgment is presented in evidence as creating a liability on the defendant, the court will not however, reassess the merits of the case giving rise to the foreign judgment. The defendant is largely restricted in defence to the question of whether the requirements for enforcement have been met.



**How long does Enforcement take**

The length of time it takes to enforce a foreign judgment in Zambia depends on a number of factors, including the complexity of the case and the number of matters pending before the court.

Enforcement generally takes between 3 and 12 months.

**Judgments in a Foreign Currency**

Where the sum payable under the foreign judgment is expressed in a foreign currency, the judgment is required to be registered in Zambia as if it were a judgment in local Zambian currency. The conversion is at the rate of exchange prevailing at the date the judgment was handed down in the foreign country.

**Interest**

A Zambian court will enforce the interest portion of the foreign judgment but it is not empowered to grant additional interest to that is already granted by the foreign court.

**Merits**

The courts will not review the merits of the case giving rise to the foreign judgment.

**Limitation**

Under the Foreign Judgments Act, an application for enforcement must be made within 6 years of the date of the judgment, or of the final judgment were it has been appealed, before enforcement is time barred.

For judgments not falling under the Foreign Judgments Act, application for registration must be made within 12 years of the date of the judgment.

**Security for Costs**

The court may in applications for registration, order the judgment creditor to provide security for the costs of the application in the event that the defendant succeeds in opposing enforcement.

**ENFORCEMENT OF FOREIGN ARBITRAL AWARDS****Relevant laws and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards**

Zambia is party to the New York Convention which is given effect to by the Arbitration Act, 19 of 2000.

**Requirements for Enforcement**

A Zambian court may enforce a foreign arbitral award if the following requirements are met:

- The parties to the arbitration agreement must have had full legal capacity and the arbitration agreement must have been valid under the governing law.
- Proper notice of the appointment of the arbitrators or of the arbitration proceedings must have been given to the defendant.
- The award must deal with disputes contemplated or in the terms of reference to arbitration.
- The arbitral tribunal must have been properly constituted in accordance with the agreement.
- The award must have become binding on the parties.
- The subject matter of the dispute must be capable of settlement by arbitration under Zambian law.

- Enforcement of the award must not be in conflict with Zambian public policy.
- The award must not have been induced by fraud, corruption or misrepresentation.

**Procedure**

Enforcement of foreign arbitral awards is by way of application to the High Court by an ex parte originating summons.

The court however may order that the application be heard inter-parties with the defendant being given an opportunity to oppose enforcement. The application must be supported by an affidavit to which the original arbitration agreement and award or authenticated copies are attached. The court then makes an order for leave to register the award. The order will not be required to be served on the defendant if the application is heard in his presence. The plaintiff is then required to file in court a notice of registration of the award and serve it on the other party who must respond within a specific time. Where the court is satisfied with the notice of registration of award and the opposing party does not raise any objection within the specified time, the court will issue an order for enforcement and registration.

**Limitation**

A party armed with a foreign arbitral award has a period of 12 years from the date of the award in which to enforce it in Zambia.

**How long will Enforcement take**

Enforcement ordinarily takes between 3 to 12 months.

**Security for Costs**

The court is empowered to order the plaintiff to provide security for the defendant's cost in the event that the defendant succeeds in opposing enforcement. However, this is not automatic as certain conditions must be met.



# ZIMBABWE

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### ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

#### What Laws Regulate Enforcement

Enforcement of foreign judgments in Zimbabwe is regulated by statute and common law. The applicable statute is the Civil Matters Mutual Assistance Act [Chapter 8: 02] as read with the High Court Rules, Order 37 of the High Court Rules.

#### Treaties

Zimbabwe is not party to any treaty concerning the enforcement of foreign money judgments.

#### Jurisdiction over Foreign Judgment Debtors

A Zimbabwean court will exercise jurisdiction in enforcement proceedings against a foreign judgment debtor who has assets in Zimbabwe only if the judgment creditor has first made application to the court for an order attaching the property of the foreign debtor in Zimbabwe in order to establish the jurisdiction of the court.

#### Requirements for Enforcement

A Zimbabwean court will enforce a foreign judgment if the following requirements are met:

- The foreign judgment must be final and conclusive. If it is pending appeal in the foreign jurisdiction it is not final for enforcement purposes.
- The foreign court must have been internationally competent to grant the judgment. This means that the defendant must either have been resident in the foreign court's jurisdiction or must have submitted to the jurisdiction of that court either by appearing voluntarily there to defend the matter, or by contract.
- The defendant must have received notice of the proceedings against him in the foreign jurisdiction. The manner of notice is not prescribed. All that is required is that some form of notice must be given to the defendant, although formal service of process is generally easier to prove where service is disputed.
- The foreign judgment must not have been set aside by a court of competent jurisdiction.
- The judgment must be capable of being enforced wholly or partly in its country of origin.
- The judgment must not have been wholly satisfied.
- The judgment must not have superannuated or have become prescribed under the foreign law.

- Enforcement must not be contrary to the public policy of Zimbabwe.
- The judgment must not be for a penal or revenue law of the foreign state.
- The judgment must not have been obtained by fraud.
- The judgment debtor must have had an opportunity to appear and to defend the proceedings, or at least have received reasonable notice of them.

#### Authentication and Translation of Judgment

The foreign judgment need not be authenticated in the foreign jurisdiction. All that is required is that it be certified as a true copy of the original judgment of the foreign court by a registrar, clerk, secretary or other competent officer of that court.

If the judgment is in a language other than English, it will be required to be translated into English by a sworn translator.

#### Procedure

Enforcement of a foreign judgment is by way of an application to court supported by an affidavit to which a certified copy of the judgment is attached. The plaintiff must state that to the best of his knowledge the judgment has not been satisfied or has been partly satisfied and that it does not fall within any of the grounds which may render it unenforceable by the prevailing legislation.

Formal notice of the registration of the judgment is required to be served on the judgment debtor within a reasonable time after registration. Usually personal service is required in the manner in which summons is normally served, but the court is competent to give other directions regarding service as deemed necessary. Notice of registration should contain particulars of the judgment registered and the name and the address of judgment creditor or his legal practitioner or another agent. It must also state that the defendant may, if he has any grounds for doing so, apply to have the registration set aside and should also state the number of days allowed in which to do so. The defendant may within the prescribed time apply for the setting aside of the order for registration of the foreign judgment.



Upon expiry of the time given in the notice a plaintiff thereafter may execute the judgment provided that he has filed an affidavit of the notice of registration with the sheriff of the court.

### How long does Enforcement take

Enforcement of a foreign judgment may take between a month to 6 months depending on whether it is opposed and the complexity of the opposition.

### Judgments in a Foreign Currency

A foreign judgment will be enforced in the currency in which it was given.

### Interest

A Zimbabwean court is empowered to enforce the interest portion of a foreign judgment. However it does not have the power to award additional interest from the date of enforcement to the date of payment.

### Merits

A Zimbabwean court will not reassess the merits of the case giving rise to the foreign judgment.

### Limitation

A foreign judgment must be enforced within a period of 6 years from the date of its granting before enforcement is time barred.

### Security for Costs

The court is empowered to order the plaintiff to provide security for the costs of the defendant in the event that the defendant is successful in opposing enforcement.

## ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

### Relevant laws and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

Zimbabwe is party to the New York Convention having acceded to it in September 1994 without reservation.

The New York Convention is given effect to by the Zimbabwean Arbitration Act.

### Requirements for Enforcement

A Zimbabwe court may enforce a foreign arbitral award if the following requirements are met:

- The parties to the arbitration agreement must have had legal capacity to contract under the governing law.
- The party against whom enforcement is sought must have been given adequate notice of the appointment of the arbitrator or of the proceedings and should have been able to represent its case.
- The award must not exceed the terms of reference to the arbitration (in other words the arbitrator must not have exceeded his jurisdiction).
- The composition of the arbitral tribunal must have been in accordance with the agreement to arbitrate or in terms of the governing law.
- The award must be binding on the parties and must not

have been set aside or suspended in terms of the governing law.

- The subject matter of the dispute must be capable of settlement by arbitration in terms of Zimbabwean law.
- The recognition and enforcement of the award must not be against Zimbabwean public policy (Foreign Arbitration Awards induced by fraud or where the principles of natural justice were not observed, will be contrary to Zimbabwe public policy.).
- The original arbitration agreement and award, or certified copies, must be provided to the court.
- Awards in a foreign language must be translated into English.

### Procedure

Enforcement of foreign arbitral awards is by way of application to the High Court for registration of the award.

The requirements applicable to filing court applications in terms of its rules are applicable, and they are:

- The application is issued by way of a notice supported by an affidavit verifying the cause of action for enforcement and exhibiting copies of the arbitration agreement and the award.
- Notice must be in prescribed form and served on all interest parties giving not less than 10 days' notice to the defendant to oppose.
- If there is no opposition filed, the matter will be enrolled on the unopposed motion roll held every second Wednesday.
- If the matter is opposed, the defendant must file a notice of opposition in the prescribed form supported by an affidavit setting out the grounds on which it is to be opposed and providing any necessary supporting documents.
- Thereafter an answering affidavit must be filed by the plaintiff and heads of argument must be filed by both parties if they are legally represented at the hearing of the enforcement proceedings.
- The matter is then set down for hearing on the opposed motion roll and an order is made recognising the award and making it an order of the Zimbabwean court;
- A writ of execution is then issued by the court which may be enforced in the usual way through the sheriff of the High Court.

### Limitation

The plaintiff has a period of 1 year from the making of the award in which to enforce it in Zimbabwe before it becomes time barred.

### How long will Enforcement take

It generally takes not less than six months from the time of making application for registration.

### Security for Costs

The Zimbabwean court is empowered to order a plaintiff to provide security for the costs of the defendant in the event that the defendant succeeds in opposing the enforcement of the foreign arbitral award.

