



## FIRM INFORMATION

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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.

