

SENEGAL

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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.

