

# ZIMBABWE

## SCANLEN AND HOLDERNESS LEGAL PRACTITIONERS

### FIRM INFORMATION

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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 defendants succeeds an opposing the enforcement of the foreign arbitral award.

