



GUIDE TO THE ENFORCEMENT
OF FOREIGN MONEY JUDGMENTS
AND ARBITRAL AWARDS IN 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 of the latter – day scramble for its assets and investment opportunities has left in its wake the inevitable commercial disputes that follow.

Against this background courts throughout Africa are increasingly seized with applications to recognize and enforce foreign judgments.

African courts, moreover, are 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, to which 38 African states are party.

The relative ease and speed of enforcement of foreign arbitral awards, facilitated in many instances by the New York Convention, has made international arbitration the preferred method of dispute resolution in cross-border business.

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 third edition of the 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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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 was resident in Angola for more than six months.

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 court;
- 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 the 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. The Supreme Court is obliged to examine the foreign judgment to ensure that it does not contravene any Angolan public policy principle. After being reviewed and enforced, the foreign judgment will be sent to a first Instance Court to be executed.

In the Angolan civil courts the Public Prosecutor has specific powers to defend the interests of the State, and to defend the rights of minors under the age of 18 years who do not have full legal capacity. The Civil Prosecutor ensures fair process and prevents abuse of rights.

How long does Enforcement take?

Enforcement will take between one to three years.

Judgments in a Foreign Currency

Foreign judgments will usually be awarded in the local currency, Kwanza. However the court may enforce it in its foreign currency. When doing so, 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 and by the Adhesion Charter n.º 10/16 on December 19 2016. 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.

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 have had capacity to contract under the governing law 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

Once the Convention has been adopted into Angolan domestic law, 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 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 a foreign award in Angola.

How long will Enforcement take?

Enforcement will take between one to three years.

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 circumstances:

- Where the foreign defendant resided 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 foreign debtor's assets 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. This means that:
 - The defendant must have 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;
 - The judgment debtor counterclaimed in the proceedings in the foreign court;
 - 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;

- If 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 be 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 must be authenticated or certified by a judge or Registrar of the originating court.

Judgments which are not in the English language must be translated into English by a sworn translator 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 which will run from the date of the judgment to the time that it 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 entertain any argument or 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 allow 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 for the enforcement of foreign judgments.

Procedure

The procedure for enforcement 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, it will issue an order enforcing the award. The award will thereafter have the effect of a judgment of the High 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.

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ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

What Laws Regulate Enforcement?

Law No 2007/001 of 19 April 2007 provides for the appointment of a judge to handle litigation related to the execution of judgments and lays down the conditions for the enforcement in Cameroon of foreign court decisions, public acts, and arbitral awards.

Treaties

Cameroon is not party to any treaty concerning the enforcement of foreign judgments. However, Cameroon has a bilateral agreement with France in judicial matters. The agreement was signed on 21 February 1974, and covers legal cooperation, enforcement of foreign judgments in civil, labour and commercial cases, extradition, and exchange of information.

Jurisdiction over Foreign Judgment Debtors

Jurisdiction is established by an application for the recognition and enforcement of the foreign judgment to the President of the competent court.

Requirements for Enforcement

The party who seeks the recognition and enforcement of a foreign court decision in a civil or commercial case must file a petition to the judge in charge of litigation relating to the execution of judgments of the place, or likely place, of enforcement together with the following documents:

- A copy of the decision which must satisfy the conditions required for its validity;
- The original copy of proof of service of the decision or any other act that justifies proof of service;
- A certificate of no-appeal issued by the registrar of the foreign court;
- Where applicable, a copy of the summons served on the party who failed to appeal and any other documents proving that the summons was duly served within the prescribed time-limit.

A foreign judgment is deemed to be final only upon presentation of a no-appeal certificate issued by the registrar (or a no-opposition certificate if the decision was rendered by default).

There is no specific requirement relating to the international

competence (jurisdiction) of the foreign court. However, for matters of public policy such as labour disputes, the Cameroonian court has exclusive jurisdiction to decide such dispute relating to a contract of employment to be performed in Cameroon and duly performed in Cameroon irrespective of the place where the contract is made and the residence of either party.

The defendant is not required to have been a resident or present in the foreign jurisdiction at the commencement of the original action. Submission by contract is sufficient for jurisdiction. Submission by conduct is not a relevant factor.

The defendant must be duly served, represented or found to be in default. Formal service of the summons is required.

The enforcement must not be against public policy in Cameroon or against a final court decision in Cameroon. For example, a foreign judgment on a land related dispute falls under Cameroonian jurisdiction. There are no ministerial or other consents required for enforcement.

Authentication and Translation of Judgment

The original copy of the decision must satisfy the conditions necessary for its authenticity.

The official languages of Cameroon are English and French. All documents including the decisions of the foreign court must be in one of the official languages.

Procedure

A petition with the required accompanying documents must be filed with the judge in charge of litigation relating to the execution of judgments of the place or likely place of enforcement.

In practice, the case file is transferred to the legal department to carry out its investigation, and for its submissions to the judge. Partial execution of the judgment is possible.

How long does Enforcement take?

No legally binding time period exists. However, in practice, a decision is delivered within thirty days following the petition in conformity with section 3(3) of Law No 2007/001 of 19 April 2007.

Judgments in a Foreign Currency

A foreign judgment in foreign currency will be converted to local

currency in the petition.

Interest

No interest is granted on the original judgment amount even if the original amount included interest.

Merits

The 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

There is no law which allows a defendant opposing enforcement to demand the plaintiff to provide security for its costs.

ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

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

The enforcement of foreign arbitral awards is regulated by the:

- New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958;
- OHADA Uniform Act on Arbitration;
- Law No 2003/009 of July 2003 which designates the competent courts mentioned in the Uniform Act on Arbitration within the framework of the organization for the Harmonisation of Business Law in Africa (OHADA) Treaty and to lay down conditions for referring matters to them;
- Law No 2007/001 of 19 April 2007 which provides for the appointment of a judge responsible for litigation related to the execution of judgments and lays down the conditions for the enforcement in Cameroon of Foreign Court Decisions, Public Acts and Arbitral Awards.

The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, was ratified by Cameroon on 19 February 1988, without reservation.

Requirements for Enforcement

If the New York Convention is relied on, the party applying

for recognition and enforcement must, at the time of the application, provide the authenticated original award (or a certified copy) and the original agreement (or a certified copy).

If the award or agreement is not made in an official language of Cameroon, the party applying for recognition and enforcement must provide a translation of these documents. The translation must be certified by a sworn translator or by a diplomatic or consular agent.

Under the OHADA Uniform Act on Arbitration, an award is subject to enforcement by virtue of an execution decision issued by the competent court in the Member State. The recognition and enforcement of the arbitral award is made by the production of the original award accompanied by the arbitration agreement or copies of these documents meeting the conditions required to establish their authenticity. Where these documents are not written in one of the original language of the Member State where the execution is demanded, the party must submit a translation, certified by a translator registered on the list of experts established by the competent jurisdiction.

Procedure

An application or a motion ex parte is made to The President of the Court of First Instance together with documents establishing the existence of the award as set out in Article 31 of the OHADA Uniform Act on Arbitration. The court must be required to render a decision on enforcement within fifteen days. If at the end of this time limit the court has not rendered its decision, the court is presumed to have granted the application, or motion, for enforcement.

Limitation

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

Security for costs

The defendant opposing enforcement is entitled to demand security for his costs from the claimant seeking enforcement. This is fixed by the court. Some courts may also require the judgment to be registered at the Tax office.

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:

- Law 13/001B dated April 11th, 2013, relating to the organization, functioning and competence of judicial courts; and
- Decree dated March 7th, 1960, instituting the Code of Civil Procedure (Article 105 and seq.)

Treaties

The DRC is a party to several conventions on cooperation in judicial matters including a convention on cooperation on judicial matters with the Republic of Congo dated 12 April 1978, and a convention on cooperation and mutual legal assistance between the members of the Economic Community of Central African States of 28 January 2004. These conventions harmonize the requirements for the recognition of foreign judgments.

Jurisdiction over Foreign Judgment Debtors

The presence of the defendant's assets in the DRC establishes the jurisdiction of DRC courts to enforce the foreign judgment against the foreign judgment debtor. It is not a jurisdictional requirement that the judgment debtor be a resident or present in the DRC.

Requirements for Enforcement

The foreign judgment becomes enforceable in the DRC by exequatur of a competent DRC court. An exequatur is the authority from the court to recognize and enforce the foreign judgment.

The DRC courts will grant the exequatur to a foreign judgment if it meets the following requirements¹ :

- It must not be contrary to DRC public policy;
- ¹ Article 119 of the Law 13/001B dated April 11th, 2013
- The judgment must be final under the law of the country where it was made (the judgment debtor must have exhausted all remedies available in the foreign courts);
 - It must have been authenticated under the law of the country where it was made;
 - The defendant's rights must not have been violated in the foreign jurisdiction.

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. Foreign judgments are also required to be authenticated for enforcement.

Procedure

Application for enforcement is made before the presiding judge of the competent DRC court which will determine whether the foreign judgment meets the requirements for its exequatur in the DRC.

The presiding judge has the power to refuse the exequatur of the foreign judgment. The court may also grant full or partial enforcement of the foreign judgment, for example, in cases where the asset is no longer in the hands of the debtor. If enforced, the foreign judgment must be published in the Government Gazette.

A duty of 6% is levied on any amount awarded by a foreign judgment rendered enforceable in the DRC .

How long does Enforcement take?

Under the law 13/001B dated 11 April 2013, a judge has a period of eight days within which to decide whether or not to enforce the foreign judgment. In practice, however, the enforcement procedure can take up to six months.

Judgments in a Foreign Currency

The DRC courts will convert the foreign currency of the foreign judgment into 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 gave 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 claimant seeking to enforce a foreign judgment in the DRC.

Security for Costs

DRC law does not provide for security when it comes to the enforcement of foreign judgments.

² Article 152 of the Code of Civil Procedure.

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

The enforcement of foreign arbitral awards in DRC is regulated by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards to which the DRC acceded in February 2015.

The DRC acceded to the New York Convention with four reservations:

- Reciprocity: The DRC will not recognize arbitral awards emanating from countries that are not parties to the New York Convention;
- Commerciality: Only foreign arbitral awards relating to commercial disputes will be recognized and enforced in the DRC;
- Non-retroactivity: The DRC will not recognize foreign arbitral awards made before the accession of the DRC to the New York Convention;
- Exclusion of immovable property matters: The DRC will not recognize foreign arbitral awards relating to fixed property located in a foreign country or relating to any rights relating to that property.

Other laws governing the enforcement of foreign arbitral awards are:

- The OHADA Uniform Act on Arbitration of 23 November 2017.
- The Rules of Arbitration of the Common Court of Justice and Arbitration dated 23 November 2017 ("CCJA Arbitration Rules").

Requirements for Enforcement

To proceed with the recognition and enforcement of a foreign award, the claimant is required to provide the original arbitration agreement and the award, or certified copies of these documents, to the competent court. Foreign awards in a language other than French, are required to be translated into French by a translator certified by a competent DRC court.

Under Article V of the New York Convention, a DRC court may enforce a foreign arbitral award if the following requirements are met:

- The parties to the arbitration agreement must have had the capacity to contract under the law applicable to them, and the arbitration agreement must be valid under the law to which the parties have subjected it or under the law of the country where the award was made;
- The defendant must have been given proper notice of the appointment of the arbitrator and of the arbitration proceedings, and must have been able to present his case;
- The foreign award must fall within the terms of the submission to arbitration;
- The composition of the arbitral authority or the arbitral procedure must have been in accordance with the agreement of the parties, or in accordance with the law of the country where the arbitration took place;
- The foreign award must have become binding on the parties and must not have been set aside or suspended by a competent authority of the country in which, or under the law of which the award was made;
- The subject matter of the dispute must be capable of resolution by arbitration under DRC law;
- The recognition and enforcement of the foreign award must not be contrary to the public policy of the DRC.

The OHADA Uniform Act on Arbitration governs any arbitration seated in one of the OHADA member States. Under the OHADA Uniform Act, the arbitral award may be executed in the DRC only by virtue of an order of exequatur granted by the competent DRC courts. The DRC courts will grant the exequatur on the foreign award if it is not contrary to a rule of international public policy.

Notwithstanding the above, the Common Court of Justice and Arbitration has sole jurisdiction to grant the exequatur of foreign awards rendered under the CCJA Arbitration Rules. The DRC Courts may only issue a formal enforcement order.

The Common Court of Justice and Arbitration may only refuse the exequatur of the award on the following grounds (see Article 30(5) of the CCJA Arbitration Rules):

- If the arbitral tribunal was constituted, or ruled, in the absence of a valid arbitration agreement;
- If the arbitral tribunal exceeded its mandate;
- If the principles of due process were not followed;
- If the arbitral award is contrary to international public policy.

Procedure

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

A similar procedure applies to foreign awards rendered under the CCJA Arbitration Rules. The application is made to the President of the Common Court of Justice and Arbitration. The decision on exequatur is issued within fifteen days. A decision rejecting the exequatur of the foreign award may be appealed. The decision granting the exequatur, however, may not be appealed.

A similar procedure applies to foreign awards rendered under the CCJA Arbitration Rules. The application is made to the President of the Common Court of Justice and Arbitration. The decision on exequatur is issued within fifteen days. A decision rejecting the exequatur of the foreign award may be appealed. The decision granting the exequatur, however, may not be appealed.

A duty of 6% is levied on amounts enforced under a foreign arbitral award³.

³Article 152 of the Code of Civil Procedure

Limitation

A party may enforce a foreign arbitral award in the DRC within thirty years after the date of the issue of the award. For enforcement of awards relating to fixed property, a party has fifteen years within which to enforce it in the DRC.

How long will Enforcement take?

Enforcement of a foreign arbitral award can take up to about twelve months.

Security for Costs

DRC law does not provide for security when it comes to the enforcement of foreign awards.

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ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

What Laws Regulate Enforcement?

The Civil Procedure Code of Ethiopia of 1965 governs the enforcement of foreign judgments.

Treaties

Ethiopia has ratified a Judicial Assistance treaty with the People's Republic of China. The treaty provides for reciprocal enforcement of judgments between the two countries

Jurisdiction over Foreign Judgment Debtors

Ethiopia does not have comprehensive conflict of laws rules. It is therefore difficult to list the grounds on which an Ethiopian court will exercise its jurisdiction in enforcing a foreign judgment against a foreign judgment debtor. In practice, however, Ethiopian courts will look at factors such as the nationality, residence and domicile of the judgment debtor as well as the underlying transaction to determine whether there is some nexus with Ethiopia before exercising its jurisdiction.

Ethiopian law is silent on what nexus there has to be between the defendant and the foreign court before it will enforce a foreign judgment of that court. It is not certain therefore whether physical presence or residence of the defendant in the foreign court's jurisdiction is required. Ethiopian courts do however recognise submission to the jurisdiction of a foreign court by contract. Likewise, an Ethiopian court will exercise its jurisdiction where the defendant demonstrates unmistakably by his conduct that he accepted the jurisdiction of the foreign court.

Requirements for Enforcement

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

- The plaintiff is required to make written application to court for the enforcement;
- The plaintiff must produce an authenticated copy of the foreign judgment;
- An Ethiopian court will require proof that the judgment was given by a properly constituted court in the foreign jurisdiction;

- A certificate signed by the President or Registrar of the foreign court confirming that the foreign judgment is final and enforceable must be produced;
- The plaintiff must produce a copy of the foreign judgment translated into Amharic. The translation must be made by a licenced translation officer;
- Execution of the foreign judgment must be allowed in its country of origin, and proof to that effect must be provided;
- The judgment debtor must have been given an opportunity to appear and present his defence;
- Enforcement must not be contrary to Ethiopian public policy or morals.

Ethiopian law is not clear on whether formal service is required on the defendant in the foreign jurisdiction before a foreign judgment will be enforced, however it is required that the defendant must have been given notice of the foreign proceedings.

On the question of the finality of the foreign judgment, Ethiopian law does not deal specifically with the consequences on enforcement of a pending appeal in the foreign jurisdiction. However, Ethiopian law is clear in the case of the enforcement and execution of a domestic judgment. A domestic judgment is not suspended by a pending appeal in Ethiopia. In such case, execution may only be stopped by an injunction issued by the appellate court. There is no binding precedent on the question of whether the same rule applies to the enforcement of foreign judgments in those circumstances, but it is most likely that the same principle will apply.

An Ethiopian court will only enforce a foreign judgment if the country of its origin reciprocally enforces Ethiopian judgments.

Authentication and Translation of Judgment

The foreign judgment must be authenticated and it must be translated into Amharic.

Procedure

Application for enforcement must be made in writing to the court. An authenticated copy of the foreign judgment together with the certificate confirming its finality must be filed. The court will then afford the defendant a period of time, fixed by the

court, within which to comment on the enforcement claim. The court will then, depending on the substance of the defendant's comments, decide whether further pleadings are required. In certain circumstances the court may decide that the parties must present oral evidence. The court has the power to decide which party must pay the costs of the proceedings.

Where the foreign judgment has been recognised and enforced by the court, it may be executed as if it were a judgment of the Ethiopian court.

How long does Enforcement take?

Generally, obtaining an order for enforcement will take about 6 months. The length of time it takes to execute the judgment will depend on the availability of the defendant's assets within Ethiopia.

Judgments in a Foreign Currency

The judgment creditor may only be paid in Birr and may seek hard currency from the National Bank of Ethiopia for repatriation.

Interest

An Ethiopian court will only award interest that is provided for in the original judgment. It may not order any further interest.

Merits

Ethiopian courts may not review the merits of the foreign judgment.

Limitation

A foreign judgment must be enforced within a period of 10 years from the date that it was granted.

Security for Costs

Ethiopian law does not allow a defendant to claim security for its costs from the judgment creditor.

ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

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

The sources of law which regulate the enforcement of foreign arbitral awards in Ethiopia are the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (which it ratified on 13 March 2020) and the Civil Procedure Code of Ethiopia of 1965.

Ethiopia ratified the New York Convention subject to reciprocity and the "commercial" reservation (that is, only commercial awards will be enforced). Ethiopia has imposed a third reservation which limits the applicability of the Convention to "arbitration agreements concluded and arbitral awards rendered after the date of Ethiopia's accession to the Convention". Thus awards emanating from arbitration agreements concluded prior to Ethiopia's accession may not be enforced under the Convention.

The 1965 Civil Procedure Code applies to arbitral awards that may not be enforced under the Convention.

Requirements for Enforcement

If the award does not fall subject to the reservations to the New York Convention, it may be enforced where -

- The original arbitration agreement or a certified copy is presented;
- An authenticated original award or certified copy is presented;
- The award is translated into Amharic;
- The parties to the arbitration agreement had capacity to conclude it under its governing law;
- The agreement was valid under the governing law, or failing that under the law of the country where it was made;
- The party against whom the award is made was given proper notice of the arbitration proceedings and was afforded an opportunity to present his case;
- The award falls within the scope of the agreement to arbitrate;
- The arbitral tribunal and the arbitral procedure complied with the terms of the arbitration agreement, or in the absence of such terms, if the agreement complies with the laws of the seat of the arbitration;
- The arbitration award is binding on the parties, was not set aside or suspended by a competent authority in its country of origin, or under the laws of its country of origin;
- The subject matter of the dispute is arbitrable under the laws of Ethiopia;
- The recognition and enforcement of the award is not contrary to the public policy of Ethiopia.

Procedure

The Ethiopian Civil Procedure Code provides that the provisions applicable to the enforcement of foreign judgments apply "by analogy" to the enforcement of foreign arbitral awards (in this regard see the requirements for the enforcement of a foreign judgment above).

Limitation

The same limitation for the enforcement of a foreign judgment applies to the enforcement of a foreign arbitral award. Hence, a judgment creditor has a period of 10 years within which to enforce a foreign award.

How long will enforcement take?

Enforcement will take about 6 months.

Security for Costs

Ethiopian law does not provide for the provision of 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 (LI 1575) (“LI 1575”), which lists countries whose judgments are enforceable in Ghana on a reciprocity basis; and
- High Court (Civil Procedure) Rules, 2004 (CI 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, LI 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 other countries.

Where there is no reciprocity, an original action may be brought in Ghana for a full retrial of the matter and the foreign judgment may be 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 have been granted 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 deemed to be incapable of alteration by that court. A judgment pending appeal in the foreign court is therefore final for enforcement purposes in Ghana;
- The 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 is deemed to have 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. The notice must have been given in accordance with the law of that country; and
- 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 a lawyer or a

representative of the judgment creditor. It must be sworn before a Judge, Magistrate, Registrar, or a Commissioner of 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 are attached, including the judgment itself and documents evidencing that it is a final judgment from a court of competent jurisdiction. The affidavit must also state the name, trade or business, and the usual or last known place of abode or business of the judgment creditor and of the debtor.

The affidavit must also state the following:

- That the judgment creditor is entitled to enforce the judgment;
- That at the date of the application, the judgment has not been satisfied;
- That at the date of the application, the judgment may be executed in the foreign country and if registered is incapable of being set aside; and
- The amount of interest owing under the foreign judgment, up to the date of application for registration.

Finally, the affidavit must be accompanied by proof that the judgment may be executed in the foreign country. The application is also required to provide proof of the foreign law governing the interest owing under the foreign judgment.

When leave to register the foreign judgment is granted by the court, the order giving leave 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.

The order giving leave to register a judgment will state the period within which an application may be made to set aside the registered judgment and must also contain a notification that the judgment may only be executed after an expiry date that is set by the court.

A notice of the registration must be served on the judgment debtor and must contain the following:

- The full particulars of the judgment registered and the order for the registration;
- The name and address of the judgment creditor, or of the lawyer of the judgment creditor;
- The right of the judgment debtor to apply to have the registration set aside; and
- The period within which an application to set aside the registration may be made

After service of the notice of registration on the judgment debtor, he may apply to set aside the registration of the judgment. The Court may set aside the registration where:

- The judgment falls within any of the cases in which a judgment may not be ordered to be registered; or
- It is not just or convenient that the judgment should be enforced in Ghana; or
- There is some other sufficient reason for setting aside the registration;
- The foreign judgment is not a judgment to which the Court's Act applies, or where it was registered in contravention of the Court's Act; or
- The original court did not have jurisdiction in the case; or
- The foreign judgment debtor, being the defendant in the proceedings in the original court, did not receive notice of those proceedings in sufficient time to enable the judgment debtor to defend the proceedings and did not appear; or
- The foreign judgment was obtained by fraud; or
- The enforcement of the foreign judgment would be contrary to public policy in Ghana.

Where an application is made to set aside the registration of a foreign judgment, execution is stayed until after the application is finally determined.

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

On enforcement the currency of the foreign judgment will 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 maybe 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 provide 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 on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York) which is given effect to by the Alternative Dispute Resolution Act, 2010 (Act 798) ("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 and 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, or must be made under the New York Convention or any other international convention on arbitration ratified by 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;
- There must be no appeal pending against the award in any court under the law applicable to the arbitration;
- 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 are met, the judgment creditor seeking enforcement must produce the original award or a copy authenticated under the laws of the country of origin. The party seeking enforcement must also provide the court with the original agreement pursuant to which the award was made, 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 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 number of matters awaiting hearing before the court. 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.

REPUBLIC OF GUINEA CONAKRY

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ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

What Laws Regulate Enforcement?

The main sources of law regulating the enforcement of foreign judgments are: the Civil, Economic and Administrative Procedure Code of 16 June 1998 ("CPCEA") and Law No 2015/019/AN of 13 August 2015 on the organization of the judiciary in the Republic of Guinea ("Law of 2015").

Treaties

The Republic of Guinea is a party to the following treaties:

- The Convention for the Settlement of Investment Disputes between States and Nationals of Other States (ICSID) established under the aegis of the International Bank for Reconstruction and Development (World Bank);
- The Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention) of 10 June 1958;
- The Organization for the Harmonization of Business Law in Africa (OHADA), and as a result a member of the Common Court of Justice and Arbitration ("CCJA") (parties to an arbitration may elect to apply the CCJA Arbitration Rules under the Uniform Act of 11 March 1999); and
- Member of the Multilateral Investment Guarantee Agency (MIGA) of the World Bank Group.

Jurisdiction over Foreign Judgment Debtors

The first President of the Court of Appeal has the power to rule on the enforcement of foreign judgments. This power includes the decision on whether the Guinea court has jurisdiction in the enforcement proceedings.

Requirements for Enforcement

- The foreign judgment must be final in the sense that it is not subject to any appeal pending in the foreign state in which it was rendered. Therefore, all appeals in the foreign state must have been exhausted before a plaintiff can commence enforcement proceedings in Guinea. If no appeal has been lodged in the foreign jurisdiction, a plaintiff may commence enforcement proceedings once the time limit for appeal has expired in the foreign jurisdiction;
- The foreign judgment must not breach Guinean public policy. The judgment must therefore comply with all the

mandatory provisions of Guinean law. Thus where, for example, the foreign judgment was granted on the basis of a contract that did not comply with the conditions of validity under Guinean law, it cannot be enforced in Guinea;

- The foreign judgment must not breach any final Guinean judicial decision on the same subject matter. Moreover, if a Guinean court has ruled on the same issue between the same parties, a contrary decision on the same matter between the same parties rendered by a foreign court may not be enforced;
- The foreign court which rendered the foreign judgment must have had jurisdiction over the defendant in terms of its own rules;
- In the case where the defendant resided abroad at the commencement of the foreign action, he must have been given notice of the proceedings against him. Where the defendant resided in Guinea at the commencement of the foreign action, service of the foreign process must have been effected on him in terms of Articles 726 and 727 of the CPCEA.

Authentication

A foreign judgment must be authenticated before it will be enforced in Guinea.

Procedure

The claimant must submit to the first President of the Court of Appeal an application for enforcement together with the authenticated copy of the foreign judgment. If all the requirements for enforcement are met, the judge will enforce the foreign judgment. Once enforced, the chief clerk of the Court of Appeal must affix an "executory formula" on the enforcement decision to enable it to be executed in Guinea. The claimant may then direct the bailiff to execute the judgment against the defendant.

How long does Enforcement take?

The time taken to enforce a foreign judgment depends largely on the nature of the judgment. If the foreign judgment concerns simple matters not requiring in-depth analysis by the court, enforcement will take about a week. Complex foreign judgments requiring in-depth analysis by the court will take a month or more to be enforced.

Judgments in a Foreign Currency

Foreign judgments directing payment in a foreign currency will be converted on enforcement to the Guinean Franc equivalent of the foreign currency at the exchange rate prevailing at the date of judgment or on the date of payment.

Interest

The CPCEA does not provide for the enforcement of any interest aspect of a foreign judgment.

Merits

A Guinean court will review the merits of the foreign judgment in accordance with the Rules of Private International Law. In this respect, the Guinean court will not sit as a court of appeal on the foreign judgment but will merely verify that the foreign judgment is not contrary to Guinean public policy.

Limitation

The limitation period for enforcement of a foreign judgment is 30 years.

Security for Costs

A Guinean court will not grant security for costs.

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

The enforcement of foreign arbitral awards is governed by the Uniform Act on Arbitration of November 23, 2017 and Order A/2016/033/MJ/CAB/SGG of February 8, 2016, on the Rules of Arbitration of the Arbitration Chamber of Guinea.

Guinea ratified the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards on 23 January 1991 (which came into force on 23 April 1991).

Requirements for Enforcement

A claimant for enforcement must establish the existence of the foreign arbitral award. This is done by providing the original arbitral award, or an authenticated copy. The original arbitration agreement, or an authenticated copy is also required.

The requirements under the New York Convention must also

be fulfilled, thus:

- 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 present 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 the governing law;
- The award must be binding on the parties and must not have been set aside or suspended under the governing law;
- The recognition and enforcement of the award must not be contrary to Guinean public policy;
- The subject matter of the dispute must be arbitrable under Guinean law.

Procedure

The claimant is required to make application to the court for enforcement of the foreign award and the original arbitral award and arbitration agreement, or authenticated copies, must be provided.

Limitation

The limitation period for the enforcement of a foreign arbitral award is 30 years.

How long will enforcement take?

The court hearing a petition for recognition and enforcement is required to give a ruling within a period of 15 days from the date of the referral. If the court has not issued its order within that period, enforcement is deemed to have been granted.

Security for Costs

Guinean law does not provide for security for costs.

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. Kenya currently has reciprocal arrangements with Australia, Malawi, Seychelles, Tanzania, Uganda, Zambia, Rwanda and the United Kingdom.

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 or must require the judgment debtor to make an interim payment to the judgment creditor. A foreign judgment is deemed final for enforcement purposes even if an appeal is pending against it in the foreign jurisdiction;
- A 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 notary public on the Registrar of the original court or authenticated by affidavit.

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 may take between 6 months to one and a half years, depending on the complexity of the defences to enforcement and whether the matter is protracted.

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.

Merits

A Kenyan court may not re-examine the merits of the case giving rise to the foreign judgments 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.

The Kenyan Arbitration Acts generally govern the enforcement of foreign arbitral awards.

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, the party relying on the award or applying for its enforcement is required to provide a certified translated copies of the documents;
- The award must not be contrary to Kenyan public policy nor must it have been induced or affected by fraud, bribery, undue influence or corruption;
- 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 6 months to one and a half years depending on the complexity of the defences to enforcement and whether the matter is protracted.

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 being the Reciprocal Enforcement of Judgments Proclamation 2 of 1922.

Treaties

Lesotho is not party to any treaty regarding the reciprocal enforcement of foreign 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 courts of the origin country;
- 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 the 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.
- Reciprocity is extended in terms of Notice 96 of 1922

to Botswana, Swaziland, Zimbabwe, Zambia, Tanzania, Malawi, Kenya, New Zealand, Australia and Uganda;

- 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 may 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, claiming on the basis that the foreign judgment is a liquidated claim.

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 enforcement of 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 duplum rule will however apply on 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 foreign 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.

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 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 arbitral 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 law of which, the award was made.

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 older than 30 years 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

In respect of local judgment creditors, the Mauritius court will enforce a foreign judgment if the enforcement is in respect of the debtor’s assets located in the Mauritian jurisdiction. In cases of enforcement by foreign judgment creditors, the subject matter of the judgment must in addition have a link to the Mauritian jurisdiction, for example a breach of contract subject to the laws of Mauritius, or a judgment in respect of shares held in a Mauritian entity.

Requirements for Enforcement

The law under which a foreign judgment is recognized and enforced in Mauritius is Article 546 of the Mauritian Code of Civil Procedure. It provides for what are known as “*exequatur*” proceedings. The Code of Civil Procedure does not actually set out the conditions that are to be fulfilled for an application for “*exequatur*”. These conditions have however been established under case law. In the case of *D’Arifat v Lesueur* [1949 MR 191], the Supreme Court set the conditions to be fulfilled for an *exequatur* application to be granted. Any final judgment or order obtained in a foreign court will be enforceable in Mauritius without re-examination of the merits of the case, provided that:

- The foreign judgment is still valid and capable of execution in the country where it was delivered;
- It is not contrary to Mauritius public policy;
- The defendant was given proper notice of the proceedings; and
- The court which delivered the judgment had jurisdiction to deal with the matter.

Where enforcement is sought against a non-Mauritian resident, it was held by the Supreme Court of Mauritius in *Dallah Albaraka (Ireland) Ltd v Pentasoft Technologies Limited & anor* 2015 SCJ 168, that the mere fact that a foreign defendant had assets in Mauritius was sufficient to establish the jurisdiction of a Mauritian court in enforcement proceedings. The case concerned an application to enforce an order issued by the High Court of England, Queen’s Bench Division, between two foreign parties. It was held that it was legitimate for a judgment creditor armed with a judgment against a debtor without assets within the jurisdiction where the judgment was obtained, to enforce the judgment in the country where the assets are located. The physical location of the debtor’s assets is an important factor in determining the jurisdiction in which the judgment creditor seeks to have the judgment recognized and enforced. In these circumstances, the judgment creditor should not be denied access to justice and to all the enforcement remedies on grounds of inadequate connection, or on the ground that the parties to the judgment are foreign. Hence, it was held that the Mauritian court was competent to deal with the enforcement.

Moreover, special enforcement regimes are applicable to judgments emanating from certain countries.

In this respect, 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 must not offend Mauritian public policy.

Moreover, enforcement under the Foreign Judgments (Reciprocal Enforcement) Act 1961 can be sought on any judgment of a superior court of a foreign country, as proclaimed by the President, 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 by the President.

Authentication and Translation of Judgment

A foreign judgment must be translated and authenticated by a competent official in the foreign jurisdiction.

Procedure

Enforcement is by way of an action before the Supreme Court of Mauritius supported by an 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. A 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 on how the judgment was obtained and must be accompanied by an authenticated copy of the judgment. The plaintiff seeking enforcement is required to state that 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 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 where 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 was otherwise 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.

More recently in *State Trading Corporation (“STC”) v Betamax Ltd* 2019 SCJ 154 the Supreme Court of Mauritius set aside an international arbitration award (of the Singapore International Arbitration Centre) in favour of Betamax on the ground of public policy because the contract out of which the dispute arose breached Mauritius procurement laws. It was held that to enforce the award would be contrary to Mauritius public policy within the meaning of the International Arbitration Act.

The public policy of Mauritius is therefore an essential aspect that has to be taken into account for the enforcement of a foreign arbitral award. It is important to note however the Supreme Court’s finding that there is a high threshold for public policy to be an effective challenge to the enforcement of an arbitral award. Indeed, the breach of public policy must be flagrant, actual and concrete. In the *Betamax* case, a breach of public procurement laws was considered to be a breach of Mauritian public policy and therefore justified the annulment of the international arbitration award.

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.

Authentication

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 the applicant is a foreign entity.

MOZAMBIQUE

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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 may 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 or must not offend Mozambican law.

Authentication and Translation of Judgment

A foreign judgment must 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 judgment. 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 of 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 the 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

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

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 against 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 certified 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 allocator 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 as determined by its local laws. 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 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 technical 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 have had the jurisdiction 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

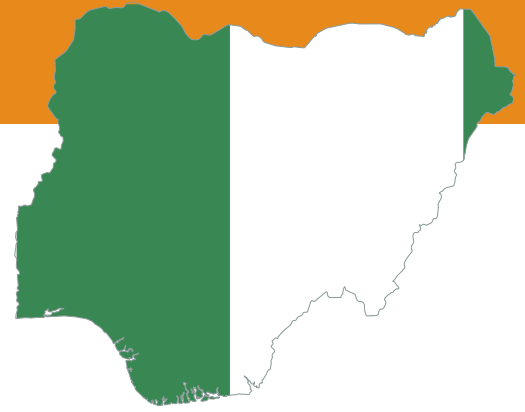
Enforcement is by way of application to the High Court on notice of motion with a founding affidavit setting out the relief applied for and the grounds on which the award should be enforced.

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 its having been granted.

NIGERIA

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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), Reciprocal enforcement of Foreign Judgment Ordinance 1922 Cap 175, Laws of the Federation of Nigeria and Lagos, 1958 ("the 1922 Ordinance"), 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.

The 1922 Ordinance was enacted to facilitate the reciprocal enforcement of judgments obtained in Nigeria and in the United Kingdom, and other territories under the United Kingdom's protection.

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 judgement 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:
 - Where the judgment debtor as a defendant in the original court, submitted to the jurisdiction of the foreign Court by voluntarily appearing in the proceedings other than for the purpose of protecting, or obtaining the release of property seized or threatened with seizure, in the proceedings, or contesting the jurisdiction of that court; or
 - Where the judgment debtor was a plaintiff, or counterclaimed, in the proceedings in the original court; or
 - Where the judgment debtor, before the commencement of the proceedings, had agreed in respect of the subject matter to submit to the jurisdiction of that court or of the courts of the country of that court; or
 - Where 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;
 - Where 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 in which the subject matter was immovable property, or in an action in rem in which the subject matter was movable property, where the property was situated in the country of the original court at the start of the proceedings;
- 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 community sense or common cognitions of the Nigerian people;
- The foreign judgement must not have been wholly satisfied elsewhere;
- The foreign judgement 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. The original judgment with the official seal of this foreign court is required.
- If the judgment is in a foreign language, it must be translated into English.

Procedure

There are a number of ways in which a foreign judgment may be enforced in Nigeria including by way of garnishee proceedings, writ, writ of sequestration, writ of attachment or by judgment summons.

At common law, a foreign judgment cannot be directly registered and enforced in Nigeria. A party seeking recognition and enforcement of a foreign judgment must bring an action on the judgment, i.e. sue on the foreign judgment in a Nigerian court. The judgment creditor may apply for summary judgment or default judgment. Either of these procedures may be used where the Plaintiff contends that the Defendant has no defence to the claim and that there is no need for a full trial. The judgment creditor may also proceed by way of an ordinary writ of summons.

How long does Enforcement take?

The enforcement process can take between 6 months to 1 year. If the defendant opposes enforcement on complex grounds, or 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

Where the judgment creditor proceeds under the common law, i.e. through summary judgment procedure, the limitation period for enforcement is either ten or twelve years from the date of judgment, depending on the State in which the enforcement of the judgment is sought.

However, where the Foreign Judgments (Reciprocal Enforcement) Act 2004 applies, the limitation period for registration and enforcement of foreign judgement is six years from the date of judgment. This limitation period applies to commonwealth countries and foreign countries in respect of which the Minister has made an order extending Part 1 of the Act on the basis of reciprocity.

Where the Minister has not made such order, the limitation period is 12 months from date of the judgment.

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 a reciprocity reservation. 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 the court with 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 Nigerian 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

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 must be recognised as binding and must 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, a foreign arbitral award may be enforced within 12 months of the date of the award. The award must be registered in the Nigerian court having jurisdiction. The award must be final and conclusive. 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 way of action. This 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.

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ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

What Laws Regulate Enforcement?

The enforcement of foreign judgments in the RoC is regulated by Law n.51-83 dated 21 April 1983, establishing the Code of Civil, Commercial, Administrative and Financial Procedure (hereinafter the "Law n.51-83").

Treaties

The RoC is a party to several conventions on cooperation in judicial matters including the convention on cooperation in judicial matters with the Democratic Republic of Congo of 12 April 1978, and a convention on cooperation and mutual legal assistance between the members of the Economic Community of Central African States, of 28 January 2004. These conventions harmonize the requirements for the recognition of foreign judgments

Jurisdiction over Foreign Judgment Debtors

The RoC courts will enforce a foreign judgment against a foreign judgment debtor if the latter has assets located in RoC. The competent courts for enforcement are the Tribunal d'instance (District Court), the Tribunal de grande instance (High Court) or the Tribunal du commerce (Commercial Court), depending on the nature and value of the judgment.

An order by RoC courts enforcing a foreign judgment applies only for the enforcement against assets located in the RoC¹.

Requirements for Enforcement

A foreign judgment is enforceable in the RoC only after its "exequatur" by a competent Congolese court. The exequatur is an authorization by the court to recognize and enforce the foreign judgment². The domestic judge may only refuse enforcement if the award is manifestly contrary to the public policy of the RoC. The judge will consider the judgment for this purpose only.

¹Article 298 of Law No. 51-83.

²Article 299 of Law No. 51-83.

Authentication and Translation of Judgment

Foreign judgments in a foreign language must be translated

into French. The translation must be done at the Embassy of the country from which the judgment emanates, either before the Ministry of Foreign Affairs, or by translators approved by the Courts of Appeal of the Republic of Congo.

Procedure

Application must be made before the Presiding judge of a competent RoC court. The competent court must give its decision on exequatur as soon as possible.

After the exequatur is granted, and if there are no defenses, the clerk of the court must proceed to execute the court decision in accordance with the terms of the decision.

How long does Enforcement take?

The law does not set a time limit within which a judge must rule on the enforcement of a foreign judgment. In practice however, a foreign judgment is usually enforced within about a month. The enforcement officer of the court will instruct the defendant to pay the judgment debt within 20 days, failing which the defendant's property will be seized.

Judgments in a Foreign Currency

The domestic court may render a judgment in foreign currency, it may also convert the foreign currency into the local currency.

Interest

No interest is awarded in the enforcement process.

Merits

RoC courts may not review the merits of the case that gave rise to the foreign judgment. They limit themselves only to examining the form of the foreign judgment, not its substance.

Limitation

A foreign judgment must be enforced in the RoC within 30 years of its granting. The time limit runs from the date of the decision of exequatur or after the exhaustion of remedies.

Security for Costs

A defendant may not oppose the execution of a court decision nor may a defendant demand any security whatsoever.

ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

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

The RoC is not a party to the New Convention on the Recognition and Enforcement of Foreign Arbitral Awards. The RoC is a State Party to the OHADA (Organisation pour l'harmonisation en Afrique du droit des affaires", or, in English, the Organisation for the Harmonisation of Corporate Law in Africa).

The enforcement of foreign arbitral awards is regulated by:

- The Law n.51-83 (Article 310);
- The OHADA Uniform Act on Arbitration dated 23 November 2017 (hereinafter the "OHADA Uniform Act");
- The Rules of Arbitration of the Common Court of Justice and Arbitration dated 23 November 2017 (hereinafter the "CCJA Arbitration Rules").

Requirements for Enforcement

The only requirement to enforce a foreign award is the exequatur.

The OHADA Uniform Act governs all arbitrations seated in one of the OHADA States. Pursuant to the OHADA Uniform Act, arbitral awards may be executed in the RoC only by virtue of an order of exequatur granted by a competent RoC court. The RoC courts may grant the exequatur on the foreign award if it is not contrary to a rule of international public policy.

Notwithstanding the above, the Common Court of Justice and Arbitration ("CCJA") has sole jurisdiction to grant the exequatur on foreign awards rendered under the CCJA Arbitration Rules. The CCJA may only refuse the exequatur on the award on the following grounds³ :

- If the arbitral tribunal has ruled without an arbitration agreement or on the basis of an arbitration agreement that is void or expired;
- If the arbitral tribunal ruled on issues beyond its mandate;
- If the principle of due process has not been respected;
- If the arbitral award is contrary to international public policy.

The RoC Courts only issue a formal enforcement order after the CCJA has issued the exequatur.

Procedure

The procedure for the enforcement of a foreign arbitral award is as follows:

- The plaintiff is required to submit a request for enforcement to the court of the place where the enforcement of the foreign award is sought;
- The president of the court seized with enforcement must issue the order of enforcement. The exequatur order once issued is immediately enforceable, and may not be opposed. This is a non-contentious procedure;
- After the order has been issued, the registrar will proceed to execute it by seizing the defendant's assets.

Under the OHADA Uniform Act, application is made to the Presiding judge of the competent RoC court and the decision on the exequatur on the award is issued within fifteen days. A decision rejecting the exequatur of the award may be appealed. In contrast, the decision granting the exequatur may not be appealed⁴ .

A similar procedure applies to foreign awards rendered under the CCJA Arbitration Rules. Application is made to the President of the CCJA. The decision on exequatur is issued within fifteen days. A decision rejecting the exequatur of the foreign award may be appealed. The decision granting the exequatur however may not be appealed. In view of the decision of the CCJA, a competent RoC court grants formal exequatur to the award⁵.

Limitation

A party may enforce a foreign arbitral award in the DRC within thirty years after the issuance of the award. For enforcement of awards relating to fixed property, a party has fifteen years within which to enforce the foreign arbitral award in the DRC.

How long will Enforcement take?

Enforcement of a foreign arbitral award may take up to about twelve months.

Security for Costs

A defendant opposing enforcement may not demand security for his costs against the defendant.

³Article 30(5) of the CCJA Arbitration Rules.

⁴See Article 31 of the OHADA Uniform Act.

⁵See Articles 30.2, 30.3, and 3 of the CCJA Arbitration Rules.

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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. As exequatur is the recognition of the judgment by the court once it is satisfied that the requirements for enforcement have been met.

A Senegalese court will not examine the merits of the case giving rise to the foreign judgment. It will only 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 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 court.

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) may 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 concerning 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 bases:

- 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; and
- 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 International Arbitration Act 15 of 2017 (which is based on the UNCITRAL Model Law).

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.

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 Eswatini:

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

Treaties

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

Jurisdiction over Foreign Judgment Debtors

Eswatini courts will exercise jurisdiction in enforcement proceedings against a foreign defendant where:

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

Requirements for Enforcement

Eswatini courts will enforce a foreign judgment if the following requirements are met:

- The foreign court must have been competent to grant the judgment. The foreign court will be competent if the defendant was a 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 Eswatini public policy and the foreign judgment must not conflict with any Eswatini 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 Eswatini. 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 out 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 the 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 will have the same force and effect as if it had been granted by Eswatini court. A foreign judgment in a foreign currency will usually therefore have to be converted into Eswatini currency when enforced. However, there have been a number of cases in which the court has enforced foreign judgment in the foreign currency.

Interest

Eswatini courts will enforce the interest portion of the foreign judgment. Courts will not grant any additional interest.

Merits

Eswatini courts 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 Eswatini.

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**

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

Requirements for Enforcement

- The award must not violate Eswatini law;
- Enforcement should not be against Eswatini 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 Eswatini.

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.



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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 three 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;
- Law of Limitation Act [Cap 89 R.E 2002] provides timescales within which action may be taken for recognition and enforcement of foreign judgments.

Treaties

Tanzania is not a 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 Tanzania has reciprocal enforcement arrangements with 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 judgement 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 will 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;
- The enforcement 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 must be 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.

Judgments in a Foreign Currency

Tanzanian courts will enforce foreign judgments expressed in a 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 limitations, 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.

ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

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

The Arbitration Act [No. 2 of 2020], the Civil Procedure Code [Cap 33 R.E 2002] and the Law of Limitation Act [Cap 89 R.E 2002] govern the recognition and enforcement of foreign arbitral awards.

Treaties and Bilateral Agreements

Tanzania is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, having acceded to it in 1964 without reservation. Tanzania is also party to the Convention on Execution of Foreign Awards, 1923 (Geneva Protocol of Arbitration Clause) and the Geneva Convention on Execution of Foreign Awards 1927 (The Arbitration Act, 2020 does not include the Geneva Protocol and Convention under its Schedule). Other international and bilateral arrangements that provide the basis for the recognition and enforcement of foreign arbitral awards in Tanzania include the ICSID Convention 1965, Multilateral Investment Guarantee Agency (MIGA) Convention 1985, and Bilateral Investment Treaties (BITs) with the UK, China, Denmark, China, Canada, Finland, Switzerland, Kuwait, and Italy, among others. The New York Convention, the ICSID and MIGA Conventions and BITs have not yet been domesticated and will have no direct effect until they have been domesticated.

Requirements for Enforcement

A foreign award is enforceable in Tanzania if:

- It was 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 must not be contrary to Tanzanian public policy or the laws of Tanzania;
- It does not amount to the reopening and rearguing of the issues of fact and law that the parties, by their own agreement, submitted to a foreign tribunal for the relevant awards.

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;
- The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing any agreement by the parties or, was not in accordance with the law of the state where the arbitration took place;
- The making of the arbitral award was induced or affected by fraud, bribery, corruption or undue influence;
- The court finds that the subject matter of the dispute is not capable of settlement by arbitration under any written laws, or the recognition or enforcement of the arbitral award would be contrary to any written laws or norms;
- The court fails to separate the decisions on matters submitted and not submitted to arbitration. This implies that the part of the award which contains decisions on matters submitted to arbitration may be enforced.

Procedure

- Enforcement is by way of application to the High Court of Tanzania.
- The process is commenced by the filing of the original (final) 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.

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 12 of the Laws of Uganda, 1908. The Act empowers Ugandan 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 law seems to be applicable to the former East African Community members (such as Kenya and Tanzania). This makes it easy to enforce judgments across their borders. However, with the addition of Rwanda, Burundi and South Sudan as member states of the Community, the East African Community has not passed a protocol for the enforcement of foreign judgments within all member states;
- The Reciprocal Enforcement of Judgments Act, Cap 21 of the Laws of Uganda regulates the enforcement of judgments emanating from superior courts in the United Kingdom and the Republic of Ireland. It was subsequently extended to include Seychelles, Mauritius, Swaziland and New South Wales. The judgment creditor may apply to the High Court of Uganda to have the judgment registered. Once the judgment is registered, it has the same force and effect as if it had been obtained from the registering court and all costs including the costs of and incidental to the registration of the judgment are recoverable as if they were sums payable under the judgment. Under the Act, a judgment creditor who obtains judgment against a person resident in the United Kingdom must obtain a certified copy of the judgment and apply to a court in the United Kingdom to execute it;
- The Foreign Judgments (Reciprocal Enforcement) Act, Cap 9 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. Only judgments of the superior courts of these countries may be registered;

- The Foreign Judgments (Reciprocal Enforcement) (General Application) Order No. 35 of 2002. The Order extends the application of Part II of the Foreign Judgments (Reciprocal Enforcement) Act, to the territories of the Commonwealth and to judgments obtained in the courts of those territories as it applies to foreign countries. The Foreign Judgments (Reciprocal Enforcement) (General Application) Order No. 36 of 2002 extends the application of the Act to Grenada.

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, 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 that 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 21 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?

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 can 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

Conventions and Treaties

Uganda is party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, having acceded to it on 12 February 1992. Uganda is also party to the following:

- The International Centre for Settlement of Investment Disputes Convention (ICSID). Uganda has agreed to enforce and uphold arbitral awards in accordance with the Convention;
- The East African Community Treaty. The Treaty enjoins the national courts of member states to enforce judgments passed by the East African Court of Justice. The treaty empowers the execution of a judgment which imposes a pecuniary obligation on a person to be governed by the rules of civil procedure in force in the partner state in which the execution is to take place.

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 the Laws of Uganda, 2000. The Act regulates international commercial arbitration and enforcement of foreign arbitral awards. The Act further recognizes and gives effect to the New York Convention. The Act also gives effect to the enforcement of ICSID awards. Reciprocity is not required under the Act.

Requirements for Enforcement

- The plaintiff is required to provide an authenticated original arbitral award and arbitration agreement, or 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 at the seat of the arbitration.

Procedure

Foreign arbitral awards are enforced as a decree of the court. Upon 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 on the opposite party. The party registering the award is required thereafter to file in the High Court proof of service on the opposing party by an affidavit.

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. The parties on whom the objections are served, may within fourteen days after the date of service of the objections lodge counter objections which must be served on the original objector.

An application to enforce an award as a decree of the court is commenced by Chamber summons supported by an affidavit. Application cannot be made, if no objections to the award are lodged, within ninety days after notice of registration of the award has been served upon the party against whom the award is to be enforced. If any objections have been made, the court will enforce judgment after dealing with the objections.

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 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 by statute into Zambian domestic law.

Jurisdiction over Foreign Judgment Debtors

Zambian Courts will exercise jurisdiction in enforcement proceedings against the foreign defendant's assets in Zambia, regardless of the defendant not being a 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 the 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. 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 Judgement (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 executed 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 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 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 where 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 set out in the terms of reference to arbitration;
- The arbitral tribunal must have been properly constituted in accordance with the arbitration 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 application. The court however may order that the application be heard inter-partes 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 judgment debtor 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 anything 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 present 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 the prescribed form and served on all interested 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.