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

Alliance of Leading Law Firms
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Aliança dos Principais Escritórios de Advocacia

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# Introduction

## About LEX Africa

*Doing business in Africa is associated with diverse opportunities, challenges and risks and must accordingly be founded on a strong legal base.*

LEX Africa is an Alliance of leading African law firms which was founded in 1993 and has over 600 lawyers in 29 African countries. It was the first legal Alliance focussing solely on Africa and effectively covers the entire African continent. LEX Africa provides a valuable resource for its clients in Africa.

Only African law firms may join the Alliance and each member's key specialist focus is on general corporate, commercial law and dispute resolution as well as regulatory and sectoral laws and regulations.

LEX Africa has a more than 30 year track record of assisting and advising clients on their African business and other activities. Each member has expert knowledge and experience in both local law and the local business, political, cultural and economic environment. LEX Africa accordingly provides a "one stop shop" and Pan African legal team for cross border and domestic African legal solutions for its clients.

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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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# CAMEROON | D. MOUKOURI AND PARTNERS

## 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 obtained by an application for the recognition and enforcement of the foreign decision to the President of the competent court.

**Requirements for Enforcement**
The party who seeks the recognition or 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 present in the foreign jurisdiction at the commencement of the original action, nor resident there. 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 30 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 is a 30-year limitation period for the enforcement of a foreign judgment.

**Security for Costs**
The law allows for a defendant opposing enforcement to demand of the foreign plaintiff to provide security for its costs in accordance with Article 73 of the Cameroonian Civil Code which provides *"Subject to trusteeship agreements and international conventions, all foreigners, whether principal*

*claimants or interveners, shall be required, if the defendant so requires before any exception, to provide security and to pay the costs and damages to which they may be ordered to pay".*

## 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 10 July 2003 which designates the competent courts mentioned in the Uniform Act on Arbitration within the framework of the organisation 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 languages 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 is 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 a 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.

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# DRC I PATHY LIONGO & ASSOCIATES

## ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

**What Laws Regulate Enforcement**
The enforcement of foreign judgments in the DRC is regulated by statute, namely:
- Organic Law No. 13/001-B of 11 April 2013 relating to the organisation, operation and jurisdiction of judicial courts;
- Decree of 7 March 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 harmonise the requirements for the recognition of foreign judgments.

**Jurisdiction over Foreign Judgment Debtors**
The presence in the DRC of the defendant's assets 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 is 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 recognise and enforce the foreign judgment.

Foreign judgements are recognised in the DRC in terms of Article 119 of the Organic Law No. 13/001-B of 11 April 2013 on condition that:
- they do not contain anything contrary to DRC's public order;
- according to the laws of the country where they have been rendered, the judgement must be final;
- it must have been authenticated under the laws of the country where it was made;
- the defendants' rights must not have been violated in the foreign jurisdiction; and
- the foreign court did not establish jurisdiction solely based on the nationality of the claimant.

**Authentication and Translation of Judgment**
Foreign judgments in a language other than French are required to be translated into French by a sworn 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 Official Gazette.

A duty of 10% is levied on any amount awarded by a foreign judgment rendered enforceable in the DRC in terms of Article 152 of the Code of Civil Procedure as amended and supplemented by Ordinance-Law No. 87/058 of 4 October 1987.

**How long does Enforcement take**
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**
In an exequatur proceeding the DRC court will not reexamine the merits of the case or sit as a court of appeal. The court will decide if the legal requirements described above have been met in respect of the judgement for which recognition is requested..

**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.

## 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.

When ratifying the New York Convention, the DRC formulated four reservations:

- Reciprocity. The DRC will not recognise 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 recognised and enforced in the DRC;
- Non-retroactivity. The DRC will not recognise foreign arbitral awards made before the accession of the DRC to the New York Convention;
- Exclusion of immovable property matters. The DRC will not recognise foreign arbitral awards relating to fixed property located in a foreign country or relating to any rights relating to that property.

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 the New York Convention, the DRC's ratification instrument of the New York Convention and the local law provisions regarding the recognition and enforcement of foreign arbitral awards, the conditions for a foreign arbitral award to be recognised and enforced in the DRC are as follows:

- The applicant must provide a duly certified copy of the award and a duly certified copy of the original agreement, with French translations if in a foreign language;
- the arbitration agreement must be valid under the law governing the original agreement, or under the law of the country where the award is made.
- The appointment of arbitrators and the arbitration procedure must have been in accordance with the agreement between the parties or, in the absence of such agreement, the laws of the country where the award is made;
- The rights of the party against which the award is invoked must have been respected during the arbitration procedure;
- The award is not related to a dispute which, under DRC law, may not be subject to arbitration.
- The award is not contrary to the DRC's public policy.

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.

Under the OHADA Uniform Act on Arbitration, the application is made to the Presiding judge of the competent DRC court. A decision rejecting the exequatur of the award may be appealed. However, the decision granting the exequatur cannot be appealed (see Article 31 of the OHADA Uniform Act on Arbitration).

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. 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 10 % is levied on amounts enforced under a foreign arbitral award in terms of Article 152 of the Code of Civil Procedure as amended and supplemented by Ordinance-Law No. 87/058 of 4 October 1987.

**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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# EGYPT | MARGHANY ADVOCATES

## ENFORCEMENT OF FOREIGN JUDGMENTS

**What Laws Regulate Enforcement**
Except for enforcing foreign judgments against the Egyptian state; in Egypt, the enforcement of foreign judgments is primarily regulated by the Egyptian Civil and Commercial Procedures Law No. 13 of 1968: This law outlines the procedures and conditions under which foreign judgments can be recognised and enforced in Egypt. It provides the legal framework for the submission of applications for recognition and enforcement.

**Treaties**
Egypt is a party to several bilateral and multilateral treaties that govern the recognition and enforcement of foreign judgments. These treaties often establish reciprocal arrangements with other countries regarding the recognition of judicial decisions, For Example:
- The Arab League Convention on the Recognition and Enforcement of Foreign Judgments, ratified on 23 January 1954
- Arbitration Law 17, which was enacted in 1994, and the New York Convention form the main legislative framework governing the recognition and enforcement of arbitral awards.
- The Al Riyadh Arab Convention for Judicial Cooperation of 6 April 1983.
- The Arab League Convention of 1952.
- The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil and Commercial Matters of 1965.
- In addition, Egypt is a member of a number of bilateral treaties concerning judicial enforcement, such as with France of 1982, and China of 1994, as well as the Legal and Judicial Cooperation Agreement with the UAE.

**Jurisdiction over Foreign Judgment Debtors**
In the absence of a specific treaty, Egyptian courts may recognise and enforce foreign judgments from countries that similarly recognise and enforce Egyptian judgments. Therefore, Egyptian courts will only recognise and enforce a foreign judgment if the country that issued the judgment also recognises and enforces Egyptian judgments. This principle of reciprocity is essential for the enforcement process.

**Requirements for Enforcement**
In accordance with Article 298 of the Egyptian Civil and Commercial Procedures Law the following basic mandatory requirements must be met regardless of the identity of the foreign court that rendered the judgment to enforce the foreign judgment in Egypt: The Egyptian courts have no jurisdiction in relation to the case; rather, the foreign court that rendered the judgment has sole jurisdiction. The defendant must have been properly notified of the lawsuit according to the laws of the country that issued the judgment, and the parties must be lawfully represented. The foreign court judgment is final and binding and not subject to an appeal. The foreign judgment does not contradict any previous Egyptian verdicts or violate Egyptian public policy. A foreign judgment can be enforced if it is possible to separate the part that violates Egyptian public policy from the parts that do not.

However, these requirements may not apply if there is a treaty of direct enforcement between Egypt and the country whose court issued the judgment. Judicial decisions in Egypt help clarify the law and establish precedents, forming a key part of the legal framework for recognising and enforcing foreign judgments.

**Authentication and Translation of Judgment**
A foreign judgment must be authenticated by the Egyptian consulate, and an official Arabic translation must be submitted to the court along with evidence that the judgment is final. Arabic is the designated language of the court therefore this requirement extends to all written submissions in a foreign language relied upon by the parties, which must also be accompanied by an Arabic translation to enable a court to consider them.

**Procedure**
Foreign judicial judgments are enforced in Egypt through the 'execution order system.' The application for enforcement must be filed before the competent court of first instance (with territorial jurisdiction), following the normal procedure for initiating a lawsuit. The court will only issue the enforcement order (exequatur) once the conditions for recognition and enforcement are met. Foreign judgments are enforced in accordance with the same procedures applicable to domestic judgments. This is without prejudice to any applicable enforcement treaties or conventions to which Egypt is a party. The judge's role is limited to verifying the conditions set in Articles 296 and 298 of the Egyptian Civil and Commercial Procedures Law without addressing the merits or validity of the judgment.

In practice, the applicant must submit a set of documents, including: the original foreign judgment, an official Arabic translation of the judgment, a certificate confirming the finality of the judgment under the laws of the issuing country, and any relevant treaty, convention, or agreement between the issuing country and Egypt (if applicable). The court with jurisdiction over the place of enforcement will consider the application and may grant the exequatur without reviewing the merits of the underlying foreign judgment. However, the court must be satisfied that all statutory conditions for enforcement have been met.
The principle of reciprocity is engaged only where the foreign country imposes stricter enforcement requirements than those under Egyptian law, in which case the Egyptian court will apply the more stringent foreign conditions. Where the foreign country's rules are equivalent to or less strict

than those in Egypt, enforcement will proceed in accordance with Egyptian law, particularly Article 298 of the Egyptian Civil and Commercial Procedures Law, and the reciprocity requirement will not apply.

**How long does Enforcement take**

In the absence of exceptional circumstances, obtaining an exequatur for a foreign judgment in Egypt typically takes between six to twelve months. The decision to grant the exequatur is subject to appeal, which may take an additional six months to be resolved.

**Judgments in a Foreign Currency**

When recognising a foreign judgment, Egyptian courts may award damages in the relevant foreign currency. However, ancillary costs relating to the judgment are determined in accordance with both Egyptian and foreign law. For example, where applicable, exchange rates will be calculated based on the official rates issued by the Central Bank of Egypt.

Any interest awarded as part of a foreign judgment or arbitral award will be converted into the relevant foreign currency in accordance with the applicable foreign law. However, interest arising from delays in enforcement proceedings is governed by Egyptian law and will be calculated in Egyptian currency.

**Interest**

Under Civil Law No. 131 of 1948, Egyptian courts may award compensation even if the original judgment amount includes interest. In terms of Article 231 of the Civil Code, a creditor may claim additional compensation where it is proven that the debtor acted in bad faith and caused damage exceeding the interest awarded. However, Article 232 prohibits charging interest on accrued interest and provides that, under no circumstances, may the total interest exceed the principal amount.

**Merits**

An Egyptian court may not review the merits of the case giving rise to the foreign judgment. The judge's role is limited to verifying the conditions prescribed in Articles 298 and 296 of the Egyptian Civil and Commercial Procedures Law without addressing the merits or validity of the judgment.

**Limitation**

The limitation period for enforcing a foreign judgment in Egypt depends on the laws of the country where the judgment was issued. As long as the judgment remains valid and enforceable in its country of origin, it may be enforced in Egypt.

**Security for Costs**

The concept of security for costs is not applicable in Egypt. However, there are several cases under the Egyptian Civil and Commercial Procedures Law in which the court may order a party to provide security for costs. These include:

- Where a party challenges the appointment of a certain judge (Article 153);
- Where a stay of execution is requested before the Court of Cassation (Article 251);
- For expedited court judgments and orders of interim judges;
- For first-instance judgments that are enforced in an expedited manner (i.e., without waiting for an appeal judgment) (Article 290); and
- where expedited performance is mandatory, in which case the losing party seeking to stay such execution may be required to submit a security amount.

## ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

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

The recognition and enforcement of foreign arbitral awards in Egypt are primarily governed by the Arbitration Law No. 27 of 1994 and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958, to which Egypt is a signatory. The New York Convention requires that foreign arbitral awards be enforced in accordance with the laws of the state where recognition and enforcement are sought. In Egypt, the Convention constitutes mandatory law and prevails over conflicting domestic procedural laws. A judgment may only be challenged on grounds of conflict if it can be shown that the court's reasoning was deficient and resulted in a misapplication of the law.

**Requirements for Enforcement**

The enforcement of foreign arbitral awards is subject to the same rules applicable to national arbitral awards under the Arbitration Law No. 27 of 1994. Article 58 of the Arbitration Law provides that an arbitral award may not be executed before the lapse of the time period prescribed for raising an action for its annulment.

Execution of a foreign arbitral award will only be ordered if the following requirements are met:

- The award does not conflict with a prior judgment issued by Egyptian courts on the subject matter of the dispute;
- The award does not contain provisions that contravene public policy in the Arab Republic of Egypt; and
- The award has been duly notified to the party against whom it is rendered.

Orders granting enforcement of arbitral awards are final and may not be appealed. However, orders refusing enforcement may be challenged before the competent court under Article 9 of the Arbitration Law, within thirty days from the date of issuance.

**Procedure**

A party seeking enforcement of a foreign arbitral award in Egypt must submit an application to the competent court accompanied by the following documents:

- The original arbitral award or a duly signed copy thereof;
- A copy of the arbitration agreement;

- An authenticated Arabic translation of the award if it was rendered in a foreign language; and
- A copy of the procès-verbal attesting to the authenticity of the award in accordance with Article 47 of the Arbitration Law.

**Limitation**

An application for the enforcement of a foreign arbitral award in Egypt may only be submitted after the expiry of 90 days from the date on which the parties were notified of the award. This 90-day period corresponds to the statutory time limit for filing an action for annulment of the award. After this period, the competent court will decide whether to issue or refuse an enforcement order.

The enforcement order must be refused if:

- The arbitral award contradicts a previous judgment issued by Egyptian courts (jurisdiction over such contradictions lies with the Supreme Constitutional Court);
- The award contains provisions that violate public order in the Arab Republic of Egypt; or
- The party against whom the award is invoked was not properly notified of the enforcement application.

Pursuant to Article 58 of the Egyptian Arbitration Law, a refusal to grant the enforcement order may be appealed by the award creditor within 30 days of the decision. Conversely, a decision to grant the enforcement order may also be appealed by the party against whom the award is to be enforced, within the same 30-day period.

Once granted, the enforcement order must be submitted to the competent court within 30 days for the award to be sealed and formally enforced. If the enforcement is denied on appeal, the award creditor may reapply for enforcement.

**Security for Costs**

The concept of security for costs is not applicable in Egypt. However, there are several instances under the Egyptian Civil and Commercial Procedures Law in which the court may order a party to provide security for costs. These include:

- Where a party challenges the appointment of a certain judge (Article 153);
- Where a stay of execution is requested before the Court of Cassation (Article 251);
- Where a party files to set aside an arbitral award and seeks to stay its enforcement until the set-aside proceedings have concluded;
- For expedited court judgments and orders of interim judges;
- For first-instance judgments that are enforced in an expedited manner (i.e., without waiting for an appeal judgment) (Article 290 of CPC);
- Where expedited performance is mandatory, in which case the losing party seeking to stay such execution may be required to submit a security amount; and
- In institutional arbitration, where the rules of the relevant institution so allow.

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# GHANA | BENTSI-ENCHILL, LETSA & ANKOMAH

## 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) ('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 in the proceedings in the original court is foreign or not) is established because 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 instituted 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 delivered by a court of competent jurisdiction as its final judgment on the matter and is incapable of alteration by that court. A judgment pending appeal in the foreign court is therefore final for enforcement purposes in Ghana;
- 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. 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 judgment 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 in Ghana.

The order giving leave to register a foreign 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 judgment debtor may, during the period within which registration may be set aside, apply for an extension of the time within which to apply to set aside the order.

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 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 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; or
- The court is satisfied that the matter in dispute in the proceedings in the original court had before judgment was given in the original court been the subject of a final and conclusive judgment by a court with jurisdiction in the matter.

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 several factors, including the number of matters awaiting hearing before the court and whether or not the judgment debtor applies to set aside the registration. Generally, however, enforcement will not take less than three months, after the application is filed.

**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 may be relied on in evidence at the hearing.

**Limitation**

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

**Security for Costs**

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

## KENYA
## KAPLAN & STRATTON

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# KENYA | KAPLAN & STRATTON

## 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 judgement debtor to make an interim payment to the judgement 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:

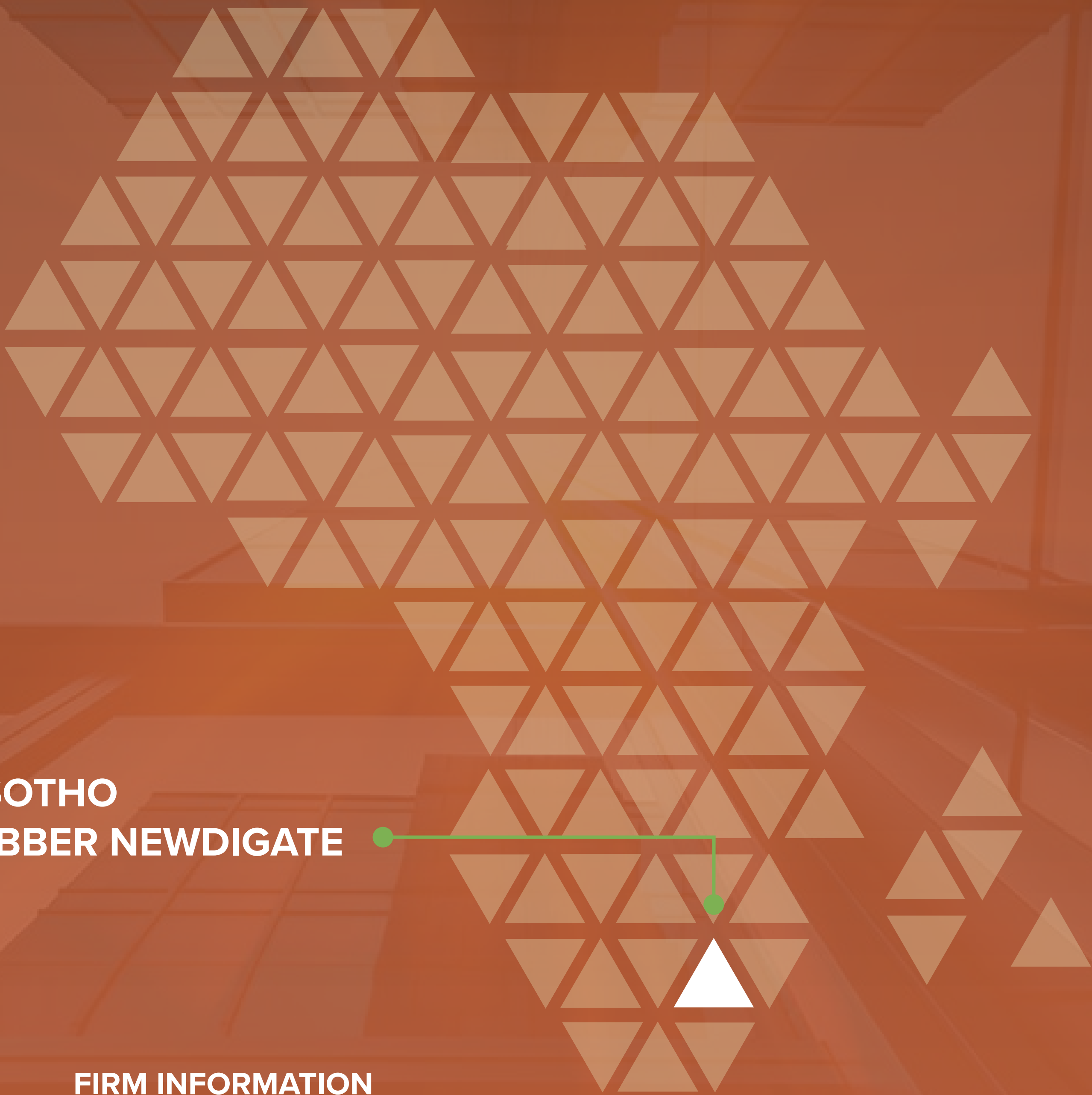
- The original arbitration agreement and the award, or certified copies of them must be provided. If these documents are in a language other than English, the party relying on the award or applying for its enforcement is required to provide certified translated copies of the documents;
- The award must not be contrary to Kenyan public policy or 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 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.



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# LESOTHO | WEBBER NEWDIGATE

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

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

**Judgments in a Foreign Currency**
The court will at the request of the judgment creditor grant

judgment in the foreign currency of the judgment or convert it to the local currency.

**Interest**
The Lesotho Courts will recognise any interest granted by a foreign judgment but will not grant additional interest. The in duplum rule will however apply 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 arbitrational 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.

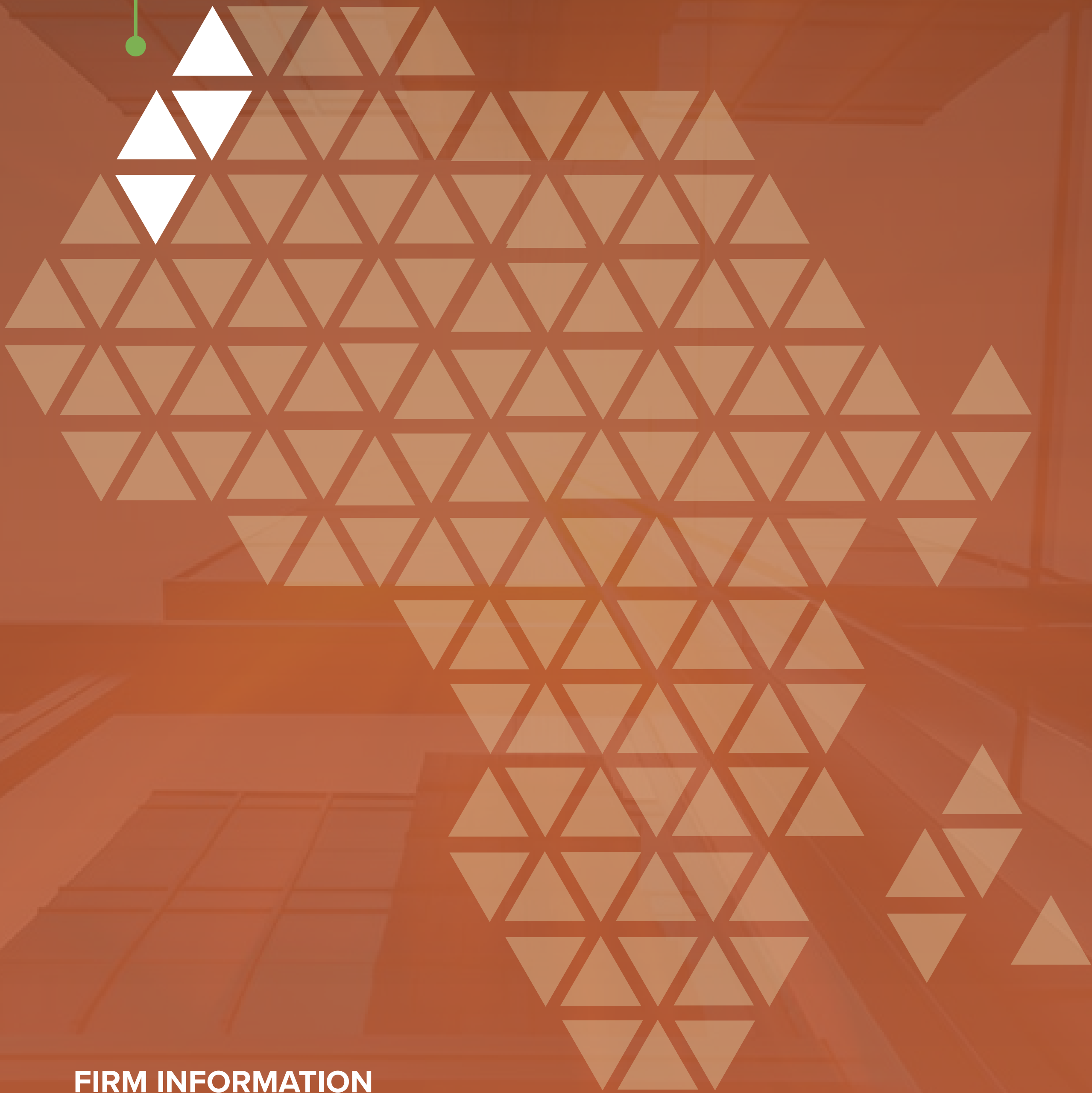
**Procedure**
Enforcement is by way of an application to the Lesotho High Court for the foreign award to be recognised.

**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 more than 30 years old will not be enforced.

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

# MOROCCO
# I&I LAW FIRM



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# MOROCCO | I&I LAW FIRM

## ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

**What Laws Regulate Enforcement**
In Morocco, the enforcement of judicial decisions rendered by foreign courts is governed by Articles 430 and 431 of the Code of Civil Procedure.

Treaties Morocco is not a party to a specific treaty concerning the enforcement of foreign judgments. However, it applies principles related to the enforcement of foreign judicial decisions through its national legislation and bilateral agreements with other countries, which establish specific procedures and particular conditions for the enforcement of judicial decisions in the signatory countries.

**Jurisdiction over Foreign Judgment Debtors**
Article 430 of the Code of Civil Procedure provides that in order to enforce a foreign judgment, it must first be granted exequatur by the court of first instance located at the defendant's domicile or residence, or, if that is not possible, at the place where enforcement is to occur. The judgment creditor will therefore be required to submit a petition along with the necessary documents to the competent court to initiate this procedure. Once the exequatur is granted, the foreign judgment will be enforceable within Moroccan territory.

**Requirements for Enforcement**
For a foreign judgment to be enforceable in Morocco, the following conditions must be met:
- The foreign judgment itself must be valid, and the jurisdiction of the foreign court must also be valid, meaning that the court had proper competence and adhered to procedural rules - including legally summoning the parties in accordance with the notification procedures of the originating jurisdiction.
- None of the provisions of the judgment may contradict Moroccan public policy.
- The foreign judgment must be final, which requires submission of a certificate from the competent court confirming there is no pending opposition, appeal, or cassation.

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**Authentication and Translation of Judgment**
Morocco requires, for the enforcement of a foreign judgment, the submission of an authenticated copy of the decision rendered by the foreign court. This judgment, along with the accompanying documents, including the original notification and the certificate from the court clerk confirming that there is no opposition, appeal, or cassation, must be translated into Arabic by a sworn translator. This translator is a professional recognized by Moroccan judicial and administrative authorities to ensure precise and accurate translation of official documents.

**Procedure**
In accordance with Articles 430 and 431 of the Civil Procedure Code, the enforcement of a foreign judgment occurs only after obtaining its exequatur from the competent court.

In the absence of an international convention providing otherwise, it is necessary to submit a request for exequatur accompanied by the following documents: an authenticated copy of the judgment, the original notification or any equivalent document, a certificate from the competent court clerk confirming the absence of opposition, appeal, or cassation, as well as a complete translation into Arabic of the aforementioned documents, certified by a sworn translator.

This request must be filed with the court of first instance of the defendant's domicile or residence, or the place of enforcement, which is responsible for verifying the validity of the foreign judgment, the jurisdiction of the foreign court, and compliance with Moroccan public policy. The judgment will then be rendered in a public hearing.

Once exequatur is granted, the foreign judgment can be enforced in Morocco in accordance with Moroccan legal procedures. The authorities are then empowered to take all necessary measures to enforce the decision, giving it the same enforceable effect as a Moroccan judgment.

**How long does Enforcement take** In Morocco, since the enforcement of a foreign judgment depends on the exequatur procedure, the time required can vary depending on the complexity of the case, the workload of the courts, the quality of the submitted documents, and any potential appeals or objections. Practically, the process can take anywhere from less than a month to over a year, depending on the specific circumstances of each case.

**Judgments in a Foreign Currency**
Generally, when Moroccan courts issue a judgment in a foreign currency, this judgment is converted into Moroccan dirhams according to the officially recognized exchange rates. The 2024 Foreign Exchange Office instruction stipulates that for the enforcement of claims arising from a foreign judgment or an arbitral award in Morocco, the following must be presented:
- An Official Copy of the Judgment or Arbitral Award: You must provide an official copy of the judgment or arbitral award, or the settlement agreement. This document must clearly indicate the amount of the claim as well as any interest and must have acquired the authority of res judicata.
- The Final Exequatur Decision Issued by a Moroccan Court: For judgments rendered abroad and arbitral awards, a final exequatur decision issued by a Moroccan court is required.

**Interest**
The role of the Moroccan court is limited to validating the procedure and verifying the compliance of the foreign

judgment with Moroccan legal requirements for its enforcement without re-evaluate the substantive issues or the evidence that led to the original judicial decision. Consequently, Moroccan courts are not able to grant interest on the amount of the initial judgment.

**Merits**
Moroccan courts do not examine the merits of the case that led to the foreign judgment. This is what the Court of Cassation determined when it instructed the court handling the exequatur to verify the validity of the judgment without discussing its substance.

**Limitation**
There is no specific provision regarding the statute of limitations for the enforcement of a foreign judgment. However, the general rule stipulates that court decisions can be enforced for a period of thirty years from the date they were rendered. After this period, they become time-barred.

**Security for Costs** In Morocco, there is no specific provision in the Code of Civil Procedure that allows the defendant to request a security for costs or for any other reason when opposing the execution of a foreign judgment. However, the judge may order security measures based on the particular circumstances of each case to ensure the fairness and justice of the judicial process.

## ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

**Relevant laws and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards**
International arbitration, and more specifically the enforcement of foreign arbitral awards in Morocco, is governed by Chapter 3 of Law 95-17 on arbitration and conventional mediation.

Morocco has acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, provided that it applies exclusively to the recognition and enforcement of awards rendered in the territory of another contracting state.

**Requirements for Enforcement** Law No. 95-17 stipulates that for an international arbitration award to be enforced in Morocco, it must not only comply with Moroccan public policy but also adhere to the principles of international public policy. Moroccan public policy can be defined as a legal concept encompassing the fundamental principles, norms, and values, primarily based on Islamic rules, that govern society and the state in Morocco. This includes essential aspects of legislation, morality, and social practices that the law seeks to protect and preserve to ensure peace, order, and the proper functioning of society. This dual requirement ensures that the enforcement of international arbitration awards aligns with both local and international legal and ethical standards.

**Procedure**
The enforcement of a foreign arbitral award in Morocco is carried out by the president of the Commercial Court of the jurisdiction where the award was issued, or by the president of the court at the place of enforcement if the seat of arbitration is located abroad, after summoning the parties. The procedure begins with the submission of the original award along with the arbitration agreement, or certified copies of these documents, as well as their translation into Arabic by an authorized translator, if the documents are in a foreign language. This request will be accepted if the time limit for filing for annulment has expired without any such appeal being lodged.

**Limitation**
Morocco is among the countries that do not impose any explicit time limitation. The law is silent on this issue, meaning there is no provision specifying the statute of limitations for the recognition and enforcement of a foreign arbitral award, and there are differing views on the subject. Generally, when the law and/or jurisprudence are silent or unclear regarding the applicable statute of limitations for the recognition and enforcement of foreign awards, the approach is to apply the time limits applicable to the enforcement of domestic awards or judgments stipulated by the Code of Civil Procedure. In Moroccan law, this period is set at 30 years from the day the award was rendered.

**How long will Enforcement take**

The duration of this process varies depending on the court and the complexity of the case. Practice shows that the exequatur of an international arbitral award can be granted within a period ranging from one week to one year before the courts of first instance.

**Security for Costs**
The Arbitration Law (No. 95-17) does not explicitly include a provision allowing the defendant to request a financial guarantee from the claimant when opposing the enforcement of an arbitral award. However, the arbitrator may decide, based on the specific circumstances, to require a financial guarantee from the claimant when the defendant opposes the enforcement of the arbitral award.

# MOZAMBIQUE
# JLA ADVOGADOS

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# MOZAMBIQUE I JLA ADVOGADOS

## ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

**What Laws Regulate Enforcement**
In Mozambique, the enforcement of foreign money judgments is governed by the Mozambican Civil Procedure Code.

**Treaties**
Mozambique is a 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;
- Hague Convention on Choice of Court Agreements of 2005;
- Legal and Judicial Cooperation Agreement between Mozambique and Portugal.

**Jurisdiction over Foreign Judgment Debtors**
Jurisdiction is obtained in matters concerning the enforcement of foreign judgments against foreign defendants under Articles 65 and 1095 of the Mozambican Civil 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**
In order for a foreign judgment to be enforced in Mozambique, the following requirements set out in Article 1096 of the Mozambican Civil Procedure Code must be met:
- The document containing the judgment must be verified and authenticated;
- The foreign court must have had jurisdiction (international competence) as recognised under the conflict rules of Mozambican law;
- The judgment must be final under the law of the country that handed it down;
- A Mozambican court cannot entertain a case to enforce a foreign judgment if the same matter is pending before another court outside of Mozambique;
- Proper notice must be given to the defendant in the foreign proceedings unless the cause of action does not require notification under Mozambican law. Where notice is required, any notice of the proceedings that is consistent with international treaties and treaties will suffice;
- The judgment does not contain decisions contrary to the principles of Mozambican public policy.

Enforcement of the judgment against a Mozambican should not offend the provisions of Mozambican private law.

**Authentication and Translation of Judgment**
The Mozambican Civil Procedure Code stipulates that the Portuguese language must be used in procedural acts, therefore foreign judgments in languages other than Portuguese must be translated into Portuguese by a sworn translator and certified by the Mozambican High Commission in the foreign country.

**Procedure**
The foreign judgment is enforced by the submission of a petition together with the foreign judgment to be reviewed to Supreme Court of Mozambique under the terms of article 1095 of the Mozambican Civil Procedure Code.

The plaintiff must pay an initial court fee of 0.6% of the value of the judgment debt. If the judgment is in foreign currency, it is converted into local meticais for calculation purposes.

Once the application has been submitted, the defendant must file an intention to oppose the enforcement proceedings within ten calendar days and must file a statement of defence within 8 days after notice of intention to oppose is given.

After the pleadings phase and the taking of any steps the judge deems indispensable, the case file is released to the parties and the Public Prosecutor's Office for examination for a period of ten days.

**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**
Under the Mozambican law, the recognition of foreign judgments focuses on the formal elements of the judgment and not on the merits of the case that gave rise to the foreign decision.

**Limitation**
A plaintiff armed with a foreign judgment who wishes to have a foreign judgment reviewed and confirmed in Mozambique 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**
In Mozambique, the enforcement of foreign arbitral awards is regulated, besides the Civil Procedure Code, by the Arbitration Law approved by Law no. 11/99, of July 8, and by the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, to which Mozambique joined in June 1988.

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

- 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;
- The judgment or convention that is written in a foreign language must be translated into the official language of the country in which the judgment is invoked, which must be certified by an official translator or by a diplomatic or consular agent.

**Procedure**
The recognition and enforcement of foreign arbitral awards in Mozambique is carried out through the submission by the plaintiff of a request for recognition and enforcement of the award to which must be attached the original award or an authentic copy thereof, as well as the written convention by which the parties undertake to submit all or some of their disputes to arbitration.

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 meticais for the purpose of the calculation.

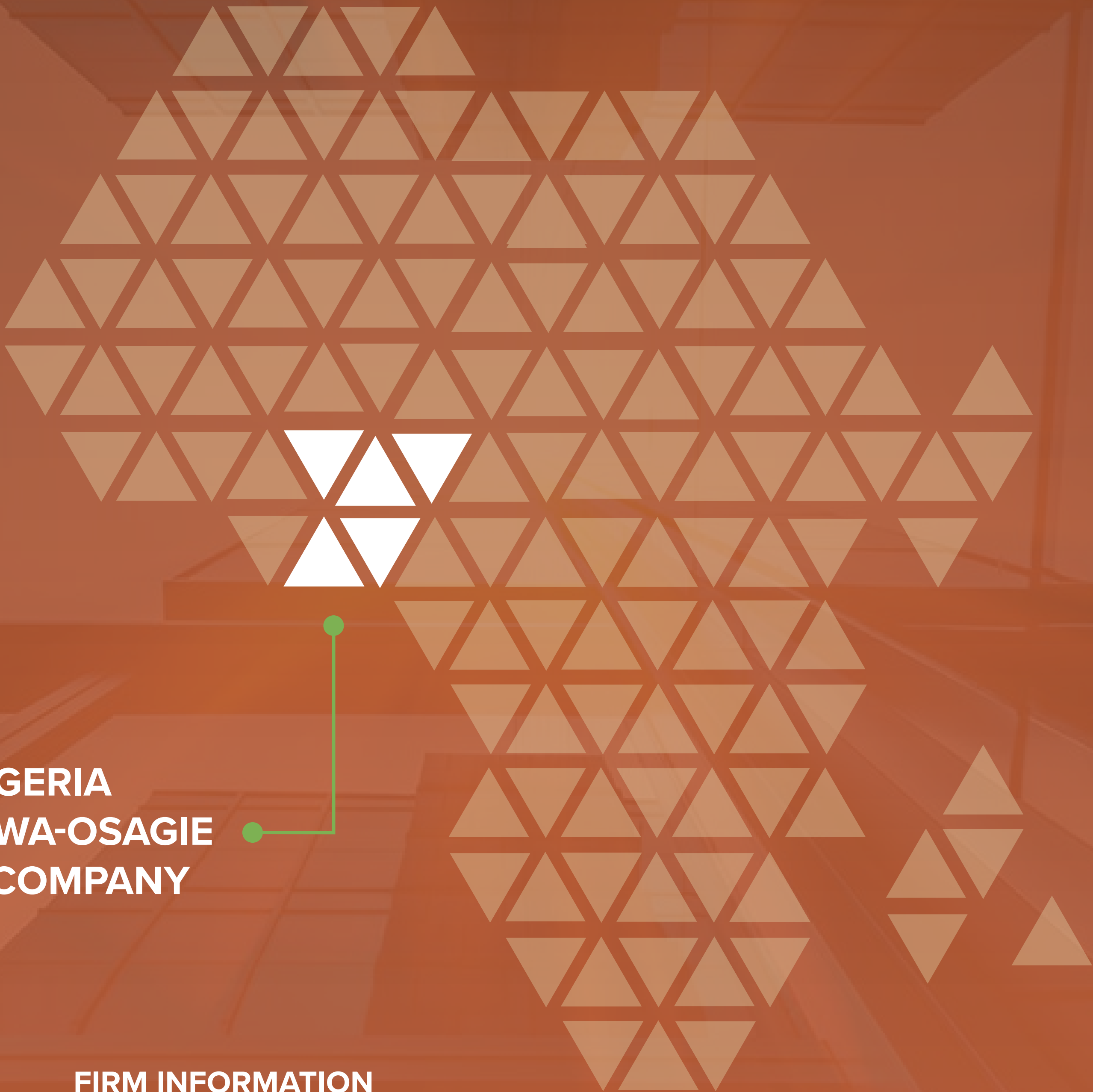
Once the application has been submitted, the opposite party is summoned to file an opposition within ten days, and the applicant may reply within eight days, in accordance with article 1098 of the Code of Civil Procedure.

After the pleadings phase and the taking of any steps the judge deems indispensable, the case file is released to the parties and the Public Prosecutor's Office for examination for a period of ten days.

**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**
There is no fixed period for the recognition and enforcement of a foreign judgement, although the procedure is relatively simple, legal practice in these matters has proved to be lengthy.

**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.



# NIGERIA
# GIWA-OSAGIE & COMPANY

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# NIGERIA I GIWA-OSAGIE & COMPANY

## 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 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.

### Recognition and enforcement of Foreign Judgments in Nigeria

In Nigeria, foreign judgments may be recognised and enforced either by registration under statute or by an action at common law. Two legal regimes govern statutory registration: the Reciprocal Enforcement of Judgments Ordinance of 1922 and the Foreign Judgments (Reciprocal Enforcement) Act of 1961. Although the 1961 Act was intended to replace the 1922 Ordinance, it has not been fully brought into force due to the absence of a required ministerial order. Until such an order is made, both laws remain in operation, allowing creditors to choose either route. Once registered or recognised, a foreign judgment has the same effect as a domestic judgment and may be enforced through standard Nigerian enforcement procedures.

### 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 of 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.

The procedure for enforcing a foreign judgment in Nigeria depends on whether the judgment creditor proceeds under the 1922 Ordinance, the 1961 Act, or common law. While the Ordinance provides for application by petition, the Act lacks procedural rules (defaulting to initiating a motion), and under common law, enforcement is initiated by filing a writ of summons with options to expedite through summary judgment or placement on the undefended list (unopposed motion proceedings).

If a foreign money judgment is registered or recognised in Nigeria, a writ of fieri facias can be issued. The writ empowers the sheriff to seize and sell the property and goods of the person against whom the execution is to be levied.

**Limitations on Foreign Injunctive Relief in Nigeria:**
Foreign injunctive reliefs such as interim, interlocutory and perpetual injunctions are not registrable and so they cannot be enforced in Nigeria. The law only permits the registration of foreign money judgments.

**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

Before the enactment of the Arbitration and Mediation Act, 2023, foreign arbitral awards in Nigeria could only be enforced through registration under the Foreign Judgments (Reciprocal Enforcement) Act or under the New York Convention, 1958. The Foreign Judgments Act permits registration of an award within six years of its issuance, provided it remains unsatisfied and enforceable in its country of origin. The Arbitration and Mediation Act, 2023 now expressly provides that arbitral awards are binding regardless of where they were made.

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 was given effect to by the Arbitration and Conciliation Act Cap A18,

Laws of the Federation of Nigeria, 2004, however, following the repeal of this Act, the Arbitration and Mediation Act 2023 now provides the legislative framework through which the provisions of the New York Convention are given effect in Nigeria. 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 the following ways:

- 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.
- Under the Arbitration and Mediation Act a party must apply in writing to the court, submitting the original or certified copies of the award and arbitration agreement, along with certified translations if not in English. The application must be made in good faith, with full disclosure of any factors that might affect the court's discretion. Under Section 57(3) of the AMA, a foreign award may, with leave of court, be enforced in the same manner as a judgment or order to the same effect.

**Limitation**

The Arbitration and Mediation Act, 2023 now governs the recognition and enforcement of foreign arbitral awards in Nigeria, incorporating both the UNCITRAL Model Law and the New York Convention, which allow enforcement subject to specific grounds for refusal but leave limitation periods to domestic law. In Nigeria, where enforcement is sought under the Foreign Judgments (Reciprocal Enforcement) Act, a six-year limitation period generally applies, and this specific statutory provision prevails over the broader Limitation Act in cases of conflict.

**How long will 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.

**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.

# REPUBLIC OF GUINEA
# THIAM & ASSOCIÉS

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# REPUBLIC OF GUINEA I THIAM & ASSOCIÉS

## ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

**What laws govern the application of the law?**
The main sources of law governing the enforcement of foreign judgments are:
- the Code of Civil, Economic and Administrative Procedure of 16 June 1998 ("CPCEA");
- Law no. 2015/019/AN of 13 August 2015 on the organisation of the judiciary in the Republic of Guinea ("2015 Law").

**Treaties**
The Republic of Guinea is a party to the following treaties:
- The Convention on 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 (New York Convention) of 10 June 1958;
- The Organisation for the Harmonisation of Business Law in Africa (OHADA), and therefore a member of the Common Court of Justice and Arbitration (CCJA) (parties to an arbitration may choose 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 debtors of foreign judgments**
According to Article 562 of the CPCEA, judgments handed down by foreign courts and documents received or drawn up by foreign public and ministerial officials are enforceable on the territory of the Republic of Guinea in the manner and in the cases provided for by law.

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 the territorial jurisdiction of the Guinean court in the enforcement proceedings.

**Requirements relating to the application of legislation**
- The foreign judgment must be final in the sense that it cannot be appealed in the foreign State where it was given. Consequently, all appeals in the foreign jurisdiction must have been exhausted before a claimant can initiate enforcement proceedings in Guinea. If no appeal has been lodged in the foreign jurisdiction, a claimant may initiate 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, for example, if the foreign judgment is based on a contract that does not meet the conditions for validity under Guinean law, it cannot be enforced in Guinea;
- The foreign judgment must not breach a final Guinean judicial decision on the same issue. Furthermore, if a Guinean court has ruled on the same issue between the same parties, a contrary ruling by a foreign court on the same issue between the same parties cannot be enforced;
- The foreign court which rendered the foreign decision 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 brought 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 accordance with articles 726 and 727 of the CPCEA.

**Authentication**
A foreign judgment must be authenticated before it can be enforced in Guinea.

**Procedure**
The applicant must submit a request for enforcement to the first President of the Court of Appeal together with an authenticated copy of the foreign judgment. If all the requirements for enforcement are met, the judge will enforce the foreign judgment. Once it has been enforced, the chief clerk of the Court of Appeal must affix an "executory clause" on the enforcement to enable it to be enforced in Guinea. The claimant can then order the bailiff to enforce 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 that do not require 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 judgements directing payment in foreign currency are converted, at the time of enforcement, into Guinean francs, at the exchange rate in force on the date of the judgement or on the date of payment.

**Interest**
The CPCEA does not provide for the enforcement of interest contained in a foreign judgment.

**Awards**
A Guinean court will examine 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 simply verify that the foreign judgment is not contrary to Guinean public policy.

**Limitation**
The limitation period for enforcing a foreign judgment is 30 years.

**Security for Costs**
A Guinean court does not guarantee 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 23 November 2017 and
- Order A/2016/033/MJ/CAB/SGG of 8 February 2016 on the arbitration rules of the Arbitration Chamber of Guinea.

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

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

The following requirements of the New York Convention must also be met:
- The parties to the arbitration agreement must have had the legal capacity to contract under the applicable law;
- The party against whom enforcement is sought must have been informed in a reasonable time of the appointment of the arbitrator or of the proceedings and must have been able to present his arguments;
- The award must not go beyond the scope of the arbitration (in other words, the arbitrator must not have exceeded his jurisdiction);
- The composition of the arbitral tribunal must comply with the arbitration agreement or the applicable law;
- The judgement must be binding on the parties and must not have been set aside or suspended under the applicable law;
- Recognition and enforcement of the judgement 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 an application to the court for the enforcement of the foreign judgement and provide the original award and arbitration agreement, or at least authenticated copies.

**Limitation**
The limitation period to enforce a foreign arbitral award is 30 years.

**How long does Enforcement take**
The court to which an application for recognition and enforcement is made must give its decision within 15 days of the date of referral. If the court has not given its decision within this period, enforcement is deemed to have been granted.

**Security for Costs**
Guinean law does not provide for security for costs.

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# SENEGAL I MAME ADAMA GUEYE & PARTNERS

## 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 but 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. It if 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) can require a foreign plaintiff seeking enforcement to provide security “caution judicatum solvi” which is required to be deposited at the “Caisse de dépôt et de Consignation du Sénégal” before the court will hear the enforcement action. Certain foreign plaintiffs are exempt from providing security under certain judicial cooperation conventions with a number of countries. The amount of security is fixed by the court.

## ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

Relevant laws and the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards
Senegal acceded to the New York Convention in 1994, without reservation. The convention is given effect to by the Uniform Act on Arbitration of the Organisation for the

Harmonisation of Business Law in Africa (OHADA) and the Arbitration Rules of The Joint Court of Justice and Arbitration.

**Requirements for Enforcement**

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

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

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

**Procedure**

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

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

**Limitation**

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

**How long will Enforcement take**

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

**Security for Costs**

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

# SOUTH AFRICA
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# SOUTH AFRICA I WERKSMANS ATTORNEYS

## ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

**What Laws Regulate Enforcement**

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

**Treaties**

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

**Jurisdiction over Foreign Judgment Debtors**

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

However, in the case of foreign judgment debtors, a South African court will only exercise jurisdiction in enforcement proceedings on the following 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 12 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 to 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.

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# TANZANIA | FB ATTORNEYS

## 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. 2019] 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. 2019] which regulates the execution of the judgments;
- Law of Limitation Act, Cap. 89 [R.E 2019] which provides for 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 is created simply by the registration of the foreign judgment in the High Court of Tanzania.

**Requirements for Enforcement**

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

- Under the Reciprocal Enforcement of Foreign Judgments Act, foreign judgments are only eligible for registration (and hence enforcement) if they are final and conclusive between the parties. The only exception to this finality requirement is (as stated below) in circumstances in which the 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. The judgment creditor may apply for registration of a foreign judgment within six years after the date of the judgment or, where there have been proceedings by way of appeal against the judgement, within six years after the date of the last judgement given in those proceedings. 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 the foreign currency.

**Interest**

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

**Merits**

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

**Limitation**

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

### Security for Costs

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

## ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

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

The Arbitration Act, Cap. 15 [R.E. 2020]; the Civil Procedure Code, Cap. 33 [R.E 2019]; and the Law of Limitation Act, Cap. 89 [R.E. 2019] 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 bi-lateral 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 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 sixty days 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.

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# TUNISIA | MEDLAR LAWYERS & LEGAL ADVISORS

## ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

**What Laws Regulate Enforcement**
The statutes regulating enforcement of foreign judgments in Tunisia are the following:
- Code of private international law promulgated by law n°98-97 dated 27 November 1998;
- Code of Civil and Commercial Procedures promulgated by law n°103 dated 5 October 1959; and
- Treaties on cooperation in judicial matters signed and ratified by Tunisia.

**Treaties**
Tunisa is a party to several bilateral treaties on cooperation in judicial matters and recognition and enforcement of judgments including the following conventions:
- Convention on assistance and cooperation in judicial matters between Tunisia and Algeria dated 26 July, 1963;
- Convention on legal and judicial cooperation in civil, commercial, personal status and criminal matters between Tunisia and Egypt on dated 9 January, 1976;
- Convention on judicial cooperation between Tunisia and Côte d'Ivoire dated 8 July 1975.
- Convention between Tunisia and Senegal dated 13 April, 1964;
- Convention on protection, judicial cooperation and recognition and enforcement of commercial arbitration and judgments in civil and commercial matters between Tunisia with Federal Republic of Germany dated 19 July 1966;
- Convention on judicial cooperation in civil and commercial and recognition and enforcement of judgments between Tunisia and France dated 28 June, 1972; and
- Convention on legal and judicial cooperation between Tunisia and Qatar dated 6 January 1997.

**Jurisdiction over Foreign Judgment Debtors**
Tunisian courts will exercise jurisdiction in enforcing foreign judgments issued by foreign competent authorities subject to compliance with the requirements for enforcement provided below.

**Requirements for Enforcement**
Article 11 of the Tunisian Code of private international law provides for the following requirements for enforcement of a foreign money judgment in Tunisia:
- The subject of the dispute does not fall under the exclusive jurisdiction of the Tunisian courts.
- The Tunisian courts did not render a decision that may be challenged through ordinary means on the same subject, between the same parties, and for the same cause.
- The foreign decision is not contrary to public order within the meaning of Tunisian private international law or was rendered following a procedure that did not preserve the rights of the defendant (i.e., The Tunisian court will verify whether the defendant was properly notified of the proceedings in the foreign court and had an adequate opportunity to present his defence. If the defendant's right to due process was violated, enforcement will be denied).
- The foreign judgment must be final and enforceable in the country of origin. That means that the foreign decision has not been annulled, or its execution suspended in accordance with the legislation of the country where it was rendered, or it is not yet enforceable in the country where it was rendered.
- The country where the judgment or decision was rendered respects the rule of reciprocity.

**Authentication and Translation of Judgment**
Foreign judgments issued in a language other than Arabic are required to be translated into Arabic by a Tunisian sworn translator. Foreign judgments are also required to be authenticated for enforcement.

**Procedure**
A foreign judgment cannot be directly enforced in Tunisia. A party seeking enforcement of a foreign judgment must bring an action before the competent Tunisian court which is the court of first instance of the city where the party against whom the foreign decision is invoked resides. If there is no domicile in Tunisia, the action is brought before the court of first instance of Tunis.

The party seeking enforcement of a foreign judgment must provide necessary documentation (e.g., an authenticated copy of the judgment, proof that the judgment is final and enforceable, and an official translation of the judgement in Arabic).

The court will ensure that the judgment does not contravene Tunisian public policy and that the foreign court had jurisdiction to issue the judgment.

**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 money judgment. In practice, depending on the complexity and any legal challenges, the enforcement process can take between 9 and 14 months. If the defendant opposes enforcement on complex grounds, or if there is an appeal or/and a challenge before the Tunisian Supreme Court, the process will take longer.

**Judgments in a Foreign Currency**
For their enforcement, foreign money judgments in a foreign currency are required to be converted into the currency of Tunisia (i.e., TND) at the Central Bank of Tunisia 's rate of exchange at the date of the judgment's execution.

**Interest**
The Tunisian competent court will enforce interest amounts awarded in terms of the foreign judgment but will not award any additional interest.

**Merits**
The Tunisian court will not review the merits and the substance of the case that gave rise to the foreign money judgement. However, it will verify that the judgment meets all legal requirements for enforcement as provided above.

**Limitation**
Tunisian Code of private international law does not provide for a specific statute of limitation for the enforcement of foreign money judgements. Therefore, the latter is subject to the applicable statute of limitations in Tunisia under ordinary law. If the request for enforcement is made after the expiration of this period, it may be denied.

In Tunisia, the statute of limitations for the enforcement of a judgment is 20 years from the date the judgment becomes final and binding.

**Security for Costs**
Tunisian law does not provide for security when it comes to the enforcement of foreign money judgement.

## 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 Tunisia is regulated by the following statutes:
- The New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards which is ratified by Tunisia on July 17th, 1967, subject to reciprocity and "commercial" reservation (i.e. only foreign arbitral awards relating to commercial disputes will be recognized and enforced in Tunisia);
- Code of Arbitration promulgated by the law no. 93-42 of 26 April 1993.
- Code of Civil and Commercial Procedure promulgated by law no°103 of 5 October 1959; and
- Code of Obligations and Contracts promulgated by Decree of December 15th, 1906.

**Requirements for Enforcement**
Pursuant to Article 80 of Tunisian Code of Arbitration provides for the following requirements for enforcement of an arbitration award in Tunisia:
(a) Capacity of the parties to the arbitration agreement. A party must have capacity to act.
(b) Validity of the arbitration agreement under the law to which the parties have subjected it or, failing such indication, under the rules of private international law.
(c) The arbitration procedure must have been adhered to and the defendant's rights must have been upheld (e.g. the party against whom the award is invoked must be duly informed of the appointment of the arbitrator or of the arbitration proceedings, or that he can assert his rights).
(d) The arbitral award should comply with the arbitration clause's terms. The arbitral award should not relate to a dispute not covered by the arbitration agreement or not included in the arbitration clause, or that it has ruled on issues not covered by the arbitration agreement or the arbitration clause. However, if the provisions of the award relating to matters submitted to arbitration can be separated from those relating to matters not submitted to arbitration, only the part of the award ruling on the matters submitted to arbitration may be recognised and enforced by a competent Tunisian court.
(e) Compliance with the rules relating to the constitution of the arbitral tribunal and the procedure followed. The constitution of the Arbitral Tribunal or the arbitral procedure followed must comply with the stipulations of the arbitration agreement in general, the arbitration rules chosen, the law of a country chosen by the parties.
(f) The arbitral award is final, and it has not been annulled or suspended by a court of the country in which, or under the law of which, it was made.
(g) The recognition and enforcement of the arbitral award do not contravene the public policy.

**Procedure**
Enforcement of a foreign arbitral award is made by way of written request submitted to the Court of Appeal of Tunis.
The party requesting the recognition and enforcement of foreign arbitral award in Tunisia must produce the duly authenticated original or a certified copy of the award, the original or certified copy of arbitration agreement as well as a translation into the Arabic language of these documents made by a Tunisian sworn translator.

**Limitation**
The Tunisian Code of arbitration does not provide for a specific statute of limitation for the enforcement of foreign arbitral award. Therefore, thee enforcement of foreign arbitral award is subject to the applicable statute of limitations in Tunisia under ordinary law rules. If the request for enforcement is made after the expiration of this period, it may be denied.
In Tunisia, the statute of limitations for the enforcement of an arbitral award under ordinary law rules is 20 years from the date the award becomes final and binding.

**How long will Enforcement take?**
The law does not set a time limit within which a judge must rule on the enforcement of a foreign arbitral award. In practice depending on the complexity and any legal challenges, the enforcement process can take between 9 to 14 months. If the defendant initiates a legal proceeding for the annulation of the award, the process will take longer.

**Security for Costs**
Tunisian law does not provide for security from the plaintiff seeking the enforcement of the foreign arbitral award.

However, If an application for the annulment or suspension of an arbitral award has been submitted to the court of the country in which, or under the law of which, it was made, the Court of Appeal of Tunis, dealing with the application for recognition or enforcement, may stay the proceedings and may also, at the request of the party seeking recognition or enforcement of the arbitral award, order the other party to provide suitable security.

# UGANDA
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# UGANDA I KATENDE, SSEMPEBWA & CO. ADVOCATES

## 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 Judgments Extension Act, Cap 15 of the Laws of Uganda. 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 23 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 10 of the Laws of Uganda, 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 23 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.
- The International Centre for Settlement of Investment Disputes Convention (ICSID). Uganda is one of the contracting member states of the ICSID convention and 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 partner 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, Cap 23;
- The Arbitration and Conciliation Act Cap 5 of the Laws of Uganda. The Act regulates international commercial arbitration and enforcement of foreign arbitral awards. The Act further recognises 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**

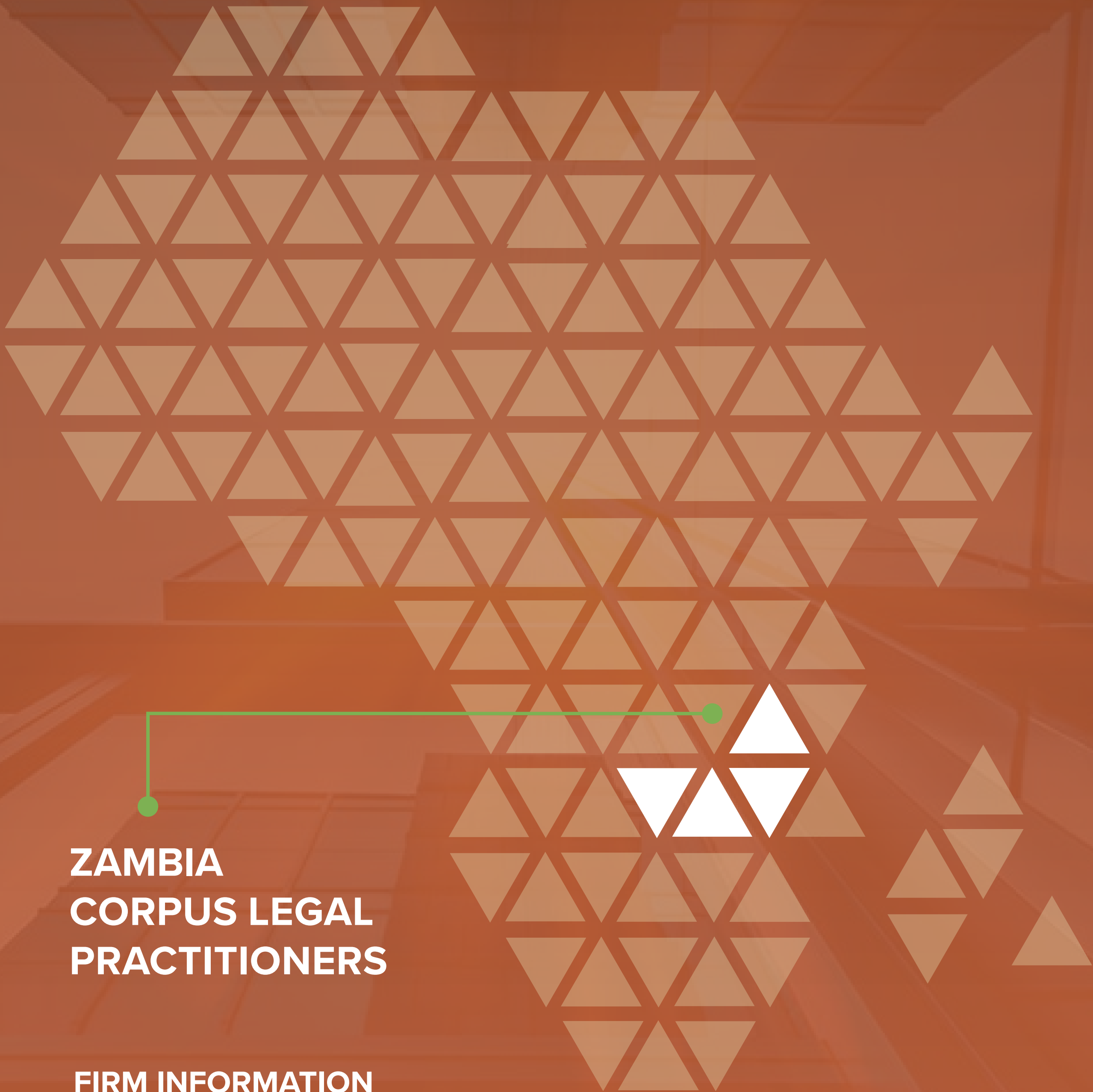
Under the Uganda Limitation Act, Cap 80 a party wishing to enforce a foreign arbitral award can only do so within a period of six years from the date on which the award was made.

**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.



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# ZAMBIA | CORPUS LEGAL PRACTITIONERS

## 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 Laws of Zambia, and the English Common Law.

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

**Jurisdiction over Foreign Judgment Debtors**
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.

**The Foreign Judgments Act**
The Foreign Judgments Act is primarily designed to promote judicial cooperation among states. It provides for the execution of foreign judgments in Zambia rendered by countries which accord reciprocal treatment to judgments given in Zambia by Zambian courts.

By virtue of this Foreign Judgments Act, a foreign judgment can be enforced in Zambia where Zambia has a reciprocal agreement with the country in which the judgment was obtained. The Foreign Judgments Act specifies that the recognition and enforcement of foreign judgments is subject to reciprocity. At present Zambia has only extended the Foreign Judgments Act to two Countries. That is Glibert and Ellice Islands Colony and British Solomon Island Protectorate.

**Requirements of Enforcement under the Foreign Judgments Act**
Once reciprocity is established, the foreign judgment must meet the following conditions before it is enforceable:
- 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;
- The Judgment by the foreign Court must be final. A judgment pending appeal in the foreign jurisdiction is deemed to be final for enforcement purposes;
- The judgment must be for payable amount of money that is not revenue or penal amount;
- 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; and
- 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.

**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 Judgments 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 affidavit for registering a foreign judgment must exhibit a certified copy and translation of the judgment (if necessary), confirm the applicant's right to enforce it, state whether it is satisfied or unsatisfied, and verify its enforceability in the original jurisdiction. It should also detail any accrued interest, convert any foreign currency amounts to the local currency, and provide the names and addresses of both the creditor and debtor. Additionally, it must specify which parts of a multi-issue judgment are being registered.

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.

**The Common Law**
Judgments to which the Foreign Judgments Act does not apply, can be enforced at common law. As such reciprocity is not a requirement if the foreign judgment is enforced under Common Law.

Under the common law, a holder of a favorable judgment can enforce the judgment in Zambia by way of re-litigation of the matter. In essence, the Party in whose favour the judgment was, will have to commence a fresh action before the relevant Zambian Court and use the foreign judgment as evidence.

By the foregoing, the judgment of any foreign competent court can be registered and is enforceable as a simple debt on the basis of an implicit responsibility which arises from the judgment debtor.

This avenue is relatively quick to pursue as the matter does not go through the full trial process as the judgment creditor can make an application for summary judgment provided it is proven that the judgment was delivered by a competent court and the judgment debtor was given a fair opportunity to be heard. The foreign judgment essentially stands as proof of the debt and as such summary judgment is relatively and a simpler avenue for conclusion of the matter.

Therefore, enforcement of the Judgment is not attainable on a Zambian Defendant until the matter is re-litigated afresh in a Zambian court and the foreign Judgment is adduced as evidence.

## 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 No.19 of 2000.

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

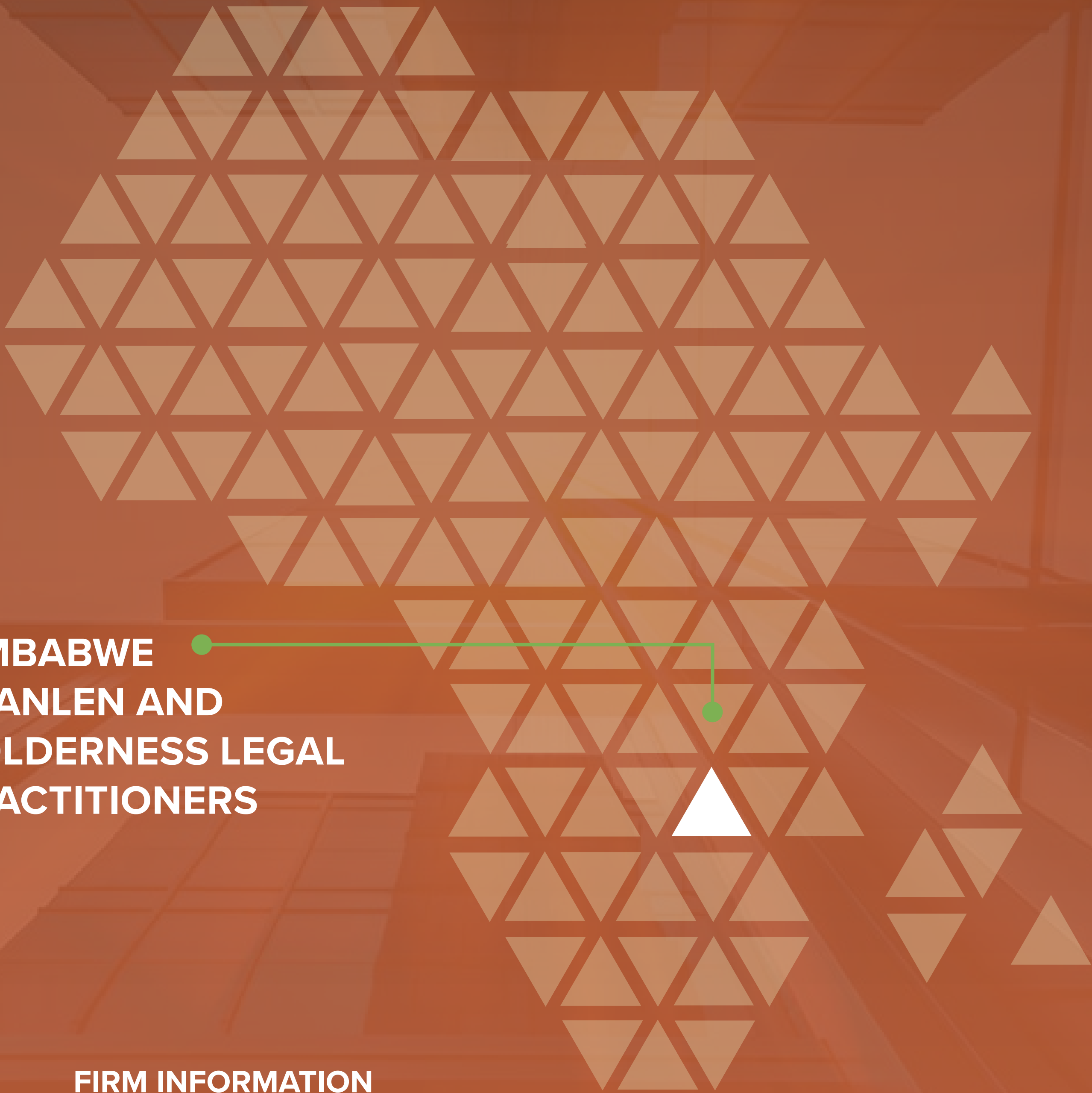
- The parties to the arbitration agreement must have had full legal capacity and the arbitration agreement must have been valid under the governing law;
- Proper notice of the appointment of the arbitrators or of the arbitration proceedings must have been given to the defendant;
- The award must deal with disputes contemplated or in the terms of reference to arbitration;
- The arbitral tribunal must have been properly constituted in accordance with the agreement;
- The award must have become binding on the parties;
- The subject matter of the dispute must be capable of settlement by arbitration under Zambian law;
- Enforcement of the award must not be in conflict with Zambian public policy;
- The award must not have been induced by fraud, corruption or misrepresentation.

**Procedure**
Enforcement of foreign arbitral awards is by filing an ex-parte application to the High Court. The court however may order that the application be heard inter-partes, giving the defendant a chance 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; if the application is heard in the judgment debtors presence, the order need not be served on him. 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 foreign arbitral award has a 12-year limitation period from the date of the award for its enforcement 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
# SCANLEN AND HOLDERNESS LEGAL PRACTITIONERS

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# ZIMBABWE I SCANLEN AND HOLDERNESS LEGAL PRACTITIONERS

## 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 08:02) as read with Rule 77 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 prescribed form and served on all interest parties giving not less than 10 days' notice to the defendant to oppose;
- If there is no opposition filed, the matter will be enrolled on the unopposed motion roll held every second Wednesday;
- If the matter is opposed, the defendant must file a notice of opposition in the prescribed form supported by an affidavit setting out the grounds on which it is to be opposed and providing any necessary supporting documents;
- Thereafter an answering affidavit must be filed by the plaintiff and heads of argument must be filed by both parties if they are legally represented at the hearing of the enforcement proceedings;
- The matter is then set down for hearing on the opposed motion roll and an order is made recognising the award and making it an order of the Zimbabwean court;
- A writ of execution is then issued by the court which may be enforced in the usual way through the sheriff of the High Court.

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

**How long will Enforcement take?**
It generally takes not less than six months from the time of making application for registration

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

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