

 BENTSI-ENCHILL
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Enforcement of Foreign Money Judgments and Arbitral Awards

in collaboration with Lex Africa

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This guide explores the laws and requirements for the enforcement of foreign money judgments and arbitral awards in Ghana. It also highlights the procedure, timelines and merits of enforcement proceedings.

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 on the basis of reciprocity.

The President determines with which countries Ghana will have a reciprocal agreement for the enforcement of foreign judgments. The President also has the power to withdraw any reciprocal treatment particularly in instances where Ghanaian judgments are treated unfavourably in those other countries.

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.

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
- 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 a number of 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.

ENFORCEMENT OF FOREIGN ARBITRAL AWARDS

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

Ghana is party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) which is given effect to by the Alternative Dispute Resolution Act, 2010 (Act 798) ('Act 798').

A foreign award may be enforced in Ghana if it was made by a competent authority under the laws of that country where (i) it was made in a country which is a party to the New York Convention or (ii) it was made in a country which is a party to any other international convention on arbitration ratified by Ghana or (iii) a reciprocal arrangement exists between Ghana and the seat of arbitration.

Requirements for Enforcement

The following are the requirements for enforcement of a foreign arbitral award in Ghana:

- The foreign award must have been made in accordance with the laws of its country of origin and must be made by a competent tribunal.
- The foreign arbitral award must emanate from a country where a reciprocal arrangement exists between Ghana and the seat of arbitration, or must be made under the New York Convention or any other international convention

on arbitration ratified by Ghana. However, awards from a state that is 'non—reciprocal' at the time the award was given, will be recognised and enforced if at the time of enforcement that state has become a reciprocal state;

- The award must not have been annulled or set aside in its country of origin;
- There must be no appeal pending against the award in any court under the law applicable to the arbitration;
- The party against whom the award is invoked must have been given sufficient notice of the arbitration proceedings and must have been able to present his case;
- The party against whom the award is invoked must have had legal capacity to contract;
- A party, lacking legal capacity, must be properly represented;
- The award must deal with the issues contained in the reference to arbitration;
- The award must not contain a decision beyond the scope of the matters submitted for arbitration; and
- The arbitrator must have jurisdiction to make the award.

If the requirements are met, the party seeking enforcement must produce the original award or a copy authenticated under the laws of the country of origin. The party seeking enforcement must also provide the court with the original agreement pursuant to which the award was made, or a copy authenticated under the governing law. Awards in a foreign language are required to be translated into English.

Procedure

Enforcement is by way of application to court for leave to enforce the award. The application must be supported by an affidavit setting out the facts and to which the arbitration agreement and the award, or certified copies of them, are attached.

In practice, the supporting affidavit must indicate that the award has not been set aside or annulled at the seat of arbitration and that the Tribunal had the requisite jurisdiction.

Once enforced, an award has the same effect as a judgment of the Ghanaian court, for execution purposes and the award may be enforced in the same manner as a judgment of the High Court.

Limitation

A foreign arbitral award must be enforced within 6 years after it was made.

How long will enforcement take?

A number of factors influence the length of time it takes to enforce a foreign arbitral award, including the number of matters awaiting hearing before the court and whether or not the application is opposed by the affected party. However, enforcement will not take less than 3 months after the application is filed.

Security for costs

Under CI 47, the High Court may order a plaintiff who is not resident in Ghana to provide security for the defendant's costs of the proceedings. Therefore, the High Court may order a foreign applicant to provide security for the respondent's costs in enforcement proceedings

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