

DEMOCRATIC REPUBLIC OF THE CONGO (DRC)

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FIRM INFORMATION

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ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

What Laws Regulate Enforcement?

The enforcement of foreign judgments in the DRC is regulated by statute, namely:

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

Treaties

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

Jurisdiction over Foreign Judgment Debtors

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

Requirements for Enforcement

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

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

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

Authentication and Translation of Judgment

Foreign judgments in a language other than French are required to be translated into French by a translator certified by a competent DRC court. Foreign judgments are also required to be authenticated for enforcement.

Procedure

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

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

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

How long does Enforcement take?

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

Judgments in a Foreign Currency

The DRC courts will convert the foreign currency of the foreign judgment into Congolese Francs.

Interest

The DRC court will enforce interest amounts awarded in terms of the foreign judgment but will not award any additional interest.

Merits

The DRC court will not review the merits of the case which gave rise to the foreign judgment. In other words, it will not sit as a court of appeal on the foreign judgment.



Limitation

There is no time limit imposed on a claimant seeking to enforce a foreign judgment in the DRC.

Security for Costs

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

² Article 152 of the Code of Civil Procedure.

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

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

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

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

Other laws governing the enforcement of foreign arbitral awards are:

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

Requirements for Enforcement

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

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

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

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



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

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

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

Procedure

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

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

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

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

³Article 152 of the Code of Civil Procedure

Limitation

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

How long will Enforcement take?

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

Security for Costs

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

