

LESOTHO

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ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

What Laws Regulate Enforcement?

Enforcement of foreign money judgments in Lesotho is governed by the common law and by statute being the Reciprocal Enforcement of Judgments Proclamation 2 of 1922.

Treaties

Lesotho is not party to any treaty regarding the reciprocal enforcement of foreign judgments.

Jurisdiction over Foreign Judgment Debtors

The High Court of Lesotho will exercise jurisdiction over a foreign defendant who is resident in its area of jurisdiction. It will also have jurisdiction in enforcement matters if the foreign defendant has assets within its jurisdiction.

Requirements for Enforcement

The following are the common law requirements for enforcement:

- The foreign court which granted the judgment must have had jurisdiction in the matter;
- The foreign judgment must be final in the sense that no appeal must be pending before the courts of the origin country;
- Enforcement of the foreign judgment must not be contrary to Lesotho's public policy or the principles of natural justice;
- The foreign judgment must not have been obtained fraudulently;
- The foreign judgment must not have become prescribed under the laws of the foreign court which granted it;
- The defendant must have received proper notice of the proceedings giving rise to the foreign judgment.

The following are the requirements for the enforcement under the Reciprocal Enforcement of Judgments Proclamation:

- Any judgment obtained in the High Court of England or Ireland or in the Court of Session in Scotland may be registered in the High Court of Lesotho within 12 months after the date of the granting of the judgment, or such longer period as the High Court may allow.
- Reciprocity is extended in terms of Notice 96 of 1922

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

- If in all the circumstances of the case, the High Court is of the view that it is just and convenient that the judgment should be enforced in Lesotho, the court will order the judgment to be registered in Lesotho (the Proclamation does not define when it will be "just and convenient" to have the foreign judgment registered.);
- Once registered, the judgment has the effect of an order of the High Court of Lesotho and may be executed as such;
- In terms of section 3(2) of the Proclamation, no judgment may ordered to be registered if:
 - The original court acted without jurisdiction;
 - The judgment debtor was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, or did not voluntarily appear or otherwise agree to submit to the jurisdiction of that court, or the judgment debtor was not duly served with the process of the original court and did not appear, notwithstanding that he may have agreed to submit to the jurisdiction of that court;
 - The judgment was obtained by fraud;
 - The judgment debtor satisfies the court either that an appeal is pending in the foreign court or that he is entitled and intends to appeal against the judgment;
 - The judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court.

Authentication and Translation of Judgment

Judgments emanating from South African courts do not require to be authenticated. Judgments from other countries require authentication in terms of the laws of their origin. Foreign judgments in a foreign language are required to be translated into English by a sworn translator.



Procedure

At common law:

- The procedure for enforcement is by way of application to the Lesotho court having jurisdiction over the defendant, or over the defendant's assets;
- Enforcement can also be by way of ordinary summons, claiming on the basis that the foreign judgment is a liquidated claim.

By Proclamation:

- Application under the Proclamation can be made ex parte, or by summons in the High Court of Lesotho;
- The application must be supported by an affidavit setting out the relevant facts of the judgment and the requirements for enforcement, and must be accompanied by an authenticated copy of the judgment;
- The judgment creditor is required to state that to the best of his knowledge and belief, he is entitled to enforcement of the judgment and that the judgment does not fall within any of the cases in which the judgment debtor is entitled to set aside the registered judgment.

How long does Enforcement take?

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

Judgments in a Foreign Currency

The court will at the request of the judgment creditor grant judgment in the foreign currency of the judgment or convert it to the local currency.

Interest

The Lesotho Courts will recognise any interest granted by a foreign judgment but will not grant additional interest. The duplum rule will however apply on the interest awarded in terms of the original foreign judgment so that the interest component may not exceed the capital component of the judgment.

Merits

The Lesotho court will not review the merits of the case giving rise to the foreign judgment.

Limitation

In terms of the Proclamation an application must be brought within 12 months after the date on which the judgment was granted by the foreign court, or during such extended time as the court may allow.

Security for Costs

The court has the power to order the foreign plaintiff to provide security for the defendant's costs should the defendant succeed in opposing enforcement.

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

Lesotho has acceded to the New York Convention without reservation.

Requirements for Enforcement

The party applying for recognition and enforcement of the foreign award is required to provide proof that the arbitral award exists by providing the court with:

- The authenticated original award, or a certified copy of it;
- The original agreement to arbitrate, or a certified copy of it;
- If the award is in a language other than English it is required to be translated into English by a certified translator;
- Enforcement of the award must not be contrary to Lesotho Public Policy;
- The parties to the arbitration agreement under the foreign law must have had capacity to contract and the agreement must be valid under the foreign law;
- The defendant must have received notice of the arbitrator's appointment or of the proceedings and must have been able to present his case;
- The award must deal with disputes which fall within the



reference to arbitration;

- The constitution of the arbitration tribunal and the proceedings must be in accordance with the relevant arbitral agreement or with the law of the country in which the arbitration took place;
- The award must be binding on the parties and must not have been set aside or suspended by a competent authority of the country under the law of which, the award was made.

Procedure

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

Limitation

The Lesotho prescription legislation does not expressly deal with prescription in relation to the enforcement of foreign arbitration awards.

How long will Enforcement take?

An unacceptable delay may be a ground for enforcement to be refused. Moreover, an award older than 30 years will not be enforced.

Security for Costs

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

