

# ZAMBIA

## CORPUS LEGAL PRACTITIONERS



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### ENFORCEMENT OF FOREIGN MONEY JUDGMENTS

#### What Laws Regulate Enforcement

The laws that govern the enforcement of foreign judgments in Zambia are the Foreign Judgments (Reciprocal Enforcement) Act, Chapter 76 of the Law of Zambia, and the English common law.

#### Treaties

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

#### Jurisdiction over Foreign Judgment Debtors

The Zambian Courts will exercise jurisdiction in enforcement proceedings against the assets in Zambia belonging to a foreign defendant on the basis that the assets are located in Zambia, irrespective of the fact that the defendant is not resident or present in Zambia.

#### Requirements for Enforcement

Foreign judgments may be enforced under the Foreign Judgments (Reciprocal Enforcement) Act where Zambia has a reciprocal agreement with the country in which the judgment was obtained. At present Zambia has only extended the Foreign Judgment (Reciprocal Enforcement) Act to two countries, namely Gilbert and Ellice Islands Colony, and the British Solomon Islands.

Once reciprocity is established, the foreign judgment must meet the following conditions before it is enforceable:

- It must be final. A judgment pending appeal in the foreign jurisdiction is deemed to be final for enforcement purposes.
- The judgment must not be in respect of a revenue or penal amount.
- The judgment must have been rendered by a court of competent jurisdiction. The fact that a judgment has been issued by a foreign court is prima facie evidence that it has been issued by a competent court and a Zambian court will enquire no further.
- Notice of the proceedings before the foreign court must have been given to the defendant in accordance with the laws of that country. The defendant should have received notice of the proceedings in sufficient time to enable him to defend the proceedings.

- Enforcement of the foreign judgment must not be contrary to Zambian public policy. It will be contrary to public policy if it concerns subject matter that is illegal or immoral in Zambia.
- Judgments to which the Enforcement Act does not apply, can be enforced at common law.
- Reciprocity is not a requirement if a foreign judgment is enforced under the common law.

#### Authentication and Translation of Judgment

The foreign judgment must be authenticated by the seal of the foreign court which gave it. 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 Judgment (Reciprocal Enforcement) Act is by way of registration in the High Court of Zambia. Application may be made ex parte and accompanied by an affidavit setting out the relevant facts.

The court may direct that the defendant be given an opportunity to oppose enforcement.

Registration may be denied if the foreign judgment has been wholly satisfied or if it cannot be enforced by execution 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 however, 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 is 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 were it has been appealed, before enforcement is time barred.

For judgments not falling under the Foreign Judgments Act, application for registration must be made within 12 years of the date of the judgment.

**Security for Costs**

The court may in applications for registration, order the judgment creditor to provide security for the costs of the application in the event that the defendant succeeds in opposing enforcement.

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

Zambia is party to the New York Convention which is given effect to by the Arbitration Act, 19 of 2000.

**Requirements for Enforcement**

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

- The parties to the arbitration agreement must have had full legal capacity and the arbitration agreement must have been valid under the governing law.
- Proper notice of the appointment of the arbitrators or of the arbitration proceedings must have been given to the defendant.
- The award must deal with disputes 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 way of application to the High Court by an ex parte originating summons.

The court however may order that the application be heard inter-parties with the defendant being given an opportunity to oppose enforcement. The application must be supported by an affidavit to which the original arbitration agreement and award or authenticated copies are attached. The court then makes an order for leave to register the award. The order will not be required to be served on the defendant if the application is heard in his presence. The plaintiff is then required to file in court a notice of registration of the award and serve it on the other party who must respond within a specific time. Where the court is satisfied with the notice of registration of award and the opposing party does not raise any objection within the specified time, the court will issue an order for enforcement and registration.

**Limitation**

A party armed with a foreign arbitral award has a period of 12 years from the date of the award in which to enforce it in Zambia.

**How long will Enforcement take**

Enforcement ordinarily takes between 3 to 12 months.

**Security for Costs**

The court is empowered to order the plaintiff to provide security for the defendant's cost in the event that the defendant succeeds in opposing enforcement. However, this is not automatic as certain conditions must be met.

