

# Enforcement of Foreign Judgments

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Fundamental Principles [Malaysia]

2020



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**I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION  
(CIVIL AND COMMERCIAL MATTERS)**

**A. Ability to Apply for Recognition and Enforcement of a Court Judgment**

- 1. Is it possible to apply for enforcement of a foreign court judgment in your country?**

**Answer:** Yes.

**B. Applicable Law: General Rules**

- 1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?**

**Answer:** A foreign judgment can be enforced in Malaysia, both at common law by bringing an action on the judgment, and also by statute by virtue of the Reciprocal Enforcement of Judgments Act 1958 (Act 99) (“**REJA 1958**”). The REJA 1958 is however limited to judgments given in superior court of reciprocating countries, which are listed in the first schedule of the REJA 1958, such as the United Kingdom, Hong Kong, Singapore, New Zealand, Sri Lanka, India and Brunei Darussalam. It is important to note that section 7 of the REJA 1958 provides that judgments which can be registered under the Act are not otherwise enforceable. In consequence, on the assumption that the statute is dominant, it is probably desirable to first consider enforcement by statute, and then enforcement under the common law.

**C. Special Rules: European Union**

- 1. Are there any special rules regarding the enforcement of a**

**foreign court judgment in your country?**

**Answer:** Not applicable.

**2. Does the European Union have a special procedure to enforce court judgments coming its member states?**

**Answer:** Not applicable.

**D. Average Duration of Enforcement Procedure**

**1. What is the average length of time for this kind of procedure?**

**Answer:** 2 to 4 months.

## **II. DENIAL OF RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT JUDGMENT: REASONS**

**A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?**

**Answer:** Yes.

The Court will not enforce a foreign judgment if –

- (a) at the date of the application it has been wholly satisfied, or if the said judgment could not be enforced by execution in the country of the original court
- (b) it was registered in contravention of REJA 1958;
- (c) a foreign court has no jurisdiction
- (d) it was obtained by fraud

- (e) it would be contrary to public policy;
- (f) the rights under the judgment are not vested in the person by whom the application for registration was made; and
- (g) the proceedings in which the judgment was obtained were opposed to natural justice.

See also ss 4 and 5, REJA 1958.

## **B. Costs and expenses**

### **1. What kind of cost and expenses can a claimant expect in this enforcement procedure?**

**Answer:** Court fees.

Translation fees.

Legal fee, which would vary depending on the professional fees charged by individual law firms.

Costs of enforcement.

## **III. FORMAL REQUIREMENTS**

### **A. Time limit**

#### **1. Is there a time limit to apply for enforcement of a foreign court judgment?**

**Answer:** Section 4(1) of REJA 1958 requires that an application for registration of judgment be made within six (6) years from the date of the foreign judgment, or where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those



proceedings. Under s 6(3), Limitation Act 1953, a common law action upon a foreign judgment must however be brought within 12 years from the date when the judgment became enforceable.

**B. Final and Definitive Court Judgment: Provisional Enforcement**

- 1. Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?**

**Answer:** Yes.

Section 3(3) of the REJA 1958 states that '*any judgment of a superior court, other than a judgment of such a court given on appeal from a court which is not a superior court, shall be a judgment to which this Part applies if –*

- (a) it is final and conclusive as between parties thereto; ...'*

**C. Necessary Requirements**

- 1. What necessary requirements must the foreign court Judgment fulfill to be recognized and enforced?**

**Answer:** Section 3 of the REJA 1958 states the conditions on which a foreign judgment can be registered are:

- (a) the judgment must have been that of a superior court of a country to which the Act applies, and not an appeal from a subordinate court;*
- (b) the judgment must be for a fixed sum of money not being a sum in respect of taxes, or a fine or other penalty; and*

- (c) the judgment must be 'final and conclusive' as between the parties thereto.

Section 4(1) of the REJA 1958 imposes two negative requirements, to the effect that a judgment must not be registered if it has been wholly satisfied, or if it could not be enforced by execution in the country of the original court.

**D. Other Formal Requirements: Court Fees**

- 1. Is it mandatory to pay Court Fees for this kind of application?**

**Answer:** Yes.

**E. Are there any other formal requirements in your country to enforce a court judgment?**

**Answer:** Yes.

Once a foreign monetary judgment is registered, it can be enforced. A judgment creditor is entitled to exercise the following enforcement methods –

- (a) Writ of Seizure and Sale;
- (b) Judgment Debtor Summons;
- (c) Garnishee Proceedings;
- (d) Winding Up Proceedings; and/or Bankruptcy Proceedings.

**IV. PROCEDURE**

**A. Competent court**

- 1. Which Court or courts are competent to decide an enforcement application?**

**Answer:** High Court.

**B. Informational Requirements for the Application to Enforce a Foreign Court Judgment**

**1. What information must be contained in the enforcement application of a foreign court judgment?**

**Answer:** Order 67 rule 3 of the Rules of Court 2012 provides for the evidence required to support such application:

- (a) An application for registration must be supported by an affidavit:
  - (i) exhibiting the judgment or a verified or certified or otherwise duly authenticated copy thereof, and where the judgment is not in the English language, a translation thereof in that language certified by a notary public or authenticated by affidavit;
  - (ii) stating the name, trade or business and the usual or last known place of abode or business of the judgment creditor and the judgment debtor respectively, so far as known to the deponent;
  - (iii) stating to the best of the information or belief of the deponent:
    - (A) that the judgment creditor is entitled to enforce the judgment;
    - (B) as the case may require, either that at the date of the application the judgment has not been satisfied, or the amount in respect of which it remains unsatisfied;
    - (C) where an application is made under REJA 1958, that the judgment does not fall within any of the cases in

which a judgment may not be ordered to be registered under section 4(2) of REJA 1958;

(D) where an application is made under the Act, that at the date of the application the judgment can be enforced by execution in the country of the original court and that, if it were registered, the registration would not be, or be liable to be, set aside under section 5 of REJA 1958;

(iv) specifying, where an application is made under REJA 1958, the amount of the interest, if any, which under the law of the country of the original court has become due under the judgment up to the time of registration.

(b) Where a sum payable under a judgment sought to be registered is expressed in a currency other than the currency of Malaysia, the affidavit must also state the amount which that sum represents in the currency of Malaysia calculated at the rate of exchange prevailing at the date of the judgment.

(c) Where a judgment sought to be registered under REJA 1958 is in respect of different matters, and some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments, those judgments could properly have been registered, the affidavit must state the provisions in respect of which it is sought to register the judgment.

- (d) In the case of an application under REJA 1958, the affidavit must be accompanied by such other evidence with respect to the enforceability of the judgment by execution in the country of the original court, and of the law of that country under which any interest has become due under the judgment, as may be required having regard to the provisions of the Order under REJA 1958 extending REJA 1958 to that country.

**C. What documents must be included with/attached to the application to enforce a foreign court judgment?**

**Answer:** An application must be supported by an affidavit with annexures:

- (a) verified, certified or duly authenticated copy of the judgment;
- (b) certified translation of the judgment by a notary public or authenticated by affidavit (if the judgment is not in English); and
- (c) such other evidence with respect to the enforceability of the judgment by execution in the country of the original court, and of the law of that country under which any interest has become due under the judgment.

**D. Phases of the Procedure**

**1. What are the phases of the procedure to enforce a foreign court judgment?**

**Answer:** The procedure is as follows:

- (a) Application – by way of originating summons supported by affidavit.  
(Order 67 rule 2 of the Rules of Court 2012)
- (b) Recognition – Before deciding to register the judgment, the

Malaysian court will have to determine whether or not it should recognize the judgment, namely whether the court is satisfied that the relevant foreign court had jurisdiction over the matter.

- (c) Registration – If the judgment is recognized, the Rules of Court 2012 state that an order giving leave to register the judgment must be drawn up and served on the judgment debtor. (Order 67 rule 5 of the Rules of Court 2012)
- (d) Application to set aside (if any) – Opposition by the defendant. An application to set aside the registration of a judgment must be made by notice of application supported by affidavit. (Order 67 rule 9 of the Rules of Court 2012)
- (e) Enforcement – the effect of registration of a foreign judgment is that the judgment is treated as a judgment of the High Court of Malaya, and that the registering court shall have the same control over execution of the judgment as the foreign court which originally granted the judgment.

#### **E. Opposition of the Defendant**

##### **1. Can a defendant oppose to this enforcement application?**

**Answer:** Yes.

##### **2. Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons?**

**Answer:** The defendant may oppose the enforcement of the court judgment, on such grounds as provided by REJA 1958:

- (a) The judgment sum has been wholly satisfied (section 4(1)(a) of REJA 1958); or
- (b) The judgment could not be enforced by execution in the country of the original court (section 4(1)(b) of REJA 1958).

The defendant may also rely on non-fulfillment of any conditions provided under section 3(3) of REJA 1958 to oppose to the enforcement application, in particular:

- (a) That the judgment was not 'final and conclusive' as between the parties;
- (b) That the judgment was not for a sum of money payable to the enforcement of judgment applicant; or
- (c) That the judgment was not a judgment from a country or territory added to the First Schedule of the REJA 1958.

**F. Appeal and its Consequences in this Procedure**

- 1. Is it possible to appeal a court decision to recognize and enforce a foreign court decision?**

**Answer:** Yes.

- 2. Can this appeal suspend the enforcement?**

**Answer:** No. Appeal does not operate as stay. An application for stay of execution of the decision of the High Court (pending an appeal to the Court

of Appeal) has to be made.

**G. Recovery of judicial costs and expenses**

1. **Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?**

**Answer:** Ordinarily, the Court is given a discretion in determining the appropriate amount of costs to the successful party. In doing so, the Court must exercise its discretion judiciously.

**V. RECOVERY OF THE DEBT**

**A. Means of Enforcement**

1. **What types of assets are subject to enforcement of the court's judgment?**

**Answer:** All movable and immovable properties as well as claims under actions *in personam*. (Section 5(2) of the REJA 1958)

**VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION**

**A. Any other issues of interest in your jurisdiction**

**Answer:** No



Malaysia

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