

Enforcement of Foreign Judgments

Fundamental Principles [Sri Lanka]

2020



TABLE OF CONTENTS

	Page
I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS)	1
A. Ability to Apply for Recognition and Enforcement of a Court Judgment	1
1. Is it possible to apply for enforcement of a foreign court judgment in your country?	1
B. Applicable Law: General Rules	1
1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?	1
C. Special Rules: European Union	1
1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?	1
2. Does the European Union have a special procedure to enforce court judgments coming out of its member states?	1
D. Average Duration of Enforcement Procedure	2
1. What is the average length of time for this kind of procedure?	2
II. Denial of Recognition and Enforcement of a Foreign Court Judgment: Reasons	2
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?	2
B. Costs and expenses	3
1. What kind of cost and expenses can a claimant expect in this enforcement procedure?	3
III. FORMAL REQUIREMENTS	3
A. Time limit	3
1. Is there a time limit to apply for enforcement of a foreign court judgment?	3

B.	Final and Definitive Court Judgment: Provisional Enforcement	3
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?	3
C.	Necessary Requirements.....	4
1.	What necessary requirements must the foreign court Judgment fulfill to be recognized and enforced?	4
D.	Other Formal Requirements: Court Fees.....	4
1.	Is it mandatory to pay Court Fees for this kind of application?	4
E.	Are there any other formal requirements in your country to enforce a court judgment?	4
IV.	PROCEDURE.....	5
A.	Competent court	5
1.	Which Court or courts are competent to decide an enforcement application?	5
B.	Informational Requirements for the Application to Enforce a Foreign Court Judgment	5
1.	What information must be contained in the enforcement application of a foreign court judgment?	5
C.	What documents must be included with/attached to the application to enforce a foreign court judgment?	5
D.	Phases of the Procedure	6
1.	What are the phases of the procedure to enforce a foreign court judgment?	6
E.	Opposition of the Defendant	7
1.	Can a defendant oppose to this enforcement application?	7
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?	7
F.	Appeal and its Consequences in this Procedure	7

1.	Is it possible to appeal a court decision to recognize and enforce a foreign court decision?	7
2.	Can this appeal suspend the enforcement?	7
G.	Recovery of judicial costs and expenses	7
1.	Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?	7
V.	RECOVERY OF THE DEBT	8
A.	Means of Enforcement.....	8
1.	What types of assets are subject to enforcement of the court's judgment?	8
VI.	OTHER ISSUES OF INTEREST IN YOUR JURISDICTION.	8
A.	Any other issues of interest in your jurisdiction	8

**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.

Enforcement is however, limited to (i) money judgments obtained from a superior court of the United Kingdom of Great Britain and Northern Ireland (“United Kingdom”), and (ii) money judgments obtained from the superior courts of certain other prescribed former and current commonwealth countries.

B. Applicable Law: General Rules

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

Answer: The Reciprocal Enforcement of Judgments Ordinance, No. 41 of 1921, and Rules of Court made thereunder by the Supreme Court of Sri Lanka.

The said Ordinance applicable in respect of any money judgement obtained in a superior court of the United Kingdom, Hong Kong, Mauritius, New South Wales, Straits Settlements; Tanganyika, Uganda, Victoria, and the Federation of Malaya.

While Sri Lanka is also a signatory to the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (1971) it does not form part of the domestic law of Sri Lanka as no implementing statute has been enacted by the Parliament of Sri Lanka.

C. Special Rules: European Union

1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?

Answer: Yes, see answers in Part I(B) above.

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

Answer: No, a judgment delivered in the European Union (excluding the United Kingdom) cannot be enforced in Sri Lanka as it is not part of the Commonwealth of Nations and has not been prescribed under the Reciprocal Enforcement of Judgements Ordinance.

Where a jurisdiction has not been prescribed under the Reciprocal Enforcement of Judgements Ordinance, fresh action must be filed in the registering court by the applicant and a certified copy of the foreign judgment may be tendered as evidence of the applicant's claim.

D. Average Duration of Enforcement Procedure

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

Answer: The actual time period for registration and enforcement of a foreign judgment may last at least a year or beyond if the matter is contested. Further, where the decision of the enforcing court is appealed against in a higher court, then the process may take upwards of several years.

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: Section 3(2) of the Reciprocal Enforcement of Judgements Ordinance sets out the grounds for refusal of registration of a foreign judgement in Sri Lanka. The registering court may deny an application to register the foreign judgement in court if:

- a. The original court acted without jurisdiction; or
- b. the judgment-debtor (the person against whom the judgement was given),
 - i. being a person who was neither carrying on business, nor
 - ii. ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court; or
- c. The judgement-debtor, being the defendant was not duly served with the process of the original court and did not appear notwithstanding that he:
 - i. was ordinarily resident, or
 - ii. was carrying on business within the jurisdiction of that court, or
 - iii. agreed to submit to the jurisdiction of that court; or
- d. the judgement was obtained by fraud; or

- e. the judgement-debtor satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal against the judgement; or
- f. the judgement 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.

B. Costs and expenses

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

Answer: Costs of enforcement of the foreign money judgement:

- (i) Section 3 (c) of the Reciprocal Enforcement of Judgments Ordinance stipulates that reasonable costs to register the judgement (including costs of obtaining a certified copy from the original court and of the application for registration) shall be recoverable as if they were sums payable under the judgement.
- (ii) Section 3 (d) of the Reciprocal Enforcement of Judgments Ordinance stipulates that the stamp duties shall be payable in respect of proceedings under the said Ordinance as would have been payable if the judgement had been an original judgement of the registering court.

In addition, in terms of the Civil Procedure Code of Sri Lanka the judgment-creditor is also entitled to recover reasonable expenses including lawyers' fees.

III. FORMAL REQUIREMENTS

A. Time limit

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

Answer: Section 3(1) of the Reciprocal Enforcement of Judgments Ordinance provides that an application must be made to the registering court at any time within twelve (12) months of the date of the foreign judgement, or such longer period as may be allowed by the court.

In view of the above, any request for enforcement filed out of time will be rejected by the court concerned.

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, it is mandatory for the judgement to be a final and definitive court judgement as per the laws of the country where such judgment is rendered.

Further, no appeal should have been proffered in respect of the said judgment by the judgment-debtor, and any appeal filed should have been decided in favour of the judgment-creditor.

C. Necessary Requirements

1. What necessary requirements must the foreign court judgment fulfill to be recognised and enforced?

Answer: In terms of the Reciprocal Enforcement of Judgements Ordinance, the judgment would only be registered in Sri Lanka, if the registering court thinks that in all the circumstances of the case that it is just and convenient that the judgement should be enforced in Sri Lanka.

Further, as per the Reciprocal Enforcement of Judgements Ordinance, the judgment, which is sought to be enforced, should be a money judgment.

The phrase “money judgment” means any judgment, decree, or order given or made by a court in any civil proceedings, **whereby any sum of money is made payable**, and includes an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place. Accordingly, a judgment for liquidation, etc., are not permitted to be enforced in Sri Lanka.

D. Other Formal Requirements: Court Fees

1. Is it mandatory to pay court fees for this kind of application?

Answer: Yes.

Court fees (including the costs of obtaining a certified copy from the original court and of the application for registration) are payable in respect of an application to register a foreign money judgement. In addition, stamp duty is also payable for filing of the action for registration.

There will also be further fees depending on the method of enforcement chosen by the applicant.

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

Answer: The applicant

The Reciprocal Enforcement of Judgements Ordinance, and Rule No. 1 of the Rules of Court made thereunder, require that any application to

have a judgment registered in Sri Lanka shall be made to the registering court by way of petition and affidavit as in an action of summary procedure under Chapter 24 of the Civil Procedure Code of Sri Lanka.

Further, subject to the provisions of the Reciprocal Enforcement of Judgements Ordinance, and the Rules of Court, proceeding for registration / enforcement shall be regulated by the Civil Procedure Code of Sri Lanka.

IV. PROCEDURE

A. Competent court

1. Which court or courts are competent to decide an enforcement application?

Answer: The application for a registration of a foreign money judgement shall be made to the District Court of Colombo.

However, in respect of commercial matters valued above Sri Lankan Rupees 20 million*, the jurisdiction of the District Court of Colombo is shifted to the Provincial High Court of the Western Province of Sri Lanka exercising commercial jurisdiction in terms of the High Court of the Provinces (Special Provisions) Act, No. 10 of 1996. The value is prescribed by the Minister of Justice from time to time, and current value was prescribed as per Government Gazette No. 2112/33 dated 28th February 2019.

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: The judgement-creditor should file a petition supported by an affidavit seeking the registration of the foreign judgment, and should contain the following:

- (i) The name of the judgement creditor and their address for service within the jurisdiction.
- (ii) The name of the judgement debtor and their address or place of business, if known.
- (iii) The original court in relation to which the judgement was given.
- (iv) The grounds on which the judgement creditor is entitled to enforce the judgement.

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

Answer: As per the Reciprocal Enforcement of Judgements Ordinance, an application to register a foreign judgement shall contain the following documents:

- (i) The petition of the judgement-creditor;
- (ii) An affidavit sworn by the judgement-creditor; and
- (iii) A certified copy of the judgement.

D. Phases of the Procedure

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

Answer: The procedure for the registration and enforcement is as follows:

- (i) An application should be filed in court by way of petition, supported by affidavit, seeking registration of the foreign money judgment at any time within twelve months after the date of the judgment, or such longer period as may be allowed by the court.
- (ii) Upon, filing of such application, where the registering court is satisfied that materials averred to in the petition are *prima facie* established and that the judgment-creditor is entitled to an order for registration based on the evidence adduced, it may order that the judgment be registered and shall also direct the court registrar to issue summons on the judgement-debtor (the defendant).
- (iii) The judgement-debtor is required to appear and show cause on the summons returnable date as to why the said judgment should not be so registered and enforced in Sri Lanka.
- (iv) Where judgement-debtor fails to so appear and show cause, the matter will proceed *ex parte* as between the parties, and the court will proceed to grant decision in favour of the judgment-creditor, subject to filing of any written submissions by the judgment-creditor as may be directed by court.
- (v) Where the judgement-debtor appears and shows cause, the matter will proceed to trial to decide on the merits of the application seeking enforcement. Where the registering court is satisfied with the defence proffered by the judgement-debtor, it may order that the registration be set aside or execution be suspended.
- (vi) Where the court grant order registering the foreign money judgment and no appeal is proffered in that respect by the judgement-debtor, the matter will proceed to enforcement. The judgment-creditor may then take appropriate action to enforcement the judgment as if it had been a judgment issued by the registering court.

E. Opposition of the Defendant

1. Can a defendant oppose to this enforcement application?

Answer: Yes.

The judgment-debtor may at any time within the time appointed by the order directing the registration of the judgment, apply by petition and affidavit to the registering court to set aside registration or to suspend the execution of the judgment already registered.

Where the registering court is satisfied that:

- the matter comes within one of the exceptions under Section 3 (2) of the Reciprocal Enforcement of Judgements Ordinance, or
- if in all the circumstances of the case the registering court thinks it is not just and convenient that the judgment should be enforced in Sri Lanka, or
- for other sufficient reasons,

may order that the registration be set aside or that the execution of the judgment be suspended.

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: See answers in II A above.

F. Appeal and its Consequences in this Procedure

1. Is it possible to appeal a court decision to recognise and enforce a foreign court decision?

Answer: Yes.

Depending on the court of registration, an appeal can be proffered by either party to the Provincial High Court of the Western Province of Sri Lanka or the Supreme Court of Sri Lanka, as the case may be.

2. Can this appeal suspend the enforcement?

Answer: Yes, suspension of enforcement must be sought by the party, and subject to the discretion of the appellate court hearing the appeal.

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: Under Section 3(5) of the Reciprocal Enforcement of Judgements Ordinance, the plaintiff shall not be entitled to the recovery of judicial costs incurred as a result of the enforcement application, unless an application to register the judgement has previously been refused or unless the court otherwise orders.

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 available assets of the judgement-debtor.

Charging order over land / property / shares, potentially with an order for sale.

Seizing of mortgaged property in execution of a decree and sale of other property belonging to the mortgagor, in addition to the mortgaged property under the decree in an action upon the mortgage in accordance with Section 47A of the Mortgage Act, 1950.

VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION

A. Any other issues of interest in your jurisdiction

Answer: No

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