



# ENFORCEMENT OF FOREIGN JUDGMENTS IN SRI LANKA

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In today's world, multi-party, cross-boundary transactions are a norm. Consequently, legal disputes between parties in different jurisdictions are inevitable. When such disputes arise, an aggrieved party (creditor) can sue the other party (debtor) in any country in which the courts and tribunals have jurisdiction to hear the dispute. By doing so, the creditor can obtain a judgment against the debtor. However, there could be circumstances where the judgment cannot be practically enforced in the country it was delivered, such as, when the debtor and its assets are in another country. Thus, in the course of dispute resolution, there may be instances where it is necessary to enforce a judgment in another country.

Generally, a court cannot enforce a judgment or an arbitral award that was delivered in another country. A court can only enforce foreign judgments and foreign awards if the court has been specifically granted jurisdiction to do so, *by law*. Sri Lanka has passed such laws to enable its courts to enforce judgements and arbitral awards, and this article briefly discusses these laws.

### **Foreign judgments and foreign arbitral awards: The distinction in enforcement**

In terms of Section 33 of the Arbitration Act No. 11 of 1995, a foreign arbitral award can be enforced in a High Court of Sri Lanka "*irrespective of the country in which it was made.*" Therefore, the Arbitration Act expressly enables the courts of Sri Lanka to register and enforce *any* foreign arbitral award.

However, the position in relation to the enforcement of foreign judgments is different.

### **Reciprocal Enforcement of Judgments Ordinance: The only law currently in force**

Sri Lanka has passed two laws that enable Sri Lankan courts to enforce foreign judgments. The first of these laws is the Reciprocal Enforcement of Judgments Ordinance No. 41 of 1921 ['REJO'], and the second of these laws is the Enforcement of Foreign Judgments Ordinance No. 3 of 1937 ['EFJO']. However, the EFJO has not been formally brought into force. Accordingly, the REJO is the only law in force that grants jurisdiction to the courts of Sri Lanka to enforce foreign judgments.

### **Scope: Jurisdictions recognised by the REJO**

Section 3 of the REJO authorises the courts of Sri Lanka to register and enforce any judgment delivered by a superior court in the United Kingdom. In the context of the REJO, the term 'superior court' is interpreted to mean the High Court of the United Kingdom.

Section 6 of the REJO further authorises the Minister to prescribe "*Her Majesty's Realms or Territories outside the United Kingdom*" that have passed reciprocal laws enabling the enforcement of judgments of its superior courts in other jurisdictions. Accordingly, the Minister has authorised the courts of Sri Lanka to register and enforce judgments of the superior courts of certain former and current territories of the United Kingdom, such as, Mauritius, Uganda, the Australian states of New South Wales and Victoria, and Hong Kong.

Therefore, only judgments of the superior courts of specifically prescribed jurisdictions can be enforced in Sri Lanka.

## **Procedure: How to make applications under the REJO**

A judgement-creditor can seek to enforce a foreign judgment under the REJO by instituting an application in the relevant court in Sri Lanka within 12 months of the date of the original judgment. Such applications are usually instituted in the District Court; but, if the sum awarded by the judgment is equivalent to or greater than LKR 20 Million, the application must be instituted in the High Court (Commercial High Court).

Applications made by the REJO are disposed by a ‘summary’ procedure. Under a ‘summary’ procedure, the court first satisfies itself that the judgement-creditor is entitled to have the judgment enforced. Thereafter, the court issues summons on the judgment-debtor, who must ‘show-cause’ as to why the judgment should not be enforced. If the judgment-debtor fails to appear and ‘show-cause’, the application will proceed *ex-parte*. If the judgment-debtor shows cause, the court will proceed to hear the application on its merits. At the conclusion of the proceedings, the court will either refuse the application or allow the registration of the foreign judgment.

In terms of Section 3(3) of the REJO, a registered foreign judgment has the same force and effect as if it had, as at the date of registration, been a judgment originally delivered by the registering court in Sri Lanka. Pursuant to registration, the foreign judgment can be enforced in Sri Lanka.

## **Exemptions: Grounds for refusing enforcement under the REJO**

In terms of Section 3(2) of the REJO an application under the REJO will be refused if the court determines, or if the judgment-debtor establishes, that any one or more of the following have occurred:

- if the original (foreign) court acted without jurisdiction;
- if the judgment-debtor was neither carrying on business nor ordinarily resident in the jurisdiction of the original court, or did not voluntarily appear or submit or agree to submit to the jurisdiction of the original court;
- if the judgment-debtor in the original proceedings was not duly served with the process of the original court;
- if the judgment was obtained by fraud;
- if an appeal in respect of the judgment is pending, or if the judgment-debtor is entitled to appeal against the judgment and intends on appealing;
- if the judgment pertains to a cause of action that could not have been entertained by the courts of Sri Lanka due to reasons of public policy.

## **Conclusion**

The enforceability of judgments and arbitral awards has a significant influence on a party’s ability to enforce obligations, settle disputes, and recover losses. Therefore, it is critical that individuals and organisations that engage in cross-border transactions through or from Sri Lanka, understand the scope and limitations of enforcing foreign judgments and awards in Sri Lanka, when concluding contracts and selecting a jurisdiction and forum to resolve disputes.