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Bahamas

ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

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This country-specific Q&A provides an overview of enforcement of judgments in civil and commercial matters laws and regulations applicable in Bahamas.

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BAHAMAS

ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS



1. What international conventions, treaties or other arrangements apply to the enforcement of foreign judgments in your jurisdiction and in what circumstances do they apply?

There are no international conventions, treaties or other arrangements that are applicable in the Bahamas in respect to the recognition and enforcement of foreign judgments.

2. What, if any, reservations has your jurisdiction made to such treaties?

Not applicable. See answer to question 1 above.

3. Can foreign judgments be enforced in your jurisdiction where there is not a convention or treaty or other arrangement, e.g. under the general law?

Yes. A foreign judgment can be enforced in our jurisdiction once the foreign judgment has been recognized or domesticated by Order of the Supreme Court of the Commonwealth of The Bahamas. There are two primary mechanisms pursuant to which a foreign judgment may be enforced in The Bahamas. The first is by commencing an action in the Supreme Court at common law based upon the foreign judgment, which is also referred to as "suing on the judgment". The second avenue available for a judgment to be enforced in The Bahamas is by firstly, having it recognized pursuant to the Reciprocal Enforcement of Judgments Act, 1924 (the "REJA"). The REJA gives the Supreme Court the statutory power to register a judgment obtained in foreign jurisdictions. The Act only permits the recognition of judgments obtained in expressed jurisdictions namely: Australia, Barbados, Belize, Bermuda, British Guiana, British Honduras, Jamaica, Leeward Islands; St Lucia;

Trinidad and the United Kingdom. As stated, aforesaid, once the judgement is recognized in The Bahamas it can be enforced thereafter in the usual manner which we will discuss further below.

4. What basic criteria does a foreign judgment have to satisfy before it can be enforced in your jurisdiction? Is it limited to money judgments or does it extend to other forms of relief?

Before a foreign judgment can be enforced in our jurisdiction, it must first be recognized as stated in 3 above. The type of judgment that can be enforced in the Bahamas under REJA, and arguably the common law, is not limited to money judgments. The Judgements, however, should not offend public policy or the laws of The Bahamas.

5. What is the procedure for enforcement of foreign judgments pursuant to such conventions, treaties or arrangements in your jurisdiction?

Not applicable. See answer to question 1 above.

6. If applicable, what is the procedure for enforcement of foreign judgments under the general law in your jurisdiction?

For a foreign judgment to be enforced in The Bahamas, it must first be recognized by one of the two mechanisms stated in 3 above. Once the foreign Judgment is recognised or domesticated the procedure of will vary and be dependent on the method of enforcement utilized. Such means of enforcement include, obtaining (i) a Writ of Fi Fa (ii) Charging Order (iii) Writ of Sequestration, issuing Third Party Debt Proceedings, the

Appointment of a Receiver and Committal.

7. What, if any, formal requirements do the courts of your jurisdiction impose upon foreign judgments before they can be enforced? For example, must the judgment be apostilled?

Save for registration and domestication, as explained above, Bahamian courts impose no formal requirements upon foreign judgments before they can be enforced.

8. How long does it usually take to enforce or register a foreign judgment in your jurisdiction? Is there a summary procedure available?

An action at common law is often disposed of summarily, usually within 6 to 12 months depending upon the court's calendar. Similarly, an application under the REJA can be heard ex parte also allowing for swift resolution, usually within 6 months. However, the length of time required to enforce or register a foreign judgment may be protracted if it becomes heavily contested by the judgment debtor.

9. Is it possible to obtain interim relief (e.g. an injunction to restrain disposal of assets) while the enforcement or registration procedure takes place?

Yes, it is possible for the judgment creditor to obtain interim relief while the substantive application is pending.

10. What is the limitation period for enforcing a foreign judgment in your jurisdiction?

Where recognition is sought under the REJA, an application for recognition is required to be brought within 12 months of the date that the foreign judgment is obtained; however the Act does provide the Court with the discretion to extend this period. Once a foreign judgment is registered under the REJA, the time limited for enforcement is six years. In relation to foreign judgments not capable of registration under the REJA the limitation period would be six years.

11. On what grounds can the enforcement

of foreign judgments be challenged in your jurisdiction?

Generally, the challenge of a foreign judgment comes at the registration/domestication stage. A foreign Judgment Debtor may challenge the registration of the foreign Judgment under the REJA on the grounds, inter alia, that the Judgment does not emanate from one of the relevant countries prescribed under the REJA. Such a person may also challenge registration on the grounds of limitation or that it is not just and convenient to be enforced in The Bahamas. The REJA also sets out grounds which prohibit registration of a foreign judgment which include: -

- (a) the original Court acted without jurisdiction;
- (b) the judgment debtor, being a person who was neither carrying on business nor 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;
- (c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original Court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that Court or agreed to submit to the jurisdiction of that Court;
- (d) the Judgment was obtained by fraud;
- (e) the judgment debtor satisfies the registering Court either that an appeal is pending or that he is entitled or intends to appeal against the judgment;
- (f) 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.

In the context of a fresh action, commenced in relation to a country to which the REJA does not apply there are no statutory codification of defences. However at common law, similar non-merit based defences are available to a defendant as are set out under The REJA as stated above.

12. Will the courts in your jurisdiction reconsider the merits of the judgment to be enforced?

The Courts in our jurisdiction will not usually reconsider the merits of the judgment to be enforced.

13. Will the courts in your jurisdiction examine whether the foreign court had jurisdiction over the defendant? If so, what criteria will they apply to this?

Prior to the registration or domestication of the foreign judgment, The Bahamian court would consider whether the foreign court has jurisdiction over the defendant. Lack of jurisdiction, in itself, will constitute a ground of challenge for registering the foreign Judgment under the REJA. Further challenges to jurisdiction are usually made under REJA if the judgment debtor, was a person who was neither carrying on business nor 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. Similar considerations are had under common law.

14. Do the courts in your jurisdiction impose any requirements on the way in which the defendant was served with the proceedings? Can foreign judgments in default be enforced?

The REJA requires the that the Judgement Creditor be duly served with the process of the original court for the Judgment to be registered. However, the REJA places no limitation on the type of Judgment that can be enforced. Thus, a foreign judgment obtained in default may be enforced in The Bahamas once the other criteria is met. Similarly, under common law the Courts would seek evidence that the Judgment Debtor was served with the proceedings. Under REJA, default judgments are capable of registration. However, a default judgment under common law, arguable may not be capable of registration, without more.

15. Do the courts in your jurisdiction have a discretion over whether or not to recognise foreign judgments?

Yes. Additionally, REJA confers a discretion upon the Supreme Court to register foreign judgments only if in all the circumstances of the case it thinks it is just and convenient that the Judgment should be enforced in The Bahamas.

16. Are there any types of foreign judgment which cannot be enforced in your jurisdiction? For example can foreign judgments for punitive or multiple

damages be enforced?

Upon the removal of the condition of a money judgment, the definition of the term "judgment" has been interpreted broadly. Save for the requirement that the Judgment must be one of a superior court, emerging local case law suggests that there is no apparent limitation on the type of Judgment that can be enforced once it does not offend the laws of The Bahamas.

17. Can enforcement procedures be started in your jurisdiction if there is a pending appeal in the foreign jurisdiction?

No, generally, the filing of an appeal or evidencing an intention to appeal may constitute a sufficient ground to bar the registration of a foreign judgment for an application under the REJA; thus preventing it from reaching the stage of enforcement. Section 3(2)(e) of the REJA provides that no judgment shall be ordered to be registered under this section if the judgment debtor satisfies the registering court either that an appeal is pending or that he is entitled or intends to appeal against the judgment. Similar considerations will arise in an action brought under common law.

18. Can you appeal a decision recognising or enforcing a foreign judgment in your jurisdiction?

Most Orders of the Supreme Court, including Orders seeking to recognise or enforce a foreign judgment in The Bahamas can be appealed to the Court of Appeal. The Court of Appeal Rules provide that the Court of Appeal shall have the jurisdiction to hear and determine appeals from any judgment or order of the Supreme Court given or made in civil proceedings. Additionally, there is further provision in the Rules of Court of (Reciprocal Enforcement of Judgments) which enables the judgment debtor to apply to set aside the registration or to suspend execution on the judgment.

19. Can interest be claimed on the judgment sum in your jurisdiction? If so on what basis and at what rate?

Locally granted monetary judgments usually attract a statutory rate of interest pursuant to the Civil Procedure (Award of Interest) Act. If interest has been awarded, by the foreign court, the interest will be recoverable based upon the terms of the foreign judgment and it will be subject to the discretion of the Court.

20. Do the courts of your jurisdiction require a foreign judgment to be converted into local currency for the purposes of enforcement?

At the time that the application for recognition is made, or at the time that a fresh action is filed, it is typically necessary to convert foreign currencies into the Bahamian Dollar equivalent.

21. Can the costs of enforcement (e.g. court costs, as well as the parties' costs of instructing lawyers and other professionals) be recovered from the judgment debtor in your jurisdiction?

It is entirely within the Court's discretion to determine whether to award costs for registration or enforcement of an Order. The Court will, save for exceptional circumstances, generally exercise its discretion to award costs in favour of the successful party. Thus, a judgment creditor may be able to recover the reasonable costs incurred during registration and enforcement, including the costs of attorneys and other professionals reasonably incurred.

22. Are third parties allowed to fund enforcement action in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?

Under Bahamian law, there are no statutory provisions,

which expressly permit third-party litigation funding arrangements. Accordingly, all litigation funding arrangements continue to be governed by the common law. At common law there is a general prohibition on champerty and maintenance. To the extent that an enforcement action is funded by an assignment to a third-party of the foreign judgment and the assignee can demonstrate a genuine commercial interest in the enforcement of the judgment, and the terms of the assignment do not fall afoul of the torts of champerty and maintenance, such arrangements, arguably, may be considered valid.

23. What do you think will be the most significant developments in the enforcement process in your jurisdiction in the next 5 years?

It is anticipated that in the next 5 years there will be more reported Bahamian cases about the scope of the REJA with respect to non-monetary judgments. At the beginning of 2022, following an application made under the REJA, the Bahamian Supreme Court rendered a novel decision confirming its ability to register a free-standing foreign worldwide Mareva Injunction.

24. Has your country ratified the Hague Choice of Courts Convention 2005? If not, do you expect it to in the foreseeable future?

The Bahamas has not ratified the Hague Choice of Courts Convention 2005.

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