Enforcement of Foreign Judgments

in 28 jurisdictions worldwide

2012

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1 Treaties
Is your country party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments? What is the country’s approach to entering into these treaties and what, if any, amendments or reservations has your country made to such treaties?

South Africa is not party to any treaty regarding the reciprocal enforcement of foreign commercial judgments, as opposed to foreign arbitral awards.

There is no clear indication of South Africa’s approach to entering into such treaties, but it may consider them unnecessary because the topic is adequately dealt with by South African statutory and common law.

The Reciprocal Enforcement of Civil Judgments Act 9 of 1966 was intended to facilitate the recognition and enforcement of foreign civil judgments and was founded on reciprocity. South Africa, however, was unable to conclude mutually acceptable agreements with foreign governments and this prevented the Act from coming into operation. South Africa’s inability to conclude such agreements may also explain why it has not entered into any multilateral reciprocal treaties on enforcement of foreign judgments.

The Reciprocal Enforcement of Civil Judgments Act 9 of 1966 was repealed by the Enforcement of Foreign Civil Judgments Act 32 of 1988, which is not based on reciprocity.

2 Intra-state variations
Is there uniformity in the law on the enforcement of foreign judgments among different jurisdictions within the country?
The law on the enforcement of foreign judgments is uniform throughout South Africa.

3 Sources of law
What are the sources of law regarding the enforcement of foreign judgments?

Enforcement of foreign judgments is governed in South Africa generally by common law and, in specific cases (dealt with in question 10), by statute, in the latter case by the Enforcement of Foreign Civil Judgments Act 32 of 1988.

4 Hague Convention requirements
To the extent the enforcing country is a signatory of the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, will the court require strict compliance with its provisions before recognising a foreign judgment?

As mentioned, South Africa is not a signatory to the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial matters.

5 Limitation periods
What is the limitation period for enforcement of a foreign judgment? When does it commence to run? In what circumstances would the enforcing court consider the statute of limitations of the foreign jurisdiction?

In terms of section 11(d) of the Prescription Act 68 of 1969, claims are extinguished by prescription three years after they arise.

In terms of section 12(3) of the Act, prescription begins to run (ie, a claim arises) from the date on which the creditor has knowledge of the identity of the debtor and of the facts from which the debt arose.

According to the principles of South African private international law, matters of procedure are governed by the domestic law of the country in which the relevant proceedings are instituted (the lex fori). Matters of substantive law, however, are governed by the law that applies to the underlying transaction or occurrence (the lex causae).

In South African law, prescription is regarded as substantive. Therefore, a South African court seized with the question of whether a claim to the enforcement of a foreign judgment has prescribed will apply the relevant foreign law.

Problems may arise, however, where the application of the foreign law results in a conflict of laws or a ‘gap’ between the two systems of law.

The Supreme Court of Appeal (South Africa’s highest court in non-constitutional matters) in Society of Lloyds v Price; Society of Lloyds v Lee (5) SA 393 (SCA) laid down the approach for dealing with such conflict. The facts in that case were as follows:

- the Society of Lloyd’s sought to enforce default judgments obtained in the High Court of Justice, London against the South African-based defendants more than three years, but less than six years, before the summonses seeking enforcement were served on the defendants in South Africa. The defendants alleged that the plaintiff’s right to enforce the judgments in South Africa had been extinguished by prescription in terms of section 11(d) of the South African Prescription Act;
- in determining the question of prescription, being a matter of substantive law, the court looked to the lex causae (ie, English law of prescription) as being the applicable law; and
- under English law, however, prescription is a procedural matter and therefore the lex fori (ie, the law of South Africa) applied.

It was held that the appropriate way of dealing with the ‘gap’ was to adopt a via media approach, which entailed three stages:

- a provisional determination of whether, in terms of South African law, prescription in terms of the Prescription Act was substantive or procedural;
- a provisional determination of whether, in English law, prescription in terms of the English legislation was substantive or procedural; and
8 Separation of recognition and enforcement

To what extent is the process for obtaining judicial recognition of a foreign judgment separate from the process for enforcement?

There are no separate proceedings required for the recognition and enforcement of a foreign judgment.

According to Forsyth (Private International Law, fourth edition, 2003, page 390) there can be no enforcement of a judgment without recognition, but there may be recognition without enforcement. The distinction, according to Forsyth, depends upon whether a South African court faced with enforcement of a foreign judgment is required to order the performance (or non-performance) of a particular act in order to give effect to the foreign judgment. He gives the following example: a plaintiff with a foreign judgment in his or her favour requiring the defendant to pay him or her an amount of money may seek to enforce that judgment in a South African court by asking for an order that the defendant so pay him or her (i.e., the local court is asked to order that the defendant perform a particular act). On the other hand, a South African court determining whether two people are married to each other may have to decide what effect should be given to a foreign judgment dissolving one of the parties’ previous marriage to another person. If the court recognises the judgment, it simply pronounces that the parties are validly married; it does not order the performance of any act. Effect is given to the judgment by mere recognition.

9 Defences

Can a defendant raise merits-based defences to liability or to the scope of the award entered in the foreign jurisdiction, or is the defendant limited to more narrow grounds for challenging a foreign judgment?

A defendant may not challenge the merits of the case that gave rise to the foreign judgment. A South African court may not, in other words, sit as a court of appeal on the foreign judgment. A defendant is limited to narrow grounds for challenging a foreign judgment, and those grounds relate largely to the non-fulfilment of the requirements for enforcement (see question 10).

10 Basic requirements for recognition

What are the basic mandatory requirements for recognition of a foreign judgment?

South African courts will enforce a foreign judgment if certain requirements, based largely on the Roman Dutch common law, are met.

A foreign judgment, therefore, is not directly enforceable in South Africa but constitutes a cause of action that will be enforced by South African courts if the following requirements are met (as affirmed in a leading case on the subject, Jones v Krok 1995(1) SA 677(A)):

- the foreign court must have had international competence as determined by South African law;
- the judgment must be final and conclusive and must not have become superannuated;
- the enforcement of the judgment must not be contrary to South African public policy (which includes the rules of natural justice);
- the judgment must not have been obtained by fraudulent means;
- the enforcement must not involve the enforcement of a penal or revenue law of the foreign state; and
- enforcement must not be precluded by the Protection of Businesses Act 99 of 1978.

Detailed discussion of the requirements

The foreign court must have had international competence as determined in terms of South African law.

International competence has a special meaning in South African law. It does not mean only that the foreign court must have had
jurisdiction over the defendant in terms of its own law; nor does it mean that the foreign court must have had jurisdiction according to the South African laws relating to jurisdiction. International competence means that the foreign court must have had jurisdiction according to the principles recognised by South African law with reference to the jurisdiction of foreign courts.

Before the decision in *Richman v Benn-Touvim* 2007(2) SA 237(SCA) a foreign court would have had international competence only on one of two grounds, namely the residence of the defendant in the jurisdiction of the foreign court or his or her submission to its jurisdiction. The court in *Richman v Benn-Touvim* confirmed, however, that the physical presence of the defendant in the foreign court's jurisdiction is sufficient also to confer international competence on that court in terms of South African law.

Nevertheless, residence of the defendant in the foreign court’s jurisdiction remains the most well established ground for international competence.

Residence in South African law requires a degree of permanence, and a South African court will look at all the relevant factors to determine that degree. A corporation would be deemed to be resident in the foreign court’s jurisdiction if it has established a place of business there.

Submission to the foreign court’s jurisdiction can be either by way of agreement or by conduct.

Blanchard, Krasner and French v Evans 2002 (4) SA 144 (T) was an appeal from a single judge’s decision of the then Witwatersrand Local Division of the High Court of South Africa, which had dismissed an action by the appellant for the enforcement against the respondent in South Africa of a judgment of the Superior Court of San Diego, California.

The question before the appeal court was whether the defendant had validly submitted to the jurisdiction of the California court so that it had the international competence required for enforcement of the judgment in South Africa. The appeal court was faced with the difficulty of determining which law to apply – South African or Californian – to decide whether the defendant had validly submitted to the jurisdiction of the California court.

The judgment of the California court was for fees for legal services rendered by the appellant to the respondent pursuant to a written contract between them. The contract or ‘fee letter’ provided that: [The] agreement shall be governed and construed in accordance with the laws of California. Any action brought to interpret or enforce this agreement or in any way related to the legal services to be provided shall be tried by the reference procedures set forth in California Code of Civil Procedures 6638 et seq upon motion by a party to the Superior Court of the Country of San Diego, California. A single referee shall be appointed to try the matter and such referee shall be a retired Judge of the California Superior Court, California Court of Appeals or California Supreme Court.

The relevant provisions of section 628 of the California Code of Civil Procedure provided as follows: a reference may be ordered … upon the motion of a party to a written contract … which provides that any controversy arising therefrom shall be heard by reference if the party finds a reference agreement exists between the parties. …

The appellant contended that the provisions of the contract constituted a submission to the jurisdiction of the foreign court. The respondent’s case was that the appellant had not followed the specified reference procedure but had, rather, obtained a judgment from a single judge sitting in the Superior Court of the County of San Diego. Accordingly, the respondent argued, the submission was ineffective and therefore that court lacked the international competence required for enforcement in South Africa.

Whether or not the written contract contained a valid submission to the jurisdiction of the foreign court was a matter for interpretation by the South African court in accordance with the rules of interpretation of the law that applied to the contract. The court, in determining which system of law applied, was faced with three possibilities: South African law, Californian law (the law of the court that rendered judgment) or the proper law of the contract. The court determined that Californian law should govern the interpretation as that was the proper law of the contract.

The court found that the respondent had submitted to the jurisdiction of the foreign court because agreement that a contract will be enforced by a specified foreign court and in accordance with its procedure, of necessity, constitutes a submission to the jurisdiction of that court. Although the contract provided expressly for a specific procedure to be followed, that procedure was applicable only in the event of the trial being necessary. If a trial was not necessary, the agreement as to the specific procedure to be followed would obviously not be of application and this would not serve to render the submission invalid. The court found that in terms of Californian law the action had been instituted in the manner and in the court the parties must be taken to have contemplated and agreed upon.

The court held, therefore, that there was a valid submission by the respondent to the jurisdiction of the foreign court and accordingly that the court had the requisite international competence for the enforcement of the judgment in South Africa.

As for submission by conduct, it was held in *Du Preez v Philip King* 1963(1) SA 801 (W) that for the defendant’s conduct to amount to submission it must be of such a nature to enable the court to say that it is consistent only with an intention by the defendant to submit the resolution of the kind of dispute in question to that court. It is clear that where a defendant defends the case on its merits, he or she must be taken to have submitted to the jurisdiction of the foreign court. However, acceptance of a summons and appearing before the court in question to contest the jurisdiction of the foreign court does not amount to submission.

In *SuperCat Incorporated v Two Oceans Marine CC* 2001 (4) SA 27 (C) the defendant had entered appearance in the Florida court but had denied the plaintiff’s allegation that the Florida court had jurisdiction. The plaintiff alleged that the defendant’s failure to proceed with its defence that the Florida court lacked jurisdiction amounted to a submission to that court’s jurisdiction. The South African court held that its concern was with the defendant’s subjective state of mind as evidenced by its objective conduct, and that it could not in the circumstances draw an adverse inference from the defendant’s procedural impropriety, and further that it had made its intention plain by denying the allegations in the pleadings relating to the jurisdiction of the Florida court.

Section 1E of the Protection of Businesses Act 99 of 1978 provides that a defendant will not be regarded as having submitted to the jurisdiction of a foreign court if he or she appeared in the proceedings only to contest the jurisdiction of the foreign court or where he or she: • applies for dismissal of the action or for setting aside a summons on the grounds that the foreign court lacked jurisdiction;
• applies for the release of property attached for the purpose of those proceedings;
• applies to the court not to exercise its jurisdiction where that court has a discretion to decide whether or not to exercise its jurisdiction;
• applies to the court for the dismissal or stay of proceedings on the ground that the latter should be referred to arbitration or to a court in another country for decision; or
• reviews or appeals any decision made in such application referred to above.
Finality
The foreign judgment must be final and conclusive. This means that the foreign court that gave the judgment must not be able to alter it in any way. The fact that the foreign judgment is pending an appeal does not affect its finality.

The court in *Jones v Krok* stated the general principles that should be applied to proceedings for the enforcement of a foreign judgment subject to appeal as follows:

- South African courts enjoy a discretion to enforce such a judgment, and in the exercise of this discretion, instead of giving judgment in favour of the plaintiff, a court may stay the enforcement proceedings pending final determination of the appeal in the foreign court.
- the onus of proving that a foreign judgment is final and conclusive rests on the plaintiff, and where this is discharged it is up to the defendant to put facts before the court to persuade it to exercise its discretion in favour of granting a stay of proceedings; and
- in exercising this discretion the court may take into account all relevant circumstances, including whether an appeal is actually pending, the consequences to the defendant if judgment is given in favour of the plaintiff and thereafter the appeal succeeds in the foreign court and whether the defendant is pursuing the right of appeal genuinely and with due diligence. As a general rule, however, the court will refuse to assess the merits and demerits of the appeal and its prospects of success in the foreign court.

The court in *Jones v Krok* moreover made it clear that the fact that the foreign judgment does not give rise to res judicata in terms of the laws of the foreign country should not prevent it being regarded as final and conclusive for the purpose of enforcement in South Africa.

As a general rule foreign default judgments will be regarded as final and conclusive for the purpose of enforcement when the defendant has failed to bring rescission proceedings and the time afforded him or her to do so under the foreign law has lapsed.

Enforcement must not be contrary to public policy (which includes the requirements of natural justice)

A foreign judgment that is repugnant to South African public policy will not be enforced in South Africa. In South African law, in the case of a breach of contract or delict (tort), the injured party is entitled only to compensation for damages actually suffered by him or her. The quantum is in no way dependent upon the reprehensible behaviour of the defendant. Punitive or multiple damages have generally been regarded as contrary to South African public policy.

In the case of *Jones v Krok* 1996(1) SA 504 (T) an American plaintiff sought to enforce a judgment of the Superior Court of the State of California in a South African court against a South African defendant. The foreign judgment was for US$13 million compensatory and US$12 million punitive or exemplary damages.

The defendant argued that recognising and enforcing an award of punitive damages, being alien to our law, would be contrary to South African public policy. The court held that the mere fact that foreign awards are made on a basis not recognised in South Africa does not necessarily mean they are contrary to public policy. Whether a foreign judgment is contrary to South African policy depends on the facts in each case. In this case the punitive award was so exorbitant the court held that to enforce it would be contrary to South African public policy.

Foreign judgments providing for revalorisation (ie, payment of an additional sum to counteract the effect of inflation on the quantum of a claim) are not unconscionable and the enforcement of such judgment is not contrary to South African public policy.

Cognovit proceedings would be regarded as contrary to South African public policy.

The principles of natural justice must have been observed in the foreign jurisdiction (ie, the defendant should have been given due notice of the proceedings, been given an opportunity to present his or her defence and the court must have been impartial).

The judgment must not have been obtained by fraudulent means

Any foreign judgment obtained fraudulently will not be enforced in South Africa.

A South African court, in deciding whether the foreign judgment was fraudulently obtained, would probably follow the South African law principles, which would enable it to set aside its own judgment on fraudulent grounds. Where, however, the issue of fraud was raised before and rejected by the foreign court, a South African court should refuse to consider the issue and should recognise the judgment because the defendant’s remedy is to appeal the decision of the foreign court (Forsyth, *Private International Law*, fourth edition, 2003, page 433).

The judgment must not be penal or involve the revenue law of the foreign state

Foreign revenue or penal judgments will not be recognised in South Africa.

Enforcement must not be precluded by the provisions of the Protection of Businesses Act

Section 11 of the Act provides that, except with the permission of the minister of trade and industry, no foreign judgment in connection with any civil proceedings and arising from an act or transaction that took place at any time and that is connected with the mining, production, importation, exportation, refinement, possession, use or sale of or ownership of any matter or material of whatever nature whether within, outside, into or from South Africa, may be enforced in South Africa.

The Act is very widely worded, but South African courts have adopted a restrictive approach to its interpretation and have held that the Act and the requirement for ministerial consent is limited to acts or transactions involving raw materials or substances from which physical things are made, and not to manufactured goods.

A legislative attempt has been made to facilitate the enforcement of foreign judgments in South Africa by means of the Enforcement of Foreign Civil Judgments Act 32 of 1988. The Act provides for the enforcement of foreign judgments of designated countries by registration in the magistrate’s courts in South Africa.

The object of the Act is to simplify enforcement by registration of a certified copy of the judgment in a magistrate’s court where the defendant resides, is employed, carries on business or owns immovable property. Once the judgment has been registered and the defendant notified, it has the same effect as a civil judgment of that court and operates as an interdict against the judgment debtor, preventing him or her from removing any assets if such removal would prejudice the judgment creditor.

Section 5 of the Act affords the judgment creditor the right to apply to court to set aside the registration of the judgment on specified grounds similar to the requirements for enforcement explained above.

However, only one country (Namibia) has been designated in the Act in nearly 20 years of its existence. There is currently no indication that further countries will be designated.

11 Other factors

May other non-mandatory factors for recognition of a foreign judgment be considered, and if so, what factors?

South African law does not require that reciprocity be shown before a foreign judgment will be enforced. If the requirements for enforcement are met, a South African court will enforce a foreign judgment...
irrespective of whether any form of reciprocity of enforcement exists between the two jurisdictions in question.

There are no non-mandatory factors for recognition of a foreign judgment.

12 Procedural equivalence
Is there a requirement that the judicial proceedings where the judgment was entered correspond to due process in your jurisdiction, and if so, how is that requirement evaluated?

A South African court will not compare the foreign judicial proceedings to its own to determine whether they observed due process. A South African court will however have to be satisfied that the basic rules of natural justice were applied in the foreign jurisdiction. Where, for example, a defendant was aware of only limited pre-trial discovery, and this in the view of the South African court prevented the defendant from properly presenting his or her case such that it constituted a breach of the rules of natural justice, a South African court will be inclined not to enforce the judgment.

13 Personal jurisdiction
Will the enforcing court examine whether the court where the judgment was entered had personal jurisdiction over the defendant, and if so, how is that requirement met?

A South African court seized with enforcement must be satisfied that the foreign court had international competence. The fact that the foreign court may have had jurisdiction in terms of its own law is not conclusive. The question of jurisdiction must be determined in terms of the principles of South African law on the jurisdiction of foreign courts, which requires that the foreign court had international competence (see question 10).

It is submitted that, where the foreign court lacked personal jurisdiction over the defendant, a South African court will refuse to enforce the judgment.

14 Subject-matter jurisdiction
Will the enforcing court examine whether the court where the judgment was entered had subject-matter jurisdiction over the controversy, and if so, how is that requirement met?

Where the foreign court lacked subject-matter jurisdiction, a South African court will not decline to enforce a judgment of that court (the reason being that the defendant would have had the opportunity of appealing such judgment in the foreign jurisdiction).

15 Service
Must the defendant have been technically or formally served with notice of the original action in the foreign jurisdiction, or is actual notice sufficient? How much notice is usually considered sufficient?

There is no specific requirement that the defendant must have been technically or formally served with notice of the original action in the foreign jurisdiction. The rules of natural justice require only that the defendant be given notice of the proceedings against him or her. The notice given should be reasonable in the circumstances of the case.

16 Fairness of foreign jurisdiction
Will the court consider the relative inconvenience of the foreign jurisdiction to the defendant as a basis for declining to enforce a foreign judgment?

If the foreign court had jurisdiction over the defendant in terms of its own rules and was internationally competent in terms of South African law, a South African court will not take into consideration any inconvenience to the defendant as a basis for declining to enforce a foreign judgment against him or her.

17 Vitiation by fraud
Will the court examine the foreign judgment for allegations of fraud upon the defendant or the court?

If fraud upon the defendant was not raised in the foreign proceedings, a South African court will examine the foreign judgment for allegations of fraud upon the defendant if the issue is raised by the defendant in the enforcement proceedings.

Where, however, the issue of fraud upon the defendant was considered and determined by the foreign court, a South African court will not revisit the issue.

18 Public policy
Will the court examine the foreign judgment for consistency with the enforcing jurisdiction’s public policy and substantive laws?

A South African court will only examine the foreign judgment for consistency with South African public policy. It may not reconsider the merits of the case giving rise to the foreign judgment; in other words, it will not sit as a court of appeal on the foreign judgment and will therefore not consider it for consistency with the enforcing jurisdiction’s own public policy and substantive laws.

19 Conflicting decisions
What will the court do if the foreign judgment sought to be enforced is in conflict with another final and conclusive judgment involving the same parties or parties in privity?

In keeping with the principle that a South African court will not re-examine the merits of the case giving rise to the foreign judgment, it will enforce a foreign judgment if the requirements for enforcement are met and notwithstanding that it conflicts with any local judgment or a judgment in any other country.

20 Alternative dispute resolution
What will the court do if the parties had an enforceable agreement to use alternative dispute resolution, and the defendant argues that this requirement was not followed by the party seeking to enforce?

As mentioned in question 10, the foreign court must have had international competence. This requires either that the defendant was resident in the area of the foreign court’s jurisdiction at the commencement of the action or that he or she submitted to its jurisdiction by agreement or by conduct.

It is submitted that, if the defendant appeared in the foreign proceedings only for the purpose of contesting the jurisdiction of that court, a judgment erroneously given against the defendant in those proceedings would not be enforced in South Africa, particularly where the foreign court would not have had jurisdiction in the matter in light of the mandatory arbitration clause.

Where the defendant in the foreign proceedings does not raise that court’s lack of jurisdiction and a judgment is given against him or her, he or she will be deemed to have submitted to that court’s jurisdiction by his or her conduct, and a South African court will accordingly enforce the judgment.

21 Favourably treated jurisdictions
Are judgments from some foreign jurisdictions given greater deference than judgments from others? If so, why?

South African courts will not favour particular foreign jurisdictions and will enforce a foreign judgment, regardless of its country of origin, if the requirements for enforcement are met.
22 Alteration of awards
Will a court ever recognise only part of a judgment, or alter or limit the damage award?

A South African court has the power to recognise only part of the foreign judgment or limit a damage award where, for example, the judgment awards punitive damages. Punitive damages are generally regarded as repugnant to South African public policy.

In Jones v Kroq 1996 (1) SA 504 (T) the court enforced the compensatory damage element of the foreign judgment but refused to enforce the punitive damages, which were so exorbitant that to enforce them would be contrary to South African public policy. Although there is no direct authority on the point, the judgment suggests that if the punitive damages were reasonable the court would have enforced them.

Section 1A of the Protection of Businesses Act 99 of 1978 provides that no foreign judgment arising from any act or transaction connected with the mining, production, importation, exportation, refinement, possession, use or sale or ownership of any matter or material of whatever nature, whether within, outside, into or from South Africa, and which directs the payment of punitive damages, will not be recognised or enforced in South Africa.

23 Currency, interest, costs
In recognising a foreign judgment, does the court convert the damage award to local currency and take into account such factors as interest and court costs and exchange controls? If interest claims are allowed, which law governs the rate of interest?

A South African court has the power to grant a judgment in a foreign currency. A judgment debt may therefore be satisfied in South Africa by payment in a foreign currency (or by payment of its equivalent in rand when paid). A South African court will, moreover, enforce any foreign interest rate awarded and any court-awarded costs.

A South African court will not consider exchange controls, it being the responsibility of the successful plaintiff to apply to the relevant exchange control authority for permission to remit the award.

24 Security
Is there a right to appeal from a judgment recognising or enforcing a foreign judgment? If so, what procedures, if any, are available to ensure the judgment will be enforceable against the defendant if and when it is affirmed?

A plaintiff who fails in enforcement proceedings may, with the leave of the court, appeal the refusal to enforce the judgment. A plaintiff is not entitled to claim security for the enforcement of the judgment in the event that he or she succeeds on appeal. Only where the plaintiff can show that the defendant intends dissipating his or her assets with the intention of defeating enforcement of the judgment against him or her will a court grant an anti-dissipatory interdict in favour of the plaintiff.

25 Enforcement process
Once a foreign judgment is recognised, what is the process for enforcing it in your jurisdiction?

Once a foreign judgment is recognised by the court, the judgment creditor is entitled to issue a writ of execution against movable property belonging to the defendant. The judgment creditor is only entitled to execute against immovable property after the sheriff of the High Court has declared that there are no moveable assets against which to execute. Once the writ has been issued by the registrar of the High Court, it must be delivered to the sheriff who is responsible for making the attachment.

26 Pitfalls
What are the most common pitfalls in seeking recognition or enforcement of a foreign judgment in your jurisdiction?

Owing to its wide language, section 1(1) and (3) of the Protection of Businesses Act requiring ministerial consent for the enforcement of judgments arising from defined acts or transactions may be abused by a defendant seeking to frustrate enforcement. The abuse may entail a plea by the defendant that consent has not been obtained.

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in matters remotely connected to the defined acts or transactions. If there is any doubt as to whether ministerial consent is required, a plaintiff seeking enforcement would be well advised to obtain the ministerial consent first, which is rarely refused.

A defendant may require a foreign plaintiff seeking enforcement to provide security for his or her costs in the event that the plaintiff fails in the enforcement proceedings.
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