

"If I had nine hours to chop down a tree, I'd spend the first six sharpening my axe" –

November 2016

Abraham Lincoln

SEEKING DAMAGES IN CROSS-BORDER TRANSACTIONS:

The Enforcement of Foreign Civil Judgments Act 32 of 1988

Parties to an agreement should always be aware of the relevant jurisdictions and laws governing the enforcement of foreign judgments.

If parties elect to submit their disputes to the jurisdiction of a foreign court, the enforceability of that court's judgment may be subject to South African local laws, provided that one of the parties are residing and domiciled in South Africa.

The enforcement of foreign judgments in South Africa is addressed by the Enforcement of Foreign Civil Judgments Act 32 of 1988 (the "**EFCJ Act**"). The **EFCJ Act** shall apply in respect of judgments given in any country outside South Africa and which country is categorised as a designated country.

A certified copy of a judgment given against any person by any court in a designated country can be lodged with a clerk of the court in South Africa for registration.

Following registration, the court shall forthwith issue a notice directed to the person against whom the foreign judgement was obtained. A registered foreign judgment shall have the same effect as a civil judgment of the South African court at which the judgment is registered. A registered foreign judgement shall not be executed before the expiration of 21 days after service of the mentioned notice.

However, no country has been categorised as a designated country company in terms of the **EFCJ Act** and more importantly, the **EFCJ Act** applies only to Magistrates' Courts. The **EFCJ Act** is therefore inadequate in most instances and the South African position on enforcement of foreign judgments is largely governed by common law.

Law & Laughter

Joke: Nothing comes easy in life, even Santa comes with a clause

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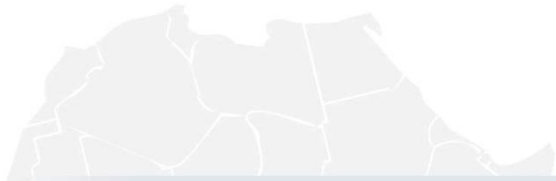
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Common law on the enforcement of foreign civil judgements

A foreign judgment, therefore, is not directly enforceable in South Africa via the **EFCJ Act**. In terms of common law principles, a foreign judgment will only constitute a cause of action that may be enforced by South African courts, provided certain requirements are met (as affirmed in the case of *Jones v Krok*):

- 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 judgment 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.

A duly authenticated copy of the foreign judgment is required and if done by way of application, a duly authenticated affidavit will be required.



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