

Judgment and arbitration award enforcement: the admiralty law perspective

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When a successful litigant to a court action or arbitration has insufficient or no security to satisfy a debt, the path to enforcing a foreign judgment or award can be complex, time consuming and expensive. In contrast to many other jurisdictions, the enforcement procedure in South African admiralty jurisdiction is remarkably straightforward.

Maritime claim

The definition of a 'maritime claim' in the Admiralty Jurisdiction Regulation Act includes any judgment or arbitration award relating to a maritime claim, whether given or made in South Africa or elsewhere.

The act recognises a broad range of claims. There are 32 specified heads of claim, including a catch-all provision which recognises a claim relating to any matter which is a marine or maritime matter by virtue of its nature or subject matter.

Essentially, the act allows a claimant to pursue admiralty proceedings for matters ranging from shipbuilding and charter disputes to broker's commission.

Enforcement procedures

Because a judgment or arbitration award relating to an underlying maritime claim is in itself a maritime claim, a claimant need not invoke complex local recognition procedure through the courts. All the claimant requires is a copy of the judgment or award.

A claimant seeking to enforce a judgment or award relating to a maritime claim can use one of the following two procedures:

- An arrest *in rem* of the maritime property relating to the dispute or, in the case of a ship, an arrest of an associated ship – for example, if the judgment or award relates to a claim in respect of a ship forming part of a fleet that is directly or indirectly beneficially owned or controlled by a single person or entity, the other ships in the fleet may be susceptible to arrest on an associated ship basis.
- An attachment of property (including associated ships) owned by the judgment debtor to found or confirm the court's jurisdiction.

The main advantage of an attachment over an arrest is that the party whose property has been attached is obliged to give security for the full value of the claim (plus interest and costs). In the case of an arrest, the affected party need secure the claim only for the value of the arrested property. The difference becomes important when the value of the property is likely to be less than the claim.

In contrast, the procedure for an arrest *in rem* is quicker and easier to achieve than an attachment.

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An arrest entails drafting and issuing a short summons, together with a warrant of arrest and a certificate from the claimant's attorney which verifies the basis of the arrest. The papers are generally issued by court officials without the intervention of a judge and can be obtained in a few hours, whereas an attachment requires an application before a judge that is supported by a detailed affidavit containing the necessary legal and factual allegations with supporting documentary evidence.

There are no specific formalities for the presentation of the judgment or award (eg, having the documents notarised and/or legalised), except that documents need to be translated into English where necessary.

Enforcement and insolvency

The fact that the judgment debtor may be subject to insolvency or liquidation proceedings is not a bar to arresting property in South Africa to enforce a maritime judgment or award.

The act recognises that property arrested in respect of a maritime claim does not vest in a trustee in insolvency and does not form part of the assets to be administered by a liquidator or judicial manager of the property owner. Further, no proceedings relating to such property or the claim in respect of which that property was arrested will be stayed by reason of any sequestration, winding up or judicial management with respect to that owner.

The practical effect of this provision is that the property will vest in the trustee only in circumstances where the foreign insolvency proceedings have been recognised in South Africa by the courts before the arrest. There is no automatic recognition in South Africa of foreign winding-up orders.

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