

ENFORCEMENT OF FOREIGN JUDGMENT AND FOREIGN ARBITRAL AWARDS FOR MONGOLIA



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Bolormaa Volodya

Partner

T: +976 701 550 31

E: bvolodya@gratanet.com



Ganbaatar Enkhzaya

Junior Associate

T: + 976 99823394

E: eganbaatar@gratanet.com

FEATURES AND LEGAL REGULATION OF ENFORCEMENT OF FOREIGN JUDGMENT AND FOREIGN ARBITRAL AWARDS

According to Article 116 of the Law on the Enforcement of Court Judgment, regulations for enforcing judgments of foreign courts, international courts, and arbitration awards in the territory of Mongolia shall be determined under this Law and international treaty in which Mongolia is Party to, and according to article 6.2 of this law, civil judgment enforcement operations shall be conducted on the basis of the decision of foreign courts, international courts or arbitration awards if stipulated in the international agreements of Mongolia.

RECOGNITION AND ENFORCEMENT OF ARBITRAL AWARDS AND FOREIGN JUDGMENT

PARTIES TO CIVIL JUDGMENT EXECUTION:

The debtor and creditor shall be referred collectively to as the Parties of the judgment enforcement process.



The creditor is a private citizen or a legal entity whose legal rights are deemed violated and therefore included in execution documents for restoration and protection of those violated rights.

The debtor is a private citizen or a legal entity who is deemed to have violated the legal rights of the creditor and not fulfilled relevant duties and therefore included in the execution document.



Successors, representatives of the Parties, translators, interpreters, third-party witnesses, and experts may participate in civil judgment enforcement proceedings.

PERIOD TO COMMENCE CIVIL JUDGMENT ENFORCEMENT PROCESS:

Unless otherwise stipulated in the international treaty of Mongolia, a foreign court, international court, or arbitral award shall not initiate a civil judgment enforcement procedure if 3 years have passed since the judgment came into force.

If the creditor is found to have exceeded the above-mentioned period due to reasonable and respectful grounds, the creditor may lodge a request for restoration of the period to court, and the court may restore the period within 3 years after the set period is exceeded. In case that exceeded period is restored, the related person shall address to court within 6 months after the restoration decision is made, requesting the issuance of an execution order.

INITIATING CIVIL JUDGMENT ENFORCEMENT OPERATION:

The Senior bailiff shall open a civil execution file within 3 days after receipt of the Execution document, issue an order to initiate civil judgment execution and assign operations to the bailiff responsible for the relevant district. After receiving an order to initiate civil execution process, the bailiff shall undertake measures to validate the enforcement of civil judgment.

Execution documents shall include execution orders, issued on the judgment of a court of foreign, international court, and arbitration awards in case of international treaties that Mongolia is Party to and judgment on reimbursement of execution costs.

MEASURES TO VALIDATE ENFORCEMENT OF CIVIL JUDGMENT:

Measures to validate enforcement of civil judgment refer to measures that the bailiff undertakes in compliance with rules and regulations set forth in the law in order to create conditions for enforcement of obligations in the execution document or debtor's obligation stated in the execution document within the stipulated period, in full scale.

In the event that the Parties to civil judgment execution disagree with measures undertaken and judgment made by the bailiff, complaint may be lodged to senior bailiff within 7 days after the undertaken measure, if not aware of the measure, within 7 days after implementation about the measure.

The Senior bailiff shall resolve the complaint within 14 days and issue an order. In case the creditor disagrees with the order, he/she shall lodge a complaint addressed to Chief Enforcement Officer within 7 days and to the court within 14 days after receipt of the order of the Chief Enforcement Officer. The measures to ensure the execution of foreign civil judgment include the following activities:

- Summon parties of civil judgment enforcement operations (representatives) and other persons and representatives of legal entities;
- Obtain necessary document, reference and certificate necessary for enforcement of obligation stated in the execution document from parties of civil judgment enforcement operations (representatives), other persons and legal entities;
- Receive property declaration from the debtor and other persons and add it to the debtor's register;
- Inspect the financial and other documents of the debtor related to the operations of the debtor;
- Assign certain duties to the Parties of civil judgment enforcement operations (representatives), other persons and legal entities in order to ensure compliance with obligations stated in execution document and send notification on it;
- Assign certain duties to Parties of civil judgment enforcement operations (representatives), other persons and legal entities in order to ensure compliance with obligations stated in execution document and send notification on it;
- In cases aside from evicting debtor, enter and search in the accommodation of the debtor or person possessing and using debtor's property, with consent from the Senior bailiff;



Inspect body, case and other properties of the debtor to enforce the demand in the execution document, seal/freeze, collateralize, seize and sell these items, and assign safeguarding and storage of the seized property;



In cases aside from evicting debtor, enter and search in the accommodation of the debtor or person possessing and using debtor's property, with consent from the senior bailiff;



Search debtor and his/her property;



Address to state registration authority for property of the debtor and its title registration, get reference and certificate;



Review and resolve complaints lodged by the Parties to civil judgment enforcement process;



Take deductions from debtor's bank account and savings account, freeze outgoing payment from bank account, impose restrictions on rights to open and possess accounts in bank and other legitimate legal entities or monitor incoming and outgoing transactions of the accounts;



Suspend rights/title of debtor, which is registered in the state registration;



Restraining of the right of the debtor to travel abroad in accordance with the Law on the Enforcement of Court judgment;



Transfer of immovable property to the management of the Creditor;



Transfer unsold property to the creditor for the due payment and evict for this purpose; and



Other rights specified in law.

TERMINATING THE ENFORCED JUDGMENT:

In case that the enforced judgment becomes void, property paid to the creditor according to that judgment shall be returned or paid to the debtor, if it is impossible, value of the property shall be set as of the period of return and creditor shall transfer the said amount to the debtor. In case that undertaken civil judgment enforcement process became void due to void execution document, expenses for judgment enforcement process shall be paid from the state budget.

ABOUT ARBITRATION AWARDS

- In accordance with article 48 of the Law of Mongolia on Arbitration, an arbitration award, irrespective of the country in which it was made shall be recognized as binding and, upon application in writing to the competent court, the award shall be enforced subject to the provisions of Article 48 and 49 of this Law, and the basic arbitration award in accordance with the procedures set forth in the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards.
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- The Party relying on the award or applying for its enforcement shall attach the original award or a duly certified copy thereof. If the award is not made in a Mongolian language, the court may request the Party to provide a Mongolian translation.

GROUND FOR REFUSING RECOGNITION OR ENFORCEMENT OF AN ARBITRATION AWARD:

According to the Law of Mongolia on Arbitration, recognition or enforcement of an arbitration award, irrespective of the country in which it was made, may be refused only:

At the request of the Party against whom it is invoked, if that Party furnished to the competent court where recognition or enforcement is sought proof that:

- A Party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made;
- A Party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitration proceedings or was otherwise unable to present the case;
- The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced;
- The composition of the arbitration tribunal or the arbitration procedure was not in accordance with the agreement of the Parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; and
- The award has not yet become binding on the Parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made.

The court determined the following situation:

- The subject matter of the dispute is not capable of arbitration jurisdiction under the law of Mongolia.



The recognition of enforcement of the award would be contrary to the common interests of Mongolia.

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