

CHAPTER 40

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT)

Ordinances Nos. 30 of 1935, 23 of 1959, 37 of 1966

AN ACT TO MAKE PROVISION FOR THE ENFORCEMENT IN FIJI OF JUDGMENTS GIVEN IN FOREIGN COUNTRIES WHICH ACCORD RECIPROCAL TREATMENT TO JUDGMENTS GIVEN IN FIJI, FOR FACILITATING THE ENFORCEMENT IN FOREIGN COUNTRIES OF JUDGMENTS GIVEN IN FIJI AND FOR OTHER PURPOSES IN CONNECTION WITH THE MATTERS AFORESAID.

[20th November, 1935.]

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Foreign Judgments (Reciprocal Enforcement) Act.

Interpretation

- 2.—(1) In this Act, unless the context otherwise requires—

1. "appeal" includes any proceeding by way of discharging or setting aside a judgment or an application for a new trial or a stay or execution;
2. "country of the original court" means the country in which the original court is situated;
3. "judgment" means a judgment or order given or made by a court in any civil proceedings or a judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party;
4. "judgment creditor" means the person in whose favour the judgment was given, and includes any person in whom the rights under the judgment have become vested by succession or assignment or otherwise;
5. "judgment debtor" means the person against whom the judgment was given, and includes any person against whom the judgment is enforceable under the law of the original court;
6. "original court" in relation to any judgment means the court by which the judgment was given;
7. "prescribed" means prescribed by rules of court;
8. "registration" means registration under Part II, and the expressions "register" and "registered" shall be construed accordingly;
9. "registering court" in relation to any judgment means the court to which an application to register the judgment is made.

(2) For the purpose of this Act, the expression "action in *personam*" shall not be deemed to include any matrimonial cause or any proceedings in connexion with any of the following matters, that is to say, matrimonial matters, administration of the estates of deceased persons, bankruptcy, winding up of companies, lunacy or guardianship of infants.

(3) For the purposes of this Act, the expression "judgments given in the Supreme Court" shall include judgments given in any courts on appeals against any judgments so given.

PART II—REGISTRATION OF FOREIGN JUDGMENTS

Power to extend Part II to foreign countries giving reciprocal treatment

3.—(1) The Governor-General, if he is satisfied that, in the event of the benefits conferred by this Part being extended to judgments given in the superior courts of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign

country of judgments given in the Supreme Court, may by proclamation direct—

1. that this Part shall extend to that foreign country; and
2. that such courts of that foreign country as are specified in the proclamation shall be deemed superior courts of that country for the purposes of this Part.

(2) Any judgment of a superior court of a foreign country to which this Part extends, other than a judgment of such a court given on appeal from a court which is not a superior court, shall be a judgment to which this Part applies if—

1. it is final and conclusive as between the parties thereto; and
2. there is payable thereunder a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; and
3. it is given after the coming into operation of the proclamation directing that this shall extend to that foreign country.

(3) For the purposes of this section a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it or that it may still be subject to appeal in the courts of the country of the original court.

Application for and effect of registration of foreign judgment

4.—(1) A person being a judgment creditor under a judgment to which this Part applies may apply to the Supreme Court at any time within six years after the date of the judgment or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in the Supreme Court, and on any such application the court shall, subject to proof of the prescribed matters and to the other provisions of this Act, order the judgment to be registered;

Provided that a judgment shall not be registered if at the date of the application—

1. it has been wholly satisfied; or
2. it could not be enforced by execution in the country of the original court.

(2) Subject to the provisions of this Act with respect to the setting aside of registration—

1. a registered judgment shall for the purposes of execution be of the same force and effect; and
2. proceedings may be taken on a registered judgment; and (c) the sum for which a judgment is registered shall carry interest; and
3. the registering court shall have the same control over the execution of a registered judgment, as if the judgment had been a judgment originally given in the registering court and entered on the date of registration:

Provided that execution shall not issue on the judgment so long as under this Part and the rules of court made thereunder it is competent for any party to make an application to have the registration of the judgment set aside or, where such an application is made, until after the application has been finally determined.

(3) Where the sum payable under a judgment which is to be registered is expressed in a currency other than the currency of Fiji, the judgment shall be registered as if it were a judgment for such sum in the currency of Fiji, as, on the basis of the rate of exchange prevailing at the date of the judgment of the original court, is equivalent to the sum so payable.

(4) If at the date of the application for registration the judgment of the original court has been partly satisfied, the judgment shall not be registered in respect of the whole sum payable under the judgment of the original court but only in respect of the balance remaining payable at that date.

(5) If on an application for the registration of a judgment it appears to the registering court that the judgment is in respect of different matters, and that some but not all of the provisions of the judgment are such that, if those provisions had been contained in separate judgments, those judgments could properly have been registered, the judgment may be registered in respect of the

provisions aforesaid but not in respect of any other provisions contained therein.

(6) In addition to the sum of money payable under the judgment of the original court, including any interest which by the law of the country of the original court becomes due under the judgment up to the time of registration, the judgment shall be registered for the reasonable costs of and incidental to registration, including the costs of obtaining a certified copy of the judgment from the original court.

Rules of court

5.—(1) The power to make rules of court under section 25 of the Supreme Court Act shall, subject to the provisions of this section, include power to make rules for the following purposes:—

1. for making provision with respect to the giving of security for costs by persons applying for the registration of judgments;
2. for prescribing the matters to be proved on an application for the registration of a judgment, and for regulating the mode of proving those matters;
3. for providing for the service on the judgment debtor of notice of the registration of a judgment;
4. for making provision with respect to the fixing of the period within which an application may be made to have the registration of the judgment set aside and with respect to the extension of the period so fixed;
5. for prescribing the method by which any question arising under this Act whether a foreign judgment can be enforced by execution in the country of the original court or what interest is payable under a foreign judgment under the law of the original court is to be determined;
6. for prescribing any matter which under this Part is to be prescribed. (2) Rules made for the purposes of this Part shall be expressed to have and shall have effect subject to any such provisions contained in proclamations made under section 3 as are declared by the said proclamations to be necessary for giving effect to agreements made between Her Majesty and foreign countries in relation to matters with respect to which there is power to make rules of court for the purposes of this Part, (*Cap.13*)

Cases in which registered judgments must or may be set aside

6.—(1) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment—

1. shall be set aside if the registering court is satisfied—
 1. that the judgment is not a judgment to which this Part applies was registered in contravention of the foregoing provisions of this Act; or
 2. that the courts of the country of the original court had no jurisdiction in the circumstances of the case; or
 3. that the judgment debtor being the defendant in the proceedings in the original court did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear; or
 4. that the judgment was obtained by fraud; or (v) that the enforcement of the judgment would be contrary to public policy in the country of the registering court; or
 5. that the rights under the judgment are not vested in the person by whom the application for registration was made;
2. may be set aside if the registering court is satisfied that the matter in dispute in the proceedings in the original court had, previously to the date of the judgment in the original court, been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.

(2) For the purposes of this section the courts of the country of the original court shall, subject to the provisions of subsection (3), be deemed to have had jurisdiction—

1. in the case of a judgment given in action in personam—
 1. if the judgment debtor, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings otherwise than for the purpose of protecting or obtaining the release of property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of that court; or
 2. if the judgment debtor was plaintiff in or counter-claimed in the proceedings in the original court; or
 3. if the judgment debtor, being a defendant in the original court, had, before the commencement of the proceedings, agreed in respect of the subject matter of the proceedings to submit to the jurisdiction of that court or of the courts of the country of that court; or
 4. if the judgment debtor, being a defendant in the original court, was, at the time when the proceedings were instituted, resident in, or being a body corporate, had its principal place of business in, the country of that court; or
 5. if the judgment debtor, being a defendant in the original court, had an office or place of business in the country of that court, and the proceedings in that court were in respect of a transaction effected through or at that office or place;
2. in the case of a judgment given in an action of which the subject matter was immovable property or in an action in rem of which the subject matter was moveable property, if the property in question was at the time of the proceedings in the original court situate in the country of that court;
3. in the case of a judgment given in an action other than any such action as is mentioned in paragraph (a) or paragraph (b), if the jurisdiction of the original court is recognized by the law of the registering court.

(3) Notwithstanding any thing in subsection (2), the courts of the country of the original court shall not be deemed to have had jurisdiction—

1. If the subject matter of the proceedings was immovable property outside the country of the original court; or
2. except in the cases mentioned in sub-paragraphs (i), (ii) and (iii) of paragraph (a) and in paragraph (c) or subsection (2), if the bringing of the proceedings in the original court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of the country of that court; or
3. if the judgment debtor, being a defendant in the original proceedings, was a person who, under the rules of public international law, was entitled to immunity from the jurisdiction of the courts of the country of the original court and did not submit to the jurisdiction of that court.

Powers of registering court on application to set aside registration

7.—(1) If on an application to set aside the registration of a judgment the applicant satisfies the registering court either that an appeal is pending or that he is entitled and intends to appeal against the judgment, the court, if it thinks fit, may, on such terms as it may think just, either set aside the registration or adjourn the application to set aside the registration until after the expiration of such period as appears to the court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by the competent tribunal.

(2) Where the registration of a judgment is set aside under the provisions of subsection (1), or solely for the reason that the judgment was not, at the date of the application for registration, enforceable by execution in the country of the original court, the setting aside of the registration shall not prejudice a further application to register the judgment when the appeal has been disposed of or if and when the judgment becomes enforceable by execution in that country as the case may

be.

(3) Where the registration of a judgment is set aside solely for the reason that the judgment, notwithstanding that it had at the date of the application for registration been partly satisfied, was registered for the whole sum payable thereunder, the registering court shall, on the application of the judgment creditor, order judgment to be registered for the balance remaining payable at that date.

Foreign judgments which can be registered not to be enforceable otherwise

8. No proceedings for the recovery of a sum payable under a foreign judgment, being a judgment to which this Part applies, other than proceedings by way of registration of the judgment shall be entertained by any court in Fiji.

Power to apply Part II to Commonwealth territories

9.—(1) The Governor-General may by proclamation direct that this Part shall apply to any country or territory of the Commonwealth outside Fiji and to judgments obtained in the courts of such countries or territories as it applies to foreign countries and judgments obtained in the courts of foreign countries, and, in the event of the Governor-General so directing, this Act shall have effect accordingly and the Reciprocal Enforcement of Judgments Act shall cease to have effect except in relation to those parts of such countries and territories to which it extends at the date of the proclamation.

(2) If, at any time after the Governor-General has directed as aforesaid, a proclamation is made under section 3 extending Part II to any country or territory of the Commonwealth to which the Reciprocal Enforcement of Judgments Act extends as aforesaid, the said Act shall cease to have effect in relation to such countries or territories.

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(3) Where a proclamation is made under subsection (2) extending Part II to any country or territory of the Commonwealth to which the Reciprocal Enforcement of Judgments Act extends, Part II shall, in relation to such country or territory, have effect as if—

1. the expression "judgment" included an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place;

(b) the fact that a judgment was given before the coming into operation of the proclamation did not prevent it from being a judgment to which Part II applies, but the time limited for the registration of a judgment were, in the case of a judgment so given, twelve months from the date of the judgment or such longer period as may be allowed by the Supreme Court;

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(c) any judgment registered in the Supreme Court under the Reciprocal Enforcement of Judgments Act before the coming into operation of the proclamation had been registered in that Court under Part II and anything done in relation thereto under the Reciprocal Enforcement of Judgments Act or any rules of court or other provisions applicable to that Act had been done under Part II or the corresponding rules of court or other provisions applicable to Part II.

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(4) For the purposes of this section, a country or territory of the Commonwealth includes British protectorates and territories in respect of which Her Majesty has entered into a trusteeship agreement.

(Section amended by 23 of 1959, s. 2, and 37 of 1966, s. II)

PART III—MISCELLANEOUS AND GENERAL

General effect of certain foreign judgments

10.—(1) Subject to the provisions of this section a judgment to which Part II applies or would have applied if a sum of money had been payable thereunder, whether it can be registered or not and whether, if it can be registered, it is registered or not, shall be recognized in any court in Fiji as

conclusive between the parties thereto in all proceedings founded on the same cause of action and may be relied on by way of defence or counterclaim in any such proceedings.

(2) This section shall not apply in the case of any judgment—

1. where the judgment has been registered and the registration thereof has been set aside on some ground other than—
 1. that a sum of money was not payable under the judgment; or
 2. that the judgment has been wholly or partly satisfied; or
 3. that at the date of the application the judgment could not be enforced by execution in the country of the original court; or
2. where the judgment has not been registered it is shown, whether it could have been registered or not, that if it has been registered the registration thereof would have been set aside on an application for that purpose on some ground other than one of the grounds specified in paragraph (a).

(3) Nothing in this section shall be taken to prevent any court in Fiji recognizing any judgment as conclusive of any matter of law or fact decided therein if that judgment would have been so recognized before the passing of this Act.

Power to make foreign judgments unenforceable in Fiji if no reciprocity

11—(1) If it appears to the Governor-General that the treatment in respect of recognition and enforcement accorded by the courts of any foreign country to judgments given in the Supreme Court is substantially less favourable than that accorded by the courts of Fiji to judgments of the superior courts of that country, the Governor-General may by proclamation apply this section to that country.

(2) Except in so far as the Governor-General may by proclamation under this section otherwise direct, no proceedings shall be entertained in any court in Fiji for the recovery of any sum alleged to be payable under a judgment given in a court of a country to which this section applies.

Issue of certificates of judgments obtained in Fiji

12. Where a judgment under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, has been entered in the Supreme Court against any person, and the judgment creditor is desirous of enforcing the judgment in a country or territory to which Part II applies, the court shall, on an application made by the judgment creditor and on payment of such fee as may be fixed for the purposes of this section under section 25 of the Supreme Court Act issue to the judgment creditor a certified copy of the judgment together with a certificate containing such particulars with respect to the action, including the causes of action and the rate of interest if any payable on the sum payable under the judgment, as may be prescribed:

Provided that where execution of a judgment is stayed for any period pending an appeal or for any other reason, an application shall not be made under this section with respect to the judgment until the expiration of that period.

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Controlled by Ministry of the Attorney-General

SECTIONS 3 AND 9 (3)—APPLICATION OF PART II

Proclamations by the Governor and Governor-General

Part II of the Act has been applied to the following countries and territories:-

Proclamations Nos.	Country or territory	Superior Courts
8 of 1950	25 of 1955,	4 of 1973
25 of 1955,	4 of 1973	2 of 1957
4 of 1971	3 of 1972	3 of 1957
3 of 1972	4 of 1977	14 of 1970
4 of 1971	7 of 1977	2 of 1971
3 of 1972		3 or
4 of 1971		1971
3 of 1972	Her Majesty's dominions outside Fiji	Republic of India
4 of 1971	Northern Territory of Australia	Australia
3 of 1972	Capital Territory	State of Victoria
4 of 1971	State of South Australia	State of Western Australia
3 of 1972	State of Western Australia	State of

Queensland State of Tasmania Kingdom of Tonga Papua New Guinea (a) the Supreme Court; (b) all High courts and Judicial Commissioners' Courts; (c) all district Courts; (d) all other courts whose civil jurisdiction is subject to no pecuniary limit, provided that the judgment sought to be registered under the said Foreign Judgments (Reciprocal Enforcement) Act is sealed with a seal showing that the jurisdiction of the court is subject to no pecuniary limit. Supreme Court of the Northern Territory of Australia. Supreme Court of the Australian Capital Territory. Supreme Court of the State of Victoria. Supreme Court of the State of South Australia. Supreme Court of the State of Western Australia. Supreme Court of the State of Queensland. Supreme Court of the State of Tasmania. Supreme Court of the Kingdom of Tonga.
(a) the National Court of Justice; and (b) the Supreme Court of Justice.

Controller by Ministry of the Attorney-General