

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT

Act 35 of 1961 – 28 October 1961

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FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT

1. Short title

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

2. Interpretation

In this Act—

“appeal” includes any proceeding by way of discharging or setting aside a judgment, or an application for a new trial or a stay of execution;

“Commonwealth” means all those territories of which the Queen is recognised as the Head;

“country of the original Court” means the country in which the original Court is situate;

“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;

“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;

“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;

“judgments given in the superior Courts of the United Kingdom” means judgments given in the High Court in England, the Court of Session in Scotland, the High Court in Northern Ireland, the Court of Chancery of the County Palatine of Lancaster or the Court of Chancery of the County Palatine of Durham, and includes judgments given in any Court on appeal against any judgments so given;

“original Court”, in relation to any judgment, means the Court by which the judgment was given;

“personal action” does not include matrimonial causes or any proceedings in connection with matrimonial matters, administration of the estates of deceased persons, bankruptcy, winding up of companies, lunacy or guardianship of infants;

“prescribed” means prescribed by Rules of Court;

“registration” means registration under Part I;

“registering Court”, in relation to any judgment, means the Court to which an application to register the judgment is made.

PART I – REGISTRATION OF FOREIGN JUDGMENTS

3. Extension of Part I to foreign countries

(1) Where the President 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 of Mauritius, he may, by Proclamation, direct—

- (a) that this Part shall extend to that foreign country; and
- (b) 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, where—

- (a) it is final and conclusive as between the parties;
- (b) there is payable under it 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
- (c) it is given after the coming into operation of the Proclamation directing that this Part 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.

[S. 3 amended by Act 48 of 1991.]

4. Registration of foreign judgments

(1) (a) A person, being a judgment creditor under a judgment to which this Part applies, may apply to the Supreme Court at any time within 6 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.

(b) A judgment shall not be registered where at the date of the application—

- (i) it has been wholly satisfied; or
- (ii) it could not be enforced by execution in the country of the original Court.

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

- (i) a registered judgment shall, for the purposes of execution, be of the same force and effect;
- (ii) proceedings may be taken on a registered judgment;
- (iii) the sum for which a judgment is registered shall carry interest; and
- (iv) 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.

(b) Execution shall not issue on the judgment so long as, under this Part and the Rules of Court made under this Act, it is competent for any party to make an application to have the registration of the judgment set aside, or, where such 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 Mauritius, the judgment shall be registered as if it were a judgment for such sum in the currency of Mauritius, as on the basis of the rate of exchange prevailing at the date of judgment of the original Court, is equivalent to the sum so payable.

(4) Where 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) Where on an application for the registration of a judgment, it appears to the registering Court that the judgement 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 but not in respect of any other provisions contained in it.

(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.

5. Rules of Court

(1) Subject to subsection (2), the Supreme Court may make rules for—

- (a) the giving of security for costs by persons applying for the registration of judgments;
- (b) the matters to be proved on an application for the registration of a judgment and for regulating the mode of proving those matters;
- (c) the service on the judgment debtor of notice of the registration of the judgment;
- (d) 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;
- (e) 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; and
- (f) any matter which is to be prescribed under this Part.

(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 Proclamations to be necessary for giving effect to agreements made between the State 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.

[S. 5 amended by Act 48 of 1991.]

6. Registered judgments

(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—

- (a) shall be set aside where the registering Court is satisfied that—
 - (i) the judgment is not a judgment to which this Part applies, or was registered in contravention of this Act;
 - (ii) the Courts of the country of the original Court had no jurisdiction in the circumstances of the case;
 - (iii) 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;
 - (iv) the judgment was obtained by fraud;
 - (v) the enforcement of the judgment would be contrary to public policy in the country of the registering Court; or
 - (vi) the rights under the judgment are not vested in the person by whom the application for registration was made;
- (b) may be set aside if the registering Court is satisfied that the matter in dispute in the proceedings in the original Court had before 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 subsection (3), be deemed to have had jurisdiction—

- (a) in the case of a judgment given in a personal action—
 - (i) where 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;
 - (ii) where the judgment debtor was plaintiff in, or counter-claimed in, the proceedings in the original Court;
 - (iii) where 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;

- (iv) where 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
- (v) where 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;
- (b) in the case of a judgment given in an action of which the subject matter was immovable property or in a real action of which the subject matter was movable property, if the property in question was at the time of the proceedings in the original Court situate in the country of that Court;
- (c) in the case of a judgment given in an action other than any such action as is specified in paragraph (a) or (b), where the jurisdiction of the original Court is recognised by the law of the registering Court.

(3) Notwithstanding subsection (2), the Courts of the country of the original Court shall not be deemed to have had jurisdiction—

- (a) where the subject matter of the proceedings was immovable property outside the country of the original Court;
- (b) except in the cases specified in subsection (2) (a) (i), (ii) and subsection (2) (c), where 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
- (c) where 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.

7. Powers of registering Court

(1) Where, 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 thinks 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 necessary steps to have the appeal disposed of by the competent tribunal.

(2) Where the registration of a judgment is set aside under 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.

8. Foreign judgments which can be registered

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 Mauritius.

PART II – APPLICATION TO COMMONWEALTH COUNTRIES

9. Application of Part I to Commonwealth

(1) The President may, by regulations, direct that Part I shall apply to the Commonwealth and to judgments obtained in the Commonwealth as it applies to foreign countries and judgments obtained in the Courts of foreign countries and, in the event of the President so directing, this Act shall have effect accordingly and the Reciprocal Enforcement of Judgments Act shall cease to have effect except in relation to any part of the Commonwealth to which it extends at the date of the coming into operation of the regulations.

(2) Where, after the President has made a direction under subsection (1), a Proclamation is made under section 3 extending Part I to any part of the Commonwealth to which the Reciprocal Enforcement of Judgments Act applies, that Act shall cease to have effect in relation to that part of the Commonwealth.

[S. 9 amended by Act 48 of 1991.]

10. Modification in relation to Commonwealth

Where a Proclamation is made extending Part I to a part of the Commonwealth to which the Reciprocal Enforcement of Judgments Act extends, Part I shall, in relation to that part of the Commonwealth, have effect as if—

- (a) “judgment” included an award in proceedings on an arbitration if the award has under 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 regulations did not prevent it from being a judgment to which Part I applies, but the time limited for the registration of a judgment were, in the case of the judgment so given, 12 months from the date of judgment or such longer period as may be allowed by the Supreme Court;
- (c) any judgment registered in the Supreme Court under the Reciprocal Enforcement of Judgments Act before the coming into operation of the regulations had been registered in the Supreme Court under Part I and anything done in relation to it under the Reciprocal Enforcement of Judgments Act or any rules of Court or other provisions applicable to that Act had been done under Part I or the corresponding Rules of Court or other provisions applicable to Part I.

PART III – MISCELLANEOUS

11. General effect of certain foreign judgments

(1) Subject to this section, a judgment to which Part I applies or would have applied if a sum of money had been payable under it, whether it can be registered or not, and whether, if it can be registered, it is registered or not, shall be recognised in any Court in Mauritius as conclusive between the parties to it 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—

- (a) where the judgment has been registered and the registration has been set aside on some ground other than—
 - (i) that a sum of money was not payable under the judgment;
 - (ii) that the judgment had been wholly or partly satisfied; or
 - (iii) that at the date of the application, the judgment could not be enforced by execution in the country of the original Court; or
- (b) where the judgment has not been registered, if it is shown (whether it could have been registered or not, that if it had been registered the registration 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 Mauritius recognising any judgment as conclusive of any matter of law or fact decided in it if that judgment would have been so recognised before the passing of this Act.

12. Power where no reciprocity

(1) Where it appears to the President 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 Supreme Court to judgments of the superior Courts of that country, the President may, by Proclamation, apply this section to that country.

(2) Except in so far as the President may by Proclamation under this section otherwise direct, no proceedings shall be entertained in any Court in Mauritius 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.

[S. 12 amended by Act 48 of 1991.]

13. Certificates of judgments obtained in Mauritius

(1) 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 foreign country to which Part I applies, the Court shall, on application made by the judgment creditor and on payment of such fee as may be fixed by law for the purposes of this section, 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.

(2) 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.
