

CAYMAN ISLANDS



FOREIGN JUDGMENTS RECIPROCAL ENFORCEMENT LAW

(1996 Revision)

Supplement No. 1 published with Gazette No. 1 of 6th January, 1997.

PUBLISHING DETAILS

Consolidated with Laws 7 of 1968 and 9 of 1986.

Revised under the authority of the *Law Revision Law* (19 of 1975).

Originally enacted-

Law 32 of 1967-22nd September, 1967

Law 7 of 1968- 28th March, 1968

Law 9 of 1986-21st May, 1986.

Consolidated and revised this 22nd day of October, 1996.



CAYMAN ISLANDS



FOREIGN JUDGMENTS RECIPROCAL
ENFORCEMENT LAW
(1996 Revision)

Arrangement of Sections

Section	Page
PART I - Preliminary	
1. Short title	5
2. Definitions and interpretation	5
PART II - Registration of Foreign Judgments	
3. Power to extend Part II to foreign countries giving treatment.....	6
4. Application for, and effect of registration of foreign judgment	7
5. Rules of Court.....	8
6. Cases in which registered judgments must or may be set aside	9
7. Powers of registering court on application to set aside registration	10
8. Foreign judgments which can be registered not to be enforceable otherwise	11
PART III - Miscellaneous and General	
9. General effect of certain foreign judgments.....	11
10. Power to make foreign judgments unenforceable in the Islands if no reciprocity	12
11. Issue of certificates of judgments obtained in the Islands	12

CAYMAN ISLANDS



FOREIGN JUDGMENTS RECIPROCAL ENFORCEMENT LAW

(1996 Revision)

ENACTED by the Legislature of the Cayman Islands.

PART I - Preliminary

Short title

1. This Law may be cited as the Foreign Judgments Reciprocal Enforcement Law (*1996 Revision*).

Definitions and interpretation

2. (1) In this Law —
 - “**appeal**” includes any proceedings for discharging or setting aside a judgment or an application for a new trial or a stay of execution;
 - “**country of the original court**” means the country in which the original court is situated;
 - “**foreign**” includes “**Commonwealth**”;
 - “**Governor**” means the Governor in Council;
 - “**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 a person in whose favour a judgment is given and includes any person in whom the rights under the judgment have become vested by succession, assignment or otherwise;

“**judgment debtor**” means the person against whom a judgment is given, and includes any person against whom the judgment is enforceable under the law of the original court;

“**judgment given in the Grand Court**” means judgments given in the Grand Court and includes judgments given in any court on appeals therefrom;

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

“**prescribed**” means prescribed by Rules of Court;

“**registration**” and its cognates means registration under Part II;

“**registering court**” in relation to a judgment, means the court to which an application to register that judgment is made; and

“**Rules**” means Rules of Court.

- (2) For the purposes of this Law, the expression “*action in personam*” shall not be deemed to include any matrimonial cause 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.

PART II - Registration of Foreign Judgments

Power to extend Part II to foreign countries giving treatment

3. (1) The Governor, 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 a foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in such country of judgments given in the Grand Court, may, by order, direct that —
- (a) this Part shall extend to that foreign country; and
 - (b) such courts of that foreign country as are specified in the order shall be deemed superior courts of that country for the purposes of this Part.
- (2) A 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 —
- (a) it is final and conclusive as between the parties thereto;
 - (b) 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



- (c) it is given after the coming into operation of the order 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.
- (4) The Governor may, by a subsequent order, vary or revoke any order previously made under this section.

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 Grand 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 Grand Court, and on any such application the court shall, subject to proof of the prescribed matters and to this Law, order the judgment to be registered:

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

- (a) it has been wholly satisfied; or
 - (b) it could not be enforced by execution in the country of the original court.
- (2) Subject to the provisions of this Law with respect to the setting aside of registration —
- (a) a registered judgment shall, for the purposes of execution, be of the same force and effect;
 - (b) proceedings may be taken on a registered judgment;
 - (c) the sum for which a judgment is registered shall carry interest; and
 - (d) 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, 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 that of the Islands, the judgment shall be registered as if it were a judgment for such sum in the currency of the Islands 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 be registered 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 under section 19 of the *Grand Court Law (1995 Revision)* shall, subject to this section, include power to make rules —
- (a) providing for the giving of security for costs persons applying for the registration of judgments;
 - (b) prescribing the matters to be proved on an application for the registration of a judgment and for regulating the mode of proving those matters;
 - (c) providing for the service on the judgment debtor of notice of the registration of a judgment;
 - (d) providing for the fixing of the period within which an application may be made to have the registration of the judgment set aside and to the extension of the period so fixed;
 - (e) prescribing the method by which any question arising under this Law 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) 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 orders made under section 3 as are declared by the said orders 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 for the purposes of this Part.



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 —
- (a) shall be set aside if the registering court is satisfied —
 - (i) that the judgment is not a judgment to which this Part applies or was registered in contravention of the foregoing provisions of this Law;
 - (ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case;
 - (iii) that the judgment debtor, being a 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) that the judgment was obtained by fraud;
 - (v) that the enforcement of the judgment would be contrary to public policy in the country of the registering court; or
 - (vi) that the rights under the judgments are not vested in the person by whom the application for registration was made; and
 - (b) 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 subsection (3), be deemed to have had jurisdiction —
- (a) in the case of a judgment given in an *action in personam* if the judgment debtor —
 - (i) 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) was plaintiff in, or counter-claimed in, the proceedings in the original court;
 - (iii) 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) 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) 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 an action *in rem* of which the subject matter was movable property, if the property in question was at the time of proceedings in the original court situate in the country of that court; and
 - (c) 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 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) if the subject of the proceedings was immovable property outside the country of the original court;
 - (b) except in the cases mentioned in sub-paragraph (i), (ii) and (iii) of paragraph (a) and in paragraph (c) of 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
 - (c) 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 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 the Grand Court.

PART III - Miscellaneous and General

General effect of certain foreign judgments

9. (1) Subject to 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 recognised in the Grand Court 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 counter-claim in any such proceedings.
- (2) Subsection (1) shall not apply in the case of any judgment —
 - (a) where the judgment has been registered and the registration thereof has been set aside on some ground other than that —
 - (i) a sum of money was not payable under the judgment;
 - (ii) the judgment had been wholly or partly satisfied; or
 - (iii) 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, it is shown (whether it could have been registered or not) that, if it had 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 the Grand Court recognising any judgment as conclusive of any matter of law or fact decided therein if that judgment would have been so recognised before the passing of this Law.

Power to make foreign judgments unenforceable in the Islands if no reciprocity

10. (1) If it appears to the Governor that the treatment in respect of recognition and enforcement accorded by the courts of any foreign country to judgments given in the Grand Court is substantially less favourable than that accorded by the Grand Court to judgments of the superior courts of that country, the Governor may, by order, apply this section to that country.
- (2) Except insofar as the Governor may, by order under this section, otherwise direct, no proceedings shall be entertained in the Grand Court 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.
- (3) The Governor may, by a subsequent order, vary or revoke any order previously made under this section.

Issue of certificates of judgments obtained in the Islands

11. 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 Grand 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 Grand 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, 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.

**Publication in consolidated and revised form authorised by the Governor in Council
this 22nd day of October, 1996.**

Carmena H. Parsons

Clerk of Executive Council

Note (not forming part of the Law): The Foreign Judgments Reciprocal Enforcement (Australia and its External Territories Order) 1993, made the 18th May, 1993 and published on 28th June, 1993 as Supplement No. 3 with Gazette No. 13 of 1993, applied



Part II of the Law to Australia and to the External Territories of Australia and for the purposes of that Part deemed the following courts to be Superior Courts of Australia and its External Territories —

High Court of Australia

Federal Court of Australia

Family Court of Australia

Family Court of Western Australia

Supreme Court of New South Wales

Supreme Court of Victoria

Supreme Court of Queensland

Supreme Court of Western Australia

Supreme Court of South Australia

Supreme Court of Tasmania

Supreme Court of the Northern Territory

Supreme Court of Australia Capital Territory

Supreme Court of Norfolk Island.