



Tuvalu

**FOREIGN JUDGMENTS (RECIPROCAL
ENFORCEMENT) ACT**

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Tuvalu

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT

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Tuvalu

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT

AN ACT TO MAKE PROVISION FOR THE ENFORCEMENT IN TUVALU
OF JUDGMENTS GIVEN IN COUNTRIES WHICH ACCORD
RECIPROCAL TREATMENT TO JUDGMENTS GIVEN IN TUVALU,
FOR FACILITATING THE ENFORCEMENT IN SUCH COUNTRIES OF
JUDGMENTS GIVEN IN TUVALU, AND FOR OTHER PURPOSES IN
CONNECTION WITH THE MATTERS AFORESAID¹

Commencement [23rd March 1965]

PART I - PRELIMINARY

1 Short title

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

2 Interpretation

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

“**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;

“**country of the original court**” means the country in which the original court is situated;

“**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;

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

“**registration**” means registration under Part II and the expressions “**register**” and “**registered**” shall be construed accordingly;

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

- (2) For the purposes of this Act the expression “*action in personam*” shall not be deemed to include any matrimonial cause or any proceedings in connection 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 High Court” shall be deemed to include a judgment given in any court on appeal against any judgment given in the High Court.

PART II - REGISTRATION OF FOREIGN JUDGMENTS

3 Power to extend Part II to foreign countries giving reciprocal treatment

- (1) The Minister, if he is satisfied that, in the event of 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 High Court, may by order direct —
 - (a) that this Part shall extend to that foreign country;² and
 - (b) that 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) Any judgment of a superior court of a foreign country to this Part extends, other than a judgment of such a court even 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; and

- (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 be pending against it or that it may still be subject to appeal in the courts of the country of the original court.

4 Application for and effect of registration of foreign judgments

- (1) A person being a judgment creditor under a judgment to which this Part applies may apply to the High 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 High 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 —

- (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 Act 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; and
 - (b) proceedings may be taken on a registered judgment; and
 - (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 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 Tuvalu, the judgment shall be registered as if it were a judgment for such sum in the currency of Tuvalu

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.

5 Power of the Chief Justice to make rules

- (1) Subject to the provisions of this section, the Chief Justice may make rules for all or any of the following purposes —
 - (a) for making provision with respect to the giving of security for costs by persons applying for the registration of judgments;
 - (b) 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;
 - (c) for providing for the service on the judgment debtor of notice of the registration of a judgment;
 - (d) 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;
 - (e) 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;
 - (f) 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 orders made under

section 3 as are declared by the said orders to be necessary for giving effect to agreements made between Tuvalu and foreign countries in relation to matters with respect to which there is power to make rules for the purposes of this Part.

6 Cases in which registered judgments must or may be set aside

- (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 Act; or
 - (ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case; or
 - (iii) 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
 - (iv) 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
 - (vi) that 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, 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 —
 - (a) in the case of a judgment given in an action *in personam* —
 - (i) 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
 - (ii) if the judgment debtor was plaintiff in or counter-claimed in the proceedings in the original court; or

- (iii) 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
 - (iv) 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
 - (v) 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;
- (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 the proceedings in the original court situated in the country of that court;
- (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 anything in subsection (2) the courts of the country of the original court shall not be deemed to have had jurisdiction —
- (a) if the subject matter of the proceedings was immovable property outside the country of the original court; or
 - (b) except in the cases mentioned in sub-paragraphs (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.

7 Powers of registering court on application to set aside registration

- (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 last foregoing subsection, 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 not to be enforceable otherwise

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

9 Power to apply Part II to Commonwealth territories

- (1) The Minister may by order direct that this Part shall apply to any part of the Commonwealth outside Tuvalu and to judgments obtained in the courts of the Commonwealth as it applies to foreign countries and judgments obtained in the courts of foreign countries, and, in the event of the Minister so directing, this Act shall have effect accordingly.
- (2) This Part shall have effect as if any judgment of a court to which subsection (1) applies which was registered in the High Court under the Reciprocal Enforcement of Judgments Act had been registered in that court under this Part, and anything done in relation thereto under that Act or any rules of court or other provisions applicable to that Act had been done under this Part or the corresponding rules or other provisions applicable to this Part.

PART III - MISCELLANEOUS AND GENERAL

10 General effect of certain foreign judgments

- (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 recognised in any court in Tuvalu 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) This section 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 —
 - (i) that a sum of money was not payable under the judgment; or
 - (ii) that the judgment has 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 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 any court in Tuvalu 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 Act.

11 Power to make foreign judgments unenforceable if no reciprocity

- (1) If it appears to the Minister that the treatment in respect of recognition and enforcement accorded by the courts of any foreign country to judgments given in the High Court is substantially less favourable than that accorded by the courts of Tuvalu to judgments of the superior courts of that country, the Minister may by order apply this section to that country.
- (2) Except in so far as the Minister may by order under this section otherwise direct, no proceedings shall be entertained in any court in Tuvalu 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.

12 Issue of certificates of judgments obtained in Tuvalu

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 High 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 any rules made under the provisions of this 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.

SCHEDULE**DIRECTION UNDER SECTION 3 (1) EXTENDING PART II TO FOREIGN COUNTRIES GIVING RECIPROCAL TREATMENT**

Part II shall extend to the Independent State of Papua New Guinea and the Supreme Court of that State shall be deemed a superior court of that State for the purposes of Part II.³

Part II of the Act shall apply to Australia and the following courts shall be deemed superior courts of Australia for the purpose of Part II of the Act⁴ -

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 the Australian Capital Territory
Supreme Court of Norfolk Island.

DIRECTIONS UNDER SECTION 9 (1) APPLYING PART II TO COMMONWEALTH TERRITORIES COURTS

Part II shall apply to any part of the Commonwealth outside Tuvalu and to judgments obtained in the Courts of the Commonwealth as it applies to foreign countries and judgments obtained in the courts of foreign countries.⁵

ENDNOTES

¹ 1990 Revised Edition, Cap. 7.28, Act 1 of 1965, LN 16/1972

² See Schedule

³ LN 27/1966

⁴ LN 5/1994

⁵ LN 26/1966