

Chapter 50.
Reciprocal Enforcement of Judgements Act 1976.

Certified on: / /20 .

INDEPENDENT STATE OF PAPUA NEW GUINEA.



Chapter 50.

Reciprocal Enforcement of Judgements Act 1976.

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INDEPENDENT STATE OF PAPUA NEW GUINEA.



AN ACT

entitled

Reciprocal Enforcement of Judgements Act 1976,

Being an Act—

- (a) to make provision for the enforcement in Papua New Guinea of judgements given in foreign countries which accord reciprocal treatment to judgements given in Papua New Guinea; and
- (b) for facilitating the enforcement in foreign countries of judgements given in Papua New Guinea,

and for related purposes.

PART I. – PRELIMINARY.

1. INTERPRETATION.

¹(1) In this Act, unless the contrary intention appears—

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

“**the commencement date**” means 17 February 1977, the date on which the *Judgements Enforcement (Reciprocal Arrangements) Act 1976* came into force;

“**country**” includes a state, province, territory or part of a country, and “**foreign country**” shall be construed accordingly;

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

“**judgement**” means a judgement or order given or made by a court in any civil proceedings, or a judgement or order given or made by a court in

¹ Section 1 amended by No. 14 of 1981, s1.

any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party;

“judgement creditor” means the person in whose favour the judgement was given and includes any person in whom the rights under the judgement have become vested by succession or assignment or otherwise;

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

“non-recoverable tax” means tax other than recoverable tax;

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

“recoverable tax” means tax payable under any law of Australia or a State or Territory of Australia relating to taxes on income, but does not include—

- (a) additional or other tax payable, by way of penalty, interest or otherwise, because of a contravention or failure to comply with any of those laws or of a requirement made under any of those laws; or
- (b) tax of a class or description for the time being specified in an order enforced under Subsection (3);

“registering court” in relation to any judgement means the court to which an application to register the judgement is made;

“registration” means registration under Part II.

(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—

- (a) matrimonial matters; or
- (b) administration of the estates of deceased persons; or
- (c) bankruptcy; or
- (d) winding-up of companies; or
- (e) lunacy; or
- (f) guardianship of infants.

(3) Where the Head of State, acting on advice, is of the opinion that any tax payable under any law of Australia or of a State or Territory of Australia is not properly a tax on income he may, for the purposes of Paragraph (b) of the definition “recoverable tax” in Subsection (1), declare a class or description of tax specified in the declaration not to be recoverable tax.

PART II. – REGISTRATION OF FOREIGN JUDGEMENTS.

2. POWER TO EXTEND PART TO FOREIGN COUNTRIES GIVING RECIPROCAL TREATMENT.

(1) Where the Minister is satisfied that, in the event of the benefits conferred by this Part being extended to judgements given in the superior court of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of judgements given in the National Court, he may, by notice in the National Gazette, declare–

- (a) that this Part extends to that foreign country; and
- (b) that the courts of that foreign country that are specified in the notice shall be deemed superior courts of that country for the purposes of this Part.

(2)^{2 3}Any judgement of a superior court of a foreign country to which this Part extends, other than a judgement of such a court given on appeal from a court that is not a superior court, shall be a judgement to which this Part applies if–

- (a) it is final and conclusive as between the parties to it; or
- (b) there is payable under it–
 - (i) a sum of money, other than a sum referred to in Subparagraph (ii), not being a sum payable in respect of taxes or other charges of a similar nature or in respect of a fine or other penalty; or
 - (ii) a sum of money payable in respect of a recoverable tax; or
- (c) it is given after the coming into operation of the notice under Subsection (1)(a).

(3) For the purposes of this section, a judgement 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.

3. APPLICATION FOR, AND EFFECT OF, REGISTRATION OF FOREIGN JUDGEMENTS.

(1) Subject to Subsection (3), a person being a judgement creditor under a judgement to which this Part applies, may apply to the National Court–

- (a) at any time within six years after the date of judgement; or
- (b) where there have been proceedings by way of appeal against the judgement–after the date of the last judgement given in those proceedings,

to have the judgement registered in the National Court.

² Section 2(2) amended by No. 14 of 1981, s2.

³ Section 2(2) amended by No. 14 of 1981, s2.

(2) On any application under Subsection (1) the National Court shall, subject to proof of the prescribed matters and to the other provisions of this Act, order the judgement to be registered.

(3) A judgement 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.

(4) Subject to Subsection (5)—

- (a) a registered judgement shall, for the purposes of execution, be of the same force and effect; and
- (b) proceedings may be taken on a registered judgement; and
- (c) the sum for which a judgement is registered shall carry interest; and
- (d) the registering court shall have the same control over the execution of a registered judgement,

as if the judgement had been a judgement originally given in the registering court and entered on the date of registration.

(5) Execution shall not issue on the judgement so long as, under this Part and any rules of court made for the purposes of Section 4, it is competent for any party to make an application to have the registration of the judgement set aside, or, where such application is made, until after the application has been finally determined.

(6) Where the sum payable under a judgement that is to be registered is expressed in a currency other than Papua New Guinea currency, the judgement shall be registered as if it were a judgement for such sum in Papua New Guinea currency as, on the basis of the rate of exchange prevailing at the date of judgement of the original court, is equivalent to the sum so payable.

(6A)⁴ ⁵Without affecting Subsection (7), where, on application for the registration of a judgement, it appears to the National Court that—

- (a) a judgement is in respect of a sum payable in respect of both recoverable tax and non-recoverable tax; and
- (b) the judgement could have been registered if it had been in respect of recoverable tax only,

the judgement may be registered in respect of the sum less so much as relates to non-recoverable tax but may not be registered in respect of so much of the sum as relates to non-recoverable tax.

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

⁴ Section 6A added by No. 14 of 1981, s3.

⁵ Section 6A added by No. 14 of 1981, s3.

(8) If, on an application for the registration of a judgement, 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 judgement are such that, if those provisions had been contained in separate judgements, those judgements could properly have been registered, the judgement may be registered in respect of those provisions but not in respect of any other provisions contained in them.

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

4. RULES OF COURT.

(1) Subject to this section, rules of court may—

- (a) make provision with respect to the giving of security for costs by persons applying for the registration of judgements; and
- (b) prescribe the matters to be proved on an application for the registration of a judgement and for regulating the mode of proving those matters; and
- (c) provide for the service on the judgement debtor of notice of the registration of a judgement; and
- (d) make provision with respect to the fixing of the period within which an application may be made to have the registration of the judgement set aside and with respect to the extension of the period fixed; and
- (e) prescribe the method by which any question arising under this Act, whether a foreign judgement can be enforced by execution in the country of the original court, or what interest is payable under a foreign judgement under the law of the original court, is to be determined; and
- (f) provide for the issue of certificates of judgements obtained in the State for the purpose of seeking enforcement in a country in which substantial reciprocity is assured; and
- (g) prescribe any matter which under this Act is to be prescribed.

(2) Rules of court to which Subsection (1) applies shall be expressed to have, and shall have effect subject to any such provisions contained in notices made by the Minister under Section 2 as are declared by the notices 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.

5. CASES IN WHICH REGISTERED JUDGEMENTS SHALL, OR MAY BE SET ASIDE.

(1) On an application duly made by any party against whom a registered judgement may be enforced, the registration of the judgement—

- (a) shall be set aside if the registering court is satisfied that—
 - (i) the judgement is not a judgement to which this Part applies or was registered in contravention of this Part; or
 - (ii) the courts of the country of the original court had no jurisdiction in the circumstances of the case; or
 - (iii) the judgement 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) the judgement was obtained by fraud; or
 - (v) the enforcement of the judgement would be contrary to public policy in the country of the registering court; or
 - (vi) the rights under the judgement are not vested in the person by whom the application for registration was made; or
- (b) may be set aside if the registering court is satisfied that the matter in dispute in the proceedings in the original court had at some time before the date of the judgement in the original court been the subject of a final and conclusive judgement by a court having jurisdiction in the matter.

(2) Subject to Subsection (3), for the purposes of this section the courts of the country of the original court shall be deemed to have had jurisdiction—

- (a) in the case of a judgement given in an action *in personam*—
 - (i) if the judgement 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 purposes of—
 - (A) protecting, or obtaining the release of, property seized, or threatened with seizure, in the proceedings; or
 - (B) contesting the jurisdiction of that court; or
 - (ii) if the judgement 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 judgement debtor, being a defendant in the original court, was at the time when the proceedings were instituted resident in, or being a corporation had its principal place of business in, the country of that court; or
- (v) if the judgement debtor, being a defendant in the original courts had an office or place of business in the country of that court and the proceeding in that court were in respect of a transaction effected through or at that office or place; and
- (b) in the case of a judgement given in an action—
 - (i) of which the subject matter was immovable property; or
 - (ii) *in rem* of which the subject matter was movable property,
 - if the property in question was at the time of the proceeding in the original court situated in the country of that court; and
- (c) in the case of a judgement given in an action other than an action of a type referred to in Paragraph (a) or (b), if the jurisdiction of the original court is recognized 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 matter of the proceedings was immovable property outside the country of the original court; or
- (b) except in the cases referred to in Subsection 2(a)(i), (ii) and (iii) and in Subsection 2(c), 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 judgement 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.

6. POWER OF REGISTERING COURT ON APPLICATION TO SET ASIDE REGISTRATION.

(1) If, on an application to set aside the registration of a judgement, the applicant satisfies the registering court that—

- (a) an appeal is pending; or
- (b) he is entitled and intends to appeal,

against the judgement, the court, if it thinks fit, may on such terms as it thinks just—

- (c) set aside the registration; or

(d) 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 judgement is set aside under Subsection (1) or solely for the reason that the judgement 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 judgement when the appeal has been disposed of or if and when the judgement becomes enforceable by execution in that country, as the case may be.

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

7. FOREIGN JUDGEMENTS WHICH MAY BE REGISTERED NOT TO BE ENFORCEABLE OTHERWISE.

Proceedings for the recovery of a sum payable under a foreign judgement, by a judgment to which this Part applies, other than proceedings by way of registration of the judgement, shall not be entertained by any court.

PART III. – MISCELLANEOUS.

8. GENERAL EFFECT OF CERTAIN FOREIGN JUDGEMENTS.

(1) Subject to this section, a judgement to which Part II. 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–

- (a) shall be recognized in any court as conclusive between the parties to it in all proceedings founded on the same cause of action; and
- (b) 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 judgement–

- (a) where the judgement has been registered and that registration has been set aside on some ground other than that–
 - (i) a sum of money was not payable under the judgement; or
 - (ii) the judgement had been wholly or partly satisfied; or
 - (iii) at the date of the application the judgement could not be enforced by execution in the country of the original court; or
- (b) where the judgement has not been registered, it is shown (whether it could have been registered or not) that if it had been registered that 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) This section does not prevent any court recognizing any judgment as conclusive of any matter of law or fact decided in it if that judgement would have been so recognized before the coming into operation of this Act.

9. POWER TO MAKE FOREIGN JUDGEMENTS 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 judgements given in the National Court is substantially less favourable than that accorded by the courts of the State to judgements of the superior courts of that country, the Minister, may by notice in the National Gazette, apply this section to that country.

(2) Except insofar as the Minister may by notice under this section otherwise direct, no proceedings shall be entertained in any court in the State for the recovery of any sum alleged to be payable under a judgement given in a court of a country to which this section applies.

10. ISSUE OF CERTIFICATES OF JUDGEMENTS OBTAINED IN THE STATE.

(1)⁶ ⁷Subject to Subsection (2), where a judgement under which a sum of money is payable has been entered in the National Court against any person and the judgement creditor is desirous of enforcing the judgement in a foreign country to which Part II. applies, the court shall, on an application made by the judgement creditor and on payment of the prescribed fee (if any), issue to the judgement creditor a certified copy of the judgement, together with a certificate containing the prescribed 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 judgement.

(2) Where execution of a judgement 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 judgement until the expiration of that period.

10A. APPLICATION IN CERTAIN CIRCUMSTANCES.

⁸(1) For the purpose of this section, “**relevant notice**” means—

- (a) a declaration under Section 1(3) or a declaration revoking or amending such declaration; or
- (b) a notice revoking or amending a notice under Section 2(1).

(2) Subject to Subsection (3), this Act applies to and in relation to judgements given before the coming into operation of a relevant notice as if the notice had not been made.

(3) Where, by reason of the coming into operation of a relevant notice—

- (a) Part II ceases to apply to a country; or
- (b) a court of a country ceases to be a superior court for the purposes of Part II; or
- (c) a recoverable tax becomes non-recoverable tax,

the—

- (d) Head of State, acting on advice, in the case of a declaration under Section 1(3); or
- (e) Minister, in the case of a notice under Section 2(1),

as the case may be, may direct that this Act shall not apply to or in respect of—

- (f) all judgements, other than a judgement referred to in Subsection (4), given before the coming into operation of the relevant order being—
 - (i) judgements given in the courts of the country referred to in Paragraph (a); or

⁶ Section 10(1) amended by No. 14 of 1981, s4.

⁷ Section 10(1) amended by No. 14 of 1981, s4.

⁸ Section 10A added by No. 14 of 1981, s5.

- (ii) judgements given in a court referred to in Paragraph (b); or
- (iii) judgements so far as sums of money are payable in respect of a tax referred to in Paragraph (c); or
- (g) such class or description of judgements referred to in Paragraph (f) as is specified in the declaration or notice,

and the direction shall, subject to Subsection (4), have effect in accordance with its terms.

(4) A direction under Subsection (3) does not have effect in relation to a judgement if an application for the registration of the judgement was made in accordance with this Act before the declaration or notice in which the direction was given came into operation.

11. TRANSITIONAL.

(1) A foreign judgement registered immediately before the commencement date under the pre-Independence *Foreign Judgements (Reciprocal Enforcement) Act 1952* or the pre-Independence *Judgements (Reciprocal Enforcement) Act 1951* shall, on the commencement date, be deemed to be registered in the National Court under Part II., and that Part applies to and in relation to the judgement accordingly.

(2) For the purposes of Section 2, a country that immediately before the commencement date was a reciprocating country for the purposes of the pre-Independence *Foreign Judgements (Reciprocal Enforcement) Act 1952* or the pre-Independence *Judgements (Reciprocal Enforcement) Act 1951* shall, on the commencement date, to the extent to which that country was a reciprocating country and unless otherwise prescribed, be deemed to be a declared foreign country under Section 2.

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