

JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT**Principal Act****Act. No. 1935-04**

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| <i>Commencement</i> | 16.2.1935 |
| <i>Assent</i> | 16.2.1935 |

Amending
enactmentsRelevant current
provisionsCommencement
date

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| Act. 1935-08 | |
| 1949-25 | |
| 1958-12 | |
| 1963-01 | s. 5(2) |
| 1978-30 | |
| 1983-48 | s. 10(1) |

See also s 13(3) of the Merchant Shipping (Oil Pollution) Act 1971 and s 6(4) of the Merchant Shipping Act 1974, as extended to Gibraltar by the Merchant Shipping (Oil Pollution) (Gibraltar) Order 1976, which appears under the title Merchant Shipping Acts 1984-1979.

Subsidiary legislation

Orders made under section 3(1).

Countries to which Part I extends.

English sources

Foreign Judgments (Reciprocal Enforcement) Act 1933 (23 & 24 Geo. 5 c 13).

RENUMBERING OF SECTIONS

| Previous | New number | Remarks |
|---------------|---------------|----------|
| 1 | 1 | |
| 2 | 2 | |
| 3 | 3 | |
| 4 | | Omitted |
| 5 (1) and (2) | 4 (1) and (2) | |
| 5 (3) | | Repealed |
| 5 (4) – (6) | 4 (3) – (5) | |
| 6 | 5 | |
| 7 | 6 | |
| 8 | 7 | |
| 9 | 8 | |
| 10 | | Omitted |
| 11 | 9 | |
| 12 | 10 | |
| 13 | 11 | |
| 14-16 | | Omitted |

ARRANGEMENT OF SECTIONS.

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

Short title.

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

Interpretation.

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

“appeal” includes any proceedings 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 a injured party;

“judgment creditor” means a person in whose favour the judgment was given and includes any person in whom the rights under the judgment have been 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 Supreme Court” include any judgments given in any court upon appeal against any judgment so given;

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

“registering court,” in relation to any judgment, means the court by which the judgment was registered;

“registration” means registration under Part I, and “register” and “registered” shall be construed accordingly.

(2) For the purpose of this Act, “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 or guardianship of minors.

PART I.

REGISTRATION OF JUDGMENTS GIVEN IN OTHER COUNTRIES.

Power to extend Part I to countries giving reciprocal 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 any other country (whether a foreign country or a part of Her Majesty’s dominions, including any British protectorate and any territory in respect of which a mandate under the trusteeship system of the United Nations has been accepted by Her Majesty); substantial reciprocity of treatment will be assured as respects the enforcement in that country of judgments given in the Supreme Court, may by order in the Gazette direct—

- (a) that this Part shall extend to that country; and
- (b) that such courts of that 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 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 to 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 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.

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 to the prescribed matters and to 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 purpose 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 Supreme 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 the application has been finally determined.

(3) If at the date of application for registration of 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.

(4) If, on an application for the registration of a judgment, it appears to the Supreme 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 may be registered in respect of those provisions but not in respect of any other provisions contained therein.

(5) In addition to the sum of money payable under the judgment of the original court, including any interest which may by the law of the country of the original court become due under the judgment up to the time of registration, the judgment shall be registered for the reasonable cost 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 the court under section 38 of the Supreme Court Act, shall, subject to the provisions of this section, include power to make rules of court for the following purposes:-

- (a) for making provision with respect to the giving of security for the 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 with 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 judgment given in another country can be enforced by execution in the country of the original court, or what interest is payable under a 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 of court for the purpose 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 such orders to be necessary for the giving effect to agreements made between her Majesty and other countries in relation to matters with respect to which there is power to make rules of court 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 in the Supreme 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 court 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 time 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 Gibraltar; 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 Supreme Court is satisfied that the matter in dispute in the proceedings in the original court had previously to the date of 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 purpose 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 principle 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 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 mentioned in paragraph (a) or paragraph (b) of this subsection, if the jurisdiction of the original court is recognised by the law of Gibraltar.
- (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-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 Supreme 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 Supreme 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, 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 Supreme Court shall, on the application of the judgment creditor, order judgment to be registered for the balance remaining payable at that date.

Judgments which can be registered not to be enforceable otherwise.

8. No proceedings for the recovery of a sum payable under a judgment given by a court of another country, 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 Gibraltar.

PART II. MISCELLANEOUS AND GENERAL

General effect of certain judgments.

9.(1) Subject to the provisions of this section, a judgment to which Part I 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, it is registered or not, shall be recognised in any court in Gibraltar 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 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, 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 the 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 Gibraltar 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.

Power to make judgments unenforceable in Gibraltar 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 other country to judgments given in Gibraltar is substantially less favourable than that accorded by the courts of Gibraltar to judgments of the superior courts of that country, the Governor may by order apply this section to that country.

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

Issue of certificate of judgments obtained in Gibraltar.

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 Supreme Court against any person and the judgment creditor is desirous of enforcing the judgment in a country or territory to which Part I 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 38 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 any other reason, an application shall not be made under this section with respect to the judgment until the expiration of that period.