



Australian Capital Territory

Foreign Judgments (Reciprocal Enforcement) Ordinance 1954

Ord1954-11

Republication No 0B (RI)

Effective: 8 June 1988 – 30 June 1992

Republication date of printed version: 31 October 1990

Reissued electronically: 17 January 2011

Last amendment made by Ord1988-24
(republication for amendments by Ord1982-36
and Ord1988-24)

Authorised by the ACT Parliamentary Counsel

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The republished law

This is a republication of the *Foreign Judgments (Reciprocal Enforcement) Ordinance 1954* effective 8 June 1988 to 30 June 1992.

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AUSTRALIAN CAPITAL TERRITORY

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ORDINANCE 1954

Reprinted as at 31 October 1990

TABLE OF PROVISIONS

PART I—PRELIMINARY

Section

1. Short title
2. Commencement
4. Interpretation

PART II—RECIPROCAL ENFORCEMENT OF JUDGMENTS

5. Application of this Part
6. Application for, and effect of, registration of foreign judgment
7. Rules of Court for the purposes of this Part
8. Registered judgments—setting aside
9. Powers of Supreme Court on application to set aside registration
10. Judgments which can be registered not to be enforceable otherwise

PART III—MISCELLANEOUS

- 10A. Judgments to which Part II does not apply
11. General effect of certain judgments
12. Judgments unenforceable if no reciprocity
13. Issue of certificates of judgments obtained in the Territory
14. Savings where proclamations revoked or amended

15938/90 Cat. No. 90 5313 1



AUSTRALIAN CAPITAL TERRITORY

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ORDINANCE 1954

An Ordinance relating to the Enforcement of Foreign Judgments in
the Territory and for other purposes

PART I—PRELIMINARY

Short title

1. This Ordinance may be cited as the *Foreign Judgments (Reciprocal Enforcement) Ordinance 1954*.¹

Commencement

2. This Ordinance shall come into operation on a date to be fixed by the Attorney-General by notice in the *Gazette*.¹

Interpretation

4. (1) In this Ordinance, unless the contrary intention appears—

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

"country" includes a part of the Queen's dominions (other than a State or Territory of the Commonwealth);

s. 4

"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 civil proceedings, or a judgment or order given or made by a court in 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 a person in whom the rights under the judgment have become vested by succession, assignment or otherwise;

"judgment debtor" means the person against whom the judgment was given, and includes a person against whom the judgment is enforceable under the law of the original court;

"judgments given in the Supreme Court" includes judgments given in the Federal Court of Australia or the High Court on appeals against judgments given in the Supreme Court;

"non-recoverable tax" means tax other than recoverable tax;

"prescribed" means prescribed by Rules of Court;

"recoverable tax" means tax payable under the laws of Papua New Guinea 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 a proclamation under subsection (2A);

"registration" means registration under Part II of this Ordinance, and "register" and "registered" have corresponding meanings;

"Rules of Court" means Rules of Court made under the *Australian Capital Territory Supreme Court Act 1933-1950*;

"the original court", in relation to a judgment, means the court by which the judgment was given;

"the Registrar" has the same meaning as in the Rules of Court.

s. 4

(2) For the purposes of this Ordinance, the expression "action *in personam*" shall not be deemed to include a matrimonial cause or proceedings in connexion with matrimonial matters, the administration of the estates of deceased persons, bankruptcy or insolvency, the winding up of companies, lunacy or the guardianship of infants.

(2A) Where the Governor-General is of the opinion that any tax payable under the laws of Papua New Guinea is not properly a tax on income, he may, for the purposes of paragraph (b) of the definition of "recoverable tax" in subsection (1), by proclamation declare any class or description of tax specified in the proclamation not to be recoverable tax.

(3) In this Ordinance, a reference to the Queen's dominions shall be deemed to include a reference to a territory which is under Her Majesty's protection and to a territory administered by the government of a part of the Queen's dominions under the trusteeship system of the United Nations.

PART II—RECIPROCAL ENFORCEMENT OF JUDGMENTS

Application of this Part

5. (1) This Part extends in relation to the United Kingdom.

(2) If the Governor-General is satisfied that, in the event of the benefits conferred by this Part being extended to judgments given in the superior courts of any country, substantial reciprocity of treatment will be assured as respects the enforcement within that country of judgments given in the Supreme Court, he may by Proclamation declare—

- (a) that this Part extends in relation to that country; and
- (b) that such courts as are specified in the Proclamation shall, for the purposes of this Part, be deemed to be superior courts of that country.

(3) A judgment of a superior court of a country in relation 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, is a judgment to which this Part applies—

s. 5

- (a) if it is final and conclusive as between the parties to the proceedings;
- (b) if there is payable under the judgment—
 - (i) a sum of money, not being (except as referred to in subparagraph (ii)) a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; or
 - (ii) a sum of money payable in respect of a recoverable tax;
- (c) in the case of a judgment given in a country other than the United Kingdom, if it is given after the coming into operation of the proclamation declaring that this Part extends in relation to that country; and
- (d) in the case of a judgment given in the United Kingdom, whether it was given before, or is given after, the commencement of this Ordinance.

(4) 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.

(5) A proclamation under this section may make provision with respect to the manner in which it may be proved—

- (a) that a judgment of the courts of the country specified in the proclamation could be enforced by execution in that country; or
- (b) that interest is payable under such a judgment, and the rates of the interest.

Application for, and effect of, registration of foreign judgment

6. (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.

s. 6

(2) Subject to the provisions of this Ordinance and to proof of the prescribed matters, the Supreme Court shall, on an application under this section, order the judgment to be registered.

(3) 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.

(4) Subject to the provisions of this Ordinance with respect to the setting aside of registration—

- (a) a registered judgment is, for the purposes of execution, of the same force and effect;
- (b) proceedings may be taken on a registered judgment;
- (c) the sum for which a judgment is registered carries interest; and
- (d) the registering court has 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.

(5) Execution shall not issue on a registered judgment so long as, under this Part and the Rules of Court, 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.

(6) Where the sum payable under a judgment which is to be registered is expressed in a currency other than Australian currency, the judgment shall be registered as if it were a judgment for such sum in Australian currency 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.

s. 6

(7) If, at the date of the application for registration of a judgment, 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.

(7A) Without affecting the operation of subsection (8), where, on an application for the registration of a judgment, it appears to the Supreme Court that—

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

the judgment 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.

(8) 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 could properly have been registered, the judgment may be registered in respect of those provisions but not in respect of any other provisions contained in it.

(9) 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 for the purposes of this Part

7. The provisions of this Ordinance are subject to any Rules of Court (not inconsistent with a proclamation under this Ordinance)—

- (a) making provision with respect to the giving of security for costs by a person applying for the registration of a judgment;

s. 7

- (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) making provision with respect to the fixing of the period within which an application may be made to have the registration of a judgment set aside and with respect to the extension of the period so fixed; and
- (e) relating to the method of determining a question arising under this Ordinance as to—
 - (i) whether a judgment given in a country in relation to which this Part extends can be enforced by execution in the country of the original court; or
 - (ii) what interest is payable under a judgment under the law of the original court.

Registered judgments—setting aside

8. (1) On an application in that behalf duly made to the Supreme Court by a party against whom a registered judgment may be enforced, the registration of the judgment—

- (a) shall be set aside if the Court is satisfied—
 - (i) that the judgment is not a judgment to which this Part applies or was registered in contravention of the provisions of this Ordinance;
 - (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 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;

s. 8

- (iv) that the judgment was obtained by fraud;
 - (v) that the judgment has been reversed on appeal or otherwise set aside in the courts of the country of the original court;
 - (vi) that the enforcement of the judgment would be contrary to public policy in the Territory; or
 - (vii) that the rights under the judgment are not vested in the person by whom the application for registration was made; and
- (b) may be set aside if the Court is satisfied that the matter in dispute in the proceeding 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 next succeeding subsection, be deemed to have had jurisdiction—

- (a) in the case of a judgment given in an action *in personam*—
- (i) if the judgment debtor voluntarily submitted to the jurisdiction of the original court;
 - (ii) if the judgment debtor was plaintiff in, or counter-claimed in, the proceedings in the original court;
 - (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;
 - (iv) if the judgment debtor, being a defendant in the original court, was as 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

s. 8

- (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; and
 - (c) in the case of a judgment given in an action other than an action referred to in either of the last two preceding paragraphs, if the jurisdiction of the original court is recognized by the law of the Territory.
- (3) Notwithstanding anything in the last preceding subsection, 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;
 - (b) except in the cases mentioned in subparagraphs (i), (ii) and (iii) of paragraph (a) and in paragraph (c) of the last preceding subsection, 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.
- (4) For the purposes of subparagraph (2) (a) (i), a person does not voluntarily submit to the jurisdiction of a court by—
- (a) entering an appearance in proceedings in the court; or

s. 8

- (b) participating in proceedings in the court only to such extent as is necessary;

for the purpose only of one or more of the following:

- (c) protecting, or obtaining the release of—
 - (i) property seized, or threatened with seizure, in the proceedings; or
 - (ii) property subject to an order restraining its disposition or disposal;
- (d) contesting the jurisdiction of the court;
- (e) inviting the court in its discretion not to exercise its jurisdiction in the proceedings.

Powers of Supreme Court on application to set aside registration

9. (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 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 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 preceding 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 does 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 under it, the Supreme Court shall, on the application of the judgment creditor, order the judgment to be registered for the balance remaining payable at the date of the last-mentioned application.

s. 10

Judgments which can be registered not to be enforceable otherwise

10. No proceedings for the recovery of a sum payable under a judgment to which this Part applies, other than proceedings by way of registration of the judgment, shall be entertained by a court having jurisdiction in the Territory.

PART III—MISCELLANEOUS**Judgments to which Part II does not apply**

10A. For the purpose of proceedings brought in the Territory for the recovery of a sum payable under a judgment given in an action *in personam* by a court of a Commonwealth country or a foreign country, not being a judgment to which Part II applies, the court shall not be taken to have had jurisdiction to give the judgment by reason only that the judgment debtor—

- (a) entered an appearance in proceedings in the court; or
- (b) participated in proceedings in the court only to such extent as was necessary;

for the purpose only of one or more of the following:

- (c) protecting, or obtaining the release of—
 - (i) property seized, or threatened with seizure, in the proceedings; or
 - (ii) property subject to an order restraining its disposition or disposal;
- (d) contesting the jurisdiction of the court;
- (e) inviting the court in its discretion not to exercise its jurisdiction in the proceedings.

General effect of certain judgments

11. (1) Subject to this section, a judgment to which Part II of this Ordinance 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

s. 11

be registered, it is registered or not, shall be recognized in any court in the Territory 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 counter-claim in any such proceedings.

(2) This section does not apply in the case of a judgment—

(a) where the judgment has been registered and the registration has been set aside on a 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 (whether it could have been registered or not) and it is shown that if it had been registered the registration would have been set aside on an application for that purpose on a ground other than one of the grounds specified in the last preceding paragraph.

(3) Nothing in this section shall be taken to prevent any court having jurisdiction in the Territory from recognizing a judgment as conclusive of any matter of law or fact decided in the judgment if that judgment would have been so recognized before the commencement of this Ordinance.

Judgments unenforceable if no reciprocity

12. (1) If it appears to the Governor-General that the treatment in respect of recognition and enforcement accorded by the courts of a country to judgments given in the Supreme Court is substantially less favourable than that accorded by the courts of the Territory to judgments of the superior courts of that country, the Governor-General may by Proclamation declare that this section applies in relation to that country.

(2) Except so far as the Governor-General by Proclamation otherwise directs, no proceedings shall be entertained in a court in the Territory for the recovery of a sum alleged to be payable under a judgment given in a court of a country declared by Proclamation to be a country in relation to which this section applies.

Issue of certificates of judgments obtained in the Territory

13. (1) Except as provided in the next succeeding subsection, where a judgment under which a sum of money is payable has been entered in the Supreme Court against a person and the judgment creditor desires to enforce the judgment in a country in relation to which Part II of this Ordinance extends, the Registrar shall, on an application made by the judgment creditor as prescribed and on payment of the prescribed fee, and if such matters with respect to the judgment as are prescribed are shown, 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 are 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.

Savings where proclamations revoked or amended

14. (1) In this section, "relevant proclamation" means—

- (a) a proclamation revoking, altering or amending a proclamation made under subsection 5 (2); or
- (b) a proclamation made under subsection 4 (2A).

(2) Subject to subsection (3), this Ordinance continues to apply to and in respect of judgments given before the coming into operation of a relevant proclamation as if the relevant proclamation had not been made.

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

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

the Governor-General may, in the relevant proclamation or in a subsequent proclamation, direct that this Ordinance shall not apply to or in respect of—

s. 14

(d) all judgments (other than a judgment referred to in subsection (5)) given before the coming into operation of the relevant proclamation, being—

- (i) judgments given in the courts of the country referred to in paragraph (a);
 - (ii) judgments given in the court referred to in paragraph (b); or
 - (iii) judgments so far as sums of money are payable in respect of a tax referred to in paragraph (c); or
- (e) such class or description of the judgments referred to in paragraph (d) as is specified in the proclamation.

(4) A direction under subsection (3) shall, subject to subsection (5), have effect according to its terms.

(5) Where the Governor-General includes in a proclamation a direction under subsection (3), the direction does not have effect in relation to a judgment if an application for the registration of the judgment was made in accordance with this Ordinance before the proclamation came into operation.

NOTE

1. The *Foreign Judgments (Reciprocal Enforcement) Ordinance 1954* as shown in this reprint comprises Ordinance No. 11, 1954 amended as indicated in the Tables below.

The *Reserved Laws (Interpretation) Act 1989* of the Territory (No. 25, 1989) provides for the interpretation of those laws of the Territory which are not enactments. That Act also affects references in those laws to enactments.

Table of Ordinances

Ordinance	Number and year	Date of notification in Gazette	Date of commencement	Application, saving or transitional provisions
<i>Foreign Judgments (Reciprocal Enforcement) Ordinance 1954</i>	11, 1954	14 Apr 1954	1 May 1954 (see Gazette 1954, p. 1240)	
<i>Ordinances Revision Ordinance 1977</i>	65, 1977	22 Dec 1977	22 Dec 1977	—
<i>Foreign Judgments (Reciprocal Enforcement) (Amendment) Ordinance 1982</i>	36, 1982	30 June 1982	1 July 1982	—
<i>Foreign Judgments (Reciprocal Enforcement) (Amendment) Ordinance 1988</i>	24, 1988	8 June 1988	8 June 1988	—

NOTE—continued**Table of Amendments**

ad.=added or inserted am.=amended rep.=repealed rs.=repealed and substituted

Provision	How affected
S. 3.....	rep. No. 65, 1977
Ss. 4-6.....	am. No. 36, 1982
S. 8.....	am. No. 24, 1988
S. 10A.....	ad. No. 24, 1988
S. 12.....	am. No. 24, 1988
S. 13.....	am. No. 36, 1982
S. 14.....	ad. No. 36, 1982

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