

REPORT OF THE LAW REFORM COMMITTEE
ON
ENFORCEMENT OF FOREIGN JUDGMENTS



SINGAPORE ACADEMY OF LAW
LAW REFORM COMMITTEE
JUNE 2005

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About this Report

In August 2004, a law reform sub-committee was set up to review the law on statutory enforcement of Singapore's subordinate court judgments overseas and if necessary or desirable, make recommendations for reform. Following its appointment, the sub-committee reviewed the law on enforcement of foreign judgments and concluded that the present situation could be improved by reforming the statutory scheme for enforcement by registration.

The sub-committee's report and recommendations, which have since been accepted by the Law Reform Committee, are consolidated in this publication.

About the Law Reform Committee

The Law Reform Committee of the Singapore Academy of Law makes recommendations to the authorities on the need for legislation in any particular area or subject of the law. In addition, the Committee reviews any legislation before Parliament and makes recommendations for amendments to legislation (if any) and for carrying out law reform.

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I. Executive Summary

1. At the request of the Honourable the Chief Justice Yong Pung How, a law reform sub-committee was set up in August 2004 to review the law on statutory enforcement of Singapore subordinate court judgments overseas and if necessary or desirable, make recommendations for reform. The sub-committee concluded that the present situation could be improved by reforming the statutory scheme for enforcement by registration and its report to that effect was accepted by the Law Reform Committee at its 120th meeting on 28 May 2005.
2. The following is a summary of the key recommendations of the Law Reform Committee.
 - The statutory scheme for enforcement by registration is at present limited to superior courts only. The scheme should be extended to cover subordinate court judgments as there is no reason in policy or principle to exclude subordinate court judgments from the benefits of enforcement by registration.
 - The requirement of reciprocity in relation to registration of foreign judgments should be retained.
 - The statutory scheme for enforcement by registration should be extended to non-money judgments.
 - The requirement of service of notice of registration should be tightened so as to ensure that no person will be deprived of his property save in accordance with due process. Failure to serve a notice of registration in accordance with the prescribed rule should be a ground to set aside registration of a foreign judgment.
 - Pre-judgment relief should be made available in the court's discretion to the applicant for registration of a foreign judgment.
 - There should be only one scheme of registration of foreign judgments instead of the present dual scheme of registration applicable to Commonwealth judgments and foreign judgments respectively.
 - Reform of this area of the law should proceed by way of legislative enactment.
 - The committee recognises that there are matters of policy such as the choice of the country with which to negotiate reciprocal arrangements and the nature and

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extent of these arrangements. Although these considerations are dealt with in this report, the committee has, in its recommendations for law reform, confined itself to providing a modernised statutory framework for the negotiation of agreements with both Commonwealth and non-Commonwealth countries. The direction and shape of such negotiations would be a matter of policy.

II. Introduction

3. On 22 June 2004, the Honourable the Chief Justice wrote to Justice Judith Prakash, Chairperson of the Law Reform Committee (“the Committee”), to request the Committee to look into the question of the enforcement of Singapore subordinate court judgments overseas. His Honour’s reference followed in the wake of a comment made by Judicial Commissioner VK Rajah (as he then was) in *Cheong Ghim Fah and Anor v Murugian s/o Rangasamy (No 2)*¹ that Singapore’s subordinate court judgments are not enforceable overseas by statutory enforcement.
4. On 14 August 2004, at its 113th meeting the Committee discussed the question of enforcement of Singapore subordinate court judgments overseas generally and statutory enforcement or enforcement by registration in particular. The Committee had earlier considered the distinct but related question of transfer of proceedings from the subordinate court to the High Court. Taking note of some recent applications for transfer of subordinate court proceedings to the High Court purportedly so as to avoid difficulties in enforcement of subordinate court judgments overseas, the Committee in its earlier report entitled ‘*Transfers of Civil Proceedings between Courts*’,² had recommended that proof of intended enforcement overseas should *prima facie* be regarded as a sufficient ground for transfer of proceedings. Against that backdrop, the Committee at its 113th meeting agreed that a more direct approach to the overseas enforcement of subordinate court judgments was warranted, and appointed a sub-committee headed by Justice Judith Prakash to prepare a report to be limited to *in personam* money judgments, identifying the issues which were raised and making recommendations for reform. Although the matter of the enforcement of maintenance orders is not free from difficulties, it was felt that it should be considered separately as part of a subsequent comprehensive review of enforcement of orders and decrees in matrimonial proceedings.
5. Following its appointment, the sub-committee reviewed the law on enforcement of foreign judgments and concluded that the present situation could be improved by reforming the statutory scheme for enforcement by registration. One constant consideration throughout the discussions of the sub-committee was that ultimately, the question of reciprocal enforcement by registration depends on recognition of reciprocity or enactment of reciprocal arrangements by the

¹ *Cheong Ghim Fah and Anor v Murugian s/o Rangasamy* (No 2) [2004] 3 SLR 193 at [15].

² Report of the Law Reform Committee “*Transfers of Civil Proceedings between Courts*” (May 2004) available at <http://lwb.lawnet.com.sg/legal/lgl/html/free/lrcr.htm>.

governments of at least two countries. This implies that very important matters of policy such as the choice of the country with which to negotiate reciprocal arrangements and the nature of such arrangements which should be made are outside the realm of law reform. Consequently, any law reform would have to be confined to providing a modernised statutory framework for negotiating agreements with both Commonwealth and non-Commonwealth countries. Law reform could not dictate the direction and shape of such negotiations.

6. At its 120th meeting on 28 May 2005, the Committee considered and accepted the recommendations of the sub-committee.³ This report sets out the results of the Committee's discussions and its recommendations for reform. A draft bill implementing the Committee's recommendations is included at Annex A.

III. The approach to money judgments in general

7. While *in personam* money judgments of the Singapore High Court are enforceable in common law countries by one of two alternative avenues,⁴ namely, action on the judgment overseas or registration overseas,⁵ *in personam* money judgments of the subordinate courts are enforceable only by action on the judgment overseas.⁶ This is because as a matter of fact, enforcement by registration is predicated upon reciprocity; and as Singapore does not accord enforcement by registration to foreign inferior court judgments, similar enforcement of a Singapore subordinate court judgment overseas must be refused for want of reciprocity. At the same time, the enlargement of the jurisdiction of the subordinate courts in Singapore following the amendments to the Subordinate Courts Act (Cap 321, 1999 Rev Ed) has reduced the number of parties who can seek a High Court judgment as first recourse with a view to enforcement by registration overseas. This enlargement of jurisdiction has had the effect, whether intended or not, of prejudicing parties who need to enforce

³ The Committee had earlier considered a draft report and Bill at the 118th meeting of the Law Reform Committee on 12 March 2005.

⁴ It is possible to sue again on the original cause because the doctrine of merger is not applied to foreign judgments. S 34 of the Civil Jurisdiction and Judgments Act 1982 of the UK has no counterpart in Singapore. See, e.g. *The Indian Grace (No 2)* [1998] AC 878. For the earlier proceedings before the House of Lords, see *The Indian Grace* [1993] AC 410.

⁵ In civil law countries, the judgment creditor must usually sue again on the original cause of action.

⁶ Note that maintenance orders are reciprocally enforced under the Maintenance Orders (Reciprocal Enforcement) Act (Cap 169, 1985 Rev Ed) or the Maintenance Orders (Facilities for Enforcement) Act (Cap 168, 1985 Rev Ed).

their judgments overseas. It has, as noted previously at [4], led to an increase in applications to transfer subordinate court proceedings to the High Court.

8. Against the insistence on reciprocity for enforcement by registration, there is little doubt that any reform of the law so as to remove unwarranted obstacles in obtaining enforcement by registration of Singapore judgments overseas must begin with the Singapore law on enforcement by registration. In our discussions, we considered the question whether the existing restriction to enforcement by registration of superior court judgments is still appropriate. In fact, it became clear in the course of our discussions that the law on enforcement by registration in relation to superior court judgments was itself in need of reform. It proved impossible to answer the immediate question within our terms of reference without also considering the broader question of whether the law on enforcement by registration, as it currently exists, continues to provide a satisfactory basis for negotiations with third countries which may have very different enforcement schemes.
9. We also considered and dismissed alternatives which stop short of altering the law on enforcement by registration. These included making subordinate court judgments registrable in the High Court or deeming them to be judgments of the High Court for the purposes of enforcement overseas as well as accession to appropriate international conventions on enforcement of judgments overseas.
10. Before we set out our detailed proposals, we outline several statutory schemes for enforcement by registration of a foreign judgment with a view to identifying the main features which we think are in need of reform. There are two statutory schemes for enforcement by registration in the Commonwealth which must be examined. As for international schemes of enforcement, we have singled out for special attention the Hague Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters (“the Hague Convention”).⁷ We have then included a comparative survey of amendments to the statute-based enforcement schemes of the United Kingdom (“UK”), Australia and the Hong Kong Special Administrative Region of the People’s Republic of China (“HKSAR”). This comparative account was particularly useful in indicating what aspects of the statutory framework should be modified.

⁷ Hague Convention on International Jurisdiction and Foreign Judgments in Civil and Commercial Matters available at <http://www.hcch.net/e/workprog/jdgm.html>.

IV. Enforcement of foreign judgments in general

A. Enforcement by Action in Singapore

11. At common law, judgments of a foreign superior or inferior court are enforceable alike as a debt. Enforcement of a foreign judgment is indirect in that the judgment creditor sues as on a debt in a court with jurisdiction over the defendant. It follows that the judgment creditor must establish jurisdiction over the judgment debtor for the purposes of obtaining a local judgment which may thereafter be enforced by execution. Among the measures which have been adopted so as to facilitate enforcement of a foreign judgment by action, mention may be made of Order 11, Rule 1(m).⁸ This provides that if the judgment debtor is outside the jurisdiction, leave may be granted to serve an Order 11 writ on him. It is thought that if the judgment debtor has assets in the country, leave will normally be granted as a matter of course.
12. Enforcement by action is frequently how judgments, both superior and inferior court judgments, from Canada, the United States, the Central and South American countries, the European countries, the Middle-Eastern and the non-Commonwealth Asian countries are enforced.⁹

B. Enforcement by Registration in Singapore

13. From as early as 1921, there has also been a statute-based scheme for the enforcement of designated foreign judgments by registration; namely, the scheme established by the Reciprocal Enforcement of Commonwealth Judgments Act¹⁰ (“RECJA”). In 1959, another scheme was added; namely the scheme established by the Reciprocal Enforcement of Foreign Judgments Act¹¹ (“REFJA”).¹² Enforcement by registration under either scheme affords the judgment creditor several clear advantages. First, the judgment creditor need not

⁸ Rules of Court (Cap 322, R 5, 2004 Rev Ed).

⁹ Until recently Australian judgments could be enforced by registration. But there appears to be some doubts as to whether this is still possible. *See* also [36]

¹⁰ Cap 264, 1985 Rev Ed.

¹¹ Cap 265, 2001 Rev Ed.

¹² In the sense of excluding the common law action, the idea of statutory enforcement by registration rather than action surfaced in the UK in the 1920s. For all its advantages, the Administration of Justice Act 1920 scheme was not made exclusive and a party was free to enforce his foreign judgment at law instead of registering it. In 1933 after some several years of experience, the Foreign Judgments (Reciprocal Enforcement) Act 1933 took a further step by creating registration as an exclusive scheme.

establish jurisdiction over the defendant all over again as he does not have to bring separate proceedings to enforce his judgment.¹³ The judgment creditor can simply enforce his judgment by registration if the defendant has assets in the country of registration. Second, as a result, the judgment creditor saves on the costs and avoids the delay which would otherwise be incurred in bringing separate proceedings. Third, although there are slight differences of detail between the RECJA and the REFJA in this respect, the judgment debtor bears the burden of proving that the adjudicating court whose judgment is to be enforced did not have ‘jurisdiction in the international sense’¹⁴ over the defendant and that the judgment is therefore not entitled to be registered.¹⁵ Fourth, the judgment creditor is entitled to a certificate for enforcement abroad which can be filed for registration without further proof of judgment.¹⁶ However, the statute-based enforcement schemes suffer from a clear disadvantage. They do not allow the judgment creditor to obtain pre-judgment relief. A judgment creditor who needs to preserve the assets of the judgment debtor must still sue on the original judgment as a debt in order to avail pre-judgment relief.

14. A foundational principle of enforcement by registration is that it is not available until and unless there is a formal executive act declaring the statute applicable to the class of foreign judgments to which the foreign judgment to be registered belongs. Before he can make this declaration, the Minister must be satisfied that Singapore judgments will enjoy reciprocal benefits in the country of the foreign judgment.¹⁷ This is the non-legal aspect of enforcement by registration schemes to which we referred in the Introduction.

¹³ *BP Exploration Co (Libya) Ltd v Hunt*, [1976] (No 1) WLR 788, [1980] 1 NSWLR 496. Provision for service of notice of registration outside the jurisdiction is made by ROC O. 67 R. 7(2).

¹⁴ *Pemberton v Hughes* (1899) 1 Ch 781 at 792.

¹⁵ *UOB Ltd v Tjong Tjui Njuk* [1987] SLR 299 (registration of HK judgment); *UOB v Khoo Boo Hor* (registration of Malaysian judgment); *MBf Finance Bhd v Yong Yet Mian* [1990] SLRT 1327; affd [1992] 2 SLR 761 (Malaysian judgment); *Sun-Line (Management) Ltd v Canpotex Shipping Services Ltd* [1986] SLR 259 (Malaysian judgment); *Harrisons Trading (Peninsula) Sdn Bhd v Juta Perkara Sdn Bhd* [1997] 2 SLR 496 (Malaysian judgment); *Lam Soon Cannery Co v Hooper & Co* [1965-1968] SLR 76 (UK judgment); *Re Patrick Tan* [1994] 2 SLR 78 (New Zealand judgment); *Re Cheah Theam Swee* [1996] 2 SLR 76 (New Zealand judgment).

¹⁶ See RECJA, s 4; REFJA, s 13.

¹⁷ There are two relevant notions of reciprocity. See Part X *infra*.

V. Enforcement of Singapore judgments overseas

15. Although a variety of statute-based enforcement schemes exists in the world, they are chiefly found in Commonwealth and common law jurisdictions and are largely modelled on the Administration of Justice Act 1920 (“AJA 1920”) or the Foreign Judgments (Reciprocal Enforcement) Act 1933 (“FJ(RE)A 1933”) of the UK.¹⁸
16. A majority of Commonwealth jurisdictions (more exactly law districts) have enacted dual enforcement by registration schemes much like Singapore’s along the lines of the AJA 1920 and FJ(RE)A 1933. The enforcement by registration of a Singapore judgment in a Commonwealth law district therefore follows the same broad lines described in [13] and [14] above.
17. A considerable number of Commonwealth jurisdictions have enacted only one registration scheme, modelled either on the AJA 1920 or the FJ(RE)A 1933 scheme. In some of them such as Australia, foreign judgments no longer have to be registered under state or territorial law as the Foreign Judgments Act 1991 (Cth) has laid down, as of 27 June 1993, a uniform scheme for enforcement by registration of foreign judgments in all states and territories of Australia. Enforcement by registration in Canada is still a matter for state or provincial law.
18. Uniquely, the enforcement by registration statutes of India and Pakistan have not followed the UK pattern but they are informed generally by the same policy.¹⁹
19. Enforcement by registration is not an available option in the United States (“US”) but a judgment must be enforced by action on the judgment. In addition, where a judgment is to be enforced against a citizen of the US, the judgment creditor must show that a judgment of the enforcing state in the US would be entitled to reciprocal enforcement in the adjudicating state from which he has obtained the judgment. This requirement of reciprocity was laid down by the Supreme Court in *Hilton v Guyot*²⁰ for the protection of US nationals. The rule is little liked and widely considered wrong. A considerable number of state legislatures have abolished the rule either expressly or by adopting the Uniform

¹⁸ A number of these including Singapore’s are *pari materia* similar to the UK statutes.

¹⁹ In 1937, British India added a new provision s 44A to the Code of Civil Procedure 1908, principally to permit reciprocal arrangements to be put into effect with the United Kingdom, although there is no limitation to Commonwealth jurisdictions, they must merely be ‘reciprocating territories’.

²⁰ 159 US 113 (1895).

Foreign Money-Judgments Recognition Act which omits the requirement of reciprocity.

20. Enforcement by registration is not an available option in most non-Commonwealth law districts. In many of them, enforcement by action is also not available but the judgment creditor must sue again on the original cause. The foreign judgment may then be recognised in the sense that it is not conclusive but may be taken into account as the merits of the cause are re-examined by the 'enforcing' court.²¹ In practice, some inroads are tolerated to the theory which treats foreign judgments as wholly irrelevant. This may lead, as in the Netherlands, to the courts giving binding effect to judgments rendered by the court of the contractual forum of the parties.²² The principle has even been extended to cases of implied submission.²³ In Sweden, as a concession, a foreign judgment given by a court with similar choice of law rules is presumed to be correct against the judgment debtor while a judgment rendered by a court of the exclusive contractual forum is conclusive on the merits.²⁴ Theoretically then, recognition of a foreign judgment in these countries is impossible unless authorised under specific statutory provisions or a treaty but concessions are made in practice.
21. Other civilian jurisdictions, such as Germany, insist that one of the conditions which must be satisfied before a foreign judgment can be recognised is reciprocity of treatment of its own judgment in the country of the adjudicating forum.²⁵ Proof of reciprocity is thus essential; albeit in many jurisdictions which require reciprocity, there is much uncertainty as to incidence of the onus of proof. If however reciprocity is proved, enforcement is as direct in effect as enforcement by registration. There is no need to bring an action on the judgment and the judgment creditor can simply seek judicial confirmation of his judgment by an *exequatur* proceeding. This appears to be the position in jurisdictions such as Japan, Germany, France, and Israel.

²¹ The doctrine of *revision au fond* originated in France and was only abandoned in 1964 in *the Munzer* case (decision of 7 Jan 1964 Cass Civ Ire 1964 JCP 11 13590).

²² See generally, Dennis Campbell Ed., *Enforcement of Foreign Judgments* (LLP, 1997) at p 292.

²³ *Id.*

²⁴ *Id* at pp 399 – 412.

²⁵ *Id* at p 196.

VI. International conventions on recognition and enforcement

22. Attempts to achieve international enforcement schemes began in earnest as far back as 1925 and 1928; of these, the 1927 Convention was most notable. However, nothing serious emerged out of these earlier efforts. A more promising convention was broached in 1960. Coming to fruition in 1971, this Hague Convention was not limited to money judgments but included declaratory judgments among other things.²⁶ The convention was significantly applicable to judgments given by courts of any level, without distinction between superior and inferior courts; albeit these courts could be specifically identified in supplementary agreements. Also noteworthy and perhaps most significant was that while the convention was an endeavour to bridge the gap between common law and civil law systems, Article 4 prescribed a principle of *prima facie* recognition for judgments covered by the convention, not unlike the principles which exist in enforcement by registration schemes. It is well known that the convention's success was short-lived.
23. In 1997, negotiations began on a new Draft Hague Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters (Hague Judgments Convention).²⁷ This Hague Judgments Convention likewise attempts to bridge the gap between common law and civil law systems. It is an ambitious double convention, covering both rules of jurisdiction and rules of enforcement of judgments. This means that convention countries agree to adopt a similar set of rules of jurisdiction for cross-border litigation and to enforce judgments from a convention country rendered in accordance with these rules. Enforcement is a matter of course. It may be denied only in very exceptional circumstances. Outside those circumstances, it cannot be withheld notwithstanding the enforcing country is completely unconnected with the parties and the dispute

²⁶ Carried out by the Hague Conference on Private International Law at its 10th regular session in 1964 and at an extraordinary session in 1966. The text came into force on 1 February 1971 with only a small number of Contracting States. The Additional Protocol on Jurisdiction was ratified by only three countries.

²⁷ Adopted by the Special Commission on 30 October 1999. The Preliminary Draft was revised in June 2001 into an Interim Text. A final convention is apparently not yet ready. Meanwhile a Working Document No 110E focusing on exclusive choice of court agreements was released in May 2004. The following are members of the Hague Conference: Argentina, Australia, Austria, Belgium, Bulgaria, Canada, Chile, China, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Estonia, Finland, Former Yugoslav Republic of Macedonia, France, Germany, Greece, Hungary, Ireland, Israel, Italy, Japan, Republic of Korea, Latvia, Luxembourg, Malta, Mexico, Monaco, Morocco, Netherlands, Norway, Peru, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Suriname, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, United States of America, Uruguay and Venezuela. (Singapore is currently not a member). See also, *supra*, note 7, above.

between them. What seems most significant is that, like the earlier 1971 Convention, the Hague Judgments Convention adheres to the principle of *prima facie* recognition which is not unlike the notion of enforcement by registration. However, reactions to the Hague Judgments Convention have been mixed and it is unlikely that satisfactory accession will be achieved in the short term. For these reasons, we conclude that the Hague Judgments Convention cannot for the moment furnish a satisfactory immediate solution to the enforcement by registration of subordinate court judgments overseas.

VII. Comparative survey of amendments to scheme

24. In this part of the report, we sketch in outline a comparative survey of important modifications which have been made to the UK and Australian enforcement by registration schemes. While the basic design and structure of enforcement by registration schemes have stood up remarkably well over the last 8 or 9 decades, the experience in the UK and Australia indicates that they have required modification in certain particulars. From our comparative assessment, two points emerge clearly. First, the most conspicuous of these amendments is the extension of enforcement by registration to inferior court judgments. Second, no radical alteration to the basic structure of the schemes has been thought to be necessary.

A. The UK Schemes

25. In the UK, the 1920 scheme has not been completely phased out and both the AJA 1920 and FJ(RE)A 1933 schemes have persisted. A tangential but perhaps helpful comment is that the differences between enforcement by action and enforcement by registration have been narrowing. Thus, the benefit of a summary judgment is now available to a judgment creditor who seeks to enforce a foreign judgment in England at common law if the judgment debtor has no real prospect of defending the claim. Another notable change is that the scope of re-litigation has been drastically narrowed following passage of section 34 of the Civil Jurisdiction and Judgments Act 1982, abolishing in large part the doctrine of non merger.

26. Direct amendments to the schemes may be grouped under three heads. First, the provisions of the Civil Jurisdiction and Judgments Act 1982 and Council Regulation (EC) 44/2001 (on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters) (OJ 2001 L12 p1) have been extended to judgments of the courts in states which are parties to the Brussels and Lugano Conventions. Second, the UK now has treaties with several countries for the reciprocal enforcement and recognition of judgments. These amendments ensure that the co-existence of different schemes of enforcement remains a prominent feature of the UK law.

27. Third, although the AJA 1920 scheme is still limited to superior court judgments, the FJ(RE)A 1933 scheme was amended in 1982 to extend to inferior court judgments. In fact, the Civil Jurisdiction and Judgments Act 1982, amending the FJ(RE)A 1933, was among the first of Commonwealth legislation to change references to ‘superior courts’ in the Act to ‘recognised’ courts which may include inferior courts.²⁸ The reasons for this extension which allows the Act to be applied to courts other than superior courts are obscure because the focus of the Civil Jurisdiction and Judgments Act 1982 Act was on implementation of the Brussels Convention and the amendments to the FJ(RE)A 1933 were considered to be of minor importance and of a consequential nature. As the Brussels Convention predicated equal treatment of inferior court judgments, it might have been thought that the same equality should be imposed on the FJ(RE)A 1933.
28. Following the 1982 amendments, the FJ(RE)A 1933 has been extended to include specified inferior courts of India, Pakistan, Australia, the Federal Court of Canada and the Canadian provinces except Quebec, Tonga, Guernsey, Jersey and the Isle of Man (Commonwealth) and Austria, Belgium, Germany, France, Israel, Italy, the Netherlands, Norway and Suriname (non-Commonwealth).

B. The Australian scheme

29. Until 1991, enforcement by registration in a state in Australia was a matter of state legislation. Three schemes were discernible. New South Wales and the Federal Territories had both the 1920 and 1933 schemes. The majority of the states, Capital Territory, Queensland, Tasmania, Victoria and Western Australia, adopted only the 1933 scheme. In South Australia a modified 1920-1933 scheme was in force. Following the promulgation of the Foreign Judgments Act 1991 (Cth), (“FJA 1991”) state and territorial legislation continued to apply for a period of two years in relation to countries with which arrangements had not yet been made under federal legislation. This means that the FJA 1991 Act has become the sole statutory scheme since 27 June 1993. The Act is modelled on the 1933 scheme.
30. Though modelled on the FJ(RE)A 1933 scheme, there is an important difference between the Australian extension to inferior court judgments and the UK extension. The UK Act has been amended to refer simply to ‘recognised courts’ and the effect of this is that superior and inferior court judgments are dealt with in the same way by designation. The Australian Act relies on a structured approach. The legislation only applies to the enforcement of money judgments rendered in the first instance by superior courts. However, the legislation may be extended to specified inferior courts in a particular country. This is achieved in

²⁸ See Sch 10 of the Civil Jurisdiction and Judgments Act which amends the FJ(RE)A 1933.

the same manner as the original application by regulation passed by the Governor General.

31. The FJA 1991 Act of Australia has been extended to France (including specified inferior courts); Germany (including specified inferior courts); Israel (including specified inferior courts); Italy (including specified inferior courts); Japan (including specified inferior courts); Korea (including specified inferior courts); New Zealand (including specified inferior courts); Poland (including specified inferior courts); Sri Lanka (including specified inferior courts); Switzerland (including specified inferior courts); Taiwan (including specified inferior courts); and United Kingdom (including specified inferior courts).

C. The Hong Kong scheme

32. We include a comparative examination of the Hong Kong Special Administrative Region (“the HKSAR scheme”) (established by the Judgments (Facilities for Enforcement) Ordinance (Cap 9) (“J(FE)O”) and Foreign Judgments (Reciprocal Enforcement) Ordinance (Cap 319)) (“FJ(RE)O”) because it helpfully illustrates four salient points of comparison. First, the scheme established by the latter statute has a wider and more impressive coverage than our schemes: the judgments of about 22 Commonwealth law districts and 7 European and non-Commonwealth jurisdictions²⁹ are exclusively enforceable by registration. We note that only UK judgments are covered by the JFEO. As the JFEO was in effect repealed by section 2A(2)(b) of the Interpretation and General Clauses Ordinance,³⁰ UK judgments are now only enforceable by action.
33. Second, the coverage of certain European and non-Commonwealth jurisdictions was the consequence of the conclusion of bilateral treaties negotiated by the UK on behalf of Hong Kong as a dependent territory of the UK, as Hong Kong then was. It has been observed that very few Commonwealth countries have endeavoured to conclude similar treaties in their own right as independent sovereign nations.
34. Third, the scheme established by the FJ(RE)O illustrates the difficulties which the reciprocity requirement has created following the creation of the HKSAR. Since the coverage of certain European and non-Commonwealth countries was automatic, doubts have arisen following the creation of the new HKSAR as to

²⁹ These are Austria, Belgium, France, Germany, Italy, Israel and the Netherlands.

³⁰ Which states that ‘provisions conferring privileges on the United Kingdom or other Commonwealth countries or territories, other than provisions giving effect to reciprocal arrangements between Hong Kong and the United Kingdom or other Commonwealth countries or territories, shall have no further effect’.

whether it is necessary for the HKSAR to conclude fresh bilateral treaties with these jurisdictions in order to maintain reciprocity of treatment. The HKSAR Department of Justice has expressed the view that the conclusion of fresh treaties is unnecessary and that there is substantial reciprocity of treatment if these jurisdictions in fact continue to enforce HKSAR judgments. This view is weaker than the holding of the High Court in one case that as long as these jurisdictions remain designated under the statute, there is substantial reciprocity of treatment regardless of whether enforcement of HKSAR judgments is in fact refused in these jurisdictions.³¹

35. Fourth, although two schemes are in force, only the scheme established by the FJ(RE)O is in active operation. However, it has not been extended to inferior court judgments.

D. Comparison with Singapore schemes

36. We note that a number of comments arise out of the foregoing comparison. First, the statutory schemes have been little modified in Singapore. The list of countries covered by the RECJA has remained virtually as it stood in 1968. As notified in one of two relevant lists, these countries are Hong Kong (for judgments obtained before or on 30 June 1997), New Zealand, Sri Lanka, Malaysia, Windward Islands, Pakistan, Brunei, Papua New Guinea, and India (except the states of Jammu and Kashmir).³² The last country in this list, India (except Jammu and Kashmir), was added as long ago as 1968 and no other countries have been added since. The states of Australia are notified in another list.³³ Our ‘Commonwealth’ list is clearly inferior in coverage when compared with its UK, Australian and HKSAR counterparts.
37. Second, the persistent omission of Canada from the ‘Commonwealth’ list is notable.
38. Third, with respect to the REFJA, the only conspicuous change since its promulgation in 1959 has been the removal of Hong Kong in 1997 from the Commonwealth list to the REFJA list as HKSAR. The HKSAR is also the only country covered by the REFJA. (The UK is of course covered by the RECJA where peculiarly and exclusively, UK judgments are not subject to any

³¹ *Koninklijke Philips Electronics NV v Utran Technology Development Ltd* [2002] HKEC 476.

³² Reciprocal Enforcement of Commonwealth Judgments (Extension) (Consolidation) Notification, G.N. 151/25.

³³ Reciprocal Enforcement of Commonwealth Judgments Act, Declaration under Section 5, S 383/93.

requirement of reciprocity.) The country’s major trading partners from the European Community are not on the REFJA list.

39. Fourth, according to the parliamentary reports, the REFJA was intended to be a “most useful and progressive step”³⁴ towards reciprocal enforcement of foreign judgments perhaps even to supersede the RECJA and become the sole statutory scheme for enforcement by registration.³⁵ If this is correct, then plainly, the phasing out of the RECJA has not materialised.
40. Fifth, despite the ease of registrations afforded by the RECJA and the REFJA, not many foreign judgments are registered in Singapore. A survey of the number of foreign judgments registered in Singapore from the years 2000 to 2005 shows that on an average about 16 foreign judgments are registered in Singapore each year. Our survey (below) also highlights that most of these foreign judgments are from Malaysia, Brunei or UK.

Year	Statute	Malaysia	Brunei	UK	Australia	Sri Lanka	India	Hong Kong	TOTAL
2000	RECJA	7	5	1	1				14
	REFJA							2	2
2001	RECJA	8	1		1				10
	REFJA							6	6
2002	RECJA	6		2					8
	REFJA							3	3
2003	RECJA	6		2	1				9
	REFJA							1	1
2004	RECJA	16	1	2	3	1	1		24
	REFJA							3	3
2005	RECJA	1	1	1					3

³⁴ As stated at the third reading of the Foreign Judgments (Reciprocal Enforcement) Bill - Parliamentary Reports, 18 March 1959.

³⁵ In the UK, an Order in Council under the 1933 Act has the effect of superseding any similar Order made under the 1920 Act. It appears that after the 1933 Act came into force, the power to make a new Order under the 1920 Act ceased.

	REFJA								0
	TOTAL	44	8	8	6	1	1	15	83

Table1. Applications received by Singapore under the RECJA and REFJA ³⁶

41. We conclude that, despite the advantages of the RECJA and REFJA and their existence in the law books since 1921 and 1959 respectively, the schemes which they established have not been put to full effect. Nor have they kept pace with changes in the country’s trading and commercial relationships. We should point out that since the 1990’s, the country has entered into several important Free Trade Agreements with its trading partners.³⁷ These agreements, however, do not attempt to make provision for enforcement of judgments by registration.

VIII. Extension to subordinate court judgments

A. Existing limitation to superior court judgments

42. Since our terms of reference require us to consider whether the RECJA and/or REFJA should be extended to subordinate court judgments, we consider this matter first of all. The RECJA limits enforcement by registration to judgments ‘obtained in a superior court’ while the REFJA limits it to judgments ‘given or made by the High Court’.
43. The limitation to superior court judgments, in the case of the RECJA, is achieved by express reference. Although the term ‘judgment’ is defined to mean any judgment or order given or made by a court in any civil proceedings, section 3(1) makes it plain that only a superior court judgment is enforceable by registration. In addition, there is little doubt that section 5 of the RECJA which is a deeming provision does not have the effect of permitting subordinate courts to

³⁶ Based on statistics provided by the Supreme Court Registry. The table only shows applications received until March 2005.

³⁷ Singapore has concluded FTA’s with New Zealand, European Free Trade Association, Japan, Australia, United States and the Hashemite Republic of Jordan. Ongoing FTA negotiations with ASEAN and the People’s Republic of China, Bahrain, Canada, Egypt, India, Korea, Mexico, Pacific 3, Panama, Peru and Sri Lanka.

- be deemed to be superior courts;³⁸ since it must be read consistently with section 3(1).
44. The limitation to superior court judgments, in the case of the REFJA, is also express. Although the term ‘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, section 3(1) makes it plain that only a superior court judgment is enforceable. The REFJA states in addition that a judgment of such a court given on appeal from a court which is not a superior court is not within the Act.
45. Thus, both the RECJA and REFJA have stopped short of allowing subordinate courts to be designated and deemed to be superior courts for the purposes of the statutory schemes.³⁹ Significantly, while the Minister may make treaties with respect to reciprocal treatment of Singapore judgments in such manner and on such terms as he thinks fit, such treaty as he may make must not contradict the express provisions of the Act. No such treaty may therefore make provision for reciprocal enforcement of subordinate court judgments contrary to the express limitations in the Acts.
46. The reasons for the limitation to superior court judgments are obscure. In part, the matter has attracted little intellectual interest and attention and we have not been able to benefit from the light that might otherwise be shed on the matter. Perhaps the advantages of registration were regarded as too far reaching in the 1920s, when the prototypical AJA 1920 of the UK was enacted, to permit a ready extension to judgments of the subordinate courts. Then, enforcement by registration of subordinate court judgments was tolerated only in an inter-state context in order to accord full faith and credit to the judgments of courts of a law district forming part of a single constitutional entity (‘judgments of a sister state’) or courts of a dependent territory under the suzerainty of a single constitutional entity.⁴⁰ Being the first step towards a uniform simplification of the enforcement of Commonwealth judgments, the 1920 scheme could have been charged as radical and incautious if it had extended to subordinate court

³⁸ S 5 reads as follows: ‘For the purposes of this section such courts of that part of the Commonwealth as are specified in the notification shall be deemed to be superior courts of that part of the Commonwealth’.

³⁹ We note that this point was not argued in *Liao Eng Kiat v Burswood Nominees Ltd* [2004] 4 SLR 690. See also the comments at [60] of this report.

⁴⁰ Examples are the Judgments Extension Act 1868 of the UK and the Service and Execution of Process Act 1901-1968 of Australia.

judgments. Over time, however, the notion of enforcement by registration has become familiar and its utility recognised, not the least in the negotiations on international conventions. There is no longer a need to be cautious about extending the scheme to subordinate court judgments, even if caution was necessary hitherto.

47. Another possible reason for the limitation is that the benefits of registration should be withdrawn from a judgment given or made by a subordinate court judge because he does not have security of tenure. We note however that it is impossible to construe the present schemes as implicitly presupposing security of tenure since judgments of the superior court are enforceable by registration notwithstanding that some judges of the superior court do not enjoy security of tenure. Moreover, within the Commonwealth, the quality of appointments to the subordinate courts has risen along with the raising of the jurisdictional limits of these courts. In the light of these changes in judicial administration, if the original limitation of the enforcement by registration schemes was based on concerns over the quality of subordinate court judgments, it has ceased to be justifiable on that basis. If indeed there are peculiar concerns over the partiality or quality of a particular class of subordinate court judgments, it would be sufficient for the executive to address them when it decides by negotiation whether all or only some of the great variety of subordinate court judgments should be enforceable by registration. What is important is that the statutory framework should not present an illogical blanket limitation and impediment to such negotiations.
48. Still further, whatever considerations might support the present limitation to superior court judgments, we are certain that commercial expedience is not among them. We believe that in modifying the framework of statutory enforcement a policy which is supportive of commercial expedience in international trade is important. The earlier comparative account indicates that the modern approach to enforcement by registration in Singapore's major trading partners is to move away from a blanket exclusion of subordinate court judgments. This contributes a push factor to the reform which has to be taken seriously. It is unlikely that the enforcement of a foreign judgment from a major trading partner can remain efficient in Singapore and the prospects of enforcement of a Singapore judgment overseas be improved unless the existing restriction of the schemes to subordinate court judgments is likewise removed.
49. In our view, there is little doubt that the enlargement of the jurisdiction of our subordinate courts has placed Singapore judgment creditors at a disadvantage compared with judgment creditors elsewhere since they are no longer able to enforce by registration judgments that would but for the enlargement have been given in the High Court and would have been enforceable by registration overseas. We believe that it was not intended that the enlargement of jurisdiction

- should result in curtailment of the judgment creditor's right to enforce his judgment by registration overseas. Extension of the Singapore enforcement by registration scheme to subordinate court judgments would reverse the unintended effect of the enlargement of our subordinate courts' jurisdiction by giving foreign jurisdictions an incentive to enforce our subordinate courts judgments on a reciprocal basis. Apart from removing the present distortion, it would also enhance Singapore's position as an adjudicating forum by ensuring that cases which should be tried in Singapore are not diverted elsewhere by reason only that Singapore judgments are not easily enforceable overseas. Still further, it would enhance the rights of judgment creditors of smaller sums of money who would otherwise find it onerous to commence a fresh action on their judgment.
50. One possible objection against making the extension to subordinate court judgments is that enforcement by registration could increase the risks of unfairness to the judgment debtor. If enforcement by registration was extended to subordinate court judgments, a person could bring proceedings against the defendant in a third country with only tenuous connections to the parties and the dispute and where it would be difficult for the defendant to defend himself adequately without incurring substantial costs. In this way, ease of enforcement could become a dangerous motivation to forum shop. However, this is unlikely to be a serious matter where the adjudicating country adheres to a doctrine of natural forum and will stay such proceedings as should in the interests of justice be brought in the natural forum. It is reasonable to expect that the executive in making reciprocal arrangements with a foreign country for enforcement of judgments overseas will have prior regard to such considerations.
51. We also think it is unlikely that Singapore businesses would be unfairly prejudiced or disadvantaged by extension of the registration scheme to foreign subordinate court judgments. If the reciprocating country is a civilian jurisdiction, the Singapore judgment creditor would in fact benefit from not having to sue on the original cause and from being able to seek judicial confirmation of his existing judgment. In any other case, the Singapore judgment debtor would suffer little more hardship if the foreign subordinate court judgment is registrable since he already may be sued in an action in Singapore on the foreign subordinate court judgment. In other words, the benefits to Singapore in any reciprocal arrangement with a civilian jurisdiction would invariably outweigh the disadvantages.
52. The more difficult question is whether extension of the enforcement by registration scheme to subordinate court judgments should be made on a uniform basis or whether the executive should be given discretion to extend the scheme to such subordinate courts as it may designate. Uniform extension covering all countries presently within the RECJA and REFJA would be sufficient to reverse the unintended effect of the enlargement of our subordinate courts jurisdiction.

But we think that from the important perspective of future extension of the statutory scheme to new law districts not hitherto within the scheme, an approach based on uniform coverage of all subordinate courts would not be sufficiently responsive to the rationale for enforcement by registration.

53. Under the uniform coverage approach, once the Minister has agreed on reciprocal arrangements with any country, all its subordinate courts would automatically be included. This could be an unsatisfactory and inappropriate result if there is insufficient familiarity among the business people of both countries with the subordinate court system of the reciprocating country to warrant its inclusion or if it is not in the interests of commercial and trading relationships between the two countries that any subordinate court or class of subordinate courts should be included. We think that it would be necessary to give the Minister discretion as to which subordinate court or class of subordinate court to include in order to ensure that the extension is appropriate in each case.

B. The options available

54. One option for reform is simply to do nothing and rely on the fact that a party seeking to enforce its judgment by registration overseas may either commence its action in the High Court or seek a transfer of its action from the subordinate court to the High Court. We do not support the option of doing nothing. The fact is that the judgment creditor's position in Singapore has worsened after enlargement of the subordinate courts' jurisdiction and it is insufficient redress to say that it may seek a transfer of its action to the High Court if it proves intended enforcement by registration overseas and the High Court exercises its discretion to permit the transfer. It is also insufficient redress for a judgment creditor who intends at the time of its subordinate court proceedings to enforce the judgment locally but afterwards finds that it must enforce the judgment overseas.
55. A second option for reform is to provide for extension of the statutory schemes to judgments which are appealed from the subordinate court to the superior court. This is at best an imperfect and to some extent an arbitrary solution. It implies that the judgment creditor would be offered the advantages of enforcement by registration if the judgment debtor chose to appeal and lost again on the appeal. There is however no reason to favour this judgment creditor but not the judgment creditor who has won at first instance and would have been vindicated on appeal had there been one.
56. The third option is to permit proceedings to be transferred to the High Court solely for the purposes of enforcement as a judgment of the High Court. A recent example is found in section 42 of the UK County Courts Act 1984 introduced by section 2 of the UK Courts and Legal Services Act 1990. Section 42(5) provides that 'Where proceedings for the enforcement of any judgment or order of a

- county court are transferred under this section - (a) the judgment or order may be enforced as if it were a judgment or order of the High Court; and (b) subject to subsection (6), it shall be treated as a judgment or order of that court for all purposes.’
57. This option would furnish a quicker solution to difficulties of enforcement by registration than the transfer of the proceedings to the High Court with a view to enforcement of judgment overseas. The proceedings would continue to be dealt with in the subordinate court, at least in theory more expeditiously, before the transfer to the High Court for enforcement purposes. The advantages of speed and economy of trial in the subordinate court would be preserved. Moreover, this option presents itself as the least radical and seems easily accommodated within the statutory scheme.
58. A simpler variant of the third option is to stipulate that a judgment of an subordinate court either generally or in a more limited manner shall be deemed to be a judgment of the Supreme Court of Judicature. Section 146(2) of the Supreme Court Act 1935 of Western Australia provides an example of such deeming provision.
59. However, we note that a similar provision in the RECJA providing for registration of a subordinate court judgment as a High Court judgment was actually repealed in 1993.⁴¹ This was probably because it is doubtful whether, when proceedings are transferred for enforcement, the resulting judgment can be treated for the purposes of enforcement by registration as a judgment of a superior court. Indeed, there is a decision that registration of a judgment registered as a High Court judgment will be rejected for want of reciprocity.⁴²
60. As for the variant of deeming an subordinate court judgment to be a superior court judgment for enforcement purposes, we note that in *Liao Eng Kiat v Burswood Nominees Ltd*,⁴³ the Court of Appeal appeared to have proceeded on the basis that a judgment of a District Court of Western Australia which was

⁴¹ As alluded to by V.K. Rajah JC (as he then was) in *Cheong Ghim Fab and Anor v Murugian s/o Rangasamy* (No 2) [2004] 3 SLR 193 at [15] that

“It is interesting to note, until 1993, s 46 of the Subordinate Courts Act (Cap 321, 1985 Rev Ed) allowed the District Court to forward judgments to the High Court for execution. Such judgments were, upon receipt, deemed to have “been made by the High Court”. Curiously, this provision appears to have been intended only to facilitate enforcement within the jurisdiction and was unceremoniously repealed by Act 15 of 1993.”

⁴² *Re Hardwick* [1995] The Jersey Law Reports 245.

⁴³ *Supra*, note 39.

deemed by section 146(2) of the Supreme Court Act 1935 of Western Australia to be a judgment of the Supreme Court of Western Australia qualified as a superior court judgment for enforcement by registration under the RECJA. It is however possible that another receiving country will reject a Singapore subordinate court judgment which is deemed to be a superior court judgment for the purposes of enforcement overseas. This is because most enforcement by registration legislations employ the phrases ‘judgment given or made by’ or ‘obtained in’ a superior court as well as refer to ‘the original court’ which is defined to mean the court by which judgment was given. It could be argued that a judgment deemed to be a superior court judgment is not one given or made by or obtained in a superior court and does not qualify as a judgment of the original court. Further, the deeming provisions in such legislation refer to judgments which are deemed to be superior court judgments by the receiving country, not the transmitting country. Still further, assuming that a judgment deemed to be a superior court judgment by the transmitting country would incontrovertibly qualify as a judgment enforceable by registration in the receiving country, we think that the deeming option would substantially remove the decision, as to how far the enforcement by registration schemes should be extended, from the executive. As we said earlier, the decision with which country to negotiate reciprocal arrangements and the extent to which they should extend to subordinate court judgments is based on policy, which should be left to the executive to articulate and implement.

IX. Recommendation on extension

61. We have found the option to remove the limitation to superior court judgments from the statutory schemes to be rather attractive and recommend its adoption. It would be most effective in reversing the unintended effect of the enlargement of our subordinate courts’ jurisdiction. It would give foreign jurisdictions a strong incentive to enforce our subordinate court judgments on a reciprocal basis. It would enhance the country’s position as an adjudicating forum by ensuring that cases which should be tried in Singapore are not diverted elsewhere by reason only that Singapore judgments are not easily enforceable overseas. Still further, it would enhance the rights of judgment creditors, of smaller sums of money, who would otherwise find it onerous to commence a fresh action on their judgment.
62. Such extension of the enforcement regime would also be in line with the removal of the limitation to superior court judgments in the UK and Australia. This removal, as well as the absence of a similar limitation in international conventions, is a solid argument that the limitation is not an essential feature of the statutory schemes. It would also be supported by considerations of harmonisation with our major trading partners which ought to carry serious

weight in the matter of enforcement of foreign judgments. We are further persuaded that the removal of the limitation would better reflect the changes in judicial administration which have resulted in an enlargement of the subordinate court jurisdiction not only in Singapore but in our major trading partners.

X. Other specific issues

A. Requirement of substantial reciprocity

63. The reform which we have just recommended would not be sufficient to ensure that enforcement by registration plays a more prominent role than it does at present. Given that the removal of the limitation is warranted by the need to increase recourse to the enforcement by registration schemes, it seems to us vital that we should also look at the schemes overall to see how they can be improved in general and in particular modified so that they can be more widely effective.
64. Of these additional issues, the more fundamental question is whether the requirement of substantial reciprocity should be discarded either wholly or partially.
65. The requirement of substantial reciprocity is formulated in slightly different terms under the RECJA and REFJA. According to section 5(1) of the RECJA, ‘when the Minister is satisfied that reciprocal provisions have been made by the legislature of any part of the Commonwealth outside the United Kingdom for the enforcement within that part of the Commonwealth of judgments obtained in the High Court of Singapore the Minister may declare by notification published in the *Gazette* that this Act shall extend to judgments obtained in a superior court in that part of the Commonwealth in the like manner as it extends to judgments obtained in a superior court in the United Kingdom and on any such declaration being made this Act shall extend accordingly’.
66. Section 3(1) of the REFJA is worded differently: ‘the Minister, 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 foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of judgments given in the High Court of Singapore, may by order published in the *Gazette* direct (a) that this Part shall extend to that foreign country; 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.’
67. The difference between the two is that the REFJA envisages that the Minister will enter into bilateral or multilateral treaties with non-Commonwealth

countries to provide for ‘substantial reciprocity of treatment’ in accordance with the REFJA. In the case of Commonwealth countries with similar statutory schemes, substantial reciprocity will seldom be an issue. Evidence of substantial reciprocity is simply furnished by the existence of ‘reciprocal provisions made by the legislature’⁴⁴ and all that is left to do is a formal act of notifying the application of the Act to that jurisdiction. In the case of civil law countries, which can only come under the REFJA, the requirement of ‘substantial reciprocity of treatment’ will seldom be satisfied without Singapore and the third country or countries entering into a bilateral treaty or multilateral treaties obliging each contracting party to provide an enforcement scheme along the lines of the REFJA.

68. Apparently, the requirement of reciprocity entered into the Commonwealth enforcement by registration scheme as a means of encouraging other countries within the common law world to enact an equivalent system. Prior to the 1920 scheme, various countries within the Commonwealth relied on some form of judgment extension legislation. The 1920 scheme was intended to be a modernised version of the Judgment Extension Act 1868. It was envisaged as a means of leading to a clear uniform statement of the enforcement law within the Commonwealth, and ultimately, to a more efficient enforcement scheme.
69. It would appear from anecdotal evidence that the modern application of the requirement of reciprocity in the RECJA has departed from its original object.⁴⁵ The requirement is now used, and perhaps for a long time has been used, by the executive as a way to control the disparities between legal systems within the common law world even where these systems already share many important attributes.⁴⁶ In this way, reciprocity is taken to mean that the judgment is from a system of comparable quality. This notion of reciprocity fails to reproduce the letter and spirit of the requirement that there be reciprocal provisions made by the legislature. It bears more resemblance to the notion of substantial reciprocity of treatment employed in the REFJA.
70. There are other difficulties with the requirement of reciprocity as contained in the RECJA and REFJA and similar provisions elsewhere in the Commonwealth.
71. First, it is uncertain whether reciprocity is a true condition precedent to enforcement by registration so that the effect of denial of reciprocity from time

⁴⁴ See s 5(1) of the RECJA.

⁴⁵ See generally, McClean and Patchett, *The Recognition and Enforcement of Judgments and Orders and the Service of Process within the Commonwealth* (Commonwealth Secretariat, 1977).

⁴⁶ *Ibid.*

to time is to revoke the enforceability by registration over the same period of time. The view prevailing in the HKSAR is that once the Minister has declared that a third country affords substantial reciprocity to HKSAR judgments and is thus within the scheme, the HKSAR courts are obliged to receive judgments from that country for registration, despite cogent proof that courts of that country no longer afford enforcement to HKSAR judgments. On this basis, it has been said that reciprocity is determined conclusively by Ministerial declaration and is not revoked by actual factual departures from reciprocity occurring subsequent to the declaration. The view prevailing in Singapore is uncertain.⁴⁷ It appears that if the enforcement by registration statute in the Commonwealth country is repealed and a new registration statute enacted, there ceases to be any reciprocity. Accordingly, though the Singapore scheme was operational before the repeal, it ceases to operate to new judgments, until and unless a formal declaration is made in that country designating the Singapore courts for purposes of the new statute.

72. Some uncertainty also exists as to whether the condition of reciprocity is exclusively determinable by the executive without any possibility of judicial intervention. Nor is it known for certain what the effect of an order or notification (order in council in the UK) is when the country to which the scheme is extended by the order undergoes constitutional changes which are not reflected in any revision to the order in question.⁴⁸
73. We note that reciprocity is not an inevitable feature of statutory enforcement schemes. For instance, the Uniform Foreign Money-Judgments Recognition Act has been adopted by about 18 states of the US without a reciprocity condition.⁴⁹ Within the Commonwealth there are statutory schemes which do not depend on reciprocity. The Indian scheme for instance does not require the Minister to be first satisfied as to reciprocity.⁵⁰ The rationale for such a scheme is that there should be no need to require reciprocal treatment if the recognising or enforcing country is persuaded that the judgment in question is of a class of judgments which are of comparable quality to its own judgments. Reciprocity is

⁴⁷ Cf. *Liao Eng Kiat v Burswood Nominees Ltd*, *supra*, note 39.

⁴⁸ For instance, the reference to Pakistan seems to be dated after the emergence of Bangladesh and the reference to the Supreme Court of the Windward Islands does not reflect the fact that it has been superseded by the West Indies Associated States Supreme Court.

⁴⁹ These states include Alaska, California, Colorado, Connecticut, Georgia, Illinois, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New York, North Dakota, Ohio, Oklahoma, Oregon, Texas, and Washington.

⁵⁰ See Code of Civil Procedure (Amendment) Act 1937, amended in 1952 by Act No 71.

dispensable because the degree of confidence in another's judgment can only be a matter for unilateral assessment.

74. Indeed, it has been said that '[i]ncreasingly, courts and legislatures reject this impediment'⁵¹ and that '[e]ven where reciprocity persists, courts find ways to ameliorate it.'⁵²

XI. Recommendations on reciprocity

75. We are however not persuaded that the requirement of reciprocity should be abrogated at this time. There is no evidence that the requirement of reciprocity has ceased to be effective as a means to incentivise reciprocal treatment. We believe that the need to provide and rely on an incentive of this nature is still felt, despite the gradual narrowing of the gap between common law and civil law systems of enforcement of foreign judgments. The long history of international schemes indicates that while common agreement is possible on broad principles, agreement on details remains difficult to achieve. A requirement of substantial reciprocity as part of a bilateral approach to enforcement serves to facilitate agreement on details bilaterally. This is some proof that in relation to non-Commonwealth countries the requirement of substantial reciprocity, with emphasis on substantial as opposed to exact reciprocity, would continue to be a useful device for achieving feasible solutions that balance individual fairness with commercial interests. The notion of reciprocity in the sense that reciprocal provisions are made by the legislature has in practice been misapplied and we recommend the adoption of a uniform requirement of substantial reciprocity of treatment in the statutory scheme.
76. That said, we would not overstate the importance of reciprocity. There is little reason to require factual proof of reciprocity going beyond proof of the existence of a pertinent Ministerial declaration or notification that there is reciprocity of treatment. Enforcement by registration should be simple and straightforward and not be cluttered with difficult issues such as whether as a matter of fact there is substantial reciprocity of treatment. As we implied by our earlier remarks, the decision whether there is substantial reciprocity of treatment should be entrusted exclusively to the executive since it is partly one of policy and may legitimately take into account considerations of trade and commercial relationships. We do not think that there is any need to introduce further clarification as to this in the statutory scheme. The decision of the Hong Kong court to which we referred in

⁵¹ F Juenger, *Selected Essays on the Conflict of Laws* (2001) at p 314.

⁵² *Ibid.*

[34] of this report, consistent with this demarcation of the respective roles of the executive and judiciary, has sufficiently clarified that continued factual reciprocity is not a condition to enforcement by registration and that enforcement by registration cannot be refused as long as the declaration made by the executive has not been revoked.

XII. Extension to non-money judgments

77. Our recommendations to retain the requirement of reciprocity lead us to make a further recommendation that the operation of the enforcement by registration scheme should be extended in the court's discretion to non-money judgments provided there is substantial reciprocity of treatment as between Singapore and the third country concerned. The non-money judgments we envisage should be confined to those given in aid of an *in personam* cause but include those of an interlocutory nature. This means that we recommend the enforcement of judgments which provide additional relief to the money judgment as well as those which call for the recovery or delivery of personal property given or made in civil proceedings. Perhaps more important as a practical consideration, under our further recommendation the enforcement facilities of the scheme will be made available to all types of judgments, especially interlocutory judgments and injunctions.
78. In our view, the growing practical importance of non-money judgments in the modern enforcement of international debts is such that it would be wrong and unrealistic to continue to exclude them from the enforcement by registration scheme. Among these the Mareva injunction is a prime example. A meritorious party to an international commercial dispute not infrequently needs to obtain a world-wide Mareva injunction in order to enforce his money judgment successfully. Under existing law, while a world-wide Mareva injunction may be granted by a common law court, it has no binding effect outside the jurisdiction and is enforceable only *in terrorem* against the defendant. The burgeoning case law discloses at the same time a need for a Mareva injunction capable of binding third parties outside the jurisdiction and we think that provided there is reciprocity of treatment, this binding effect can appropriately be achieved by extension of the enforcement by registration scheme as between two law areas which recognise the world-wide Mareva injunction and are willing to allow it an enhanced extra-territorial effect. However, we do not think that registration of a non-money judgment should be as of right. The court should have discretion to refuse registration if it is not just and convenient to enforce the non-money judgment in Singapore. This means that the party seeking registration on a reciprocal basis must show that it is just and convenient to enforce the non-money judgment in Singapore. We envisage that if the enforcement of a non-money judgment in Singapore would expose a person to the risk of committing

an illegality or to an action for breach of a rule of privilege, enforcement would not be just and convenient and should be refused.

79. So far as concerns the enforcement of international intellectual property rights, the case for reciprocal enforcement by registration of non-money judgments is rapidly becoming urgent as opportunities for such litigation widen or open up. In some cases, money judgments are unimportant or irrelevant since parties desire either an injunction against future infringements of intellectual property rights or an order to destroy infringing materials. Before enforcement of such non-money judgments can seriously be considered as a general principle, a number of central issues would need to be resolved. For instance, the difficulties of enforcement of such non-money judgments are compounded by the presence of a large element of discretion in the making of the non-monetary order and the need to respond to changes in circumstance at the enforcement stage. There is still little consensus as to how these issues should be resolved. Despite the absence of consensus on the enforcement of such judgments, nor is consensus likely in the near future, we believe that reciprocity will provide a sufficiently certain basis and one that is workable at a bilateral level as between law areas which operate similar non-money judgments schemes. Once again, registration should not be as of right but the court should have discretion to refuse registration of the non-money judgment if it is not just and convenient to enforce it in Singapore.

XIII. Due notice and other procedures

80. Turning to the procedural aspects of the enforcement by registration schemes, we agree that ‘the procedure of enforcement must not be too costly and too long, otherwise in international commerce, the creditor will tend to sell his goods at a higher price in order to insure himself against the risk of insolvency of his debtor.’⁵³ It is important that where a judgment is entitled to be registered, the judgment creditor should not need to establish that the court has jurisdiction over the judgment debtor as defendant. The judgment creditor need only serve a notice of registration on the judgment debtor. This is obviously a simpler procedure and represents one of the advantages of enforcement by registration. However, it gives rise to concerns that the automaticity of enforcement by registration may cause a judgment debtor to be deprived of his assets without adequate notice and opportunity to defend his property against the enforcement. We think that the balance between the interests of creditors and debtors which is presently achieved under the rules of procedure should be refined to weigh the safeguards of natural justice a little more in favour of debtors. This is important

⁵³ J Castel, *Recognition and Enforcement of Foreign Judgments in Personam and in Rem in the Common Law Provinces of Canada*, 17 McGill LJ 11 at p 180.

as under our recommendations the enforcement by registration scheme is to be made more widely effective for the enforcement of international debts.

81. The relevant rules pertaining to notice of registration and service of this notice are contained in the Rules of Court. O 67 rule 7(2) provides that service of such a notice out of the jurisdiction is permissible without leave, and that Order 11, rules 3, 4 and 6, shall apply in relation to such a notice as they apply in relation to a writ. The notice of registration must state (a) full particulars of the judgment registered and the order for registration; (b) the name and address of the judgment creditor or of his solicitor on whom, and at which, any summons issued by the judgment debtor may be served; (c) the right of the judgment debtor to apply to have the registration set aside; and (d) the period within which an application to set aside the registration may be made.
82. A comparison between the rules which are applicable to enforcement by action and the rules of notice of registration indicates that the differences are very small and are narrowing. Mention was earlier made at [25] that a judgment creditor who seeks to enforce a foreign judgment in England at common law can now apply for summary judgment under CPR Pt 24 on the ground that the defendant has no real prospect of successfully defending the claim. This is an excellent example of narrowing the differences between enforcement by action and enforcement by registration.

XIV. Recommendations on procedures of enforcement

83. The primary difference between the procedures applicable to enforcement by action and enforcement by registration remains this. Whereas a judgment creditor seeking to enforce a foreign judgment by registration in Singapore may serve notice of registration without leave of the court, a judgment creditor seeking enforcement by action must have leave of the court in serving an Order 11 writ. This difference should not be overstated. Even with enforcement by action, leave is usually granted as a matter of course, if the judgment debtor has assets in the country. However, the procedures applicable to enforcement by registration admit the possibility that a judgment creditor could seek enforcement by registration in Singapore with a view not to execution in Singapore but in a third country in which the Singapore judgment will be entitled to registration. This raises the possibility of a judgment creditor's circumventing the absence of reciprocity between the country of adjudication and the country of ultimate enforcement. We see no reason to encourage the use of the enforcement by registration schemes as a stepping stone to enforcement in a third country. Our recommendation is that there should be a similar requirement that leave must be obtained to serve a notice of registration which would be useful in forestalling such attempts. Should we tighten on this and

insist on reasonable notice and not merely service?

84. Our further recommendation is also intended to strengthen the safeguards for the debtor's protection. Under the enforcement by registration schemes the rules relating to service of notice of registration are made by the Rules Committee and contained in the Rules of Court. The rule that notice of registration must be served on the defendant is clearly of primary importance since it ensures that a judgment debtor will not be deprived of his property without proper notice and reasonable opportunity to defend. Not being provisions of the Act, these requirements of due process may be compromised by contradictory arrangements negotiated by way of a bilateral or multilateral treaty. We believe however that the prospect of this occurring is negligible and insufficient to warrant enactment of the rule of service of notice of registration as provisions of the Act.⁵⁴ We recommend instead that failure to serve notice of registration in accordance with the rule prescribed should be a ground to set aside the registration of a foreign judgment.
85. The foregoing recommendations would not upset the legitimate expectations of a judgment creditor, particularly as we also recommend strengthening the position of the judgment creditor by affording him greater access to pre-judgment relief. We have remarked at [13] that enforcement by registration schemes suffer from the disadvantage that they do not allow the judgment creditor to obtain pre-judgment relief. This exclusion of recourse to pre-judgment relief would be consistent with the view that enforcement by registration is appropriate and fully justifiable in straightforward cases when all that is left to do is to enforce the judgment in question. It follows that the procedures should be kept as simple as possible in line with the plainness of the cases which are disposable in accordance with the RECJA and REFJA.
86. The above view was persuasive so long as the enforcement by registration scheme was an alternative to enforcement by action on the judgment. The RECJA can be said to present an alternative avenue to enforcement and the above view could be argued to remain persuasive in relation to it. However, the REFJA was envisaged as an exclusive scheme in the sense that where a judgment is enforceable under the REFJA, enforcement by action is precluded. Section 7(1) states that 'No proceedings for the payment of a sum payable under a foreign judgment to which [the scheme] applies, other than proceedings by way of registration of the judgment shall be entertained by any court in Singapore.' The result is serious inconvenience in that the judgment creditor registering a judgment under the REFJA is precluded from obtaining pre-judgment relief when he is compelled to rely exclusively on the REFJA. We recommend that the

⁵⁴ Cf. *Lam Soon Cannery Co v Hooper & Co* [1966] 1 MLJ 198-1, supra, note 15.

Act should be amended to make pre-judgment relief available in the court's discretion in registration cases. It would be consistent with these considerations to permit a judgment creditor registering his judgment at least to obtain a garnishee order at the same time and we so recommend. A more far reaching suggestion is that the Mareva injunction should be made available to a judgment creditor who would be entitled to register a judgment in Singapore under the enforcement by registration scheme. At present, the courts in Singapore have no jurisdiction to grant a Mareva injunction in the absence of a substantive cause of action which has accrued against the defendant over whom the court has personal jurisdiction. Where the cause of action is sued upon elsewhere, it is doubtful whether the above essential pre-requisite of a Mareva injunction can be satisfied, even where the court would otherwise have had personal jurisdiction over the defendant. The situation herein described would be analogous to that of a plaintiff merely having a prospective cause of action against the defendant over whom the court has personal jurisdiction and the decision in *Mercedes-Benz AG v Leiduck*⁵⁵ that such plaintiff has no Mareva protection. We think that a plaintiff may be as much in need of Mareva protection where he is suing the defendant elsewhere on a cause of action which has accrued but needs to enforce his judgment in Singapore. Provided that his judgment would be registrable under the enforcement by registration scheme, Mareva protection should be made available to him if there are proper grounds to suppose that the defendant will dissipate his assets in Singapore before the plaintiff can take any step to register any judgment he obtains overseas.

XV. Two schemes or one common scheme

87. Finally, it is timely and necessary to consider whether there is any basis in policy or principle for retaining two statute-based enforcement schemes.
88. The RECJA, the older statute, applies the principle of discretionary registration while the REFJA, compulsory registration. Under both schemes, enforceability is direct upon registration. Thus, section 3(1) of the RECJA states that 'Where a judgment has been obtained in a superior court of the United Kingdom of Great Britain and Northern Ireland the judgment creditor may apply to the High Court at any time within 12 months after the date of the judgment, or such longer period as may be allowed by the Court, to have the judgment registered in the Court, and on any such application the High Court may, if in all the circumstances of the case it thinks it is just and convenient that the judgment should be enforced in Singapore, and subject to this section, order the judgment to be registered accordingly.' The effect of this section is that a judgment cannot

⁵⁵ [1996] 1 AC 284.

be registered unless the court is satisfied of the justice and convenience of enforcement in Singapore.⁵⁶

89. In contrast, section 4(1) of the REFJA states that ‘A person, being a judgment creditor under a judgment to which this Part applies, may apply to the High Court at any time (a) within 6 years after the date of the judgment; or (b) 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. Section 4(2) adds that ‘On an application under subsection (1), the court shall, subject to proof of the prescribed matters and to the provisions of this Act, order the judgment to be registered.’ Registration is automatic if the judgment is of the statutory class.
90. It seems to us that the differences between Commonwealth and non-Commonwealth schemes can and should no longer be maintained. The RECJA like its model, the AJA 1920, was predicated upon the basic similarity of Commonwealth jurisdictions. Yet compared to the REFJA which was designed to serve as a basis or springboard for negotiations with non Commonwealth law districts, its procedures are more cumbersome and less advantageous. It offers a much shorter period within which registration must be made; 12 months compared with 6 years in the latter case. Further, registration is discretionary whereas under the REFJA it is compulsory. So far from reflecting the supposed greater degree of cohesiveness and similarity of basic principles among Commonwealth jurisdictions, the RECJA suggests greater disparity and reason for distrust. It could be suggested that in view of the developments in the Commonwealth, the reality may not be far from that. Perceptions of the Commonwealth have changed and it may not be an exaggeration to say that the Commonwealth has quite simply ceased to be regarded as a law region in need of uniform legislation. In any case, with the shift in focus to quality of justice rather than similarity of laws and judicial administration, there is no longer justification to operate two schemes instead of one common scheme.
91. We are therefore of the view that the law should be amended to provide for a single enforcement by registration scheme, as in Australia. This scheme should be sufficiently flexible to allow for different degrees of reciprocity as between law districts. If a foreign country will only recognise and enforce Singapore superior court judgments, it may nevertheless be notified under the enforcement by registration scheme but only superior court judgments from that country will be enforced in Singapore. This scheme should adopt a common approach to questions of international jurisdiction and defences to enforcement by registration. As the law presently stands, the public policy defence to

⁵⁶ See *Lam Soon Cannery Co v Hooper & Co*, *supra* at note 54.

enforcement by registration under the RECJA is satisfied if the cause of action resulting in the judgment would not have been entertained for reasons of public policy or for other similar reason whereas the equivalent defence under the REFJA requires that enforcement of the judgment would be contrary to public policy.⁵⁷ Again, the failure of natural justice defence under the RECJA is satisfied by proof of absence of due service on and non-appearance of the judgment debtor whereas under the REFJA the judgment debtor must show absence of adequate notice (and not merely non-service) and non-appearance. In our view, there is no compelling reason to continue these differences in the reform legislation.

XVI. Conclusion & Summary

92. The following is a summary of the issues we have considered and our recommendations.

1. Is there any reason in policy or principle to exclude subordinate court judgments from the benefits of enforcement by registration? We find that there is none. In particular, the fact that the subordinate court judge has no security of tenure is an insufficient reason to exclude his judgment from the benefits of enforcement by registration.
2. Should the requirement of reciprocity be partially or wholly discarded? We recommend retention of the requirement.
3. Should the enforcement by registration scheme be extended to non-money judgments? We answer in the affirmative.
4. Should the requirement of service of notice of registration be tightened so as to ensure that no person will be deprived of his property save in accordance with due process? We recommend that failure to serve a notice of registration in accordance with the prescribed rule should be a ground to set aside registration of a foreign judgment.
5. Should pre-judgment relief be made available to the applicant for registration of a foreign judgment? We agree that it should.
6. Should there be more than one scheme of registration of foreign judgments? Our recommendation is that there should be one scheme only.

⁵⁷ See *Liao Eng Kiat v Burswood Nominees Ltd*, *supra* at note 39.

Enforcement of Foreign Judgments

7. Should reform of this area of the law proceed by way of legislative enactment? We believe that it should and have drafted provisions to implement the above recommendations in the Foreign Judgments Bill 2005 set out in Annex A.

Annex A. Foreign Judgments Bill 2005

Foreign Judgments Bill

Bill No. /2005.

Read the first time on 2005.

THE FOREIGN JUDGMENTS ACT 2005

(No. of 2005)

Arrangement of Provisions

PART 1

PRELIMINARY

- 1 Short title and commencement
- 2 Interpretation

PART 2

RECIPROCAL ENFORCEMENT OF JUDGMENTS

- 3 Application of this Part on the basis of reciprocity of treatment
- 4 Application for, and effect of, registration of foreign judgments
- 5 Setting aside registration of judgment
- 6 Stay of enforcement of a registered judgment
- 7 Re-registration of certain registered judgments which have been set aside
- 8 Registrable judgments not to be otherwise enforceable
- 9 No registration of judgments for taxes, fines, penalties etc.
- 10 Appeal

PART 3

MISCELLANEOUS

- 11 Judgments to which Part 2 does not apply
- 12 General effect of certain judgments
- 13 Registered judgments cease to be enforceable in certain circumstances
- 14 Issue of certificates of judgments obtained in Singapore courts

- 15 Rules of Court
- 16 Repeal
- 17 Transitional provisions

A BILL
i n t i t u l e d

An Act relating to the reciprocal enforcement of judgments from other jurisdictions, and for related purposes.

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

PART 1
PRELIMINARY

Short title and commencement

1. This Act may be cited as the Foreign Judgments Act 2005 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

Interpretation

2. In this Act, unless the contrary intention appears—

“action *in personam*” does not include a matrimonial cause or proceedings in connection with —

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

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

“country” includes any region —

- (a) which is part of a foreign country;

(b) which is under the protection of a foreign country; or

(c) for whose international relations a foreign country is responsible;

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

“enforcement” means —

(a) where there is not an amount of money payable under the judgment, any mode of enforcement provided under any written law; or

(b) where there is an amount of money payable under the judgment, enforcement by execution;

“judgment” means —

(a) a final or interlocutory judgment or order given or made by a court in civil proceedings; or

(b) 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”, in relation to a judgment, means the person in whose favour the judgment was given (whether or not a sum of money is payable under the judgment), and includes a person in whom the rights under the judgment have become vested by succession, assignment or otherwise;

“judgment debtor”, in relation to a judgment, means the person against whom the judgment was given (whether or not a sum of money is payable under the judgment), and includes a person against whom the judgment is enforceable under the law of the original court;

“money judgment” means a judgment under which money is payable;

“non-money judgment” means a judgment that is not a money judgment;

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

“recognised court”, in relation to any judgment, means any court specified in an order made under section 3(1) for the purposes of section 3(2)(a) in respect of such a judgment.

“registered judgment” means a judgment registered under section 4;

“registering court”, in relation to any judgment, means the court to which application to register the judgment is made or by which the judgment is registered;

“registration” means registration under Part 2;

“Singapore court” means a court in Singapore.

PART 2 RECIPROCAL ENFORCEMENT OF JUDGMENTS

Application of this Part on the basis of reciprocity of treatment

3.—(1) If the Minister is satisfied that, in the event of the benefits conferred by this Part being applied to all or some judgments given in courts of a country, substantial reciprocity of treatment will be assured in relation to the enforcement in that country of similar judgments given in similar Singapore courts, he may by order in the *Gazette* provide that this Part applies to such judgments given in the courts of that country as are specified in the order.

(2) Orders made for the purposes of subsection (1) shall provide for the kinds of judgments to which this Part applies by specifying —

- (a) the courts in which such judgments are given;
- (b) the kinds of judgments; and
- (c) in the case of non-money judgments, the kinds of proceedings in which such non-money judgments are given.

(3) This Part shall not apply to a money judgment unless the money judgment is final and conclusive.

(4) For the purposes of subsection (3), a money judgment is taken to be final and conclusive even though —

- (a) an appeal may be pending against it; or
- (b) it may still be subject to appeal,

in the courts of the country of the original court.

(5) This Part does not apply to a judgment given by a recognised court on appeal from a judgment given by another court that is not a recognised court.

Application for, and effect of, registration of foreign judgments

4.—(1) A judgment creditor under a judgment to which this Part applies may apply to the appropriate court at any time within 6 years after —

- (a) the date of the judgment; or

- (b) where there have been proceedings by way of appeal against the judgment, the date of the last judgment in those proceedings,
- to have the judgment registered in the court.
- (2) For the purposes of subsection (1), the appropriate court —
- (a) shall be the High Court or the District Court if —
- (i) the judgment is a money judgment; and
- (ii) the amount for which the judgment is to be registered (excluding the amount referred to in subsection (10)(a)) does not exceed the District Court limit; or
- (b) shall be the High Court in any other case.
- (3) Subject to this Act and to proof of any prescribed matters, if an application is made under this section to the appropriate court —
- (a) in respect of a money judgment, the court shall order the judgment to be registered;
- (b) in respect of a non-money judgment, the court may order the judgment to be registered if in all the circumstances of the case the court thinks it is just and convenient that the judgment should be enforced in Singapore.
- (4) A judgment shall not be registered under this section if at the date of the application the judgment —
- (a) has been wholly satisfied; or
- (b) could not be enforced in the country of the original court.
- (5) A non-money judgment shall not be registered under this section if at the date of the application any of the grounds for setting aside a judgment referred to in section 5(2)(a) exist in respect of that judgment.
- (6) Subject to sections 5 and 13 —
- (a) a registered judgment has, for the purposes of enforcement, the same force and effect;
- (b) proceedings may be taken on a registered judgment;
- (c) the amount for which a judgment is registered carries interest; and
- (d) the registering court has the same control over the enforcement of a registered judgment,
- as if the judgment had been originally given in the court in which it is registered and

entered on the date of registration.

(7) Action is not to be taken to enforce a registered judgment —

- (a) during the prescribed period in which a party may apply to have the registration of the judgment set aside; or
- (b) where such an application has been made, until after the application has been finally determined.

(8) If, on the day 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 amount payable under the judgment of the original court, but only in respect of the balance remaining payable on that day.

(9) If, on an application to a court for the registration of a judgment, it appears to the 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.

(10) A judgment registered under this section shall be registered for —

- (a) the reasonable costs of and incidental to registration, including the cost of obtaining a certified copy of the judgment from the original court; and
- (b) where an amount of money is payable under the judgment, any interest which, by the law of the country of the original court, becomes due under the judgment up to the time of registration.

Setting aside registration of judgment

5.—(1) A party against whom a registered judgment is enforceable, or would be enforceable but for an order under section 6, may apply to the registering court to have the registration of the judgment set aside.

(2) Where an application has been made under subsection (1), the court —

- (a) must set the registration of that judgment aside if it is satisfied that —
 - (i) the judgment is not, or has ceased to be, a judgment to which this Part applies;
 - (ii) the judgment was registered for an amount greater than the amount payable under it at the date of registration;
 - (iii) the judgment was registered in contravention of this Act;

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- (iv) the courts of the country of the original court had no jurisdiction in the circumstances of the case;
 - (v) the judgment debtor, being the defendant in the proceedings in the original court, did not (whether or not process had been duly served on the judgment debtor in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable the judgment debtor to defend the proceedings and did not appear;
 - (vi) the judgment was obtained by fraud;
 - (vii) the judgment has been reversed on appeal or otherwise set aside in the courts of the country of the original court;
 - (viii) the rights under the judgment are not vested in the person by whom the application for registration was made;
 - (ix) the judgment has been discharged;
 - (x) the judgment has been wholly satisfied;
 - (xi) notice of registration of the judgment has not been served on the judgment debtor in accordance with the Rules of Court; or
 - (xii) the enforcement of the judgment would be contrary to public policy; or
- (b) may set the registration of the judgment aside if it is satisfied that the matter in dispute in the proceedings in the original court had before the date of the judgment in the original court been the subject of a final and conclusive judgment by any other court having jurisdiction in the matter.

(3) For the purposes of paragraphs (a)(iv) and (b) of subsection (2) and subject to subsection (4), the courts of the country of the original court are taken 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 was a defendant in the original court and had agreed, in respect of the subject matter of the proceedings, before the proceedings commenced, to submit to the jurisdiction of that court or of the courts of the country of that court;
 - (iv) if the judgment debtor was a defendant in the original court and, at the time when the proceedings were instituted, resided in, or (being a body corporate) had its principal place of business in, the country of that court;

or

- (v) if the judgment debtor was a defendant in the original court and the proceedings in that court were in respect of a transaction effected through or at an office or place of business that the judgment debtor had in the country of that court; or
- (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; or
- (c) in the case of a judgment given in an action other than an action of the kind referred to in paragraph (a) or (b), if the jurisdiction of the original court is recognised by the law in force in Singapore.

(4) Notwithstanding subsection (3), the courts of the country of the original court are not taken to have had jurisdiction —

- (a) if the subject matter of the proceedings was immovable property situated outside the country of the original court;
- (b) except in the cases referred to in paragraphs (a)(i), (a)(ii), (a)(iii) and (c) of subsection (3), if the bringing of the proceedings in the country of 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.

(5) For the purposes of subsection (3)(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
- (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:
 - (i) protecting, or obtaining the release of —
 - (A) property seized, or threatened with seizure, in the proceedings; or
 - (B) property subject to an order restraining its disposition or disposal;
 - (ii) contesting the jurisdiction of the court;
 - (iii) inviting the court in its discretion not to exercise its jurisdiction in the proceedings.

(6) Subsections (3) and (4) shall apply to the other court referred to in subsection (2)(b) as if a reference to the original court were a reference to such other court.

Stay of enforcement of a registered judgment

6.—(1) If the registering court is satisfied that the judgment debtor has appealed, or is entitled and intends to appeal, against the judgment, the court may order that enforcement of the judgment be stayed until a specified day or for a specified period.

(2) If the registering court makes an order on the ground that the person is entitled and intends to appeal against the judgment, the court shall require the person, as a condition of the order, to bring the appeal by a specified day or within a specified period.

(3) Every order shall be made on the condition that the judgment debtor pursues the appeal in an expeditious manner.

(4) An order may be made on such other conditions, including conditions relating to giving security, as the registering court thinks fit.

Re-registration of certain registered judgments which have been set aside

7.—(1) If the registration of a judgment is set aside under section 5(2)(a)(ii), the registering court shall, on the application of the judgment creditor, order that the judgment be registered in respect of the amount payable under the judgment at the date of the application.

(2) If the registration of a judgment has been set aside under section 5(2)(a)(iii) solely because it was not at the date of the application for registration enforceable in the country of the original court, the setting aside of the registration does not prejudice a further application to register the judgment if and when the judgment becomes enforceable in that country.

Registrable judgments not to be otherwise enforceable

8. No proceedings for the recovery of an amount payable under a judgment to which this Part applies, other than proceedings by way of registration of the judgment, are to be entertained by a Singapore court.

No registration of judgments for taxes, fines, penalties etc.

9. Nothing in this Act shall allow the registration of judgments in respect of taxes or other charges of a like nature, a fine or other penalty or rights, privileges or immunities arising out of a public law or founded upon an act of State.

Appeal

10. Notwithstanding section 29A of the Supreme Court of Judicature Act (Cap. 322), there shall be no appeal to the Court of Appeal from a judgment or order of the High Court made on appeal from a judgment or order made by a District Court to register a judgment or to refuse to register a judgment or to set aside the registration of a judgment under this Act.

PART 3 MISCELLANEOUS

Judgments to which Part 2 does not apply

11.—(1) For the purposes of proceedings brought in Singapore for the recovery of an amount payable under a judgment given in an action *in personam* by a court of a country, not being a judgment to which Part 2 applies, the court is not taken to have had jurisdiction to give the judgment merely because the judgment debtor (only for one or more of the purposes listed in subsection (2)) —

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

(2) The purposes referred to in subsection (1) are:

- (a) 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;
- (b) contesting the jurisdiction of the court;
- (c) inviting the court in its discretion not to exercise its jurisdiction in the proceedings.

General effect of certain judgments

12.—(1) Subject to this section, a judgment to which Part 2 applies, or would have applied if it were a money judgment, whether or not it is, or can be, registered, shall be recognised in any Singapore court 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 to —

- (a) a judgment that has been registered, the registration of which has been set aside under section 5(2)(a)(iv), (v), (vi), (vii) or (xii); or

- (b) a judgment (whether registrable or not) that has not been registered, the registration of which would, if it were registered, have been set aside under one or more of the provisions referred to in paragraph (a).

(3) Nothing in this section prevents any Singapore court from recognising a judgment as conclusive of any matter of law or fact decided in the judgment if that judgment would be recognised as conclusive under the common law.

Registered judgments cease to be enforceable in certain circumstances

13.—(1) If, because of the amendment or repeal of orders made for the purposes of section 3(1), a judgment ceases to be a judgment to which Part 2 applies, the judgment ceases to be enforceable under this Act, whether or not the judgment was registered before the amendment or repeal of the orders came into force.

(2) Subsection (1) does not apply to judgments —

- (a) that are registered under this Act or in respect of which applications for registration under this Act have been made; and
- (b) that are specified, in the order effecting the amendment or repeal, not to be judgments to which subsection (1) applies.

Issue of certificates of judgments obtained in Singapore courts

14.—(1) Subject to this section, where an application is duly made by a judgment creditor who wishes to enforce in a country a judgment that has been given in a Singapore court, the court shall issue to the judgment creditor —

- (a) a certified copy of the judgment; and
- (b) a certificate with respect to the judgment containing such particulars, including —
 - (i) the causes of action to which the judgment relates; and
 - (ii) the rate of interest (if any) payable on any amount payable under the judgment,

as may be prescribed.

(2) An application shall not be made until the expiration of any stay of enforcement of the judgment in question.

(3) Nothing in subsection (1) prevents a fee being imposed in respect of the issue of documents referred to in that subsection.

Rules of Court

15.—(1) Subject to this section, the power to make Rules of Court under section 80 of the Supreme Court of Judicature Act (Cap. 322) shall include power to make rules for the following purposes:

- (a) making provision with respect to the giving of security for costs by a person applying for registration of a judgment;
- (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) prescribing the period within which an application to set aside the registration of a judgment may be made or providing for the extension of such a period;
- (e) relating to the method of determining a question arising under this Act as to —
 - (i) whether a judgment given in a country in relation to which this Part extends can be enforced in the country of the original court; or
 - (ii) what interest is payable under a judgment under the law of the original court;
- (f) prescribing fees in respect of any proceedings under this Act;
- (g) conferring on the registrar of the court all or any of the jurisdiction or powers conferred by this Act on the court;
- (h) providing that the court may grant interim relief in respect of judgments to which Part 2 applies, whether registered or not;
- (i) providing transitional provisions (in addition to section 17) in relation to judgments that have been registered under the Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 264) and the Reciprocal Enforcement of Foreign Judgments Act (Cap. 265) or in respect of which applications for registration under any of those Acts have been made;
- (j) prescribing any matter required or permitted to be prescribed for carrying out or giving effect to this Act.

(2) Such rules 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 orders to be necessary for giving effect to agreements between the Minister and the foreign countries in relation to matters with respect to which there is power to make rules.

(3) For the purposes of this subsection (1)(g), “registrar of the court” means —

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- (a) in relation to proceedings in the District Court, the registrar of the subordinate courts within the meaning of the Subordinate Courts Act (Cap. 321); and
- (b) in relation to proceedings in the High Court, the Registrar of the Supreme Court within the meaning of the Supreme Court of Judicature Act (Cap. 322).

Repeal

16. The Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 264) and the Reciprocal Enforcement of Foreign Judgments Act (Cap. 265) are repealed.

Transitional provisions

17.—(1) This Act shall not apply to any judgment —

- (a) that has been registered under the Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 264) or the Reciprocal Enforcement of Foreign Judgments Act (Cap. 265) before the commencement of this Act; or
- (b) in respect of which an application for registration under either of those Acts has been made before the commencement of this Act.

(2) Notwithstanding the repeal of the Reciprocal Enforcement of Commonwealth Judgments Act and the Reciprocal Enforcement of Foreign Judgments Act, those Acts (including section 11 of the Reciprocal Enforcement of Foreign Judgments Act) shall apply to a judgment referred to in subsection (1) as if this Act had not been enacted.

T:\Foreign Judgments Act\Foreign Judgements Bill.1 (5.7.05)

Annex B. Incomplete List of Registration Schemes of the Commonwealth

1920 scheme only

Bahamas

Malta

Malawi

Trinidad and Tobago

1933 scheme only

Australia

Malaysia

New Zealand

Tanzania

1920 and 1933 schemes

Fiji

Jamaica

Kenya

Mauritius

Nigeria

Singapore

Sri Lanka

Uganda

UK

Others

India

Pakistan

Annex C. Reciprocal Enforcement of Commonwealth Judgments Act

RECIPROCAL ENFORCEMENT OF COMMONWEALTH JUDGMENTS ACT (CHAPTER 264, 1985 REV ED)

An Act to facilitate the reciprocal enforcement of judgments and awards in Singapore and other parts of the Commonwealth.

[6th January 1921]

Arrangement of Provisions

- 1 Short title.
- 2 Interpretation.
- 3 Registration in Singapore of judgments obtained in superior courts in the United Kingdom.
- 4 Issue of certificates of judgments obtained in Singapore.
- 5 Extension of this Act.
- 6 Power to make rules.

Actual Provisions

Reciprocal Enforcement of Commonwealth Judgments Act (Chapter 264)

An Act to facilitate the reciprocal enforcement of judgments and awards in Singapore and other parts of the Commonwealth.

[6th January 1921]

Short title.

1. This Act may be cited as the Reciprocal Enforcement of Commonwealth Judgments Act.

Interpretation.

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

“judgment” means any judgment or order given or made by a court in any civil proceedings, whether before or after the passing of this Act, whereby any sum of money is made payable, and includes an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place;

“judgment creditor” means the person by whom the judgment was obtained, and includes the successors and assigns of that person;

“judgment debtor” means the person against whom the judgment was given, and includes any person against whom the judgment is enforceable in the place where it was given;

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

“registering court” , in relation to any judgment, means the court to which application to register a judgment is made or by which a judgment has been registered.

(2) Subject to Rules of Court, any of the powers conferred by this Act on any court may be exercised by a judge of the court.

Registration in Singapore of judgments obtained in superior courts in the United Kingdom.

3. —(1) Where a judgment has been obtained in a superior court of the United Kingdom of Great Britain and Northern Ireland the judgment creditor may apply to the High Court at any time within 12 months after the date of the judgment, or such longer period as may be allowed by the Court, to have the judgment registered in the Court, and on any such application the High Court may, if in all the circumstances of the case it thinks it is just and convenient that the judgment should be enforced in Singapore, and subject to this section, order the judgment to be registered accordingly.

Restrictions on registration.

(2) No judgment shall be ordered to be registered under this section if —

- (a) the original court acted without jurisdiction;
- (b) the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court;
- (c) the judgment debtor, being the defendant in the proceedings, was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that court or agreed to submit to the jurisdiction of that court;
- (d) the judgment was obtained by fraud;
- (e) the judgment debtor satisfies the registering court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment; or

- (f) the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court.

(3) Where a judgment is registered under this section —

- (a) the judgment shall, as from the date of registration, be of the same force and effect, and proceedings may be taken thereon, as if it had been a judgment originally obtained or entered upon the date of registration in the registering court;
- (b) the registering court shall have the same control and jurisdiction over the judgment as it has over similar judgments given by itself, but in so far only as relates to execution under this section;
- (c) the reasonable costs of and incidental to the registration of the judgment (including the costs of obtaining a certified copy thereof from the original court and of the application for registration) shall be recoverable in like manner as if they were sums payable under the judgment.

(4) The Judges of the Supreme Court or any 3 of them of whom the Chief Justice shall be one shall provide by rules —

- (a) for service on the judgment debtor of notice of the registration of a judgment under this section;
- (b) for enabling the High Court on an application by the judgment debtor to set aside the registration of a judgment under this section on such terms as the Court thinks fit; and
- (c) for suspending the execution of a judgment registered under this section until the expiration of the period during which the judgment debtor may apply to have the registration set aside.

(5) In any action brought in the High Court on any judgment which might be ordered to be registered under this section, the plaintiff shall not be entitled to recover any costs of the action unless an application to register the judgment under this section has previously been refused, or unless the Court otherwise orders.

Issue of certificates of judgments obtained in Singapore.

4. Where a judgment has been obtained in the High Court against any person the Court shall, on an application made by the judgment creditor and on proof that the judgment debtor is resident in the United Kingdom of Great Britain and Northern Ireland, issue to the judgment creditor a certified copy of the judgment.

Extension of this Act.

5. —(1) When the Minister is satisfied that reciprocal provisions have been made by the legislature of any part of the Commonwealth outside the United Kingdom for the enforcement within that part of the Commonwealth of judgments obtained in the High Court of Singapore the Minister may declare by notification published in the *Gazette* that this Act shall extend to judgments obtained in a superior court in that part of the Commonwealth in the like manner as it extends to judgments obtained in a superior court in the United Kingdom and on any such declaration being made this Act shall extend accordingly.

(2) For the purposes of this section such courts of that part of the Commonwealth as are specified in the notification shall be deemed to be superior courts of that part of the Commonwealth.

Power to make rules.

6. The Judges of the Supreme Court or any 3 of them of whom the Chief Justice shall be one may by rules regulate the practice and procedure, including scales of fees, and evidence, in respect of proceedings of any kind under this Act.

Annex D. Reciprocal Enforcement of Foreign Judgments Act

RECIPROCAL ENFORCEMENT OF FOREIGN JUDGMENTS ACT (CHAPTER 265, 2001 REV ED)

An Act to make provision for the enforcement in Singapore of judgments and awards given in foreign countries which afford reciprocal treatment to judgments given in Singapore, for facilitating the enforcement in foreign countries of judgments given in Singapore and for matters connected therewith.

[26th March 1959]

Arrangement of Provisions

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- 4 Application for, and effect of, registration of foreign judgment
- 5 Cases in which registered judgments must or may be set aside
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PART II APPLICATION TO COMMONWEALTH COUNTRIES

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PART III MISCELLANEOUS AND GENERAL

- 11 General effect of certain foreign judgments

- 12 Power to make foreign judgments unenforceable in Singapore if no reciprocity
- 13 Issue of certificates of judgments obtained in Singapore

Actual Provisions

Reciprocal Enforcement of Foreign Judgments Act (Chapter 265)

An Act to make provision for the enforcement in Singapore of judgments and awards given in foreign countries which afford reciprocal treatment to judgments given in Singapore, for facilitating the enforcement in foreign countries of judgments given in Singapore and for matters connected therewith.

[26th March 1959]

PART I REGISTRATION OF FOREIGN JUDGMENTS

Short title.

1. This Act may be cited as the Reciprocal Enforcement of Foreign Judgments 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 stay of execution;

“country” includes a territory;

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

“foreign country” means any country outside Singapore which is not part of the Commonwealth;

“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;

“prescribed” means prescribed by Rules of Court;

“registration” means registration under Part I and “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.

[2/99]

(2) For the purposes 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:

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

(3) Subject to Rules of Court, any of the powers conferred by this Act on any court may be exercised by a judge of the court.

Power to extend Part I to foreign countries giving reciprocal treatment.

3. —(1) The Minister, 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 foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of judgments given in the High Court of Singapore, may by order published in the *Gazette* direct —

- (a) that this Part shall extend to that foreign country; 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 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 —

Enforcement of Foreign Judgments

- (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.

[S 227/95]

(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) An order directing that this Part shall extend to a foreign country may provide that the order shall come into operation before, on or after 25th February 1999.

[2/99]

(5) The Minister may by a subsequent order published in the *Gazette* 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 High Court at any time —

- (a) within 6 years after the date of the judgment; or
- (b) 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.

(2) On an application under subsection (1), the court shall, subject to proof of the prescribed matters and to the provisions of this Act, order the judgment to be registered.

(3) A judgment shall not be registered under this section 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 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;

- (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.

(5) 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 application is made, until after the application has been finally determined.

(6) 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 the date.

(7) 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.

(8) 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.

[34/92]

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

5. —(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 sections 3 and 4;
 - (ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case;

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- (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 judgment 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 before 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* —
 - (i) if the judgment debtor, being a defendant in the proceedings 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) if the judgment debtor was a plaintiff, or counterclaimed, in the proceedings in the original court;
 - (iii) if the judgment debtor, being a defendant in the proceedings 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 proceedings in the original court, was at the time when the proceedings were instituted resident, 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 proceedings 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 any such action as is mentioned in paragraph (a) or (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;
- (b) except in the cases mentioned in subsection (2) (a) (i), (ii) and (iii) and (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 judgment debtor, being a defendant in the proceedings in the original court, 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.

Power of registering court on application to set aside registration.

6. —(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 —

- (a) set aside the registration; or
- (b) 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.

7. —(1) 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 any court in Singapore.

[2/99]

(2) Where the date of coming into operation of the relevant order is before the date it is published in the *Gazette*, subsection (1) shall apply only to proceedings commenced in any court in Singapore on or after the date the relevant order is published in the *Gazette*.

[2/99]

(3) In subsection (2), “relevant order” means the order made under section 3 by virtue of which the foreign judgment is a judgment to which this Part applies.

[2/99]

Rules of Court.

8. —(1) Subject to this section, the power to make Rules of Court under section 80 of the Supreme Court of Judicature Act (Cap. 322) shall include power to make rules for 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; and
- (f) for prescribing any matter which under this Part is to be prescribed.

(2) Such rules 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 orders to be necessary for giving effect to agreements made between the Minister and the foreign countries in relation to matters with respect to which there is power to make the rules.

PART II

APPLICATION TO COMMONWEALTH COUNTRIES

Power to apply Part I to Commonwealth.

9. —(1) The Minister may by order published in the *Gazette* direct that Part I shall apply to the Commonwealth and to judgments obtained in the Commonwealth as it applies to foreign countries and to judgments obtained in the courts of foreign countries.

(2) If the Minister has directed under subsection (1), this Act shall have effect accordingly and the Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 264) shall cease to have effect except in relation to any part of the Commonwealth to which that Act extends at the date of the order.

(3) If at any time after the Minister has directed under subsection (1), an order is made under section 3 extending Part I to any part of the Commonwealth to which the Reciprocal Enforcement of Commonwealth Judgments Act applies, that Act shall cease to have effect in relation to that part of the Commonwealth.

Modification of this Act in relation to Commonwealth.

10. Where an order is made under section 3 extending Part I to a part of the Commonwealth to which the Reciprocal Enforcement of Commonwealth Judgments Act (Cap. 264) applies, Part I shall in relation to that part of the Commonwealth have effect as if —

- (a) the expression “judgment” included an award in proceedings on an arbitration if the award has in pursuance of the law in force in the place where it was made become enforceable in the same manner as a judgment given by a court in that place;
- (b) the fact that a judgment was given before the coming into operation of the order did not prevent it from being a judgment to which Part I applies, but the time limited for the registration of a judgment were, in the case of the judgment so given, 12 months from the date of judgment or such longer period as may be allowed by the High Court; and

- (c) any judgment registered in the High Court under the Reciprocal Enforcement of Commonwealth Judgments Act before the coming into operation of the order had been registered in the High Court under Part I and anything done in relation thereto under the Reciprocal Enforcement of Commonwealth Judgments Act or any Rules of Court or other provisions applicable to that Act had been done under Part I or the corresponding Rules of Court or other provisions applicable to that Part.

PART III MISCELLANEOUS AND GENERAL

General effect of certain foreign judgments.

11. —(1) Subject to this section, a judgment to which Part I applies or would have applied if a sum of money had been payable thereunder, whether or not it can be or is registered, shall be recognised in any court in Singapore 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 counterclaim 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;
 - (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 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 Singapore recognising any judgment as conclusive of any matter of law or fact decided therein if that judgment would have been so recognised before 21st March 1959.

Power to make foreign judgments unenforceable in Singapore if no reciprocity.

12. —(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 of Singapore is substantially less favourable than that accorded by the courts of Singapore 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 Singapore for the recovery of any sum alleged to be payable under judgment given in a court of a country to which this section applies.

(3) The Minister may by a subsequent order vary or revoke any order previously made under this section.

Issue of certificates of judgments obtained in Singapore.

13. —(1) 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 foreign country or in a part of the Commonwealth 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 prescribed, 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.

(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 subsection (1) with respect to the judgment until the expiration of that period.

Annex E. Australia Foreign Judgments Act 1991

Foreign Judgments Act 1991

Act No. 112 of 1991 as amended

Consolidated as in force on 25 October 1999

(includes amendments up to Act No. 125 of 1999)

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- 5 Application of this Part on the basis of reciprocity of treatment
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TRANSITIONAL PROVISIONS.**

- 18 Registration of judgments recognised under State or Territory law
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**PART 5
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- 21 Amendment of the Foreign Proceedings (Excess of Jurisdiction) Act 1984
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Actual Provisions

An Act relating to the enforcement of foreign judgments in the Commonwealth, and for related purposes

**PART 1
PRELIMINARY.**

1 Short title.

This Act may be cited as the Foreign Judgments Act 1991.

2 Commencement.

(1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.

(2) Section 21 commences at the end of 4 months after the day on which this Act receives the Royal Assent.

3 Interpretation.

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

action *in personam* does not include a matrimonial cause or proceedings in connection with:

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

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 means a foreign country, and includes any region:

- (a) which is part of a foreign country; or
- (b) which is under the protection of a foreign country; or
- (c) for whose international relations a foreign country is responsible.

country of the original court means the country in which the original court is situated.

enforceable money judgment means a money judgment under which is payable:

- (a) an amount of money, other than (except as mentioned in paragraphs (b) and (c)) an amount payable in respect of:
 - (i) taxes or other charges of a similar nature; or
 - (ii) a fine or other penalty; or
- (b) an amount of money payable in respect of New Zealand tax; or
- (c) an amount of money payable in respect of recoverable Papua New Guinea income tax.

enforcement means:

- (a) where there is not an amount of money payable under the judgment, enforcement by:
 - (i) attachment; or
 - (ii) committal; or
 - (iii) fine; or
 - (iv) sequestration; or

Enforcement of Foreign Judgments

- (b) where there is an amount of money payable under the judgment, enforcement by execution.

judgment means:

- (a) a final or interlocutory judgment or order given or made by a court in civil proceedings; or
- (b) 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; or
- (c) an award (other than an award given in a dispute of a kind referred to in paragraph 34(a) of the International Arbitration Act 1974 or an award that may be enforced under subsection 35(2) of that Act) in proceedings on an arbitration conducted in, and under the law applying in, a country, being an award that has become enforceable in a court of that country in the same manner as a judgment or order given by that court.

judgment creditor, in relation to a judgment, means the person in whose favour the judgment was given, (whether or not a sum of money is payable under the judgment) and includes a person in whom the rights under the judgment have become vested by succession, assignment or otherwise.

judgment debtor, in relation to a judgment, means the person against whom the judgment was given, (whether or not a sum of money is payable under the judgment) and includes a person against whom the judgment is enforceable under the law of the original court.

money judgment means a judgment under which money is payable.

New Zealand tax means tax or other charge of a similar nature payable under the laws of New Zealand, and includes additional or other tax payable, by way of penalty, interest or otherwise, because of a contravention of any of those laws or of a requirement made under any of those laws.

non-money judgment means a judgment that is not a money judgment.

non-recoverable tax means tax that is not New Zealand tax or recoverable Papua New Guinea income tax.

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

recoverable Papua New Guinea income 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 of any of those laws or of a requirement made under any of those laws; or
- (b) tax of a class or description prescribed for the purposes of subsection (2).

registered judgment means a judgment registered under section 6.

Registrar, in relation to a court, means the person who holds, in relation to that court, the office of, or the office equivalent to the office of, Registrar or Clerk.

registration means registration under Part 2.

Rules of Court means rules duly made by the Supreme Court of a State or Territory or the Federal Court of Australia.

(2) The regulations may provide that a specified tax, or a tax included in a specified class of taxes, payable under the laws of Papua New Guinea is not a recoverable Papua New Guinea income tax.

(3) Regulations are not to be made in relation to a tax or class of taxes unless the Governor-General is satisfied that the tax, or each tax included in the class, is not properly a tax on income.

(4) For the purposes of this Act, an award of a kind to which paragraph (c) of the definition of judgment in subsection (1) applies is taken to be a judgment of the court, referred to in that paragraph, in which the award has become enforceable.

4 External Territories.

This Act extends to each external Territory.

PART 2 RECIPROCAL ENFORCEMENT OF JUDGMENTS.

5 Application of this Part on the basis of reciprocity of treatment.

(1) If the Governor-General is satisfied that, in the event of the benefits conferred by this Part being applied to money judgments given in the superior courts of a country, substantial reciprocity of treatment will be assured in relation to the enforcement in that country of money judgments given in all Australian superior courts, the regulations may provide that this Part extends in relation to that country.

(2) A specified court of such a country is taken to be a superior court for the purposes of this Act if the regulations so provide, but a failure so to provide in relation to a particular court is not taken to imply that the court is not a superior court for the purposes of this Act.

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(3) If the Governor-General is satisfied that, in the event of the benefits conferred by this Part being applied to money judgments given in all or some inferior courts of such a country, substantial reciprocity of treatment will be assured in relation to the enforcement in that country of money judgments given in all or some Australian inferior courts, the regulations may provide that this Part extends in relation to specified inferior courts of that country.

(4) This Part applies to an enforceable money judgment that:

- (a) is final and conclusive; and
- (b) was given in:
 - (i) a superior court of a country in relation to which this Part extends; or
 - (ii) an inferior court of such a country, being an inferior court in relation to which this Part extends.

(5) For the purposes of paragraph (4)(a), a judgment is taken to be final and conclusive even though:

- (a) an appeal may be pending against it; or
 - (b) it may still be subject to appeal;
- in the courts of the country of the original court.

(6) If the Governor-General is satisfied that, in the event of the benefits conferred by this Part being applied to all or some non-money judgments given in courts of a country in relation to which this Part extends, substantial reciprocity of treatment will be assured in relation to the enforcement in that country of all or some non-money judgments given in Australian courts, the regulations may provide that this Part applies to such non-money judgments, given in the courts of that country, as are prescribed.

(7) Regulations made for the purposes of subsection (6) must provide for the kinds of non-money judgments, given in the courts of a country, to which this Part applies by specifying or describing:

- (a) the courts in which such non-money judgments are given; and
- (b) the kinds of proceedings in which such non-money judgments are given; and
- (c) the kinds of non-money judgments.

(8) This Part does not apply to:

- (a) a money judgment given by a superior court of a country before the day on which the regulations extend this Part in relation to that country; or
- (b) a money judgment given by an inferior court before the day on which the regulations extend this Part in relation to that court; or

- (c) a non-money judgment of a particular kind given in a court in proceedings of a particular kind before the day on which the regulations apply this Part to non-money judgments of that kind given in that court in proceedings of that kind;

unless:

- (d) the judgment was given by a court of New Zealand or the United Kingdom; or
- (e) the judgment was, immediately before that day, registrable in the Supreme Court of a State or Territory under a law of that State or Territory.

(9) This Part does not apply to a judgment given by a superior court on appeal from a judgment given by an inferior court, unless the judgment of the inferior court is a judgment to which this Part applies.

(10) This Part does not apply to a judgment given in a proceeding, or a part of a proceeding, in which a matter for determination arises under section 36A, 98H or 99A of the Commerce Act 1986 of New Zealand.

6 Application for, and effect of, registration of foreign judgments.

(1) A judgment creditor under a judgment to which this Part applies may apply to the appropriate court at any time within 6 years after:

- (a) the date of the judgment; or
- (b) where there have been proceedings by way of appeal against the judgment, the date of the last judgment in those proceedings;

to have the judgment registered in the court.

(2) For the purposes of subsection (1), the appropriate court is:

- (a) if the judgment is a money judgment and was given in proceedings in which a matter for determination arises under the Commerce Act 1986 of New Zealand (other than proceedings in which a matter for determination arises under section 36A, 98H or 99A of that Act)—the Federal Court of Australia or the Supreme Court of a State or Territory; or
- (b) if the judgment is not a money judgment and was given in such proceedings—the Federal Court of Australia; or
- (c) in any other case—the Supreme Court of a State or Territory.

(3) Subject to this Act and to proof of the matters prescribed by the applicable Rules of Court, if an application is made under this section, the Supreme Court of a State or Territory or the Federal Court of Australia is to order the judgment to be registered.

(4) The court's order must state the period within which an application may be made under section 7 to have the registration of the judgment set aside.

(5) The court may, by order, extend the period within which such an application may be made.

(6) A judgment is not to be registered if at the date of the application:

- (a) it has been wholly satisfied; or
- (b) it could not be enforced in the country of the original court.

(7) Subject to sections 7 and 14:

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

as if the judgment had been originally given in the court in which it is registered and entered on the date of registration.

(8) A judgment registered under this section in the Supreme Court of a State or Territory is registrable in the Supreme Court of any other State or Territory under Part 6 of the Service and Execution of Process Act 1992 as if the judgment had been originally given in the first-mentioned Supreme Court and entered on the day of registration.

(9) Subsection (8) does not apply if an order has been made under section 8 that enforcement of the judgment be stayed.

(10) Action is not to be taken to enforce a registered judgment:

- (a) during the period fixed under subsection (4) (including any extensions of that period under subsection (5)) as the period during which a party may apply to have the registration of the judgment set aside; or
- (b) where such an application has been made, until after the application has been finally determined.

(11) Subject to subsection (12), if the amount payable under a judgment that is to be registered is expressed in a currency other than Australian currency, the judgment is to be registered:

- (a) if the judgment creditor has stated in the application that the judgment creditor wishes the judgment to be registered in the currency in which it is expressed—in that currency; or

- (b) in any other case—as if it were for an equivalent amount in Australian currency, based on the rate of exchange prevailing on the second business day (the conversion day) before the day on which the application for registration is made.

(11A) For the purposes of paragraph (11)(b), the rate of exchange prevailing on the conversion day referred to in that paragraph is the average of the rates at which Australian dollars may be bought in the currency in which the judgment is expressed at:

- (a) 11 am; or
- (b) if another time is prescribed for the purposes of this subsection—that other time;

on that day from 3 authorised foreign exchange dealers selected by the judgment creditor.

(11B) The reference in paragraph (11)(b) to a business day is a reference to a day on which the authorised foreign exchange dealers selected by the judgment creditor as mentioned in subsection (11A) publish rates at which Australian dollars may be bought in the currency in which the judgment is expressed.

(12) If, on the day of the application for registration of a judgment, the judgment of the original court has been partly satisfied, the judgment is not to be registered in respect of the whole amount payable under the judgment of the original court, but only in respect of the balance remaining payable on that day.

(13) If, on an application to a court for the registration of a judgment, it appears to the 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.

(14) Without affecting the operation of subsection (13), where, on an application to a court for the registration of a judgment, it appears to the court that:

- (a) the judgment is in respect of an amount of money payable in respect of both recoverable Papua New Guinea income tax and non-recoverable tax; and
- (b) the judgment could have been registered if it had been in respect of recoverable Papua New Guinea income tax only;

the judgment may be registered in respect of the amount less so much as relates to non-recoverable tax.

(15) A judgment registered under this section is to be registered for:

- (a) the reasonable costs of and incidental to registration, including the cost of obtaining a certified copy of the judgment from the original court and the costs of obtaining from foreign exchange dealers evidence of the rates at which Australian dollars may be bought in the currency in which the judgment is expressed; and
- (b) where an amount of money is payable under the judgment—any interest which, by the law of the country of the original court, becomes due under the judgment up to the time of registration.

(16) In this section:

authorised foreign exchange dealer means a person authorised by a general authority issued by the Reserve Bank of Australia under regulation 38A of the Banking (Foreign Exchange) Regulations to buy and sell foreign currency.

7 Setting aside a registered judgment.

(1) A party against whom a registered judgment is enforceable, or would be enforceable but for an order under section 8, may seek to have the registration of the judgment set aside by duly applying to the court in which the judgment was registered, or (where applicable) a court in which the judgment was registered under Part 6 of the Service and Execution of Process Act 1992, to have the registration of the judgment set aside.

(2) Where a judgment debtor duly applies to have the registration of the judgment set aside, the court:

- (a) must set the registration of that judgment aside if it is satisfied:
 - (i) that the judgment is not, or has ceased to be, a judgment to which this Part applies; or
 - (ii) that the judgment was registered for an amount greater than the amount payable under it at the date of registration; or
 - (iii) that the judgment was registered in contravention of this Act; or
 - (iv) that the courts of the country of the original court had no jurisdiction in the circumstances of the case; or
 - (v) that the judgment debtor, being the defendant in the proceedings in the original court, did not (whether or not process had been duly served on the judgment debtor in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable the judgment debtor to defend the proceedings and did not appear; or
 - (vi) that the judgment was obtained by fraud; or

- (vii) that the judgment has been reversed on appeal or otherwise set aside in the courts of the country of the original court; or
 - (viii) that the rights under the judgment are not vested in the person by whom the application for registration was made; or
 - (ix) that the judgment has been discharged; or
 - (x) that the judgment has been wholly satisfied; or
 - (xi) that the enforcement of the judgment, not being a judgment under which an amount of money is payable in respect of New Zealand tax, would be contrary to public policy; or
- (b) may set the registration of the judgment aside if it is satisfied that the matter in dispute in the proceedings in the original court had before 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.
- (3) For the purposes of subparagraph (2)(a)(iv) and subject to subsection (4), the courts of the country of the original court are taken 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; 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 was a defendant in the original court and had agreed, in respect of the subject matter of the proceedings, before the proceedings commenced, to submit to the jurisdiction of that court or of the courts of the country of that court; or
 - (iv) if the judgment debtor was a defendant in the original court and, at the time when the proceedings were instituted, resided in, or (being a body corporate) had its principal place of business in, the country of that court; or
 - (v) if the judgment debtor was a defendant in the original court and the proceedings in that court were in respect of a transaction effected through or at an office or place of business that the judgment debtor had in the country of that court; or
 - (vi) if there is an amount of money payable in respect of New Zealand tax under the judgment; or
 - (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; or

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- (c) in the case of a judgment given in an action other than an action of the kind referred to in paragraph (a) or (b)—if the jurisdiction of the original court is recognised by the law in force in the State or Territory in which the judgment is registered.

(4) In spite of subsection (3), the courts of the country of the original court are not taken to have had jurisdiction:

- (a) if the subject matter of the proceedings was immovable property situated outside the country of the original court; or
- (b) except in the cases referred to in subparagraphs (3)(a)(i), (ii) and (iii) and paragraph (3)(c), if the bringing of the proceedings in the country of 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.

(5) For the purposes of subparagraph (3)(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
- (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.

(6) Where the registration of a judgment is set aside on an application to a court in which the judgment was registered under Part IV of the Service and Execution of Process Act 1901, the applicant must:

- (a) forthwith notify the Registrar of the court in which the judgment was registered under this Act of the order setting the judgment aside; and
- (b) within 7 days lodge a certified copy of the order in that court.

8 Stay of enforcement of a registered judgment.

(1) If the court in which a judgment is registered is satisfied that the judgment debtor has appealed, or is entitled and intends to appeal, against the judgment, the court may order that enforcement of the judgment be stayed pending the final determination of the appeal, until a specified day or for a specified period.

(2) If the court in which a judgment is registered makes an order on the ground that the person is entitled and intends to appeal against the judgment, the court must require the person, as a condition of the order, to bring the appeal by a specified day or within a specified period.

(3) Every order is to be made on the condition that the judgment debtor pursues the appeal in an expeditious manner.

(4) An order may be made or such other conditions, including conditions relating to giving security, as the court in which the judgment is registered thinks fit.

9 Re-registration of certain registered judgments which have been set aside.

(1) If the registration of a judgment is set aside under subparagraph 7(2)(a)(ii), the court in which the judgment was registered must, on the application of the judgment creditor, order that the judgment be registered in respect of the amount payable under the judgment at the date of the application.

(2) If the registration of a judgment has been set aside under subparagraph 7(2)(a)(iii) solely because it was not at the date of the application for registration enforceable in the country of the original court, the setting aside of the registration does not prejudice a further application to register the judgment if and when the judgment becomes enforceable in that country.

10 Registrable judgments not to be otherwise enforceable.

(1) No proceedings for the recovery of an amount payable under a judgment to which this Part applies, other than proceedings by way of registration of the judgment, are to be entertained by a court having jurisdiction in Australia.

(2) Nothing in this section affects the enforcement, under the International Arbitration Act 1974, of an award.

PART 3 MISCELLANEOUS.

11 Judgments to which Part 2 does not apply.

For the purposes of proceedings brought in Australia for the recovery of an amount payable under a judgment given in an action *in personam* by a court of a country, not being a judgment to which Part 2 applies, the court is not taken to have had jurisdiction to give the judgment merely because 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.

12 General effect of certain judgments.

(1) Subject to this section, a judgment to which Part 2 applies, or would have applied if it were a money judgment, must, whether or not it is, or can be, registered, be recognised in any Australian court 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 to:

- (a) a judgment that has been registered, the registration of which has been set aside under subparagraph 7(2)(a)(iv), (v), (vi), (vii) or (xi); or
- (b) a judgment (whether registrable or not) that has not been registered, the registration of which would, if it were registered, have been set aside under one or more of those subparagraphs.

(3) Nothing in this section prevents any Australian court from recognising a judgment as conclusive of any matter of law or fact decided in the judgment if that judgment would be recognised as conclusive under the common law.

13 Money judgments unenforceable if no reciprocity.

(1) If the Governor-General is satisfied that the treatment in respect of recognition and enforcement accorded by the courts of a country to money judgments given in Australian superior courts is substantially less favourable than that accorded by Australian superior courts to money judgments of the superior courts of that country, the regulations may provide that this section applies to that country.

(2) Except so far as regulations made for the purposes of subsection (1) provide, no proceedings are to be entertained in an Australian court for the recovery of an amount of money alleged to be payable under a judgment given in a country to which this section applies.

(3) Nothing in this section affects the enforcement, under the International Arbitration Act 1974, of an award.

14 Registered judgments cease to be enforceable in certain circumstances.

(1) If, because of regulations made for the purposes of subsection 3(2) or because of the amendment or repeal of regulations made for the purposes of subsection 5(1), (3), (6) or (7), a judgment ceases to be a judgment to which Part 2 applies, the judgment ceases to be enforceable under this Act, whether or not the judgment was registered before the amendment or repeal of the regulations came into force.

(2) Subsection (1) does not apply to judgments:

- (a) that are registered under this Act or in respect of which applications for registration under this Act have been made; and
- (b) that have ceased to be judgments to which Part 2 applies because of regulations made for the purposes of subsection 3(2); and
- (c) that are specified, in the regulation effecting the amendment or repeal, not to be judgments to which subsection (1) applies.

15 Issue of certificates of judgments obtained in Australian courts.

(1) Subject to this section, where an application is duly made by a judgment creditor who wishes to enforce in a country a judgment that has been given in an Australian court, the Registrar of the court must issue to the judgment creditor:

- (a) a certified copy of the judgment; and
- (b) a certificate with respect to the judgment containing such particulars, including:
 - (i) the causes of action to which the judgment relates; and
 - (ii) the rate of interest (if any) payable on any amount payable under the

judgment;

as are prescribed by the regulations or by Rules of Court.

(2) An application may not be made until the expiration of any stay of enforcement of the judgment in question.

(3) Nothing in subsection (1) prevents a fee being imposed in respect of the issue of documents referred to in that subsection.

16 Regulations.

The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act;

and, in particular, for and in relation to the practice and procedure of a superior court in proceedings under this Act.

17 Rules of Court.

(1) The power of an authority to make rules regulating the practice and procedure of a superior court extends to making any rules, not inconsistent with this Act or with any regulations made under this Act, prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act, including the following:

- (a) making provision with respect to the giving of security for costs by a person applying for registration of a judgment;
- (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 extension of the period within which an application may be made to have the registration of a judgment set aside;
- (e) relating to the method of determining a question arising under this Act as to:
 - (i) whether a judgment given in a country in relation to which this Part extends can be enforced in the country of the original court; or
 - (ii) what interest is payable under a judgment under the law of the original court.

(2) This section does not affect any power to make rules under any other law.

PART 4 TRANSITIONAL PROVISIONS.

18 Registration of judgments recognised under State or Territory law.

(1) Subject to this section, a judgment that:

- (a) is a judgment of a court of a country that is not a country prescribed for the purposes of subsection 5(1); and
- (b) but for the operation of this Act (other than section 19), would be registrable under the law of a State or Territory;

may be registered in the Supreme Court of that State or Territory.

(2) This section does not extend to the courts of countries that are prescribed for the purposes of this section.

(3) This section ceases to be in force at the end of 2 years, or such lesser period as is prescribed, after the day on which it commences.

19 Enforcement of judgments registered under State or Territory law after commencement of this Act.

A State or Territory law providing for the enforcement of judgments of courts of a country continues to apply, and this Act (other than this subsection) does not apply, after the commencement of this Act to judgments registered:

- (a) under that law before the commencement of this Act; or
- (b) under section 18 of this Act.

20 Rules of Court.

Rules of Court relating to the registration or enforcement, under the laws of a State or Territory, of judgments of the courts of a country apply, so far as they are capable of application and with necessary modifications and adaptations, to proceedings under this Act until:

- (a) the day on which Rules of Court are made under section 17 of this Act; or
- (b) the end of one year from the day on which this Act commences;

whichever is the earlier.

**PART 5
AMENDMENTS OF OTHER ACTS.**

- 21 Amendment of the Foreign Proceedings (Excess of Jurisdiction) Act 1984
- 22 Amendment of the Federal Court of Australia Act 1976

