

Enforcement of a Foreign Judgment



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Moderator

Michael Penman; Blaney McMurtry; Canada: Ontario

Panelists

*Daniel Polsenberg; Beckley Singleton; USA: Nevada
Jonathan Lloyd Jones; Blake Laphorn Linnell; England
Paul Hopkins; Carter Newell; Australia
Sebastian Fischer-Zernin; Weiss Walter Fischer-Zernin; Germany
Alberto De Orleans E Bragança; Xavier, Bernardes, Bragança,
Sociedade De Advogados; Brazil*

RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN CANADA

CHECKLIST OF POINTS TO CONSIDER

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**Prepared by
Michael J. Penman
Blaney McMurtry LLP
Barristers & Solicitors
2 Queen Street East
Suite 1500
Toronto, ON M5C 3G5**

**Tel: (416) 593-3966
mpenman@blaney.com**

**With assistance from
Attila Ataner
(Articling Student)**

INTRODUCTION

This paper will deal with recognition and enforcement of foreign judgments in all the provinces and territories of Canada other than the Province of Quebec, where the law is based on the Civil Code. For information regarding recognition and enforcement in Quebec, please contact Yves Robillard at Belanger Sauvé, the Montreal TAGLaw firm.

What follows are the analytic steps one must go through to determine:

- a) whether a foreign judgment is one that can be recognized and enforced (Step 1);
- b) if it is, whether it can be summarily enforced through reciprocal legislation (Step 2);
- c) if it cannot be so enforced, whether it can be recognized and enforced at common law (Step 3); and
- d) that, where neither recognition nor enforcement is available, the matter must be retried on its merits (Step 4).

STEP 1: What is the nature of the judgment sought to be recognized and enforced?

Basic rules in ordinary scenarios:

- (1) **Money judgment.** Subject to certain qualifications, a final judgment *in personam* made by a foreign court of competent jurisdiction for a fixed sum of money is capable of recognition and enforcement in the common law provinces of Canada. Traditionally, only money judgments have been enforceable.
- (2) **Injunctions, declarations or orders for specific performance.** In principle, at common law, foreign decrees granting injunctions and other equitable remedies, whether final, interim or interlocutory, are not entitled to enforcement in Canada, although they may render a matter *res judicata*. However, recently some courts and commentators have suggested that such decrees may be enforceable.
- (3) **Judgments based on penal or revenue laws.** Such judgments are generally still not enforceable in Canada, but this is an area that may be subject to challenge given the general trend towards increasing comity towards foreign courts.
- (4) **Foreign arbitral awards.** The enforcement of foreign arbitral awards in Canada is governed by the *New York Convention*, and can be enforced by application to domestic courts (Model Law Articles 35 and 36).

Basic rules in various special scenarios:

- (5) **Judgments *in rem* relating to personal property.** Such judgments will be recognized and enforced in the common law provinces of Canada if the personal property was situated in the territory of the foreign forum at the time of the commencement of proceedings.
- (6) **Judgments *in rem* relating to real property.** Such judgments will be recognized in the common law provinces of Canada if the property was situated in the territory of the foreign forum where judgment was given.
- (7) **Antitrust judgments.** In principle, ordinary rules of Canadian conflicts of laws apply to the recognition and enforcement of foreign antitrust judgments and orders. However s. 82 of the *Competition Act*, R.S.C. 1985, c. 19 (2nd Supp.) should be consulted.
- (8) **International trade judgments that may trigger operation of Canada's *Foreign Extraterritorial Measures Act*, R.S.C. 1985, c. F-29 as amended by S.C. 1996, c. 28.** This Act permits the Attorney General of Canada to block the recognition or enforcement of a judgment, made under foreign antitrust or trade laws, that would in the opinion of the Attorney General adversely affect significant Canadian interests in relation to international trade or commerce, or would otherwise infringe Canadian sovereignty.
- (9) **Other types of judgments.** Various provincial statutes indirectly give effect to foreign judgments in special situations such as highway traffic violations and insurance matters.

STEP 2: Is there recourse to Canadian reciprocal enforcement of judgments legislation, based on the origin of the judgment?

Each of Canada's ten provinces and three territories has enacted its own *Reciprocal Enforcement of Judgments Acts*. In British Columbia, the equivalent is called the *Court Order Enforcement Act*.

Additionally, there are Conventions between Canada and the United Kingdom (in force in various provinces throughout Canada), and between Canada and France (not yet in force), for the *Reciprocal Recognition of Enforcement of Judgments in Civil and Commercial Matters*.

In Quebec, the recognition and enforcement of foreign judgments is governed by Book Ten, Title IV, Articles 3155-3168 of the *Civil Code of Quebec*.

LIST OF RECIPROCATING JURISDICTIONS (excluding Quebec):

Alberta:	Australia and the U.S. states of Washington, Idaho and Montana.
British Columbia:	Australia, Austria, Germany, U.K and the U.S. states of Alaska, California, Colorado, Idaho, Oregon and Washington.
Manitoba:	Australia and the U.S. states of Idaho and Washington.
New Brunswick:	no reciprocity with any non-Canadian jurisdictions.
Newfoundland & Labrador:	Australia and the U.K.
Northwest Territories:	U.K.
Nova Scotia:	no reciprocity with any non-Canadian jurisdictions.
Nunavut Territory:	no reciprocity with any non-Canadian jurisdictions.
Ontario:	U.K.
Prince Edward Island:	the US state of Washington.
Saskatchewan	does not reciprocate with any non-Canadian jurisdictions.
Yukon Territory:	the Australian state of Western Australia.

PROCEDURE FOR REGISTRATION OF FOREIGN JUDGMENTS:

A judgment creditor may apply to the Superior Court or a District Court of a province for an order registering a judgment from a reciprocating jurisdiction. Provided certain conditions are met, the court has discretion to make an order for registration *ex parte*. An order for registration will be made only on clear facts.

The order may be registered by filing it and an exemplification or certified copy of the judgment with the clerk of the court in which the order was made, and the judgment will be entered as a judgment of that court. With certain exceptions pertaining to registered *ex parte* orders, a registered judgment is of the same force and effect as if it had been a judgment given in the registering court on the date of registration.

Pursuant to deadlines fixed by the particular provincial legislation, the judgment debtor may apply to the registering court to have the registration set aside, and the court may set it aside upon any of the grounds listed in the legislation, and upon such terms as the court thinks fit. The defences available in the provincial legislation are analogous to those available at common law (listed below).

STEP 3: If there is no recourse to reciprocal enforcement of judgments legislation, are the requirements for recognition and enforcement at common law satisfied?

The following tests must be considered for recognition and enforcement via the common law. Such recognition and enforcement is typically obtained upon making application, pursuant to the procedural rules of a provincial Superior Court, for an Order granting such recognition and ordering enforcement. That application is usually made on the basis of affidavit evidence demonstrating satisfaction of the issues below as well as any procedural requirements of the particular court:

- (1) **Was there competent domestic jurisdiction?** Is there a real and substantial connection between the foreign jurisdiction and the subject matter of the proceedings or defendant? The judgment is only enforceable if the original court had jurisdiction in the international sense according to the Canadian rules of the conflicts of laws. This is a broad test.
- (2) **Is the judgment for a debt or a definite and ascertainable sum of money?** Subject to possible exceptions with respect to injunctions or mandatory orders, it has been consistently held by the common law courts that foreign judgments will be enforced only if they are *in personam* and if they are for a debt or a definite and ascertainable sum of money.
- (3) **Where the money judgment is founded on sovereign acts, is the money judgment on account of taxes, penalties or laws of “public nature”?** As a general rule, Canadian common law courts will refuse to recognize or enforce judgments that enforce the penal or revenue laws of a foreign jurisdiction. To avoid enforcement, the defendant must establish that the penalty is a penalty in the “international sense”.
- (4) **Where a money judgment is obtained by a state, is the judgment brought at the instance of the state in a civil capacity?** A judgment based on a foreign statute where the statute may be interpreted as being non-penal or non-revenue in nature may be enforceable in Canada even where enforcement is sought by a foreign state and not a private party.
- (5) **Is the foreign judgment final and binding in its own jurisdiction and conclusive on the merits?** A foreign judgment is final if the court issuing the judgment has ceased to have the power to “rescind, vary or re-open” the judgment and the existence of the debt recognized by the foreign judgment has been rendered *res judicata* as defined by Canadian law.
- (6) **Would the defence of fraud apply?** This defence applies equally where the foreign judgment was obtained by fraud on the part of foreign court or by fraud on the part of the successful party.
- (7) **Would the defence of public policy apply?** This defence applies where the foreign judgment is deemed to violate some fundamental principle of justice, some prevalent conception of good morals (or “essential morality”), or some deep-rooted tradition of the forum. This defence is narrowly construed.

- (8) **Would the defence of “natural justice” apply?** Were there basic effective procedural safeguards, such as judicial independence and fair ethical rules governing the parties, in place in the originating forum? This defence is restricted to procedure and does not relate to the merits of the case.
- (9) **Would the defence of sovereign immunity apply?** Is the defendant a foreign state and/or sovereign and as such immune from the jurisdiction of Canadian courts? The basic consideration in the application of this defence is whether the defendant’s activity involved an act of state, or conduct more akin to that of a private actor.

STEP 4: If the requisite tests for the recognition and enforcement of foreign judgments at common law are not met, the action must be re-tried on its merits in Canada.

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AUTHORITIES

Leading Cases

Morguard Investments Ltd. v. De Savoye, [1990] 3 S.C.R. 1077 (Supreme Court of Canada)

Moses v. Shore Boat Builders Ltd. (1993), 83 B.C.L.R. (2d) 177 (British Columbia Court of Appeal)

United States of America v. Ivey (1996), 30 O.R. (3d) 370 (Ontario Court of Appeal)

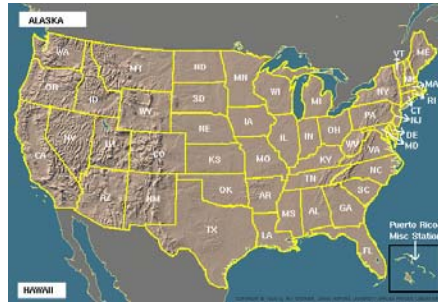
Old North State Brewing Co. v. Newlands Services Inc., [1999] 4 W.W.R. 573 (British Columbia Court of Appeal)

Beals v. Saldanha, [2003] 3 S.C.R. 416 (Supreme Court of Canada)

Leading Text

Castel, J.-G. and Walker, J. *Canadian Conflict of Laws*, 6th Edition (Toronto: Butterworths, 2005)

Enforcing Judgments in Individual States – Daniel Polsenberg; Beckley Singleton; USA: Nevada



Enforcing Judgments in Individual States

27 States have adopted the Uniform Foreign Money-Judgments Recognition Act (UFMJRA). This is the only semblance of uniformity in the U.S. system. Of the 27, five require reciprocity of enforcement with the rendering foreign nation.

Those Adopting the Act in some form are:

Alaska	Idaho	Minnesota	Oklahoma
California	Illinois	Missouri	Oregon
Colorado	Iowa	New Mexico	Pennsylvania
Connecticut	Maine	New York	Texas
Delaware	Maryland	North Carolina	Virginia
Florida	Massachusetts	North Dakota	Washington
Georgia	Michigan	Ohio	

Those requiring reciprocity are Georgia, Idaho, Massachusetts, Ohio, and Texas. The rest of the states require their own individualized procedures for enforcing the judgments of foreign nations. State case law and state statutes control the requirements in these states.

What Is Required to Enforce a Judgment in a State that has adopted the UFMJRA but has not adopted the Uniform Enforcement of Foreign Judgments Act?

Example: New York

Enforcement begins by filing a motion for summary judgment in lieu of complaint or by starting an action on the foreign country money judgment.

- Enforcing the judgment in New York may require:
 - A copy of the final foreign court judgment
 - Copies of the foreign provisions showing what type of proceeding was held
 - Proof that according to foreign law the foreign court had jurisdiction
 - Copies of all service of process and English translations if necessary
 - Copies of documents filed by the defendant in the foreign court, if any
 - A letter or memorandum from the foreign lawyer who handled the case that explains the documents listed above
 - Explanation of how the service of process was effectuated on the defendant
 - Definitive answer as to whether the foreign decision is final
 - Copies of written orders
 - Copies of pertinent communications between the two parties
 - An acknowledgement of whether defendant had any connections or business presence in the foreign country

The enforcement of foreign judgments is based on state law. The following procedures will provide a basic knowledge of what needs to be done to enforce the judgment of a foreign country in the United States.

THE UNIFORM FOREIGN MONEY-JUDGMENTS RECOGNITION ACT (UFMJRA)

- Not all the states have adopted this act.
- In the states that have adopted it, there is more structure and predictability in enforcing foreign judgments.
- Not all of the adopting states adopted the exact same text.
- Some adopting states require reciprocity with the foreign country. These are Georgia, Idaho, Massachusetts, Ohio, and Texas. These states will recognize foreign judgments from countries willing to recognize their judgments.
- Some adopting states use the UFMJRA in conjunction with the Uniform Enforcement of Foreign Judgments Act (UEFJA) to recognize foreign country judgments in the same way they recognize sister state judgments under the UEFJA. Those states still require that the foreign country judgment comply with the tests for procedural fairness that are part of the UFMJRA and are listed below. States treating foreign judgments in the same way they treat sister state judgments are Alaska, Colorado, Connecticut, Florida, Georgia, Idaho, Illinois, Iowa, Maine, Massachusetts, New Mexico, North Dakota, Ohio, Oregon, and Texas.
- If a UFMJRA state does not recognize foreign country judgments like a sister state judgment, the enforcement procedure begins by summary judgment in lieu of a complaint or by starting an action on the foreign judgment.
- The party must file a summons in the court and on the judgment debtor.
- The debtor will need to answer the summons within a set time period (20 days in New York).
- The debtor may appear and contest the motion.
- The debtor may raise appropriate defenses and grounds for non-recognition.
- The judge may or may not decide the motion on the papers.
- If the judge determines there are issues of fact, the proceeding will continue just as any other litigation.
- If the debtor does not appear when summoned, a default judgment can be entered after the hearing date has passed.

The court may require:

- ❖ A copy of the final foreign country judgment.
- ❖ Copies of foreign provisions showing what type of proceeding was held.
- ❖ Proof that according to foreign law the foreign court had jurisdiction.
- ❖ Copies of all service of process and English translations.
- ❖ Copies of documents filed by the defendant in the foreign court.
- ❖ A letter from a foreign lawyer (who handled the case) explaining the documents.
- ❖ An explanation of how service of process was effectuated on the defendant.
- ❖ A definitive answer as to the finality of the foreign decision. If not final, the court can postpone any action.
- ❖ Copies of written orders.
- ❖ Copies of written documents.
- ❖ Acknowledgement of defendant's business or personal connections to the foreign country.

The judgment will not be recognized if:

- ❖ The judgment was rendered in a jurisdiction without impartial tribunals.
- ❖ The foreign court did not have personal jurisdiction over the defendant.
- ❖ The foreign court did not have subject matter jurisdiction.

The judgment may not be recognized if:

- ❖ The defendant did not receive notice in time to defend.
- ❖ The judgment was obtained by fraud.
- ❖ The cause of action/claim is repugnant to the public policy of the U.S. state.

- ❖ The judgment conflicts with another final judgment.
- ❖ The foreign proceeding was contrary to an agreement between parties on how to handle disagreement.
- ❖ The foreign court was an inconvenient forum.

IV. STATES THAT DO NOT HAVE THE FOREIGN MONEY-JUDGMENTS RECOGNITION ACT

- There is no uniform procedure to enforce or register foreign judgments.
- Look to case law to know how to proceed and to know the prospects of winning.
- A party should institute a new action in state court on the foreign judgment.
- The action can be brought wherever the defendant can be found or where he is domiciled.
- The state court must be convinced that the foreign court had proper jurisdiction.
- This is a standard proceeding in which defendant will answer. Summary judgment is possible. The case will proceed like any other lawsuit.
- Judgments are not automatically recognized.
- When recognized, the recognition is based on principles of comity.
- The Foreign Money-Judgments Recognition Act is better because it provides structure and predictability.

V. THE UNIFORM ENFORCEMENT OF FOREIGN JUDGMENTS ACT (UEFJA) IS THE PROCEDURE USED FOR SISTER STATE JUDGMENTS

- Almost all states have adopted this act.
- States must give full faith and credit to all decisions by other states that meet minimum constitutional due process requirements.
- A foreign judgment means any judgment of a court of the U.S or any other court entitled to full faith and credit.
- A copy of the judgment must be filed with the clerk of the state court.
- An affidavit must be attached which provides the last known address of the debtor and of the creditor.
- The creditor must mail notice to the debtor.
- The creditor cannot execute on the judgment until 30 days after the notice is mailed.
- If the debtor shows there is a pending appeal, the court should stay enforcement.
- Some states having adopted the UEFJA and a form of UFMJRA treat foreign country judgments as sister state judgments as long as procedural fairness is satisfied and there is no pending appeal. This is discussed in the section on the UFMJRA.

The Enforcement of Foreign Judgments in the British Isles

Jonathan Lloyd-Jones
Partner Blake Lapthorn Linnell

1. England and Wales

The recognition and enforceability of a foreign judgment, within England and Wales, will depend on a number of factors. These include: the date on which the judgment was given in the foreign court, the nature of the order itself, and, perhaps most importantly, the nationality of the court that handed down the judgment.

There are broadly two ways in which a foreign judgment may be recognised in England and Wales. First, various statutes provide for the registration of foreign judgments:

The Administration of Justice Act 1920 (the “1920 Act”)

This Act relates to judgments of superior courts in any of Her Majesty's dominions outside the United Kingdom¹. Since 1920 some of the HM dominions have become republics and at the same time, the statutory list has been extended and amended to cover additional territories.

The list of countries covered by the 1920 Act now includes²: Anguilla, Antigua and Barbuda, Bahamas, Barbados, Belize, Bermuda, Botswana, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Christmas Island, Cocos (Keeling) Islands, Cyprus, Dominica, Falkland Islands, Fiji, Gambia, Ghana, Grenada, Guyana, Hong Kong, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Malta, Mauritius, Montserrat, Newfoundland, New Zealand, Nigeria, Norfolk Island, Papua New Guinea, St Christopher and Nevis, St Helena, St Lucia, St Vincent and the Grenadines, Seychelles, Sierra Leone, Singapore, Solomon Islands, Sovereign Base Areas of Akrotiri and Dhekalia in Cyprus, Sri Lanka, Swaziland, Tanzania, Trinidad and Tobago, Turks and Caicos Islands, Tuvalu, Uganda, Zambia, and Zimbabwe.

The 1920 Act provides that a judgment creditor³ from one of the listed countries can apply to the High Court within 12 months of the judgment being handed down, (or a longer period if allowed) to have the judgment registered. If the court considers it just and convenient⁴, the judgment will be registered and made enforceable within the United Kingdom. A registered judgment will then have the same force as any other judgment of the same court that registered the foreign judgment⁵.

Foreign Judgments (Reciprocal Enforcement) Act 1933

The 1933 Act works slightly differently with its use of ‘Orders in Council’. Where a specific country are prepared to give reciprocity of recognition of judgments from the UK, then that country's judgments will also be recognised and enforced within the UK, provided that an Order in Council stated the same⁶.

¹ The ‘United Kingdom’ means England, Scotland, Wales and Northern Ireland.

² The extended list came as a consequence of Orders in Council made since 1920 and the Reciprocal Enforcement of Judgments (Administration of Justice Act 1920, Part II) (Consolidation) Order 1984, which was itself amended by SIs in 1985, 1994 and 1997.

³ Administration of Justice Act 1920, s 12(1)

⁴ Administration of Justice Act 1920, s 9(1)

⁵ Administration of Justice Act 1920, s 9(3)

⁶ A power was also included in the 1933 Act to allow Orders in Council to extend the remit of the 1920 act in relation to HM dominions.

continued

To date, Orders in Council have been made in relation to the following countries: France, Belgium, Pakistan, India, Germany, Norway, Austria, The Netherlands, Israel, Guernsey, Isle of Man, Jersey, Italy, Tonga, Surinam, Canada and Australia.

As with the 1920 Act, foreign judgments must first be registered within six years of creation by the English courts⁷. After registration very similar rights of enforceability are made available to judgment creditors⁸.

'Brussels I' Regulation and the Brussels and Lugano Conventions

The recognition of judgments of European Union member states is governed largely by the recent 'Brussels I' Regulation (EC Council Regulation 44/2001) and, for a number of other countries, by the Brussels⁹ and Lugano¹⁰ Conventions.

The Brussels Convention now only operates between Denmark and the other EU member states. This is because the 'Brussels I' Regulation was meant to replace the Brussels Convention in its entirety, however Denmark has not yet adopted the Regulation¹¹.

The Lugano Convention is in force between the EU member states that have acceded to the Convention, and the European Free Trade Association member states that do not belong to the European Union.¹²

Prior to the recent enlargement of the EU, the 'Brussels I' Regulation regulated the way in which judgments were enforced between 14 of the 15 member states (with the exception of Denmark). In May 2004, Poland, the Czech Republic, Cyprus, Latvia, Lithuania, Estonia, Hungary, Malta, Slovenia and Slovakia all officially joined the EU. One of the requirements for membership was that these new member states should accede to 'Brussels I' and this took place on the date of their accession to the EU. As a result, under this regulation judgments may now be recognised and enforced in any of the member state jurisdictions (except Denmark).

The scope of the 'Brussels I' Regulation is limited however. Whilst it does extend to most civil and commercial matters, it does not apply to revenue, customs and administrative matters nor to the status/legal capacity of natural persons, matrimonial law, wills, bankruptcy, social security and arbitration matters.

The interrelationship of these three EU provisions is actually very involved. There are a wide number of amending provisions in relation to each of the conventions and the regulation, and it is often very difficult to pin down, exactly which country is covered, and why.

For further user-friendly information on the 'Brussels I' Regulation please see the Europa legislation summary: "Jurisdiction, recognition and enforcement of judgments in civil and commercial matters".

As an alternative to enforcement of judgments under statute, the common law can be used to enforce in England and Wales a judgment of a foreign court (usually from countries outside Europe or the commonwealth).

⁷ Foreign Judgments (Reciprocal Enforcement) Act 1933, s 2(1)

⁸ Foreign Judgments (Reciprocal Enforcement) Act 1933, s 2(2)

⁹ The Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Brussels, 27 September 1968; EC 46 (1976); Cmnd 7395)

¹⁰ The Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters (Lugano, 16 September 1988, OJ L319, 25.11.88, p.9)

¹¹ See Halsbury's Laws, para 65 "Jurisdiction according to the 'Brussels I' Regulation and the Conventions." at note 2, (the final paragraph).

¹² According to Halsbury's the list now includes the following countries: Austria, Belgium, Denmark, Finland, France, Germany (the former Federal Republic), the Hellenic Republic, Iceland, the Republic of Ireland, Italy, Luxembourg, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom and Poland.

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Judgments of foreign courts¹³ (of competent jurisdiction¹⁴) are capable of recognition and enforcement by being regarded, for procedural purposes, as creating a debt between the parties concerned. In such a case the 'debtor' is liable to pay the amount of the foreign judgment to the judgment 'creditor' and this simple debt can be enforced in England and Wales in the usual way:

*"In England and in those states which are governed by the common law, such judgments are enforced, not by virtue of any treaty, nor by virtue of any statute, but upon a principle very well stated by Parke, B., in Williams v. Jones¹⁵:
"Where a court of competent jurisdiction has adjudicated a certain sum to be due from one person to another, a legal obligation arises to pay that sum, on which an action of debt to enforce the judgment may be maintained. It is in this way that the judgments of foreign and colonial courts are supported and enforced."¹⁶*

Such 'debts' are subject to the appropriate limitation period and can remain effective even in the event of the debtor's death (and therefore as against his Personal Representatives¹⁷).

As long as a foreign court has international jurisdiction to pronounce a judgment, whether the court lacked competence under its own country's laws is usually irrelevant. However, if it is shown that the judgment is both voidable (or in some way irregular), and also a complete nullity according to that country's laws, it is probable that it will not be recognised in an English court¹⁸.

In addition, if a foreign judgment shows a 'perverse and deliberate refusal to apply generally accepted doctrines of private international law'¹⁹ then it will not be recognised²⁰. Judgments will also not be recognised in the event of fraud, if recognition or enforcement would be contrary to public policy, or if the judgment was obtained in proceedings that were contrary to natural justice.

2. Scotland

Under Scots Law foreign decrees may be recognised in a similar way to foreign judgments within England and Wales. Indeed, the two competing doctrinal theories explaining the recognition of foreign judgments, appear very similar to their English counterparts:

*"The first gives emphasis to the ideas of **comity and reciprocity**: it explains recognition and enforcement in Scotland of a judgment of a court of a foreign legal system in terms of the degree of recognition and enforcement given to similar Scottish decrees in that legal system. The second theory, the **vested rights** theory, which is currently favoured in English law, explains recognition and enforcement of a foreign judgment in terms of the rights and duties*

¹³ For arbitrations see Part II of the Arbitration Act 1950

¹⁴ Foreign judgments (in personam) must originate from a foreign court with international jurisdiction according to English conflict of laws rules. To have international jurisdiction, broadly speaking: (1) the defendant must have been present in the country of the foreign court (Adams v Cape Industries plc [1991] 1 All ER 929); and (2) the defendant must have submitted or agreed to submit to the jurisdiction of the foreign court (but this is not to be implied).

¹⁵ (1845) 13 M & W 628 (at 633)

¹⁶ Godard and Another v Gray and Another, (1870) 6 Q.B. 139 (at 148). An even earlier case mentioned by Halsbury's is: Walker v Witter (1778) 1 Doug KB 1

¹⁷ Re Flynn (No 2), Flynn v Flynn [1969] 2 All ER 557

¹⁸ SA Consortium General Textiles v Sun & Sand Agencies Ltd [1978] 2 All ER 339, CA

¹⁹ See Halsbury's Laws, (4)(2)(iii) para 150 "Foreign judgment generally conclusive"

²⁰ E.g. Simpson v Fogo (1863) 1 Hem & M 195

continued

*which that judgment vests in the parties to the foreign action. Authority in Scots law appears neither to accept nor to reject either of these theories in its entirety.*²¹

The Scottish common law requires that a decree be enforced by way of summons in an ordinary Court of Session²² action for payment. The purpose of an action of decree conform is to seek for the court to allow the enforcement in Scotland of the *obligation*, as defined in the foreign judgment and effective as between the parties concerned.

Scots Law further requires that the persons recognised under a Scottish decree must be the same as those under the foreign judgment, or, if different, that they must be able to show their connection with the obligations of the original parties²³. There are also various grounds for opposing the recognition or enforcement of foreign judgments, for example: a lack of jurisdiction (by the foreign court); some irregularity in the foreign proceedings; that the judgment was a penal or revenue judgment; or that it was not final.

In terms of statutory provision for the recognition of foreign judgments in Scotland, the 1920 and 1933 Acts together with the various EU provisions, all apply to Scotland as they do to England and Wales. The reason for this is the way in which the legislation is drafted. The acts relate to the 'United Kingdom' (thereby including Scotland) and the EU legislation to the 'Member State', again meaning the UK.

3. Northern Ireland

As with Scotland, the statutory provisions contained within the various acts of the United Kingdom parliament and the EU provisions²⁴, all apply to the province of Northern Ireland as they would the other constituent countries of the United Kingdom.

It is quite hard to access information in relation to the common law of Northern Ireland. Possibly the best source is the British and Irish Legal Information Institute. This contains the largest set of freely available legal resources on the internet. A search of the archive provides the case of Lough Neagh Exploration Ltd v Morrice [1999] NICH 4 (Northern Ireland Chancery Division, High Court of Justice) and NICA 8 (Northern Ireland Court of Appeal) which mentions at para 52 of the High Court judgment, how a judgment is recognised:

"At common law under the domestic law of Northern Ireland an estoppel by res judicata necessitates proof that the previous decision was a final and conclusive decision on the merits, that the parties were the same and that the cause of action or issue before the court was identical with that previously determined."

There is also mention of the use of ex parte applications to register incoming judgments or orders under Part II of the Administration of Justice Act 1920 or the Foreign Judgments (Reciprocal Enforcement) Act 1933, which may be the more typical route.

4. The Republic of Ireland

European legislation, as described above, applies to the Republic of Ireland in its capacity as a Member State of the European Union. The Oireachtas (Irish Parliament) introduced a number of Acts to give effect to the European conventions and associated legislation otherwise not directly-effective within Ireland. These were the Jurisdiction of Courts and Enforcement of Judgments Acts, and were passed in 1988, 1993 and most recently in 1998.

²¹ Stair Memorial Encyclopaedia, (2)(1) para 400 "Basis for recognition and enforcement"

²² Scotland's supreme civil court

²³ Thereby providing an opportunity for executors or PRs to enforce judgments obtained by deceased creditors

²⁴ These are specifically given effect in Northern Ireland as a result of the Civil Jurisdiction and Judgments Act 1982, s 52 (Extent)

continued

5. Enforcement of English judgments in foreign countries

CPR 74, part II, sets out the procedural steps to be taken in England and Wales to get a judgment ready for enforcement in a foreign country. The main requirement is that a certified copy should be obtained first.

The next steps will depend on the country in which the judgment creditor is trying to enforce his judgment.

Clearly, within the EU, the conventions, regulation and other associated provisions as described above, should apply equally in other EU countries as in the UK. The same should be true for the commonwealth countries and countries with reciprocal enforcement treaties/agreements in operation. The likely countries concerned are also described above.

In these countries it will of course still be necessary to comply with local registration and enforcement procedures.

The bigger problem comes for countries that have never been involved with the UK in any of these ways. In such cases the creditor is usually only able to enforce his judgment by suing on it in the foreign court. It is usually then essential to get a parallel, local judgment, with the same effect, that can be enforced in that country.

Broadly speaking, the chances of realising an English judgment in a foreign country without the benefit of a reciprocal agreement or otherwise, will depend on the strength of relations between the UK and that country (in terms of trade, diplomacy etc) or whether the subject matter of the judgment potentially offends the foreign country on religious, policy or other grounds. It may also be relevant whether or not UK courts themselves recognise judgments from that country.

There are plans however to produce a worldwide convention on the enforcement and recognition of judgments. In 1992 the United States of America proposed that as part of the Hague Conference, negotiations should begin on a convention on the recognition and enforcement of foreign judgments. Unfortunately, and although a draft was produced, consensus has proven exceptionally hard to reach. At present therefore, the European model is the best example of a solution to problems of recognition and enforcement of judgments.

4th November 2005



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Enforcing Foreign Judgements
in the Asia Pacific Region

Presented by Paul Hopkins, Partner

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As a provider of services to the corporate environment, the Firm specialises in the areas of Insurance, Commercial Dispute Resolution, Construction & Engineering and Corporate & Commercial law.

Providing strategic advice and solutions to our clients achieves successful results on a timely basis. We have a proven track record of handling complex commercial issues, as well as high level disputes both nationally and internationally.

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Enforcing Foreign Judgments in the Asia Pacific Region

For the purposes of this paper we have considered the enforcement of foreign judgments in Australia, New Zealand, Papua New Guinea, Taiwan, the Philippines, Indonesia and the Solomon Islands. As Australia is the primary jurisdiction in the area, we have focused on it but will also deal with the other jurisdictions for completeness.

Australia

Foreign judgments may be enforced in Australian courts pursuant to either the general law or statute. Specifically, the recognition and enforcement of foreign judgments may be effected in one of three ways:

1. by registration of the foreign judgment pursuant to statute;
2. by the foreign judgment creditor bringing an action on the foreign judgment in an Australian court; or
3. by an Australian court indirectly enforcing a foreign judgment in its equitable jurisdiction by recognising a non-money judgment.

General Comments

In certain circumstances the distinction between recognition of a foreign judgment as opposed to enforcement of a foreign judgment is important. A foreign judgment which does not satisfy the domestic requirements for enforcement, may nonetheless be recognized by an Australian court (both under common law and statute) as enabling a party to assert *res judicata* or issue estoppel as a defence.

A foreign judgment has no direct operation in Australia and execution cannot be levied upon it in the absence of statute, however, a judgment creditor can sue on the judgment in Australia to enforce it.

Legislation

In 1991 the Commonwealth Parliament enacted the *Foreign Judgments Act* 1991 (Cth), which applies to all Australian states and territories.

The basic scheme of the Act is that certain foreign judgments can be enforced in Australian States by registration in the Supreme Court of each Australian State or the Federal Court. Once registered, the judgment is, for the purposes of execution, of the same force and effect as if it were, a judgment of the court in which it is registered (s6(7)).

The Act only applies to certain judgments of certain foreign courts, which are declared by regulation for the purposes of the Act and specifically made subject to the Act. Schedule 1 to this paper is a list of countries whose judgments are capable of registration under the terms of the Act. Reciprocity of treatment of similar Australian judgments is the prerequisite for the making of any regulations declaring that the Act will apply to a judgment of a particular country (ss(5)(1), (3) and (6)). Foreign judgments subject to the Act can only be enforced in Australia pursuant to the statutory registration procedure prescribed by the Act and they cannot be enforced at common law (s10(1)).

An application to register a foreign judgment must be made in either the Supreme Court or the Federal Court, depending upon the nature of the judgment (ss6(1) and (2)).

An application must be made within six years after the date of the foreign judgment (s6(1)).

An application may be made on an *ex parte* basis in the Federal Court (Federal Court of Australia Rules O 74 r3(2)); in the Supreme Court, the judgment debtor must be joined as a defendant in the

proceedings (Supreme Court of New South Wales¹ Rules Pt 59A r2(1)), but the originating process need not be served on him (SCR (NSW) Pt 59A r2(2)). The affidavit evidence required in support of any application must satisfy the court that:

- the court is the appropriate court in which to make the application;
- the judgment creditor is entitled to enforce the judgment;
- the judgment can be enforced by execution in the foreign country; and
- there are no grounds upon which registration could be set aside.

It must also specify the provisions of the judgment to be enforced and the details of any interest owing on the judgment under foreign law, including the applicable interest rate (SCR (NSW) Pt 59A r3; FCR O 74 r4). A copy of the foreign judgment and a translation, if necessary, must be annexed to the affidavit (SCR (NSW) Pt 59A r3(1)(a) and (b) FCR O 74 r3(1)(b)).

A judgment will be registered by the Supreme Court or Federal Court under the Act if:

- it is a judgment to which the Act applies;
- if it has not been wholly satisfied, (s6(6)(a)); and
- if it could be enforced in the foreign country (s6(6)(b)).

A partly satisfied judgment can only be registered in respect of the balance remaining payable on the day of the application for registration (s6(12)).

If the amount payable under a foreign judgment is expressed in a currency other than Australian dollars, the judgment creditor, has the option of either having the judgment registered for the equivalent amount of Australian dollars based upon the exchange rate on the date of application; or having the judgment registered in the foreign currency (s6(11)).

Execution may not be levied on a registered foreign judgment until a notice of registration is served on the judgment debtor, giving him the opportunity to apply to the Supreme Court or Federal Court to have the registration set aside. The notice must specify the time in which any such application must be made.

A notice of registration can only be validly served if the judgment debtor is within the jurisdiction.

It should be noted that:

- a foreign judgment registered in the Supreme Court or Federal Court under the Act has, for the purposes of enforcement, the same force and effect as if it had been originally given by that court (s 6(7)(a));
- proceedings may be taken on the registered judgment in that court (s 6(7)(b));
- the registering court has control over the enforcement of the judgment (s 6(7)(d); and
- the judgment accrues interest at the rate applicable to a judgment given by that court on the date of registration (s6(7)(c)).

A judgment which is registrable under the Act, even if it is not in fact registered, must be recognized in any Australian court as being conclusive between the parties to it in any proceedings founded on the same cause of action and may be relied upon by way of defence or counter-claim in any such proceedings (s12(1)).

¹ Note that we have focused on the New South Wales Supreme Court for the purposes of this paper. There are Supreme Courts in each state of Australia and the rules for bringing applications for registration are largely the same.

Once a judgment has been registered in the Supreme Court, it also becomes registrable and enforceable in the Supreme Courts of the other states and territories under the *Service and Execution of Process Act* (s6(8)).

Common Law

Judgments given by foreign courts which are not subject to the Act (or the State Act during the transition period) may only be enforced in accordance with the common law.

This procedure involves a foreign judgment creditor bringing an action in debt on the foreign judgment in the Supreme Court. Provided that the requirements for recognition and enforcement set out below are satisfied, the Supreme Court will treat the foreign judgment as creating a debt between the parties and enter its own judgment for the same amount.

A prerequisite to enforcement of a foreign judgment at common law is the Supreme Court having jurisdiction over the judgment debtor.

At common law, a foreign judgment is subject to the availability of one of the established defences, enforceable if:

- it is final and conclusive as between the parties;
- it is for a fixed sum of money, not being a tax or penalty; and
- it has been given by a court of competent jurisdiction.

The onus of establishing each of these conditions rests with the party seeking to rely upon the foreign judgment.

New Zealand

The basic legal position with respect to foreign judgments is that they have no direct operation in New Zealand. However, amendments in 1992 to the Reciprocal Enforcement of Judgments Act 1934 ('the Act') have enabled:

- money judgments given by certain inferior courts to be enforced in New Zealand;
- non-money judgments of superior courts and certain inferior courts to be enforced in New Zealand; and
- judgments given in superior and inferior courts of Australia under which tax or other similar charges are payable to be enforced in New Zealand.

The basic approach to foreign judgments in New Zealand is one of reciprocity. In other words, if the foreign state will enforce a judgment of a New Zealand superior court, then New Zealand will generally do likewise for that foreign state's judgments.

Legislation

The Act requires that Orders in Council be made by the New Zealand Parliament before a judgment made in a foreign jurisdiction will be capable of registration. With respect to money judgments given in inferior courts of foreign jurisdiction the only country in relation to whom an Order in Council has been made is Australia. The Australian courts have received early recognition, by virtue of the Australian New Zealand Closer Economic Relations Trade Agreement ('CER') and the moves towards harmonisation of the laws of Australia and New Zealand. The Inferior Courts specified in the Order in Council are set out in Schedule 2 to this paper.

In the case of non-money judgments no Orders in Council have been made by the New Zealand. Thus the Act will not apply to such judgments and therefore there are no non-money judgments capable of registration in New Zealand.

In the case of money judgments made by superior courts, the Act specifically provides that it will apply to the United Kingdom. By virtue of Orders in Council, the act will also apply to money judgments made in the superior courts of the countries set out in Schedule 3.

The procedure for registration of a foreign judgment is found in the High Court Rules of New Zealand ('the Rules').

In summary, these Rules provide:

- every application for registration is made by originating application (r729);
- the application may be made without notice to the judgment debtor, but must be certified as correct by the solicitor acting;
- the application for registration must be supported by affidavit evidence (r732).

Rule 737 provides that the application for registration: shall be supported by such other evidence as maybe required having regard to the provisions of the relevant Order in Council.

Once the judgment is registered, the judgment creditor must personally serve notice in writing of the registration on the judgment debtor, unless another mode of service is ordered. If the judgment debtor is out of New Zealand, the notice can be served without the court's leave.

Common Law

A further means of enforcement of foreign judgments in New Zealand is also possible. As a foreign money judgment constitutes a simple contract debt only, there is no merger of the original cause of action, and it is therefore open to the plaintiff to sue, either on the foreign judgment, or on the original cause of action on which it is based.

At common law in New Zealand it is well settled:

"...that a judgment in personam of a foreign court of competent jurisdiction is capable of recognition and enforcement. It is regarded as creating a debt between the parties to it, the debtor's liability arising on an implied promise to pay the amount of the foreign judgment (8 Halsbury's Laws of England (4th ed) para 715); Obrist v Ruedi (Supreme Court, Hamilton Registry 14 July 1977 A202/73 per Richardson, J at page 9)."

There are four general requirements for recognition and enforcement in New Zealand of a foreign judgment in personam:

- the foreign court has jurisdiction according to New Zealand conflict of law rules;
- the judgment is for a definite sum of money or a sum readily ascertainable;
- the judgment is final and conclusive; and
- the foreign judgment is not substantially unjust.

Generally, a court of a foreign country has jurisdiction to give a judgment in personam capable of enforcement in New Zealand where either:

- before the commencement of the proceedings the judgment debtor submitted or agreed to submit to the jurisdiction of the court; or
- the judgment debtor was, at the time when the proceedings were instituted, resident in the country of the foreign court and, in the case of a corporate defendant, had a place of business in that country.

Conversely, where a defendant in a personal action is a New Zealand resident or company and has not submitted or agreed to submit to the jurisdiction of the foreign court, or did not have sufficient presence in the foreign country, the judgment of the foreign court will not be enforced in New Zealand.

Papua New Guinea

In Papua New Guinea the *Reciprocal Enforcement of Judgments Act 1976* was enacted as an act to make provision for the enforcement in Papua New Guinea of judgements given in foreign countries which accord reciprocal treatment to judgements given in Papua New Guinea.

The Act will extend to foreign countries giving reciprocal treatment to PNG's judgments where the Minister is satisfied that, in the event of the benefits conferred by this Part being extended to judgements given in the superior court of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of judgements given in the National Court, he may, by notice in the National Gazette, declare:

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

Any judgement of a superior court of a foreign country to which the Act extends, other than a judgement of such a court given on appeal from a court that is not a superior court, shall be a judgement to which the Act applies if:

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

A judgment of a foreign country to whom the Act is deemed to apply maybe registered upon the application of the judgment creditor to the judgment so long as the application is made within 6 years of the judgment being entered and, if there has been an appeal of the judgment, if the final judgment in the matter has been made.

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

The Philippines

A valid judgment rendered in a foreign jurisdiction will be recognised in the Philippines so far as the immediate parties and the underlying cause of action are concerned, provided the Philippine courts are convinced that:

- there has been opportunity for a full and fair trial abroad before a court of competent jurisdiction, conducting the trial upon regular proceedings, after due citation or voluntary appearance of the defendant, and under a system of jurisprudence likely to secure an impartial administration of justice; and
- there is nothing to show either prejudice in the court, or in the system of laws under which it is sitting, or fraud in procuring the judgment (*Salonga, Private International Law*, 435).

As a general principle, therefore, a foreign judgment may be recognised and enforced if it constitutes a final adjudication on a civil or commercial matter, including questions of status, issued

by an impartial court or agency of competent jurisdiction and is neither inconsistent with fundamental principles of public policy nor tainted with collusion or fraud.

Before a foreign judgment can be enforced it must be shown by the party seeking its enforcement that the following requirements have been complied with:

- it must be a judgment in a judicial or quasi-judicial action, that is, a decision rendered in which the defendant shall be given reasonable notice and opportunity to be heard (Salonga, at 436).
- it must be a judgment on civil or commercial matters, including questions of status (Salonga, 438, n.3).
- the court issuing the judgment must be a court of competent jurisdiction (Salonga, at 439).
- the judgment must emanate from an impartial court (Salonga, at 440, n.3).
- the judgment just be valid according to the law of the court that delivered it (Salonga at 440, n.3).
- the judgment must be final and must amount to res judicata in the country where it was delivered.
- a judgment for the payment of money must be for a fixed sum (Salonga, at 442).
- the foreign judgment must have disposed of the dispute on its merits (Salonga, at 442).
- the foreign judgment must not be contrary to the public policy or the canons of morality of the place where it is sought to be enforced or recognised (Salonga, at 442).
- the foreign judgment should not have been obtained by fraud (Salonga, at 443, n.3).
- the foreign judgment must not constitute a clear 'mistake of law or fact' (Salonga, at 444, n.3).

A judgment rendered in a foreign jurisdiction cannot automatically be enforced in the Philippines. Enforcement must be made by action or special proceedings. An action means 'an ordinary suit in a court of justice, by which one party prosecutes another for the enforcement or protection of a right, or the prevention or redress of a wrong' (Revised Rules of Court, s1, r2), while 'every other remedy is by special proceeding' (ibid, s2, r2). An action is commenced by filing a complaint with the court (ibid, s6, r2) while special proceedings are commenced by the filing of the proper petitions with the court.

In filing an action for the enforcement of a foreign judgment, the following must be alleged and proved:

- the jurisdiction of the court rendering the judgment;
- legal capacity of the parties, plaintiff and defendant, according to the law of the forum;
- service of summons to the defendant in the judgment sought to be enforced;
- lawful cause according to the law of both countries;
- the judgment was final; and
- record of judgment was authentic.

In view of the requirement that an action must be filed to enforce a foreign judgment, the formalities of trial as established by the procedural laws of the Philippines must be followed.

Being a final consideration and determination by the court of the rights of the parties, the judgment of a court in an action to enforce a foreign judgment must necessarily contain an order on interest and costs incurred in enforcing the foreign judgment.

A judgment for money in an action to enforce a foreign judgment must be expressed in Philippine currency, including interest and costs of litigation.

Indonesia

The question whether a foreign judgment has an executorial title within the Republic of Indonesia is answered in the Reglement op de Rechtsvordering ('Rv'). According to Rv, art 436 judgments by foreign judges or courts cannot be enforced in Indonesia. Exceptions are made for 'general average' (Commercial Code, art 724) and 'other exceptions which the law provides'. The last part of this exception is currently, however, without any practical meaning.

Suit has to be brought again in the domestic court of domicile of the Indonesian debtor and normal court proceedings have to take place. The foreign judgment can be submitted as an authentic affidavit to the court but the degree of importance attributed to such foreign judgment is entirely a matter for the court's discretion.

Solomon Islands

The enforcement of foreign judgments in the Solomon Islands is regulated by the *Foreign Judgments (Reciprocal Enforcement) Act*.

Pursuant to the Act the relevant Minister, if he is satisfied that, in the event of the benefits conferred by the Act being extended to judgments given in the superior courts of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of judgments given in the High Court, may by order direct:

- that the provisions of the Act shall extend to that foreign country; and
- that such courts of that foreign country as are specified in the order shall be deemed superior courts of that foreign country for the purposes of the Act.

The Act goes further and provides that any judgment of a superior court of a foreign country to which the provisions of the Act extend, 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 the provisions of the Act apply, if:

- it is final and conclusive as between the parties thereto; and
- there is payable there under 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
- it is given after the coming into operation of the order directing that the provisions of the Act shall extend to that foreign country

A person, being a judgment creditor under a judgement to which the provisions of this Act apply, may apply to the High Court at any time within six years after the date of the judgment or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in the High Court, and on any such application the court shall, subject to proof of the prescribed matters and to the other provisions of this Act, order the judgment to be registered

Where the sum payable under a judgment which is to be registered is expressed in a currency other than the currency of Solomon Islands, the judgment shall be registered as if it were a judgment for such sum in the currency of Solomon Islands as, on the basis of the rate of exchange prevailing at the date of the judgment of the original court, is equivalent to the sum so payable.

The Act has been extended to apply to the Courts and jurisdictions listed in Schedule 4 hereto.

Schedule 1

Item	Country	Courts
1	New Zealand	Court of Appeal High Court
1A	Province of Alberta, Canada	Supreme Court of Canada Court of Appeal of Alberta Court of Queen's Bench of Alberta
2	Bahamas, The Commonwealth of the	Court of Appeal Supreme Court
3	Province of British Columbia, Canada	Supreme Court of Canada Court of Appeal of British Columbia Supreme Court of British Columbia
4	British Virgin Islands	Eastern Caribbean Supreme Court
5	Cayman Islands	Grand Court
6	Dominica, Commonwealth of	Eastern Caribbean Supreme Court Court of Appeal High Court of Justice
7	Falkland Islands	Court of Appeal Supreme Court
8	Fiji, Republic of	Supreme Court Court of Appeal High Court
9	France (French Republic)	Cour de Cassation Cours d'Appel Tribunaux de grand instance Tribunaux de commerce Cours d'assise Tribunaux correctionnels
10	Germany, Federal Republic of	Bundesgerichtshof Oberlandesgerichte Bayerische Oberste Landesgericht Landgerichte
11	Gibraltar	Court of Appeal Supreme Court
12	Grenada	Supreme Court (consisting of the: Court of Appeal; High Court)
13	Hong Kong Special Administrative Region of the People's Republic of China, The	Court of Final Appeal High Court (consisting of the: Court of Appeal; Court of First Instance)
14	Israel, State of	Supreme Court District Courts Moslem Religious Courts

		Druze Religious Courts
15	Italy (Italian Republic)	Corte Suprema di Cassazione Corte di Assise Corte d'Appello Tribunale
16	Japan	Supreme Court High Courts District Courts Family Courts
16A	Korea, Republic of	Supreme Court Appellate Courts District Courts Family Court Patent Court Administrative Court
16B	Malawi	High Court Supreme Court
17	Province of Manitoba, Canada	Court of the Queen's Bench of Manitoba
18	Montserrat	Privy Council Eastern Caribbean Court of Appeal High Court of Montserrat
19	Papua New Guinea	Supreme Court of Justice National Court of Justice
19A	Poland, Republic of	Supreme Court Commercial Courts Courts of Appeal Provincial Courts
20	St Helena	Supreme Court
21	St Kitts and Nevis, Federation of	Privy Council Eastern Caribbean Court of Appeal High Court (Saint Christopher Circuit) High Court (Nevis Circuit)
22	St Vincent and the Grenadines	Eastern Caribbean Supreme Court (consisting of the: Court of Appeal, High Court)
23	Seychelles, Republic of	Court of Appeal Supreme Court
24	Singapore, Republic of	Privy Council: in respect of orders made on appeals from the Singapore Supreme Court and filed with the Court of Appeal of Singapore Supreme Court of Singapore (consisting of the: Court of Appeal; High Court)
25	Solomon Islands	Court of Appeal High Court



25A	Sri Lanka	Supreme Court Court of Appeal High Court District Court
25AA	Switzerland	Bundesgericht Kantonale Obere Gerichte Handelsgerichte
25AB	Taiwan	Supreme Court High Courts District Courts
25B	Tonga	Court of Appeal Supreme Court
26	Tuvalu	Court of Appeal High Court
27	United Kingdom, The	House of Lords Supreme Court of England and Wales Supreme Court of Judicature of Northern Ireland Court of Session
28	Western Samoa	Court of Appeal Supreme Court of Western Samoa



Schedule 2

State or Territory of Australia

Australian Capital Territory
Territory of Christmas Island
Territory of Cocos (Keeling) Islands
State of New South Wales
Northern Territory
State of Queensland
State of South Australia
State of Tasmania
Territory of Norfolk Island
State of Victoria
State of Western Australia

Court

Magistrates Court
Magistrates Court
Magistrates Court
District Court; Local Courts
Local Court
District Courts; Magistrates Courts
District Court; Magistrates Court
Magistrates Court; Courts of Request
Court of Petty Sessions
County Court, Magistrates Court
District Court; Local Courts



Schedule 3

Australia	New Guinea
Australian Capital Territory	Nigeria
Basutoland (Lesotho)	Norfolk Island
Bechuanaland (Botswana)	North Borneo (Sabah)
Belgium	Northern Territory of Australia
Cameroons	Oceania
Ceylon (Sri Lanka)	Pakistan
Commonwealth of Australia	Papua
Fiji	Sarawak
France	Singapore
Gilbert and Ellice Islands (Kiribati)	Solomon Islands (Tuvalu)
Hong Kong	Swaziland
India	Tasmania
Malaya (Malaysia)	Western Samoa



Schedule 4

State of New York	Supreme Court of the State of New York
Papua New Guinea	The National Court and Supreme Court
Commonwealth of Australia	The High Court of Australia, Federal Court of Australia and the Family Court of Australia
Australian States and Territories	Supreme Court of Northern Territory; Supreme Court of the Australian Capital Territory; Supreme Court of Norfolk Island; Supreme Court of the Australian Capital Territory; Heard and McDonald Islands; Supreme Court of the Australian Capital Territory; Supreme Court of Norfolk Island; Supreme Court of the Northern Territory
The Commonwealth	It is hereby directed that the provisions of <u>the Act</u> shall apply to any part of the Commonwealth and to the judgments obtained in the Superior Courts of the Commonwealth as they apply to foreign countries and judgments obtained in the Superior Courts of foreign countries.

