

LAWS OF BRUNEI

CHAPTER 177

**RECIPROCAL ENFORCEMENT OF FOREIGN
JUDGMENTS**

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CHAPTER 177

RECIPROCAL ENFORCEMENT OF FOREIGN
JUDGMENTS

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**RECIPROCAL ENFORCEMENT OF FOREIGN
JUDGMENTS ACT**

An Act to provide for the enforcement in Brunei Darussalam of judgments given in foreign countries which afford reciprocal treatment to judgments given in Brunei Darussalam, for facilitating the enforcement in foreign countries of judgments given in Brunei Darussalam, and for matters connected therewith

*Commencement : 27th March 1996
[S 12/99]*

PART I

PRELIMINARY

Citation.

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

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

“foreign country” means any country other than Brunei Darussalam;

“judgment” means —

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

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

(c) an award in proceedings on an arbitration.

“judgment creditor” means the person in whose favour the judgment was given and 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 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 this Act;

“registering court”, in relation to any judgment, means the court to which an application to register the judgment is made.

(2) For the purposes of this Act, “action in personam” shall not be deemed to include any proceedings in connection with any of the following matters —

(a) any matrimonial cause or matter;

(b) administration of the estate of a deceased persons;

(c) bankruptcy;

(d) winding-up of a company;

(e) lunacy; or

(f) guardianship of an infant.

(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 Act to foreign countries giving reciprocal treatment.

3. (1) The Attorney General, if he is satisfied that substantial reciprocity of treatment will be assured as respects the enforcement in a foreign country of judgment given in the High Court of Brunei Darussalam, may by order published in the *Gazette* direct —

(a) that this Act shall extend to that foreign country; and

(b) that such courts of that foreign country as are specified in the Act shall be deemed superior courts of that country for the purposes of this Act.

(2) Any judgment of a superior court of a foreign country to which this Act 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 Act applies, if —

(a) it is final and conclusive as between the parties thereto; and

(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 Act shall extend to that foreign country.

(3) For the purposes of this section, a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.

(4) The Attorney General 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 judgments.

4. (1) A person, being a judgment creditor under a judgment to which this Act applies, may apply to the High Court at any time within 6 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.

(2) No judgment shall be registered if, at the date of the application —

(a) it has been wholly satisfied; or

(b) it could not be enforced by execution in the country of the original court.

(3) 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.

(4) Execution shall not issue on the judgment so long as, under this Act 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.

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

(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 judgments 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.

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 Act applies or was registered in contravention of sections 2, 3 or 4;
- (ii) that the court of the country of the original court had no jurisdiction in the circumstances of the case;
- (iii) that the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear;
- (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;

(b) may be set aside if the registering court is satisfied that the matter in dispute in the proceedings in the original court had previously to the date of the judgment in the original court been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.

(2) For the purposes of this section, the courts of the country of the original court shall, subject to subsection (3), be deemed to have had jurisdiction —

- (a) in the case of a judgment given in an action in personam -
 - (i) if the judgment debtor, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings otherwise than for the purpose of protecting, or obtaining the release of, property seized, or threatened with seizure, in the proceedings or of contesting the jurisdiction of that court;
 - (ii) if the judgment debtor was a plaintiff in, or counter-claimed in, the proceedings in the original court;
 - (iii) if the judgment debtor, being a defendant in the original court, had before the commencement of the proceedings agreed, in respect of the subject-matter of the proceedings, to submit to the jurisdiction of that court or of the courts of the country of that court;
 - (iv) if the judgment debtor, being a defendant in the original court, was at the time when the proceedings were instituted resident in, or being a body corporate had its principal place of business in, the country of that court; or

(v) if the judgment debtor, being a defendant in the original court, had an office or place of business in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place;

(b) in the case of a judgment given in an action of which the subject-matter was immovable property or in an action in rem of which the subject-matter was movable property, if the property in question was at the time of the proceedings in the original court situate in the country of that court; and

(c) in the case of a judgment given in an action other than 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 subsection (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 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.

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, either set aside the registration or adjourn the application to set aside the registration until after the expiration of such period as appears to the court to be reasonably

sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by the competent tribunal.

(2) Where the registration of a judgment is set aside under subsection (1), or solely for the reason that the judgment was not at the date of the application for registration enforceable by execution in the country of the original court, 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. 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 Brunei Darussalam.

Rules of Court.

8. (1) The power to make Rules of Court under section 12 of the Supreme Court Act (Chapter 5) shall, subject to this section, include power to make rules for —

(a) the giving of security for costs by persons applying for the registration of judgments;

(b) the matters to be proved on an application for the registration of a judgment and for regulating the mode of proving those matters;

(c) the service on the judgment debtor of notice of the registration of a judgment;

(d) 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) 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) prescribing any matter which under this Act is to be or may be prescribed.

(2) Such Rules shall have effect subject to any such provisions contained in orders made under section 3 as are declared by the said orders to be necessary for giving effect to agreements made between the Attorney General and foreign countries in relation to matters with respect to which there is power to make the rules.

PART II

MISCELLANEOUS AND GENERAL

General effect of certain foreign judgments.

9. (1) Subject to this section, a judgment to which this Act 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 Brunei Darussalam 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 that —

(i) a sum of money was not payable under the judgment;

(ii) the judgment had been wholly or partly satisfied; or

- (iii) 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 Brunei Darussalam recognising any judgment as conclusive of any matter of law or fact decided therein if that judgment would have been so recognised before the passing of this Act.

Power to make foreign judgments unenforceable in Brunei Darussalam if no reciprocity.

10. (1) If it appears to the Attorney General that the recognition and enforcement accorded by the courts of any foreign country to judgments given in the High Court of Brunei Darussalam substantially less favourable than that accorded by the courts of Brunei Darussalam to judgments of the superior courts of that country, the Attorney General may by order apply this section to that country.

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

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

Issue of certificates of judgments obtained in Brunei Darussalam.

11. (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 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 this section with respect to the judgment until the expiration of that period.