



ANALYSIS

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1992, No. 10

An Act to amend the Reciprocal Enforcement of Judgments Act 1934

[13 March 1992]

BE IT ENACTED by the Parliament of New Zealand as follows:

1. Short Title—This Act may be cited as the Reciprocal Enforcement of Judgments Amendment Act 1992 and shall be read together with and deemed part of the Reciprocal Enforcement of Judgments Act 1934 (hereinafter referred to as the principal Act).

2. Interpretation—(1) Section 2 (1) of the principal Act is hereby amended by inserting, after the definition of the term “appeal”, the following definition:

“‘Australian tax’ means tax or a charge of a similar nature payable under the laws of the Commonwealth of Australia or any State or Territory of Australia; and includes additional or other tax payable by way of penalty, interest, or otherwise by reason of a contravention of any of those laws or of a requirement made under any of those laws:”.

(2) Section 2 (1) of the principal Act is hereby further amended by inserting in the definition of the term “judgment”, before the word “judgment”, in the first place where it appears, the words “final or interlocutory”.

(3) Section 2 (1) of the principal Act is hereby further amended by inserting in the definition of the term “judgment creditor”, after the word “given”, the words “(whether or not a sum of money is payable under the judgment)”.

(4) Section 2 (1) of the principal Act is hereby further amended by inserting in the definition of the term “judgment debtor”, after the word “given”, the words “(whether or not a sum of money is payable under the judgment)”.

(5) Section 2 (1) of the principal Act is hereby further amended by inserting, after the definition of the expression “judgments given in the superior Courts of New Zealand”, the following definitions:

“‘Money judgment’ means a judgment under which a sum of money is payable:

“‘Non-money judgment’ means a judgment that is not a money judgment:”.

3. Application of this Part of Act—(1) Section 3 (2) of the principal Act is hereby amended by inserting before the word “judgments”, in both places where it appears, the word “money”.

(2) Section 3 of the principal Act is hereby amended by inserting, after subsection (2), the following subsection:

“(2A) The fact that a particular Court is not specified in an Order in Council is not taken to imply that the Court is not a superior Court for the purposes of this Act.”

(3) Section 3 (3) of the principal Act is hereby amended—

(a) By inserting before the word “judgment”, in the first 2 places where it appears, the word “money”:

(b) By inserting after the word “Court”, in the third place where it appears, the words “, not being a specified inferior Court,”.

(4) Section 3 of the principal Act is hereby amended by inserting, after subsection (3) (as amended by subsection (3) of this section), the following subsection:

“(3A) Nothing in paragraph (b) of subsection (3) of this section prevents a judgment given in a superior Court of Australia under which Australian tax is payable being a judgment to which this Part of this Act applies.”

(5) Section 3 of the principal Act is hereby amended by repealing subsection (6).

4. New sections inserted—The principal Act is hereby amended by inserting, after section 3, the following sections:

“3A. Application of this Part to judgments of inferior Courts—(1) If the Governor-General is satisfied that, in the event of the benefits conferred by this Part of this Act being extended to money judgments given in all or some inferior Courts of a country to which this Part of this Act extends, substantial reciprocity of treatment will be assured as respects the enforcement in that country of money judgments given in all or some inferior Courts of New Zealand, the Governor-General may, by Order in Council, direct that such inferior Courts of that country as are specified in the order, are specified inferior Courts for the purposes of this Part of this Act.

“(2) Any money judgment of a specified inferior Court shall be a judgment to which this Part of this Act applies if—

“(a) It is final and conclusive as between the parties to it; and

“(b) There is payable under the judgment 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 in Council directing that the inferior Court is a specified inferior Court for the purposes of this Part of this Act.

“(3) Nothing in paragraph (b) of subsection (2) of this section prevents a judgment given in an inferior Court of Australia under which Australian tax is payable being a judgment to which this Part of this Act applies.

“(4) Nothing in paragraph (c) of subsection (2) of this section applies to a judgment of an inferior Court of Australia.

“(5) 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.

“(6) The Governor-General may by a subsequent Order in Council vary or revoke any Order in Council previously made under this section.

“3B. Application of this Part to non-money judgments—(1) If the Governor-General is satisfied that, in the

event of the benefits conferred by this Part of this Act being extended to some or all non-money judgments given in any superior Courts of any country to which this Part of this Act extends, substantial reciprocity of treatment will be assured as respects the enforcement in that country of all or some non-money judgments given in the superior Courts of New Zealand, the Governor-General may, by Order in Council, direct that such non-money judgments of the superior Courts of that country as are specified in the order are specified non-money judgments for the purposes of this Part of the Act.

“(2) If the Governor-General is satisfied that, in the event of the benefits conferred by this Part of this Act being extended to all or some non-money judgments given in any inferior Courts of a country to which this Part of this Act extends, substantial reciprocity of treatment will be assured as respects the enforcement in that country of all or some non-money judgments given in the inferior Courts of New Zealand, the Governor-General may, by Order in Council, direct that such non-money judgments of such of the inferior Courts of that country as are specified in the order, are specified non-money judgments for the purposes of this Part of this Act.

“(3) Every Order in Council made under subsection (1) or subsection (2) of this section shall specify the non-money judgments by reference to—

“(a) The kinds of proceedings in which the non-money judgments are given; and

“(b) The kinds of non-money judgments.

“(4) A specified non-money judgment, not being a judgment of a superior Court or an inferior Court of Australia, shall be a judgment to which this Part of this Act applies if it was given after the coming into operation of an Order in Council made under subsection (1) or subsection (2), as the case may be, of this section, in relation to that judgment.

“(5) A specified non-money judgment that is a judgment of a superior Court or an inferior Court of Australia shall be a judgment to which this Part of this Act applies whether it was given before or after the coming into operation of an Order in Council made under subsection (1) or subsection (2), as the case may be, of this section in relation to that judgment.

“(6) The Governor-General may by a subsequent Order in Council vary or revoke any Order in Council previously made under this section.”

5. Application for, and effect of, registration of judgment—(1) Section 4 (1) of the principal Act is hereby amended by omitting, from paragraph (b) of the proviso thereto, the words “by execution”.

(2) Section 4 (2) of the principal Act is hereby amended—

(a) By omitting from paragraph (a) the word “execution”, and substituting the word “enforcement”;

(b) By omitting from paragraph (d) the word “execution”, and substituting the word “enforcement”;

(c) By omitting the words “and entered”;

(d) By omitting from the proviso thereto the words “execution shall not issue on the judgment”, and substituting the words “the judgment shall not be enforced”.

(3) Section 4 of the principal Act is hereby amended by inserting, after subsection (2) (as amended by subsection (2) of this section), the following subsection:

“(2A) A judgment may only be enforced if, and to the extent that, at the time the proceedings for enforcement are or are to be taken, the judgment is capable of being enforced in the country of the original Court.”

(4) Section 4 of the principal Act is hereby amended by repealing subsection (3), and substituting the following subsection:

“(3) Where a sum payable under a judgment that is to be registered is expressed in a currency other than New Zealand 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 New Zealand currency, based on the rate of exchange prevailing on the day of the application for registration.”

(5) Section 4 (4) of the principal Act is hereby amended by inserting, after the word “registration”, the words “of a judgment”.

(6) Section 4 (6) of the principal Act is hereby amended by omitting the words “the sum”, and substituting the words “any sum”.

6. Rules of Court—Section 5 of the principal Act is hereby amended by repealing paragraph (e), and substituting the following paragraph:

“(e) For prescribing the method by which any question arising under this Act whether a judgment to which this Part of this Act applies can be enforced in the country of the original Court, or what interest is payable under a judgment under the law of the original Court, is to be determined.”.

7. Cases in which registered judgments must, or may, be set aside—(1) Section 6 (1) (e) of the principal Act is hereby amended by inserting, after the word “judgment,” the words “, not being a judgment of a superior Court or an inferior Court of Australia under which Australian tax is payable,”.

(2) Section 6 (3) (a) of the principal Act is hereby amended by adding the following subparagraph:

“(vi) If Australian tax is payable under the judgment:”.

8. Powers of High Court on application to set aside registration—Section 7 (2) of the principal Act is hereby amended by omitting the words “by execution” in both places where they appear.

9. Registration—(1) Section 8D (2) of the principal Act (as inserted by section 2 of the Reciprocal Enforcement of Judgments Amendment Act 1990) is hereby amended by omitting the words “and entered”.

(2) Section 8D of the principal Act (as so inserted) is hereby amended by repealing subsection (3), and substituting the following subsection:

“(3) Where a judgment or order to which this Part of this Act applies under which a sum is payable that is expressed in Australian currency is to be registered under this Part of this Act, the judgment or order is to be registered—

“(a) If the applicant for registration of the judgment or order has stated in the application that the applicant wishes the judgment or order to be registered in Australian currency, in Australian currency; or

“(b) In any other case, as if it were for an equivalent amount in New Zealand currency, based on the rate of exchange prevailing on the day of the application for registration.”

10. General effect of certain judgments—The principal Act is hereby amended by repealing section 9, and substituting the following section:

“9. (1) Subject to this section, a judgment to which Part I of this Act applies, or would apply if it was a money judgment, whether or not it is, or can be, registered, shall be recognised in any Court in New Zealand 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 counterclaim in any such proceedings.

“(2) This section does not apply to—

“(a) A judgment the registration of which has been set aside under paragraph (b) or paragraph (c) or paragraph (d) or paragraph (e) of subsection (1) or under subsection (2) of section 6 of this Act; or

“(b) A judgment, whether registrable or not, that has not been registered, the registration of which would, if it was registered, have been set aside under any one or more of those paragraphs of subsection (1) or subsection (2) of that section.

“(3) Nothing in this section limits or affects the application of any rule of law relating to the recognition of judgments by any Court in New Zealand.”

11. Power to make judgments unenforceable in New Zealand if no reciprocity—Section 10 (1) of the principal Act is hereby amended by inserting, before the word “judgments”, in both places where it appears, the word “money”.

12. Issue of certificates of judgments obtained in New Zealand—The principal Act is hereby amended by repealing section 11, and substituting the following section:

“11. (1) Subject to this section, a New Zealand Court shall, on application by a judgment creditor who wishes to enforce a judgment given in that Court in a country to which Part I of this Act extends, issue to that person—

“(a) A certified copy of the judgment; and

“(b) A certificate with respect to the judgment containing—

“(i) Particulars of the causes of action to which the judgment relates; and

“(ii) Particulars of the rate of interest, if any, payable on any amount payable under the judgment; and

“(iii) Such other particulars as may be prescribed.

“(2) Every application under subsection (1) of this section must be accompanied by payment of the prescribed fee.

“(3) No application shall be made under subsection (1) of this section in relation to a judgment until the expiry of any period during which the enforcement of the judgment is stayed.”

13. Orders in Council deemed to be regulations—The principal Act is hereby amended by inserting, after section 11, the following section:

“11A. Every Order in Council made under this Act is deemed to be a regulation for the purposes of the Regulations (Disallowance) Act 1989.”

This Act is administered in the Department of Justice.
