

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ORDINANCE 1936-1937.⁽¹⁾

An Ordinance to make provision for the enforcement in the Territory of New Guinea of Judgments given in Foreign Countries which accord Reciprocal Treatment to Judgments given in the Territory of New Guinea, for facilitating the enforcement in Foreign Countries of Judgments given in the Territory of New Guinea, and for other purposes.

BE it ordained by the Legislative Council for the Territory of New Guinea, in pursuance of the powers conferred by the *New Guinea Act 1920-1935*, as follows:—

PART I.—PRELIMINARY.

1. This Ordinance may be cited as the *Foreign Judgments (Reciprocal Enforcement) Ordinance 1936-1937.*⁽¹⁾

Short title.
Amended by
No. 3 of 1934,
s. 50.

2. This Ordinance is divided into Parts, as follows:—

Parts.

Part I.—Preliminary.

Part II.—Registration of Foreign Judgments.

Part III.—Miscellaneous.

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

Definitions.

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

(1) The *Foreign Judgments (Reciprocal Enforcement) Ordinance 1936-1937* comprises the *Foreign Judgments (Reciprocal Enforcement) Ordinance 1936*, as amended by the other Ordinance referred to in the following Table:—

ORDINANCES OF THE LEGISLATIVE COUNCIL.

Short title, number and year.	Date of assent by Administrator.	Date notified in <i>N.G. Gaz.</i> as not disallowed by Gov.-Gen. in Council.	Date on which came into operation.
<i>Foreign Judgments (Reciprocal Enforcement) Ordinance 1936</i> (No. 15 of 1936)	26.2.1936	15.6.1936	26.2.1936 (<i>Laws of T.N.G.</i> , Vol. XIII, p. 399)
<i>Foreign Judgments (Reciprocal Enforcement) Ordinance 1937</i> (No. 15 of 1937)	4.3.1937	22.6.1937	4.3.1937 (<i>Laws of T.N.G.</i> , Vol. XIV, p. 63)

JUDGMENTS (RECIPROCAL ENFORCEMENT)—

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

“judgment” means a judgment or order given or made by a court in any civil proceedings, or a judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party;

“judgment creditor” means the person in whose favour the judgment was given and includes any person in whom the rights under the judgment have become vested by succession or assignment or otherwise;

“judgment debtor” means the person against whom the judgment was given and includes any person against whom the judgment is enforceable under the law of the original court;

“judgments given in the Supreme Court of the Territory” includes judgments given in any courts on appeals against any judgments so given;

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

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

“registration” means registration under Part II. of this Ordinance, and the expressions “register” and “registered” shall be construed accordingly.

Sub-section
(2) amended
by No. 15 of
1937, s. 2.

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

PART II.—REGISTRATION OF FOREIGN JUDGMENTS.

Power to extend
Part to foreign
countries giving
reciprocal
treatment.

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

- (a) that this Part shall extend to that foreign country; and
- (b) that such courts of that foreign country as are specified in the proclamation shall be deemed superior courts of that country for the purposes of this Part.

(2) No proclamation has been published in *N.G. Gaz.*

Foreign Judgments (Reciprocal Enforcement) Ordinance 1936-1937.

(2.) Any judgment of a superior court of a foreign country to which this Part extends, other than a judgment of such a court given on appeal from a court which is not a superior court, shall be a judgment to which this Part applies, if—

- (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 proclamation directing that this Part 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.

5.—(1.) A person, being a judgment creditor under a judgment to which this Part applies, may apply to the Supreme Court at any time within six years after the date of the judgment or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in the Supreme Court, and on any such application the Supreme Court shall, subject to proof of the prescribed matters and to the other provisions of this Ordinance, order the judgment to be registered:

Application for, and effect of, registration of foreign judgment.

Provided that a judgment shall not be registered if at the date of the application—

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

(2.) Subject to the provisions of this Ordinance 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; and
- (b) proceedings may be taken on a registered judgment; and
- (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:

JUDGMENTS (RECIPROCAL ENFORCEMENT)—

Provided that execution shall not issue on the judgment so long as, under this Part and the rules of court made under this Ordinance, it is competent for any party to make an application to have the registration of the judgment set aside or, where such an application is made, until after the application has been finally determined.

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

(4.) 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 that date.

(5.) If, on an application for the registration of a judgment, it appears to the registering court that the judgment is in respect of different matters and that some, but not all, of the provisions of the judgment are such that, if those provisions had been contained in separate judgments, those judgments could properly have been registered, the judgment may be registered in respect of the provisions aforesaid but not in respect of any other provisions contained therein.

(6.) 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.

Power to make
rules of court.

6.—(1.) Subject to the provisions of this section, the Chief Judge of the Territory may make rules of court⁽³⁾—

- (a) for making provision with respect to the giving of security for costs by persons applying for the registration of judgments;
- (b) for prescribing the matters to be proved on an application for the registration of a judgment and for regulating the mode of proving those matters;
- (c) for providing for the service on the judgment debtor of notice of the registration of a judgment;

(3) No rules of court have been made.

Foreign Judgments (Reciprocal Enforcement) Ordinance 1936-1937.

- (d) for making provision with respect to the fixing of the period within which an application may be made to have the registration of the judgment set aside and with respect to the extension of the period so fixed;
- (e) for prescribing the method by which any question arising under this Ordinance, whether a foreign judgment can be enforced by execution in the country of the original court, or what interest is payable under a foreign judgment under the law of the original court, is to be determined; and
- (f) for prescribing any matter which under this Ordinance is to be prescribed.

(2.) Rules of court made under this Ordinance shall be expressed to have, and shall have, effect subject to any such provisions contained in proclamations made by the Governor-General under section four of this Ordinance as are declared by the proclamations to be necessary for giving effect to agreements made between His Majesty and foreign countries in relation to matters with respect to which there is power to make rules of court under this Ordinance.

(3.) Rules of court made under this Ordinance shall be subject to disallowance by the Governor-General, and any rules of court so disallowed shall cease to have effect from the date of publication of disallowance in the *New Guinea Gazette*.

7.—(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—

Cases in which registered judgments shall, or may, be set aside.

- (a) shall be set aside if the registering court is satisfied—
 - (i) that the judgment is not a judgment to which this Part applies or was registered in contravention of the provisions of this Part; or
 - (ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case; or
 - (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 upon 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; or

JUDGMENTS (RECIPROCAL ENFORCEMENT)—

- (iv) that the judgment was obtained by fraud; or
 - (v) that the enforcement of the judgment would be contrary to public policy in the country of the registering court; or
 - (vi) that the rights under the judgment are not vested in the person by whom the application for registration was made; or
- (b) may be set aside if the registering court is satisfied that the matter in dispute in the proceedings in the original court had previously to the date of the judgment in the original court been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.
- (2.) For the purposes of this section the courts of the country of the original court shall, subject to the provisions of the next succeeding sub-section, 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; or
 - (ii) if the judgment debtor was plaintiff in, or counterclaimed in, the proceedings in the original court; or
 - (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; or
 - (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 situated 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 either of the last two preceding paragraphs, if the jurisdiction of the original court is recognised by the law of the registering court.

(3.) Notwithstanding anything in the last preceding sub-section, 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; or

(b) except in the cases mentioned in sub-paragraphs (i), (ii), and (iii) of paragraph (a), and in paragraph (c), of the last preceding sub-section, 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.

8.—(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 registering 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 registering court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by the competent tribunal.

Power of registering court on application to set aside registration.

(2.) Where the registration of a judgment is set aside under the last preceding sub-section, or solely for the reason that the judg-

JUDGMENTS (RECIPROCAL ENFORCEMENT)—

ment 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 may be registered not to be enforceable otherwise.

9. Except as otherwise provided by any law for the time being in force in the Territory, 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 the Territory.

Power to apply Part to the United Kingdom and British dominions, protectorates, and mandated territories.

10.—(1.) The Governor-General may by proclamation⁽⁴⁾ direct that this Part shall apply to the United Kingdom and to His Majesty's dominions outside the United Kingdom and to judgments obtained in the courts of the United Kingdom and of such dominions as it applies to foreign countries and judgments obtained in the courts of foreign countries, and, in the event of the Governor-General so directing, this Ordinance shall have effect accordingly and the *Reciprocal Enforcement of Judgments Ordinance 1925* shall cease to have effect except in relation to the United Kingdom and any parts of such dominions to which it extends at the date of the proclamation.

(2.) If at any time after the Governor-General has directed as aforesaid, a proclamation is made under section four of this Ordinance extending this Part to the United Kingdom or to any part of His Majesty's dominions to which the *Reciprocal Enforcement of Judgments Ordinance 1925* extends as aforesaid, the *Reciprocal Enforcement of Judgments Ordinance 1925* shall cease to have effect in relation to the United Kingdom or to that part of His Majesty's dominions, except as regards judgments obtained before the date of the order.

(3.) References in this section to His Majesty's dominions outside the United Kingdom shall be construed as including references to any British protectorate or protected State and to any territory in respect of which a mandate on behalf of the League of Nations has been accepted by His Majesty.

(4) No proclamation has been published in *N.G. Gaz.*

PART III.—MISCELLANEOUS.

11.—(1.) Subject to the provisions of this section, a judgment to which Part II. of this Ordinance applies or would have applied if a sum of money had been payable thereunder, whether it can be registered or not, and whether, if it can be registered, it is registered or not, shall be recognised in any court in the Territory 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 counter-claim in any such proceedings.

General effect
of certain
foreign
judgments.

(2.) This section shall not apply in the case of any judgment—

(a) where the judgment has been registered and the registration thereof has been set aside on some ground other than—

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

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

(iii) that at the date of the application the judgment could not be enforced by execution in the country of the original court; or

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

(3.) Nothing in this section shall be taken to prevent any court in the Territory 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 Ordinance.

12.—(1.) If it appears to the Governor-General that the treatment in respect of recognition and enforcement accorded by the courts of any foreign country to judgments given in the Supreme Court of the Territory is substantially less favourable than that accorded by the courts of the Territory to judgments of the superior courts of that country, the Governor-General may by proclamation⁽⁵⁾ apply this section to that country.

Power to make
foreign
judgments
unenforceable in
the Territory
if no
reciprocity.

(2.) Except in so far as the Governor-General may by proclamation under this section otherwise direct, no proceedings shall be entertained in any court in the Territory 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.

(5) No proclamation has been published in *N.G. Gaz.*

JUDGMENTS (RECIPROCAL ENFORCEMENT)—

Issue of
certificates
of judgments
obtained in the
Territory.

13. 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 Supreme Court against any person and the judgment creditor is desirous of enforcing the judgment in a country or territory to which Part II. of this Ordinance applies, the Supreme Court shall, on an application made by the judgment creditor and on payment of the prescribed fee, issue to the judgment creditor a certified copy of the judgment, together with a certificate containing such particulars with respect of 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:

Provided that 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.