

Hong Kong

Foreign Judgments (Reciprocal Enforcement) Ordinance of 6 May 1960

Chapter 319 Long title

To make provision for the enforcement in the Colony of Hong Kong of judgments given in other parts of the Commonwealth and foreign countries which afford reciprocal treatment to judgments given in the Colony of Hong Kong, for facilitating the enforcement in such parts or countries of judgments given in the Colony of Hong Kong, and for matters connected therewith.

Section: 1 Short title

This Ordinance may be cited as the Foreign Judgments (Reciprocal Enforcement) Ordinance.

Section: 2 Interpretation

Remarks:

Adaptation amendments retroactively made-25 of 1998 s. 2

(1) In this Ordinance, unless the context otherwise requires—

- ‘appeal’ (上訴) includes any proceedings by way of discharging or setting aside a judgment or an application for a new trial or a stay of execution;
- ‘country of the original court’ (原訟法院的國家) means the country in which the original court is situated;
- ‘foreign country’ (外地國家) has the same meaning as in the United Kingdom Foreign Judgments (Reciprocal Enforcement) Act 1933 (1933 c. 13);
- ‘judgment’ (判決) means—

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

(b) 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, but does not include a judgment which by virtue of the Foreign Judgments (Restriction on Recognition and Enforcement) Ordinance (Cap 46) cannot be recognized or enforced in Hong Kong;

- ‘judgment creditor’ (判定債權人) 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’ (判定債務人) 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 superior courts of the Colony’ (香港高級法院作出的判決) means judgments given in the Court of First Instance and includes judgments given in any court whether of the Colony or not, on appeals against any judgments so given;
- ‘original court’ (原訟法院) in relation to any judgment means the court by which the judgment was given;
- ‘prescribed’ (訂明) means prescribed by rules of court made under the High Court Ordinance (Cap 4) as modified by section 5 of this Ordinance;
- ‘registration’ (登記) means registration under section 4, and the expressions ‘register’ (登記) and ‘registered’ (已登記) shall be construed accordingly;
- ‘registering court’ (登記法院) in relation to any judgment means the court to which an application to register the judgment is made.

(2) For the purposes of this Ordinance, the expression ‘action in personam’ (對人的訴訟) shall not be deemed to include any matrimonial cause or any proceedings in connection with any of the following matters

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

Section: 3 Power to extend the provisions of the Ordinance to countries giving reciprocal treatment

(1) The Governor in Council, if he is satisfied that, in the event of the benefits conferred by this Ordinance 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 superior courts of the Colony, may by order direct—

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

(2) Any judgment of a superior court of any foreign country to which the provisions of this Ordinance 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 this Ordinance apply, 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 the provisions of this Ordinance 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 is pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.

(4) The Governor in Council may by a subsequent order vary or revoke any order previously made under this section.

Section: 4 Application for, and effect of, registration of foreign judgments

(1) A person, being a judgment creditor under a judgment to which the provisions of this Ordinance apply, may apply to the Court of First Instance 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 Court of First Instance, and on any such application the court shall, subject to proof of the prescribed matters and to the other provisions of this Ordinance, order the judgment to be registered:

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 day of registration:

Provided that the execution shall not issue on the judgment so long as, under the provisions of this Ordinance and any prescribed rules, 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 Colony, the judgment shall be registered as if it were a judgment for such sum in the currency of the Colony as, on the basis of the rate of exchange prevailing at the date of registration, 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.

Section: 5 Rules of Court

(1) The power to make rules of court under the High Court Ordinance (Cap 4) shall, subject to the provisions of this section, include power to make rules for the following purposes—

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

(f) for prescribing any matter which under the provisions of this Ordinance is to be prescribed.

(2) Rules made for the purposes of this Ordinance shall be expressed to have, and shall have, effect subject to any such provisions contained in orders made by the Governor in Council under section 3 as are declared by such orders to be necessary for the giving of effect to agreements made between Her Majesty and any foreign country in relation to matters with respect to which there is power to make rules of court for the purposes of the provisions of this Ordinance.

Section: 6 Cases in which registered judgments must, or may be set aside

(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 the provisions of this Ordinance apply or was registered in contravention of any of the foregoing provisions of this Ordinance; 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 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; or

(iv) that the judgment was obtained by fraud; or

(v) that the enforcement of the judgment shall 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 the provisions of 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; 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 situate in the country of that court;

(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 recognized by the law of the registering court.

(3) Notwithstanding anything contained 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; or

(b) (Repealed)

(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.

Section: 7 Powers of registering courts on application to set aside registrations

(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.

Section: 8 Foreign judgments which can be registered not to be enforceable otherwise

No proceedings for the recovery of a sum payable under a foreign judgment, being a judgment to which the provisions of this Ordinance apply, other than proceedings by way of registration of the judgment, shall be entertained in any court in the Colony.

Section: 9 Application to the Commonwealth

(1) The Governor in Council may by order direct that the provisions of this Ordinance shall apply to any part of the Commonwealth and to judgments obtained in the superior courts of such part, as they apply to foreign countries and judgments obtained in the superior courts of foreign countries; and upon the making of any such order the provisions of the Judgments (Facilities for Enforcement) Ordinance (Cap 9) shall cease to have effect except in relation to such part of the Commonwealth to which it extends at the date of the order.

(2) If at any time after the Governor in Council has directed as aforesaid an order is made under section 3 extending the provisions of this Ordinance to any part of the Commonwealth to which

the Judgments (Facilities for Enforcement) Ordinance (Cap 9) extends, then in relation to such part—

(a) the last mentioned Ordinance shall cease to have effect;

(b) the provisions of this Ordinance shall have effect as if—

(i) the expression ‘judgment’ (判決) included an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place;

(ii) the fact that a judgment was given before the coming into operation of the order did not prevent such judgment from being a judgment to which the provisions of this Ordinance apply, but the time limited for the registration of a judgment so given was 12 months from the date of the judgment or such longer period as may be allowed by the High Court; and

(iii) any judgment registered in the High Court under the provisions of the Judgments (Facilities for Enforcement) Ordinance (Cap 9) before the coming into operation of the order had been registered in that court under the provisions of this Ordinance and anything done in relation thereto under the provisions of the Judgments (Facilities for Enforcement) Ordinance (Cap 9) or any rules of court or other provisions applicable thereto had been done under the provisions of this Ordinance or the corresponding rules of court or other provisions applicable there to.

Section: 10 General effect of certain foreign judgments

(1) Subject to the provisions of this section, a judgment to which the provisions of this Ordinance apply 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 recognized in any court in the Colony 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 a 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 paragraph (a).

(3) Nothing in this section shall be taken to prevent any court in the Colony recognizing any judgment as conclusive of any matter of law or fact decided therein if that judgment would have been so recognized before the commencement of this Ordinance.

Section: 11 Power to make foreign judgments unenforceable in the Colony, if no reciprocity

(1) If it appears to the Governor in Council that the treatment in respect of recognition and enforcement accorded by the courts of any foreign country to judgments given in the superior courts of the Colony is substantially less favourable than that accorded by the courts of the

Colony to judgments of the superior courts of that country, the Governor in Council may by order apply this section to that country.

(2) Except insofar as the Governor in Council may by order under this section otherwise direct, no proceedings shall be entertained in any court in the Colony 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 Governor in Council may by a subsequent order vary or revoke any order previously made under this section.

Section: 12 Issue of certificates of judgments obtained in the Colony

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 Court of First Instance against any person and the judgment creditor is desirous of enforcing the judgment in a foreign country to which the provisions of this Ordinance apply, the court shall, on an application made by the judgment creditor and on payment of such fee as may be fixed for the purposes of this section by rules of court made under the High Court Ordinance (Cap 4) as modified by section 5 of this Ordinance 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: 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.

Section: 13 Transitional

Notwithstanding the amendment of section 4(3) by section 2 of the Foreign Judgments (Reciprocal Enforcement) (Amendment) Ordinance 1981 (8 of 1981) (hereinafter called the 'amending Ordinance'), the provisions of section 4(3) immediately prior to the date of commencement of the amending Ordinance shall continue to apply in relation to judgments registered before such date.