

South Africa

Domicile Act 3 of 1992

Act

To amend the law of domicile; and to provide for matters connected therewith.

[...]

4. Application of choice of law rules in certain cases.

If a court, in the application of the choice of law rules, finds that a question before the court should be decided in accordance with the law of a foreign state or territory on account of someone's domicile in that state or territory, the court shall decide that question in accordance with that law, even though a court of that state or territory, in the application of the choice of law rules, would have found the South African law or any other law to be applicable with respect to the question concerned.

[...]

Divorce Act 70 of 1979

Act

To amend the law relating to divorce and to provide for incidental matters.

[...]

7. Division of assets and maintenance of parties.

[...]

(9) When a court grants a decree of divorce in respect of a marriage the patrimonial consequences of which are according to the rules of the South African private international law governed by the law of a foreign state, the court shall have the same power as a competent court of the foreign state concerned would have had at that time to order that assets be transferred from one spouse to the other spouse.

[...]

Enforcement of Foreign Civil Judgments 32 of 1988

Act

To provide that civil judgments given in designated countries may be enforced in magistrates' courts in the Republic; to repeal the Reciprocal Enforcement of Civil Judgments Act, 1966; and to provide for matters incidental thereto.

1. Definitions

In this Act, unless the context otherwise indicates –

‘certified copy’, in relation to a judgment, means a copy certified by the proper officer of the court of a designated country to be a true copy;

‘court’, in relation to the court of a designated country, means the Supreme or High Court or any magistrate’s court (including a regional court) of that country and, in relation to a court in the Republic, means the magistrate’s court of the district where–

(a) the person against whom a judgment in question was given–

(i) resides, carries on business or is employed; or

(ii) owns any movable or immovable property;

(b) any juristic person against which the judgment was given has its registered office, or its principal place of business;

(c) any partnership against which the judgment was given has its business premises or any member thereof resides;

‘designated country’ means a country designated under section 2 (1);

‘judgment’ means any final judgment or order for the payment of money, given or made before or after the commencement of this Act by any court in any civil proceedings which is enforceable by execution in the country in which it was given or made, but does not include any judgment or order given or made by any court on appeal from a judgment or order of a court other than a court as defined in this Act, or for the payment of any tax or charge of a like nature or of any fine or other penalty, or for the periodical payment of sums of money towards the maintenance of any person;

[Definition of ‘judgment’ substituted by s. 36 of Act 75 of 1996]

‘judgment creditor’ means the person in favour of whom the judgment was given, including any other person in whom rights under the judgment have become vested;

‘judgment debtor’ means the person against whom a judgment was given in the court of a designated country, including any person against whom such judgment is enforceable under the law of the designated country;

‘Minister’ means the Minister of Justice;

‘prescribed’ means prescribed by the rules referred to in section 6 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), read with section 10 of this Act;

‘proceedings’ means the proceedings in which the judgment was given.

2. Application of Act

(1) This Act shall apply in respect of judgments given in any country outside the Republic which the Minister has for the purposes of this Act designated by notice in the Gazette.

(2) The Minister may at any time by subsequent notice in the Gazette withdraw any notice under subsection (1), and thereupon any country referred to in such last-mentioned notice shall cease to be a designated country for the purposes of this Act.

3. Registration of judgments given in designated countries

(1) Whenever a certified copy of a judgment given against any person by any court in a designated country is lodged with a clerk of the court in the Republic, such clerk of the court shall register such judgment in the prescribed manner in respect of—

(a) the balance of the amount payable thereunder, including the taxed costs awarded by the court of the designated country;

(b) the interest, if any, which by the law or by order of the court of the designated country concerned is due on the amount payable thereunder up to the time of such registration;

(c) the reasonable costs of and incidental to such registration, including the costs of obtaining a certified copy of the judgment.

(2) The clerk of the court registering the judgment shall forthwith issue a notice directed to the judgment debtor informing him of such registration.

(3) The notice referred to in subsection (2) shall be served on the judgment debtor by the judgment creditor in the manner prescribed for the service of process.

(4) If any amount payable under a judgment registered under this section is expressed in a currency other than the currency of the Republic, the judgment shall be registered as if it were a judgment for such amount in the currency of the Republic, calculated at the rate of exchange prevailing at the date of the judgment.

(5) The amounts referred to in subsection (1) (a) and (c) shall bear interest from the date of registration of the judgment until the date of payment of the said amount, calculated at the rate prescribed under section 1 of the Prescribed Rate of Interest Act, 1975 (Act 55 of 1975), or at the rate fixed by the court of the designated country, whichever is the lower.

4. Effect of registration of judgment, and execution

(1) Whenever a judgment has been registered in terms of section 3, such judgment shall have the same effect as a civil judgment of the court at which the judgment has been registered.

(2) Notwithstanding anything to the contrary in this section contained, a judgment registered in terms of section 3 shall not be executed before the expiration of 21 days after service of the notice referred to in section 3 (2), or until an application in terms of section 5 has been finally disposed of.

5. Setting aside of registered judgment

(1) The registration of a judgment under section 3 shall, on the application of the judgment debtor, be set aside if the court at which the judgment is registered is satisfied —

(a) that the judgment was registered in contravention of any provision of this Act;

(b) that the court of the designated country concerned had no jurisdiction in the circumstances of the case;

(c) that the judgment debtor did not receive notice of the proceedings in which the judgment was given, as prescribed by the law of the designated country, or, if no such notice is so prescribed, that he did not receive reasonable notice of the said proceedings to enable him to defend the proceedings, and did not appear;

- (d) that the judgment was obtained by fraud;
 - (e) that the enforcement of the judgment would be contrary to public policy in the Republic;
 - (f) that the certified copy of the judgment lodged in terms of section 3 was so lodged at the request of a person other than the judgment creditor;
 - (g) that the matter in dispute in the proceedings had, prior to the date of the judgment, been the subject of a final judgment in civil proceedings by a court of competent jurisdiction;
 - (h) that the judgment has been set aside by a court of competent jurisdiction;
 - (i) that the judgment has become prescribed under either the laws of the Republic or the designated country concerned;
 - (j) that the judgment has been wholly satisfied;
 - (k) that the judgment has been partly satisfied, to the extent in which it has been so satisfied;
 - (l) that the judgment is a judgment or order which in terms of any law may not be recognized or enforced in the Republic.
- (2) An application under subsection (1) shall be brought within 21 days after service of the notice referred to in section 3 (2).
- (3) The court hearing an application referred to in subsection (1) may at any time postpone the hearing of the application to such date as it may determine.

6. Stay of execution of judgment

If, on the application of any judgment debtor, the court at which the judgment is registered is satisfied that an appeal against the judgment is pending in a court of competent jurisdiction or that the applicant is entitled and intends to appeal against the judgment to a court of competent jurisdiction, it may, on such conditions as it may deem fit, postpone the execution of the judgment.

7. Presumptions

- (1) A judgment shall be deemed to be final notwithstanding that an appeal against such judgment is pending in a court of the designated country or that the time prescribed by the law of such country for appealing against such judgment has not expired.
- (2) A document purporting to be a copy of a judgment of a court in a designated country, and purporting to be certified as a true copy of an original judgment of that court by someone styled in that document to be a registrar or a clerk of such court, shall be admissible in evidence in any proceedings under any of the provisions of this Act, and shall be prima facie proof of the contents thereof.
- (3) Any document admissible under subsection (2), or any document which would have been admissible under any other law if made or attested within the Republic, need not be authenticated and shall be admissible as if it has been made or attested within the Republic.
- (4) Subject to the provisions of subsection (5), the court of the designated country in which the judgment was given shall, for the purpose of section 5, be deemed to have had jurisdiction—

(a) if the judgment debtor –

(i) was the plaintiff or plaintiff in reconvention in the proceedings or submitted to the jurisdiction of the court by which the judgment was given by voluntarily appearing in the proceedings for any purpose other than protecting or obtaining the release of property seized or threatened with seizure in the proceedings or contesting the jurisdiction of that court;

(ii) was a defendant in the proceedings and had, before the commencement of the proceedings, agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of any court of the designated country; or

(iii) was a defendant and, at the institution of the proceedings, resident in, or being a juristic person, had its principal place of business in, such designated country, or at any time had an office or place of business in such designated country through or at which the transaction to which the proceedings relate, was effected;

(b) if, in any action relating to immovable property, the property was at the institution of the proceedings situate in the designated country in which the proceedings were instituted;

(c) if, in any proceedings other than proceedings referred to in paragraph (a) or (b), the jurisdiction of the court by which the judgment was given is recognized by the law of the Republic.

(5) The court of the designated country in which the judgment was given shall, for the purposes of section 5, be deemed not to have had jurisdiction—

(a) in proceedings relating to immovable property situated outside such designated country;

(b) except in the cases referred to in subsection (4) (a) (i) and (ii), in proceedings instituted in contravention of an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of such designated country; or

(c) in proceedings in which the person against whom the judgment was given was under the rules of public international law entitled to immunity from jurisdiction of the courts of such designated country and did not submit to such jurisdiction.

8. Removal of assets prohibited

A notice issued under section 3 (2) shall operate as an interdict against the judgment debtor on whom it was served, and against any person having knowledge of such notice, not to remove or dispose of any assets of the judgment debtor if such removal or disposal would prejudice the execution of the judgment.

9. Savings

Nothing in this Act contained shall be construed as preventing any court in the Republic from recognizing, for the purposes of any claim, defence or counter-claim, any judgment (other than a judgment the registration of which has been set aside under section 5) given by any court of competent jurisdiction outside the Republic in any civil matter, as conclusive of any matter of law or of fact decided in such judgment if such judgment could, before the commencement of this Act, have been so recognized by such court.

10. Rules

Any powers to make rules under section 6 of the Rules Board for Courts of Law Act, 1985 (Act 107 of 1985), shall be deemed to include the power to make rules prescribing any matter which may in terms of this Act be prescribed or which is necessary or expedient to be prescribed to give effect to the provisions of this Act.

11. Repeal of Act 9 of 1966

The Reciprocal Enforcement of Civil Judgments Act, 1966 (Act 9 of 1966), is hereby repealed.

12. Short title and commencement

This Act shall be called the Enforcement of Foreign Civil Judgments Act, 1988, and shall come into operation on a date fixed by the State President by proclamation in the Gazette.