

# LAWS OF TONGA

[1988 Ed]

## CHAPTER 14

### RECIPROCAL ENFORCEMENT OF JUDGMENTS

#### ARRANGEMENT OF SECTIONS

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**No. 5 of 1967**

**AN ACT TO MAKE PROVISION FOR THE ENFORCEMENT IN THE KINGDOM OF JUDGMENTS GIVEN IN FOREIGN COUNTRIES WHICH ACCORD RECIPROCAL TREATMENT TO JUDGMENTS GIVEN IN THE KINGDOM, FOR FACILITATING ENFORCEMENT IN FOREIGN COUNTRIES OF JUDGMENTS GIVEN IN THE KINGDOM AND FOR OTHER RELATED PURPOSES.**

[24<sup>th</sup> November 1967] Commencement.

##### **Short title.**

1. This Act may be cited as the Reciprocal Enforcement of Judgments Act.

#### **PART I - PRELIMINARY**

##### **Interpretation.**

**2. (1) In this Act -**

"appeal" includes any proceeding by way of discharging or setting aside a judgment or an application for a lie or a stay of execution;

"country of the original court" means a 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; and includes 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 give court in that place;

"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 of the original court;

"judgment given in the Supreme Court of Tonga" includes judgments given in, any court on appeals against any judgments; and also includes judgments that have become enforceable as judgments of the Supreme Court though not given therein;

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

"prescribed" means prescribed by the rules of court;

"registration" means registration under Part II of this Act; the expressions "register" and "registered" shall be construed accordingly;

"Supreme Court" means the Supreme Court of Tonga.

(2) For the purposes of this Act the expression "action in personam" shall not be deemed to include any matrimonial cause or any proceedings in connection with any of the following matters- that is to say, matrimonial matters, administration of the estates or deceased persons, bankruptcy, winding up of companies, lunacy, or guardianship of infants.

## **PART II - RECIPROCAL ENFORCEMENT OF JUDGMENTS**

### **Application of this Part.**

**3. (1)** If the King is satisfied that, in the event of the benefits conferred by this Part of this Act being extended to judgments given in the superior court of any country, substantial reciprocity of treatment will be assured as respects the enforcement within that country of judgments given in the Supreme Court of Tonga, He may by Order-in-Council direct: -

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

(b) that such courts as are specified in the Order-in-Council shall, for the purposes of this Part of this Act, be deemed superior courts of that country.

(2) Any judgments of a superior court of a country to which this Part of this Act extends, other than a judgment of such court given on appeal from the court which is not a superior court, shall be judgments to which this Part of this Act applies, if: -

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

(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-in-Council directing that this Part of this Act shall extend to that 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 it, or that it may still be subject to appeal, in the courts of the country of the original court.

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

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

4. (1) A person, being a judgment creditor under a judgment to which this Part of this Act applies, may apply to the Supreme 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 Supreme Court, and on any such application the said Court shall, subject to proof of the prescribed matters and to the other provisions of this Act, order the judgment to be registered:

Provided that the 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 Act with respect to the setting aside or 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 the same interest; and

(d) the Supreme 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 Supreme Court and entered on the date of registration:

Provided that execution shall not issue on the judgment so long as, under this Part of 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 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 Tonga, the judgment shall be registered as if it were a judgment for such sum in the currency of Tonga 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 judgement of the original court has been partly satisfied, the judgments shall not be registered in respect of the whole sum payable under the judgement 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 Supreme 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, that 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.

#### **Rules of Court for the purposes of this Act.**

5. The power to make rules of court under section 6 Supreme Court Act, shall, subject to the provisions of this 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 judgment;

(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 judgement 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 the judgment set aside and with respect to the extension of the period so fixed;

(e) for prescribing the method by which it might be determined whether a judgment can be enforced by execution in the country of the original court;

(f) for prescribing any other thing which under this Act may be prescribed by regulation.

## **Cases where registered judgments shall be set aside.**

**6. (1)** On application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment shall be set aside if the Supreme Court is satisfied:-

(a) that the judgment is not a judgment to which this Part of this Act applies or was registered in contravention of the provisions of this Act;

(b) that the courts of the country of the original court had no jurisdiction in the circumstances of the case;

(c) 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;

(d) that the judgment was obtained by fraud;

(e) that the enforcement of the judgment would be contrary to public policy in Tonga;  
or

(f) that the rights under the judgment are not vested in the person by whom the application for registration was made.

(2) On an application in that behalf duly made by any party against a registered judgment may be enforced, the registration of the judgment may be set aside if the Supreme Court is satisfied that the 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.

(3) For the purposes of this section the courts of the country original court shall, subject to the provisions of subsection (4) of 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;

(ii) if the judgment debtor was plaintiff in, or counterclaimed in, the proceedings in that 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 subject matter was immovable property or in an action in, of which the subject matter was movable property, property in question was at the time of the proceedings original court situate in the country of that court;

(c) in the case of the judgment given in an action other than any such action as is mentioned in paragraph (a) or paragraph (b) of this sub-section, if the jurisdiction of the original court is recognised by the law of Tonga.

(4) Notwithstanding anything in sub-section (3) of this section 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 sub-sections (3)(a) (i), (ii), (iii) and (3)(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 then 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.

### **Powers of Supreme Court on application to set aside registration.**

7. (1) If, on an application to set aside the registration of a judgment, the applicant satisfies the Supreme 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 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 Supreme Court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by a competent tribunal.

(2) Where the registration of a judgment is set aside under sub-section (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 Supreme Court shall, on the application of the judgment creditor, order judgment to be registered for the balance remaining payable at that date.

**Judgments which can be registered not to be enforceable otherwise.**

8. No proceedings for the recovery of a sum payable under a judgment to which this part of this Act applies, other than proceedings by way of registration of the judgment, shall be entertained by the Supreme Court.

**PART III - MISCELLANEOUS**

**General effect of certain judgments.**

9. (1) Subject to the provisions of this section, a judgment to which Part II of this Act 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 the Supreme Court as conclusive between the parties to in all proceedings founded on the same cause of action, and 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 grounds other than -

(i) that a sum of money was not payable and judgment;

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

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

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

(3) Nothing in this section shall be taken to prevent the Supreme Court recognising any judgment as conclusive of any matter of law or fact decided therein if the judgment would have been so recognised before the passing of this Act.

**Power to make judgments unenforceable in the Kingdom if no reciprocity.**

10. (1) If it appears to the King that the treatment in respect of recognition and enforcement accorded by the courts of any country to judgments given in the Supreme Court is substantially less favourable than that accorded by the Supreme Court to judgments of superior courts of that country, the King in Council may by Order declare that this section applies in relation to that country.

(2) Except in so far as the King may by Order-in-Council under this section otherwise direct, no proceedings shall be entertained in the Supreme Court for the recovery of any sum alleged to be payable under a judgment given in a court of a country declared by Order to be a country in relation to which this section applies.

(3) The King may by a subsequent Order-in-Council vary or revoke any order previously made under this section.

### **Issue of certificates of judgments obtained in Tonga.**

**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 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 desires to enforce the judgment in any country to which Part II of this Act applies, the court shall, on an application made by the judgment creditor and on payment of such fees as may be fixed by rules of court for the purposes of this section, issue to the judgment creditor, 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 under the judgment, as may be prescribed.

(2) Where execution of a judgment is stayed for any period pending an appeal or for any reason, an application shall not be made under this section with respect to the judgment until the expiration of that period.

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## **SUBSIDIARY LEGISLATION**

### **SECTION 3(1) - Reciprocal Enforcement of Judgments (Extension to Countries and States) Order**

*Made by His Majesty in Privy Council*

*G. S. 23/77, G. S. 173/86, G. S. 21/88*

Commencement: [31 March, 1977]

#### **Short title.**

**1.** This Order may be cited as the Reciprocal Enforcement of Judgments (Extension to Countries and States) Order.

#### **Act extended to certain countries and states.**

**2.** (1) Part II of the Act extends to the countries and states specified in the first column of the Schedule.

(2) The courts specified in the second column of the Schedule are deemed to be Superior Courts of the relevant country or state for the purposes of Part II of the Act.

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## **SCHEDULE**



Countries and States	Courts
Australian States and Territories:	
Australian Capital Territory	Supreme Court
Queensland	Supreme Court
New South Wales	Supreme Court
Northern Territory	Supreme Court
South Australia	Supreme Court
Tasmania	Supreme Court
Victoria	Supreme Court
Western Australia	Supreme Court
Australian Antarctic Territory	Supreme Court of the Australian Capital Territory
Coral Sea Island Territory	Supreme Court of Norfolk Island
Heard and McDonald Islands Territory	Supreme Court of the Australian Capital Territory
Territory of Ashmore and Cartier Islands	Supreme Court of the Northern Territory
Territory of Cocos (Keeling) Island	Supreme Court of the Cocos (Keeling) Islands
Territory of Norfolk Island	Supreme Court of Norfolk Island
Commonwealth of Australia	High Court of Australia Federal Court of Australia
New Zealand	Supreme Court and Court of Appeal
Papua New Guinea	Supreme Court of Justice National Court of Justice
United Kingdom of Great Britain and Northern Ireland	House of Lords Supreme Court of Judicature Court of Appeal High Court of Justice and Crown Court (for England and Wales) Court of Session, and Sheriff Court (for Scotland) Supreme Court of Judicature (for Northern Ireland)

## SECTION 5\*- Reciprocal Enforcement of Judgments Rules

\* And also made under section 6 of the Supreme Court Act.

*Made by the Judge of the Supreme Court*

*G.S. 109/79, Act 46 of 1988†*

† N. B. Section 7 of Act 46 of 1988 is not yet in force.

Commencement.

[31 May, 1979]

### ARRANGEMENT OF RULES

#### RULE

1. Short title.
2. Judge and Registrar to exercise powers.

3. Application to register judgment.
4. Affidavits in support.
5. Registering judgment.
6. Setting aside judgment.
7. Effect of Rules.
8. Application under section 11 of Act.

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### **Short title.**

1. These Rules may be cited as the Reciprocal Enforcement of Judgments Rules.

### **Judge and Registrar to exercise powers.**

2. The Powers conferred on the Supreme Court by the Reciprocal Enforcement of Judgments Act (in these Rules referred to as "The Act") may be exercised by a Judge of the Supreme Court in Chambers or by the Registrar of the Supreme Court.

### **Application to register judgment.**

3. An application under the Act to have a judgment registered in the Supreme Court may be made ex-party but the Court may order that the applicant give notice to any party concerned that there will be a hearing of the application and the date of the hearing.

### **Affidavits in support.**

4. (1) An application for registration must be supported by an affidavit:-

(a) exhibiting the judgment or a verified, certified or otherwise duly authenticated copy thereof and where the judgment is not in either the Tongan or English language, a translation of it into one or other of those languages authenticated by an affidavit sworn by the translator in which he shall state his name, address and qualifications to translate and that he has correctly translated the judgment to the best of his ability;

(b) stating the name and the usual or last known address of the judgment creditor and judgment debtor and their address for service if different;

(c) stating to the best of the information or belief of the deponent and giving the source of information or grounds for beliefs:-

(i) that the applicant is entitled to enforce the judgment and whether the enforcement is as to the whole or part of the judgment and if a part, which part;

(ii) that the judgment could be enforced by execution in the country of the original court;

(iii) that the registration is not liable to be set aside under the provisions of Section 6 of The Act;

(d) specifying the amount of interest if any which, under the law of the country of the original court has become due under the judgment up to the time of registration;

(e) stating where the sum payable under the judgment is expressed in a currency other than that of the Kingdom of Tonga, the equivalent in Tongan currency at the rate of exchange prevailing on the date the judgment was entered or perfected in the country of origin;

(f) that all the Rules and Orders of the Court relating to the registration have been complied with.

(2) The Court may require a supplemental affidavit to be filed if it requires further information on the above matters or any other matter affecting the registration.

### **Registering judgment.**

5. (1) If the Court is satisfied by the applicant that the judgment is one that should (on the evidence before it) be registered, it shall register the judgment in a register which shall be kept by the Registrar in the Central Registry of the Supreme Court.

(2) Upon the judgment being registered the applicant must obtain from the Central Registry a Certificate of registration and this certificate shall state -

(a) the exact wording of the registration;

(b) the time allowed for applying to set aside the registration;

(c) the means by which the certificate is to be served on the judgment debtor.

(3) Before execution can be effected the applicant must file an affidavit showing -

(a) that the certificate has been served on the judgment debtor in the manner ordered by the Court;

(b) that he has no knowledge of any application to set aside the registration;

(c) that the time allowed for applying for the registration to be set aside has expired.

(4) Upon the filing of an affidavit as required by subrule (3), the Registrar shall enter the word "Execution" in the register beside the registration and cause the Court Stamp to be affixed to the entry and sign and date the entry.

(5) No process of execution is lawful until the acts in subrule (4) have been completed.

### **Setting aside judgment.**

6. (1) An application to set aside registration of a judgment must be made by summons supported by an affidavit.

(2) The Court on hearing the application may order any issue between the applicant to register and the applicant to set aside to be tried and the trial shall be by the Chief Justice or a Judge of the Supreme Court.

- (3) The Court may order evidence to be given orally or by affidavit.
- (4) The Court after the hearing shall either confirm the registration or revoke it.
- (5) Appeal shall by leave lie to the Privy Council\* against the decision of the Court.
- (6) Leave shall be asked for at the hearing or within 14 days thereof. If leave is refused by the Judge any party aggrieved may apply to the Privy Council\* for leave at its next Judicial Session.

\* Pursuant to section 7 of Act 46 of 1988, the words "Privy Council" will be replaced by the words "Court of Appeal" when the Court of Appeal Act (14 of 1966) comes into force.

### **Effect of Rules.**

7. The foregoing rules shall have effect subject to the provisions contained in the Order in Council extending the Act to the country of the Original Court.

### **Application under section 11 of Act.**

8. (1) An application under Section 11 of the Act must be made ex-party to the Registrar on affidavit.

The Affidavit must -

- (a) give particulars of the proceedings in which the judgment was obtained;
- (b) have annexed to it a copy of the writ or originating process by which the proceedings were begun, the evidence of service thereof on, or appearance by the defendant and copies of the pleadings, if any;
- (c) state whether the defendant did or did not object to the jurisdiction, and, if so, on what grounds;
- (d) show that the judgment is not subject to any stay of execution;
- (e) state that the time for appealing has expired or, as the case may be, the date on which it will expire and in either case whether notice of appeal against the judgment has been entered; and
- (f) state the rate at which the judgment carries interest.

(2) The certified copy of the judgment shall be an office copy sealed with the seal of the Supreme Court of Tonga endorsed with a certificate signed by the Registrar certifying that the copy is a true copy of a judgment obtained in the Supreme Court of Tonga and that it is issued in accordance with section 11 of the Act.

(3) There shall be issued with the certified copy a certificate which shall contain the following information:

- (a) the manner in which the writ or other originating process was served on the defendant or that he appeared thereto;

(b) what objections, if any, were made to the jurisdiction; (c) what pleadings, if any, were served;

(d) that the time for appealing has expired or, as the case may be, the date on which it will expire;

(e) whether notice of appeal against the judgment has been entered;

(f) the rate at which the judgment carries interest;

(g) such other particulars as it may be necessary to give to the court in the foreign country in which it is sought to obtain execution of the judgment.

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