



ST HELENA

REVISED EDITION OF THE LAWS, 2017

COURTS AND JUSTICE

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ORDINANCE, 1961¹

*Ordinance 7 of 1961
In force 17 July 1961*

Amended by Ordinance 5 of 1962 (in force 20 July 1962)

Subsidiary legislation:

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) RULES, 1961
Legal Notice 9 of 1961 (in force 1 November 1961)

**FOREIGN JUDGMENTS (AUSTRALIA AND ITS EXTERNAL TERRITORIES)
ORDER, 1994**
Legal Notice 27 of 1994

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ORDINANCE, 1961

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AN ORDINANCE to make provision for the enforcement in St Helena of judgments given in foreign countries, for facilitating the enforcement in foreign countries of judgments given in St Helena, and for other purposes in connection with those matters.

PART I PRELIMINARY

Short title and application

1. This Ordinance may be cited as the Foreign Judgments (Reciprocal Enforcement) Ordinance, 1961, and applies to St Helena, Ascension and Tristan da Cunha.

Interpretation

2. (1) In this Ordinance—
- “**appeal**” 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 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 any 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;
- “**judgment given in the Supreme Court**” includes a judgment given in any court on appeal against a judgment given in the Supreme Court.
- “**original court**” in relation to any judgment means the court by which the judgment was given;
- “**registration**” means registration under Part II of this Ordinance, and the expressions “**register**” and “**registered**” are to be construed accordingly;
- “**St Helena**” includes Ascension and Tristan da Cunha;
- “**Supreme Court**” means the Supreme Court of St Helena.

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

PART II REGISTRATION OF FOREIGN JUDGMENTS

Power to extend Part II to foreign countries giving reciprocal treatment

3. (1) If the Governor in Council is satisfied that if the benefit conferred by this Part is given 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, the Governor in Council may by Order direct that—

- (a) this Part extends to that foreign country; and
- (b) the courts of that foreign country specified in the Order are deemed to be superior courts of that country for the purposes of this Part.

(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, is a judgment to which this Part applies, if—

- (a) it is final and conclusive as between the parties;
- (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 directing that this Part extends to that foreign country.

(3) For the purposes of this section, a judgment is final and conclusive even if an appeal is pending against it, or it is subject to appeal, in the courts of the country of the original court.

Application for, and effect of, registration of foreign judgment

4. (1) A person who is a judgment creditor under a judgment to which this Part applies may apply to the Supreme Court at any time within 6 years after the date of the judgment, or, if 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.

(1A) On an application under subsection (1) the Supreme Court must, subject to proof of the prescribed matters and to the other provisions of this Ordinance, order the judgment to be registered, unless at the date of the application the judgment—

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

(2) Subject to subsection (2A) and the provisions of this Ordinance with respect to the setting aside of registration—

- (a) a registered judgment has the same force and effect;
- (b) proceedings may be taken on a registered judgment;

- (c) the sum for which a judgment is registered carries interest; and
- (d) the Supreme Court has 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.

(2A) Execution must not issue on the judgment so long as under this Part and any rules of court made under it it is competent for any party to apply to have the registration of the judgment set aside, or, if such an application is made, until after the application has been finally determined.

(3) If the sum payable under a judgment which is to be registered is expressed in a currency other than the currency of St Helena, the judgment must be registered as if it were a judgment for such sum in the currency of St Helena 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 must 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 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, the judgment may be registered in respect of those latter provisions but not in respect of any other provisions contained in the judgment.

(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 must 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

5. (1) The Chief Justice may make rules of court, to be published in the *Gazette*—

- (a) regulating and prescribing the procedure and practice in respect of any proceedings under this Ordinance;
- (b) prescribing the fees payable in respect of any proceedings under this Ordinance;
- (c) making provision with respect to the giving of security for costs by persons applying for the registration of judgments;
- (d) prescribing the matters to be proved on an application for the registration of a judgment and regulating the mode of proving those matters;
- (e) providing for the service on the judgment debtor of notice of the registration of a judgment;

- (f) 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;
- (g) 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;
- (h) prescribing any matter which under this Part is to be prescribed;
- (i) generally for the better carrying out of the purposes of this Ordinance.

(2) Rules made for the purposes of this Part must be expressed to have, and do have, effect subject to any provisions contained in Orders made under section 3 that are declared by those Orders to be necessary for giving effect to agreements made between Her Majesty and foreign countries in relation to matters with respect to which there is power to make rules of court for the purposes of this Part.

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

6. (1) On application by any party against whom a registered judgment may be enforced, the registration of the judgment—

- (a) must be set aside if the Supreme Court is satisfied that—
 - (i) the judgment is not a judgment to which this Part applies or was registered in contravention of the foregoing provisions of it;
 - (ii) the courts of the country of the original court had no jurisdiction in the circumstances of the case;
 - (iii) the judgment debtor, being the defendant in the proceedings in the original court, did not (even if process was duly served on the debtor in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable the debtor to defend the proceedings and did not appear;
 - (iv) the judgment was obtained by fraud;
 - (v) the enforcement of the judgment would be contrary to public policy in St Helena; or
 - (vi) 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 Supreme Court is satisfied that the matter in dispute in the proceedings in the original court had before 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 are, subject to subsection (3), deemed to have had jurisdiction—

- (a) in the case of a judgment given in an action *in personam* if the judgment debtor—
 - (i) was a defendant in the original court and 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) was plaintiff in, or counter-claimed in, the proceedings in the original court;
 - (iii) was a defendant in the original court and 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) was a defendant in the original court and was at the time when the proceedings were instituted resident in, or was a corporate body with its principal place of business in, the country of that court; or
 - (v) was a defendant in the original court and 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 recognised by the law of St Helena.
- (3) Notwithstanding anything in subsection (2), the courts of the country of the original court are not 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 paragraphs (a)(i), (ii) and (iii) and (c) of subsection (2), 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 was a defendant in the original proceedings, was under the rule of public international law 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 in relation to setting aside

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 the applicant is entitled and intends to appeal, against the judgment, the court may, on terms it thinks just –

- (a) set aside the registration; or
- (b) adjourn the application to set aside the registration until after the expiration of a period that appears to the court to be sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by the competent tribunal.

(2) If the registration of a judgment is set aside either under subsection (1), or because 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 does not prejudice a further application to register the judgment when the appeal has been disposed of or

when the judgment becomes enforceable by execution in that country, as the case may be.

(3) If the registration of a judgment is set aside only because the judgment, even though at the date of the application for registration partly satisfied, was registered for the whole sum payable under it, the Supreme Court must, on the application of the judgment creditor, order judgment to be registered for the balance remaining payable at that date.

Foreign judgments which can be registered not to be enforceable otherwise

8. No proceedings for the recovery of a sum payable under a foreign judgment to which this Part applies, other than proceedings by way of registration of the judgment, may be entertained by any court in St Helena.

Application to Commonwealth

9. This Part applies to Commonwealth countries or territories outside St Helena and to judgments obtained in the courts of such Commonwealth countries or territories as it applies to foreign countries and judgments obtained in foreign countries.

PART III MISCELLANEOUS

General effect of certain foreign judgments

10. (1) Subject to this section, a judgment to which Part II applies or would have applied if a sum of money had been payable under it, whether it can be registered or not, and whether, if it can be registered, it is registered or not, must be recognised in any court in St Helena as conclusive between the parties to it and may be relied on by way of defence or counter-claim in any proceedings in such court.

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

(a) if the judgment has been registered and the registration of it has been set aside on some ground other than that—

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

(ii) the judgment has been wholly or partly satisfied; or

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

(b) if 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 of it 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) This section does not prevent the recognition by any court in St Helena of any judgment as conclusive of any matter of law or fact decided in it if that judgment would have been so recognised before the enactment of this Ordinance.

Power to make foreign judgments unenforceable if no reciprocity

11. (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 Supreme Court is substantially less favourable than that accorded by the courts of St Helena to judgments of the superior courts of that country, the Governor in Council may by Order apply this section to that country.

(2) Unless the Governor in Council in an Order under subsection (1) otherwise directs, no proceedings may be entertained in any court in St Helena 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.

Issue of certificates of judgments obtained in St Helena

12. (1) If –

- (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
- (b)* the judgment creditor is desirous of enforcing the judgment in a country or territory to which Part II applies,

the court must, 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 any 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, that are prescribed.

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

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ORDINANCE, 1961

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) RULES, 1961

(Section 5(1))

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Citation

1. These Rules may be cited as the Foreign Judgments (Reciprocal Enforcement) Rules, 1961.

Interpretation

2. In these Rules—
 “**judge**” means the Chief Justice or any other judge of the Supreme Court;
 “**Order**” means an Order made under section 3 of the Ordinance;

Application for registration

3. An application under section 4 of the Ordinance to have a foreign judgment to which Part II of the Ordinance applies registered in the Supreme Court may be made *ex parte* to the court or a judge.

Evidence in support of application

4. (1) An application for registration must be supported by an affidavit of the facts—

- (a) exhibiting a certified copy of the judgment issued by the original court and authenticated by its seal; and if the judgment was not in English a translation of the judgment certified by a notary public or authenticated by affidavit;
- (b) stating to the best of the information and belief of the deponent—
 - (i) that the applicant is entitled to enforce the judgment;
 - (ii) as the case may require, either that at the date of the application the judgment has not been satisfied, or if the judgment has been satisfied in part, what the amount is in respect of which it remains unsatisfied;
 - (iii) that at the date of the application the judgment can be enforced by execution in the country of the original court;
 - (iv) that if the judgment were registered, the registration would not be, or be liable to be, set aside under section 6 of the Ordinance;
- (c) stating the amount of the 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.

(1A) The application must be accompanied by such other evidence with respect to the matters referred to in paragraph (b)(iii) or (c) of subsection (1) as may be required, having regard to the provisions of the Order extending the Ordinance to the country of the original court.

(2) If the sum payable under the judgment is expressed in a currency other than the currency of St Helena, the affidavit must also state the amount which that sum represents in the currency of St Helena calculated at the rate of exchange prevailing at the date of the judgment.

(3) The affidavit must also state the full name, title, trade or business and the usual or last known place of abode or of business of the judgment creditor and the judgment debtor respectively, so far as known to the deponent.

(4) If a judgment is in respect of different matters and some of the provisions of that judgment, but not all, are such that if they had been contained in separate judgments those judgments could properly have been registered, the affidavit must state the provisions in respect of which it is sought to register the judgment.

Security for costs

5. Except as otherwise provided by any relevant Order, the court or a judge may, in respect to an application for registration, order the judgment creditor to find security for the costs of the application and of any proceedings which may later be brought to set aside the registration.

Title of affidavit and summons

6. An affidavit for the purpose of these Rules must be headed:
 “In the matter of the Foreign Judgments (Reciprocal Enforcement) Ordinance, 1961, and in the matter of a judgment of the (describing the court) obtained in (describing the cause or matter) and dated the day of, 20.....” .

Order on application for registration

7. (1) An order giving leave to register a judgment must be drawn up by, or on behalf of, the judgment creditor.

(2) An order giving leave does not need to be served on the judgment debtor.

(3) Every such order must state the period within which an application may be made to set aside the registration and must contain a notification that execution on the judgment will not issue until the expiration of that period.

(4) The court or a judge may, on an application made while any party can still apply to have the registration set aside, grant an extension of the period (either as originally fixed or as subsequently extended) during which an application to have the judgment set aside may be made.

Register of judgments

8. A register of the judgments ordered to be registered under the Ordinance must be kept in the Registry of the Supreme Court by, or under the direction of, the Registrar.

Notice of registration

9. (1) Notice in writing of the registration of a judgment must be served on the judgment debtor—

- (a) if within the jurisdiction, by personal service as in the case of a writ of summons, unless some other mode of service is ordered by the court or a judge;
- (b) if out of the jurisdiction, in accordance with the rule applicable to the service of a writ of summons out of jurisdiction, except that special leave to serve out of the jurisdiction is not required.

(2) The notice of registration must state—

- (a) full particulars of the judgment registered and the order for registration;
- (b) the name and address of the judgment creditor or the creditor's legal representative on whom, and at which, any summons issued by the judgment debtor may be served;
- (c) the right of the judgment debtor to apply on the grounds provided in the Ordinance to have the registration set aside; and
- (d) in accordance with the terms of the order giving leave to register, within what time from the date of service of the notice an application to set aside may be made.

Endorsement of service

10. (1) Within 3 days from the day of service or within any extended period that may, in special circumstances, be allowed by order of a judge, the notice of registration or a copy or duplicate of it must be endorsed by the person serving it with the day of the month and of the week on which service was effected. If the notice is not so endorsed, the judgment creditor is not at liberty to issue execution on the judgment without the leave of the court or a judge.

(2) Every affidavit of service of a notice of registration must state on what day the endorsement was made.

Application to set aside registration

11. (1) An application to set aside the registration of a judgment must be made by summons to the court or a judge supported by affidavit.

(2) A summons for the purpose of this rule must be an ordinary summons headed in the same manner as the affidavit referred to in rule 6.

(3) On any such application the court or a judge may direct that an issue between the judgment creditor and the judgment debtor must be stated and tried and may give any directions

in relation to the trial of the issue that are necessary.

Issue of execution

12. (1) Execution must not issue on a registered judgment until after the expiration of the period which, in accordance with rule 7(3), is specified in the order giving leave to register as the period within which an application may be made to set aside the registration, or, if an order is made extending the period so specified, until after the expiration of the extended period.

(2) If an application is made to set aside the registration of a judgment, execution must not issue until such application has been disposed of.

(3) The party desirous of issuing an execution upon a registered judgment must produce to the proper officer an affidavit of the service of the notice of registration and of any order made by the court in relation to the judgment registered.

Form of writ of execution

13. In the case of a registered judgment, a writ of execution must contain the words “which said sum of money and interest were lately in” (describing the court in which judgment was obtained) and the words “and which judgment has been duly registered in the Supreme Court of St Helena pursuant to Part II of the Foreign Judgments (Reciprocal Enforcement) Ordinance, 1961”.

Determination of certain questions

14. If, whether under the Ordinance or under these rules, any question arises whether a foreign judgment can be enforced by execution in the country of the original court, or what interest is payable under the foreign judgment under the law of that country, that question is to be determined in accordance with any relevant provisions contained in the Order extending the Ordinance to that country.

Certified copy of Supreme Court judgment

15. (1) An application under section 12 of the Ordinance for a certified copy of a judgment obtained in the Supreme Court must be made *ex parte* to the Registrar on an affidavit made by the judgment creditor or the creditor’s legal representative.

(2) An affidavit for the purposes of this rule must—

- (a)** give particulars of the proceedings in which the judgment was obtained;
- (b)** have annexed to it a copy of the writ of summons or the originating summons by which the proceedings were instituted, the evidence of service of it upon, or appearance by, the defendant, copies of any pleadings in the proceedings, and a statement of the grounds on which the judgment was based;
- (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 and that no notice of appeal against it has been entered, and whether the time for appealing has expired; and
- (e) state the rate at which the judgment carries interest, if any.

(3) (1) If an application for a certified copy of a judgment is duly made under this rule, an office copy of the judgment must be issued, sealed with the seal of the Supreme Court and certified by the Registrar as follows:

“I certify that the above copy judgment is a true copy of a judgment obtained in the Supreme Court of St Helena and this copy is issued in accordance with section 12 of the Foreign Judgments (Reciprocal Enforcement) Ordinance, 1961.

Signed
Registrar of the Supreme Court”.

(2) The following further certificates must also be issued under the seal of the Supreme Court and certified by the Registrar:

- (a) a certificate giving particulars of the proceedings in which the judgment was obtained and having annexed to it copies of the writ of summons, or originating summons, by which the proceedings were instituted, showing the manner in which the writ or summons was served on the defendant, or that the defendant appeared to it, any objections made to the jurisdiction, any pleadings in the proceedings, a statement of the grounds on which the judgment was based and any other particulars it might be necessary to give to the foreign tribunal in which it is sought to obtain execution of the judgment;
- (b) a certificate stating the rate at which the judgment carries interest, if any.

Rules to have effect subject to Orders

16. These rules have effect subject to any provisions contained in Orders made under section 3 of the Ordinance that are declared by those Orders to be necessary for giving effect to agreements made between Her Majesty and foreign countries in relation to matters with respect to which there is power to make rules of court for the purposes of Part II of the Ordinance.

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ORDINANCE, 1961

FOREIGN JUDGEMENTS (AUSTRALIA AND ITS EXTERNAL TERRITORIES) ORDER, 1994 (Section 3(1))

Citation

1. This Order may be cited as the Foreign Judgments (Australia and its External Territories) Order, 1994.

Part II of the Ordinance extended to Australia and its external territories

2. (1) Part II of the Ordinance is extended to Australia and its external territories.

(2) The following courts of Australia and its external territories are deemed to be superior courts for the purpose of Part II of the Ordinance—

High Court of Australia

Federal Court of Australia

Family Court of Australia

Family Court of Western Australia

Supreme Court of New South Wales

Supreme Court of Victoria

Supreme Court of Queensland

Supreme Court of Western Australia

Supreme Court of South Australia

Supreme Court of Tasmania

Supreme Court of the Northern Territory

Supreme Court of the Australian Capital Territory

Supreme Court of Norfolk Island
