

## **ENFORCING FOREIGN JUDGMENTS IN BERMUDA UNDER THE JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT 1958**

Bermuda's *Judgments (Reciprocal Enforcement) Act 1958* (the "1958 Act") provides for the registration and enforcement of judgments in Bermuda of judgments obtained in the superior courts of certain foreign jurisdictions. Those foreign jurisdictions include England, Scotland, Northern Ireland, The Bahamas, Barbados, Guyana, Gibraltar, Granada, Hong Kong, Leeward Islands, St. Vincent, Jamaica, Nigeria, Dominica, St. Lucia and most of the states, territories and possessions of Australia. Significantly, commercial judgments<sup>1</sup> obtained in Canada or the United States of America must be enforced at common law rather than under the 1958 Act. The 1958 Act is based on the United Kingdom's *Foreign Judgments (Reciprocal Enforcement) Act 1933*.

Where a foreign judgment is eligible for registration under the 1958 Act, no other method of enforcing payment of the sum due under that foreign judgment is permissible in Bermuda.

In order for a foreign judgment to be registered and enforced in Bermuda it must satisfy the following criteria:

- (1) it must be given by a Superior Court of the relevant jurisdiction (including an Appellate Court on appeal from a Superior Court);
- (2) it must be final and conclusive as between the parties thereto;
- (3) it must be in respect of a sum of money, which sum must not be in respect of taxes or other charges of a like nature or in respect of any fine or other penalty;
- (4) the application for registration must be made within 6 years after the date of judgment (or, where there have been proceedings by way of appeal, the date of the last judgment);
- (5) if the "judgment" is an arbitration award, the arbitration award must be enforceable as a judgment of the superior court in the place where it was made.

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<sup>1</sup> Matrimonial causes or any proceedings in connection with administration of estates of deceased persons, bankruptcy, winding-up of companies, lunacy or guardianship of infants are specifically excluded from the ambit of the 1958 Act.

Provided the applicant satisfies the relevant provisions of the 1958 Act, the foreign judgment will be registered in Bermuda as a matter of course; the Supreme Court “shall” order the foreign judgment to be registered provided all of the requirements of the 1958 Act have been complied with.

The procedure for registration of a qualifying foreign judgment is straightforward. An application is made to a judge supported by an affidavit exhibiting a copy of the foreign judgment (or an authenticated copy thereof) and setting out the deponent’s belief that:

- (1) the judgment is one to which the 1958 Act applies;
- (2) the foreign court had jurisdiction to make the judgment it did;
- (3) the defendant did receive notice of the foreign proceedings giving rise to the judgment in sufficient time to defend them;
- (4) no fraud was practiced on the foreign court; and
- (5) the person seeking registration is the person in whom the rights under the foreign judgment are vested (whether by that judgment or by assignment or otherwise). Notice of the application and the evidence in support must be provided to the person against whom it is intended to register the foreign judgment.

It is open to a person against whom a foreign judgment has been registered to apply to have that registration set aside. On any application to set aside registration of a foreign judgment, the burden of proof will be on the judgment debtor to show that the foreign judgment offends, or at least does not comply with some material part of the 1958 Act.

It is open to a judgment debtor to apply to the Supreme Court of Bermuda to set aside any judgment registered pursuant to the 1958 Act on any one or more of the following grounds:

- (1) the judgment is not one to which the 1958 Act applies;
- (2) the judgment was registered in contravention of some provision of the 1958 Act;
- (3) the court purporting to give the judgment registered had no jurisdiction to give the judgment;

- (4) the judgment debtor did not receive notice of the proceedings giving rise to the judgment in sufficient time to enable him to defend the proceedings and he did not appear at those proceedings;
- (5) the judgment was obtained by fraud;
- (6) the rights under the judgment registered are not vested in the person who applied for registration; or
- (7) that the proceedings giving rise to the judgment registered had previously been litigated as between the parties and that a prior final and conclusive judgment by a court having competent jurisdiction was rendered in that matter.

Those are the only grounds upon which registration may be set aside; the 1958 Act does not confer on the court any general discretion in the matter.

The only exception to the above is where there is an appeal or a proven intention to appeal. In such a case, there is a discretion in the court to provisionally set aside registration of a foreign judgment. That discretion arises where a judge is satisfied that the person against whom the foreign judgment was made (1) has appealed the foreign judgment or (2) is entitled to and intends to appeal the foreign judgment. If the court is so satisfied, it may, but need not, set aside registration until after the expiration of some specified period which is reasonably sufficient to enable the applicant to take the necessary steps to have his appeal disposed of. A setting aside in those circumstances does not affect the right of the applicant to bring a further application for registration of the foreign judgment.

It is possible under the 1958 Act to register a judgment a portion of which satisfies the provisions of the 1958 Act and a portion of which does not. In such a case, the registration will only be effective in respect of those matters which are within the ambit of the 1958 Act, but not those other matters.

Once a foreign judgment is registered it carries interest in Bermuda at the statutory rate and may be enforced in Bermuda as if it were a judgment originally given by the Supreme Court of Bermuda. If the foreign judgment is given in a currency which not legal tender in Bermuda, the registered judgment will be in Bermuda dollars and the exchange rate shall be that prevailing at the date of the original judgment, not the date of registration.

*This article addresses general principles only and is not intended to be a comprehensive exposition of the subject. Specific legal advice should be obtained*

*in respect of any particular foreign judgment to be enforced in Bermuda.*

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