STATUTORY INSTRUMENTS

1973 No. 1894

JUDGMENTS

The Reciprocal Enforcement of Foreign Judgments (Italy) Order 1973

Made - - - - 13*th November* 1973
Coming into Operation 16*th January* 1974

At the Court at Buckingham Palace, the 13th day of November 1973

Present,

The Queen's Most Excellent Majesty in Council

Whereas a Convention, a copy whereof is set out in Schedule 1 to this Order, relating to the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters signed at Rome on 7th February 1964, was ratified on 15th October 1973 by Her Majesty and the President of the Republic of Italy and will enter into force on 16th January 1974:

And whereas a Protocol, a copy whereof is set out in Schedule 2 to this Order, amending the said Convention was concluded at Rome on 14th July 1970:

And whereas Her Majesty is satisfied that, in the event of Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933(**a**) being extended to judgments given in the superior courts of the Republic of Italy, substantial reciprocity of treatment will, under the terms of the said Convention and Protocol, be assured as respects the enforcement in the Republic of Italy of judgments given in the superior courts of the United Kingdom:

And whereas it is necessary in order to give effect to the said Convention and Protocol to make the provisions contained in sections 4, 5 and 6 of this Order in relation to matters with respect to which there is power to make rules of court for the purposes of Part I of the said Act:

Now, therefore, Her Majesty, by virtue and in exercise of the powers conferred on Her by sections 1 and 3 of the said Act, and of all other powers enabling Her in that behalf, is pleased, by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:—

1.—(1) This Order shall come into operation on 16th January 1974 and may be cited as the Reciprocal Enforcement of Foreign Judgments (Italy) Order 1973.

(2) The Interpretation Act 1889(**b**) shall apply for the interpretation of this Order as it applies for the interpretation of an Act of Parliament.

2. Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933 shall extend to the Republic of Italy.

(**a**) 1933 c.13. (**b**) 1889 c.63.

3. The following courts of the Republic of Italy shall be deemed superior courts of the Republic of Italy for the purposes of Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933, that is to say:—

The Corte d'Appello
The Tribunale

4. No security for costs shall be required to be given by any person making application for the registration of a judgment of a superior court of the Republic of Italy.

5. A judgment of a superior court of the Republic of Italy shall, in the absence of proof to the contrary, be deemed to be capable of execution in the Republic of Italy if there is produced a certified copy of the judgment issued by the court and bearing the following executory formula:

"Comandiamo a tutti gli ufficiali giudiziari che ne siano richiesti e a chiunque spetti, di mettere a esecuzione il presente titolo, al pubblico ministero di darvi assistenza, e a tutti gli ufficiali della forza pubblica di concorrervi, quando ne siano legalmente richiesti."

6. The rate of interest due under the law of the Republic of Italy upon the sum in respect of which a judgment of a superior court of the Republic of Italy is given shall be deemed to be that ordered in the judgment and, if no rate is so ordered, no interest shall be deemed to be due thereon under the law of the Republic of Italy unless the contrary is shown.

W. G. Agnew.

SCHEDULE 1

CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE REPUBLIC OF ITALY FOR THE RECIPROCAL RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS.

Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Head of the Commonwealth,

and the President of the Republic of Italy,

Desiring to provide on the basis of reciprocity for the recognition and enforcement of judgments in civil and commercial matters;

Have resolved to conclude a Convention for this purpose and to that end have appointed as their Plenipotentiaries:

Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Head of the Commonwealth (hereinafter referred to as Her Majesty):

For the United Kingdom of Great Britain and Northern Ireland:

H.E. Sir John Guthrie WARD, Her Majesty's Ambassador Extraordinary and Plenipotentiary at Rome,

The President of the Republic of Italy:

H.E. the Hon. Giuseppe LUPIS, Under-Secretary for Foreign Affairs,

who, having communicated to each other their respective Full Powers found in good and due form, have agreed as follows:

General

ARTICLE I

For the purposes of the present Convention:

(1) The territory of one (or of the other) High Contracting Party means

(*a*) in relation to the United Kingdom, England and Wales, Scotland, Northern Ireland, and any territories to which the Convention shall have been extended under Article X; and

(*b*) in relation to the Republic of Italy, Italy.

(2) The word "judgment" means any decision of a court, however described (judgment, order and the like), which is final and conclusive as between the parties thereto notwithstanding that it may still be subject to appeal.

(3) The words "original court" mean in relation to any judgment the court by which the judgment was given; and the words "court applied to", the court in which it is sought to obtain recognition of a judgment or to which an application for the registration of a judgment or for the grant of a *dichiarazione di efficacia* is made.

(4) The words "judgment debtor" mean the person against whom the judgment was given in the original court and include, where necessary, any person against whom such judgment is enforceable under the law of the country of the original court; and the words "judgment creditor", the person in whose favour the judgment was given, and include, where necessary, any other person in whom the rights under the judgment have become vested.

(5) The word "appeal" includes any proceeding by way of discharging or setting aside a judgment or an application for a new trial or a stay of execution.

ARTICLE II

(1) Subject to the provisions of paragraph (2) the present Convention shall apply to judgments in civil and commercial matters, pronounced after the date of the entry into force of the present Convention, by the following courts:

(*a*) In the case of the United Kingdom, the House of Lords; for England and Wales, the Supreme Court of Judicature (Court of Appeal and High Court of Justice) and the Courts of Chancery of the Counties Palatine of Lancaster and Durham; for Scotland, the Court of Session and the Sheriff Court; and for Northern Ireland, the Supreme Court of Judicature; and

(*b*) in the case of Italy, the Corte d'Appello and the Tribunale.

(2) The present Convention shall not apply to:

(*a*) judgments given on appeal from courts not referred to in paragraph (1) of this Article;

(*b*) judgments given in proceedings for the recovery of any form of taxation (state or municipal);

(*c*) judgments given in proceedings for the recovery of fines or penalties due to public authorities.

(3) The present Convention shall not preclude the recognition and enforcement of judgments given in circumstances where the present Convention does not contemplate recognition or enforcement.

Recognition of Judgments

ARTICLE III

(1) Judgments in civil and commercial matters, pronounced in the territory of one High Contracting Party, shall, whatever the nationality of the judgment creditor or debtor, be recognised in the courts of the territory of the other High Contracting Party, except where it can be established that:

(*a*) in the case in question, the jurisdiction of the original court is not recognised under the provisions of Article IV ;

(*b*) the judgment was given by default and 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 ;

(*c*) the judgment was obtained by fraud ;

(*d*) the recognition of the judgment would be contrary to public policy in the country of the court applied to ;

(*e*) the judgment debtor, being a defendant in the original proceedings, was a person who, in the opinion of the court applied to, was entitled under the rules of public international law to immunity from the jurisdiction of the original court and did not submit to the jurisdiction of that court ; or the judgment debtor, in the opinion of the court applied to, is entitled under the rules of public international law to immunity from the jurisdiction of that court at the time of application for registration or for a *dichiarazione di efficacia* ;

(*f*) the judgment debtor satisfies the court applied to that proceedings by way of appeal have been instituted against the judgment in the country of the original court. It is understood that if such proceedings have not been actually instituted but it appears that the judgment debtor is entitled and intends to appeal, the court applied to may adjourn its decision on the recognition of the judgment, so as to allow the judgment debtor a reasonable opportunity of instituting such proceedings, or may accord it recognition on such terms as it may think fit including the imposition of a payment into court.

(2) Where the court applied to is satisfied that the matter in dispute in the proceedings in the original court

(*a*) had before the date of the judgment in the original court been the subject of a final and conclusive judgment between the same parties by a court having jurisdiction in the matter, or

(*b*) is the subject of proceedings between the same parties in the country of the court applied to which were commenced before the date of the judgment in the original court,

the court applied to may refuse to recognise the judgment of the original court.

(3) For the purposes of the present Convention, the effect of the recognition of a judgment shall be that such judgment shall be treated as conclusive as to the matter thereby adjudicated upon in any further action as between the same parties, and shall constitute a defence in any further action between them in respect of the same cause of action.

ARTICLE IV

(1) For the purposes of sub-paragraph (*a*) of paragraph (1) of Article III, the original court shall be recognised as possessing jurisdiction in all cases:

(*a*) where the judgment debtor, being a defendant in the proceedings in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings upon the merits and not only 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 ; or

(*b*) where the judgment debtor was plaintiff in, or counterclaimed in, the proceedings in the original court ; or

(*c*) where in a matter relating to contract the judgment debtor, being a defendant in the proceedings in the original court, had before the commencement of the proceedings agreed in the form required by the law of the country of the original court to submit himself in respect of the subject matter of the proceedings to the jurisdiction of the courts of the country of the original court ; or

(*d*) where 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 registered or head office in, the country of that court : or

(*e*) where 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.

(2) The provisions of paragraph (1) of this Article shall not apply to judgments where the subject matter of the proceedings is immovable property, or to judgments in actions *in rem* in respect of movable property. Nevertheless the jurisdiction of the original court shall be recognised if the immovable property was situated in the country of the original court or if the movable property was so situated at the time of the commencement of the proceedings in the original court.

(3) The provisions of paragraph (1) of this Article shall not apply:

(*a*) to judgments in matters of family law or status (including divorce decrees or other judgments in matrimonial causes) ;

(*b*) to judgments in matters of succession, or the administration of the estates of deceased persons ;

(*c*) to judgments in bankruptcy proceedings ;

(*d*) to judgments in proceedings for the winding up of companies or other bodies corporate.

In the case of judgments given in proceedings of the kind referred to in the present paragraph, the jurisdiction of the original court shall be recognised in all cases where such recognition is in accordance with the law of the country of the court applied to.

(4) In the cases specified in sub-paragraphs (*d*) and (*e*) of paragraph (1) and in paragraph (2) of this Article the jurisdiction of the original court need not be recognised, if recognition is contrary to the laws of the country of the court applied to, where the bringing of the proceedings in the original court was contrary to a compromise or other agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of the country of that court.

Enforcement of Judgments

ARTICLE V

(1) Judgments in civil and commercial matters, pronounced in the territory of one High Contracting Party, shall, whatever the nationality of the judgment creditor or debtor, be enforced in the territory of the other High Contracting Party in the manner provided in Articles VI, VII and VIII of the present Convention provided that the following conditions are fulfilled:

(*a*) none of the objections set out in Article III (read in conjunction with Article IV) to the recognition of the judgment can be established ;

(*b*) it can be established under the provisions of paragraph (3) of this Article that they could be enforced by execution in the country of the original court ;

(*c*) there is payable thereunder a sum of money ;

(*d*) the judgment debt has not been wholly satisfied ; and provided that, where the judgment debtor satisfies the court applied to that proceedings by way of appeal have been instituted against the judgment in the country of the original court or, if such proceedings have not been instituted, that he is entitled and intends to appeal, such a judgment need not be enforced and the court applied to may take such measures in regard thereto as are permitted by its own law. However, such a judgment may be enforced on such terms as the court applied to thinks fit including the imposition of a payment into court.

(2) If the amount of the costs to be paid under a judgment is not fixed by the judgment itself but by a separate order, such order shall be deemed to be part of the judgment for the purposes of the present Convention.

(3) A judgment in respect of which a certified copy has been issued by the original court shall, in the absence of proof to the contrary, be deemed to be capable of being enforced by execution in the country of the original court within the meaning of sub-paragraph (*b*) of paragraph (1) of this Article. A certified copy of a judgment issued by an Italian court shall bear the executory formula set out in the Annex to the present Convention.

ARTICLE VI

(1) In order that any judgment of a court of the Republic of Italy should be enforced in the United Kingdom, an application by a judgment creditor for its registration, accompanied by a certified copy of the judgment by the original court, should be made:

(*a*) In England and Wales, to the High Court of Justice ;

(*b*) In Scotland, to the Court of Session ; and

(*c*) In Northern Ireland, to the Supreme Court of Judicature ;

in accordance with the procedure of the court applied to.

(2) If such application is made in respect of a judgment fulfilling the conditions laid down in Article V, registration shall be granted.

ARTICLE VII

(1) In order that any judgment of a court in a territory of the United Kingdom should be enforced in Italy, an application by a judgment creditor for the grant of a *dichiarazione di efficacia* should, in accordance with the procedure of the court applied to, be made to the Corte d'Appello in whose jurisdiction the judgment is to be enforced. Such application should be accompanied by a certified copy of the judgment issued by the original court.

(2) If such application is made in respect of a judgment fulfilling the conditions laid down in Article V, a *dichiarazione di efficacia* shall be granted.

ARTICLE VIII

(1) Where any judgment has been registered under Article VI, or where a *dichiarazione di efficacia* has been granted in respect of a judgment under Article VII, such judgment shall, as from the date of registration or grant of a *dichiarazione di efficacia*, and as regards all questions relating to its execution in the country of the court applied to, be of the same effect as if it had been a judgment originally given by the court applied to at the date of the registration or of the grant of the *dichiarazione di efficacia* ; and the court applied to shall have the same jurisdiction over the execution of the judgment as it has over the execution of judgments given by itself.

(2) A copy of any judgment certified by the original court shall be accepted without legislation, but certified translations of the judgment and other documents shall be required in accordance with the procedure of the court applied to.

(3) The procedure for the registration of a judgment under Article VI and the procedure for the grant of a *dichiarazione di efficacia* under Article VII shall be made as simple and rapid as possible, and no deposit by way of security for costs shall be required of any person making application for such registration, or for the grant of a *dichiarazione di efficacia.*

(4) A period of six years, unless the law of the court applied to allows a longer period, running from the date of the judgment of the original court or, where there have been proceedings by way of appeal against the judgment, from the date of the last judgment given in the appeal proceedings, shall be allowed by the court applied to for the purpose of making any application for registration or the grant of a *dichiarazione di efficacia.*

(5) If it is found by the court applied to that the judgment in respect of which an application is made for registration or for the grant of a *dichiarazione di efficacia* has been, at the date of such application partly but not wholly satisfied by payment, registration or a *dichiarazione di efficacia* shall be granted in respect of the balance remaining payable at that date provided that the judgment is one which would be enforceable under the provisions of the present Convention.

(6) If it is found by the court applied to that the judgment in respect of which an application is made for registration or for the grant of a *dichiarazione di efficacia* contains more than one provision 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 or could have been granted a *dichiarazione di efficacia,* the judgment may be registered or granted a *dichiarazione di efficacia* in respect of those provisions of which enforcement is permitted by the present Convention.

(7) If under a judgment a sum of money is payable which is expressed in a currency other than that of the country of the court applied to, the law of the country of the court applied to shall determine if, and if so, how, the amount payable under the judgment may or shall be converted into the currency of the country of the court applied to for the purposes of the satisfaction or enforcement of the judgment debt.

(8) When granting registration or a *dichiarazione di efficacia,* the court applied to shall, if so requested by the judgment creditor, include the costs of and incidental to registration or the grant of a *dichiarazione di efficacia* and the amount due by way of interest up to the date of the grant of registration or a *dichiarazione di efficacia.*

Final Provisions

ARTICLE IX

Any difficulties which may arise in connexion with the interpretation or application of the present Convention shall be settled through the diplomatic channel, or through any other means agreed upon by the High Contracting Parties.

ARTICLE X

(1) Her Majesty may, by a notification given through the diplomatic channel, at any time while the present Convention is in force, and provided that an agreement has been concluded by an Exchange of Notes on the points mentioned in paragraph (2) of this Article, extend the operation of the present Convention to any territory for whose international relations Her Majesty's Government in the United Kingdom of Great Britain and Northern Ireland are responsible.

(2) Prior to any notification of extension in respect of any territory under paragraph (1) of this Article, an agreement shall be concluded between the High Contracting Parties by an Exchange of Notes as to the judgments of the courts of the territory concerned to which the present Convention shall apply and the courts to which application for registration of any judgment shall be made.

(3) Any extension of the present Convention under this Article shall come into force three months from the date of the notification given under paragraph (1) of this Article.

(4) At any time after the expiry of three years from the coming into force of an extension of the present Convention to any of the territories referred to in paragraph (1) of this Article, either of the High Contracting Parties may terminate such extension on giving six months' notice of termination through the diplomatic channel.

(5) The termination of the present Convention under Article XI shall, unless otherwise expressly agreed by both High Contracting Parties, terminate it in respect of any territory to which it has been extended under paragraph (1) of this Article.

ARTICLE XI

The present Convention shall be subject to ratification. Instruments of Ratification shall be exchanged at London. The Convention shall come into force three months after the date on which the Instruments of Ratification are exchanged, and shall remain in force for three years. If neither of the High Contracting Parties shall have given notice through the diplomatic channel to the other, not less than six months before the expiration of the said period of three years, of intention to terminate the present Convention, it shall remain in force until the expiration of six months from the date on which either of the High Contracting Parties shall have given notice to terminate it.

IN WITNESS WHEREOF the above-mentioned Plenipotentiaries have signed the present Convention.

DONE in duplicate at Rome the 7th day of February, 1964, in the English and Italian languages, both texts being equally authoritative.

For the United Kingdom of Great Britain and Northern Ireland

J. G. WARD.

For the Republic of Italy

G. LUPIS.

ANNEX

The Executory Formula referred to in paragraph (3) of Article V is as follows:

"Comandiamo a tutti gli ufficiali giudiziari che ne siano richiesti e a chiunque spetti, di mettere a esecuzione il presente titolo, al pubblico ministero di darvi assistenza, e a tutti gli ufficiali della forza pubblica di concorrervi, quando ne siano legalmente richiesti."(1)

(1) *Translation:* " We order all officers of the judiciary who may be required and anyone who is concerned, to give effect to the present document, the Public Prosecutor to render assistance, and all officers of the police to comply therewith when they may be legally required."

SCHEDULE 2

PROTOCOL AMENDING THE CONVENTION BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE ITALIAN REPUBLIC FOR THE RECIPROCAL RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS, SIGNED AT ROME ON THE 7TH FEBRUARY, 1964.

Her Majesty The Queen of the United Kingdom of Great Britain and Northern Ireland and of Her other Realms and Territories, Head of the Commonwealth (hereinafter referred to as "Her Britannic Majesty") and the President of the Italian Republic;

Desiring to amend the Convention between the United Kingdom of Great Britain and Northern Ireland and the Italian Republic providing for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters signed at Rome on the 7th February, 1964 (hereinafter referred to as "The Convention");

Have resolved to conclude a Protocol for that purpose, and to that end have appointed as their Plenipotentiaries:

Her Britannic Majesty:

H.E. Sir Patrick Hancock, Her Majesty's Ambassador Extraordinary and Plenipotentiary at Rome

The President of the Italian Republic:

H.E. the Hon. Angelo Salizzoni, Under-Secretary of State for Foreign Affairs

who, having communicated to each other their respective Full Powers, found in good and due form, have agreed as follows:

ARTICLE 1

A new paragraph shall be inserted at the end of Article II of the Convention, to read as follows:

"(4) A High Contracting Party shall not be obliged to apply the present Convention to any judgment given in respect of injury or damage of a description which is the subject of a convention with respect to third party liability in the field of nuclear energy to which that Party is also a Party."

ARTICLE 2

At the beginning of paragraph (1) of Article II of the Convention, the words: "Subject to the provisions of paragraph (2)" shall be replaced by the words "Subject to the provisions of paragraphs (2) and (4) of this Article".

ARTICLE 3

The present Protocol shall enter into force on the same date as the Convention and shall have the same duration as the Convention.

IN WITNESS WHEREOF the above-named Plenipotentiaries have signed the present Protocol and have affixed thereto their seals.

DONE in duplicate at Rome this 14th day of July 1970, in the English and Italian languages, both texts being equally authoritative.

For the United Kingdom of Great Britain and Northern Ireland:

P. F. HANCOCK.

For the Italian Republic:

ANGELO SALIZZONI.

EXPLANATORY NOTE

(This Note is not part of the Order.)

This Order extends Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933 to the judgments of the superior courts of the Republic of Italy and makes certain provisions regarding the registration and enforcement of such judgments.

Relevant judgments given after the 15th January 1974 will be enforceable in the United Kingdom upon registration in the High Court, the Court of Session or the Supreme Court of Judicature in Northern Ireland.

SI 1973/1894
ISBN 0-11-031894-3

