1980 No. 1523

JUDGMENTS

The Reciprocal Enforcement of Foreign Judgments (Tonga) Order 1980

Made - - - - 13*th October* 1980

Coming into Operation 18*th December* 1980

At the Court at Buckingham Palace, the 13th day of October 1980

Present,

The Queen's Most Excellent Majesty in Council

Whereas a Convention, a copy whereof is set out in the Schedule to this Order, providing for the Reciprocal Enforcement and Recognition of Judgments in Civil Matters, signed at London on 28th June 1979, has been ratified by the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Tonga on 18th September 1980 and will enter into force on 18th December 1980:

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 Tonga, substantial reciprocity of treatment will, under the terms of the said Convention, be assured as respects the enforcement in Tonga of judgments given in the superior courts of the United Kingdom; and is accordingly minded to direct that Part I of the said Act shall extend to Tonga:

And whereas it is expedient to specify the court in Tonga which is, for the purposes of that Act, to be deemed to be a superior court, and necessary, in order to give effect to the said Convention, to make certain provisions in relation to matters with respect to which there is power to make rules of court for the purpose 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. This Order may be cited as the Reciprocal Enforcement of Foreign Judgments (Tonga) Order 1980 and shall come into operation on 18th December 1980.

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

3. The Supreme Court of Tonga shall be deemed a superior court of Tonga for the purposes of Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933.

(a) 1933 c. 13.

4. A judgment of a superior court of Tonga shall, in the absence of proof to the contrary, be deemed to be capable of execution in Tonga if a certified copy of the judgment is produced authenticated by the court seal and bearing or accompanied by a certificate issued by an officer of the court that it is capable of execution in Tonga.

5. The rate of interest due under the law of Tonga upon the sum in respect of which a judgment of a superior court of Tonga is given shall be deemed to be that specified in the judgment or any certificate of the original court accompanying the judgment and, if no rate is so specified, no interest shall be deemed to be due thereon under the law of Tonga.

6. A translation of the judgment of a superior court of Tonga or of any other document accompanying an application for registration of such a judgment shall, if certified by a sworn translator, or by a diplomatic or consular officer of either the United Kingdom or Tonga, be accepted without further authentication.

N. E. Leigh,
Clerk of the Privy Council.

SCHEDULE

CONVENTION BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF TONGA PROVIDING FOR THE RECIPROCAL ENFORCEMENT AND RECOGNITION OF JUDGMENTS IN CIVIL MATTERS

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Tonga;

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

Have agreed as follows:—

Part I—Definitions

ARTICLE 1

In this Convention, the following words and expressions shall, unless the context otherwise requires, have the meanings assigned to them in this Article.

(*a*) "Action in personam" shall not be deemed to include any matrimonial cause or any proceeding in connection with matrimonial matters, administration of estates of deceased persons, bankruptcy, winding up of companies, guardianship of infants, or judicial supervision of the administration of the property or affairs of a person who is incompetent or incapable of managing and administering his property and affairs.

(*b*) "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.

(*c*) "Judgment" means any decision of a court, however described (judgment, order and the like), by which the rights of the parties are finally determined.

It includes 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. It also includes judgments and orders against which an appeal may be pending or which may still be subject to appeal in the courts of the country of the original court. If the amount of the costs or interest to be paid under a judgment is not fixed by the judgment itself but by a separate court order, such order shall be deemed to be part of the judgment for the purposes of this Convention.

(*d*) "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.

(*e*) "Judgment debtor" means the person against whom the judgment was given in the original court and includes any person against whom the judgment is enforceable under the law of the country of the original court.

(*f*) "Original court" in relation to any judgment means the court by which the judgment was given; and "Court applied to" means the court to which an application for the registration of a judgment is made.

(*g*) "Superior court" means:

(i) in the case of the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as "the United Kingdom"), the House of Lords; for England and Wales, the Supreme Court of Judicature (Court of Appeal, High Court of Justice and Crown Court); for Scotland, the Court of Session and the Sheriff Court; and for Northern Ireland, the Supreme Court of Judicature; and

(ii) in the case of Tonga, the Supreme Court of Tonga.

(*h*) "Territory" means:

(i) in relation to the United Kingdom, England and Wales, Scotland, Northern Ireland and any territories to which the Convention may have been extended under Article 11; and

(ii) in relation to Tonga, the Kingdom of Tonga.

Part II—Enforcement of Judgments

ARTICLE 2

(1) Any judgment of a superior court other than a judgment of such a court given on appeal from a court which is not a superior court, shall be a judgment to which this Part of this Convention applies, if:

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

(*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 date of the entry into force of this Convention.

(2) For the purposes of this Article, a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.

ARTICLE 3

(1) A person, being a judgment creditor under a judgment to which this Part of this Convention applies, may apply to the competent superior court at any time within a period of six 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, and on any such application the competent superior court shall, subject to such simple and rapid procedures as each Contracting Party may prescribe and to the other provisions of this Convention, order the judgment to be registered:

Provided that a 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; or

(*c*) the court is satisfied that 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 courts of the country of the original court and did not submit to the jurisdiction of that court; or

(*d*) the court is satisfied that the judgment is sought to be enforced against a person who, in the opinion of the court applied to, is entitled under the rules of public international law to immunity from the jurisdiction of the court applied to.

(2) Subject to the provisions of this Convention with respect to the setting aside of registration:

(*a*) a registered judgment shall, for the purposes of execution, be of the same force and effect; and

(*b*) proceedings may be taken on it; and

(*c*) the sum for which it is registered shall, as from the date of the order giving leave to register the judgment, carry interest on the total sum (principal and interest, if any) in respect of which an order is made for leave to register the judgment, at a rate to be determined by the court applied to; and

(*d*) the court applied to shall have the same control over the execution of it;

as if it had been a judgment originally given in the court applied to and entered on the date of registration:

Provided that a judgment shall not be executed so long as, in accordance with the provisions of this Convention and the law of the court applied to, 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 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 the country of the court applied to, the law of the country of the court applied to shall determine if, and if so in what manner and at what stage, the amount payable under the judgment may or shall be converted into the currency of the court applied to for the purposes of the satisfaction or enforcement of the judgment debt.

(4) If at the date of the application for registration the judgment of the original court has been partly satisfied, the judgment shall 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 court applied to 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 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.

ARTICLE 4

(1) In order that any judgment given in Tonga may be enforced in the United Kingdom, an application by a judgment creditor for its registration should, in accordance with the procedure of the court applied to, 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.

(2) The application for registration should be accompanied by:

(*a*) a certified copy of the judgment authenticated by the court seal and bearing or accompanied by a certificate issued by an officer of the court that it is capable of execution in the country of that court;

(*b*) an affidavit of the facts required by the rules of the court applied to;

(*c*) a translation into English of any document which is in some other language and which is required by this paragraph, certified by a sworn translator or by a diplomatic or consular officer of either Contracting Party.

(3) The documents enumerated in paragraph (2) shall require no further authentication.

(4) If an application is made in accordance with paragraphs (1) and (2) of this Article in respect of a judgment fulfilling the conditions laid down in Article 3, registration shall be granted.

ARTICLE 5

(1) In order that any judgment given in the territory of the United Kingdom may be enforced in Tonga, an application by a judgment creditor for its registration should, in accordance with the procedure of the court applied to, be made to the Supreme Court of Tonga.

(2) The application for registration should be accompanied by:

(*a*) a certified copy of the judgment authenticated by the court seal (or in the case of judgments of the Sheriff Court, authenticated by the signature of the Sheriff Clerk) and bearing or accompanied by a certificate issued by an officer of the court that it is capable of execution in the country of that court;

(*b*) an affidavit of the facts required by the rules of the court applied to;

(*c*) a translation into English of any document which is in some other language and which is required by this paragraph, certified by a sworn translator or by a diplomatic or consular officer of either Contracting Party.

(3) The documents enumerated in paragraph (2) shall require no further authentication.

(4) If an application is made in accordance with paragraphs (1) and (2) of this Article in respect of a judgment fulfilling the conditions laid down in Article 3, registration shall be granted.

ARTICLE 6

(1) On an application in that behalf duly made by any party against whom a registered judgment may be enforced:

(*a*) the registration of the judgment shall be set aside if the court applied to is satisfied:

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

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

(iii) 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; or

(iv) that the judgment was obtained by fraud; or

(v) that the enforcement of the judgment would be contrary to public policy in the country of the court applied to; or

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

(*b*) the registration of the judgment may be set aside if the court applied to is satisfied that the matter 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.

(2) For the purposes of this Article the courts of the country of the original court shall, subject to the provisions of paragraph (3) of this Article, 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; or

(ii) if the judgment debtor was plaintiff in, or counter-claimed in, the proceedings in the original court; or

(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; or

(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 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 situated 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 sub-paragraph (*a*) or sub-paragraph (*b*) of this paragraph, if the jurisdiction of the original court is recognised by the law of the registering court.

(3) Notwithstanding anything in paragraph (2) of this Article, the 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; or

(*b*) except in the cases mentioned in sub-sub-paragraphs (i), (ii), and (iii) of sub-paragraph (*a*) and in sub-paragraph (*b*) of paragraph (2) of this Article, 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.

ARTICLE 7

Where the judgment debtor satisfies the court applied to that an appeal is pending or that he is entitled and intends to appeal against the judgment in the country of the original court, the judgment need not be enforced, and the court applied to may take such measures in regard thereto as are permitted by the law of its country.

Part III—Recognition of Judgments

ARTICLE 8

(1) Subject to the provisions of this Article, a judgment given in the territory of one Contracting Party and to which Part II of this Convention applies or would have applied if a sum of money had been payable thereunder, whether it can be enforced or not, and whether, if it can be enforced, it is enforced or not, shall be recognised in the territory of the other as conclusive between the parties thereto in all proceedings founded on the same cause of action and shall be capable of being relied on by way of defence or counter-claim in any such proceedings.

(2) The provisions of paragraph (1) of this Article 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 ground other than:

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

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

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

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

Part IV—General

ARTICLE 9

(1) Enforcement or recognition of a judgment shall not be refused merely on the ground that the original court has applied, in the choice of the system of law applicable to the case, rules of private international law different from those observed by the court applied to.

(2) Nothing in this Convention shall preclude the enforcement or recognition in the territory of one Contracting Party, in accordance with the municipal law for the time being in force in the country concerned, of judgments given in the territory of the other Contracting Party, being judgments to which this Convention does not apply or judgments given in circumstances where the provisions of this Convention do not require such enforcement or recognition.

Part V—Final Provisions

ARTICLE 10

Any difficulties which may arise in connexion with the interpretation or application of this Convention shall be settled through the diplomatic channel.

ARTICLE 11

(1) Subject to paragraph (2) of this Article, the Government of the United Kingdom may, by notification given through the diplomatic channel at any time while this Convention is in force, extend its operation to any territory for the international relations of which they are responsible.

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

(3) Any such extension shall come into force one month after the date of its notification.

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

(5) The termination of this Convention under Article 12 shall, unless otherwise expressly agreed by both Contracting Parties, also terminate it in respect of any territory to which it has been extended under paragraph (1) of this Article.

ARTICLE 12

This Convention shall be subject to ratification. Instruments of Ratification shall be exchanged at Nuku'alofa. The Convention shall enter into force three months after the date on which the Instruments of Ratification are exchanged, and shall remain in force for three years from the date of its entry into force. If neither of the 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 Convention, it shall remain in force until the expiration of six months from the date on which either of the Contracting Parties shall have given notice to terminate it.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Convention.

Done in duplicate at London the 28th day of June 1979.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

P. A. R. BLAKER.

For the Government of Tonga:

I. F. FALETAU.

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 Tonga and makes certain provisions regarding the registration and enforcement of suchju dgments.

Relevant judgments given after the 17th December 1980 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 1980/1523
ISBN 0-11-007523-4

