

An Act relating to the enforcement of foreign judgments in the Commonwealth, and for related purposes

有關在英聯邦執行外國判決與達到相關目的法律

第1部- 簡稱、施行與名詞解釋

1 【簡稱】

本法亦稱為1991年外國判決法。

2 【施行】

- (1) 除本條第2項另有規定外，本法自收到御准之日起生效。
- (2) 第21條在本法案獲得御准之日後4個月結束時開始生效。

3 【名詞定義】

- (1) 除有例外，本法關於對人的訴訟不包括與婚姻有關訴因的訴訟或與下列有關的訴訟：
 - (a) 婚姻相關事件
 - (b) 繼承與遺產的管理相關事宜
 - (c) 破產程序
 - (d) 公司清算程序
 - (e) 自然人之精神健康與否的行為能力判斷
 - (f) 未成年人之監護

“上訴”，指包括請求撤回訴訟之程序或要求阻卻原判決的程序或是請求對執行停止的訴訟。

“國家”，指一外國主權國家

- (a) 涵蓋一特定外國疆土領域內的任何區域
- (b) 受一外國主權保護的疆土領域內的任一區域
- (c) 此外國主權負責對外之國際關係

“判決法庭地國”，指原審之國家

“可執行之金錢判決”，指得以貨幣給付的金錢判決

- (a) 一定數額之金錢判決，但非外國稅金或性質相近的稅收或外國罰金或處分之罰鍰；
- (b) &(c)情況除外
- (b) 一定數額之紐西蘭請求稅金給付判決
- (c) 請求以一定數額之巴布亞新幾內亞所得稅退稅為給付之判決

“執行”，指

- (a) 非為金錢判決時，透過以下方式為強制執行手段
 - (i) 扣押
 - (ii) 管收
 - (iii) 罰款
 - (iv) 假執行
- (b) 為一定金額之金錢判決時，以執行令為之

“判決”，指

- (a) 審判法院經民事訴訟程序所為的終局判決、中間判決或命令
- (b) 刑事附帶民事訴訟案中，受害者因該侵權行為所受之人身與財產損害之賠償請求判決
- (c) 仲裁(非International Arbitration Act 1974中34(a)範圍內容之仲裁，亦非35(2)中所定義的仲裁)經仲裁法定程序所取得仲裁決定，且在該國其仲裁決定之效力與法院判決或命令具有等同的效力，並可得被執行

“判決債權人”，指獲勝訴判決者，不論是否獲判一定金額之判決。亦同時指判決債權人之繼受人、繼承人、指定人，與之繼受者

“判決債務人”，指判決內容與自己訴訟上的主張互為對立，不論判決內容是否要求給付一定金額。亦同時指，按原審判決內容與法律，被執行之一方當事人

“金錢判決”，指為請求一定金額並得以金錢貨幣給付之判決

“非金錢判決”，指判決之請求非以金錢為給付的手段

“原審法院”，指做出判決之法院

“已登記判決”，指依本法第二部第6條規定登記的判決

“登記員”，指受理登記之法院相關辦事處或與法院辦事處同等地位之處所之登記人員或辦事處人員

“登記”，指按本法第二部規範下所為的登記程序

“法院訴訟程序規則”，指澳洲之州或領地最高法院或澳洲聯邦法院所定的訴訟程序規則

“域外領地”，本法範圍及於澳洲域外的領地區

- (2) 本法可規範按巴布亞新幾內亞法律應繳納但非屬巴布亞新幾內雅之可抵扣項目之特定的稅款，或包含在特定稅種中的稅款。

- (3)除非澳洲總督確信該稅收或該類別中含稅之稅收屬適當的所得稅，始可將就該稅收或該稅收類別納入本法制定規範中。
- (4)就本法立法目言，本條名詞解釋第1項(c)所稱之判決類別其一之仲裁決定，被視為屬於法院所做的判決，此仲裁決定基此當然是可被強制執行的。

4 【域外領地】

本法及於域外領地。

第2部-符合互惠待遇的強制執行

5 【符合本部(Part 2)申請登記之外國判決須有互惠對待的基礎】

- (1)如果澳洲總督確信，透過本法賦予的互惠利益，澳洲的上級法院判決在對方國家中基於實質性互惠待遇之下獲可得強制執行的效力，同等地對方上級法院判決也能得到澳洲實質上同樣對等的互惠待遇，基此本章關於外國判決的執行規定即可適用於對方常設上級法院級別所為的判決。
- (2)一國的特定法院層級依據本法規範被視為本法所謂的上級法院。倘此特定法院經證實非該國所屬之上級法院層級，則該特定法院即非本法所適用之上級法院。
- (3)如澳洲總督確信，透過本法賦予的互惠利益，澳洲的所有下級法院所為之金錢判決在對方國家基於實質性互惠待遇之下獲可得強制執行的效力，則對方所有或部分下級法院之金錢判決也能得到澳洲同樣對等與實質性的互惠待遇，基此則本章關於外國判決的執行規定即可適用於對方常設下級法院級別所為的判決。
- (4)適用本章可為強制執行的金錢判決為
- (a)具有終局性與決定性的判決。
 - (b)判決由以下法院所為
 - (i)適用本章所定義的外國上級法院。
 - (ii)適用本章所定義的外國下級法院。
- (5)依本章5(4)(a)之立法目的，判決於以下情形之仍視為具有決定性與終局性
- (a)於原審國法院尚處於上訴程序中。
 - (b)於原審國法院仍有可能繼續上訴。

(6)如澳洲總督確信，透過本法賦予的互惠利益，澳洲所有或部分之非金錢判決在對方國家基於實質性互惠待遇之下獲可得強制執行的效力，對方所有或部分之非金錢判決也能於澳洲取得同樣對等實質性的互惠待遇。有關本章之外國判決於澳洲之相關執行規定得明定是適用該國的哪些審級法院所為的非金錢判決。

(7)依據前條 5(6)，相關規定明定何種非金錢判決為本法所適用範圍並具體描述：

(a)敘明外國法院之非金錢判決是由何種審級/層級之法院所為。

(b)此類非金錢判決所適用的程序其類別為何。

(c)非金錢判決屬何種類別判決。

(8)本章條款不適用於以下情事之判決：

(a)一國之上級法院所做出的金錢判決其判決日早於本法可得適用之日，即該國之外國判決獲互惠待遇之日，則早於互惠生效前的外國判決本法本章節不適用，或者

(b)一下級法院，在本章節規定基於互惠待遇擴展適用至該下級法院之前所做出的金錢判決，不適用；或者

(c)一特定非金錢類別的判決且是在其訴訟程序中所為的判決，在本章節規定基於互惠待遇擴展適用至該特定種類非金錢判決之前所為的判決，不適用；

除非

(d)該判決是由大英帝國法院所為的判決。

(e)該判決日緊接著雙方互惠待遇承認日之前一日，馬上按該州或地區的法律在該州或地區的最高法院登記。

(9)本章針對由下級法院上訴到上級法院之判決不適用之，除非此下級法院為本章所定義之下級法院。

6 【登記之申請程序】

(1)判決債權人依據本法得於以下期日起，六年內向適合的法院提出登記申請

(a)判決之日起。

(b)倘判決被上訴，則繼續上訴程序中最後一個判決之裁判日起算。

(2)前條所謂之適合法院為

(a)如為依據1986年紐西蘭商業法 (Commerce Act 1986 New Zealand) 所為的金錢判決(但非該法中第36A條、第98H條與第99條內容事項)，則適合登記法院為澳洲聯邦法院或州或領地的最高法院。

(b)倘非為金錢判決，則由澳洲聯邦法院為適合法院。

(c)其他- 由州或領地的最高法院為之。

(3)依據本法並按法院程序訴訟程序規則提交證明文件,判決依本法提出登記申請,州或領地之最高法院以命令方式對判決進行登記。

(4)前條所稱之命令,需申明於登記後一定期間內,若被執行人有提出依第7條所列之抗辯事項,則被執行人得於此一定期間內請求阻卻已為登記之判決。

(5)受理登記之法院得以命令方式延長提出此類申請的期限。

(6)判決有以下情形不得登記

(a)判決內容已全部清償滿足。

(b)在原審國此判決內容是無法被執行的。

(7)按本法第7條與第14條

(a)已登記之判決,以執行目的言,一經登記即與受理登記法院所為的判決一樣具有同等效力。

(b)已登記的判決就如同受理法院所為的判決一樣,相繼之法律程序同時開啟。

(c)已登記的判決就如同受理法院所為的判決一樣,登記的判決金額依法可附帶利息。

(d)已登記的判決就如同受理法院所為的判決一樣,受理登記之法院對登記的判決有控制權。

(8)依據本條,於州或領地最高法院登記之判決,可按1992年送達與執行程序施行法第六章(Service and Execution of Process Act 1992)規定,於澳洲的任一州與領地的最高法院登記,其效力就如同於第一次登記之最高法院所為的裁判一樣之效力,其效力從登記之日起開始生效。

(9)前項規定倘因第8條情事而被命中止執行,則不可申請登記。

(10)於以下情事或期日之內,強制執行尚不會被啟動

(a)判決債權人登記後之一定期日內,包括按6(5)條受理法院命令得延長之期日。此期乃為判決債務人可得行使抗辯權以阻卻(set aside)登記之期限。

(b)已經提出申請登記者,等待申請程序全部完備並最終確定之前。

(11)除了6(12)條另有規定外,登記之判決為以金錢為給付內容者,倘幣值非澳幣,依下列情況予以登記

(a)判決債權人於申請之際已表明,其金錢判決之執行要以判決書內容所示之貨幣為主。

(b)其他情況-其匯率是以申請登記之前,以銀行或外匯交易商兌換日的第二個營業日為主之現行匯率換算為等值之澳幣。

(11A)前項11(b)所謂之現行匯率,所指的兌換日的現行匯率是以判決當日所使用的外國貨幣兌換澳幣的平均匯率,其判決日匯率轉換時間為

(a)上午11時。

(b)若有其他時段的規定，從其規定。判決債權人得從授權之指定3家外幣外匯交易商之當日匯率擇一換算。

(11B)前(11)(b)所指稱的兌換匯率營業日，指判決債權人依據(11A)選擇授權之外匯交易商所提供的判決日之當日匯率。

(12)若於申請登記該日，部分債權已獲受償，則就尚未受償之金額為登記。

(13)如就一判決向法院提出登記申請，法院認為該判決內容涉及不同爭端，而該判決的部份既決內容已在其他獨立分離的判決裡述及，此些獨立分離的判決內容可適切的申請登記。而記載不同之端既決事項的判決則有條件的進行登記，即僅登記除了在其他獨立分離判決裡之既決事項外的其他內容。

(14)在向法院申請登記判決時符合(13)款之操作情況為，法院認為：

(a)判決是關於應收帳款，且屬於巴布亞新幾內亞可抵扣之所得稅和不可抵扣之稅款；
和

(b)如果判決僅涉及可抵扣的巴布亞新幾內亞所得稅，則該判決可逕登記；如判決金額小，且屬於不可抵扣之稅款亦可進行登記。

(15)依據本條登記的判決可登錄以下費用

(a)合理登記費與附帶的雜費，包括取得原審判決法院認證之裁判副本費用，與由外匯交易商處取得依據判決時點兌換澳幣的當時匯率證明。

(b)一固定金額之金錢判決，在登記當下，依原審國法院所援引之法律，利息已產生者，利息可併同登記。

(16)本章所稱之授權外匯交易商係指由澳大利亞儲備銀行根據《銀行（外匯）條例》第38A所頒發的一般授權授予可買賣外幣的人。

7 【阻卻(set aside)已登記之判決】

(1)一方當事人欲對抗一即將付諸強制執行的已登記判決，或是可被執行但因本法第8條所列情事而暫停止執行者，可向登記法院或是向依據1992年送達與執行法第六章而受理登記的法院，請求阻卻其強制執行。

(2)當判決債務人申請阻卻已為登記之判決時，法院應

(a)倘判決符合以下情事，應准其阻卻執行

(i) 該判決不是本法適用的判決或已停止適用的判決。

(ii) 判決的登記金額高於在登記日期根據該判決所應付的金額。

(iii) 登記之判決違反本法。

(iv) 原審法院無管轄權。

- (v) 判決債務人，即原審訴訟程序中之被告，沒有在足夠時間內收到有關該等法律程序的通知(不論送達是否依法庭地法成功送達)，致債務人無法就法律程序進行抗辯並且沒有辦法出庭為自己辯護。
 - (vi) 判決是經詐騙取得。
 - (vii) 判決於原審已被上訴，上訴結果推翻前一審級判決或已被原審國法院撤銷。
 - (viii) 判決內容所賦予的權利不屬於申請登記之人。
 - (ix) 判決內容已被清償。
 - (x) 判決內容已完全被滿足。
 - (xi) 欲執行之判決非為紐西蘭稅法中得以金錢支付之一定金額判決，此恐違反公序良俗。
- (b)倘已經登記之判決，原審於審酌本案爭端並給出裁判之前，另一擁有管轄權之法院已就本案同一爭端事件做出終局性與決定性的判決時，則此時已登記之判決可被阻卻執行。

(3)為符7(2)(a)(iv)和7(4)的立法理由，以下視為原審法院擁有管轄權

(a)判決如為對人的訴訟

- (i)判決債務人自願的順服原審的管轄。
 - (ii)判決債務人是原審程序中的原告，或於原審中提起反訴。
 - (iii)判決債務人是原審中的被告，就本案之訴訟程序於訴訟前即已同意倘涉訴訟，願以原審為審理法院，並順服該法院之管轄或該法院所在國家的任一法院的管轄。
 - (iv)判決債務人於原審中之地位為被告，訴訟開啟時，被告居住於法院地，或於法院地設有法人並有一固定的營業處所。
 - (v)判決債務人是原審法院的被告，並且該法院的訴訟程序是有關於判決債務人在該法院國或該法院所在國擁有的辦事處或營業地點進行的有效交易行為。
 - (vi)判決內容是屬紐西蘭稅法下應支付的項目。
- (b)判決之訴訟標的物為不動產，或其對物訴訟的標的為動產者，於原審訴訟期間其動產或不動產位於法院地國之法院。
- (c)其他非上述(a)與(b)所羅列之管轄基礎規範內者，如果受理登記之州或領地法院依該州或該領地法律承認原審之管轄權，則原審即符合本法為有管轄權之法院。

(4)除前條7(3)情況外，以下視為原審國法院無管轄權

- (a)訴訟標的不動產不在原審國境內。
- (b)除了(3)(a)(i), (3)(a)(ii), (3)(a)(iii)與7(c)情形外，原審違反當事人的合意管轄。
- (c)判決債務人為原審中的被告，根據國際公法於該法院地屬管轄豁免之人，可豁免於原審之管轄，且被告無自願順服原審管轄情事。

(5)為符合(3)(a)(i)的自願順服原審管轄的立法目的，以下行為不視為被告自願性的順服法院管轄

- (a)向法院遞交到庭通知(entering an appearance) 文書。
- (b)僅在以下必要情況下參與的法院訴訟程序; 僅出於以之一或多重目的:

- (c) 為保護資產或為尋求釋放被扣押資產而出庭
 - (i) 資產被查封，或被威脅查封。
 - (ii) 資產被凍結，不得處分與處置。
- (d) 為抗辯該法院有無管轄權而出庭。
- (e) 請求法院酌情在訴訟程序階段不行使管轄權而出庭的情況。

- (6) 倘一已登記的判決依據1901年送達與執行程序法而被阻卻強制執行, 則
 - (a) 立即將阻卻執行的命令通知按本法登記受理該判決的法院司法常務官； 和
 - (b) 在 7 天內向該法院提交該命令的認證副本。

8 【暫停執行已登記之判決】

- (1) 如受理登記法院相信判決債務人已就本案上訴或有權上訴且有意上訴，則受理登記法院得命執行暫時停止，直至該上訴已於某特定日或一定時間內獲裁定。
- (2) 倘登記受理法院基於某人有權並有意圖上訴之理由命暫時停止強制執行，受理法院須諭知該某人其停止命令為附有條件的暫時停止，其須於特定期日或一定時間內提出上訴。
- (3) 每個執行停止命令都是基於判決債務人能迅速提出上訴的條件之下才得發布。
- (4) 倘受登記的法院認為情事合宜，得作出與提供擔保有關的命令或其他附帶條件之命令。

9 【針對某些已被抗辯阻卻(set aside)之登記判決予以再次登記】

- (1) 倘登記因7(2)(a)(ii)理由被阻卻其強制執行，登記法院須依判決債權人之申請，命其按判決書內容應為給付之正確金額為登記。
- (2) 倘登記因7(2)(a)(iii)理由而被阻卻強制執行，究其原因僅為登記之時該判決於原審國尚屬不得執行之項目，此阻卻執行原因倘排除，即判決已屬原審國可執行之項目時，則可恢復其登記。

10 【可為登記執行的判決除本法外無其他可為執行的方式】

- (1) 非適用本部規範內的金錢給付判決，除以判決登記程序為之, 其执行程序由具有管轄權的澳洲法院受理。
- (2) 本條中任何內容皆不影響依1974年國際仲裁法所為的仲裁決定之強制執行。

第3部- 雜項條款

11 【不適用第2部(Part 2)之判決】

於外國法院提起對人的訴訟取得之判決並欲至澳洲強制執行，而原審訴訟程序中判決債務人遇有以下情況，而原審法院據此取得管轄權並為判決，視為原審無管轄權，該判決亦不適用第2部(Part 2)規範內可得為登記執行的判決

- (a)向法院遞交到庭通知(entering an appearance)之文書。
- (b)僅在以下範圍內參與必要的法院程序; 出席目的僅基於以下列一項或多項的原因。
- (c)為保護資產或要求釋放被扣押的資產
 - (i)資產於訴訟程序中被查封或威脅查封。
 - (ii)資產被禁止處分與處置。
- (d)出席法庭抗辯原審無管轄權。
- (e)請法院審酌勿行使管轄權。

12 【判決之通常效力】

- (1)依據本條規範，只要符合第二部(Part 2)中定義之判決，或是已經登記的金錢判決，不論登記與否，澳洲任一法院皆承認其屬在當事人間權利義務已獲確認的決定性判決，此確認來自，同一原因事由屆已經通常之法律訴訟程序、辯論或反訴後所做出的決定性裁判。
- (2)本條所賦予的效力不適用以下情形
 - (a)已登記之判決，因 7(2)(a)(iv), (v), (vi), (vii) or (xi)條文而被阻卻強制執行者。
 - (b)判決(無論是否能登記)尚未登記前，此登記遇有前項之一或更多之阻卻事項，本條之判決通常效力不適用之。
- (3)一判決以普通法法理觀之屬決定性(conclusive)之裁判，按本條規定無理由可阻止任何澳洲法院承認業經事實與法律的判斷與審理後所做出的決定性判決。

13 【無互惠原則待遇之金錢判決無從執行】

- (1)如果澳洲總督確信外國法院對澳大利亞上級法院做出的金錢判決所給予的承認和強制執行，其互惠待遇低於澳大利亞上級法院對該外國上級法院金錢判決所給予的承認與強制執行。則本法之互惠對等執行原則不適用於該國家之法院的判決。

(2)除前項立法目的之規則外，按本條任一國家的金錢給付判決，若無對等之判決互惠待遇，澳洲法院無其他法律程序可援引以強制執行。

(3)針對1974年國際仲裁法所為的仲裁決定本條不適用。

14 【某些情事下已登記之判決不再具有可執行性】

(1)因3(2)立法目的而制定的規定，或是5(1)，5(3)，5(6)或5(7)規定的修訂或廢除，一旦規定或情勢變更，判決則不復適用第2部(Part 2)所定義的判決，也即不再具可執行性，無論判決是否在法令修改或廢除條例生效之前已為登記;和

(2)前項14(1)規定不適用以下判決

(a)判決依據本法已為登記或依本法登記之申請登記程序已然完成;和

(b)依3(2)立法目的而制定的規定，已不再是第2部(Part 2)內容適用的判決;和

(c)在影響修訂或廢除的規定中已述明排除對14(1)款的適用。

15 【向澳洲法院申請取得判決核證書】

(1)按本條判決債權人向澳洲法院申請登記一外國判決之強制執行並獲受理,該受理登記之法院應提供判決債權人以下文書

(a) 判決書的核證副本。

(b) 此證需記載以下事項

(i)判決所載的訴因。

(ii)判決內容所載應支付金額之利息(如有)

此亦由條例或法院規則規定。

(2)在強制執行被暫緩執行其原因尚未排除之前,申請判決登記有可能不受理。

(3)依本條第一項而發出的文書有相對的文書費用

16 【條例】

澳洲總督可制定不與本法相抵觸的條例以規定相涉事項：

(a) 本法要求或允許規定的。

(b) 基於需要與便利之理由讓本法得以施行並具有效力；尤其是關於上級法院依本法之判決申請登記與強制執行程序中的慣例和程序步驟。

17 【法院規則】

- (1)有關當局制定規則規範上級法院在程序上的常用慣例與程序步驟,包括基於此目的延伸制定的任何規則,當不與本法或根據本法制定的任何規定相抵觸,其規則是基於需要與便利之理由讓本法得以施行並具有效力。規則內容應包括
- (a) 規範就申請判決登記者應提供費用為擔保;
 - (b) 規範申請判決登記需檢附之證明事項,與規範證明事項的類別;
 - (c) 判決債務人應被送達判決登記通知書;
 - (d) 就可阻卻判決申請登記的期限作出規範;
 - (e) 有關適用本法可能會衍伸如下述情況之解決方法:
 - (i) 在本部分所適用外國的判決是否得以在原審法院的國家被強制執行;
 - (ii) 據原審法院的法律作出的何種金錢判決的利息是應支付的。
- (2)本條不影響根據任何其他法律制定規則的任何權力。

An Act relating to the enforcement of foreign judgments in the Commonwealth, and for related purposes

Part 1—Preliminary

1 Short title

This Act may be cited as the *Foreign Judgments Act 1991*.

2 Commencement

- (1) Subject to subsection (2), this Act commences on the day on which it receives the Royal Assent.
- (2) Section 21 commences at the end of 4 months after the day on which this Act receives the Royal Assent.

3 Interpretation

- (1) In this Act, unless the contrary intention appears:

action in personam does not include a matrimonial cause or proceedings in connection with:

- (a) matrimonial matters; or
- (b) the administration of the estates of deceased persons; or (c) bankruptcy or insolvency; or
- (d) the winding up of companies; or
- (e) mental health; or
- (f) the guardianship of infants.

appeal includes a proceeding by way of discharging or setting aside a judgment or an application for a new trial or a stay of execution.

country means a foreign country, and includes any region: (a) which is part of a foreign country; or (b) which is under the protection of a foreign country; or (c) for whose international relations a foreign country is responsible.

country of the original court means the country in which the original court is situated.

enforceable money judgment means a money judgment under which is payable:

- (a) an amount of money, other than (except as mentioned in paragraphs (b) and (c)) an amount payable in respect of:
 - (i) taxes or other charges of a similar nature; or (ii) a fine or other penalty; or
 - (b) an amount of money payable in respect of New Zealand tax; or
 - (c) an amount of money payable in respect of recoverable Papua New Guinea income tax.

enforcement means:

- (a) where there is not an amount of money payable under the judgment, enforcement by: (i) attachment; or (ii) committal; or (iii) fine; or (iv) sequestration; or
- (b) where there is an amount of money payable under the judgment, enforcement by execution.

judgment means:

- (a) a final or interlocutory judgment or order given or made by a court in civil proceedings; or
- (b) a judgment or order given or made by a court in criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party; or
- (c) an award (other than an award given in a dispute of a kind referred to in paragraph 34(a) of the *International Arbitration Act 1974* or an award that may be enforced under subsection 35(2) of that Act) in proceedings on an arbitration conducted in, and under the law applying in, a country, being an award that has become enforceable in a court of that country in the same manner as a judgment or order given by that court.

judgment creditor, in relation to a judgment, means the person in whose favour the judgment was given, (whether or not a sum of money is payable under the judgment) and includes a person in whom the rights under the judgment have become vested by succession, assignment or otherwise.

judgment debtor, in relation to a judgment, means the person against whom the judgment was given, (whether or not a sum of money is payable under the judgment) and includes a person against whom the judgment is enforceable under the law of the original court.

money judgment means a judgment under which money is payable.

New Zealand tax means tax or other charge of a similar nature payable under the laws of New Zealand, and includes additional or other tax payable, by way of penalty, interest or otherwise, because of a contravention of any of those laws or of a requirement made under any of those laws.

non-money judgment means a judgment that is not a money judgment.

non-recoverable tax means tax that is not New Zealand tax or recoverable Papua New Guinea income tax.

original court, in relation to a judgment, means the court by which the judgment was given.

recoverable Papua New Guinea income tax means tax payable under the laws of Papua New Guinea relating to taxes on income, but does not include:

- (a) additional or other tax payable, by way of penalty, interest or otherwise, because of a contravention of any of those laws or of a requirement made under any of those laws; or
- (b) tax of a class or description prescribed for the purposes of subsection (2).

registered judgment means a judgment registered under section 6.

Registrar, in relation to a court, means the person who holds, in relation to that court, the office of, or the office equivalent to the office of, Registrar or Clerk.

registration means registration under Part 2.

Rules of Court means rules duly made by the Supreme Court of a State or Territory or the Federal Court of Australia.

(2) The regulations may provide that a specified tax, or a tax included in a specified class of taxes, payable under the laws of Papua New Guinea is not a recoverable Papua New Guinea income tax.

(3) Regulations are not to be made in relation to a tax or class of taxes unless the Governor-General is satisfied that the tax, or each tax included in the class, is not properly a tax on income.

(4) For the purposes of this Act, an award of a kind to which paragraph (c) of the definition of **judgment** in subsection (1) applies is taken to be a judgment of the court, referred to in that paragraph, in which the award has become enforceable.

4 External Territories

This Act extends to each external Territory.

Part 2—Reciprocal enforcement of judgments

5 Application of this Part on the basis of reciprocity of treatment

- (1) If the Governor-General is satisfied that, in the event of the benefits conferred by this Part being applied to money judgments given in the superior courts of a country, substantial reciprocity of treatment will be assured in relation to the enforcement in that country of money judgments given in

all Australian superior courts, the regulations may provide that this Part extends in relation to that country.

- (2) A specified court of such a country is taken to be a superior court for the purposes of this Act if the regulations so provide, but a failure so to provide in relation to a particular court is not taken to imply that the court is not a superior court for the purposes of this Act.
- (3) If the Governor-General is satisfied that, in the event of the benefits conferred by this Part being applied to money judgments given in all or some inferior courts of such a country, substantial reciprocity of treatment will be assured in relation to the enforcement in that country of money judgments given in all or some Australian inferior courts, the regulations may provide that this Part extends in relation to specified inferior courts of that country.
- (4) This Part applies to an enforceable money judgment that: (a) is final and conclusive; and (b) was given in:
 - (i) a superior court of a country in relation to which this Part extends; or
 - (ii) an inferior court of such a country, being an inferior court in relation to which this Part extends.
- (5) For the purposes of paragraph (4)(a), a judgment is taken to be final and conclusive even though:
 - (a) an appeal may be pending against it; or
 - (b) it may still be subject to appeal;in the courts of the country of the original court.
- (6) If the Governor-General is satisfied that, in the event of the benefits conferred by this Part being applied to all or some non-money judgments given in courts of a country in relation to which this Part extends, substantial reciprocity of treatment will be assured in relation to the enforcement in that country of all or some non-money judgments given in Australian courts, the regulations may provide that this Part applies to such non-money judgments, given in the courts of that country, as are prescribed.
- (7) Regulations made for the purposes of subsection (6) must provide for the kinds of non-money judgments, given in the courts of a country, to which this Part applies by specifying or describing:
 - (a) the courts in which such non-money judgments are given; and
 - (b) the kinds of proceedings in which such non-money judgments are given; and
 - (c) the kinds of non-money judgments.
- (8) This Part does not apply to:
 - (a) a money judgment given by a superior court of a country before the day on which the regulations extend this Part in relation to that country; or
 - (b) a money judgment given by an inferior court before the day on which the regulations extend this Part in relation to that court; or
 - (c) a non-money judgment of a particular kind given in a court in proceedings of a particular kind before the day on which the regulations apply this Part to non-money judgments of that kind given in that court in proceedings of that kind;unless:
 - (d) the judgment was given by a court of the United Kingdom; or
 - (e) the judgment was, immediately before that day, registrable in the Supreme Court of a State or Territory under a law of that State or Territory.
- (9) This Part does not apply to a judgment given by a superior court on appeal from a judgment given by an inferior court, unless the judgment of the inferior court is a judgment to which this Part applies.
- (10) This Part does not apply to a judgment given by a court of New Zealand.

6 Application for, and effect of, registration of foreign judgments

- (1) A judgment creditor under a judgment to which this Part applies may apply to the appropriate court at any time within 6 years after:
 - (a) the date of the judgment; or
 - (b) where there have been proceedings by way of appeal against the judgment, the date of the last judgment in those proceedings;to have the judgment registered in the court.
- (2) For the purposes of subsection (1), the appropriate court is:
 - (a) if the judgment is a money judgment and was given in proceedings in which a matter for determination arises under the Commerce Act 1986 of New Zealand (other than proceedings in which a matter for determination arises under section 36A, 98H or 99A of that Act)—the Federal Court of Australia or the Supreme Court of a State or Territory; or
 - (b) if the judgment is not a money judgment and was given in such proceedings—the Federal Court of Australia; or

- (c) in any other case—the Supreme Court of a State or Territory.
- (3) Subject to this Act and to proof of the matters prescribed by the applicable Rules of Court, if an application is made under this section, the Supreme Court of a State or Territory or the Federal Court of Australia is to order the judgment to be registered.
- (4) The court's order must state the period within which an application may be made under section 7 to have the registration of the judgment set aside.
- (5) The court may, by order, extend the period within which such an application may be made.
- (6) A judgment is not to be registered if at the date of the application:
- (a) it has been wholly satisfied; or
 - (b) it could not be enforced in the country of the original court.
- (7) Subject to sections 7 and 14:
- (a) a registered judgment has, for the purposes of enforcement, the same force and effect; and
 - (b) proceedings may be taken on a registered judgment; and
 - (c) the amount for which a judgment is registered carries interest; and
 - (d) the registering court has the same control over the enforcement of a registered judgment; as if the judgment had been originally given in the court in which it is registered and entered on the date of registration.
- (8) A judgment registered under this section in the Supreme Court of a State or Territory is registrable in the Supreme Court of any other State or Territory under Part 6 of the *Service and Execution of Process Act 1992* as if the judgment had been originally given in the first-mentioned Supreme Court and entered on the day of registration.
- (9) Subsection (8) does not apply if an order has been made under section 8 that enforcement of the judgment be stayed.
- (10) Action is not to be taken to enforce a registered judgment:
- (a) during the period fixed under subsection (4) (including any extensions of that period under subsection (5)) as the period during which a party may apply to have the registration of the judgment set aside; or
 - (b) where such an application has been made, until after the application has been finally determined.
- (11) Subject to subsection (12), if the amount payable under a judgment that is to be registered is expressed in a currency other than Australian currency, the judgment is to be registered:
- (a) if the judgment creditor has stated in the application that the judgment creditor wishes the judgment to be registered in the currency in which it is expressed—in that currency; or
 - (b) in any other case—as if it were for an equivalent amount in Australian currency, based on the rate of exchange prevailing on the second business day (the *conversion day*) before the day on which the application for registration is made.
- (11A) For the purposes of paragraph (11)(b), the rate of exchange prevailing on the conversion day referred to in that paragraph is the average of the rates at which Australian dollars may be bought in the currency in which the judgment is expressed at:
- (a) 11 am; or
 - (b) if another time is prescribed for the purposes of this subsection—that other time; on that day from 3 authorised foreign exchange dealers selected by the judgment creditor.
- (11B) The reference in paragraph (11)(b) to a business day is a reference to a day on which the authorised foreign exchange dealers selected by the judgment creditor as mentioned in subsection (11A) publish rates at which Australian dollars may be bought in the currency in which the judgment is expressed.
- (12) If, on the day of the application for registration of a judgment, the judgment of the original court has been partly satisfied, the judgment is not to be registered in respect of the whole amount payable under the judgment of the original court, but only in respect of the balance remaining payable on that day.
- (13) If, on an application to a court for the registration of a judgment, it appears to the 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 provisions, but not in respect of any other provisions contained in it.
- (14) Without affecting the operation of subsection (13), where, on an application to a court for the registration of a judgment, it appears to the court that:
- (a) the judgment is in respect of an amount of money payable in respect of both recoverable Papua New Guinea income tax and non-recoverable tax; and

- (b) the judgment could have been registered if it had been in respect of recoverable Papua New Guinea income tax only;
the judgment may be registered in respect of the amount less so much as relates to non-recoverable tax.
- (15) A judgment registered under this section is to be registered for:
 - (a) the reasonable costs of and incidental to registration, including the cost of obtaining a certified copy of the judgment from the original court and the costs of obtaining from foreign exchange dealers evidence of the rates at which Australian dollars may be bought in the currency in which the judgment is expressed; and
 - (b) where an amount of money is payable under the judgment— any interest which, by the law of the country of the original court, becomes due under the judgment up to the time of registration.
- (16) In this section:
authorised foreign exchange dealer means a person authorised by a general authority issued by the Reserve Bank of Australia under regulation 38A of the Banking (Foreign Exchange) Regulations to buy and sell foreign currency.

7 Setting aside a registered judgment

- (1) A party against whom a registered judgment is enforceable, or would be enforceable but for an order under section 8, may seek to have the registration of the judgment set aside by duly applying to the court in which the judgment was registered, or (where applicable) a court in which the judgment was registered under Part 6 of the *Service and Execution of Process Act 1992*, to have the registration of the judgment set aside.
- (2) Where a judgment debtor duly applies to have the registration of the judgment set aside, the court:
 - (a) must set the registration of that judgment aside if it is satisfied:
 - (i) that the judgment is not, or has ceased to be, a judgment to which this Part applies; or
 - (ii) that the judgment was registered for an amount greater than the amount payable under it at the date of registration; or
 - (iii) that the judgment was registered in contravention of this Act; or
 - (iv) that the courts of the country of the original court had no jurisdiction in the circumstances of the case; or
 - (v) that the judgment debtor, being the defendant in the proceedings in the original court, did not (whether or not process had been duly served on the judgment debtor in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable the judgment debtor to defend the proceedings and did not appear; or
 - (vi) that the judgment was obtained by fraud; or
 - (vii) that the judgment has been reversed on appeal or otherwise set aside in the courts of the country of the original court; or
 - (viii) that the rights under the judgment are not vested in the person by whom the application for registration was made; or
 - (ix) that the judgment has been discharged; or
 - (x) that the judgment has been wholly satisfied; or
 - (xi) that the enforcement of the judgment, not being a judgment under which an amount of money is payable in respect of New Zealand tax, would be contrary to public policy; or
 - (b) may set the registration of the judgment aside if it 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.
- (3) For the purposes of subparagraph (2)(a)(iv) and subject to subsection (4), the courts of the country of the original court are taken to have had jurisdiction:
 - (a) in the case of a judgment given in an action *in personam*:
 - (i) if the judgment debtor voluntarily submitted to the jurisdiction of the original 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 was a defendant in the original court and had agreed, in respect of the subject matter of the proceedings, before the proceedings commenced, to submit to the jurisdiction of that court or of the courts of the country of that court; or
 - (iv) if the judgment debtor was a defendant in the original court and, at the time when the proceedings were instituted, resided in, or (being a body corporate) had its principal place of business in, the country of that court; or

- (v) if the judgment debtor was a defendant in the original court and the proceedings in that court were in respect of a transaction effected through or at an office or place of business that the judgment debtor had in the country of that court; or
 - (vi) if there is an amount of money payable in respect of New Zealand tax under the judgment; or
 - (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; or
 - (c) in the case of a judgment given in an action other than an action of the kind referred to in paragraph (a) or (b)—if the jurisdiction of the original court is recognised by the law in force in the State or Territory in which the judgment is registered.
- (4) In spite of subsection (3), the courts of the country of the original court are not taken to have had jurisdiction:
- (a) if the subject matter of the proceedings was immovable property situated outside the country of the original court; or
 - (b) except in the cases referred to in subparagraphs (3)(a)(i), (ii) and (iii) and paragraph (3)(c), if the bringing of the proceedings in the country of 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, 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.
- (5) For the purposes of subparagraph (3)(a)(i), a person does not voluntarily submit to the jurisdiction of a court by:
- (a) entering an appearance in proceedings in the court; or
 - (b) participating in proceedings in the court only to such extent as is necessary; for the purpose only of one or more of the following:
 - (c) protecting, or obtaining the release of:
 - (i) property seized, or threatened with seizure, in the proceedings; or
 - (ii) property subject to an order restraining its disposition or disposal;
 - (d) contesting the jurisdiction of the court;
 - (e) inviting the court in its discretion not to exercise its jurisdiction in the proceedings.
- (6) Where the registration of a judgment is set aside on an application to a court in which the judgment was registered under Part IV of the *Service and Execution of Process Act 1901*, the applicant must:
- (a) forthwith notify the Registrar of the court in which the judgment was registered under this Act of the order setting the judgment aside; and
 - (b) within 7 days lodge a certified copy of the order in that court.

8 Stay of enforcement of a registered judgment

- (1) If the court in which a judgment is registered is satisfied that the judgment debtor has appealed, or is entitled and intends to appeal, against the judgment, the court may order that enforcement of the judgment be stayed pending the final determination of the appeal, until a specified day or for a specified period.
- (2) If the court in which a judgment is registered makes an order on the ground that the person is entitled and intends to appeal against the judgment, the court must require the person, as a condition of the order, to bring the appeal by a specified day or within a specified period.
- (3) Every order is to be made on the condition that the judgment debtor pursues the appeal in an expeditious manner.
- (4) An order may be made or such other conditions, including conditions relating to giving security, as the court in which the judgment is registered thinks fit.

9 Re-registration of certain registered judgments which have been set aside

- (1) If the registration of a judgment is set aside under subparagraph 7(2)(a)(ii), the court in which the judgment was registered must, on the application of the judgment creditor, order that the judgment be registered in respect of the amount payable under the judgment at the date of the application.

- (2) If the registration of a judgment has been set aside under subparagraph 7(2)(a)(iii) solely because it was not at the date of the application for registration enforceable in the country of the original court, the setting aside of the registration does not prejudice a further application to register the judgment if and when the judgment becomes enforceable in that country.

10 Registrable judgments not to be otherwise enforceable

- (1) No proceedings for the recovery of an amount payable under a judgment to which this Part applies, other than proceedings by way of registration of the judgment, are to be entertained by a court having jurisdiction in Australia.
- (2) Nothing in this section affects the enforcement, under the *International Arbitration Act 1974*, of an award.

For the purposes of proceedings brought in Australia for the recovery of an amount payable under a judgment given in an action *in personam* by a court of a country, not being a judgment to which Part 2 applies, the court is not taken to have had jurisdiction to give the judgment merely because the judgment debtor:

- (a) entered an appearance in proceedings in the court; or
- (b) participated in proceedings in the court only to such extent as was necessary; for the purpose only of one or more of the following:
- (c) protecting, or obtaining the release of:
 - (i) property seized or threatened with seizure, in the proceedings; or
 - (ii) property subject to an order restraining its disposition or disposal;
- (d) contesting the jurisdiction of the court;
- (e) inviting the court in its discretion not to exercise its jurisdiction in the proceedings.

Part 3—Miscellaneous

11 Judgments to which Part 2 does not apply

For the purposes of proceedings brought in Australia for the recovery of an amount payable under a judgment given in an action *in personam* by a court of a country, not being a judgment to which Part 2 applies, the court is not taken to have had jurisdiction to give the judgment merely because the judgment debtor:

- (a) entered an appearance in proceedings in the court; or
- (b) participated in proceedings in the court only to such extent as was necessary; for the purpose only of one or more of the following:
- (c) protecting, or obtaining the release of:
 - (i) property seized or threatened with seizure, in the proceedings; or
 - (ii) property subject to an order restraining its disposition or disposal;
- (d) contesting the jurisdiction of the court;
- (e) inviting the court in its discretion not to exercise its jurisdiction in the proceedings.

12 General effect of certain judgments

- (1) Subject to this section, a judgment to which Part 2 applies, or would have applied if it were a money judgment, must, whether or not it is, or can be, registered, be recognised in any Australian court as conclusive between the parties to it in all proceedings founded on the same cause of action and may be relied on by way of defence or counter-claim in any such proceedings.
- (2) This section does not apply to:
- (a) a judgment that has been registered, the registration of which has been set aside under subparagraph 7(2)(a)(iv), (v), (vi), (vii) or (xi); or
 - (b) a judgment (whether registrable or not) that has not been registered, the registration of which would, if it were registered, have been set aside under one or more of those subparagraphs.

13 Money judgments unenforceable if no reciprocity

- (1) If the Governor-General is satisfied that the treatment in respect of recognition and enforcement accorded by the courts of a country to money judgments given in Australian superior courts is substantially less favourable than that accorded by Australian superior courts to money judgments of the superior courts of that country, the regulations may provide that this section applies to that country.
- (2) Except so far as regulations made for the purposes of subsection (1) provide, no proceedings are to be entertained in an Australian court for the recovery of an amount of money alleged to be payable under a judgment given in a country to which this section applies.
- (3) Nothing in this section affects the enforcement, under the *International Arbitration Act 1974*, of an award.

14 Registered judgments cease to be enforceable in certain circumstances

- (1) If, because of regulations made for the purposes of subsection 3(2) or because of the amendment or repeal of regulations made for the purposes of subsection 5(1), (3), (6) or (7), a judgment ceases to be a judgment to which Part 2 applies, the judgment ceases to be enforceable under this Act, whether or not the judgment was registered before the amendment or repeal of the regulations came into force.
- (2) Subsection (1) does not apply to judgments:
 - (a) that are registered under this Act or in respect of which applications for registration under this Act have been made; and
 - (b) that have ceased to be judgments to which Part 2 applies because of regulations made for the purposes of subsection 3(2); and
 - (c) that are specified, in the regulation effecting the amendment or repeal, not to be judgments to which subsection (1) applies.

15 Issue of certificates of judgments obtained in Australian courts

- (1) Subject to this section, where an application is duly made by a judgment creditor who wishes to enforce in a country a judgment that has been given in an Australian court, the Registrar of the court must issue to the judgment creditor:
 - (a) a certified copy of the judgment; and
 - (b) a certificate with respect to the judgment containing such particulars, including:
 - (i) the causes of action to which the judgment relates; and
 - (ii) the rate of interest (if any) payable on any amount payable under the judgment; as are prescribed by the regulations or by Rules of Court.
- (2) An application may not be made until the expiration of any stay of enforcement of the judgment in question.
- (3) Nothing in subsection (1) prevents a fee being imposed in respect of the issue of documents referred to in that subsection.

16 Regulations

- The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:
- (a) required or permitted by this Act to be prescribed; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act; and, in particular, for and in relation to the practice and procedure of a superior court in proceedings under this Act.

17 Rules of Court

- (1) The power of an authority to make rules regulating the practice and procedure of a superior court extends to making any rules, not inconsistent with this Act or with any regulations made under this Act, prescribing all matters necessary or convenient to be prescribed for carrying out or giving effect to this Act, including the following:
 - (a) making provision with respect to the giving of security for costs by a person applying for registration of a judgment;
 - (b) 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) providing for the service on the judgment debtor of notice of the registration of a judgment;
 - (d) making provision with respect to the extension of the period within which an application may be made to have the registration of a judgment set aside;
 - (e) relating to the method of determining a question arising under this Act as to:
 - (i) whether a judgment given in a country in relation to which this Part extends can be enforced in the country of the original court; or

- (ii) what interest is payable under a judgment under the law of the original court.
- (2) This section does not affect any power to make rules under any other law.