



Tonga

# **RECIPROCAL ENFORCEMENT OF JUDGMENTS RULES**

**1988 Revised Edition**





## RECIPROCAL ENFORCEMENT OF JUDGMENTS RULES

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## RECIPROCAL ENFORCEMENT OF JUDGMENTS RULES

*Made by the Judge of the Supreme Court*

*G.S. 109/79, Act 46 of 1988†*

*† N. B. Section 7 of Act 46 of 1988 is not yet in force.*

*\* And also made under section 6 of the Supreme Court Act.*

Commencement [31 May, 1979]

### **1 Short title.**

These Rules may be cited as the Reciprocal Enforcement of Judgments Rules.

### **2 Judge and Registrar to exercise powers.**

The Powers conferred on the Supreme Court by the Reciprocal Enforcement of Judgments Act (in these Rules referred to as “The Act”) may be exercised by a Judge of the Supreme Court in Chambers or by the Registrar of the Supreme Court.

### **3 Application to register judgment.**

An application under the Act to have a judgment registered in the Supreme Court may be made ex-party but the Court may order that the applicant give notice to any party concerned that there will be a hearing of the application and the date of the hearing.

**4 Affidavits in support.**

- (1) An application for registration must be supported by an affidavit:—
  - (a) exhibiting the judgment or a verified, certified or otherwise duly authenticated copy thereof and where the judgment is not in either the Tongan or English language, a translation of it into one or other of those languages authenticated by an affidavit sworn by the translator in which he shall state his name, address and qualifications to translate and that he has correctly translated the judgment to the best of his ability;
  - (b) stating the name and the usual or last known address of the judgment creditor and judgment debtor and their address for service if different;
  - (c) stating to the best of the information or belief of the deponent and giving the source of information or grounds for beliefs:—
    - (i) that the applicant is entitled to enforce the judgment and whether the enforcement is as to the whole or part of the judgment and if a part, which part;
    - (ii) that the judgment could be enforced by execution in the country of the original court;
    - (iii) that the registration is not liable to be set aside under the provisions of Section 6 of The Act;
  - (d) specifying the amount of interest if any which, under the law of the country of the original court has become due under the judgment up to the time of registration;
  - (e) stating where the sum payable under the judgment is expressed in a currency other than that of the Kingdom of Tonga, the equivalent in Tongan currency at the rate of exchange prevailing on the date the judgment was entered or perfected in the country of origin;
  - (f) that all the Rules and Orders of the Court relating to the registration have been complied with.
- (2) The Court may require a supplemental affidavit to be filed if it requires further information on the above matters or any other matter affecting the registration.

**5 Registering judgment.**

- (1) If the Court is satisfied by the applicant that the judgment is one that should (on the evidence before it) be registered, it shall register the judgment in a register which shall be kept by the Registrar in the Central Registry of the Supreme Court.

- (2) Upon the judgment being registered the applicant must obtain from the Central Registry a Certificate of registration and this certificate shall state—
  - (a) the exact wording of the registration;
  - (b) the time allowed for applying to set aside the registration;
  - (c) the means by which the certificate is to be served on the judgment debtor.
- (3) Before execution can be effected the applicant must file an affidavit showing —
  - (a) that the certificate has been served on the judgment debtor in the manner ordered by the Court;
  - (b) that he has no knowledge of any application to set aside the registration;
  - (c) that the time allowed for applying for the registration to be set aside has expired.
- (4) Upon the filing of an affidavit as required by subrule (3), the Registrar shall enter the word “Execution” in the register beside the registration and cause the Court Stamp to be affixed to the entry and sign and date the entry.
- (5) No process of execution is lawful until the acts in subrule (4) have been completed.

## **6 Setting aside judgment.**

- (1) An application to set aside registration of a judgment must be made by summons supported by an affidavit.
- (2) The Court on hearing the application may order any issue between the applicant to register and the applicant to set aside to be tried and the trial shall be by the Chief Justice or a Judge of the Supreme Court.
- (3) The Court may order evidence to be given orally or by affidavit.
- (4) The Court after the hearing shall either confirm the registration or revoke it.
- (5) Appeal shall by leave lie to the Privy Council\* against the decision of the Court.
- (6) Leave shall be asked for at the hearing or within 14 days thereof. If leave is refused by the Judge any party aggrieved may apply to the Privy Council\* for leave at its next Judicial Session.

\* Pursuant to section 7 of Act 46 of 1988, the words “Privy Council” will be replaced by the words “Court of Appeal” when the Court of Appeal Act (14 of 1966) comes into force.

## **7 Effect of Rules.**

The foregoing rules shall have effect subject to the provisions contained in the Order in Council extending the Act to the country of the Original Court.

## **8 Application under section 11 of Act.**

- (1) An application under Section 11 of the Act must be made ex-party to the Registrar on affidavit.

The Affidavit must —

- (a) give particulars of the proceedings in which the judgment was obtained;
  - (b) have annexed to it a copy of the writ or originating process by which the proceedings were begun, the evidence of service thereof on, or appearance by the defendant and copies of the pleadings, if any;
  - (c) state whether the defendant did or did not object to the jurisdiction, and, if so, on what grounds;
  - (d) show that the judgment is not subject to any stay of execution;
  - (e) state that the time for appealing has expired or, as the case may be, the date on which it will expire and in either case whether notice of appeal against the judgment has been entered; and
  - (f) state the rate at which the judgment carries interest.
- (2) The certified copy of the judgment shall be an office copy sealed with the seal of the Supreme Court of Tonga endorsed with a certificate signed by the Registrar certifying that the copy is a true copy of a judgment obtained in the Supreme Court of Tonga and that it is issued in accordance with section 11 of the Act.
- (3) There shall be issued with the certified copy a certificate which shall contain the following information:
- (a) the manner in which the writ or other originating process was served on the defendant or that he appeared thereto;
  - (b) what objections, if any, were made to the jurisdiction;
  - (c) what pleadings, if any, were served;
  - (d) that the time for appealing has expired or, as the case may be, the date on which it will expire;

- (e) whether notice of appeal against the judgment has been entered;
- (f) the rate at which the judgment carries interest;
- (g) such other particulars as it may be necessary to give to the court in the foreign country in which it is sought to obtain execution of the judgment.