



ENFORCEMENT OF FOREIGN JUDGMENTS

In Jamaica, there are two statutes which govern the enforceability of foreign judgments in our local courts; the Judgments and Awards (Reciprocal Enforcement) Act and the Judgments (Foreign) (Reciprocal Enforcement) Act.

By virtue of the Judgments and Awards (Reciprocal Enforcement) Act, a judgment creditor who has obtained a judgment in a Superior Court in the United Kingdom may apply to the Supreme Court of Jamaica to have the judgment registered and enforced in Jamaica. The application must be made within 12 months of the date of the judgment unless a longer period is allowed by the court, and may be without notice to the judgment debtor.

Under this Act, judgment is defined as any judgment or order given or made by a Court in any civil proceedings, whereby any sum of money is made payable and may include an award in proceedings on an arbitration. A judgment creditor is the person who obtains the judgment and includes successors and assigns of that person whilst a judgment debtor is the person against whom the judgment was given, and includes any person against whom the judgment is enforceable in the UK.

Once registered, the judgment has the same force and effect as if originally obtained or entered in our Supreme Court from the date of the registration and our Supreme Court has the same control and jurisdiction over the registered judgment as it has over judgments given by it but only in so far as it relates to execution. The Act also provides for recovery of reasonable costs of and incidental to the registration of the judgment as if they were sums payable under the judgment.

It should however, be noted that an application for registration of a foreign judgment will be refused if:

- a) the original court (i.e. UK court) acted without jurisdiction;
- b) the judgment was obtained by fraud;
- c) the judgment debtor was not served with the process of the original court; or
- d) an appeal is pending.

Reciprocity

The Governor-General may declare that judgments obtained in any part of the Commonwealth outside the United Kingdom are enforceable. However, he will only do so if satisfied that the relevant Commonwealth country has made reciprocal provisions for the enforcement of judgments obtained from the Jamaican Supreme Court. Commonwealth includes any country under section 9 of the Constitution of Jamaica which currently lists the UK and colonies, Canada, Australia, New Zealand, India, Pakistan, Ceylon, Ghana, the Federation of Malaya, the Federation of Nigeria, the Republic of Cyprus, Sierra Leone, Tanganykia, the Federation of Rhodesia and Nyasaland and the State of Singapore.

Under the Judgments (Foreign) (Reciprocal Enforcement) Act, a judgment creditor may apply to the Supreme Court within six years after the date of the judgment to have the judgment registered in the Supreme Court provided that the judgment has not been wholly satisfied or could not be enforced by execution in the country of the original court. Here, judgment includes not only a judgment or order made in civil proceedings but extends to 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. The judgment must however be final and conclusive and given after the Governor-General in Council has directed that the benefits of this Act extend to judgments of superior courts of the specific foreign country.

Where the judgment is expressed in a foreign currency it will be registered as if it were a judgment for such sum

in the currency of Jamaica calculated on the basis of the exchange rate prevailing at the date of the judgment of the original court. Reasonable costs incurred in making and incidental to the application for registration are also recoverable under this Act.

Judgments obtained in the United States and other excluded countries

In order to enforce a judgment obtained from a superior court of a foreign country to which the Acts do not extend, such as the United States, a fresh action on the judgment must be filed as if it were an action for a debt in our Supreme Court. Once the Defendant acknowledges service of the claim, the Claimant (judgment creditor) may apply for summary judgment as there would be no real prospect of successfully defending the claim where there is a judgment of another jurisdiction which has not been appealed. Alternatively, if the Defendant fails to acknowledge service, the Claimant may request a default judgment as the claim is for a specified amount.

The summary judgment or default judgment procedure if not defended/or opposed could be completed in a few months which may not be longer or cost more than the process to register the foreign judgments recognized by the Acts.

LISA RUSSELL

Lisa Russell is an Associate at Myers Fletcher & Gordon and a member of the Firm's Litigation and Marine Departments. Lisa may be contacted at lisa.russell@mfg.com.jm or through www.myersfletcher.com