

1969 No. 1063

JUDGMENTS

The Reciprocal Enforcement of Foreign Judgments (the Netherlands) Order 1969*Made* - - - - - 31st July 1969*Coming into Operation* 21st September 1969

At the Court at Arundel Park, the 31st day of July 1969

Present,

The Queen's Most Excellent Majesty in Council

Whereas by section 1 of the Foreign Judgments (Reciprocal Enforcement) Act 1933(a) Her Majesty, if She is satisfied that, in the event of the benefits conferred by Part I of the said Act being extended to judgments given in the superior courts of any foreign country, substantial reciprocity of treatment will be assured as respects the enforcement in that foreign country of judgments given in the superior courts of the United Kingdom, is empowered to direct by Order in Council that Part I of the said Act shall extend to that foreign country and that such courts of that foreign country as are specified in the Order shall be deemed to be superior courts of that country for the purposes of the said Part I:

And whereas by section 3 of the said Act it is provided that rules of court made for the purposes of that Act shall have effect subject to any such provisions contained in Orders in Council made under section 1 of the said Act as are declared by the said Orders to be necessary for giving effect to agreements made between Her Majesty and foreign countries in relation to matters with respect to which there is power to make rules for the purposes of that Act:

And whereas a Convention, a copy whereof is set out in the Schedule to this Order, relating to the Reciprocal Recognition and Enforcement of Judgments in Civil Matters, signed at The Hague on 17th November 1967, has been ratified by Her Majesty and Her Majesty the Queen of the Netherlands:

And whereas Her Majesty is satisfied that, in the event of Part I of the said Act being extended to judgments given in the superior courts of the Kingdom of the Netherlands, substantial reciprocity of treatment will, under the terms of the said Convention, be assured as respects the enforcement in the Kingdom of the Netherlands 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 the Kingdom of the Netherlands:

And whereas it is expedient to specify the Courts in the Kingdom of the Netherlands which are, for the purposes of that Act, to be deemed to be superior courts, 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 purposes of the said Act:

Now, therefore, Her Majesty, by virtue and in exercise of Her powers under 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 (the Netherlands) Order 1969 and shall come into operation on 21st September 1969.

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

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

The Hoge Raad der Nederlanden ;

The gerechtshoven ;

The arrondissementsrechtbanken.

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 Kingdom of the Netherlands.

5. A judgment of a superior court of the Kingdom of the Netherlands shall, in the absence of proof to the contrary, be deemed to be capable of execution in the Kingdom of the Netherlands if a certified copy of the judgment is produced bearing the seal of the court and the executory formula "in naam der Koningin".

6. The rate of interest due under the law of the Kingdom of the Netherlands upon the sum in respect of which a judgment of a superior court of the Kingdom of the Netherlands 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 the Kingdom of the Netherlands.

7. A translation of the judgment of a superior court of the Kingdom of the Netherlands 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 the Kingdom of the Netherlands, be accepted without further authentication.

W. G. Agnew.

SCHEDULE

CONVENTION

BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE KINGDOM OF THE NETHERLANDS PROVIDING FOR THE RECIPROCAL RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL 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 (hereinafter referred to as "Her Britannic Majesty") and

Her Majesty the Queen of the Netherlands ;

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

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

Her Britannic Majesty :

For the United Kingdom of Great Britain and Northern Ireland :

His Excellency Sir Isham Peter Garran, KCMG, Her Britannic Majesty's Ambassador Extraordinary and Plenipotentiary at The Hague and

The Right Honourable Lord Gardiner, Lord High Chancellor of Great Britain ;

Her Majesty the Queen of the Netherlands :

His Excellency Mr. H. J. de Koster, State 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 this Convention :

(1) The word "territory" means :

(a) in relation to the United Kingdom of Great Britain and Northern Ireland (hereinafter referred to as "the United Kingdom"), England and Wales, Scotland, and Northern Ireland and any territories in respect of which this Convention is in force by reason of an extension under paragraph 1 (a) of Article X ; and

(b) in relation to the Kingdom of the Netherlands, the European part of the Kingdom and any other part of the Kingdom in respect of which this Convention is in force by reason of an extension under paragraph 1 (b) of Article X.

(2) The word "judgment" means any decision of a court, however described (judgment, order and the like), by which the rights of the parties are finally determined, notwithstanding that an appeal may be pending against the judgment or that it may be subject to appeal in the courts of the country of the original court. A "gerechtelijke minnelijke schikking" shall also be deemed to be a judgment for the purposes of this Convention. 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.

(3) The words "action in rem" mean an action which seeks to obtain a judgment which is conclusive not only against the parties to the proceedings but also against any other person claiming an interest in the subject matter of the action.

(4) The words "original court" mean in relation to any judgment the court by which such 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 execution is made.

(5) 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.

(6) 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) and (4) of this Article, this Convention shall apply to judgments in any civil proceedings given after the date of the entry into force of this 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 the Kingdom of the Netherlands, the Hoge Raad der Nederlanden, the gerechtshoven and the arrondissementsrechtbanken.

(2) This 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 taxes or other charges of a like nature or for the recovery of a fine or other penalty ;
- (c) judgments in matters of family law or status, including orders for maintenance ;
- (d) judgments in matters of succession or the administration of the estates of deceased persons ;
- (e) judgments in matters of bankruptcy or suspension of payments (*surséance van betaling*) or the winding up of companies.

(3) This Convention shall not preclude the recognition and enforcement in the territory of one High Contracting Party, in accordance with the municipal law for the time being in force in the country concerned, of judgments given by any court in the territory of the other High 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 recognition or enforcement.

(4) A High Contracting Party shall not be obliged to apply this Convention to any judgment given in respect to 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 High Contracting Party is also a Contracting Party.

RECOGNITION OF JUDGMENTS

ARTICLE III

(1) For the purposes of this Convention, the effect of the recognition of a judgment shall be that it shall be treated as conclusive between the parties thereto in all proceedings founded on the same cause of action and it may be relied on by way of defence or counter-claim in any such proceedings.

(2) Subject to the provisions of paragraphs (3) to (5) of this Article judgments given in the territory of one High Contracting Party shall be recognised in the territory of the other except where the court applied to is satisfied of the existence of any of the following objections to the judgment :

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

- (b) 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 ;
 - (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, 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 ;
 - (f) the judgment is sought to be enforced against a person who, under the rules of public international law, is entitled to immunity from the jurisdiction of the court applied to.
- (3) 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 court applied to may recognise the judgment or may, if the judgment debtor makes an application to this effect, either refuse to recognise the judgment or adjourn its decision on the recognition of the judgment so as to allow the judgment debtor a reasonable opportunity of completing or of instituting such appeal.

(4) Where 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 judgment by a court having jurisdiction in the matter, the court applied to may refuse to recognise the judgment of the original court.

(5) Recognition 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.

ARTICLE IV

- (1) For the purposes of sub-paragraph (a) of paragraph (2) of Article III, the courts of the country of the original court shall, subject to the provisions of paragraphs (2) to (4) of this Article, be recognised as possessing jurisdiction:
- (a) if 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 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
 - (b) if the judgment debtor was plaintiff or counterclaimant in the proceedings in the original court ; or
 - (c) if the judgment debtor, being a defendant in the proceedings 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
 - (d) 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
 - (e) 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.

(2) The provisions of paragraph (1) of this Article shall not apply to judgments where the subject matter of the proceedings was immovable property, but the jurisdiction of the original court shall be recognised if such property were situated in the country of the original court.

(3) The provisions of paragraph (1) of this Article shall not apply to judgments given in an action in rem concerning ships, aircraft or their cargo. The jurisdiction of the original court shall, however, be recognised if such ships, aircraft or their cargo were situated in the country of the original court at the time of the commencement of the proceedings in the original court.

(4) The jurisdiction of the original court shall not be recognised in the cases specified in sub-paragraphs (d) and (e) of paragraph (1) and in paragraphs (2) and (3) 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 the original court.

ENFORCEMENT OF JUDGMENTS

ARTICLE V

(1) Subject to the provisions of paragraph (2) of this Article any judgment given in the territory of one High Contracting Party under which a sum of money is payable shall be enforced by execution in the territory of the other in the manner provided in Articles VI to VIII of this Convention :

Provided that the judgment shall not be enforced if :

- (a) the judgment debt has been wholly satisfied, or
- (b) the judgment could not be enforced by execution in the country of the original court, or
- (c) any of the objections to the recognition of the judgment set out in Article III exists.

(2) 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.

ARTICLE VI

(1) In order that any judgment given in the territory of the Kingdom of the Netherlands 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 complete judgment authenticated by the court seal and bearing the formula "In naam der Koningin" ;
- (b) an affidavit of the facts required by the rules of the court applied to ;
- (c) a translation into English of any document required by this paragraph certified by a sworn translator or by a diplomatic or consular officer of either High 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 V, registration shall be granted.

ARTICLE VII

(1) In order that any judgment given in the territory of the United Kingdom may be enforced in the Kingdom of the Netherlands, an application by a judgment creditor for the grant of execution should, in accordance with the procedure of the court applied to, be made to the "arrondissementsrechtbank" in whose jurisdiction the judgment debtor is resident or owns property.

(2) The application for the grant of execution 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;

(b) a document issued by the original court giving particulars of the proceedings and a statement of the grounds on which the judgment was based;

(c) a translation into Dutch of any document required by this paragraph certified by a sworn translator or by a diplomatic or consular officer of either High Contracting Party, if such a translation is requested by the Court applied to.

(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 V, execution shall be granted.

ARTICLE VIII

(1) From the date on which it is granted registration under Article VI or execution under Article VII a judgment shall, for the purposes of its execution by virtue of that grant, have effect in the country of the court applied to as if it were a judgment originally given in that country on that date.

(2) The procedure for the registration of a judgment under Article VI and the procedure for the grant of execution of a judgment under Article VII shall be as simple and rapid as possible, and no security for costs shall be required of any person making application for such registration or for the grant of execution.

(3) A period of not less than six years, running from the date of the judgment of the original court, if no appeal has been brought to a higher court in the country of the original court, or from the date of the judgment given in last instance if such an appeal has been brought, shall be allowed by the court applied to for the purpose of making any application for registration or for a grant of execution.

(4) If it is found by the court applied to that the judgment of the original court is in respect of different matters and that one or more, 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 execution, the judgment may be registered or granted execution in respect only of the provisions aforesaid.

(5) If it is found by the court applied to that the judgment has been at the date of the application partly but not wholly satisfied by payment, the judgment shall be registered or execution shall be granted in respect of the balance remaining payable at that date provided that the judgment is otherwise one which would be enforceable under the provisions of this Convention.

(6) 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 that country shall determine if, and if so, in what manner and on what conditions, the amount payable under the judgment may or shall be converted into the currency of that country for the purposes of the satisfaction or enforcement of the judgment debt.

(7) When granting registration or execution, the court applied to shall, if so requested by the judgment creditor, include the reasonable costs of and incidental to the grant of registration or of execution.

(8) Where a judgment is granted registration or execution it shall carry, in respect of the period up to the date of the grant, interest at the rate specified in the judgment or in any certificate of the original court accompanying the judgment. As from the date of the grant, interest shall be allowed at 4 per cent per annum on the total sum (principal and interest) in respect of which the registration or execution is granted.

FINAL PROVISIONS

ARTICLE IX

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

ARTICLE X

(1) The Governments of the High Contracting Parties may at any time, by mutual agreement expressed in an Exchange of Notes, extend the operation of this Convention to:

- (a) any territory for the international relations of which Her Britannic Majesty's Government in the United Kingdom are responsible ;
- (b) any part of the Kingdom of the Netherlands outside Europe.

(2) It shall also be specified in the Exchange of Notes referred to in the preceding paragraph which courts of the territory concerned or the part of the Kingdom concerned are to be named as the courts to whose judgments this Convention shall apply, and to which courts application for registration or grant of execution of any judgment shall be made.

(3) As regards judgments given in a territory after the extension to that territory has come into force, the courts specified in the relevant Exchange of Notes as the courts to whose judgments this Convention shall apply, shall be deemed to have been named in paragraph (1) of Article II.

(4) Any such extension shall come into force one month after the date of the Exchange of Notes.

(5) Either of the High 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.

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

ARTICLE XI

This 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 after the date of its coming into force. 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 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 this Convention and have affixed thereto their seals.

DONE in duplicate at The Hague, this 17th day of November 1967 in the English and Dutch languages, both texts being equally authoritative.

For Her Britannic Majesty :

PETER GARRAN
GARDINER C. (L.S.)

For Her Majesty the Queen of the Netherlands :

H. J. de KOSTER (L.S.)

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 Kingdom of the Netherlands and makes certain provisions regarding the registration and enforcement of such judgments.

Relevant judgments given after the 20th September 1969 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.