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STATUTORY INSTRUMENTS

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**1994 No. 1901**

**JUDGMENTS**

**The Reciprocal Enforcement of Foreign  
Judgments (Australia) Order 1994**

*Made - - - - 19th July 1994*

*Coming into force in accordance with Article 1*

At the Court at Buckingham Palace, the 19th day of July 1994

Present,

The Queen's Most Excellent Majesty in Council

Whereas an Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia<sup>(1)</sup>, a copy whereof is set out in the Schedule to this Order, providing for the reciprocal recognition and enforcement of judgments in civil and commercial matters, was signed at Canberra on 23rd August 1990:

And whereas the said Agreement has been supplemented in accordance with Article 1(b)(iii) thereof by an agreement between the said Governments to include the Industrial Relations Court of Australia as a court to which the said Agreement shall apply:

And whereas Her Majesty is satisfied that, in the event of the benefits conferred by Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933<sup>(2)</sup> being extended to judgments in civil and commercial matters given in the courts of Australia, substantial reciprocity of treatment will be assured as regards the enforcement in Australia of similar judgments given in the courts of the United Kingdom:

And whereas it appears to Her Majesty that the law in Australia provides for the enforcement in Australia of judgments given under section 6 of the Protection of Trading Interests Act 1980<sup>(3)</sup>:

Now, therefore, Her Majesty, by virtue and in exercise of the powers conferred on Her by section 14(2) of the Administration of Justice Act 1920<sup>(4)</sup>, section 1 as read with section 3 of the Foreign Judgments (Reciprocal Enforcement) Act 1933, section 7 of the Protection of Trading Interests Act 1980<sup>(5)</sup> and section 9(2) of the Civil Jurisdiction and Judgments Act 1982<sup>(6)</sup> is pleased by and with the advice of Her Privy Council, to order, and it is hereby ordered, as follows:

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(1) Cm 1394.

(2) 1933 c. 13 as extended by S.I.1933/1073 and as amended by section 35(1) of and Schedule 10 to the Civil Jurisdiction and Judgments Act 1982 (c. 27).

(3) 1980 c. 11.

(4) 1920 c. 81.

(5) As amended by section 38 of the Civil Jurisdiction and Judgments Act 1982 (c. 27).

(6) 1982 c. 27.

1. This Order may be cited as the Reciprocal Enforcement of Foreign Judgments (Australia) Order 1994. It shall come into force on the date on which the Agreement between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia, signed at Canberra on 23rd August 1990, providing for the reciprocal recognition and enforcement of judgments in civil and commercial matters shall enter into force, which date shall be notified in the London, Edinburgh and Belfast Gazettes.

2. Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933 shall extend to Australia<sup>(7)</sup>.

3. The following courts of Australia (hereinafter referred to as “recognised courts”) shall be recognised for the purposes of Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933, that is to say:

- the High Court of Australia;
- the Federal Court of Australia;
- the Industrial Relations Court of Australia;
- the Family Court of Australia;
- the Family Court of Western Australia;
- the Supreme Court exercising jurisdiction in respect of each Australian State or Territory;
- the District Court of New South Wales;
- the County Court of Victoria;
- the District Courts in Queensland;
- the District Court of Western Australia;
- the Local Courts in, and the District Court and the Magistrates' Court of, South Australia;
- the Courts of Requests in Tasmania; and
- the Magistrates' Court of the Australian Capital Territory.

4. The following judgments shall be judgments to which Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933 applies, that is to say—

- (a) any judgment, decree, rule, order or other final decree for the payment of money (other than in respect of taxes or other charges of a like nature or an order requiring the payment of maintenance) given by a recognised court in respect of a civil or commercial matter;
- (b) an award in proceedings on an arbitration conducted in Australia under the law applying there if the award has become enforceable in the same manner as a judgment in that country;
- (c) a judgment or order given or made by a recognised court in criminal proceedings for the payment of money in respect of compensation or damages to an injured person.

5. A judgment given in a recognised court shall, in the absence of proof to the contrary, be deemed to be capable of execution in Australia on production of a certified copy of the judgment.

6. A judgment of a recognised court obtained under section 10 of the Foreign Proceedings (Excess of Jurisdiction) Act 1984 of Australia shall be enforceable in the same manner and circumstances as an award to which section 6(2) of the Protection of Trading Interests Act 1980 applies, where the judgment—

- (a) was obtained after the coming into force of this Order; and

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(7) Insofar as is applicable as modified by section 51 of the [Administration of Justice Act 1956](#) 4 & 5 Eliz. II c.46.

- (b) relates to the recovery of sums paid or obtained pursuant to a judgment for multiple damages within the meaning of section 5(3) of the said Act of 1980; and
- (c) is founded on an instrument made under section 9(1) of the said Act of 1984 which includes a statement that the Attorney-General is satisfied in accordance with either—
  - (i) paragraph 9(1)(b)(ii) of that Act; or
  - (ii) paragraph 9(1)(b)(i) and paragraph 9(1)(b)(ii) of that Act.

7. The rate of interest due under the law in Australia upon the sum in respect of which a judgment of a recognised court 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 in Australia unless the contrary is shown.

8. It is hereby declared that—

- (a) the provisions contained in articles 5 and 7 of this Order are necessary for giving effect to the Agreement scheduled hereto in relation to matters with respect to which there is power to make rules of court for the purposes of Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933; and
- (b) Article 3 of the Agreement scheduled hereto is a provision of a convention whereby the United Kingdom assumes an obligation of the kind provided for in article 59 of the Convention on jurisdiction and the enforcement of judgments in civil and commercial matters, signed at Brussels on 27th September 1968<sup>(8)</sup>.

9.—(1) The Reciprocal Enforcement of Judgments (Australian Capital Territory) Order 1955<sup>(9)</sup> is hereby revoked.

(2) The Reciprocal Enforcement of Judgments (Administration of Justice Act 1920, Part II) (Consolidation) Order 1984<sup>(10)</sup> shall be amended by deleting from Schedule 1 thereto the following entries—

- (a) New South Wales;
- (b) Northern Territory of Australia;
- (c) Queensland;
- (d) South Australia;
- (e) Tasmania;
- (f) Victoria;
- (g) Western Australia.

*N. H. Nicholls*  
Clerk of the Privy Council

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<sup>(8)</sup> The Convention is set out in Schedule 1 to the Civil Jurisdiction and Judgments Act 1982.

<sup>(9)</sup> S.I. 1955/559.

<sup>(10)</sup> S.I. 1984/129 as amended by S.I. 1985/1994.

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## SCHEDULE

### AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND AND THE GOVERNMENT OF AUSTRALIA PROVIDING FOR THE RECIPROCAL RECOGNITION AND ENFORCEMENT OF JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia,

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

Have agreed as follows:

## ARTICLE 1

In this Agreement—

- (a) “the 1968 Convention” means the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters done at Brussels on 27th September 1968<sup>(11)</sup>, as amended from time to time;
- (b) “court of a Party” means one of the following courts—
  - (i) in relation to Australia—
    - (aa) the High Court of Australia;
    - (bb) the Federal Court of Australia;
    - (cc) the Family Court of Australia;
    - (dd) the Family Court of Western Australia;
    - (ee) the Supreme Court exercising jurisdiction in respect of each Australian State or Territory;
    - (ff) the District Court of New South Wales;
    - (gg) the County Court of Victoria;
    - (hh) the District Courts in Queensland;
    - (ii) the District Court of Western Australia;
    - (jj) the Local Courts in South Australia;
    - (kk) the Courts of Requests in Tasmania; or
    - (ll) the Magistrates' Court of the Australian Capital Territory;
  - (ii) in relation to the United Kingdom—
    - (aa) any superior court of the United Kingdom;
    - (bb) for England and Wales and Northern Ireland, any county court;
    - (cc) for Scotland, any sheriff court,and such superior courts as may be specified by the United Kingdom in a declaration pursuant to Article 7 of this Agreement;
  - (iii) such other courts as may be agreed between the Parties;
- (c) “judgment” means—

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<sup>(11)</sup> Treaty Series No. 10 (1988), Cm 306 p.25.

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- (i) any judgment, decree, rule, order or other final decree for the payment of money (other than in respect of taxes or other charges of like nature or an order requiring the payment of maintenance) given in the territory of a Party in respect of a civil or commercial matter;
  - (ii) an award in proceedings on an arbitration conducted in the territory of a Party under the law applying in that territory if the award has become enforceable in the same manner as a judgment in the territory of that Party; or
  - (iii) a judgment or order given or made by a court of a Party in criminal proceedings for the payment of money in respect of compensation or damages to an injured person;
- (d) “registering court” means a court of a Party to which an application for the registration of a judgment is made.

## ARTICLE 2

(1) Subject to paragraph (2) and to paragraph (3) of this Article, a judgment of a court of a Party, whether given before or after the entry into force of this Agreement, shall be recognised and enforced in the territory of the other Party on terms no less favourable than those—

(a) applicable to the recognition and enforcement of such judgments at the date of this Agreement, including the terms contained in the following provisions—

(i) In Australia—

- (aa) the Foreign Proceedings (Excess of Jurisdiction) Act 1984 (Australia);
- (bb) the Foreign Judgments Act 1973 of New South Wales;
- (cc) the Foreign Judgments Act 1962 of Victoria;
- (dd) the Reciprocal Enforcement of Judgments Act 1959 of Queensland;
- (ee) the Foreign Judgments Act 1963 of Western Australia;
- (ff) the Foreign Judgments Act 1971 of South Australia;
- (gg) Part X of the Supreme Court Civil Procedure Act 1932 of Tasmania;
- (hh) the Foreign Judgments (Reciprocal Enforcement) Ordinance 1954 of the Australian Capital Territory;
- (ii) the Foreign Judgments (Reciprocal Enforcement) Act of the Northern Territory of Australia;
- (jj) the Foreign Judgments (Reciprocal Enforcement) Ordinance 1978 of the Territory of Norfolk Island;
- (kk) the Foreign Judgments (Reciprocal Enforcement) Ordinance 1977 of the Territory of Christmas Island;
- (ll) the Reciprocal Enforcement of Judgments Ordinance as amended by the Reciprocal Enforcement of Judgments (Amendment) Ordinance 1963 of the Territory of Cocos (Keeling) Islands;

(ii) in the United Kingdom—

- (aa) Part II of the Administration of Justice Act 1920, in respect of the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, New South Wales, the Territory of Norfolk Island, the Northern Territory of Australia, Queensland, South Australia, Tasmania, Victoria and Western Australia;
- (bb) the Foreign Judgments (Reciprocal Enforcement) Act 1933;
- (cc) the Protection of Trading Interests Act 1980;

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- (b) provided by the law generally applicable in the registering court to the recognition and enforcement of foreign judgments at the date when application for recognition or enforcement is made.
- (2) A judgment of a court of a Party, obtained under—
  - (a) section 10 of the Foreign Proceedings (Excess of Jurisdiction) Act 1984 of Australia, in a case where the judgment is founded on an instrument made under section 9(1) of that Act which includes a statement that the Attorney-General is satisfied in accordance with paragraph 9(1)(b)(ii) of that Act; or
  - (b) section 6 of the Protection of Trading Interests Act 1980 of the United Kingdom,shall be entitled to be recognised and enforced in the territory of the other Party, in accordance with the provisions in the United Kingdom of section 7 of the Protection of Trading Interests Act 1980 and in Australia of section 12 of the Foreign Proceedings (Excess of Jurisdiction) Act 1984.
- (3) Notice of any amendment to or repeal of any provision listed in sub-paragraph (1)(a) of this Article dealing with the terms of recognition and enforcement of foreign judgments shall be given to the other Party through the diplomatic channel at least three months, or such other time as may be mutually arranged between the Parties, before the amendment or repeal takes effect.

### ARTICLE 3

- (1) The United Kingdom undertakes, in the circumstances permitted by Article 59 of the 1968 Convention, not to recognise or enforce under that Convention any judgment within the meaning of that Convention given in a third State which is a Party to that Convention against a person domiciled or habitually resident in Australia.
- (2) For the purposes of paragraph (1) of this Article—
  - (a) an individual shall be treated as domiciled in Australia if and only if he is resident in Australia and the nature and circumstances of his residence indicate that he has a substantial connection with Australia;
  - (b) a corporation or association shall be treated as domiciled in Australia if and only if it is incorporated or formed under a law in force in Australia and has a registered office there, or its central management and control is exercised in Australia; and
  - (c) in the case of an individual who—
    - (i) is resident in Australia; and
    - (ii) has been so resident for the last three months or more,the requirements of Article 3(2)(a) shall be presumed to be fulfilled unless the contrary is proved.

### ARTICLE 4

This Agreement shall not affect any treaties or arrangements to which both Parties are from time to time parties and which, in relation to particular matters, govern the recognition or enforcement of judgments.

### ARTICLE 5

This Agreement shall not apply to any judgment that imposes a liability which a Party is obliged not to recognise or enforce by virtue of a treaty with a third State. That Party shall give notice of any such treaty to the other Party through the diplomatic channel.

## ARTICLE 6

Either Party may, at the time of its notification under Article 9 or at any time thereafter, modify by declaration the list of its courts where a court replaces a court specified in Article 1(b)(i) or (ii) or agreed under Article 1(b)(iii) or specified in a declaration under this Article. Such a declaration shall be given through the diplomatic channel and shall take effect three months, or such other time as may be mutually arranged between the Parties, after the date on which it is given.

## ARTICLE 7

(1) The United Kingdom may, at any time while this Agreement is in force, declare that this Agreement shall extend to any territory for whose international relations it is responsible.

(2) Any declaration made pursuant to paragraph (1) of this Article shall specify the superior courts of the territory to which application for the registration of a judgment given by a court of Australia shall be made.

(3) Any declaration made by the United Kingdom pursuant to this Article may be modified by a further declaration given at any time thereafter.

(4) Any declaration made pursuant to this Article shall be given through the diplomatic channel and shall take effect three months, or such other time as may be mutually arranged between the Parties, after the date on which it is given.

## ARTICLE 8

The Parties shall consult at the request of either concerning the operation of this Agreement.

## ARTICLE 9

(1) Each Party shall give notice to the other through the diplomatic channel of the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications.

(2) This Agreement may be terminated by notice in writing by either Party through the diplomatic channel and it shall terminate three months after the date of such notice.

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

Done in duplicate at Canberra this

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

Twenty-third day of August, One thousand nine hundred and ninety.

*Geoffrey Howe*

For the Government of Australia

*Michael Duffy*

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#### **EXPLANATORY NOTE**

*(This note is not part of the Order)*

This Order replaces the Reciprocal Enforcement of Judgments (Australian Capital Territory) Order 1955 and the arrangements under Part II of the Administration of Justice Act 1920 which applied to the rest of Australia. Pursuant to an agreement between the governments of the United Kingdom and of Australia, it provides for the extension of Part I of the Foreign Judgments (Reciprocal Enforcement) Act 1933 to the judgments of designated courts of Australia, so as to enable such judgments to be registered and enforced in the United Kingdom. Substantial reciprocity will be accorded in Australia to judgments of designated courts of the United Kingdom. The Order also (in article 8(b)) gives effect to an undertaking given by the United Kingdom in Article 3 of the Agreement that it will not recognise or enforce judgments given against Australian residents by other States parties to the convention on jurisdiction and the enforcement of judgments in civil and commercial matters signed at Brussels on 27th September 1968 if the judgment could only have been based on a ground of jurisdiction specified in the second paragraph of Article 3 of that convention (which specifies certain exorbitant jurisdictions).

Relevant judgments given after the coming into force of this Order will be enforced in the United Kingdom upon registration in the High Court, the Court of Session or the High Court of Justice in Northern Ireland, as the case may be.