

CAYMAN ISLANDS



Supplement No. 2 published with Gazette No. 13
dated 30th June, 2014.

**A BILL FOR A LAW TO AMEND THE FOREIGN JUDGMENTS
RECIPROCAL ENFORCEMENT LAW (1996 REVISION); AND TO
MAKE PROVISION FOR INCIDENTAL AND CONNECTED MATTERS**

**THE FOREIGN JUDGMENTS RECIPROCAL ENFORCEMENT
(AMENDMENT) BILL, 2014**

MEMORANDUM OF OBJECTS AND REASONS

This Bill seeks to amend the Foreign Judgments Reciprocal Enforcement Law (1996 Revision) (“the principal Law”) in order to apply the provisions of Part II to the judgments of a superior court of a scheduled country without the added requirement of reciprocity.

Clause 1 of the Bill contains the short title and the commencement provisions.

Clause 2 amends the short title of the principal Law by deleting the word “reciprocal” in keeping with the removal of the requirement for reciprocity in the enforcement of a foreign judgment.

Clause 3 deletes the definition of “foreign” as this term is understood within the context of its ordinary dictionary meaning. It also deletes the definition of “Governor” given that the Cabinet will now be empowered to determine which jurisdictions are recognised. Introduced is a definition of “country” to make it clear that states, provinces and territories fall within the scope of the legislation. Also introduced is a definition of “superior court” in order to remove the need to specifically identify a court in a country as being superior.

Clause 4 amends the heading to Part II of the principal Law by deleting the word “Foreign”.

Clause 5 amends section 3 of the principal Law by removing the requirement for reciprocity in the enforcement of a judgment of a superior court and it extends the application of Part II of the principal Law to judgments of the superior court of a country identified in the Schedule.

Clause 6 amends section 5 of the principal Law by deleting the word “foreign” and by repealing subsection (2) as a consequence of the removal of the requirement of reciprocity.

Clause 7 amends section 6 of the principal Law by introducing provisions to prohibit enforcement of a judgment until an application to set aside that judgment has been determined. It also specifies the burden to be met by the judgment creditor.

Clause 8 amends section 8 of the principal Law by deleting the word “foreign”.

Clause 9 repeals section 10 of the principal Law in keeping with the removal of the reciprocity requirement which was previously needed in order determine whether a judgment should be recognised and registered.

Clause 10 amends section 11 of the principal Law to permit the Grand Court to issue certificates of judgments obtained in the Islands to any country including those to which Part II apply.

Clause 11 inserts a Schedule into the principal Law which identifies the countries that will fall within the scope of the legislation.

Clause 12 repeals the Foreign Judgments Reciprocal Enforcement (Australia and its External Territories) Order, 1993.

Clause 13 sets out the savings and transitional provisions.

**THE FOREIGN JUDGMENTS RECIPROCAL ENFORCEMENT
(AMENDMENT) BILL, 2014**

ARRANGEMENT OF CLAUSES

1. Short title and commencement
2. Amendment of section 1 of the Foreign Judgments Reciprocal Enforcement Law (1996 Revision) - short title
3. Amendment of section 2 - definitions and interpretation
4. Amendment to heading of Part II - registration of foreign judgments
5. Amendment of section 3 - power to extend Part II to foreign countries giving treatment
6. Amendment of section 5 - Rules of Court 1995 Revision
7. Amendment of section 6 - cases in which registered judgments must or may be set aside
8. Amendment of section 8 - foreign judgments which can be registered not to be enforceable otherwise
9. Repeal of section 10 - power to make foreign judgments unenforceable in the Islands if no reciprocity
10. Amendment of section 11 - issue of certificates of judgments obtained in the Islands
11. Insertion of Schedule - countries
12. Repeal - Foreign Judgments Reciprocal Enforcement (Australia and its External Territories) Order, 1993
13. Savings and transitional provisions

CAYMAN ISLANDS

**A BILL FOR A LAW TO AMEND THE FOREIGN JUDGMENTS
RECIPROCAL ENFORCEMENT LAW (1996 REVISION); AND TO
MAKE PROVISION FOR INCIDENTAL AND CONNECTED MATTERS**

ENACTED by the Legislature of the Cayman Islands.

1. (1) This Law may be cited as the Foreign Judgments Reciprocal Enforcement (Amendment) Law, 2014.

Short title and commencement

(2) This Law shall come into force on such date as may be appointed by Order made by the Cabinet.

2. The Foreign Judgments Reciprocal Enforcement Law (1996 Revision), in this Law referred to as “the principal Law”, is amended in section 1 by deleting the word “Reciprocal”.

Amendment of section 1 of the Foreign Judgments Reciprocal Enforcement Law (1996 Revision) - short title

3. The principal Law is amended in section 2 as follows -

Amendment of section 2- definitions and interpretation

- (a) by deleting the definition of the word “foreign”;
- (b) by deleting the definition of the word “Governor”; and
- (c) by inserting in the appropriate alphabetical sequence the following definitions-
 - “ “country” includes any state, province or territory other than the Islands; and
 - “superior court” means any court other than a court of summary jurisdiction.”.

The Foreign Judgments Reciprocal Enforcement (Amendment) Bill, 2014

Amendment to heading of Part II- registration of foreign judgments

4. The principal Law is amended in the heading to Part II by deleting the word “Foreign”.

Amendment of section 3- power to extend Part II to foreign countries giving treatment

5. The principal Law is amended by repealing section 3 and substituting the following section -

“Judgments and countries to which Part II applies

3. (1) A judgment of a superior court of a country other than a judgment of such a court given on appeal from a court which is not a superior court, shall be a judgment to which this Part applies if-

- (a) it is final and conclusive between the parties; and
- (b) there is payable a sum of money under the judgment, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or penalty.

(2) For the purposes of this section, a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it or that it may still be subject to appeal in the courts of the country of the original court.

(3) This Part shall apply to a judgment from a superior court of a country specified in the Schedule.

(4) The Cabinet may, by Order, after consultation with the Rules Committee of the Grand Court, amend the Schedule.”.

Amendment of section 5- Rules of Court 1995 Revision

6. The principal Law is amended in section 5 as follows -

- (a) in subsection (1)(e), by deleting the word “foreign” wherever it appears; and
- (b) by repealing subsection (2).

Amendment of section 6- cases in which registered judgments must or may be set aside

7. The principal Law is amended in section 6 by inserting after subsection (3) the following subsections -

“ (4) Where a judgment debtor makes an application to set aside a registered judgment, no proceedings shall be commenced to enforce that judgment before a final determination of the judgment debtor’s application.

(5) The court shall make an order staying any proceedings commenced to enforce a registered judgment until a final determination of the judgment debtor's application.

(6) The judgment creditor shall be required, on a balance of probabilities, to satisfy the court that the circumstances relied upon by the judgment debtor do not justify setting aside the registration and enforcement of a judgment.”.

- | | |
|--|--|
| 8. The principal Law is amended in section 8 as follows - | Amendment of section 8- foreign judgments which can be registered not to be enforceable otherwise |
| (a) by deleting the word “foreign” wherever it appears; and | |
| (b) in the marginal note, by deleting the word “Foreign”. | |
| 9. The principal Law is amended by repealing section 10. | Repeal of section 10- power to make foreign judgments unenforceable in the Islands if no reciprocity |
| 10. The principal Law is amended in section 11 by deleting the words “a country or territory to which Part II applies” and substituting the words “any country”. | Amendment of section 11- issue of certificates of judgments obtained in the Islands |
| 11. The principal Law is amended by inserting after Part III the following Schedule - | Insertion of Schedule- countries |

“SCHEDULE (Section 3(3))

Countries

Australia and its States and Territories
Bahamas
Bermuda
British Virgin Islands
Canada and its Provinces and Territories
England and Wales
Guernsey
Hong Kong
Isle of Man
Jamaica
Jersey
New Zealand
Northern Ireland
Republic of Ireland
Scotland
Singapore.”.

Repeal - Foreign
Judgments Reciprocal
Enforcement (Australia
and its External
Territories) Order, 1993

Savings and transitional
provisions

12. The Foreign Judgments Reciprocal Enforcement (Australia and its External Territories) Order, 1993 is repealed.

13. (1) Any proceedings which commenced under the former Law as a consequence of the Foreign Judgments Reciprocal Enforcement (Australia and its External Territories) Order, 1993, shall continue to be dealt with as if that Order and the former Law were still in force.

(2) The amendment of section 3 of the former Law by this new Law shall not affect the validity of an Order made under that section which was in force immediately before the commencement of this new Law and any proceedings which commenced as a consequence of that Order shall continue to be dealt with after the date of commencement of this new Law as if the former Law was still in force.

(3) Any common law proceedings which commenced before this new Law comes into force in relation to the enforcement of a superior court judgment to which Part II applies shall continue to be dealt with in all respects as if this new Law had not come into force.

(4) In this section -

“new Law” means the principal Law as amended by this Law; and

“former Law” means the principal Law in force immediately before the date of commencement of this Law.

Passed by the Legislative Assembly the day of , 2014.

Speaker.

Clerk of the Legislative Assembly.