



SAMOA

**RECIPROCAL ENFORCEMENT OF JUDGMENTS ACT
1970**

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**RECIPROCAL ENFORCEMENT OF JUDGMENTS ACT
1970**

1970

No. 5

AN ACT to make provision for the enforcement in Samoa of superior Court judgments given in foreign countries which afford reciprocal treatment to superior Court judgments given in Samoa, for facilitating the enforcement in foreign countries of such judgments given in Samoa, and for other purposes in connection with the matters aforesaid.

[Assent and commencement date: 14 August 1970]

PART 1
PRELIMINARY

1. Short title – This Act may be cited as the Reciprocal Enforcement of Judgments Act 1970.

2. Interpretation – (1) In this Act, unless the context otherwise requires:

“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;

“Country” or “foreign country” includes a member of the Commonwealth of Nations, and a territory for whose international relations the Government of any such member is responsible;

“Country of the original Court” means the country in which the original Court is situated;

“Head of State” means the Head of State, acting on the advice of the Prime Minister;

“Judgment” means a judgment or order given or made, whether before or after the passing of this Act, by a Court in any civil proceedings, or 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; and includes an award in proceedings on an arbitration (not being a foreign award within the meaning of Part II of the Arbitration Clauses (Protocol) and the Arbitration (Foreign Awards) Act 1933 (New Zealand)) if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a Court in that place;

“judgment creditor” means the person in whose favour the judgment was given, and includes any person in whom the rights under the judgment have become vested by succession or assignment or otherwise;

“judgment debtor” means the person against whom the judgment was given, and includes any person against whom the judgment is enforceable under the law of the original Court;

“judgments given in the superior Courts of Samoa” means judgments given in the Supreme Court and the Court of Appeal; and includes judgments given in the Court of Appeal on appeal against judgments given in the Supreme Court; and also includes judgments that have become enforceable as judgments of the Supreme Court though not given therein;

“original Court”, for a judgment, means the Court by which the judgment was given;

“prescribed” means prescribed by rules of Court;

“registration” means registration under Part 2, and “register” and “registered” are to be construed accordingly;

“Supreme Court” means the Supreme Court of Samoa.

(2) For the purposes of this Act, “action in *personam*” is not taken to include any matrimonial cause or any proceedings in connection with any of the following matters, that is to say, matrimonial matters, administration of the estates of deceased persons, bankruptcy, winding up of companies, lunacy and guardianship of infants.

PART 2 RECIPROCAL ENFORCEMENT OF JUDGMENTS

3. Application of this Part – (1) If the Head of State is satisfied that, in the event of the benefits conferred by this Part 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 Samoa, the Head of State may by Order direct:

- (a) that this Part shall extend to that foreign country; and
- (b) that such Courts as are specified in the Order shall, for the purposes of this Part, be deemed superior Courts of that foreign country.

(2) Any judgment of a superior Court of a country to which this Part of this Act extends shall be a judgment to which this Part applies, if:

- (a) it is final as between the parties thereto; and

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(b) there is payable thereunder a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty.

(3) For the purposes of this section a judgment is deemed to be final even if 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.

(4) The Head of State may by a subsequent Order vary or revoke any Order previously made under this section.

(5) A copy of the Samoa *Gazette* or the *Savali* purporting to contain a copy of an Order under this section, or a copy of such an Order printed and published under Regulations Ordinance 1953, is conclusive evidence of the validity, contents, making and publication of such Order and of the fulfilment of all conditions precedent to the valid making thereof.

4. Application for, and effect of, registration of judgment

– (1) A person, being a judgment creditor under a judgment to which this Part applies, may apply to the Supreme Court at any time within 6 years after the date of the judgment, or, where there have been proceedings by way of appeal against the judgment, after the date after the last judgment given in those proceedings, to have the judgment registered in the Supreme Court, and on any such application the Supreme Court shall, subject to proof of the prescribed matters and to the other provisions of this Act, order the judgment to be registered:

PROVIDED THAT a judgment shall not be registered if at the date of the application:

- (a) it has been wholly satisfied; or
- (b) it could not be enforced by execution in the country of the original Court.

(2) Subject to the provisions of this Act with respect to the setting aside of registration:

- (a) a registered judgment shall, for the purposes of execution, be of the same force and effect; and
- (b) proceedings may be taken on a registered judgment; and
- (c) the sum for which a judgment is registered shall carry interest; and

(d) the Supreme Court has the same control over the execution of a registered judgment, – as if the judgment had been a judgment originally given in the Supreme Court and entered on the date of registration:

PROVIDED THAT execution shall not issue on the judgment so long as, under this Part and the rules of Court made thereunder, it is competent for any party to make an application to have the registration of the judgment set aside, or, where such an application is made, until after the application has been finally determined.

(3) Where the sum payable under a judgment which is to be registered is expressed in a currency other than the currency of Samoa, the judgment shall be registered as if it were a judgment for such sum in the currency of Samoa as, on the basis of the rate of exchange prevailing at the date of the judgment of the original Court, is equivalent to the sum so payable.

(4) If at the date of the application for registration the judgment of the original Court has been partly satisfied, the judgment shall not be registered in respect of the whole sum payable under the judgment of the original Court, but only in respect of the balance remaining payable at that date.

(5) If, on an application for the registration of a judgment, it appears to the Supreme Court that the judgment is in respect of different matters and that some, 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, the judgment may be registered in respect of the provisions aforesaid but not in respect of any other provisions contained therein.

(6) In addition to the sum of money payable under the judgment of the original Court, including any interest which by the law of the country of the original Court becomes due under the judgment up to the time of registration, the judgment shall be registered for the reasonable costs:

- (a) of obtaining a certified copy of the judgment from the original Court; and
- (b) otherwise of and incidental to registration.

5. Rules of Court – (1) The power to make rules of Court under section 40 of the Judicature Ordinance 1961 shall, subject

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to this section, include power to make rules for the following purposes:

- (a) for making provision with respect to the giving of security for costs by persons applying for the registration of judgments;
- (b) for prescribing the matters to be proved on an application for the registration of a judgment and for regulating the mode of proving those matters;
- (c) for providing for the service on the judgment debtor of notice of the registration of a judgment;
- (d) for making provision with respect to the fixing of the period within which an application may be made to have the registration of a judgment set aside and with respect to the extension of the period so fixed;
- (e) for prescribing the method by which it is to be determined whether a judgment given in any foreign country to which this Part extends can be enforced by execution in the country of the original Court, or what interest is payable under any judgment under the law of the original Court;
- (f) for prescribing any matter which under this Part of this Act is to be prescribed.

(2) Rules made for the purposes of this Part shall be expressed to have, and shall have, effect subject to any provisions contained in Orders made under section 3 relating to any of the purposes set out in subsection (1).

6. Cases in which registered judgments must, or may, be set aside – (1) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment shall be set aside if the Supreme Court is satisfied:

- (a) that the judgment is not a judgment to which this Part applies, or was registered in contravention of the foregoing provisions of this Act; or
- (b) that the Courts of the country of the original Court had no jurisdiction in the circumstances of the case; or

- (c) that the judgment debtor, being the defendant in the proceedings in the original Court, did not (even if process may have been duly served on him or her in accordance with the law of the country of the original Court) receive notice of those proceedings in sufficient time to enable him or her to defend the proceedings and did not appear; or
- (d) that the judgment was obtained by fraud; or
- (e) that the enforcement of the judgment would be contrary to public policy in Samoa; or
- (f) that the rights under the judgment are not vested in the person by whom the application for registration was made.

(2) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment may be set aside if the Supreme Court is satisfied that the matter in dispute in the proceeding in the original Court had previously to the date of the judgment in the original Court been the subject of a final judgment by a Court having jurisdiction in the matter.

(3) For the purposes of this section the Courts of the country of the original Court is, subject to subsection (4), taken to have had jurisdiction:

- (a) for a judgment given in an action in *personam* —
 - (i) if the judgment debtor, being a defendant 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
 - (ii) if the judgment debtor was a plaintiff in, or counterclaimed in, the proceedings in the original Court;
 - (iii) if the judgment debtor, being a defendant 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

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that Court or of the Courts of the country of that Court; or

(iv) if the judgement 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

(v) 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;

(b) for a judgment given in an action of which the subject-matter was immovable property or in an action *in rem* of which the subject-matter was movable property, if the property in question was at the time of the proceedings in the original Court situate in the country of that Court;

(c) for a judgment given in an action other than any such action as is mentioned in paragraph (a) or (b), if the jurisdiction of the original Court is recognised by the law of the registering Court.

(4) Despite subsection (3), the Courts of the country of the original Court shall not be deemed to have had jurisdiction:

(a) if the subject matter of the proceedings was immovable property outside the country of the original Court; or

(b) except in the cases mentioned in subsection (3)(a)(i), (ii) and (iii) and (c), 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 that Court; or

(c) if 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.

7. Powers of Supreme Court on application to set aside registration – (1) If, on an application to set aside the registration of a judgment, the applicant satisfies the Supreme Court either that an appeal is pending, or that he or she is entitled and intends to appeal, against the judgment, the Court may, if it thinks fit and on such terms as it thinks just, either set aside the registration or adjourn the application to set aside the registration until after the expiration of such period as appears to the Supreme Court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by a competent tribunal.

(2) When the registration of a judgment is set aside under subsection (1), or solely for the reason that the judgment was not at the date of the application for registration enforceable by execution in the country of the original Court, the setting aside of the registration does not prejudice a further application to register the judgment when the appeal has been disposed of or if and when the judgment becomes enforceable by execution in that country, as the case may be.

(3) When the registration of a judgment is set aside solely for the reason that the judgment, although it had at the date of the application for registration been partly satisfied, was registered for the whole sum payable thereunder, the Supreme Court shall, on the application of the judgment creditor, order the judgment to be registered for the balance remaining payable at that date.

8. Judgments which can be registered under this Act not to be enforceable otherwise – No proceedings for the recovery of a sum payable under a judgment to which this Part applies, other than proceedings by way of registration of the judgment, shall be entertained by any Court in Samoa.

PART 3 MISCELLANEOUS

9. General effect of judgments given by superior Courts outside Samoa – (1) Subject to the provisions, a judgment to

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which Part 2 applies or would have applied if a sum of money had been payable thereunder, whether it can be registered or not, and whether, if it can be registered, it is registered or not, shall be recognised in any Court in Samoa as conclusive between the parties thereto in all proceedings founded on the same cause of action, and may be relied on by way of defence or counter-claim in any such proceedings.

(2) This section does not apply in the case of any judgment:

(a) if the judgment has been registered and the registration thereof has been set aside on some ground other than —

(i) that a sum of money was not payable under the judgment; or

(ii) that the judgment had been wholly or partly satisfied; or

(iii) that at the date of the application the judgment could not be enforced by execution in the country of the original Court; or

(b) if the judgment has not been registered, and it is shown (whether it could have been registered or not) that if it had been registered the registration thereof would have been set aside on an application for that purpose on some ground other than one of the grounds specified in paragraph (a).

(3) Nothing in this section prevents any Court in Samoa recognising any judgment as conclusive of any matter of law or fact decided therein if that judgment would have been so recognised before the passing of this Act.

10. Power to make judgments unenforceable in Samoa if no reciprocity – (1) If it appears to the Head of State that the treatment in respect of recognition and enforcement accorded by the Courts of any foreign country to judgments given in any superior Court of Samoa is substantially less favourable than that accorded by the Courts of Samoa to judgments of the superior Courts of that country, the Head of State may by Order apply this section to that country.

(2) Except in so far as the Head of State may by Order under this section otherwise direct, no proceedings shall be entertained

in any Court in Samoa for the recovery of any sum alleged to be payable under a judgment given in a Court of a country to which this section applies.

(3) The Head of State may by a subsequent Order vary or revoke any Order previously made under this section.

11. Issue of certificates of judgments obtained in Samoa

– When a judgment, under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, has been entered in the Supreme Court against any person and the judgment creditor is desirous of enforcing the judgment in any country to which Part 2 applies, the Court shall, on an application made by the judgment creditor and on payment of any fee fixed by rules of Court for the purposes of this section, issue to the judgment creditor a certified copy of the judgment, together with a certificate containing such particulars with respect to the action including the causes of action and the rate of interest, if any, payable on the sum payable under the judgment, as may be prescribed:

PROVIDED THAT, where execution of a judgment is stayed for any period pending an appeal or for any other reason, an application made under this section with respect to the judgment shall not be granted until the expiration of that period.

REVISION NOTES 2008 – 2019

This is the official version of this Act as at 31 December 2019.

This Act has been revised by the Legislative Drafting Division from 2008 – 2019 respectively under the authority of the Attorney General given under the *Revision and Publication of Laws Act 2008*.

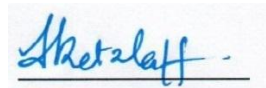
The following general revisions have been made:

- (a) Amendments have been made to conform to modern drafting styles and to use modern language as applied in the laws of Samoa.
- (b) Amendments have been made to up-date references to offices, officers and statutes.
- (c) Insertion of the commencement date and part numbering in roman numeral changed to decimal numbers;
- (d) Other minor editing has been done in accordance with the lawful powers of the Attorney General.
 - (i) Present tense drafting style where appropriate:

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- “shall be” and “has been” changed to “is/are” or “is/are to be”
- “shall have” changed to “has”
- (ii) Use of plain language
 - “notwithstanding” changed to “despite”
 - “pursuant to” or “in accordance with the provisions of” changed to “under”
 - “in relation to” changed to “for”
 - “deemed” changed to “taken”
- (iii) Removal of superfluous terms
 - “and conclusive” after “final”
 - “the expressions”

There were no amendments made to this Act since the publication of the *Consolidated and Revised Statutes of Samoa 2007*.



Lemalu Hermann P. Retzlaff
Attorney General of Samoa

*This Act is administered by
the Ministry of Justice and Courts Administration*
