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THE OFFICIAL GAZETTE 2ND AUGUST, 2023
LEGAL SUPPLEMENT — A

GUYANA

ACT NO. 9 OF 2023

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT 2023

I assent.

Mohamed Irfaan Ali,

President.

2nd August, 2023

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SCHEDULE – Countries to which this Act extends.

AN ACT to repeal the Foreign Judgments (Reciprocal Enforcement) Act, and to make new provision for the enforcement of foreign judgments given in countries outside of Guyana which accord reciprocal treatment to judgments given in Guyana and for related matters.

A.D.2023 Enacted by the Parliament of Guyana –

PART I

PRELIMINARY

Short title.

1. This Act may be cited as the Foreign Judgments (Reciprocal Enforcement) Act 2023.

Interpretation.

2. In this Act –

"appeal" includes any proceeding by way of discharging or setting aside a judgment or an application for a new trial or stay of execution;

"court" includes a tribunal and in relation to a court of a foreign country means a court that is –

(a) a court of civil jurisdiction; or

(b) a court of criminal jurisdiction in respect only of a civil claim it is competent to entertain under the law of that foreign country for damages or restitution based on an act giving rise to criminal proceedings;

"country of origin" means the country where a foreign judgment was made;

"designated court" means –

(a) a superior court of a reciprocating country which is a country listed in the Schedule or contemplated in section 3 (1);

(b) a superior court of any other reciprocating country which is specified in an order made under section 3 (2);

(c) a subordinate court of a reciprocating country which is specified in an order made under section 3(4);

"foreign judgment" means a final decision made by a court of a foreign country deemed to have had jurisdiction under this Act and which is a money-judgment or a non-monetary judgment;

"High Court" means the High Court of Guyana;

"judgment creditor" means the person in whose favour a foreign judgment was given and includes any person in whom the rights under the judgment have become vested by succession, 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 country of the original court;

"judgments given in the High Court" includes any judgments given in any court on appeal against any judgment so given in the High Court;

"Minister" means the Minister responsible for legal affairs;

"money-judgment" means a foreign judgment under which is payable an amount of money;

"non-monetary judgment" means a foreign judgment –

(a) ordering specific performance of a contractual obligation;

(b) ordering the transfer of a specified item or specified items of movable property; or

(c) prohibiting the judgment debtor from acting in a specified way;

"original court" in relation to any judgment means the court by which the judgment was given;

"prescribed" means prescribed by rules of court;

"registration" means registration under Part II, and the expressions "register" and "registered" shall be construed accordingly.

Reciprocal enforcement.

Schedule.

3. (1) This Act shall apply to countries listed in the Schedule, and where a country is not listed in the Schedule, this Act shall also apply to that country if Guyana is obligated to recognise and enforce a judgment of that country under an international agreement.

(2) Where the Minister is satisfied that provisions which are substantially reciprocal have been made by a foreign country, not contemplated in subsection (1), for the enforcement of judgments obtained in the High Court, the Minister may by order, amend the Schedule to extend this Act to judgments obtained in the superior court in the foreign country.

(3) An order made under subsection (2) shall specify the courts which are deemed to be the superior courts of that country.

(4) Where the Minister is satisfied that provisions which are substantially reciprocal will be or have been made by a country outside Guyana for the enforcement therein of judgments given by subordinate courts in Guyana, the Minister, may by order, declare that this Act shall apply with respect to judgments of the subordinate courts of that country and the order shall specify the courts in that country which are deemed to be subordinate courts.

Judgments to which this Act applies.

4. (1) This Act shall apply to –

(a) money judgments including –

(i) a judgment or order of a designated court in civil proceedings for the payment of a lump sum of money as financial provision for, or maintenance of, a spouse or a former spouse or a child or other person who is or was a dependent of another;

(ii) a judgment or order of a designated court in criminal proceedings for the payment of a sum of money in respect of compensation or damage to an injured person or for the delivery of movable property by way of restitution to an injured person;

(b) non-monetary judgments including a judgment or order of a designated court in civil proceedings under which movable property is ordered to be delivered to any person, including an order for the delivery of movable property as part of a scheme for the provision for, or maintenance of, a spouse or a former spouse or a child or other person who is or was a dependant of another;

(c) a judgment given in any court on appeal against a judgment or order of a designated court referred to in paragraphs (a) and (b);

(d) a judgment of a designated superior court for the costs of an appeal from a subordinate court, whether or not a designated court, or from an award referred to in paragraph (e); and

(e) an award in arbitration proceedings, if the award has, under the laws in force in the country where it was made, become enforceable in the same manner as a judgment given in a superior court of that country.

(2) This Act shall apply to a judgment referred to in subsection (1) if it requires the judgment debtor to make an interim payment of a sum of money to the judgment creditor.

(3) A foreign judgment shall be treated as final and conclusive as between the parties notwithstanding that in the courts of the country of origin –

(a) an appeal is pending against it; or

(b) the time within which the appeal may be made or leave for appeal requested has not expired.

Exclusion from the scope of the Act.

5. (1) The Act shall not apply to a foreign judgment or order –

(a) whereby a sum of money is payable or an item of movable property is deliverable in respect of taxes or other charges of a similar nature or in respect of a fine or other penalty;

(b) to the extent to which it provides for payment of a sum of money by way of exemplary, punitive or multiple damages;

(c) for the periodical payment of money as financial provision for, or maintenance of, a spouse or a former spouse or a child or other person who is or was a dependent of the person against whom the order was made;

(d) in a matrimonial cause or matter, or determining rights in property arising out of a matrimonial relationship, not being a judgment referred to in section 4(1)(a)(i) or (b), whereby a sum of money is payable or item of movable property deliverable;

(e) in proceedings in connection with the custody or guardianship of a child;

(f) in proceedings concerning the administration of the property or affairs of a person who is incompetent or incapable of managing and administering his or her property and affairs;

(g) in a matter of succession to, or administration of, estates of deceased persons whereby a sum of money is payable or movable property is deliverable;

(h) in a matter of social security or public assistance whereby a sum of money is payable by or to a public authority or fund;

(i) in bankruptcy proceedings or in proceedings for the winding-up or re-organisation of a

corporation or in proceedings for judicial arrangements, compositions or similar matters;

(j) of a designated court in any proceedings if –

(i) the bringing of those proceedings in that court was contrary to an agreement, or to an instrument in respect of which the proceedings were instituted, whereby the dispute, or proceedings, were to be settled otherwise than in the courts of the reciprocating country;

(ii) those proceedings were not brought in that court by, or with the agreement of, the person against whom the judgment was given; or

(iii) that person did not counterclaim in the proceedings or otherwise submit to the jurisdiction of the court;

(k) relating to the status and legal capacity of a natural person;

(l) made in proceedings commenced before the coming into operation of this Act;

(n) which is regarded for the purposes of its enforcement as a judgment of a designated country but which was given in another country; and

(o) given by a designated court in proceedings founded on a judgment of a court in another country and having as their objective the enforcement of the latter judgment.

(2) A foreign judgment shall not be excluded from the scope of this Act by the mere fact that a government, a government agency or any person acting for the state was a party to the proceedings in which the foreign judgment was made.

(3) Nothing in this Act shall affect the privileges and immunities of sovereign countries or of entities of sovereign countries, or of international organisations.

Jurisdiction of the original court.

6. (1) The original court shall, subject to subsections (2) and (3), be deemed to have had jurisdiction if –

(a) the judgment debtor expressly agreed to submit to the jurisdiction of the court;

(b) the judgment debtor submitted to the jurisdiction of the court by appearing voluntarily in the proceedings;

(c) the judgment debtor was plaintiff in, or counterclaim in, the proceedings;

(d) the judgment debtor, a natural person, was ordinarily resident in the country of origin;

(e) the judgment debtor, not a legal person, was incorporated in the country of origin, exercised its central management in that state or had its

principal place of business located in that country;

(f) the judgment debtor, being a defendant in the court of the country of origin, had an office or place of business in that country and the proceedings were with respect to a transaction effected through or at that office or place;

(g) the proceedings related to a contractual obligation that was or should have been performed in the country of origin;

(h) the proceedings related to tort or a non-contractual obligation and the wrongful act occurred in the country of origin;

(i) the proceedings related to a dispute concerning immovable property or in an action *in rem* of which the subject matter was movable property, located in the country of origin;

(j) the proceedings related to the validity or administration of a trust established in the country of origin or trust assets located in the country, and the trustee, settlor or beneficiary had his or her ordinary residence or its principal place of business in the country of origin; or the original court was a court of a country designated in the trust instrument as having jurisdiction for this purpose; or

(k) the proceedings related to a dispute concerning goods made or services provided by the judgment debtor and the goods and services were acquired or used by the judgment creditor when the judgment creditor was ordinarily resident in the country of origin and were marketed through the normal channels of trade in the country of origin.

(2) For the purposes of this section, a person shall not be regarded as having submitted to the jurisdiction of the court by reason only of the fact that the person appeared conditionally or otherwise in the proceedings for all or any one or more of the following purposes –

(a) to contest the jurisdiction of the court;

(b) to ask the court to dismiss or stay the proceedings on the grounds that the dispute in question should be submitted to arbitration or to the determination of the courts of another country; or

(c) to protect or obtain the release of, property seized or threatened with seizure in the proceedings.

(3) 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;

(b) except in cases mentioned in subsection (1)(a), (b) 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 proceedings in that court; or

(c) if the judgment debtor was a person entitled to immunity from the jurisdiction of the original court and did not submit to the jurisdiction of that court.

PART II

REGISTRATION AND ENFORCEABILITY OF FOREIGN JUDGMENTS

Registration of foreign judgments.

7. (1) A foreign judgment shall not be enforced except by registration under this Act.

(2) A judgment creditor may apply to the High Court to have the judgment registered at any time within six years after –

(a) the date of the judgment; or

(b) where there have been proceedings by way of appeal against the judgment, the date of the last judgment given in those proceedings.

(3) 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.

(4) An application shall be made under subsection (2) in any case in which –

(a) the judgment debtor was personally served with process in the original action in a manner provided for by the rules of procedure of the country where the action originated;

(b) the judgment debtor, though not personally served, appeared in the original court 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

(c) under the law in force in the country of origin, the time within which an appeal may be made against the judgment has expired and no appeal is pending or an appeal has been heard and disposed of.

(5) An application for registration of a judgment under subsection (1), shall be made in accordance with the Civil Procedure Rules.

No. 2 of 2016

(6) Where the sum payable under a judgment which is to be registered is expressed in a currency other than the currency of Guyana, the judgment shall be registered as if it were a judgment for such sum in the

currency of Guyana, calculated at the rate of exchange prevailing at the date of the judgment of the original court.

(7) Where 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 or items of movable property deliverable under the judgment, but only in respect of the balance remaining payable or the items of movable property remaining deliverable.

(8) Where a judgment for the payment of a sum of money is satisfied in part by payment in a currency other than the currency of Guyana, the extent to which the registered judgment has been satisfied shall, for the purposes of subsection (7), be calculated on the basis of the rate of exchange prevailing at the date or dates of payment of the relevant sum or sums.

(9) A written certificate purporting to be signed by an officer of any bank in Guyana certifying that a specified rate of exchange prevailed between currencies on a certain date shall be *prima facie* evidence of the rate of exchange prevailing on that date.

(10) Where, on an application for the registration of a judgment, it appears to the registering 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 those provisions but not in respect of any other provisions contained in the judgment.

(11) 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 of and

incidental to registration, including the costs of obtaining a certified copy of the judgment from the original court.

Effect of registration.

8. (1) Subject to subsection (2) –

(a) a registered judgment shall, for the purposes of execution, be of same force and effect;

(b) proceedings may be taken on a registered judgment;

(c) the sum for which a judgment is registered shall carry interest; and

(d) the registering court shall have the same control over the execution of a registered judgment as it has over its own judgments and the judgment may be enforced under procedures applying to the judgments of the court.

(2) An execution shall not issue on the registration of a judgment so long as 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.

Setting aside judgment.

9. (1) Where a judgment has been registered under this Act an application may be made by the judgment debtor that the judgment be set aside on any of the grounds set out in subsection (2) or (3), and if the High Court is satisfied that any of those grounds has been established it shall set aside the registration of the judgment.

(2) The grounds upon which a registered judgment may be set aside are that –

(a) the judgment is not a judgment to which this Act applies;

(b) the judgment was registered in contravention of this Act;

(c) the courts of the country of origin had no jurisdiction to adjudicate upon the cause of action upon which the judgment was given;

(d) the judgment debtor did not appear in the original court and the jurisdiction of that court was based upon an agreement by the judgment debtor to submit to its jurisdiction which is invalid under the rules of private international law applicable to Guyana;

(e) the cause of action upon which the judgment was given had at the date of that judgment been the subject of a final and conclusive judgment of a court having jurisdiction to adjudicate upon that cause of action;

(f) the matter in relation to which the judgment was given had, subsequent to the date of that judgment, and as a result of proceedings instituted prior to the institution of the proceedings in the original court, become the subject of a final and conclusive judgment of a court in Guyana which is irreconcilable with the judgment of the original court;

(g) the judgment debtor, being the defendant in the original proceedings –

(i) was not duly served with the process of the original court; or

(ii) notwithstanding that he or she was duly served in conformity with the law of the country of that court, did not receive notice of those proceedings in sufficient time to enable him or her to defend the proceedings; and

(iii) did not appear or appeared only for one or more of the purposes set out in section 6(2);

(h) the judgment was obtained by fraud, other than fraud which was, or could have been, put in issue by the judgment debtor in the proceedings in the original court or on appeal from that court;

(i) there are provisions of the law of Guyana which, by virtue of the rules of private international law applicable to Guyana, would not have been applicable notwithstanding any choice of another system of law by the judgment creditor and the judgment debtor, had the proceedings been brought in the High Court, and the

judgment disregards those provisions in some material respect;

(j) it was necessary for the original court, in order to give its judgment, to decide a question relating to any matter specified in paragraphs (c) to (j) of section 5(1) and the decision is different from that which the High Court, having applied the rules of private international law applicable to Guyana, would have reached;

(k) the judgment has been taken on appeal, and reversed or discharged or otherwise set aside, in a court of the country of origin;

(l) the judgment debtor is a person who, under the rules of public international law, is entitled to immunity from the jurisdiction of the High Court;

(m) the rights under the judgment are not vested in the person by whom the application for registration was made; or

(n) the enforcement of the judgment would be manifestly contrary to public policy in Guyana.

(3) An application may be made under subsection (1) to set aside the judgment to the extent that its enforcement would require payment of sums in excess of monetary limits upon liability imposed by any

law of Guyana which applies under the rules of private international law applicable to Guyana.

(4) Where the High Court is satisfied, on an application made by or on behalf of a judgment debtor, that the sums, including costs, awarded under a registered judgment are substantially in excess of those which would have been awarded by the High Court on the basis of the findings of law and fact made by the original court, had the assessment of those sums been made in proceedings before the High Court, the High Court may set aside the judgment to the extent of that excess.

Power of registering court on application to set aside judgment.

10. (1) An application may be made by or on behalf of the judgment debtor to set aside the registration of a judgment on the ground that–

(a) an appeal is pending against the judgment;

(b) he or she is entitled and intends to appeal against the judgment; or

(c) the matter in relation to which the judgment was given is the same as that in respect of which proceedings, instituted prior to the institution of the proceedings in the original court, are pending in a court in Guyana.

(2) Where the High Court is satisfied that the grounds specified in subsection (1) are satisfied, it may, on such terms as it thinks just, set aside the registration or adjourn the application until the expiration of such period as appears to the court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by the competent court.

PART III

RECOGNITION OF FOREIGN JUDGMENTS.

Recognition of a foreign judgment.

11. (1) Subject to the following provisions of this section, a foreign judgment shall be recognised in any proceedings in Guyana, without any registration or other formality, as binding on the parties so as to be a defence to a claim or conclusive of an issue.

(2) The High Court shall not review a foreign judgment on the merits.

(3) A foreign judgment shall not be recognised in Guyana if at the time the judgment is relied upon in proceedings in Guyana –

(a) proceedings between the same parties and having the same subject matter were pending before a court in Guyana, having been commenced before the proceedings that gave rise to the judgment were commenced;

(b) the judgment is inconsistent with a judgment made, either in Guyana or in a foreign country, provided that in the latter case the judgment meets the conditions for recognition;

(c) the judgment was rendered in proceedings that were conducted contrary to the principles of procedural fairness and natural justice;

(d) the judgment is manifestly contrary to public policy;

(e) the judgment was obtained by fraud;

(f) where the judgment has been registered and the registration would have been set aside on some ground other than –

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

(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

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

(4) Nothing in this section shall be taken to prevent the High Court from recognising any judgment as conclusive of any matter of law or fact decided in that judgment if the judgment would have been so recognised before the passing of this Act.

PART IV

MISCELLANEOUS

Special provision with respect to non-Commonwealth countries.

12. The Minister may, in order to give effect to an agreement between Guyana and any country, other than a Commonwealth country, in relation to the enforcements of judgments, make, by order, provision for exceptions, adaptions and modifications to this Act or any rules of court.

Rules of court.

Cap. 3:02

13. (1) In addition to the power to make rules of court under section 67 of the High Court Act, the High Court may make rules for the following purposes –

(a) the giving of security for costs by persons applying for the registration of judgments;

(b) the matters to be proved on an application for the registration of a judgment and for regulating the mode of proving those matters;

(c) the service on the judgment debtor of notice of the registration of a judgment;

(d) the fixing of the period within which an application may be made to have the registration of the judgment set aside and with respect to the extension of the period so fixed;

(e) the method by which any question arising under this Act whether a foreign judgment can be enforced by execution in the country of the original court, or what interest is payable under a foreign judgment under the law of the original court, is to be determined; and

(f) any matter under this Part which is to be prescribed.

Certificates of judgments obtained in Guyana.

14. (1) Subject to this section, where a judgment under which a sum of money is payable or item of movable property is deliverable has been entered in the High Court against any person and the judgment creditor wishes to enforce the judgment in a foreign country, the Court shall, on the application of the judgment creditor and on payment of the prescribed fee, issue to the judgment creditor –

(a) a certified copy of the judgment; and

(b) a certificate containing such particulars as are mentioned in the judgment with respect to the proceedings, including the cause of action and the rate of interest, if any, payable on any sum payable under the judgment as may be prescribed.

(2) An application under subsection (1) shall not be made with respect to a judgment –

(a) under which a sum of money is payable or any movable property is deliverable in respect of taxes or other charges of a similar nature or in respect of a fine or other penalty; or

(b) the execution of which is stayed for any period pending an appeal or for any other reason, until the expiration of that period.

(3) In the case of a judgment given by a tribunal or of an award in arbitration proceedings –

(a) the certified copy of the judgment or award shall be issued by the chairperson of the tribunal or arbitration tribunal or the arbitrator;

(b) the certificate referred to in subsection (1) (b) shall, with such modifications as circumstances dictate, be issued by the High Court and the certificate shall state that the award is enforceable as a judgment of the High Court under the laws of Guyana.

Regulations.

15. The Minister may make regulations to give effect to the provisions of this Act.

Repeal.

Cap. 7:04

Cap. 27

16. (1) The Foreign Judgment (Reciprocal Enforcement) Act is repealed.

(2) The Judgments Extension Ordinance is repealed.

Transitional provisions.

Cap. 7:04

17. (1) Notwithstanding the repeal of the Foreign Judgment (Reciprocal Enforcement) Act, that Act continues to apply with respect to foreign judgments made in proceedings commenced prior to the coming into force of this Act.

(2) An application for registration of a judgment under the repealed Act which is pending at the date of commencement of this Act shall be deemed to have been made under this Act.

SCHEDULE s.3

Countries to which this Act extends.

Antigua and Barbuda

Australia

Bangladesh

Barbados

Belize

Botswana

Brunei Darussalam

Cameroon

Canada

China

Cyprus

Dominica

Gabon

Fiji

Ghana

Grenada

Haiti

India

Jamaica

Kenya

Kingdom of Eswatini

Kiribati

Lesotho

Malawi

Malaysia

Maldives

Malta

Mauritius

Montserrat

Mozambique

Namibia

Nauru

New Zealand

Nigeria

Pakistan

Papua New Guinea

Rwanda

St Kitts and Nevis

St Lucia

St Vincent and the Grenadines

Samoa

Seychelles

Sierra Leone

Singapore

Solomon Islands

South Africa

Sri Lanka

Suriname

The Bahamas

The Gambia

Togo

Tonga

Trinidad and Tobago

Tuvalu

Uganda

United Kingdom

United Republic of Tanzania

United States of America

Vanuatu

Zambia

Passed by the National Assembly on the 20th July, 2023.

S.E. Isaacs,A.A.,

Clerk of the National Assembly.

(BILL No. 4/2023)