

Enforcement of Foreign Judgments at Common Law:

1. The *Foreign Judgments Act 1991* (Cth), together with the *Foreign Judgments Regulations 1992* (Cth), provides a statutory scheme for the recognition of and enforcement of judgments made in foreign countries with which reciprocal arrangements have been made. An application under the *Foreign Judgments Act 1991* (Cth) should be made in accordance with the procedure set out under Order 11 of the *Supreme Court (Miscellaneous Civil Proceedings) Rules 2008*.
2. The list of foreign jurisdictions with reciprocity under the *Foreign Judgments Regulations 1992* (Cth) is relatively short, however. For foreign judgments rendered in most parts of the world, the only basis for recognition and enforcement in the Supreme Court is under common law principles.
3. The purpose of this Practice Note is to set out the procedure for bringing an application before the Supreme Court to enforce a foreign judgment under common law principles. Some guidance is also provided as to the conditions that must be satisfied to enforce a foreign judgment, although this is not meant to be exhaustive. The application of these conditions or any other conditions with respect to any application will depend upon the circumstances of that case.

The Common Law Test

4. To entitle a foreign judgment to recognition at common law, four well-established conditions must be satisfied:
 - (a) The foreign court must have exercised a jurisdiction that Australian courts recognise;
 - (b) The foreign judgment must be final and conclusive;
 - (c) There must be an identity of parties; and
 - (d) The foreign judgment must be for a debt or a definite sum of money.
5. The onus of establishing the existence of those conditions rests upon the party seeking to rely upon the foreign judgment.

6. Where the above four conditions are met, the recognition of the foreign judgment can only be challenged on limited grounds; including (but not limited to):
 - a) where the foreign judgment was obtained by fraud;
 - b) where the foreign judgment is contrary to Australian public policy; and
 - c) where the foreign court acted contrary to natural justice.

The jurisdiction of foreign courts

7. The basic principle is that the foreign court must have had jurisdiction over the defendant at the time when the jurisdiction of the foreign court was invoked. This usually requires the judgment debtor to have been present in the foreign jurisdiction when served with the originating process for the foreign proceedings, the judgment debtor to have been domiciled or ordinarily a resident in the foreign jurisdiction or for the judgment debtor to have submitted to the jurisdiction of the foreign court.
8. It is generally sufficient if the defendant was personally served with the originating process while physically present in the foreign jurisdiction, even if that presence was only temporary.
9. There may be a defence where the defendant's presence in the foreign jurisdiction could not be said to be voluntary, i.e. was induced by fraud to come within the jurisdiction of the foreign court for the concealed purpose of serving him or her with an originating process.

The judgment must be final and conclusive

10. The foreign judgment must be determinative of the rights and obligations of the parties. More is needed than merely the judgment bringing to an end the particular proceedings pending between the parties – it must be that the controversy between the parties that led to the proceedings is similarly brought to an end.
11. The key test of finality is whether the foreign tribunal treats the judgment as *res judicata* of the issue between the parties to the litigation.

12. The fact that the final order of the foreign court may subsequently be varied in the event of default of a party carrying out its terms may not affect the finality of the order.
13. A default judgment may be enforceable as a final and conclusive judgment even though it is liable to be set aside in the court that rendered it. Generally, until steps are taken to set the judgment aside the judgment is enforceable as a final and conclusive judgment.
14. The fact that an appeal lies from the decision of the foreign court or even that appellate proceedings are pending may not affect the finality of the judgment.

The identity of the parties

15. The parties to the foreign judgment must be the same as the parties to the enforcement proceedings.

The judgment must be for a debt or a definite sum of money

16. At common law, the Court may enforce foreign judgments that are for a fixed, or readily calculable, sum of money.
17. A foreign judgment for the payment of a sum of money that is subject to the deduction of an as yet unascertained amount for costs cannot be enforced at common law.
18. The Court will not enforce a foreign judgment that is penal or is a judgment for a revenue debt.

Procedure for recognising a foreign judgment

19. An application for the recognition of a foreign judgment under common law principles must be by originating motion under Order Rule 45 of the *Supreme Court (General Civil Procedure) Rules 2005*, and must be accompanied by a supporting affidavit.

20. The affidavit must state on the basis of information and belief on the part of the deponent –
 - a) that the plaintiff is entitled to enforce the judgment;
 - b) that the judgment is final and conclusive between the parties;
 - c) that at the date of the application the judgment has not been satisfied or, if the judgment has been satisfied in part, the amount in respect of which it remains unsatisfied.
 - d) that at the date of the application the judgment can be enforced by execution in the country of the foreign court;
 - e) the full name, title, occupation and the usual or last known place of residence or of business of the judgment creditor and of the judgment debtor.

21. The affidavit must exhibit –
 - a) a copy of the judgment of the foreign court certified as such by the proper officer of the foreign court and authenticated by its seal; and
 - b) if the judgment is not in the English language, a translation of the judgment certified by a notary public.

21. If the claim on the foreign judgment is successful, the judgment creditor will then have the benefit of a judgment of the Supreme Court of Victoria. The judgment creditor may then seek to enforce this judgment within or outside Victoria utilizing appropriate procedures in this or other jurisdictions.

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30 May 2014