

FOREIGN JUDGMENTS

CONSTRAINTS IN ECONOMIC DEVELOPMENT

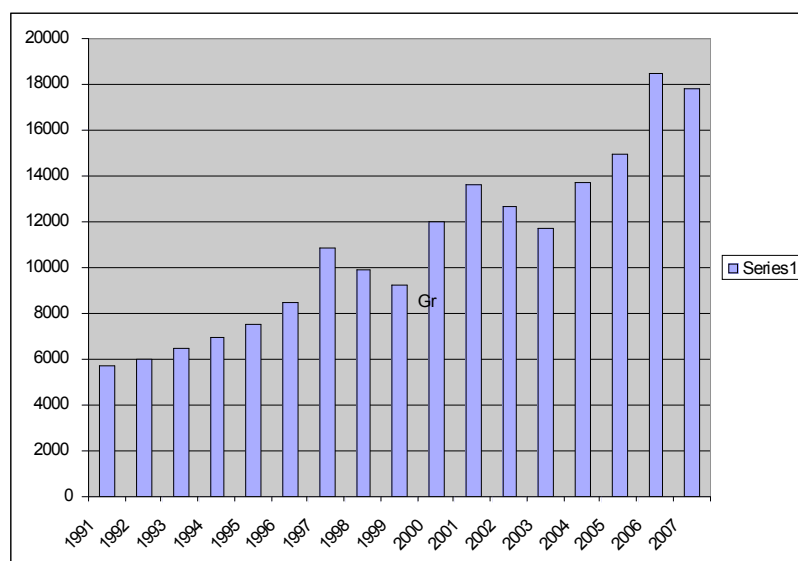
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In our interconnected world, commerce is increasingly conducted not only across national borders but between parties from mutually alien languages, culture, political and legal systems and over substantial physical distances that greatly hamper their capacity to enforce legal rights against each other if the need arises. It is critical in ensuring reliability and integrity of international commerce that both parties are able to readily and cost effectively enforce their legal rights.

The purpose of this paper is to review the effectiveness of the mechanisms presently available for:

- the enforcement in Australia of foreign judgments for the payment of money; and
- the enforcement of the judgments of Australian courts in foreign jurisdictions

Systems and processes that facilitate the prompt and cost effective exercise of legal rights across national boundaries are important to the economic development of Australia. Internationally in the area of e-commerce alone trade has grown from virtually zero to in excess of US\$1trillion per annum in the last 15 years. About 85% of these transactions are B2B commerce (i.e. between businesses) and the remaining 15% consumer transactions.¹ The following chart in A\$ millions, is since 1991:



In the last 20 years the total value of Australian trade as more than trebled.

Australia's Major Trading Partners

Our trade is increasingly dominated by countries within the Asian region. This is clearly set out in the list of Australia's major trading partners, set out in Schedule 1 covering the periods 2008 and 2009.

E-Commerce as a Contributor to Growth in Trade

Australia is amongst the top one third of countries worldwide whose businesses engage in internet commerce. Importantly as at 2006 almost half Australian businesses reported placing orders via the internet. Whilst we do not know how many of those transactions were with businesses located overseas, to the extent that they were Australian business were exposed in the event of default by the other party in its contractual obligations.

The proportion of businesses which reported placing orders via the Internet or web for any goods or services during the year ended 30 June 2006 was 37%, an increase of 4 percentage points from the previous year. The incidence of this business practice continues to increase.

The proportion of businesses reporting receipt of orders via the Internet or web increased from 12% in 2004-05 to 21% in 2005-06. The value of Internet income associated with the receipt of orders grew by approximately 40% from \$40 billion in 2004-05 to \$57 billion in 2005-06.²

The substantial growth in international transactions between Australian small-medium business and individual consumers and foreign parties highlights the need for simple and cost effective processes by which all Australian businesses and consumers can readily and effectively enforce their legal rights in international dealings.³

Overview of history of recognition of judgments across foreign jurisdictions⁴

International Arbitration Act 1974 (Cth)

It should be noted at the outset that under the *International Arbitration Act 1974 (Cth)* and the *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* to which Australia is a party⁵ awards made by arbitrators pursuant to arbitration agreement may be enforced in the courts of the Australian States and Territories.⁶

Of its nature, arbitration occurs only with the consent of the parties to the dispute.

The focus of this paper is on dispute determination through the Court process which can be pursued without the consent of the other party(ies) and for that reason enforcement of arbitral awards is not a subject of this paper.

1. Common law enforcement

Historically within common law countries it has been possible to obtain a judgment in a second jurisdiction by “suing on the judgment” obtained in the first jurisdiction. This is referred to as “common law proceedings” and “common law enforcement”.

In *Williams v Jones* (1845) 13 M&W 628, 634 [153 ER 262, 265], Alderson B defined the legal principle:

"The true principle is, that where a court of competent jurisdiction adjudges a sum of money to be paid, an obligation to pay it is created thereby, and an action of debt may therefore be brought upon such judgment. This is the principle upon which actions on foreign judgments are supported" ⁷

Pre-requisites for suing on a foreign judgment debt by way of common law proceedings are that:

- The foreign court must have exercised a jurisdiction which the Australian courts recognise;
- The judgment must be final and conclusive;
- The parties to the first judgment and the action brought in the second jurisdiction must be identical; and.
- The judgment in the first jurisdiction must be for a fixed, or readily calculable debt.

Common law proceedings are permissible not only for the recovery of debts but also:

- To enable enforcement of non monetary orders such as family law property settlements⁸;
- To enable Australian courts to make Declaratory Orders under Australian law to similar effect as that made in the foreign jurisdiction;
- To establish *res judicata*;
- To establish a defence of estoppel.⁹

The judgments of any foreign court can be recognised in Australia in these ways provided the pre-requisites set out above are met. It is not matter if the law in the foreign jurisdiction is different to the law in Australia. Parties are not permitted to re-litigate in Australia issues determined by foreign courts pursuant to the principle of cause of action estoppel.¹⁰

Of their nature common law proceedings require, preparation of initiating Court process, including the drafting of pleadings, incurring of Court filing fees, service fees, and related expenditure for professional legal costs.

It has always been open to the defendant to defend common law proceedings on the basis of:

- Public policy reasons particular to the second jurisdiction^{11, 12}
- Fraud in obtaining the initial judgment,
- Failure of the Court in the initial jurisdiction to act in accordance with natural justice or to apply the appropriate law, or that
- the party seeking the enforcement is estopped from doing so.

Depending on whether or not the defendant files a defence a plaintiff will also incur professional legal costs in applying for default judgment, summary judgment or trial

2. Foreign Judgments Act 1991

Commencing in the early 1960's Australian State Governments passed legislation providing for the reciprocal recognition of foreign judgments in order to simplify the process by which those judgments could be registered and enforced in Australian courts.

By the early 1990's these arrangements had been replicated across the States and Territories and came to be regarded as "multitudinous, cumbersome, time and cost consuming to maintain". The various State and Territory Acts were substantially uniform, being based on the United Kingdom *Foreign Judgments (Reciprocal Enforcement) Act* 1933. However, there were also some inconsistencies in the State and Territory legislation and the countries with which reciprocal recognition arrangements had been negotiated. Also there was no mechanism to enable reciprocal recognition of judgments of the Australian Federal Court.¹³

As a consequence in 1991 the then Federal Government decided to introduce legislation which would standardize the approach across the States, Territories and Commonwealth and introduced the *Foreign Judgments Act* 1991 (Cth) which passed through Parliament with bipartisan support.

The *Foreign Judgments Act* is based on the principle of reciprocity of treatment between participating countries. It provides for registration in the Supreme Court of a State or Territory of money judgments given by the superior court of a foreign country to which the legislation is applied. The legislation may be applied by instrument with respect to a foreign country where that foreign country gives substantial reciprocity of treatment to judgments of the relevant State or Territory Supreme Court.

Then Attorney General Michael Duffy explained the rationale in terms which remain relevant today:

“Considerations of justice, convenience, greater certainty in international transactions and comity between nations show the desirability of the scheme reflected in this Bill. With the increased mobility of persons and money across borders, the need for, and benefits of, an effective capacity to enable a judgment given in one country to be enforced against assets in another country are obvious.”¹⁴

The then Attorney General continued

“Commonwealth legislation will facilitate negotiations, enable satisfactory arrangements to be made for judgments of all Australian superior courts, increase efficiency and reduce resource needs. At the same time, the State and Territory supreme courts will continue their role under the present law for enforcement of foreign judgments

While the Commonwealth legislation will replace State and Territory legislation, the States and Territories will still be directly involved through the consultative process on proposed arrangements with foreign countries and in the continued enforcement of foreign judgments in their courts.”¹⁵

Under the arrangements agreed between the Commonwealth and the States and Territories the State and Territory, *Foreign Judgments Acts* were intended to cease to have effect in 1993. They have now been repealed in all States and Territories except Victoria and South Australia.¹⁶

In addition to providing for the enforcement of money judgments of foreign superior courts the *Foreign Judgments Act* provides for:

- enforcement of judgments of foreign inferior courts where the foreign country provides reciprocal treatment for Australian inferior court judgments-agreements on this have been reached with New Zealand and the United Kingdom
- enforcement of foreign non-money judgments-for example, injunctions-also on the basis of reciprocity, by registration in the same manner as money judgments. Agreement on this has been reached with New Zealand, and
- enforcement of New Zealand revenue judgments, including penalty components of such judgments, in the same manner as civil money judgments.¹⁷

However, as at the date of writing no arrangements have been negotiated with other countries in relation to the recognition of non-monetary judgments. Therefore, for practical purposes, other than in respect of the United Kingdom¹⁸ and New Zealand¹⁹, the *Foreign Judgments Act* acts as a vehicle to aid the enforcement of monetary judgments only.

Litigants seeking to enforce non monetary judgments in Australian courts must continue to rely on common law proceedings.

3. Pre-requisites to registration under the Foreign Judgments Act 1991

Under the *Foreign Judgments Act*, a foreign judgment must be:

- final and conclusive,
- for a sum of money-other than a sum in respect of a revenue debt, fine or other penalty²⁰-and
- enforceable by execution in the foreign country.

Once registered, a judgment has the same force and effect for the purposes of execution as if the judgment had been originally given in the registering court.

4. Grounds for setting aside a judgment once registered

A judgment once registered can be set aside upon application by the debtor to the relevant Australian Court on any of the bases:

- that the debtor was not given sufficient notice to be able to defend the original proceedings and did not appear²¹;
- that the judgment was registered for an amount greater than the amount payable under it at the date of registration²²;
- that the judgment has been fully satisfied²³;
- that the judgment has been discharged²⁴;
- that the judgment was reversed on appeal²⁵;
- that the judgment was obtained by fraud²⁶;
- that the rights under the judgment are not vested in the person by whom the application for registration was made²⁷;
- of inappropriate assertion of jurisdiction by the foreign court²⁸,
- that enforcement of the judgment would be contrary to public policy^{29, 30}
- registration in contravention of the legislation³¹.

5. Procedural and Relevant Issues

(a) Registrations under the Foreign Judgments Act - 1999-2009

Registrations under the *Foreign Judgments Act* have been surprisingly few in number given the growth in international commerce since the *Foreign Judgments Act* was introduced. These are set out in Schedule 2, below, covering approximately the last decade.

(b) Analysis of Sample of Judgments Registered under the Act

Although the sample is very small it is of some concern that none of the judgments appear to have originated from our major trading partners in the Asian region, Japan, South Korea or Taiwan.

(c) Comparison of Procedure, Timeframes and Costs for common law or Act registration in New South Wales

Once registered in the Supreme Court of a State or Territory in Australia, a judgment creditor can also apply to have the judgment registered in the Supreme Court of any other State or Territory in Australia in accordance with the *Service and Execution of Process Act* 1992 (Cth)³²,

For comparative purposes, a summary of the procedures, timeframes and possible costs in relation to registering judgments in the Supreme Court of New South Wales is set out in Schedule 3, below. Differences between this Schedule and registration of judgments in the Supreme Court of any other State or Territory are not likely to be significant.

(d) Countries with which Reciprocal Arrangements are currently in place compared with State and Territory arrangements

The list of countries with whom reciprocal arrangements are in place under the *Foreign Judgments Act* is significantly less than it was under the former State Acts. The listing now omits India which is an increasingly important trading partner of Australia.

The full listing of countries with which reciprocal arrangements are currently, as set out in the *Foreign Judgments Regulations* 1992 (Cth), is set out in Schedule 4, below.

Apart from the omission of India, other foreign countries that are not on the present list, but were under the former State Acts, include, Anguilla, Antigua and Barbuda, Beilize, Bermuda, Cook Islands, Gambia, Ghana, Guyana, Jamaica, Kenya, Malaysia, Niue, Pakistan, Nauru, Sierra Leone and Western Samoa. From an Australian perspective, apart from India, the omissions of Malaysia, Pakistan and nearby Pacific Islands are, perhaps, most relevant.

6. International trends in recognition of foreign judgments

The international community attempted between 1992 and 2002 to negotiate a multilateral treaty *The Hague Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters* dealing with the reciprocal enforcement of judgments.

In 2002 the negotiations broke down as the result of differences between the US and European Union.³³

The main areas which eluded agreement were:

- The laws that were to be applicable to the internet;
- Defamation;
- Consumer protection;
- Industrial property and intellectual property protection;
- Differences between jurisdictions in damages particularly arising from actions on the internet
- The requirement arising from reciprocity of having to enforce judgments in the home jurisdiction against individuals and corporations in respect of conduct that was entirely legal in the home jurisdiction;

A scaled down draft Convention is now under negotiation, known as the *Choice of Court Convention*, which is limited to “international commercial matters” where businesses agree in advance to the forum in which any dispute will be heard. That forum would then have exclusive jurisdiction in respect of any such disputes. Countries joining the treaty will agree to enforce the judgments of Courts of other treaty countries.

The proposed new Convention expressly excludes:

- Consumer agreements;
- Employment contracts of an international character;
- Insolvency;
- Anti-trust matters;
- Personal injury;
- Tort claims for damage to property not arising from a contractual relationship;
- Most intellectual property rights other than copyright.

If it is successfully concluded, the proposed new Choice of Court Convention would be a step forward notwithstanding that its scope will be very limited and it would offer no assistance to aggrieved consumers.

7. European Economic Community

Since 1968 within the European Economic Community ("EEC"), now the European Union ("EU"), a judgment given in a Member State has been recognized in the other Member States without any special procedure being required^{34 35}

Recognition can only be refused if:

- (a) The judgment is manifestly contrary to public policy in the Member State in which recognition is sought (Art 34.1); and
- (b) There was no service or opportunity for the defendant to defend (Art 34.2);
- (c) The judgment is irreconcilable with a judgment given in a dispute between the same parties in the Member State in which recognition is sought (Art 34.3);³⁶ or
- (d) The judgment is irreconcilable with an earlier judgment given in another Member State or in a third State involving the same cause of action and between the same parties (Art 34.4).

Registration is effected by the filing of a copy of the judgment and a certificate from the issuing Court confirming that the judgment is enforceable.

In the EEC no security, bond or deposit may be required of a party registering a judgment on the ground that he is a foreign national or that he is not domiciled or resident in the State in which enforcement is sought. This provision in the EEC contrasts with the provisions in Australian Rules of Court, which permit our Courts an unfettered discretion to order a foreign judgment creditor to give security for costs³⁷, including costs in respect of an application by a judgment debtor to set aside the registration.

In relation to the judgments of non-EU countries that have treaty arrangements with EU countries, such as Australia, the procedures to achieve registration of a foreign judgment vary.

Currently arrangements are in place under the *Foreign Judgments Act* with 5 of the 27 member countries: the UK, France, Germany, Italy and Poland. In addition reciprocal arrangements are in place with Switzerland which is not an EU member. There is no arrangement presently in place with Greece.

8. Central and South America

Since 1979 Central and South American countries have recognized each others judgments pursuant to the Inter-American Convention on Extraterritorial Validity of

Foreign Judgments and Arbitral Awards. This Convention applies to judgments and arbitral awards rendered in civil, commercial or labor proceedings.³⁸ The United States participated in the negotiation of the treaty but to date has not signed the treaty (nor is it expected to do so in the future).³⁹

9. Hong Kong and PRC⁴⁰

Under the "one country, two systems" formula, Hong Kong and China have distinct and separate legal systems. Until recently, no legal mechanism existed which would enable a judgment obtained in the Hong Kong Courts to be directly enforced in Mainland China ("PRC"), and vice versa.

Between Hong Kong and mainland China there is now an "Arrangement" applying to *"money judgments of commercial cases given by specified courts of either the Mainland or Hong Kong made pursuant to a valid exclusive choice of court agreement in writing"*. The Arrangement has been in effect since 1 August 2008 and brought into effect by the passing of the *Mainland Judgments (Reciprocal Enforcement) Ordinance* by the Hong Kong legislature and the promulgation of a judicial interpretation by the Supreme People's Court of the PRC.

The Arrangement applies to:

- money judgments. [Orders for specific performance or injunctions are not covered];
- commercial cases. [Contracts relating to matrimonial matters wills and successions, bankruptcy and winding up, employment and consumer matters etc are excluded];
- judgments of specified courts. In Hong Kong, the Arrangement applies to judgments of the District Court and above. In the Mainland, it applies to courts at the Intermediate People's Court level or above and to those Basic Level People's Courts designated to have jurisdiction over civil and commercial cases involving foreign parties (42 in various provinces and municipalities);
- cases where the parties concerned have expressly agreed in writing to designate a Mainland or a Hong Kong Court to have exclusive jurisdiction for resolving any dispute;
- "legally enforceable final judgments."

10. United States

In the United States any foreign judgment can be recognized by means of common law proceedings unless the judgment breaches public policy or due process was not followed. The United States is not a party to any international convention governing the recognition and enforcement of foreign judgments.⁴¹

According to the Commonwealth Attorney-General's Department that attempts were made to negotiate reciprocal arrangements for the recognition of judgments in the context of the US-Australia Free Trade Agreement but those negotiations were not successful. Australian judgment creditors are, therefore, limited to common law as the only basis available for enforcement of Australian judgments in the United States courts.

Current issues

It is clear that for Australia's future economic development it is important for mechanisms to be readily available to facilitate the registration and enforcement of judgments across national boundaries.

The registration and enforcement process needs to be readily accessible by all judgment creditors and cost effective.

The available evidence shows that:

- (a) There has been a substantial increase in Australian international trade since the introduction of the *Foreign Judgments Act* ;
- (b) Today there are less countries with which Australia has arrangements for the reciprocal recognition of judgments than was the case under the State Foreign Judgment Acts;
- (c) No countries have been added to the schedule to the Foreign Judgments Regulation since 1999;
- (d) No reciprocal arrangements are in place with important trading partners, the United States, China, India, Thailand, Malaysia or Indonesia.
- (e) The use made of the *Foreign Judgments Act* modest
- (f) There appears to be very little use made of the reciprocal recognition arrangements with Japan, South Korea and Taiwan.

Suggestions

Whilst the *Foreign Judgments Act* has reduced the resource demands on the State and Territory governments in maintaining their own reciprocal recognition arrangements the extent of its potential benefit to Australian litigants is yet to be fully realized.

- (a) Today there are substantially less countries with which Australia has arrangements for the reciprocal recognition of judgments than was the case under the State Foreign Judgment Acts;
- (b) No countries have been added to the schedule to the Foreign Judgments Regulation since 1999;

(c) The use made of the *Foreign Judgments Act* is modest

The matter is worthy of renewed focus, but what should Australia seek to do?

Ongoing data collection

First as a tool to policy making relevant up to date data needs to be available to government on an ongoing basis. It would be useful if the Federal Government could take steps to monitor the number of actions in the States by way of common law enforcement and the use of the *Foreign Judgments Act*. This could be done by liaison with the State Supreme Courts.

It would also assist if the Federal Government were able to use its diplomatic relationships with the countries specified in the regulation to the *Foreign Judgments Act* 1991 to obtain periodic statistical data on the registration of Australian judgments in the various foreign jurisdictions.

Expansion of countries with which reciprocal arrangements are in place pursuant to the *Foreign Judgments Act*

Secondly it may be appropriate to revisit the possibility for negotiating reciprocal arrangements with additional countries, particularly key trading partners and those countries which had reciprocal arrangements in place under the State Acts which lapsed following the introduction of the Federal *Foreign Judgments Act*.

It is likely there would be the most benefit by focusing efforts on countries that have previously demonstrated a commitment to the recognition and enforcement of foreign judgments and in particular:

- (a) Countries with which arrangements have lapsed since the introduction of the *Foreign Judgments Act* .(eg India and Malaysia);
- (b) The EU;
- (c) China (perhaps using a model similar to that agreed between Hong Kong and China);

Focus on money judgments

The experience of the *Hague Convention on Jurisdiction and Foreign Judgments in Civil and Commercial Matters* highlights the difficulties in reaching agreement at an international level on the types of relief which should be recognized across foreign jurisdictions.

It is suggested that the most fruitful short to medium term approach is likely to be to focus our efforts on money judgments which are the most common form of judgment and fundamental to any trading relationship.

Review effectiveness of the Act in context of international relationships

Work co-operatively with the governments of the countries with whom we have reciprocal arrangements under the *Foreign Judgments Act* and, in particular, Japan, South Korea and Taiwan to identify any roadblocks in using the *Foreign Judgments Act*.

Negotiate protocols to facilitate the registration of judgments across jurisdictions

Finally, the process of registration and enforcement would be made much quicker and cost effective if judgment creditors could register judgments and pay filing fees on line. The technologies currently being used in some of our courts and foreign courts suggest it could be possible technologically to streamline the process in these ways. This is something could possibly be addressed in the context of an international protocol.

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In preparing this presentation, Geoff Provest acknowledges the assistance and input of;

- Registries of the State Supreme Courts who assisted in making statistical data available;
- Commonwealth Attorney General's Department;
- Bond University students, Marian Pond and Jennifer Nicolae who assisted with research.

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SCHEDULE 1

Australia's Major Trading Partners - 2008 and 2009

	Country	Year	
		2007	2008
1	Japan	31,932	50,511
2	China	23,792	32,422
3	Republic of Korea	13,469	18,388
4	India	9,294	13,502
5	United States	10,034	12,130
6	New Zealand	9,477	9,366
7	United Kingdom	7,012	9,336
8	Taiwan	5,948	8,258
9	Singapore	4,073	6,148
10	Thailand	4,417	5,341
11	Indonesia	3,906	4,257
12	Malaysia	3,151	3,998
13	Netherlands	2,782	3,657
14	Hong Kong (SAR of China)	2,817	3,022
15	Saudi Arabia	1,946	2,477
16	Germany	1,424	2,072
17	France	1,422	1,742
18	Italy	1,564	1,688
19	Canada	1,791	1,541
20	Philippines	1,103	1,479

SCHEDULE 2

REGISTRATIONS UNDER FOREIGN JUDGMENTS ACT BY STATE 1999-2009

Year	NSW	Vic	Qld ¹	South Australia	Western Australia	Tasmania
1999	14		11		3	N/A
2000	8		5		0	N/A
2001	15		6		1	N/A
2002	8		7		2	N/A
2003	3		5		3	N/A
2004	16	30 ²	0		3	0
2005	15		4		3	1
2006	12		4		3	0
2007	9		8		3	0
2008	11	25 ³	5		3	0
Total⁴	111	55⁵	55	15⁶	24	1

¹ Data for Queensland is current to 21 April 2009 and includes lodgments for Brisbane and Townsville files for all years and Cairns and Rockhampton Courts from 1 July 2002 only, and any active matters lodged prior to this date that were finalised after 1 July 2002

² Statistic is for the total period 1999-2004.

³ Statistic is for the period 2005 to date

⁴ There are no recorded entries for the Northern Territory or the Australian Capital Territory

⁵ Oral advice from Victorian Supreme Court registry..

⁶ A breakdown for South Australia is not available. The South Australian Courts Administration Authority was able to provide the total figure of 15 registrations covering the entire period 1990-August 2009.

SCHEDULE 3

Comparison Of Procedure, Timeframes And Costs For Common Law and Foreign Judgment Act Registration In New South Wales Supreme Court

	Professional cost to prepare initiating process (est)	Description of initiating process	Cost to file initiating process	Timeframe for defendant to file appearance	Process if matter is contested	Timeframe for enforceability of judgment	Overall legal costs to creditor of contested
COMMON LAW	\$2,000.00	Claim and Statement of Claim	\$685.00 (Ind) \$1,370 (Corp)	28 days from service of claim and statement of claim or default judgment	Contested litigation leading to trial in usual way with oral evidence from witnesses	12 years	\$20,000+ (depending on usual factors – eg extent of disclosure, interlocutory applications, length of trial)
FJA	\$1,200.00	Summons, affidavit and Minute of Order	\$685.00 (Ind) \$1,370 (Corp)	14? days from service of Notice of Registration	Hearing of application to set aside registration. Normally determined on affidavit evidence requiring hearing time of no more than 1 day.	6 years from date of judgment or appeal	\$5,000

SCHEDULE 4

FOREIGN JUDGMENTS REGULATIONS 1992

Schedule of Superior Courts

Item	Country	Courts
1	New Zealand	Court of Appeal High Court
1A	Province of Alberta, Canada	Supreme Court of Canada Court of Appeal of Alberta Court of Queen's Bench of Alberta
2	The Commonwealth of the Bahamas	Court of Appeal Supreme Court
3	Province of British Columbia, Canada	Supreme Court of Canada Court of Appeal of British Columbia Supreme Court of British Columbia
4	British Virgin Islands	Eastern Caribbean Supreme Court
5	Cayman Islands	Grand Court
6	Commonwealth of Dominica	Eastern Caribbean Supreme Court Court of Appeal

		High Court of Justice
7	Falkland Islands	Court of Appeal Supreme Court
8	Republic of Fiji	Supreme Court Court of Appeal High Court
9	France (French Republic)	Cour de Cassation Cours d'Appel Tribunaux de grand instance Tribunaux de commerce Cours d'assise Tribunaux correctionnels
10	Federal Republic of Germany	Bundesgerichtshof Oberlandesgerichte Bayerische Oberste Landesgericht Landgerichte
11	Gibraltar	Court of Appeal Supreme Court
12	Grenada	Supreme Court (consisting of the: Court of Appeal; High Court)
13	Hong Kong Special Administrative Region of the People's Republic of China, The	Court of Final Appeal High Court (consisting of the: Court of Appeal; Court of First Instance)
14	State of Israel	Supreme Court District Courts Moslem Religious Courts Druze Religious Courts
15	Italy (Italian Republic)	Corte Suprema di Cassazione Corte di Assise Corte d'Appello Tribunale
16	Japan	Supreme Court High Courts District Courts Family Courts
16A	Republic of Korea	Supreme Court Appellate Courts District Courts Family Court Patent Court Administrative Court
16B	Malawi	High Court Supreme Court
17	Province of Manitoba, Canada	Court of the Queen's Bench of Manitoba
18	Montserrat	Privy Council Eastern Caribbean Court of Appeal High Court of Montserrat
19	Papua New Guinea	Supreme Court of Justice National Court of Justice
19A	Republic of Poland	Supreme Court Commercial Courts

		Courts of Appeal Provincial Courts
20	St Helena	Supreme Court
21	Federation of St Kitts and Nevis	Privy Council Eastern Caribbean Court of Appeal High Court (Saint Christopher Circuit) High Court (Nevis Circuit)
22	St Vincent and the Grenadines	Eastern Caribbean Supreme Court (consisting of the: Court of Appeal, High Court)
23	Republic of Seychelles	Court of Appeal Supreme Court
24	Republic of Singapore	Privy Council: in respect of orders made on appeals from the Singapore Supreme Court and filed with the Court of Appeal of Singapore Supreme Court of Singapore (consisting of the: Court of Appeal; High Court)
25	Solomon Islands	Court of Appeal High Court
25A	Sri Lanka	Supreme Court Court of Appeal High Court District Court
25AA	Switzerland	Bundesgericht Kantonale Obere Gerichte Handelsgerichte
25AB	Taiwan	Supreme Court High Courts District Courts
25B	Tonga	Court of Appeal Supreme Court
26	Tuvalu	Court of Appeal High Court
27	United Kingdom	House of Lords Supreme Court of England and Wales Supreme Court of Judicature of Northern Ireland Court of Session
28	Western Samoa	Court of Appeal Supreme Court of Western Samoa

Note The Eastern Caribbean Supreme Court is constituted by Statutory Instrument 1967 No. 223, as amended by Statutory Instrument 1983 No. 1108, of the United Kingdom. The Court is differently described in the usage of the countries mentioned in the Schedule in relation to which it is listed as a superior court. The description used by each of those countries is set out in column 3 of the relevant item in the Schedule.

¹ These issues are explored in detail in a paper “*Consumers as International Traders: Some Potential Information Issues for Consumer Protection Regulators*” by David K Round and Jeremy Tustin* Centre for Regulation and Market Analysis, University of South Australia Paper presented at International Trade Law Conference, Attorney-General’s Department, Canberra, 23 September 2004

² Australian Bureau of Statistics Report 8129.0 - Business Use of Information Technology, 2005-06

³ Ibid, page 20

⁴ State judgments are recognised in other States pursuant to s 118 of the Constitution and s 185 of the Evidence Act 1995 (Cth).

⁵ Adopted in 1958 by the United Nations Conference on International Commercial Arbitration at its twenty-fourth meeting

⁶ Section 8 International Arbitration Act 1974 (C’th)

⁷ Cited by Finkelstein J in *Dennehy v Reasonable Endeavours Pty Ltd* (2003) FCAFC 158

⁸ *Eg N v N* Family Court of Australia 25 May 1999, per Lindenmayer J

⁹ J Cheng, Recognition and Enforcement of Foreign Judgments in Australia: a World Wide Web of Difficulties, Berrigan Doube Lawyers Legal Update, 2006 p 4.

¹⁰ Per Lindenmayer J in *N v N* opt cit, page19 of the judgment.

¹¹ PE Nygh and M Davies, Conflict of Laws in Australia (7th ed) LexisNexis Butterworths 2002 p 193: “a foreign judgment may be contrary to public policy because it is founded on a law which is not acceptable to the public policy of the forum, such as the judgment for the wages of a prostitute... A foreign judgment may also be contrary to public policy because it was obtained in a manner obnoxious to the law of the forum such as duress, or undue influence.”

¹² For a general discussion on public policy as a basis for refusing enforcement of foreign judgments on public policy grounds see Sophie Dawson and Aaron Kloczko, Beyond Gutnick: “*Enforcement of foreign defamation judgments in Australia*”

¹³ Second Reading speech on Foreign Judgments Bill 1991 of Attorney General Michael Duffy Hansard 29 May 1991, page 4218

¹⁴ Ibid

¹⁵ Ibid

¹⁶ The status of the Victorian and South Australian legislation does not seem to be completely clear. Neither Act has been formally repealed. In *Abigroup Contractors Pty Ltd V Hardesty & Hanover International Llc & Ors* [2008] SASC 337 (3 December 2008) Judge Lunn, a Master of the Supreme Court of South Australia, regarded the South Australian legislation as remaining in force when he stated at paragraph 21: “*The United States of America is not a country proclaimed for the registration of judgments under either the South Australian Foreign Judgments Act 1971 or the Commonwealth Foreign Judgments Act 1991. Accordingly, I presume there is no corresponding right for the third party to be able to enforce any costs order against the defendants by registering that judgment for costs in an appropriate Court in the United States.*”

¹⁷ Revenue debts include income tax, capital gains tax and customs duty.

¹⁸ The Agreement between the Government of Australia and the Government of the United Kingdom of Great Britain and Northern Ireland providing for the Reciprocal Recognition and Enforcement of Judgments in Civil and Commercial Matters commenced in September 1994.

¹⁹ In July 2008 the Agreement between the Government of Australia and the Government of New Zealand on Trans-Tasman Court Proceedings and Regulatory Enforcement was signed to expand the range of judgments that can be enforced and simplify the enforcement process. Legislation is currently being developed to implement the agreement.

²⁰ Except in the case of New Zealand

²¹ Foreign Judgments Act (“FJA”) s 7(2)(a)(v)

²² FJA s 7(2)(a)(ii)

²³ FJA s 7(2)(a)(x)

²⁴ FJA s 7(2)(a)(ix)

²⁵ FJA s 7(2) (a)(vii)

²⁶ FJA s 7(2)(a)(vi)

²⁷ FJA s 7(2)(a)(viii)

²⁸ FJA s 7(2)(a)(iv)

²⁹ FJA s 7(2)(a)(xi)

³⁰ For a summary of the basis on which judgments might be set aside on the ground that registration is contrary to public policy see the decision of Atkinson J in *De Santis v. Russo* [2001] QSC 65 (12 March 2001)

³¹ FJA s 7(2)(a)(iii)

³² FJA s 6(8)

³³ J Cheng, *op cit*, part 3, p 4

³⁴ Official Journal of the European Communities article 33

³⁵ “Judgment means any judgment given by a Court or tribunal of a Member State, whatever the judgment may be called, including a decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court – article 32.

³⁶ Note this principle is potentially in conflict with the principle of cause of action estoppel that applies in common law proceedings.

³⁷ For example in *Victoria Supreme Court (Miscellaneous Proceedings) Rules* 2008 Order 11.05.

³⁸ Inter-American Convention On Extraterritorial Validity Of Foreign Judgments And Arbitral Awards Article 1

³⁹ *ibid*

Deacons International Services Group, “*Reciprocal Enforcement of Judgments in PRC and Hong Kong*”, 6 Jan 2007, http://www.hg.org/articles/article_1765.html

⁴¹ Office of the Chief Counsel for International Commerce, U.S. Department of Commerce website article Recognition And Enforcement Of Foreign Money Judgments, 2002: <http://www.osec.doc.gov/ogc/occic/refmj.htm>