

**International
Comparative
Legal Guides**



Practical cross-border insights into enforcement of foreign judgments

**Enforcement of Foreign
Judgments
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Expert Analysis Chapters

- 1** **The Impact of Sanctions on the Enforcement of Foreign Judgments**
Eddy Eccles & Thomas McGuire, Covington & Burling LLP
- 6** **International Enforcement Strategy – An Overview**
Andrew Bartlett, Osborne Clarke LLP
- 11** **EU Overview**
Sébastien Champagne & Vanessa Foncke

Q&A Chapters

- 19** **Australia**
Corrs Chambers Westgarth: Cara North & Harrison Frith
- 26** **Belgium**
Arcas Law: Joost Verlinden & Michiel Van Dooren
- 32** **Brazil**
Garcia Demori Advocacia: Pedro Demori
- 39** **Canada**
Goodmans LLP: Peter Kolla, Julie Rosenthal & Sarah Stothart
- 46** **Cayman Islands**
Kobre & Kim: Jalil Asif KC, Peter Tyers-Smith & Ilona Groark
- 50** **China**
SGLA Law Firm: Dr. Xu Guojian
- 57** **Croatia**
Macesic and Partners LLC: Anita Krizmanic
- 64** **Cyprus**
Phoebus, Christos Clerides & Associates LLC: Constantinos Clerides
- 71** **England & Wales**
Covington & Burling LLP: Louise Freeman & Eddy Eccles
- 78** **France**
Archipel: Jacques-Alexandre Genet & Michaël Schlesinger
- 84** **Germany**
White & Case LLP: Markus Langen, Dr. Dominik Stier & Kristof Waldenberger
- 91** **Greece**
Saplegal-A.S. Papadimitriou & Partners Law Firm: Elena F. Kossena, Pavlina A. Galati & Orestis C. Angelopoulos
- 98** **India**
LexOrbis: Manisha Singh & Varun Sharma
- 103** **Japan**
Mori Hamada & Matsumoto: Yoshinori Tatsuno
- 108** **Liechtenstein**
GASSER PARTNER Attorneys at Law: Thomas Nigg & Domenik Vogt
- 114** **Netherlands**
OSK Advocaten: Jurjen de Korte & Geert Wilts
- 119** **Spain**
King & Wood Mallesons: Alfredo Guerrero & Fernando Badenes
- 126** **Sweden**
Advokatfirman Glimstedt: Finn Stenström & Amanda Moberg
- 131** **Switzerland**
BMG Avocats: Rocco Rondi, Guillaume Fatio & Mimoza Lekiqi
- 138** **Taiwan**
Formosan Brothers Attorneys-at-Law: Li-Pu Lee & Szu-Shian Lu
- 143** **Tanzania**
CRB AFRICA LEGAL: Charles R. B. Rwechungura, Beatha G. Telli, Sophiamary P. Chacha & Ruqaiyyah A. Mushi
- 148** **United Arab Emirates**
Araa Group Advocates and Legal Consultants: Abdulla Yousef Al Nasser & Flora Ghali Gerges Yuosef
- 155** **USA**
Williams & Connolly LLP: John J. Buckley, Jr. & Jonathan M. Landy

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1 Country Finder

1.1 Please set out the various regimes applicable to recognising and enforcing judgments in your jurisdiction and the names of the countries to which such special regimes apply.

Applicable Law/Statutory Regime	Relevant Jurisdiction(s)	Corresponding Section Below
<i>Trans-Tasman Proceedings Act 2010</i> (Cth).	New Zealand.	Section 3.

2 General Regime

2.1 Absent any applicable special regime, what is the legal framework under which a foreign judgment would be recognised and enforced in your jurisdiction?

In Australia, foreign judgments are primarily recognised and enforced through the statutory regime enshrined in the *Foreign Judgments Act 1991* (Cth) (the **FJ Act**) and the *Foreign Judgments Regulations 1992* (Cth) (the **FJ Regulations**), or alternatively pursuant to common law principles.

Statutory framework

The FJ Act stands as the operative legislation governing the recognition and enforcement of foreign judgments in Australia. The statutory regime applies where there is substantial reciprocity of treatment in relation to the enforcement of judgments between Australia and the superior courts (and specified inferior courts) of foreign countries as prescribed in the FJ Regulations. Where substantial reciprocity is established, a judgment creditor can register a foreign judgment, which gives it the same force and effect as if it were made by an Australian court.

Currently, the FJ Regulations specify that the FJ Act applies with respect to judgments given in the superior courts in Alberta, the Bahamas, British Columbia, the British Virgin Islands, the Cayman Islands, Dominica, the Falkland Islands, Fiji, France, Germany, Gibraltar, Grenada, Hong Kong, Israel, Italy, Japan, Korea, Malawi, Manitoba, Montserrat, Papua New Guinea, Poland, St Helena, St Kitts and Nevis, St Vincent and the Grenadines, Seychelles, Singapore, the Solomon Islands, Sri Lanka, Switzerland, Taiwan, Tonga, Tuvalu, the United Kingdom and Western Samoa.

In cases where a foreign judgment is not made in a court prescribed in the FJ Regulations, including notably courts in the USA, Russia, China and India, parties must rely on common law principles for recognition and enforcement.

Further, judgments by a New Zealand court are not capable of recognition and enforcement under the FJ Act. As discussed in Q3, the *Trans-Tasman Proceedings Act* (2010) applies with respect to New Zealand judgments.

Common law

In circumstances where the FJ Act or another Act or treaty do not apply, enforcement must be sought under the common law principles as an action in debt.

Alternatively, a judgment creditor can commence fresh proceedings and rely on the original cause of action in the foreign proceedings. The foreign judgment may then give rise to an estoppel, preventing the judgment debtor from asserting particular defences that were available in the foreign proceedings.

2.2 What constitutes a ‘judgment’ capable of recognition and enforcement in your jurisdiction?

Statutory framework

Section 3 of the FJ Act defines a “judgment” that is capable of registration to mean:

- a final or interlocutory judgment or order made by a court in civil proceedings;
- a judgment or order for compensation or damages to an injured party made by a court in criminal proceedings; or
- an award in proceedings on an arbitration conducted in, and under the law applying in, a country being an award that has become enforceable in a court of that country in the same manner as a judgment or order given by that court (excluding awards given pursuant to the International Arbitration Act 1974 (Cth)).

Judgments given before the day on which the regulations apply to a particular country or court are excluded from the scope of the FJ Act, unless the judgment was given by a UK court (section 5(8) FJ Act).

Common law

At common law, a judgment is capable of recognition and enforcement if the judgment is for a fixed, or readily calculable, sum of money. However, certain non-monetary judgments may be enforceable in equity (see, for example, *White v Verkouille* [1990] 2 Qd R 191 in which a foreign-appointed receiver’s title to assets was recognised in Australia and it was held that equity will lend assistance to the enforcement of a foreign judgment without

it being made a judgment of the local court; *Davis v Turning Properties Pty Ltd* (2005) 222 ALR 676 in which a freezing order was granted in aid of a foreign freezing order based on the inherent jurisdiction of the Court; *Independent Trustee Services Ltd v Morris* (2010) 79 NSWLR 425 in which an order for account of profits from the High Court of Justice of England was recognised).

2.3 What requirements (in form and substance) must a foreign judgment satisfy in order to be recognised and enforceable in your jurisdiction?

Statutory framework

Section 6 of the FJ Act provides that a foreign judgment can be registered by the Federal Court of Australia or the Supreme Court of a state or territory if it meets the following four substantive requirements:

- the judgment is for payment of a sum of money;
- the judgment is final and conclusive;
- the judgment is enforceable in the foreign court in which it was made; and
- the judgment has not yet been discharged or wholly satisfied.

A foreign judgment will be treated as “final and conclusive” irrespective of any pending appeal or that it may still be subject to appeal in the courts of the foreign jurisdiction.

The FJ Act can apply to non-money judgments if prescribed by the FJ Regulations. However, to date, no provision has been made for any kinds of non-money judgments (i.e. injunctions or specific performance) to fall within the ambit of the FJ Act.

For a party to register a foreign judgment it must file an originating application with an authenticated copy of the foreign judgment, with a certified translation if necessary (see for example Order 11 of the *Supreme Court (Miscellaneous Civil Proceedings) Rules 2018* (Vic)).

Common law

The common law test stipulates four requirements that must be met before a foreign judgment can be recognised. The onus is on the party seeking recognition and enforcement.

First, the foreign court must have exercised an “international jurisdiction”. International jurisdiction does not mean the foreign court has jurisdiction under its own rules; rather, jurisdiction in the international sense means competence recognised under Australian law, which will be satisfied where:

- the defendant was present in the foreign jurisdiction when served with the originating process from the foreign proceeding;
- the judgment made in the foreign court delivered title to, or possession of, tangible property located in the foreign place; or
- the defendant has submitted to the foreign jurisdiction by:
 - agreeing to accept the jurisdiction of the foreign court; or
 - appearing in the proceeding, other than to contest jurisdiction or the exercise of jurisdiction on discretionary grounds.

A judgment debtor will usually be taken to have submitted to jurisdiction if it takes a step which is not consistent with, or relevant to, the challenge of jurisdiction.

In addition, international jurisdiction might also be established at common law when the defendant was domiciled or ordinary resident in the foreign jurisdiction.

- Second, the judgment must be final and conclusive – it must be *res judicata*, i.e., not capable of being re-litigated by the same parties in the same court. This will not be the case if, for example, the decision is capable of being

varied or discharged at the discretion of the foreign court or by a court of the same level. The existence of an appeal does not render a decision inconclusive. However, Australian courts may stay the enforcement when an appeal is pending in the foreign jurisdiction.

Third, the parties must be the same as those in the foreign judgment.

Lastly, as stated above, the judgment must be for a fixed sum. However, Australian courts will not enforce foreign judgments that are based on a foreign revenue debt or a penalty imposed by a foreign law.

In seeking recognition and enforcement, the judgment creditor need only allege that the judgment debtor owes it a fixed sum. The judgment debtor can then put any of the above requirements in issue, such that the onus of proving the requirement is borne by the judgment creditor (*R v McLeod* (1890) 11 LR (NSW) 218, 221).

As discussed below, where the above four conditions are met, the recognition of the foreign judgment can only be challenged on limited grounds.

2.4 What (if any) connection to the jurisdiction is required for your courts to accept jurisdiction for recognition and enforcement of a foreign judgment?

Under the FJ Act, the only connection required is that the foreign court be listed in the Schedule of the FJ Regulations. However, as discussed below, the judgment debtor can contest enforcement on the basis that the court of origin did not have jurisdiction.

At common law, as discussed above, the judgment must have been rendered by a court which had jurisdiction over the person at the time when the jurisdiction of that court was invoked. Jurisdiction in this context is “jurisdiction in the international sense” (i.e. a competence that is recognised under the Australian conflict of law rules).

2.5 Is there a difference between recognition and enforcement of judgments? If so, what are the legal effects of recognition and enforcement respectively?

Recognition and enforcement are distinct but related concepts. A judgment can be recognised without being enforced but a judgment cannot be enforced without first being recognised.

For example, a party may seek recognition of a foreign judgment as a defence to a cause of action brought on the same cause of action and between the same parties or their privies (under the doctrine of *res judicata*) or a party may seek to rely on findings in the foreign judgment in proceedings in Australia (under the doctrine of issue estoppel).

Separately, a judgment creditor may seek enforcement of a foreign judgment awarding a sum of money to it. Enforcement of the foreign judgment follows recognition of that judgment, and is required for the court to compel a party to pay the sum ordered by the foreign court.

Under the FJ Act, foreign judgments are enforced by virtue of first being registered, which is analogous to recognition. Once registered, a foreign judgment has the same force and effect as if the judgment were rendered by an Australian court.

2.6 Briefly explain the procedure for recognising and enforcing a foreign judgment in your jurisdiction.

Statutory framework

A judgment creditor must apply within six years after the date of the foreign judgment to register it under the FJ Act (section 6(1) FJ Act). The application to a Supreme Court can be made *ex parte* without giving any notice to the judgment debtor.

The amount that a foreign judgment can be registered for includes the reasonable costs of and incidental to registration, and any interest due on the judgment up to the time of registration (section 6(15) FJ Act).

Each Australian Supreme Court and the Federal Court of Australia prescribe specific formality requirements for a registration application and the evidence that must be filed in support.

After a court registers the foreign judgment, the judgment creditor must serve a notice of registration on the judgment debtor and inform them of their right to apply to set aside the registration. After the deadline passes for setting aside the registration, the judgment creditor can enforce the foreign judgment in the same way as an Australian judgment.

Common law

Each court will prescribe rules relating to initiating proceedings and any required evidence. However generally speaking, an application for the recognition of a foreign judgment under common law principles must be by originating motion, and must be accompanied by a supporting affidavit. The affidavit must also exhibit an authenticated copy of the judgment and an English translation of the judgment, if the judgment is not in English.

2.7 On what grounds can recognition/enforcement of a judgment be challenged? When can such a challenge be made?

Statutory framework

A judgment debtor can apply to set aside the registration of a foreign judgment by applying to the court in which the judgment was registered. Pursuant to section 7(2)(a) of the FJ Act, the court has no discretion and must set aside the registration of the judgment if satisfied that:

- the judgment is not, or has ceased to be, a judgment to which the FJ Act applies;
- the judgment was registered for an amount greater than the amount payable under it at the date of registration;
- the judgment was registered in contravention of the FJ Act;
- the original court had no jurisdiction in the circumstances of the case (see also subsections 7(3)–(4) FJ Act, which sets out when the foreign court is deemed to have jurisdiction);
- the judgment debtor did not receive notice of those proceedings in sufficient time to enable the judgment debtor to defend the proceedings and did not appear;
- the judgment was obtained by fraud;
- the judgment has been reversed on appeal or otherwise set aside by the original court;
- the rights under the judgment are not vested in the person by whom the application for registration was made;
- the judgment has been discharged or wholly satisfied; or
- the enforcement of the judgment would be contrary to public policy.

The court also has discretion to set aside the registration of the judgment if the matter in dispute in the original proceedings had, before the date of the judgment in the original court, been the subject of a final and conclusive judgment by a court having jurisdiction in the matter (section 7(2)(b) FJ Act).

A judgment creditor can apply for the judgment to be re-registered if it has been set aside solely on the basis that it was not enforceable in the original court, once it becomes enforceable in that foreign court (section 9(2) FJ Act).

Common law

Under the common law, a judgment debtor can challenge the enforcement of a foreign judgment if:

- the foreign judgment was obtained by fraud, and possibly where the allegation of fraud was not, and could not have been, raised before the original court;
- the foreign judgment is manifestly contrary to Australian public policy;
- the judgment debtor was denied natural justice in the original court (e.g., there was no due notice of the proceedings or the debtor was not afforded a fair opportunity to present its case); or
- the foreign judgment is penal, or a judgment for a revenue debt.

2.8 What, if any, is the relevant legal framework applicable to recognising and enforcing foreign judgments relating to specific subject matters?

The *Foreign Proceedings (Excess of Jurisdiction) Act 1984* (Cth) (**FPEJ Act**) applies in specific circumstances to prevent or limit the enforcement of foreign judgments. The FPEJ Act applies to anti-trust proceedings in foreign courts and permits the Australian Attorney-General to prohibit or limit the recognition and enforcement of foreign judgments of that kind in whole or part.

However, to exercise the powers under the FPEJ Act, the Attorney-General must be satisfied that:

- doing so is desirable for the protection of the national interest; or
- the assumption or exercise of jurisdiction by the foreign court is contrary to international law or is inconsistent with international comity or practice.

Further, the FJEP Act only applies with respect to proceedings of the kind specified in section 5.

2.9 What is your court's approach to recognition and enforcement of a foreign judgment when there is: (a) a conflicting local judgment between the parties relating to the same issue; or (b) local proceedings pending between the parties?

Statutory framework

The registration of a foreign judgment may be set aside under the FJ Act on the basis that before the date of the original judgment the matter in dispute had already been the subject of a final and conclusive judgment by a court having jurisdiction in the matter. Albeit a rare instance, this may occur where the same matter was earlier adjudged in a second foreign place. The general position is that a rule of chronological priority will apply (*Showlag v Mansour* [1995] 1 AC 431).

A judgment to which the FJ Act applies must be recognised as conclusive between the parties to it. Therefore, where there are local proceedings pending between the parties, a registered foreign judgment can be relied on by way of defence or counter-claim in any such proceedings. However, this rule does not apply where the registration of the foreign judgment has been or could be set aside on the grounds specified in subsections 7(2)(a)(iv), (v), (vi), (vii) or (xi) of the FJ Act (section 12(2) FJ Act).

Common law

At common law, if a local judgment exists in relation to the same issue between the same parties that conflicts with a foreign judgment, the local judgment will take precedence on the basis of public policy.

However, as stated above, where local proceedings are pending between the parties on the same issue, a foreign judgment can be relied upon under the doctrine of *res judicata* or as an issue estoppel.

2.10 What is your court's approach to recognition and enforcement of a foreign judgment when there is a conflicting local law or prior judgment on the same or a similar issue, but between different parties?

Neither the common law nor the FJ Act provide for setting aside a foreign judgment on the basis that there is a conflicting domestic law or prior judgment on the same or similar issue between different parties.

The Australian courts have repeatedly accepted and applied the principle in *Goddard v Gray* (1870) LR 6 QB 139 at 150 that a foreign judgment cannot be refused recognition or enforcement on the basis that the “tribunal mistook either the facts or the law” (see, for example, *XPlore Technologies Corp of America v Tough Corp Pty Ltd* [2008] NSWSC 1267 at [15] per Rothman J and *SK Foods LP v SK Foods Australia Pty Ltd (in liq) (No 3)* [2013] FCA 526 at [23] per Flick J).

It is therefore irrelevant that there is a conflicting local law or prior judgment on the same or similar issue. The only exception to this rule is that a foreign judgment can be set aside under the FJ Act or at common law if it is manifestly contrary to Australian public policy. However, this exception is narrowly construed.

2.11 What is your court's approach to recognition and enforcement of a foreign judgment that purports to apply the law of your country?

Australian courts do not treat a foreign judgment differently if it purports to apply Australian law. The same principles apply and, as stated above, an Australian court will not set aside a judgment on the basis that the foreign court incorrectly applied the law or mistook the facts (short of a manifest departure from Australian public policy).

2.12 Are there any differences in the rules and procedure of recognition and enforcement between the various states/regions/provinces in your country? Please explain.

The FJ Act and FJ Regulations establish a national framework for foreign judgments to be registered and enforced in Australia. However, the formal requirements and procedures are provided for in and differ between state and territory legislation. For example, rule 11.04 of the *Supreme Court (Miscellaneous Civil Proceedings) Rules 2018* (Vic) requires different evidence to that prescribed in rule 53.3 of the *Uniform Civil Procedure Rules 2005* (NSW). Division 41.6 of the *Federal Court Rules 2011* (Cth) also contains its own unique requirements to register a foreign judgment. It is therefore important to be aware of the differences and comply with the relevant jurisdiction's procedural rules.

2.13 What is the relevant limitation period to recognise and enforce a foreign judgment?

Statutory framework

Under section 6(1) of the FJ Act, a judgment creditor must apply to the appropriate court in their jurisdiction within six years after the date of the judgment to have the judgment registered; or, where there have been proceedings by way of appeal against the judgment, within six years of the date of the last judgment in those proceedings. Otherwise, a judgment creditor will be time-barred from the FJ Act, unless the court extends the period within which such an application may be made (section 6(5) FJ Act).

Common law

The relevant limitation period for recognising and enforcing a foreign judgment is provided for in each state or territory's legislation, as follows:

Jurisdiction	Legislation	Limitation period from the date when the foreign judgment becomes enforceable
Victoria	<i>Limitation of Actions Act 1958</i> (Vic) s 5(4)	15 years
New South Wales	<i>Limitation Act 1969</i> (NSW) s 17(1)	12 years
Queensland	<i>Limitation of Actions Act 1974</i> (Qld) s 10(4)	12 years
South Australia	<i>Limitation of Actions Act 1936</i> (SA) s 34	15 years
Tasmania	<i>Limitation Act 1974</i> (Tas) s 4(4)	12 years
Northern Territory	<i>Limitation Act 1981</i> (NT) s 15(1)	12 years
Australian Capital Territory	<i>Limitation Act 1985</i> (ACT) s 14(1)	12 years

There is no specific limitation period prescribed in Western Australia to enforce a foreign judgment. However, there is a general limitation period of six years from the time the cause of action accrued (*Limitation Period 2005* (WA) section 13).

3 Special Enforcement Regimes Applicable to Judgments from Certain Countries

3.1 With reference to each of the specific regimes set out in question 1.1, what requirements (in form and substance) must the judgment satisfy in order to be recognised and enforceable under the respective regime?

Under the *Trans-Tasman Proceedings Act 2010* (Cth) (the **TTP Act**), a New Zealand (**NZ**) judgment can be recognised and enforced in Australia if the NZ judgment is “registrable” pursuant to section 66.

A registrable NZ judgment must be final and conclusive and be:

- given in a civil proceeding by a NZ court;
- given in a civil proceeding by a NZ tribunal prescribed by the *Trans-Tasman Proceedings Regulations 2012* (CTH) (the **TTP Regulations**);
- given in a criminal proceeding by a NZ court and consist wholly of a requirement to pay an injured party a sum of money by way of compensation, damages or reparation;
- given in a criminal proceeding by a NZ court and consist wholly of an imposition of a regulatory regime criminal fine; or
- an order under the *Trans-Tasman Proceedings Act 2010* of NZ or the NZ Evidence Act by a NZ court or tribunal (see section 66(2)(e) TTP Act).

Non-monetary judgments are therefore capable of registration and there is no requirement for registration that the NZ court had “international jurisdiction”.

A registrable NZ judgment also includes NZ market proceeding judgments and judgments registered in a NZ court under the *Reciprocal Enforcement of Judgments Act 1934* of NZ.

However, a judgment is not registrable if it is wholly or partly:

- related to family matters as referred to as “excluded matters”;
- an order under proceeds of crime legislation;
- an order relating to the granting of probate or letters of administration of the estate of a deceased person;
- an order relating to the guardianship or care of a person; or
- an order relating to the care, control or welfare of a child.

A NZ judgment remains final and conclusive even if an appeal is available or an appeal has not yet been finally determined.

In addition, a NZ judgment can be partially registered and enforced if it deals with some matters that are not registrable.

An authenticated copy of the NZ judgment must be filed at the relevant Australia court along with the application for registration.

3.2 With reference to each of the specific regimes set out in question 1.1, does the regime specify a difference between recognition and enforcement? If so, what is the difference between the legal effect of recognition and enforcement?

Similar to the FJ Act, the TTP Act provides a registration regime for NZ judgments in Australian courts. Registration is analogous to recognition. Once registered, the NZ judgment can be enforced as if it were an Australian judgment.

3.3 With reference to each of the specific regimes set out in question 1.1, briefly explain the procedure for recognising and enforcing a foreign judgment.

A judgment creditor that intends to enforce a NZ judgment in Australia must apply for registration using the form provided in Schedule 1 of the *Trans-Tasman Proceedings Regulations 2012* (CTH). The application must be made within six years after the date of the NZ judgment and can be filed by email (section 67(5) TTP Act). In addition, a sealed, certified or otherwise authenticated copy of the NZ judgment must be physically filed at the court in hard copy (rule 17(2)(b) TTP Regulations).

A judgment creditor can make the application for registration in a superior Australian court (Federal Court of Australia, Family Court of Australia or the Supreme Court of any state or territory) or an inferior Australian court provided it has power to grant the relief contained within the NZ judgment (see section 67 TTP Act). In the case of a civil pecuniary penalty, the inferior court must be one that has the power to impose such a penalty of the same value (section 67(2)(b) TTP Act).

Where an Australian court registers the NZ judgment, the creditor must serve a notice of registration on the debtor within 15 working days after registration (section 73 TTP Act). Once the notice has been served, the NZ judgment can be enforced. If the notice is not served, the creditor must wait 45 working days before seeking enforcement (section 74 TTP Act).

3.4 With reference to each of the specific regimes set out in question 1.1, on what grounds can recognition/enforcement of a judgment be challenged under the special regime? When can such a challenge be made?

There are only three grounds on which an Australian court can set aside a registered NZ judgment. As per section 72(1) of the TTP Act, they include when:

- the enforcement of the judgment would be contrary to Australian public policy;

- the judgment was registered in contravention of the TTP Act; or
- the judgment relates to immovable property or was an *in rem* judgment in respect of movable property, and neither such property was situated in NZ.

Importantly, the application to set aside registration must be made within 30 working days after the notice of registration was given to the debtor or any longer period that an Australian court considers appropriate (section 72(2) TTP Act).

A judgment debtor can also apply for a stay of enforcement of a registered NZ judgment so that it can be appealed in a NZ court or tribunal provided that the debtor prosecutes the appeal expeditiously and otherwise complies with section 76 of the TTP Act.

4 Enforcement

4.1 Once a foreign judgment is recognised and enforced, what are the general methods of enforcement available to a judgment creditor?

Once a foreign money judgment is registered, either under the FJ Act or at common law, it can be enforced like any judgment of a local court. As such, the plaintiff will have access to any of the usual remedies available within the Australian civil system. The remedies available in each state and territory may vary but generally the creditor may make an application to the court for enforcement.

An enforcement warrant or order might involve the seizure and sale of real and personal property owned by the debtor; garnishee orders against the debtor's wages or salary; charging orders against the debtor's stocks, shares, bonds, or debentures; the appointment of a receiver; or even committal of the debtor.

5 Other Matters

5.1 Have there been any noteworthy recent (in the last 12 months) legal developments in your jurisdiction relevant to the recognition and enforcement of foreign judgments? Please provide a brief description.

Some noteworthy cases are as follows:

- In *Bank of China Ltd v Chen* [2022] NSWSC 749, the defendants opposed the enforcement in Australia of two Civil Mediation Judgments handed down by a district People's Court of China on the basis that the plaintiff had not shown that the civil mediations could not be classified as “judgments” under Chinese law. Harrison AsJ rejected this argument and ruled that the civil mediations were judgments for the purpose of enforcement in Australia because they established *res judicata*, were mandatorily enforceable in China and had coercive authority. This case further defines the scope of what classifies as a foreign judgment and is the first instance a mainland China Civil Mediation decision has been recognised and enforced in Australia.
- In *Tianjinm Yingtong Materials Co Ltd v Young* [2022] NSWSC 943, the plaintiff sought enforcement of a Chinese judgment in Australia pursuant to common law principles. The defendant challenged the foreign judgment on the basis that first, it had been obtained by fraud, and second, that the defendant was denied natural justice by the Chinese Court. Harrison AsJ held that both defences failed as neither could be substantiated. With respect to the defence of fraud, the defendant relied on bare assertions of possible fraud, which fell well short of the relevant threshold. To establish fraud as a defence, it must be proven with admissible evidence and a mere suspicion of fraud will not

suffice to secure relief. In *obiter*, Harrison AsJ endorsed the decision in *Keele v Findley* (1990) 21 NSWLR 444 which establishes that an allegation of fraud must be based on evidence not available or not reasonably discoverable at the time of the foreign proceedings. In other words, evidence that was reasonably available or discoverable at the time of the hearing in the foreign court cannot be used to impugn the foreign judgment.

- In *Nyunt v First Property Holdings Pte Ltd* [2022] NSWCA 249, the plaintiff sought to have two Singaporean judgments that had been registered under the FJ Act set aside. One of the grounds of appeal raised by the plaintiff was that registration was contrary to public policy. It was argued on the basis that the defendant had engaged in an illegitimate form of “forum shopping”, having resorted to litigation in Singapore after litigation in Myanmar was unsuccessful. Bell CJ held that the plaintiff’s public policy defence failed as it was problematic to find that an alleged abuse of process in the Singapore High Court was contrary to Australian public policy to register and enforce a judgment of a foreign court. His Honour affirmed that the public policy defence is not a concept that is designed to afford the court of registration a broad, merits-focused basis for setting aside the registration of (or refusing to enforce) a foreign judgment. The public policy ground is applied narrowly and only where the violation to public policy is fundamental and of a high order. In this context, the plaintiff’s public policy defence did not meet this threshold.

5.2 Are there any particular tips you would give, or critical issues that you would flag, to clients seeking to recognise and enforce a foreign judgment in your jurisdiction?

Prior to the commencement of proceedings in another jurisdiction, if the client knows that it might need to seek recognition and enforcement of the foreign judgment in Australia, they should carefully review the requirements for recognition and enforcement in Australia to ensure that the judgment rendered by the foreign court will be enforceable. In this regard, clients should be aware of the statutory (general and special) and common law regimes that exist and which will apply in the specific circumstances of the case. As stated above, where the judgment was issued in New Zealand, the TTP Act will apply; where the court of the foreign country is listed in the FJ Regulations, the FJ Act will apply; and where neither of those regimes apply the common law principles will apply.

In addition, the client should ensure that the correct court is selected based on its jurisdiction and powers, and should follow the procedural requirements as stipulated by each state and territory when applying for recognition and enforcement of a foreign judgment. This extends to any special regimes for non-money judgments.



Cara North has over a decade's worth of experience acting for clients on large and complex multi-jurisdictional disputes, specialising in domestic and international commercial litigation, arbitration and investor-state dispute resolution. Her expertise includes arbitrating under the rules of various arbitral institutions and acting for clients in complex and high-profile litigation in the UK, the US, Guernsey, the Cayman Islands, Hong Kong and Malaysia; primarily in the areas of construction projects, large corporate collapses and fraud.

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