



Treaty Series No. 45 (1995)

Agreement

between the Government of the
United Kingdom of Great Britain and Northern Ireland
and the Government of Australia

providing for the Reciprocal Recognition and
Enforcement of Judgements in Civil and
Commercial Matters

Canberra, 23 August 1990

with Exchange of Notes

London, 1 September 1994

[The Agreement and Exchange of Notes entered into force on 1 September 1994]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
July 1995*

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AGREEMENT
BETWEEN THE GOVERNMENT OF THE UNITED KINGDOM
OF GREAT BRITAIN AND NORTHERN IRELAND
AND THE GOVERNMENT OF AUSTRALIA
PROVIDING FOR
THE RECIPROCAL RECOGNITION AND ENFORCEMENT OF
JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS

The Government of the United Kingdom of Great Britain and Northern Ireland and the Government of Australia,

Desiring to provide, on the basis of reciprocity, for the recognition and enforcement of judgments in civil and commercial matters;

Have agreed as follows:

ARTICLE 1

In this Agreement:

- (a) "the 1968 Convention" means the Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters done at Brussels on 27 September 1968¹, as amended from time to time;
- (b) "court of a Party" means one of the following courts:
- (i) in relation to Australia:
 - (aa) the High Court of Australia;
 - (bb) the Federal Court of Australia;
 - (cc) the Family Court of Australia;
 - (dd) the Family Court of Western Australia;
 - (ee) the Supreme Court exercising jurisdiction in respect of each Australian State or Territory;
 - (ff) the District Court of New South Wales;
 - (gg) the County Court of Victoria;
 - (hh) the District Courts in Queensland;
 - (ii) the District Court of Western Australia;
 - (ij) the Local Courts in South Australia;
 - (kk) the Courts of Requests in Tasmania; or
 - (ll) the Magistrates Court of the Australian Capital Territory;
 - (ii) in relation to the United Kingdom:
 - (aa) any superior court of the United Kingdom;
 - (bb) for England and Wales and Northern Ireland, any county court;
 - (cc) for Scotland, any sheriff court,and such superior courts as may be specified by the United Kingdom in a declaration pursuant to Article 7 of this Agreement;
 - (iii) such other courts as may be agreed between the Parties;
- (c) "judgment" means:
- (i) any judgment, decree, rule, order or other final decree for the payment of money (other than in respect of taxes or other charges of like nature or an order requiring the payment of maintenance) given in the territory of a Party in respect of a civil or commercial matter;
 - (ii) an award in proceedings on an arbitration conducted in the territory of a Party under the law applying in that territory if the award has become enforceable in the same manner as a judgment in the territory of that Party;
- or

¹ European Communities No. 46 (1978) Cmnd. 7395.

(iii) a judgment or order given or made by a court of a Party in criminal proceedings for the payment of money in respect of compensation or damages to an injured person;

(d) "registering court" means a court of a Party to which an application for the registration of a judgment is made.

ARTICLE 2

(1) Subject to paragraph (2) and to paragraph (3) of this Article, a judgment of a court of a Party, whether given before or after the entry into force of this Agreement, shall be recognised and enforced in the territory of the other Party on terms no less favourable than those:

(a) applicable to the recognition and enforcement of such judgments at the date of this Agreement, including the terms contained in the following provisions:

(i) in Australia:

- (aa) the Foreign Proceedings (Excess of Jurisdiction) Act 1984 (Australia);
- (bb) the Foreign Judgments Act 1973 of New South Wales;
- (cc) the Foreign Judgments Act 1962 of Victoria;
- (dd) the Reciprocal Enforcement of Judgments Act 1959 of Queensland;
- (ee) the Foreign Judgments Act 1963 of Western Australia;
- (ff) the Foreign Judgments Act 1971 of South Australia;
- (gg) Part X of the Supreme Court Civil Procedure Act 1932 of Tasmania;
- (hh) the Foreign Judgments (Reciprocal Enforcement) Ordinance 1954 of the Australian Capital Territory;
- (ii) the Foreign Judgments (Reciprocal Enforcement) Act of the Northern Territory of Australia;
- (jj) the Foreign Judgments (Reciprocal Enforcement) Ordinance 1978 of the Territory of Norfolk Island;
- (kk) the Foreign Judgments (Reciprocal Enforcement) Ordinance 1977 of the Territory of Christmas Island;
- (ll) the Reciprocal Enforcement of Judgments Ordinance as amended by the Reciprocal Enforcement of Judgments (Amendment) Ordinance 1963 of the Territory of Cocos (Keeling) Islands;

(ii) in the United Kingdom:

- (aa) Part II of the Administration of Justice Act 1920, in respect of the Territory of Christmas Island, the Territory of Cocos (Keeling) Islands, New South Wales, the Territory of Norfolk Island, the Northern Territory of Australia, Queensland, South Australia, Tasmania, Victoria and Western Australia;
- (bb) the Foreign Judgments (Reciprocal Enforcement) Act 1933;
- (cc) the Protection of Trading Interests Act 1980;

(b) provided by the law generally applicable in the registering court to the recognition and enforcement of foreign judgments at the date when application for recognition or enforcement is made.

(2) A judgment of a court of a Party, obtained under:

(a) section 10 of the Foreign Proceedings (Excess of Jurisdiction) Act 1984 of Australia, in a case where the judgment is founded on an instrument made under section 9(1) of that Act which includes a statement that the Attorney-General is satisfied in accordance with paragraph 9(1) (b) (ii) of that Act; or

(b) section 6 of the Protection of Trading Interests Act 1980 of the United Kingdom,

shall be entitled to be recognised and enforced in the territory of the other Party, in accordance with the provisions in the United Kingdom of section 7 of the Protection of Trading Interests Act 1980 and in Australia of section 12 of the Foreign Proceedings (Excess of Jurisdiction) Act 1984.

- (3) Notice of any amendment to or repeal of any provision listed in sub-paragraph (1) (a) of this Article dealing with the terms of recognition and enforcement of foreign judgments shall be given to the other Party through the diplomatic channel at least three months, or such other time as may be mutually arranged between the Parties, before the amendment or repeal takes effect.

ARTICLE 3

- (1) The United Kingdom undertakes, in the circumstances permitted by Article 59 of the 1968 Convention, not to recognise or enforce under that Convention any judgment within the meaning of that Convention given in a third State which is a Party to that Convention against a person domiciled or habitually resident in Australia.
- (2) For the purposes of paragraph (1) of this Article:
- (a) an individual shall be treated as domiciled in Australia if and only if he is resident in Australia and the nature and circumstances of his residence indicate that he has a substantial connection with Australia;
- (b) a corporation or association shall be treated as domiciled in Australia if and only if it is incorporated or formed under a law in force in Australia and has a registered office there, or its central management and control is exercised in Australia; and
- (c) in the case of an individual who—
- (i) is resident in Australia; and
- (ii) has been so resident for the last three months or more,
- the requirements of Article 3(2)(a) shall be presumed to be fulfilled unless the contrary is proved.

ARTICLE 4

This Agreement shall not affect any treaties or arrangements to which both Parties are from time to time parties and which, in relation to particular matters, govern the recognition or enforcement of judgments.

ARTICLE 5

This Agreement shall not apply to any judgment that imposes a liability which a Party is obliged not to recognise or enforce by virtue of a treaty with a third State. That Party shall give notice of any such treaty to the other Party through the diplomatic channel.

ARTICLE 6

Either Party may, at the time of its notification under Article 9 or at any time thereafter, modify by declaration the list of its courts where a court replaces a court specified in Article 1(b)(i) or (ii) or agreed under Article 1(b)(iii) or specified in a declaration under this Article. Such a declaration shall be given through the diplomatic channel and shall take effect three months, or such other time as may be mutually arranged between the Parties, after the date on which it is given.

ARTICLE 7

- (1) The United Kingdom may, at any time while this Agreement is in force, declare that this Agreement shall extend to any territory for whose international relations it is responsible.
- (2) Any declaration made pursuant to paragraph (1) of this Article shall specify the superior courts of the territory to which application for the registration of a judgment given by a court of Australia shall be made.

(3) Any declaration made by the United Kingdom pursuant to this Article may be modified by a further declaration given at any time thereafter.

(4) Any declaration made pursuant to this Article shall be given through the diplomatic channel and shall take effect three months, or such other time as may be mutually arranged between the Parties, after the date on which it is given.

ARTICLE 8

The Parties shall consult at the request of either concerning the operation of this Agreement.

ARTICLE 9

(1) Each Party shall give notice to the other through the diplomatic channel of the completion of the procedures required by its law for the bringing into force of this Agreement. The Agreement shall enter into force on the date of the later of these notifications.

(2) This Agreement may be terminated by notice in writing by either Party through the diplomatic channel and it shall terminate three months after the date of such notice.

In witness whereof the undersigned, being duly authorised thereto by their respective Governments, have signed this Agreement.

Done in duplicate at Canberra this Twenty-Third day of August, One thousand nine hundred and ninety

For the Government of the United
Kingdom of Great Britain and
Northern Ireland:

For the Government of Australia:

GEOFFREY HOWE

MICHAEL DUFFY

*The Australian High Commission at London to the Foreign and
Commonwealth Office.*

*London
1 September 1994*

Note No. 203/94

The Australian High Commission presents its compliments to the Foreign and Commonwealth Office and has the honour to refer to 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, done at Canberra on 23 August 1990 ("the Agreement").

The High Commission has the honour to advise that, pursuant to Article 9, paragraph (1) of the Agreement, all procedures required by the law of Australia for bringing the Agreement into force have been completed and, therefore, has the honour to propose that the Agreement shall enter into force today, 1 September 1994.

The High Commission has the further honour to advise that the Local Courts in South Australia have been replaced by the District Court and the Magistrates Court of South Australia. Accordingly, pursuant to Article 6 of the Agreement, the High Commission, on behalf of the Government of Australia, hereby declares that the list of Australian Courts set out in Article 1(b)(i) of the Agreement be modified by the addition of the District Court and the Magistrates Court of South Australia. The Local Courts in South Australia are, however, to remain in the list of Australian Courts set out in Article 1(b)(i) of the Agreement as judgments given in those Courts before their replacement may be enforced in the United Kingdom pursuant to the Agreement.

Pursuant to Article 1(b)(iii) of the Agreement, the High Commission wishes to propose, on behalf of the Government of Australia, that, with effect from today, the list of Australian Courts set out in Article 1(b)(i) of the Agreement be amended to include the Industrial Relations Court of Australia.

If the foregoing proposals are acceptable to the Government of the United Kingdom of Great Britain and Northern Ireland, the Australian High Commission, on behalf of the Government of Australia, has the honour to propose that the amendment pursuant to Article 1(b)(iii) and the modification pursuant to Article 6 will enter into force on the same date as the Agreement enters into force, which date will be the date of the Foreign and Commonwealth Office's Note in reply.

The Australian High Commission avails itself of this opportunity to renew to the Foreign and Commonwealth Office the assurances of its highest consideration.

LONDON
1 September 1994

The Foreign and Commonwealth Office to the Australian High Commission

London

1 September 1994

The Foreign and Commonwealth Office present their compliments to the Australian High Commission and have the honour to refer to the High Commission's Note No. 203/94 of 1 September 1994 which reads as follows:

[As in No. 1]

The Foreign and Commonwealth Office have the honour to advise that, pursuant to Article 9, paragraph (1), all procedures required by the law of the United Kingdom of Great Britain and Northern Ireland ("United Kingdom") for bringing the Agreement into force have been completed.

The Foreign and Commonwealth Office have the further honour to advise the High Commission's proposals are acceptable to the Government of the United Kingdom and that the Government of the United Kingdom agree that the Agreement, and the proposed amendment and modification thereto, shall therefore enter into force on the date of this Note, 1 September 1994.

The Foreign and Commonwealth Office avail themselves of this opportunity to renew to the Australian High Commission the assurances of their highest consideration.

FOREIGN AND COMMONWEALTH OFFICE
1 September 1994

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