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Convention

between the
United Kingdom of Great Britain and Northern Ireland
and Canada

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

Ottawa, 24 April 1984

[Instruments of ratification were exchanged on 1 October 1986
and the Convention entered into force on 1 January 1987]

*Presented to Parliament
by the Secretary of State for Foreign and Commonwealth Affairs
by Command of Her Majesty
November 1988*

**CONVENTION
BETWEEN THE UNITED KINGDOM OF GREAT BRITAIN AND
NORTHERN IRELAND AND CANADA PROVIDING FOR THE
RECIPROCAL RECOGNITION AND ENFORCEMENT OF
JUDGMENTS IN CIVIL AND COMMERCIAL MATTERS**

The United Kingdom of Great Britain and Northern Ireland, and Canada,

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

Have agreed as follows:

PART I

Definitions

ARTICLE I

In this Convention

- (a) "appeal" includes any proceeding by way of discharging or setting aside a judgment or an application for a new trial or a stay of execution;
- (b) "the 1968 Convention" means the Convention of 27th September 1968 on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters as amended¹;
- (c) "court of a Contracting State" means
 - (i) in relation to the United Kingdom, any court of the United Kingdom or of any territory to which this Convention extends pursuant to Article XIII;
 - (ii) in relation to Canada, the Federal Court of Canada or any court of a province or territory to which this Convention extends pursuant to Article XII, and the expressions "court of the United Kingdom" and "court of Canada" shall be construed accordingly;
- (d) "judgment" means any decision, however described (judgment, order and the like), given by a court in a civil or commercial matter, and includes an award in proceedings on an arbitration if the award has become enforceable in the territory of origin in the same manner as a judgment given by a court in that territory;
- (e) "judgment creditor" means the person in whose favour the judgment was given, and includes his executors, administrators, successors and assigns;
- (f) "judgment debtor" means the person against whom the judgment was given and includes any person against whom the judgment is enforceable under the law of the territory of origin;
- (g) "original court" in relation to any judgment means the court by which the judgment was given;
- (h) "registering court" means a court to which an application for the registration of a judgment is made;
- (i) "territory of origin" means the territory for which the original court was exercising jurisdiction.

PART II

Scope of the Convention

ARTICLE II

1. Subject to the provisions of this Article, this Convention shall apply to any judgment given by a court of a Contracting State after the Convention enters into force and, for the purposes of Article IX, to any judgment given by a court of a third State which is party to the 1968 Convention.

¹ Treaty Series No. 10 (1988); Cm 306.

2. This Convention shall not apply to
 - (a) orders for the periodic payment of maintenance;
 - (b) the recovery of taxes, duties or charges of a like nature or the recovery of a fine or penalty;
 - (c) judgments given on appeal from decisions of tribunals other than courts;
 - (d) judgments which determine
 - (i) the status or legal capacity of natural persons;
 - (ii) custody or guardianship of infants;
 - (iii) matrimonial matters;
 - (iv) succession to or the administration of the estates of deceased persons;
 - (v) bankruptcy, insolvency or the winding up of companies or other legal persons;
 - (vi) the management of the affairs of a person not capable of managing his own affairs.
3. Part III of this Convention shall apply only to a judgment whereby a sum of money is made payable.
4. This Convention is without prejudice to any other remedy available to a judgment creditor for the recognition and enforcement in one Contracting State of a judgment given by a court of the other Contracting State.

PART III

Enforcement of Judgments

ARTICLE III

1. Where a judgment has been given by a court of one Contracting State, the judgment creditor may apply in accordance with Article VI to a court of the other Contracting State at any time within a period of six years after the date of the judgment (or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings) to have the judgment registered, and on any such application the registering court shall, subject to such simple and rapid procedures as each Contracting State may prescribe and to the other provisions of this Convention, order the judgment to be registered.
2. In addition to the sum of money payable under the judgment of the original court including interest accrued to the date of registration, the judgment shall be registered for the reasonable costs of and incidental to registration, if any, including the costs of obtaining a certified copy of the judgment from the original court.
3. If, on an application for the registration of a judgment, it appears to the registering court that the judgment is in respect of different matters and that some, but not all, of the provisions of the judgment are such that if those provisions had been contained in separate judgments those judgments could properly have been registered, the judgment may be registered in respect of the provisions aforesaid but not in respect of any other provisions contained therein.
4. Subject to the other provisions of this Convention
 - (a) a registered judgment shall, for the purposes of enforcement, be of the same force and effect;
 - (b) proceedings may be taken on it; and
 - (c) the registering court shall have the same control over its enforcement, as if it had been a judgment originally given in the registering court with effect from the date of registration.

ARTICLE IV

1. Registration of a judgment shall be refused or set aside if
 - (a) the judgment has been satisfied;
 - (b) the judgment is not enforceable in the territory of origin;
 - (c) the original court is not regarded by the registering court as having jurisdiction;
 - (d) the judgment was obtained by fraud;
 - (e) enforcement of the judgment would be contrary to public policy in the territory of the registering court;
 - (f) the judgment is a judgment of a country or territory other than the territory of origin which has been registered in the original court or has become enforceable in the territory of origin in the same manner as a judgment of that court; or
 - (g) in the view of the registering court the judgment debtor either is entitled to immunity from the jurisdiction of that court or was entitled to immunity in the original court and did not submit to its jurisdiction.
2. The law of the registering court may provide that registration of a judgment may or shall be set aside if
 - (a) the judgment debtor, being the defendant in the original proceedings, either was not served with the process of the original court or did not receive notice of those proceedings in sufficient time to enable him to defend the proceedings and, in either case, did not appear;
 - (b) another judgment has been given by a court having jurisdiction in the matter in dispute prior to the date of judgment in the original court; or
 - (c) the judgment is not final or an appeal is pending or the judgment debtor is entitled to appeal or to apply for leave to appeal against the judgment in the territory of origin.
3. If at the date of the application for registration the judgment of the original court has been partly satisfied, the judgment shall be registered only in respect of the balance remaining payable at that date.
4. A judgment shall not be enforced so long as, in accordance with the provisions of this Convention and the law of the registering court, it is competent for any party to make an application to have the registration of the judgment set aside or, where such an application is made, until the application has been finally determined.

ARTICLE V

1. For the purposes of Article IV(1)(c) the original court shall be regarded as having jurisdiction if
 - (a) the judgment debtor, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings;
 - (b) the judgment debtor was plaintiff in, or counterclaimed in, the proceedings in the original court;
 - (c) the judgment debtor, being a defendant in the original court, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of the territory of origin;
 - (d) the judgment debtor, being a defendant in the original court, was at the time when the proceedings were instituted habitually resident in, or being a body corporate had its principal place of business in, the territory of origin;
 - (e) the judgment debtor, being a defendant in the original court, had an office or place of business in the territory of origin and the proceedings were in respect of a transaction effected through or at that office or place; or

- (f) the jurisdiction of the original court is otherwise recognised by the registering court.
2. Notwithstanding anything in sub-paragraphs (d), (e) and (f) of paragraph (1), the original court shall not be regarded as having jurisdiction if
- (a) the subject matter of the proceedings was immovable property outside the territory of origin; or
 - (b) the bringing of the proceedings in the original court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of the territory of origin.

PART IV

Procedures

ARTICLE VI

1. Any application for the registration in the United Kingdom of a judgment of a court of Canada shall be made
- (a) in England and Wales, to the High Court of Justice;
 - (b) in Scotland, to the Court of Session;
 - (c) in Northern Ireland, to the High Court of Justice.
2. Any application for the registration in Canada of a judgment of a court of the United Kingdom shall be made
- (a) in the case of a judgment relating to a matter within the competence of the Federal Court of Canada, to the Federal Court of Canada;
 - (b) in the case of any other judgment, to a court of a province or territory designated by Canada pursuant to Article XII.
3. The practice and procedure governing registration (including notice to the judgment debtor and applications to set registration aside) shall, except as otherwise provided in this Convention, be governed by the law of the registering Court.
4. The registering court may require that an application for registration be accompanied by
- (a) the judgment of the original court or a certified copy thereof;
 - (b) a certified translation of the judgment, if given in a language other than the language of the territory of the registering court;
 - (c) proof of the notice given to the defendant in the original proceedings, unless this appears from the judgment; and
 - (d) particulars of such other matters as may be required by the rules of the registering court.

ARTICLE VII

All matters concerning

- (a) the conversion of the sum payable under a registered judgment into the currency of the territory of the registering court; and
- (b) the interest payable on the judgment with respect to the period following its registration.

shall be determined by the law of the registering court.

PART V
Recognition of Judgments

ARTICLE VIII

Any judgment given by a court of one Contracting State for the payment of a sum of money which could be registered under this Convention, whether or not the judgment has been registered, and any other judgment given by such a court, which if it were a judgment for the payment of a sum of money could be registered under this Convention, shall, unless registration has been or would be refused or set aside on any ground other than that the judgment has been satisfied or could not be enforced in the territory of origin, be recognised in a court of the other Contracting State as conclusive between the parties thereto in all proceedings founded on the same cause of action.

PART VI
Recognition and Enforcement of Third State Judgments

ARTICLE IX

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 given in a third State which is a Party to that Convention against a person domiciled or habitually resident in Canada.
2. For the purposes of paragraph (1)
 - (a) an individual shall be treated as domiciled in Canada if and only if he is resident in Canada and the nature and circumstances of his residence indicate that he has a substantial connection with Canada; and
 - (b) a corporation or association shall be treated as domiciled in Canada if and only if it is incorporated or formed under a law in force in Canada and has a registered office there, or its central management and control is exercised in Canada.

PART VII
Final Provisions

ARTICLE X

This Convention shall not affect any conventions, international instruments or reciprocal arrangements to which both Contracting States are or will be parties and which, in relation to particular matters, govern the recognition or enforcement of judgments.

ARTICLE XI

Either Contracting State may, on the exchange of instruments of ratification or at any time thereafter, declare that it will not apply the Convention to a judgment that imposes a liability which that State is under a treaty obligation toward any other State not to recognise or enforce. Any such declaration shall specify the treaty containing the obligation.

ARTICLE XII

1. On the exchange of instruments of ratification, Canada shall designate the provinces or territories to which this Convention shall extend¹ and the courts of the provinces and territories concerned to which application for the registration of a judgment given by a court of the United Kingdom may be made.

¹ On ratifying the Government of Canada declared that the Convention should extend to the provinces of British Columbia, Manitoba, New Brunswick, Nova Scotia and Ontario.

2. The designation by Canada may be modified by a further designation given at any time thereafter¹.
3. Any designation shall take effect three months after the date on which it is given.

ARTICLE XIII

1. The United Kingdom may at any time while this Convention is in force declare that this Convention shall extend to the Isle of Man, any of the Channel Islands, Gibraltar or the Sovereign Base Areas of Akrotiri and Dhekelia (being territories to which the 1968 Convention may be applied pursuant to Article 60 of that Convention).
2. Any declaration pursuant to paragraph (1) shall specify the courts of the territories to which application for the registration of a judgment given by a court of Canada 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 pursuant to this Article shall take effect three months after the date on which it is given.

ARTICLE XIV

1. This Convention shall be ratified; instruments of ratification shall be exchanged at London.
2. This Convention shall enter into force three months after the date on which instruments of ratification are exchanged.
3. This Convention may be terminated by notice in writing by either Contracting State and it shall terminate three months after the date of such notice.

In witness whereof, the undersigned, duly authorized thereto by their respective Governments, have signed this Convention.

Done in duplicate at Ottawa, this 24th day of April 1984 in the English and French languages, each version being equally authentic.

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

R. H. BAKER

For the Government of Canada:

JOHN C. TAIT

¹ By later declarations the Convention was extended to the Yukon Territory with effect from 21 October 1987 and to the province of Prince Edward Island with effect from 17 September 1988.