

GRAND COURT PRACTICE DIRECTION NO. 2 OF 2017

Registration of Foreign Maintenance Orders or Judgments Sections 14, 22 and 23 of the *Maintenance Act (as amended and revised)* ("the Law")

INTRODUCTION

The *Maintenance Act (as amended and revised)* ("the Law") in sections 14, 22 and 23, provides for the enforcement in the Islands of certain foreign orders and judgments by way of registration. In broad terms, these are the orders or judgments of the courts of England, Ireland and Jamaica and of courts of countries (or of jurisdictions within countries) which are designated by Order made by the Cabinet and referenced within schedules to the Law. To date only the courts of Belize and two Canadian Provinces (the Yukon and Ontario) have been referenced within schedules by Orders made under the Law.

The process of registration is meant to be simple and direct, avoiding the need to prove the foreign order or judgment by way of suit. It is nonetheless essential that, as provided by the Law, once registered, the order or judgment is enforceable as if it had been made by a local court. To this end the process requires that the foreign order or judgment is enforced by order of a judge of the Grand Court or (if it emanates from a foreign court which is not a court of superior jurisdiction) by an order of a Magistrate of the Summary Court.

This practice direction explains the procedure - adopted from Grand Court Rules Order 71 which prescribes the procedure for the enforcement of foreign judgments under the *Foreign Judgments Reciprocal Enforcement Act (as amended and revised)* (the "F.J.R.E.L."). Like under the Law, under the F.J.R.E.L., only the judgments of those foreign countries or territories scheduled by Order of the Cabinet (and in the case of the F.J.R.E.L. regarded as providing reciprocity) can be enforced by way of registration. Here too



under F.J.R.E.L, at present, only the judgments of a limited number of courts are enforceable by registration - those of the Superior Courts of Australia and its External Territories.

Other than under the Law and under the F.J.R.E.L, it remains the position that foreign judgments can be enforced within the Islands only by way of being sued upon at common law.

DIRECTIONS:

1. The Clerk of the Court shall be the "Prescribed Officer" for the purposes of section 14, 22 and 23 of the Law.
2. The Prescribed Officer shall maintain a Register of Foreign Maintenance Orders and Judgments ("the Register"). The Register will be a public record.
3. Upon receipt of an order or judgment of a foreign court capable of registration under the Law, the Prescribed Officer shall apply to the Grand Court by ex parte originating summons for the registration of the foreign order or judgment. Where the foreign order or judgment was made by a court which is not a court of superior jurisdiction, the Prescribed Officer shall apply to the Summary Court.
4. An application for registration must be supported by an affidavit by the Prescribed Officer:
 - (a) exhibiting the order or judgment or certified (or otherwise duly authenticated) copy thereof and where the judgment is not in the English language, a translation thereof in the English language certified by a notary public or authenticated by affidavit;
 - (b) stating the name and the usual or last known place of abode or business of the judgment creditor and judgment debtor

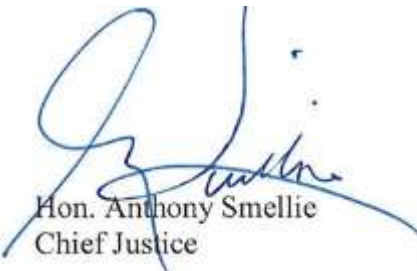


- respectively, so far as known to the prescribed officer or as disclosed in the foreign order or judgment;
- (c) stating to the best of the information or belief of the Prescribed Officer:
- (i) that the foreign order or judgment is a certified copy thereof of the relevant foreign court duly transmitted to the Governor in keeping with section 14 of the Law.
 - (ii) As the case may require, either that at the date of the application the foreign order or judgment has not been satisfied, or that the amount in respect of which it was made remains unsatisfied.
5. (a) An order of the Grand Court giving leave to register the foreign order or judgment shall be drawn up by the Prescribed Officer on behalf of the judgment creditor and presented to the Judge or (in the case of a foreign order or judgment made by a court which is not a court of superior jurisdiction) to a Magistrate of the Summary Court, for grant of registration.
- (b) An Order of the Grand or Summary Court giving leave to register shall state the period of time for compliance with the terms of the foreign order or judgment, and that failing which, the Prescribed Officer will have leave automatically to take steps for enforcement as if the foreign order or judgment had been originally made by the Grand Court or Summary Court, respectively.
- (c) Upon grant of registration of the foreign order or judgment it shall be entered in the Register and served upon the judgment debtor by notice of its registration;
- (d) Notice of registration of a foreign order or judgment (with the order or judgment of the foreign court attached) must be served upon the judgment debtor by delivering it to the judgement debtor personally at that judgment debtor's usual or last known place of



abode or business as identified in keeping with paragraph 4(b) above.

6. Execution shall not issue for a foreign order or judgment registered under the Law until after the period of time for compliance with the terms of the foreign order or judgment has expired.
7. An application for execution shall be supported by an affidavit of service of the notice of registration of the foreign order or judgment and the order granting leave for its registration.



Hon. Anthony Smellie
Chief Justice

1 August 2017

