

# Model Law on the Recognition and Enforcement of Foreign Judgments



The Commonwealth

Office of Civil and  
Criminal Justice Reform

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The Commonwealth

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# Introduction

While international trade and commercial activity have rapidly evolved as a result of globalisation, mechanisms to resolve international commercial disputes have not been developed at the same speed or with similar enthusiasm. Legal arrangements that are currently in place, in the Commonwealth and elsewhere, fail to meet the expectation that judgments will be enforced in foreign jurisdictions.

It is possible to enforce a foreign monetary judgment through the common law action on judgment debt, which allows the judgment creditor to apply for summary judgment by producing the foreign judgment as proof of debt owed by the judgment debtor. The court may then issue a summary judgment, unless the application is opposed by the judgment debtor. This common law procedure is often slow, expensive, uncertain and ineffective.

In addition to this common law action, enforcement of foreign judgments is also made possible by statute. The statutes currently found in the Commonwealth are now in many cases antiquated and do not reflect best current practice.

This Model Law is designed to assist member countries to modernise their approach to the recognition and enforcement of foreign judgments. It contains provisions for the enforcement of both monetary and non-monetary judgments, and is accompanied by Explanatory Notes.

# Background

This Model Law fulfils a long-standing mandate from law ministers to address the need to reform the arrangements within the Commonwealth for the recognition and enforcement of foreign judgments. It also reflects the co-operation over many years between the Commonwealth Secretariat and The Hague Conference on Private International Law. The Secretariat participated in The Hague Conference's efforts in the period 1992–2001 to draw up a wide-ranging convention dealing with both jurisdiction and the recognition and enforcement of foreign judgments. The drafting of this Model Law drew upon the experience gained in the earlier Hague Conference project, and also The Hague Convention of 30 June 2005 on Choice of Court Agreements.

At the Commonwealth Law Ministers Meeting in 2005 in Accra, the Law Ministers tasked the Commonwealth Secretariat to report on the existing intra-Commonwealth legal arrangements on the recognition and enforcement of foreign judgments.

The response to the mandate took the form of a detailed paper tabled at the Meeting of Senior Officials of Commonwealth Law Ministries in October 2007; a questionnaire circulated to law ministries; an interim report on the progress of the mandate to Law Ministers at their meeting in 2008 in Edinburgh; and a consultative meeting in May 2009 in Ottawa, to make further progress on building the Model Law. A draft of the Model Law was tabled at the Commonwealth Law Ministers Meeting in 2014 in Gaborone. The Secretariat received a mandate to produce the final text of the Model Law for the next meeting of Senior Officials in 2016 in London.

The Model Law was considered and endorsed by Commonwealth Law Ministers at their meeting of 16–19 October 2017, held in Nassau, The Bahamas. At that meeting, Law Ministers commended the Model Law and noted its usefulness. They further noted the desirability for member countries that have not already done so to become party to The Hague Convention on Choice of Court Agreements and to participate in the Judgments Projects of The Hague Conference on Private International Law.

# Model Recognition and Enforcement of Foreign Judgments Bill

## A Bill for

An Act to make provision for the recognition and enforcement of foreign judgments

## Short title

1 This Act may be cited as the Foreign Judgments Act 20xx.

## Interpretation

2(1) In this Act:

'court' in relation to a court of a foreign state means a court that is

- (a) a court of civil jurisdiction; or
- (b) a court of criminal jurisdiction in respect only of a civil claim it is competent to entertain under the law of that state for damages or restitution based on an act giving rise to criminal proceedings;

'foreign judgment' means a final decision (however described, and including a judgment, order, decree, decision, writ of execution or determination of costs by an officer of a court) made by a court of a foreign state deemed to have had jurisdiction on any of the grounds set out in section 5, and which is a money-judgment or a non-monetary judgment;

'judgment creditor' means the person in whose favour a foreign judgment was made;

'judgment debtor' means the person liable under a foreign judgment;

'money-judgment' means a foreign judgment under which is payable an amount of money;

'non-monetary judgment' means a foreign judgment:

- (a) ordering specific performance of a contractual obligation;
- (b) ordering the transfer of a specified item or specified items of movable property; or
- (c) prohibiting the judgment debtor from acting in a specified way; and

'state of origin' means the state or subdivision of a state where a foreign judgment was made.

(2) A foreign judgment is to be treated as final notwithstanding that in the courts of the state of origin:

- (a) an appeal is pending against it; or
- (b) the time within which such an appeal may be made or leave for appeal requested has not expired.

### Application to severable foreign judgments

- 3 Where a foreign judgment contains elements which are severable and only a part of the foreign judgment is entitled to recognition or, as the case may be, enforcement, under this Act, the provisions of this Act as to recognition, registration and enforcement shall apply to that part.

### Exclusions from scope

- 4(1) This Act does not apply to a foreign judgment –
- (a) relating to the status and legal capacity of a natural person;
  - (b) relating to a family law matter, including a matter relating to maintenance obligations, matrimonial property and other rights or obligations arising out of marriage or similar relationships;
  - (c) arising out of bankruptcy, insolvency, composition or analogous proceedings;
  - (d) for the recovery of taxes;
  - (e) for the recovery of monetary fines or penalties;
  - (f) that recognize the judgment of another foreign state; or
  - (g) made in proceedings commenced before the coming into force of this Act.
- (2) A foreign judgment is not excluded from the scope of this Act by the mere fact that a government, a governmental agency or any person acting for the state was a party to the proceedings in which the foreign judgment was made.
- (3) Nothing in this Act affects the privileges and immunities of sovereign states or of entities of sovereign states, or of international organisations.

### Jurisdiction of the court of origin

- 5(1) A court in the state of origin is deemed to have had jurisdiction if:
- (a) the judgment debtor expressly agreed to submit to the jurisdiction of the court;
  - (b) the judgment debtor submitted to the jurisdiction of the court by appearing voluntarily in the proceedings;
  - (c) the judgment debtor was plaintiff in, or counterclaimant in, the proceedings;
  - (d) the judgment debtor, being an individual, was ordinarily resident in the state of origin;
  - (e) the judgment debtor, not being an individual, was incorporated in the state of origin, exercised its central management in that state or had its principal place of business located in that state;
  - (f) the judgment debtor, being a defendant in the court of the state of origin, had an office or place of business in that state and the proceedings were with respect to a transaction effected through or at that office or place;
  - (g) the proceedings related to a contractual obligation that was or should have been performed in the state of origin;
  - (h) the proceedings related to tort or a non-contractual obligation and the wrongful act occurred in the state of origin;

- (i) the proceedings related to a dispute concerning title to real property located in the state of origin;
  - (j) the proceedings related to the validity or administration of a trust established in the state of origin or to trust assets located in that state, and the trustee, settlor or beneficiary had his or her ordinary residence or its principal place of business in the state of origin; or the court of origin was a court of a country designated in the trust instrument as having jurisdiction for this purpose;
  - (k) the proceedings related to a dispute concerning goods made or services provided by the judgment debtor and the goods and services were acquired or used by the judgment creditor when the judgment creditor was ordinarily resident in the state of origin and were marketed through the normal channels of trade in the state of origin.
- (2) For the purposes of this section, a person shall not be regarded as having submitted to the jurisdiction of the court by reason only of the fact that he appeared (conditionally or otherwise) in the proceedings for all or any one or more of the following purposes:
- (a) to contest the jurisdiction of the court;
  - (b) to ask the court to dismiss or stay the proceedings on the ground that the dispute in question should be submitted to arbitration or to the determination of the courts of another country;
  - (c) to protect, or obtain the release of, property seized or threatened with seizure in the proceedings.

## Recognition of foreign judgments

### Recognition of a foreign judgment

- 6(1) Subject to the following provisions of this section, a foreign judgment is to be recognised in any proceedings in [.....], without any registration or other formality, as binding on the parties so as to be a defence to a claim or conclusive of an issue.
- (2) In no circumstances may a court in [.....] review a foreign judgment on the merits.
- (3) A foreign judgment is not to be recognised in [.....] if at the time the judgment is relied upon in proceedings in [.....],
- (a) proceedings between the same parties and having the same subject matter were pending before a court of [.....], having been commenced before the proceedings that gave rise to the judgment were commenced;
  - (b) the judgment is inconsistent with a judgment made, either in [.....] or in another foreign state, provided that in the latter case the judgment meets the conditions for recognition in [.....];
  - (c) the judgment was rendered in proceedings that were conducted contrary to the principles of procedural fairness and natural justice;
  - (d) the judgment is manifestly contrary to public policy in [.....]; or
  - (e) the judgment was obtained by fraud.



## Enforcement of money-judgments

### Registration for enforcement

- 7 Where a money-judgment is entitled to recognition under this Act and is enforceable in the state of origin it may be registered by a judgment creditor for enforcement in [.....].

### No other method of enforcement to be used

- 8(1) The common law action on a judgment debt created by a foreign judgment is hereby abolished.
- (2) A foreign judgment shall not be enforced in [.....] except by registration under this Act.

### Effect of registration

- 9(1) On registration under this Act, a money-judgment is enforceable as if it were a judgment of the court.
- (2) Subject to the following provisions of this section, the court has the same jurisdiction and control over a foreign money-judgment registered under this Act as it has over its own judgments and the judgment may be enforced under procedures applying to judgments of the court.
- (3) A money-judgment registered under this Act may not be enforced by the sale or other disposition of any property of the judgment debtor before the expiry of 30 days after the judgment debtor has received notice of the registration of the foreign judgment, or any longer period that a court in [.....] may allow.
- (4) A money-judgment registered under this Act may be enforced in [.....] only within the period provided by the law of the state of origin, or within [10] years after the day on which the foreign judgment becomes enforceable in that state, whichever is earlier.

### Registration of a money-judgment

- 10(1) A judgment creditor registers a money-judgment by filing in the court in [.....]:
- (a) the judgment or a verified or certified or otherwise authenticated copy of it;
  - (b) where the judgment is not in [English], a certified translation of it into [English]; and
  - (c) a document indicating which one or more of the grounds set out in section 5 are being relied on to claim that the court in the state of origin had jurisdiction to make the foreign judgment and containing such other such information as may be required by rules of court.
- (2) The judgment creditor shall give to the judgment debtor a notice of the registration of the money-judgment
- (a) indicating which one or more of the grounds set out in section 5 are being relied on to claim that the court in the state of origin had jurisdiction to make the foreign judgment;
  - (b) notifying the judgment debtor of the right to apply within 30 days of the receipt of the notice for the registration to be set aside under section 11;
- and

- (c) where the judgment orders the payment of a sum of money expressed in a currency other than the currency of [.....], a statement that the money payable under the judgment will be the amount of [.....] currency that is necessary to purchase the equivalent amount of the other currency at a bank located in [.....] at the close of business on [the date of registration] [the conversion date].
- [(3) For the purposes of subsection (2), the conversion date is the last day, before the day on which the judgment debtor makes a payment to the judgment creditor under the registered foreign judgment, on which the bank mentioned in subsection (2) quotes an amount in the [currency unit] of [.....] equivalent to the other currency.]

### Interest

- 11 The interest payable on an amount awarded under a money-judgment registered under this Act is:
- (1) the interest accruing on that amount under the law of the state of origin, starting on the day on which the foreign judgment became enforceable in that state and ending on the day immediately before the date of registration; and
  - (2) the interest accruing on that amount under the law of [.....], starting on the date of registration.

### Application to set aside registration of money-judgment

- 12(1) The judgment debtor may apply within 30 days of the receipt of the notice of registration for the registration of a money-judgment to be set aside.
- (2) The court shall set aside the registration if it is satisfied that
- (a) the court of the state of origin did not have jurisdiction in the proceedings in which the judgment was made on the ground or grounds in section 5 indicated in the notice given to the judgment debtor;
  - (b) the foreign judgment was for any reason not entitled to recognition under this Act;
  - (c) the judgment has been satisfied; or
  - (d) the judgment is not enforceable in the state of origin [or an appeal is pending in that state, or the time within which such an appeal may be made or leave for appeal requested has not expired].
- (3) Where a registration is set aside under subsection (2)(d), the judgment creditor may apply to the court for leave to re-register the foreign judgment on the ground that the circumstances specified in that subsection no longer exist.

### [Staying of enforcement

- 13 The court may on the application of any party make an order staying or limiting the enforcement of a money-judgment, subject to any terms and for any period the court considers appropriate in the circumstances, if in the state of origin an appeal is pending, or the time within which such an appeal may be made or leave for appeal requested has not expired.]

## Limit of damages

- 14(1) If the court, on an application by a judgment debtor, determines that a money-judgment includes an amount added to compensatory damages as punitive or multiple damages or for other non-compensatory purposes, it shall limit enforcement of the damages awarded by the foreign judgment to the amount of similar or comparable damages that could have been awarded in [.....].
- (2) If the court, on application by a judgment debtor, determines that a money-judgment includes an amount of compensatory damages that is excessive in the circumstances, it may limit enforcement of the award, but the amount awarded may not be less than that which the court could have awarded in the circumstances.
- (3) In this section, a reference to damages includes the costs and expenses of the proceedings in the state of origin.

## Enforcement of non-monetary judgments

### Registration of a non-monetary judgment

- 15(1) The judgment creditor may apply to the court to register a non-monetary judgment.
- (2) The application shall be accompanied by:
- (a) the judgment or a verified or certified or otherwise authenticated copy of it;
  - (b) where the judgment is not in [English], a certified translation of it into [English]; and
  - (c) a document indicating which one or more of the grounds set out in section 5 are being relied on to claim that the court in the state of origin had jurisdiction to make the foreign judgment and containing such other such information as may be required by rules of court.
- (3) The judgment creditor shall give notice to the judgment debtor in accordance with rules of court of the making of the application and, if it be the case, of an application made to the court for it to exercise its powers under section 16 to modify the foreign judgment.

### Powers of the court in respect of non-monetary judgments

- 16(1) In the case of a non-monetary judgment, the court may, on application by any party:
- (a) make an order that the judgment be modified as may be required to make it enforceable in [.....], unless the judgment is not susceptible of being so modified;
  - (b) make an order stipulating the procedure to be used in enforcing the judgment.
- (2) The court shall refuse to permit the registration of a non-monetary judgment if it is satisfied that
- (a) the court of the state of origin did not have jurisdiction in the proceedings in which the judgment was made on the ground or grounds in section 5 indicated in the notice given to the judgment debtor;
  - (b) the judgment is for any reason not entitled to recognition under this Act;

- (c) the judgment has been satisfied;
  - (d) the judgment is by reason of its nature incapable of enforcement in [...] and is not susceptible of modification to make it enforceable; or
  - (e) the judgment is not enforceable in the state of origin or an appeal is pending, or the time within which an appeal may be made or leave for appeal requested has not expired.
- (3) The court may on the application of any party make an order staying or limiting the enforcement of the non-monetary judgment, subject to any terms and for any period the court considers appropriate in the circumstances, if:
- (i) the court could have made that order with respect to an order or judgment rendered by it pursuant to the Acts and the rules of court in [...] relating to legal remedies and the enforcement of orders and judgments; or
  - (ii) the judgment debtor has brought, or intends to bring, in the state of origin, a proceeding to set aside, vary or obtain other relief with respect to the foreign judgment.
- (4) A non-monetary judgment may be enforced in [...] only within the period provided by the law of the state of origin, or within [10] years after the day on which the judgment becomes enforceable in that state, whichever is earlier.

## General

### Rules of court

- 17 Rules of court may regulate the practice and procedure, including costs, with respect to proceedings under this Act.

### Repeal and transitional provisions

- 18(1) The [*previous legislation on foreign judgments*] is repealed.
- (2) Notwithstanding the repeal of the [*previous legislation on foreign judgments*] that Act continues to apply with respect to foreign judgments made in proceedings commenced prior to the coming into force of this Act.

## Explanatory text

**Clause 1 (short title)** gives the simplest possible formulation; reference to 'Reciprocal Enforcement', found in many current acts, is no longer appropriate.

**Clause 2 (interpretation)** is largely self-explanatory. The expansive list of terms which may be used by foreign courts (judgment, order, decree, decision, writ of execution or determination of costs) draws on extensive international discussion at The Hague. The clause introduces, and defines, the notion of a non-monetary judgment.

The earlier draft of the model law, like the Canadian Uniform Act, contained no requirement that the foreign judgment be made 'in civil proceedings'. This was intended to ensure (as does much current legislation) that the award of damages possible in some countries to a *partie civile* in criminal proceedings is, subject to the extensive safeguards in the act, capable of recognition and enforcement. The discussions in Gaborone suggested that the *partie civile* point should be expressly mentioned, so adding to the clarity of the text. There was also some concern on a related point, that the model law should be limited to courts of civil jurisdiction (not

quite the same as a limitation to civil proceedings). The model law does not apply to decisions of arbitral tribunals and it was argued that other types of court, such as the religious courts found in some states, should also be excluded.

It is thought that these issues are satisfactorily addressed by the inclusion in clause 2 of the definition of 'court of a foreign state' as meaning:

- (a) *a court of civil jurisdiction; and*
- (b) *a court of criminal jurisdiction in respect only of a civil claim it is competent to entertain under the law of that state for damages or restitution based on an act giving rise to criminal proceedings.*

The text of the model law, in defining 'foreign judgment', requires it to be 'final'; nothing seems to be added by the traditional but tautologous 'and conclusive'. Interim orders will not be covered.

The definition of 'non-monetary judgment' reflects the effect of the discussion noted earlier in this paper.

**Clause 2(2)** is the first point at which the text addresses a set of issues concerning judgments subject to possible appeal. There are differing practices within the Commonwealth as to the treatment of foreign judgments that are the subject of an appeal in the state of origin. The possibility, or indeed the actual lodging, of an appeal in that state does not bar a common law action on the judgment debt. Under legislation based on the model of the UK's Foreign Judgments (Reciprocal Enforcement) Act 1933, the same is true but the court in the enforcing state may, as a matter of discretion, set aside the registration of a judgment subject to appeal. Under legislation on the model of the earlier UK act, the Administration of Justice Act 1920, no judgment can be registered if the judgment debtor satisfies the court either that an appeal is pending, or that he or she is entitled and intends to appeal against the judgment.

The (perhaps optimistic) view taken in the consultative meeting in Ottawa was that effective case management techniques now limit the delays inherent in the appeal process, and that the development in relatively recent years of sophisticated freezing orders (*Mareva* injunctions) safeguarded the interests of the judgment creditor. It was therefore felt that the more expeditious enforcement procedures under the proposed model legislation could be balanced by insisting that only a judgment that was not subject to appeal could be registered. This remains a controversial matter and the model law provides alternative solutions. Clause 2(2) means that a judgment subject to appeal is nonetheless 'final', and clause 13 enables the court in the state of enforcement in its discretion to stay or limit enforcement if an appeal is pending or might yet be brought. Clause 12(2)(d) has wording for the policy of excluding enforcement in those circumstances. The discretionary approach is adopted, following the Canadian model, in respect of non-monetary judgments, where enforcement is less easily rectified should an appeal succeed.

**Clause 3 (severable judgments)** is an attempt to deal with an issue discussed but never quite resolved in the earlier negotiations at The Hague, that of judgments entitled to recognition or enforcement only in part. The discussions continued at the Special Commission earlier this year. It is thought that this generally worded provision will suffice.

**Clause 4 (scope)** excludes a number of types of judgment from the scope of the act. The principles are familiar in Commonwealth practice; the wording draws in part on that produced at The Hague.

While broadly consistent, a number of provisions in the model law differ from those in the text now under discussion at The Hague. Many of the differences arise from the fact that The Hague text applies to any decision on the merits and does not start from the notion of a money-judgment. So it is necessary to deal at The Hague with certain types of declaratory judgments – for example, as to the validity of entries in public registers, or of the organs of a company. Other terms, such as ‘insolvency’, present few difficulties as between common law countries, but seem to require more explanation in a civil law context. The model law text ‘arising from bankruptcy, insolvency ...’ seems to reflect the preferred narrow interpretation of the exclusion of insolvency in The Hague text.

One particular matter addressed in the model law has been reconsidered in the light of discussions at Gaborone. This concerns certain orders made in family proceedings for the transfer of property from one spouse, or more usually former spouse, to another. The general policy is to exclude family matters from the model law; hence the exclusion in clause 4(1)(a) and (b) of judgments relating to the status and legal capacity of natural persons, or relating to maintenance obligations. The model law’s reference in clause 2, in its definition of ‘non-monetary judgment’ to judgments ‘ordering the transfer of a specified item or specified items of movable property’ might include some orders made in family proceedings. Clause 4(c) has therefore been inserted to exclude judgments ‘relating to other family law matters, including matrimonial property and other rights or obligations arising out of marriage or similar relationships’. The phrase ‘similar relationships’ is deliberately vague, given the widely differing policies within Commonwealth member states to rights flowing from cohabitation or from same-sex relationships; it will be for the law of the state asked to enforce a judgment to determine the scope of the phrase.

**Clause 5 (jurisdiction of the foreign court)** is a key provision. Paragraphs (a) to (f) and (i) correspond to provisions in the traditional Commonwealth legislative models, but the language is simplified. Paragraphs (d) and (e) are more precise than the traditional formulation in specifying the connection between the judgment debtor and the foreign jurisdiction. An individual must be ‘ordinarily resident’ and not merely ‘resident’. The drafting of paragraph (e) applies to various types of association, and is not limited to ‘bodies corporate’; and it includes places of incorporation and of central management, found in a number of international instruments but not hitherto in the Commonwealth legislation; the word ‘seat’ familiar in civil law usage is not used, but actually has the same effect. Later paragraphs include material not found in existing Commonwealth statutes, but which reflect an international consensus and correspond to grounds familiar in Commonwealth legislation on service out of the jurisdiction. It may be repeated that the abandonment of the system of reciprocity removes any pressure on Commonwealth legislators to adopt an identical list, and it may be that some will be hesitant about one or more of the additional grounds.

However, a number of changes have been made in the light of the comments made in Gaborone. Clause 5(1)(h) in the earlier draft included cases in which the proceedings related to tort or a non-contractual obligation and the wrongful act occurred in the state of origin; *or the injury to person or property was sustained in the state of origin*. Although that draft reflected the Ottawa discussions, it has been judged better to omit the words here italicised. They raise some difficult issues where, for example, tortious behaviour in state A causes not only direct physical damage in state B, but also what may be indirect financial loss in state C. A provision

that it was foreseeable that injury might be sustained in the state of origin would have limited the scope of the provision, but at the risk of causing further difficulties. Limiting paragraph (h) to cases in which the wrongful act occurred in the state of origin seems the best solution, and it seems to be an approach commending itself in The Hague discussions.

One other departure from the conclusions reached in Ottawa is to be found in clause 5(1)(j) dealing with trusts. In international discussions, such as those at The Hague, it has been very difficult to secure agreement as to the rules as to jurisdiction in trust cases, largely because the trust is unfamiliar to or unknown in many civil law jurisdictions. At various times, for example, discussions at The Hague have favoured one or more of the following rules, that the state of origin is to be treated as having jurisdiction where it is: (a) expressly or impliedly designated in the trust instrument as the principal place of administration of the trust; (b) in fact the principal place of administration of the trust; (c) the state whose law is expressly or impliedly designated in the trust instrument as the law governing the trust; (d) the state whose law, without any such designation, is held to be the law applicable to the trust; (e) the state with which the trust has the closest connection for the purpose of the proceedings. The policy adopted in preparing the model law was to avoid such general tests as that of 'closest connection', and it also seems best not to introduce questions of the applicable law into jurisdictional issues. Given the existence of the other grounds in clause 5, the Ottawa meeting agreed on a relatively simple rule. The discussion in Gaborone prompted further consideration and the new draft adds the words 'or where the court of origin was a court of a country designated in the trust instrument as having jurisdiction for this purpose'. It would of course be possible to add further elaboration, but it is thought that the text now offers a serviceable rule.

The provision in clause 5(1)(k) may be unfamiliar in some member countries. It is essentially a consumer protection rule. An illustration might make the provision clearer. Suppose that A spends some time working in the United States. He or she buys a product manufactured in, for example, Germany but marketed in the US. The product turns out to be defective and indeed dangerous; A is injured. Although the German manufacturing company is in no sense present in the relevant US jurisdiction and there is no contractual relationship between A and the company, most US states will claim jurisdiction on the ground that by targeting a US market, the company has exposed itself to the risk of litigation there. Few Commonwealth courts would themselves take jurisdiction on such a ground, but there seems no good reason to deny A enforcement of any judgment obtained on that basis elsewhere.

**Clause 6 (recognition of a foreign judgment)** states the basic rule as to recognition and the circumstances in which recognition will be refused. The prohibition on the review of a foreign judgment on the merits (in clause 6(2)) is seen as very important in international dealings. Some participants in earlier discussions have expressed anxiety about the effect of removing the requirement of designating foreign countries, so that all countries are within the scope of the act; the concern is that the procedural safeguards in some foreign courts may be inadequate, or the system of law applied frankly unacceptable to the state of enforcement. Paragraphs 6(3)(c) to (e) enable, and indeed require, recognition to be refused in such cases.

**Clause 6(3)(e)** deals with judgments obtained by fraud. There is a certain tension between that provision and the principle that there should be no review of the merits, and there has been case law in several Commonwealth jurisdictions, including the Privy Council, and much discussion in the literature examining the scope of the fraud defence and its relationship to the public policy defence. The text submitted to law ministers at Gaborone followed existing Commonwealth models and attracted no

comment. However, there may be merit in using the language found in article 9(d) of The Hague Choice of Court Convention, which speaks of 'fraud in connection with a matter of procedure', and the relevant words are now added to the model law in square brackets. The Explanatory Report to The Hague Convention lists as examples of fraud in connection with a matter of procedure 'where the plaintiff deliberately serves the writ, or causes it to be served, on the wrong address; where the plaintiff deliberately gives the defendant wrong information as to the time and place of the hearing; or where either party seeks to corrupt a judge, juror or witness, or deliberately conceals key evidence'.

**Clause 7 (registration for enforcement)** is the first of a run of clauses dealing with the enforcement of money-judgments; non-monetary judgments are dealt with in clauses 15 and 16. Clause 7 sets out the basic rule as to registration and abolishes the common law action on the judgment debt created by a foreign judgment.

**Clause 8 (no other method of enforcement to be used)** expressly abolishes the common law action on the judgment debt created by a foreign judgment.

**Clause 9 (the effect of registration)** is largely self-explanatory. Subsections (3) and (4) follow the Canadian Uniform Law, which reflects in turn the general practice of the courts in that country. Different provisions, or different periods of time, may be thought appropriate in other Commonwealth countries.

**Clause 10 (registration of a foreign money-judgment)** sets out the procedure to be followed by the judgment creditor, which may need amplification in rules of court. It also deals with the issue of currency conversion. Some legislation adopts the principle of conversion as at the date of registration: the amount payable is thus settled and later conversion calculations are unnecessary. Another approach adopts the principle of conversion at the date of payment by the judgment debtor, so that if payment is by instalments, each payment has to be converted as at that date; the argument for this approach is that only when a payment is received does the judgment creditor have something to convert.

Following the guidance given by the consultative meeting in Ottawa, the model law provides alternative solutions, without too much detail. It was thought that other legislation might well exist that would, for example, indicate an authoritative source of exchange rates.

Some legislation, notably that in Australia, includes detailed provisions dealing with the position where a foreign judgment is initially registered for an amount greater than the sum actually due. This could happen, for example, by mistake, or when a judgment had already been partially satisfied and this fact had been ignored. It is thought that in most jurisdictions, the necessary correction could be made under general statutory or inherent powers, or in response to an application by the judgment debtor, and no specific provision is made in the model law.

**Clauses 12 and 13 (setting aside or staying registration):** Clause 12 sets out the procedure under which a judgment debtor may apply to have the registration set aside. As mentioned in paragraph 45, above, the drafting allows for different treatment of foreign judgments which are, or may become, subject to appeal in the state of origin. If the final words of clause 11(2)(d) are omitted, clause 13 is needed if it is desired to give a discretionary power to stay.

**Clause 14 (limit of damages):** The courts in some states give judgment for punitive, exemplary or multiple damages, or make awards of compensatory damages far in excess of those considered appropriate elsewhere. Some Commonwealth countries have specific legislation, separate from their general foreign judgments legislation,



to address particular instances of this problem. It might be possible to address this problem via the doctrine of public policy, referred to in clause 6(3)(d), but that would lead to a complete refusal of recognition and so of enforcement, denying the judgment creditor any recovery in the state of enforcement. The public policy doctrine is properly regarded in most Commonwealth jurisdictions as of strictly limited scope.

This problem was recognised in the international discussions at The Hague, and clause 12 seeks to provide a solution based on provisions in the Canadian Uniform Act. These deal both with non-compensatory damages and with excessive compensatory damages. Clause 12(2) will not always be easy to operate, as some foreign judgments will be made in types of action unknown to the law of the state of enforcement so that a local comparator will not be available. It is thought, nonetheless, that the provisions should be included for use where possible.

**Clause 15 (registration of a non-monetary judgment)** makes it clear that for the registration of this type of foreign judgment, an application to the court is required.

**Clause 16 (powers of the court in respect of non-monetary judgments)** deals with the power to modify a non-monetary judgment so as to enable it to be enforced under the legal procedures of the state of enforcement (see paragraph 33, above), and also with the grounds on which permission to register must be refused and in which enforcement may be stayed.

**Clause 17 (rules of court)** may be needed in some countries; in others, generally worded powers to regulate procedure by means of rules of court may suffice.



The Commonwealth