



## RECOGNITION & ENFORCEMENT OF FOREIGN JUDGMENTS

Felix Beneby, Jr.

A person obtaining a foreign judgment in civil proceedings in a superior court, outside the jurisdiction of the Commonwealth of The Bahamas, may have the option of having the judgment recognized and registered in The Bahamas upon complying with certain statutory provisions and/or common law principles. This aligns with a global approach of assistance amongst countries, in relation to enforcing certain legal orders, remedies or awards afforded to the appropriate parties.

The recognition and enforcement of foreign judgments made in applicable countries such as the United Kingdom and select Commonwealth countries (Australia, Bermuda and Jamaica to name a few); are primarily governed by the **Reciprocal of Enforcement of Judgments Act 1924, chapter 67 of the Statute Laws of the Bahamas** (the "REJA"). Section 3 (1) of the REJA provides:

*Where a judgment has been obtained in a superior court outside The Bahamas, the person awarded judgment may apply to the Supreme Court, at any time within twelve months after the date of the judgment, or such longer period as may be allowed by the court, to have the judgment registered in the court, and on any such application the court may, if in all the circumstances of the*

*case it thinks it is just and convenient that the judgment should be enforced in The Bahamas and subject to the provisions of this section, order the judgment to be registered accordingly.*

The REJA defines "judgment" as any judgment or order given or made by a court in any civil proceedings, whether before or after the passing of the REJA and includes an award in proceedings on an arbitration if the award has become enforceable in the same manner as a judgment given by a court in the place of origin.

Section 2 of REJA provides that judgments will **NOT** be registered in The Bahamas under particular circumstances. Such circumstances include If:

- the original court acted without jurisdiction;
- the person obtaining the judgment, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court;
- the defendant in the proceedings was not duly served with the process of the original court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business

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For additional copies of FOCUS, please contact Antonia Burrows at 242 502 5200 or at [aburrows@higgsjohnson.com](mailto:aburrows@higgsjohnson.com).

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within the jurisdiction of that court or agreed to submit to the jurisdiction of that court;

- the judgment was obtained by fraud;
- the defendant satisfies the registering court either that an appeal is pending or that he is entitled or intends to appeal against the judgment;
- the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the registering court.

Application of the REJA was seen in the Bahamian case of **Casio Computer Co. v Tsuru (BHSJ) No. 643 of 2001**, where the Honorable Mr. Justice Small applied the provisions of the REJA in recognizing Casio Computer's worldwide freezing injunction obtained in England and Wales against the Defendant, Tsuru.

If the country in which the judgment was obtained is not an applicable country under the ambit of the REJA, one may still have recourse to have the judgment recognized in The Bahamas, by way of common law upon satisfying certain legal criteria.

In determining whether the judgment is to be recognized and enforced the Bahamian courts will consider, amongst

other things:

- Whether the judgment is final and conclusive;
- Whether the foreign court has jurisdiction; and
- Whether the judgment is for a debt or definite amount of money including a final order for cost and other than a sum payable in respect of taxes, fines, penalties or other charges.

### **Defences against Recognition and Enforcement of Foreign Judgment**

#### *Fraud*

If a question arises as to whether the foreign judgment was obtained fraudulently then the foreign judgment will not be enforced in the Bahamian court.

#### *Public Policy*

Generally, where a law or judgment is contrary to public policy then the foreign judgment will be unenforceable.

#### *Natural Justice*

If it can be concluded that natural justice did not prevail in the proceedings whereby the foreign judgment was granted, it shall not be enforced. This position is synonymous with the latin phrase "*audi alteram partem*" which means let the other side be heard as well.

*Felix Beneby, Jr. is an Associate in the Litigation Practice Group specializing in civil and commercial litigation. He provides legal advice and counsel regarding cross-border and multi-jurisdictional litigation, fraud, asset-tracing and recovery matters .*