

## *Reciprocal Enforcement of Judgments*

In the Commonwealth of the Bahamas judgments obtained outside of the jurisdiction of The Bahamas can be registered in the Bahamas if the provisions of the Reciprocal Enforcement of Judgments Act 1924, chapter 77 of the Statute Laws of the Bahamas (the Act) are complied with.

Section 3 of the Reciprocal Enforcement of Judgments Act provides:

(1). Where a judgment has been obtained in a superior court outside The Bahamas the judgment creditor 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.

(2). No judgment shall be ordered to be registered under this section if –

- (a) the original court acted without jurisdiction;
- (b) the judgment debtor, 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;
- (c) the judgment debtor, being 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 within the jurisdiction of that court or agreed to submit to the jurisdiction of that court;
- (d) the judgment was obtained by fraud;
- (e) the judgment debtor satisfies the registering court either that an appeal is pending or that he is entitled or intends to appeal against the judgment;
- (f) 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.

A judgment is defined in the Act as follows: judgment means any judgment or order given or made by a court in any civil proceedings whether before or after the passing of this Act

and includes an award in proceedings on an arbitration if the award has, in pursuance of the law in force in the place where it was made, become enforceable in the same manner as a judgment given by a court in that place.

In the recent case of Fitzpatrick International Limited and The Republic of Equatorial Guinea in the Supreme Court of the Bahamas—Common Law and Equity Division 2012/CLE/GEN/01674, an application was made to enforce a final arbitral award. In the case the Fitzpatrick Equatorial Guinea Ltd (FEG) obtained an Arbitral Award from the Court of Arbitration of the International Chambers of Commerce sitting in Paris France against the respondent, The Republic of Equatorial Guinea.

On the 7<sup>th</sup> January 2012 FEG assigned the award to the applicant, Fitzpatrick International Limited.

On the 17<sup>th</sup> January 2012 the applicant made an application in the Commercial Court of the Queen's Bench Division of the High Court of Justice of England & Wales under section 101(2) of the Arbitration Act 1996 for permission to enforce the Arbitration of the same manner as a judgment or Order of the Court of same effect. The English Court granted the application and the applicant made application to register the judgment in the Supreme Court of the Bahamas.

The application was made pursuant to the Act but was refused by the Court. The Chief Justice stipulated that Section 3 of the Act states that judgment of the English Court are only registerable in England against a defendant who was ordinarily resident in England or carrying on business in England who had voluntarily submitted to the jurisdiction of the English Court in these proceedings. The Chief Justice stated that this clearly contemplates that the proceedings which give rise to the judgment, must have been proceedings in the English Court against a defendant who met the specified conditions.

The Chief Justice continued to state that the Order was not made in proceedings begun against a defendant ordinarily resident in England or who was carrying on business in England and who has voluntarily submitted to the jurisdiction of the English Court. It therefore did not fall within the provisions of the Act.

**Halsbury Chambers**