

Zimbabwe

Civil Matters (Mutual Assistance) Act

Chapter 8:02

Legislation as at 31 December 2016

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Civil Matters (Mutual Assistance) Act (Chapter 8:02)

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Civil Matters (Mutual Assistance) Act

Chapter 8:02

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AN ACT to provide for the enforcement in Zimbabwe of civil judgments given in foreign countries and territories and to facilitate the enforcement in foreign countries and territories of civil judgments given in Zimbabwe; to provide for the service in Zimbabwe of civil process issued out of foreign courts and to facilitate the service in foreign countries and territories of civil process issued out of courts in Zimbabwe; to provide for the obtaining of evidence of persons in Zimbabwe in connection with civil cases in foreign countries and territories.

Part I – Preliminary

1. Short title

This Act may be cited as the Civil Matters (Mutual Assistance) Act *[Chapter 8:02]*.

2. Interpretation

In this Act—

"**civil case**" means proceedings in any civil or commercial matter before any court or tribunal, and includes proceedings before an arbitrator;

"**designated country**" means a foreign country or territory declared to be a designated country in terms of subsection (2) of section three;

"**give evidence**" includes to answer a question and to produce a thing in evidence;

"**judgment**" means a judgment or order given or made by any court or tribunal requiring the payment of money, and includes an award of compensation or damages to an aggrieved party in criminal proceedings;

"**Minister**" means the Minister of Justice, Legal and Parliamentary Affairs or any other Minister to whom the President may, from time to time, assign the administration of this Act;

"**rules of court**" include rules or regulations governing the practice and procedure of any tribunal;

"**tribunal**" includes any tribunal, commission, body or authority, whether consisting of one or more persons, which performs any function of a judicial nature or by way of arbitration, conciliation or inquiry.

3. Application of act to designated countries and international tribunals

(1) In this section—

"international tribunal" means any court or tribunal which, in pursuance of any international agreement or any resolution of the General Assembly of the United Nations—

- (a) exercises any jurisdiction or performs any function of a judicial nature or by way of arbitration, conciliation or inquiry; or
- (b) is appointed, whether permanently or temporarily, for the purpose of exercising any jurisdiction or performing any such function.

(2) Subject to this section, the Minister may, by order in the *Gazette*—

- (a) declare any foreign country or territory to be a designated country for the purposes of this Act or such of the provisions of this Act as he may specify in the order;
- (b) declare that this Act, or such of the provisions of this Act as he may specify in the order, shall apply in relation to any international tribunal.

(3) In an order under subsection (2), the Minister may declare that—

- (a) the application of this Act, or of any provision of this Act, shall be restricted to any particular class of judgments, process or civil cases in relation to the designated country or international tribunal concerned; or
- (b) this Act, or any provision of this Act, shall apply in relation to the designated country or international tribunal concerned subject to specified restrictions or modifications; and this Act or that provision, as the case may be, shall apply in relation to that designated country or international tribunal accordingly.

(4) Subject to this Act and any restrictions or modifications specified in the order concerned, this Act shall apply to—

- (a) judgments given in a designated country or by an international tribunal specified in an order under subsection (2); and
- (b) summonses and other process issued in a designated country or by an international tribunal specified in an order under subsection (2); and
- (c) civil cases commenced in a designated country or before an international tribunal specified in an order under subsection (2);

whether before, on or after the date on which the country or territory concerned became a designated country or the international tribunal was specified in the order, as the case may be.

Part II – Reciprocal enforcement of judgments

4. Interpretation in Part II

In this Part—

"appropriate court", in relation to—

- (a) any judgment, means the High Court;
- (b) any judgment which would have been within the jurisdiction of a magistrates court had the cause of action arisen wholly within the court's province, means that magistrates court;

"defendant" includes any person against whom proceedings, whether in convention or reconvention, are instituted in any court or tribunal;

"judgment creditor" means the person in whose favour a judgment was given or any other person in whom any of his rights under the judgment have become vested;

"judgment debtor" means the person against whom a judgment was given or any other person against whom the judgment is enforceable;

"plaintiff" includes any person who institutes proceedings, whether in convention or reconvention, in any court or tribunal or on whose behalf such proceedings are instituted;

"registration", in relation to a judgment, means registration in terms of subsection (1) of section seven.

5. Application for registration of foreign judgment

- (1) Subject to subsection (2), a judgment creditor under a judgment given in a designated country may apply to an appropriate court for the registration of that judgment in the appropriate court.
- (2) An application under subsection (1) for the registration of a judgment—
 - (a) may be made at any time within six years after—
 - (i) the date of the judgment; or
 - (ii) the determination of any proceedings by way of appeal or review, where such proceedings have been instituted in respect of the judgment; and
 - (b) shall be made in the form and manner prescribed in rules of court applicable to the appropriate court.

6. Grant or refusal of application

- (1) Subject to this section, in an application under section five, an appropriate court shall direct the registration of the judgment concerned if the court is satisfied that it is just and convenient for the judgment to be enforced in Zimbabwe.
- (2) An appropriate court shall not direct the registration of a judgment if the court is satisfied that—
 - (a) the court or tribunal that gave the judgment had no jurisdiction to do so; or
 - (b) the judgment is not a final and conclusive judgment of the court or tribunal concerned; or
 - (c) the judgment could not be enforced wholly or partly by execution in the designated country in which it was given; or
 - (d) the judgment has been set aside by a court of competent jurisdiction; or
 - (e) the judgment has been wholly satisfied; or
 - (f) the judgment has become prescribed under the law of the designated country in which it was given; or
 - (g) enforcement of the judgment would be contrary to any law or to public policy in Zimbabwe; or
 - (h) the judgment is for the payment of—
 - (i) any tax, duty, rate or similar charge; or
 - (ii) a fine or other penalty; or
 - (iii) maintenance for any person; or
 - (i) the judgment was obtained by fraud; or
 - (j) the applicant is not a judgment creditor vested with a right to seek enforcement of the judgment; or

- (k) the judgment debtor, as defendant in the proceedings that gave rise to the judgment, was not able to appear and defend the proceedings because he did not receive reasonable notice of them.
- (3) When directing the registration of a judgment an appropriate court may give such ancillary orders as it considers necessary or desirable, including an order prohibiting the removal or disposal of any assets of the judgment debtor.
- (4) If on the date of an application under section five the judgment concerned has been partly satisfied, the appropriate court may direct that the judgment be registered in respect of the balance remaining payable at that date.
- (5) Where a court refuses to direct the registration of a judgment on the ground that—
 - (a) an appeal against it is pending or the judgment debtor is entitled to appeal against it and intends to do so; or
 - (b) the judgment is not enforceable by execution in the designated country in which it was given;

the refusal shall not prevent the bringing of a further application under this section when the appeal has been determined or the judgment has become enforceable by execution in the designated country concerned, as the case may be.

7. Registration of foreign judgment and effect of registration

- (1) Where an appropriate court has directed the registration of a foreign judgment in terms of section six, the registrar or clerk of the court shall forthwith—
 - (a) register the judgment in the manner prescribed in rules of court applicable to the appropriate court; and
 - (b) give the judgment debtor notice of the registration and of any ancillary order that the appropriate court may have made.
- (2) Subject to this section and to sections eight and nine, upon the registration of a judgment in terms of subsection (1)—
 - (a) the judgment shall have the same effect for the purposes of execution; and
 - (b) proceedings may be taken on the judgment; and
 - (c) the sum for which the judgment is registered shall bear interest; and
 - (d) the appropriate court concerned shall have the same control over the judgment;as if the judgment were a judgment of the appropriate court concerned.
- (3) Subject to any order of the appropriate court concerned the following amounts shall be included in the money payable under any registered judgment—
 - (a) any interest payable under the law of the designated country concerned, up to the time of the judgment's registration; and
 - (b) the costs of and incidental to the judgment's registration, including the costs of obtaining a certified copy of the judgment.
- (4) No execution shall issue on a registered judgment until the period within which an application for setting the registration aside may be made has elapsed.

8. Setting aside of registration of foreign judgment

- (1) Subject to this section, a judgment debtor under a registered judgment may apply to the court where the judgment is registered for its registration to be set aside.
- (2) An application in terms of subsection (1) shall be made within the time and in the manner prescribed in rules of court applicable to the court concerned.
- (3) Without the leave of the court, a judgment debtor shall not apply in terms of subsection (1) for the setting aside of the registration of a judgment on any ground that was determined by the court in the application for registration of the judgment.
- (4) Subject to subsection (5), in an application in terms of subsection (1) the court shall set aside the registration of the judgment concerned if the court is satisfied that, for any reason referred to in subsection (2) of section six, the registration should be set aside.
- (5) If the court is satisfied, in an application in terms of subsection (1), that—
 - (a) an appeal is pending against the judgment concerned or that the applicant is entitled to appeal against it and intends to do so, the court may postpone the application to enable the appeal to be determined;
 - (b) the judgment has been partly satisfied, the court may order the judgment to be registered for the balance remaining payable under the judgment.
- (6) Where the registration of a judgment is set aside on the ground that—
 - (a) an appeal against it is pending or that the judgment debtor is entitled to appeal against it and intends to do so; or
 - (b) the judgment is not enforceable by execution in the designated country in which it was given;

the setting aside of the registration shall not prevent the bringing of a further application under section six when the appeal has been determined or the judgment has become enforceable by execution in the designated country concerned, as the case may be.

9. Evidence and presumptions

- (1) A document purporting to be a copy of a judgment of a court or tribunal in a designated country and purporting to be certified as a true copy of an original judgment of that court or tribunal by someone styled in that document to be a registrar, clerk, secretary or other officer of that court or tribunal shall be admissible in evidence in proceedings under this Part on its production by any person and shall be *prima facie* proof of its contents.
- (2) A document made or executed outside Zimbabwe shall be admissible in evidence in proceedings under this Part in all respects as if it had been made or executed in Zimbabwe.
- (3) Documents referred to in subsection (1) and (2) need not be authenticated.
- (4) In any proceedings under this Part for the registration of a judgment or for the setting aside of its registration, the court or tribunal which gave the judgment shall be deemed to have had jurisdiction—
 - (a) if the judgment debtor—
 - (i) was a plaintiff in the proceedings or submitted to the jurisdiction of the court or tribunal concerned by voluntarily appearing in the proceedings for any purpose other than protecting or obtaining the release of property seized or threatened with seizure in the proceedings or contesting the jurisdiction of the court or tribunal; or

- (ii) was a defendant in the proceedings and, before the proceedings commenced, agreed in respect of the subject-matter of the proceedings to submit to the jurisdiction of any court or tribunal in the designated country concerned; or
- (iii) was a defendant in the proceedings and—
 - A. when the proceedings were instituted, was resident in the designated country concerned or, being a juristic person, had its principal place of business in that designated country; or
 - B. at any time had an office or place of business in the designated country concerned through or at which the transaction which gave rise to the proceedings was effected; or
- (b) where the proceedings related to movable or immovable property, if the property was in the designated country concerned when the proceedings were instituted; or
- (c) in respect of any proceedings other than those referred to in paragraph (a) or (b), if the jurisdiction of the court or tribunal by which the judgment was given is recognized under the law of Zimbabwe.

10. Act not to affect conclusive nature of foreign judgments

Nothing in this Part shall be construed as preventing any court in Zimbabwe from recognizing any judgment given by a court or tribunal outside Zimbabwe, other than a judgment the registration of which has been refused or set aside in terms of section six or eight, as being conclusive of any question of law or of fact decided in the judgment.

11. Issue of documents for enforcement of judgments given in Zimbabwe.

- (1) Where a judgment creditor wishes to enforce in a designated country a judgment given in Zimbabwe, the registrar, clerk or secretary of the court or tribunal which gave the judgment shall, on application by the judgment debtor, provide him with—
 - (a) a copy of the judgment, certified as correct by the registrar, clerk or secretary; and
 - (b) a certificate stating—
 - (i) the name of the court or tribunal which gave the judgment and the date on which and the place at which it was given, where such particulars are not stated on the copy of the judgment itself; and
 - (ii) the nature of the proceedings as a consequence of which the judgment was given; and
 - (iii) whether or not an appeal has been noted against the judgment and, if such an appeal has been determined, its result; and
 - (iv) the extent to which the judgment has been satisfied; and
 - (v) any other particulars that may be prescribed in rules of court applicable to the court or tribunal concerned.
- (2) An application for the purposes of subsection (1) shall be made in the manner and accompanied by the fee, if any, prescribed in rules of court applicable to the court or tribunal concerned.

Part III – Service of civil process and attendance of witnesses in designated countries

12. Interpretation in Part III

In this Part—

"process" means a summons, writ, notice or other document issued or executed in relation to a civil case, and includes a subpoena;

"subpoena" means any document requiring the attendance of a person before a court or tribunal as a witness in a civil case.

13. Service of process received from designated country

- (1) Subject to subsections (3) and (4), where any process that purports to have been issued by an officer of a court in a designated country is received by a magistrate with a request that it be served within the province for which the magistrate's court is established, the magistrate shall, if he is satisfied that the process was lawfully issued, endorse the process for service.
- (2) Subject to rules of court applicable to magistrates courts, any process endorsed in terms of subsection (1) shall be served as if it were process issued out of the court of the magistrate concerned.
- (3) Any process not drawn up in the English language or in any other language commonly spoken within the area in which the process is to be served shall not be endorsed in terms of subsection (1) unless it is accompanied by a sworn translation in English or such other language.
- (4) Where the process referred to in subsection (1) is a subpoena requiring the attendance of any person before a court or tribunal in a designated country, the magistrate shall not endorse it for service unless he is satisfied that, when the subpoena is served on that person, there will be tendered to him a sum sufficient to cover his reasonable expenses in proceeding to and returning from the court or tribunal named in the subpoena and during his detention at the place where his evidence is to be given.
- (5) Unless otherwise provided in the order designating the foreign country or territory concerned, service of a subpoena that has been issued in a designated country and endorsed for service in terms of subsection (1) shall not impose any obligation under the law of Zimbabwe to comply with it.

14. Authentication of foreign process not required

Notwithstanding any other law, it shall not be necessary for any process to be authenticated for service or for a return of service under this Part, if the process was issued in a designated country and is certified by a person purporting to be a judicial officer or other officer of court in that designated country as an original process or as a true copy or translation of the process, as the case may be.

15. Penalty for failing to obey certain subpoenas

- (1) Where—
 - (a) an order under section three designating a foreign country or territory provides that obedience to any subpoena issued in that designated country and served in Zimbabwe shall be compulsory; and

- (b) a person on whom such a subpoena is served in terms of section thirteen fails without sufficient cause to attend at the time and place specified in the subpoena;

that person shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[subsection as amended by section 4 of Act 22 of 2001]

- (2) A magistrates court within whose area of jurisdiction the subpoena has been served or the accused person ordinarily resides shall have jurisdiction to try a person for an offence in terms of subsection (1).
- (3) In any prosecution for an offence in terms of subsection (1)—
 - (a) the return of the person who is authorized to serve the subpoena concerned in terms of section thirteen, showing that service was duly effected, shall be *prima facie* proof of such service; and
 - (b) a certificate purporting to be by the person presiding at the court or tribunal from which the subpoena concerned was issued, and stating that the accused person failed to attend at the time and place specified in the subpoena, shall be *prima facie* proof of such failure.

16. Certain fees not recoverable

No fees other than disbursements shall be recoverable from a court outside Zimbabwe in respect of the service of any process in terms of this Part, unless the Minister otherwise directs.

17. Issue of process for service in designated country

Notwithstanding any other law, process may be issued by the Registrar of the High Court or the clerk of a magistrates court for service in a designated country without leave of the court concerned.

18. Proof of service of process issued in Zimbabwe

Where process issued in Zimbabwe has been served in a designated country, the service may be proved—

- (a) by an affidavit sworn before a justice of the peace, commissioner of oaths or notary public or any other person with authority to administer oaths in the designated country; or
- (b) in any other manner prescribed in rules of court applicable to the court before which the service is sought to be proved.

Part IV – Obtaining of evidence for use in designated countries

19. Interpretation in Part IV

In this Part—

"requesting court or tribunal" means the court or tribunal pursuant to whose request an application is made in section twenty.

20. Application to Zimbabwean court for assistance in obtaining evidence

- (1) Where an application is made to the High Court or a magistrates court for an order for evidence to be obtained in Zimbabwe, and the court is satisfied—
 - (a) that the application is made in pursuance of a request issued by or on behalf of a court or tribunal exercising jurisdiction in a designated country; and

- (b) that the evidence to which the application relates is to be obtained for the purposes of a civil case which either has been instituted before the requesting court or tribunal or whose institution before that court or tribunal is contemplated; and
- (c) in the case of an application made to a magistrates court, that the evidence is to be obtained within the province for which the magistrates court has been established;

the court may make an order referred to in section twenty-one.

- (2) An application in terms of subsection (1)—
 - (a) may be made by or on behalf of—
 - (i) any party to the civil case concerned; or
 - (ii) any officer of the requesting court or tribunal; or
 - (iii) the Minister;
 - (b) shall be made in the form and manner prescribed in rules of court applicable to the High Court or the magistrates court, as the case may be.

21. Orders that may be made on application for assistance

- (1) Subject to this Part, on an application in terms of section twenty, the High Court or the magistrates court concerned, as the case may be, may by order make such provision for obtaining evidence as the court considers will give effect to the request pursuant to which the application was made.
- (2) Without prejudice to the generality of subsection (1), an order under that subsection may make provision for—
 - (a) the examination of any witness, either orally or in writing;
 - (b) the production of any document;
 - (c) the inspection, photographing, preservation, custody or detention of any property, whether movable or immovable;
 - (d) the taking of a sample of any property, whether movable or immovable, and the carrying out of any experiment on or with any such property;
 - (e) the medical examination of any person, including the taking and testing of a sample of his blood.
- (3) An order under subsection (1)—
 - (a) may require a person specified therein to take such steps as the court considers appropriate to give effect to the order;
 - (b) shall not require the doing of anything that cannot be required to be done by way of obtaining evidence for the purposes of a civil case in the court making the order:

Provided that an order may require a person to give testimony, either orally or in writing, otherwise than an oath where this is asked for by the requesting court;
 - (c) shall not require a person—
 - (i) to state what documents relevant to the civil case to which the application relates are or have been in his possession, custody or power; or
 - (ii) to produce any document other than documents specified in the order as being documents appearing to the court making the order to be, or to be likely to be, in his possession, custody or power.

- (4) A person who, by virtue of an order under subsection (1), is required to attend at any place shall be entitled to such fees, allowances and expenses as are prescribed in rules of court applicable to the court making the order.

22. Privileges of persons giving evidence

- (1) A person shall not be compelled by virtue of an order under subsection (1) of section twenty-one to give any evidence which he could not be compelled to give—
- (a) in a civil case in Zimbabwe; or
 - (b) subject to subsection (2), in a civil case in the designated country in which the requesting court or tribunal exercises jurisdiction.
- (2) Paragraph (b) of subsection (1) shall not apply unless the person's claim to be exempt from giving the evidence concerned is—
- (a) supported, either conditionally or unconditionally, by a statement contained in the request; or
 - (b) conceded by the person who applied for the order;

and, where his claim is not so supported or conceded, he may be required to give the evidence concerned:

Provided that the evidence shall not be transmitted to the requesting court if that court, on the matter being referred to it, upholds the claim.

23. Offences by witnesses

- (1) A person who is required by an order under subsection (1) of section twenty-one to give evidence and who, without sufficient cause—
- (a) fails to attend at the time and place specified in the order or in any process issued in consequence of the order, or fails to remain in attendance until the conclusion of his examination or until he is excused from further attendance by the person before whom he is required to give evidence; or
 - (b) refuses to be sworn as a witness, unless in its request the requesting court required or permitted his evidence to be given unsworn; or
 - (c) fails to answer fully and satisfactorily any question put to him; or
 - (d) fails to produce any thing in his possession or custody which he was required to produce;

shall be guilty of an offence and liable to a fine not exceeding level five or to imprisonment for a period not exceeding six months or to both such fine and such imprisonment.

[subsection as amended by section 4 of Act 22 of 2001]

- (2) A person who, being required by an order under subsection (1) of section twenty-one to give evidence, gives false evidence which he knows to be false or does not have reasonable grounds to believe to be true, shall be guilty of an offence and liable to a fine not exceeding level seven or to imprisonment for a period not exceeding two years or to both such fine and such imprisonment.

[subsection as amended by section 4 of Act 22 of 2001]

Part V – General

24. Immunity of witnesses from designated countries

No person who has been subpoenaed in a designated country to appear before a court or tribunal in Zimbabwe and, by virtue of a law in that designated country, is required so to appear shall be liable, while in Zimbabwe for the purpose of appearing before the court or tribunal, to be arrested on a civil or criminal warrant for any debt due or offence committed in Zimbabwe before he entered Zimbabwe for that purpose.

25. Act not to derogate from other laws

This Act shall be regarded as additional to, and not as limiting the provisions of any other law relating to the recognition and enforcement of foreign judgments, the service of process or the taking of evidence, whether on commission or otherwise.

26. Repeals and savings

- (1) Subject to this section, the Reciprocal Enforcement of Judgments Act [*Chapter 51 of 1974*], the Service of Process and Execution of Judgments Act [*Chapter 53 of 1974*] and the Witnesses Compulsory Attendance Act [*Chapter 55 of 1974*] are repealed.
- (2) Any judgment which was registered in terms of the Reciprocal Enforcement of Judgments Act [*Chapter 51 of 1974*] shall be deemed to have been registered in terms of Part II of this Act and may be enforced accordingly.
- (3) Any process which was issued or other thing made, done or commenced under any Act referred to in subsection (1) and which, immediately before the date of commencement of this Act, had or was capable of acquiring legal effect shall be deemed, on and after that date, to have been issued, made, done or commenced under the appropriate provision of this Act and shall continue to have or to be capable of acquiring, as the case may be, the same legal effect