

NORTHERN TERRITORY OF AUSTRALIA

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT

As in force at 1 May 1988

Table of provisions

<b>Part I</b>	<b>Preliminary</b>	
1	Short title .....	1
2	Commencement .....	1
4	Definitions.....	1
<b>Part II</b>	<b>Reciprocal enforcement of judgments</b>	
5	Application of this Part.....	2
6	Application for, and effect of, registration of foreign judgment.....	3
7	Rules of Court for the purposes of this Part.....	5
8	Cases in which registration judgments shall or may be set aside .....	6
9	Powers of the Supreme Court on application to set aside registration.....	8
10	Judgments which can be registered not to be enforceable otherwise .....	9
<b>Part III</b>	<b>Miscellaneous</b>	
11	Continued application of the <i>Reciprocal Enforcement of Judgments Ordinance 1925</i> .....	9
12	General effects of certain judgments .....	10
13	Power to make judgments unenforceable in the Territory if no reciprocity .....	11
14	Issue of certificates of judgments obtained in the Territory.....	11
15	Savings re declarations revoked, allowed or varied.....	11
<b>Part IV</b>	<b>Enforcement of judgments to which Part II does not apply</b>	
16	Certain judgments not enforceable at common law.....	12

ENDNOTES



# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 1 May 1988

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## FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT

An Act to provide for the enforcement of foreign judgments in the Northern Territory of Australia and for other purposes

### Part I Preliminary

#### 1 Short title

This Act may be cited as the *Foreign Judgments (Reciprocal Enforcement) Act*.

#### 2 Commencement

This Act shall come into operation on a date to be fixed by the Attorney-General by notice published in the *Gazette*.

#### 4 Definitions

(1) In this Act, unless the contrary intention appears:

***appeal*** includes a proceeding by way of discharging or setting aside a judgment or an application for a new trial or a stay of execution.

***country of the original court*** means the country in which the original court is situated.

***judgment*** means a judgment or order given or made by a court in civil proceedings, or a judgment or order given or made by a court in criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party.

***judgment creditor*** means the person in whose favour the judgment was given, and includes a person in whom the rights under the judgment have become vested by succession, assignment or otherwise.

***judgment debtor*** means the person against whom the judgment is enforceable under the law of the country of the original court.

**judgments given in the Supreme Court** includes judgments given in the High Court on appeal against judgments given in the Supreme Court.

**non-recoverable tax** means tax other than recoverable tax.

**prescribed** means prescribed by Rules made under section 7.

**recoverable tax** means tax payable under the laws of Papua New Guinea relating to taxes on income, but does not include:

- (a) additional or other tax payable, by way of penalty, interest or otherwise, because of a contravention or failure to comply with any of those laws or of a requirement made under any of those laws; or
- (b) tax of a class or description for the time being declared under subsection (3).

**registration** means registration under Part II, and **register** and **registered** have corresponding meanings.

**the Master** has the same meaning as in the *Supreme Court Act*.

**the original court** in relation to a judgment, means the court by which the judgment was given.

- (2) For the purposes of this Act, the expression "action in personam" shall not be deemed to include a matrimonial cause or proceedings in connection with matrimonial matters, the administration of the estates of deceased persons, bankruptcy or insolvency, the winding up of companies, lunacy or the guardianship of infants.
- (3) Where the Minister is of the opinion that a tax payable under the laws of Papua New Guinea is not properly a tax on income, he may, for the purposes of paragraph (b) of the definition of **recoverable tax**, by notice in the *Gazette*, declare a class or description of tax specified in the notice not to be recoverable tax.

## Part II                      Reciprocal enforcement of judgments

### 5                      Application of this Part

- (1) If the Minister is satisfied that, in the event of the benefits conferred by this Part being applied to and in relation to judgments given in the superior courts of a country outside Australia, substantial reciprocity of treatment will be assured as respects the enforcement within that country of judgments given in the Supreme Court, he may, by notice in the *Gazette*, declare:

- (a) that this Part applies in relation to that country; and
  - (b) that such courts of that country as are specified in the notice shall, for the purposes of this Part, be deemed to be superior courts of that country.
- (2) A judgment of a superior court of a country in relation to which this Part applies, other than a judgment of such a court given on appeal from a court which is not a superior court, is a judgment to and in relation to which this Part applies if:
- (a) it is final and conclusive as between the parties to the proceedings;
  - (b) there is payable under the judgment:
    - (i) a sum of money, not being (except as referred to in subparagraph (ii)) a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; or
    - (ii) a sum of money payable in respect of a recoverable tax; and
  - (c) it is given after the coming into operation of the notice declaring that this Part applies in relation to that country.
- (3) For the purposes of this section, a judgment shall be deemed to be final and conclusive notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court.
- (4) A notice under this section may make provision with respect to the manner in which it may be proved:
- (a) that a judgment of the courts of the country specified in the notice could be enforced by execution in that country; or
  - (b) that interest is payable under such a judgment, and the rates of the interest.

## **6 Application for, and effect of, registration of foreign judgment**

- (1) A person, being a judgment creditor under a judgment to and in relation to which this Part applies, may apply to the Supreme Court at any time within 6 years after the date of the judgment, or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings, to have the judgment registered in the Supreme Court.

- (2) Subject to the provisions of this Act and to proof of the matters prescribed by the Rules made under section 7, the Supreme Court shall, on an application under this section, order the judgment to be registered.
- (3) A judgment shall not be registered if at the date of the application:
- (a) it has been wholly satisfied; or
  - (b) it could not be enforced by execution in the country of the original court.
- (4) Subject to the provisions of this Act with respect to the setting aside of registration:
- (a) a registered judgment is, for the purposes of execution, of the same force and effect;
  - (b) proceedings may be taken on a registered judgment;
  - (c) the sum for which a judgment is registered carries interest; and
  - (d) the Supreme Court has the same control over the execution of a registered judgment,
- as if the judgment had been a judgment originally given in the Supreme Court and entered on the date of registration.
- (5) Execution shall not issue on a registered judgment so long as, under this Part and the Rules of Court of the Supreme Court, it is competent for any party to make an application to have the registration of the judgment set aside, or, where such an application is made, until after the application has been finally determined.
- (6) Where the sum payable under a judgment which is to be registered is expressed in a currency other than Australian currency, the judgment shall be registered as if it were a judgment for such sum in Australian currency as, on the basis of the rate of exchange prevailing at the date of the judgment of the original court, is equivalent to the sum so payable.
- (6A) Without affecting subsection (7), where, on an application for the registration of a judgment, it appears to the Supreme Court that:
- (a) a judgment is in respect of a sum of money payable in respect of both recoverable tax and non-recoverable tax; and
  - (b) the judgment could have been registered if it had been in respect of recoverable tax only,

the judgment may be registered in respect of the sum less so much as relates to non-recoverable tax, but may not be registered in respect of so much of the sum as relates to non-recoverable tax.

- (7) If, at the date of the application for registration of a judgment, the judgment of the original court has been partly satisfied, the judgment shall not be registered in respect of the whole sum payable under the judgment of the original court, but only in respect of the balance remaining payable at that date.
- (8) If, on an application for the registration of a judgment, it appears to the Supreme Court that the judgment is in respect of different matters and that some, but not all, of the provisions of the judgment are such that, if those provisions had been contained in separate judgments, those judgments could properly have been registered, the judgment may be registered in respect of those provisions but not in respect of any other provisions sustained in it.
- (9) In addition to the sum of money payable under the judgment of the original court, including any interest which by the law of the country of the original court becomes due under the judgment up to the time of registration, the judgment shall be registered for the reasonable costs of an incidental to registration, including the costs of obtaining a certified copy of the judgment from the original court.

## **7 Rules of Court for the purposes of this Part**

The Judges of the Supreme Court who are not appointed as acting or additional Judges, or a majority of those Judges may make Rules (not inconsistent with a notice under this Act) prescribing all matters which by this Act are required or permitted to be prescribed and, in particular, making provision for or in relation to:

- (a) the giving of security for costs by a person applying for the registration of a judgment;
- (b) the matters to be provided on an application for the registration of a judgment and the mode of proving those matters;
- (c) the service on the judgment debtor of notice of the registration of a judgment;
- (d) the fixing of the period within which an application may be made to have the registration of a judgment set aside and extension of the period so fixed;

- (e) the method of determining a question arising under this Act as to:
  - (i) whether a judgment given in a country in relation to which this Part applies can be enforced by execution in the country of the original court; or
  - (ii) what interest is payable under a judgment under the law of the country of the original court;
- (f) the fees payable in respect of matters under this Act; and
- (g) the costs payable to legal practitioners for work done in relation to matters under this Act.

## **8 Cases in which registration judgments shall or may be set aside**

- (1) On an application in that behalf duly made to the Supreme Court by a party against whom a registered judgment may be enforced, the registration of the judgment:
  - (a) shall be set aside if the Court is satisfied:
    - (i) that the judgment is not a judgment to which this Part applies or was registered in contravention of the provisions of this Act;
    - (ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case;
    - (iii) that the judgment debtor, being the defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on him in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear;
    - (iv) that the judgment was obtained by fraud;
    - (v) that the judgment has been reversed on appeal or otherwise set aside in the courts of the country of the original court;
    - (vi) that the enforcement of the judgment would be contrary to public policy in the Northern Territory; or



- (vii) that the rights under the judgment are not vested in the person by whom the application for registration was made; and
  - (b) may be set aside if the Court is satisfied that the matter in dispute in the proceedings in the original court had previously to the date of the judgment in the original court been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.
- (2) For the purposes of this section, the courts of the country of the original court shall, subject to sub-section (3), be deemed to have had jurisdiction:
- (a) in the case of a judgment given in an action in personam:
    - (i) if the judgment debtor voluntarily submitted to the jurisdiction of the original court;
    - (ii) if the judgment debtor was plaintiff in, or counter-claimed in, the proceedings in the original court;
    - (iii) if the judgment debtor, being a defendant in the original court, had before the commencement of the proceedings agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of the country of that court;
    - (iv) if the judgment debtor, being a defendant in the original court, was at the time when the proceedings were instituted resident in, or being a body corporate had its principal place of business in, the country of that court; or
    - (v) if the judgment debtor, being a defendant in the original court, had an office or place of business in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place;
  - (b) in the case of a judgment given in an action of which the subject matter was immovable property or in an action in rem of which the subject matter was movable property if the property in question was at the time of the proceedings in the original court situate in the country of that court; and
  - (c) in the case of a judgment given in an action other than an action referred to in paragraph (a) or (b), if the jurisdiction of the original court is recognized by the law of the Northern Territory.

- (3) Notwithstanding anything in subsection (2), the courts of the country of the original court shall not be deemed to have had jurisdiction:
- (a) if the subject matter of the proceedings was immovable property outside the country of the original court;
  - (b) except in the cases mentioned in subsection (2)(a)(i), (ii), (iii) and (c), if the bringing of the proceedings in the original court was contrary to an agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of the country of the court; or
  - (c) if the judgment debtor, being a defendant in the original proceedings, was a person who under the rules of public international law was entitled to immunity from the jurisdiction of the courts of the country of the original court and did not submit to the jurisdiction of that court.
- (4) For the purposes of subsection (2)(a), a person does not voluntarily submit to the jurisdiction of a court by:
- (a) entering an appearance in proceedings in the court; or
  - (b) participating in proceedings in the court only to such extent as is reasonably necessary,

for the purposes only of one or more of the following:

- (c) protecting, or obtaining the release of:
  - (i) property seized, or threatened with seizure, in the proceedings; or
  - (ii) property subject to an order restraining its disposition or disposal;
- (d) contesting the jurisdiction of the court; or
- (e) inviting the court in its discretion not to exercise its jurisdiction in the proceedings.

## **9 Powers of the Supreme Court on application to set aside registration**

- (1) If, on an application to set aside the registration of a judgment, the applicant satisfies the Supreme Court either that an appeal is pending, or that he is entitled and intends to appeal against the judgment, the Court, if it thinks fit, may, on such terms as it thinks just, either set aside the registration or adjourn the application to set

aside the registration until after the expiration of such period as appears to the Court to be reasonably sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by the competent tribunal.

- (2) Where the registration of a judgment is set aside under subsection (1), or solely for the reason that the judgment was not at the date of the application for registration enforceable by execution in the country of the original court, the setting aside of the registration does not prejudice a further application to register the judgment when the appeal has been disposed of or if and when the judgment becomes enforceable by execution in that country, as the case may be.
- (3) Where the registration of a judgment is set aside solely for the reason that the judgment, notwithstanding that it had at the date of the application for registration been partly satisfied, was registered for the whole sum payable under it, the Supreme Court shall, on the application of the judgment creditor, order the judgment to be registered for the balance remaining payable at the date of the last-mentioned application.

**10            Judgments which can be registered not to be enforceable otherwise**

No proceedings for the recovery of a sum payable under a judgment to and in relation to which this Part applies, other than proceedings by way of registration of the judgment, shall be entertained by a court having jurisdiction in the Northern Territory.

**Part III            Miscellaneous**

**11            Continued application of the *Reciprocal Enforcement of Judgments Ordinance 1925***

- (1) After the commencement of this Act:
  - (a) the powers conferred by section 7 of the *Reciprocal Enforcement of Judgments Ordinance 1925* cease to be exercisable; and
  - (b) that Ordinance continues, subject to subsection (2), to apply in relation to judgments obtained in those parts of the Queen's dominions to which that Ordinance applies or extends immediately before the commencement of this Act.

(2) Where:

- (a) the *Reciprocal Enforcement of Judgments Ordinance 1925* applies or extends to judgments obtained in a country; and
- (b) the Minister has, by notice under section 5, declared that Part II applies in relation to that country,

the *Reciprocal Enforcement of Judgments Ordinance 1925* ceases to apply or extend to judgments obtained in that country except in relation to judgments which the Supreme Court has, before the date of the publication of the notice, ordered to be registered under that Ordinance.

## **12 General effects of certain judgments**

- (1) Subject to this section, a judgment to which Part II applies or would have applied if a sum of money had been payable under it, whether it can be registered or not, and whether, if it can be registered, it is registered or not, shall be recognized in any court in the Northern Territory as conclusive between the parties to it in all proceedings founded on the same cause of action and may be relied on by way of defence or counterclaim in any such proceedings.
- (2) This section does not apply in the case of a judgment:
  - (a) where the judgment has been registered and the registration has been set aside on a ground other than:
    - (i) that a sum of money was not payable under the judgment;
    - (ii) that the judgment had been wholly or partly satisfied; or
    - (iii) that at the date of the application the judgment could not be enforced by execution in the country of the original court; or
  - (b) where the judgment has not been registered (whether it could have been registered or not) and it is shown that, if it had been registered, the registration would have been set aside on an application for that purpose on a ground other than one of the grounds specified in paragraph (a).
- (3) Nothing in this section shall be taken to prevent any court having jurisdiction in the Northern Territory from recognizing a judgment as conclusive of any matter of law or fact decided in the judgment if that judgment would have been so recognized before the commencement of this Act.

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**13 Power to make judgments unenforceable in the Territory if no reciprocity**

- (1) If it appears to the Minister that the treatment in respect of recognition and enforcement accorded by the courts of a country to judgments given in the Supreme Court is substantially less favourable than that accorded by the courts of the Northern Territory to judgments of the superior courts of that country, the Minister may by notice in the *Gazette* declare that this section applies in relation to that country.
- (2) Except in so far as the Minister in the notice under this section otherwise directs, no proceedings shall be entertained in a court in the Northern Territory for the recovery of a sum alleged to be payable under a judgment given in a court of a country declared by notice under this section to be a country in relation to which this section applies.

**14 Issue of certificates of judgments obtained in the Territory**

- (1) Except as provided in subsection (2), where a judgment under which a sum of money is payable has been entered in the Supreme Court against a person and the judgment creditor desires to enforce the judgment in a country in relation to which Part II applies, the Master shall on an application made by the judgment creditor as prescribed and on payment of the prescribed fee, and if such matters with respect to the judgment as are pre-scribed are shown, issue to the judgment creditor a certified copy of the judgment, together with a certificate containing such particulars with respect to the action, including the causes of action, and the rate of interest, if any, payable on the sum payable under the judgment, as are prescribed.
- (2) Where execution of a judgment is stayed for any period pending an appeal or for any other reason, an application shall not be made under this section with respect to the judgment until the expiration of that period.

**15 Savings re declarations revoked, allowed or varied**

- (1) In this section, ***relevant declaration*** means:
  - (a) a declaration revoking, altering or amending a declaration under section 4(3) or 5(1); or
  - (b) a declaration under section 4(3).
- (2) Subject to subsection (3), this Act continues to apply to and in respect of judgments given before the coming into operation of a relevant declaration as if the declaration had not been made.

(3) Where, by reason of the coming into operation of a relevant declaration:

- (a) Part II ceases to apply to a country;
- (b) a court of a country ceases to be a superior court for the purposes of Part II; or
- (c) a recoverable tax becomes a non-recoverable tax,

the Minister may, in the relevant declaration or a subsequent declaration, direct that this Act shall not apply to or in respect of:

- (d) all judgments (other than a judgment referred to in subsection (4)) given before the coming into operation of the relevant declaration, being:
  - (i) judgments given in the courts of the country referred to in paragraph (a);
  - (ii) judgments given in the courts referred to in paragraph (b); or
  - (iii) judgments so far as sums of money are payable in respect of a tax referred to in paragraph (c); or
- (e) such class or description of the judgments referred to in paragraph (d) as is specified in the declaration,

and the direction shall, subject to subsection (4), have effect according to its terms.

(4) A direction under subsection (3) does not have effect in relation to a judgment if an application for the registration of the judgment was made in accordance with this Act before the declaration in which the direction was given came into operation.

## **Part IV                      Enforcement of judgments to which Part II does not apply**

### **16                      Certain judgments not enforceable at common law**

For the purposes of proceedings brought in the Territory for the recovery of an amount payable under a judgment given in an action in personam by a court of a Commonwealth country (other than Australia) or a foreign country, not being a judgment to which Part II applies, the court shall not be taken to have had jurisdiction to give the judgment by reason only that the judgment debtor:

- (a) entered an appearance in proceedings in that court; or
- (b) participated in proceedings in that court only to such extent as was reasonably necessary;

for the purpose only of one or more of the following:

- (c) protecting, or obtaining the release of:
  - (i) property seized, or threatened with seizure, in the proceedings; or
  - (ii) property subject to an order restraining its disposition or disposal;
- (d) contesting the jurisdiction of the court; or
- (e) inviting the court in its discretion not to exercise its jurisdiction in the proceedings.

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**ENDNOTES**
**1 KEY**

Key to abbreviations

<b>amd = amended</b>	<b>od = order</b>
<b>app = appendix</b>	<b>om = omitted</b>
<b>bl = by-law</b>	<b>pt = Part</b>
<b>ch = Chapter</b>	<b>r = regulation/rule</b>
<b>cl = clause</b>	<b>rem = remainder</b>
<b>div = Division</b>	<b>renum = renumbered</b>
<b>exp = expires/expired</b>	<b>rep = repealed</b>
<b>f = forms</b>	<b>s = section</b>
<b>Gaz = Gazette</b>	<b>sch = Schedule</b>
<b>hdg = heading</b>	<b>sdiv = Subdivision</b>
<b>ins = inserted</b>	<b>SL = Subordinate Legislation</b>
<b>lt = long title</b>	<b>sub = substituted</b>
<b>nc = not commenced</b>	

**2 LIST OF LEGISLATION*****Foreign Judgments (Reciprocal Enforcement) Ordinance 1955 (Act No. 21, 1955)***

Assent date	11 January 1956
Commenced	1 March 1956

***Ordinances Revision Ordinance 1973 (Act No. 87, 1973)***

Assent date	11 December 1973
Commenced	11 December 1973 (s 12(2))

**Amending Legislation*****Ordinances Revision Ordinance 1974 (Act No. 34, 1974)***

Assent date	26 August 1974
Commenced	11 December 1973 (s 3(2))

***Ordinances Revision Ordinance (No. 2) 1974 (Act No. 69, 1974)***

Assent date	24 October 1974
Commenced	11 December 1973 (s 3)

***Ordinances Revision Ordinance 1976 (Act No. 27, 1976)***

Assent date	28 June 1976
Commenced	ss 1, 2 and 6: 28 June 1976 (s 6(2)); ss 3 and 4: 11 December 1973; s 5: 24 October 1974

***Transfer of Powers (Further Provisions) Ordinance 1977 (Act No. 51, 1977)***

Assent date	9 December 1977
Commenced	1 January 1978

***Transfer of Powers (Self-Government) Ordinance 1978 (Act No. 54, 1978)***

Assent date	1 July 1978
Commenced	1 July 1978 (see s 8)



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**Statute Law Revision Act (No. 2) 1982 (Act No. 54, 1982)**

Assent date 8 October 1982  
 Commenced 8 October 1982

**Foreign Judgments (Reciprocal Enforcement) Amendment Act 1981 (Act No. 22, 1981)**

Assent date 25 March 1981  
 Commenced 1 July 1982

**Foreign Judgments (Reciprocal Enforcement) Amendment Act 1988 (Act No. 2, 1988)**

Assent date 21 March 1988  
 Commenced 1 May 1988

**3 GENERAL AMENDMENTS**

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Ordinances Revision Ordinance 1973* (as amended) to the following provisions: ss 4, 6, 8, 9, 11, 12 and 14.

**4 LIST OF AMENDMENTS**

It	amd No. 22, 1981, s 10
s 1	amd No. 58, 1978, s 4; No. 22, 1981, s 10
s 2	amd No. 22, 1981, s 10
s 3	rep No. 128, 1979, s 37
s 4	amd No. 22, 1981, ss 4 and 10
s 5	amd No. 87, 1973, s 12; No. 51, 1977, s 3; No. 54, 1978, s 3; No. 22, 1981, s 5
s 6	amd No. 22, 1981, s 6
s 7	amd No. 22, 1981, ss 7 and 10
s 8	amd No. 87, 1973, s 12; No. 22, 1981, s 10; No. 2, 1988, s 3
s 11	amd No. 51, 1977, s 3; No. 54, 1978, s 3; No. 22, 1981, s 10
s 12	amd No. 22, 1981, s 10
s 13	amd No. 51, 1977, s 3; No. 54, 1978, s 3
s 14	amd No. 22, 1981, s 8
s 15	ins No. 22, 1981, s 9
pt IV hdg	ins No. 2, 1988, s 4
s 16	ins No. 2, 1988, s 4