

# The Foreign Judgments (Reciprocal Enforcement) Bill 1988

(NAME OF BILL)

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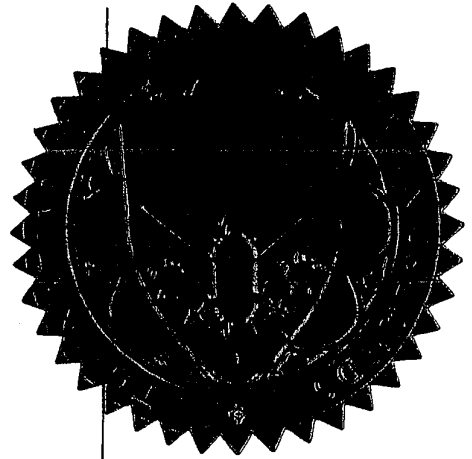
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Handwritten: 18.7.88

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**THE FOREIGN JUDGMENTS  
(RECIPROCAL  
ENFORCEMENT) ACT 1988**

(NO. 9 OF 1988)



# THE FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT) ACT 1988


(NO. 9 OF 1988)

*Passed by the National Parliament this fifth day of April 1988.*

*This printed impression has been carefully compared by me with the Bill passed by Parliament and found by me to be a true and correct copy of the said Bill.*

  
 J.M. Tuhaika  
 Clerk to the National Parliament

*Assented to in Her Majesty's name and on Her Majesty's behalf this twenty-eighth day of April 1988.*

  
 B. Devesi  
 Governor-General

*Date of Commencement: see section 1.*

AN ACT to make provision for the enforcement in Solomon Islands of judgments given in other parts of the Commonwealth and foreign countries which afford reciprocal treatment to judgments given in Solomon Islands, for facilitating the enforcement in such parts or countries of judgments given in Solomon Islands; to repeal the Reciprocal Enforcement of Judgments Act and the Foreign Judgments (Reciprocal Enforcement) Act, and for matters connected therewith or incidental thereto.

ENACTED by the National Parliament of Solomon Islands.

FOREIGN JUDGMENTS (RECIPROCAL ENFORCEMENT)  
ACT 1988

ARRANGEMENT OF SECTIONS

Section:

1. Short title and commencement.
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4. Application for and effect of registration of foreign judgments.
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6. Cases in which registered judgments shall or may be set aside.
7. Powers of registering court on application to set aside registration.
8. Foreign judgments which can be registered not to be enforceable otherwise.
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11. Power to make foreign judgments unenforceable in Solomon Islands, if no reciprocity.
12. Issue of certificates of judgments obtained in Solomon Islands.
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1. This Act may be cited as the Foreign Judgments (Reciprocal Enforcement) Act 1988, and shall come into operation on such date as the Minister may appoint by notice published in the Gazette.

Short title  
and commence-  
ment.

2. (1) In this Act, unless the context otherwise requires -
- “appeal” includes any 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 any civil proceedings or a judgment or order given or made by a court in any criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party and includes any award in arbitration proceedings, if the award has, under the law in force in the country where it was made, become enforceable in the same manner as a judgment given by a court in that country;
  - “judgment creditor” means the person in whose favour the judgment was given, and includes any person in whom the rights under the judgment have become vested by succession or assignment or otherwise;
  - “judgment debtor” means the person against whom the judgment was given, and includes any person against whom the judgment is enforceable under the law of the original court;
  - “original court” in relation to any judgment means the court by which the judgment was given and includes any arbitrator or arbitral tribunal by which an arbitral award to which this Act applies was given;
  - “registration” means registration under this Act, and the expressions “register” and “registered” shall be construed accordingly;
  - “registering court” in relation to any judgment means the court to which an application to register the judgment is made.

Interpre-  
tation.

(2) For the purposes of this Act the expression “action *in personam*,” shall not be deemed to include any matrimonial cause or any proceedings in connection with any of the following matters -

- (a) matrimonial matters;
- (b) administration of the estates of deceased persons;
- (c) bankruptcy;
- (d) winding up of companies;
- (e) lunacy; or
- (f) guardianship of infants.

(3) For the purposes of this Act the expression "judgments given in the High Court" shall be deemed to include a judgment given in any court on appeal against any judgment given in the High Court.

Power to extend the provisions of this Act to countries giving reciprocal treatment.

3. (1) The Minister, if he is satisfied that, in the event of the benefits conferred by this Act being extended to judgments given in the superior courts of any foreign country, substantial reciprocity of treatment will be assured as respects of the enforcement in that foreign country of judgments given in the High Court, may by order direct -

- (a) that the provisions of this Act shall extend to that foreign country; and
- (b) that such courts of that foreign country as are specified in the order shall be deemed superior courts of that foreign country for the purposes of this Act.

(2) Any judgment of a superior court of a foreign country to which the provisions of this Act extend, other than a judgment of such a court given on appeal from a court which is not a superior court, shall be a judgment to which the provisions of this Act apply, if -

- (a) it is final and conclusive as between the parties thereto; and
- (b) there is payable thereunder a sum of money, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty; and
- (c) it is given after the coming into operation of the order directing that the provisions of this Act shall extend to that foreign 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) The Minister may by a subsequent order vary or revoke any order previously made under this section.

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4. (1) A person, being a judgment creditor under a judgment to which the provisions of this Act apply, may apply to the High Court at any time within six 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 High Court, and on any such application the court shall, subject to proof of the prescribed matters and to the other provisions of this Act, order the judgment to be registered:

Provided that 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.

(2) Subject to the provisions of this Act with respect to the setting aside of registration -

- (a) a registered judgment shall for the purposes of execution be of the same force and effect; and
- (b) proceedings may be taken on a registered judgment; and
- (c) the sum for which a judgment is registered shall carry interest; and
- (d) the registering court shall have the same control over the execution of a registered judgment,

as if the judgment had been a judgment originally given in the registering court and entered on the date of registration:

Provided that execution shall not issue on the judgment so long as, under the provisions of this Act and the rules made thereunder, 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.

(3) Where the sum payable under a judgment which is to be registered is expressed in a currency other than the currency of Solomon Islands, the judgment shall be registered as if it were a judgment for such sum in the currency of Solomon Islands 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.

(4) If at the date of the application for registration 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.

(5) If, on an application for the registration of a judgment it appears to the registering 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 the provisions aforesaid but not in respect of any other provisions contained therein.

(6) 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 and incidental to registration, including the cost of obtaining a certified copy of the judgment from the original court.

Power of  
Chief Justice  
to make  
rules.

5. (1) Subject to the provisions of this section, the Chief Justice may make rules for all or any of the following purposes -

- (a) for making provision with respect to the giving of security for costs by persons applying for the registration of judgments;
- (b) for prescribing the matters to be proved on an application for the registration of a judgment, and for regulating the mode of proving those matters;
- (c) for providing for the service on the judgment debtor of notice of the registration of a judgment;
- (d) for making provision with respect to the fixing of the period within which an application may be made to have the registration of the judgment set aside and with respect to the extensions of the period so fixed;
- (e) for prescribing the method by which any question arising under this Act whether a foreign judgment can be enforced by execution in the country of the original court or what interest is payable under a foreign judgment under the law of the original court is to be determined;
- (f) for prescribing any matter which under this Act is to be prescribed.

(2) Rules made for the purposes of this Act shall be expressed to have and shall have effect subject to any such provisions contained in orders made under section 3 as are declared by the said orders to be necessary for giving effect to agreements made between Solomon Islands and foreign countries in relation to matters with respect to which there is power to make rules for the purposes of the provisions of this Act.



6. (1) On an application in that behalf duly made by any party against whom a registered judgment may be enforced, the registration of the judgment -

- (a) shall be set aside if the registering court is satisfied -
- (i) that the judgment is not a judgment to which the provisions of this Act apply or was registered in contravention of the foregoing provisions of this Act; or
  - (ii) that the courts of the country of the original court had no jurisdiction in the circumstances of the case; or
  - (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; or
  - (iv) that the judgment was obtained by fraud; or
  - (v) that the enforcement of the judgment would be contrary to public policy in the country of the registering court; or
  - (vi) that the rights under the judgment are not vested in the person by whom the application for registration was made;

(b) may be set aside if the registering 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 the provisions of subsection (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, being a defendant in the original court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings otherwise than for the purpose of protecting or obtaining the release of property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of that court; or
  - (ii) if the judgment debtor was plaintiff in, or counter-claimed in, the proceedings in the original court; or

Cases in which registered judgments shall or may be set aside.

- (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; or
  - (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 moveable property, if the property in question was at the time of the proceedings in the original court situated in the country of that court;
- (c) in the case of a judgment given in an action other than any such action as is mentioned in paragraph (a) or paragraph (b) of this subsection, if the jurisdiction of the original court is recognised by the law of the registering court.
- (3) Notwithstanding anything contained 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; or
  - (b) except in the cases mentioned in subparagraphs (i), (ii) and (iii) of paragraph (a) and in paragraph (c) of subsection (2), 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 that 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.

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7. (1) If, on an application to set aside the registration of a judgment, the applicant satisfies the registering 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 may think 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.

Powers of registering court on application to set aside registration.

(2) Where the registration of a judgment is set aside under subsection (1), or solely for the reasons 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 shall 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 thereunder, the registering court shall, on the application of the judgment creditor, order judgment to be registered for the balance remaining payable at that date.

8. No proceedings for the recovery of a sum payable under a foreign judgment, being a judgment to which the provisions of this Act apply, other than proceedings by way of registration of the judgment, shall be entertained by any court in Solomon Islands.

Foreign judgments which can be registered not to be enforceable otherwise.

9. The Minister may by order direct that the provisions of this Act shall apply to any part of the Commonwealth and to judgments obtained in the superior courts of such part, as they apply to foreign countries and judgments obtained in the superior courts of foreign countries, and, in the event of the Minister so directing, this Act shall have effect accordingly.

Application to the Commonwealth.

10. (1) Subject to the provisions of this section, a judgment to which the provisions of this Act apply or would have applied if a sum of money had been payable thereunder, whether it can be registered or not, and whether, if it can be registered, it is registered or not, shall be recognised in any court in Solomon Islands as conclusive between the parties thereto in all proceedings founded

General effect of certain foreign judgments.

on the same cause of action and may be relied on by way of defence or counter-claim in any such proceedings.

(2) This section shall not apply in the case of any judgment -

(a) where the judgment has been registered and the registration thereof has been set aside on some grounds other than -

(i) that a sum of money was not payable under the judgment; or

(ii) that the judgment has 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 it is shown, whether it could have been registered or not, that if it had been registered the registration thereof would have been set aside on an application for that purpose on some ground other than one of the grounds specified in paragraph (a) of this subsection.

(3) Nothing in this section shall be taken to prevent any court in Solomon Islands recognising any judgment as conclusive of any matter of law or fact decided therein if that judgment would have been so recognised before the commencement of this Act.

Power to  
make foreign  
judgments  
unenforceable  
in Solomon  
Islands, if  
no reciprocity.

11. (1) If it appears to the Minister that the treatment in respect of recognition and enforcement accorded by the courts of any foreign country to judgments given in the High Court is substantially less favourable than that accorded by the courts of Solomon Islands to judgments of the superior courts of that country the Minister may by Order apply the section to that country.

(2) Except in so far as the Minister may by order under this section otherwise direct, no proceedings shall be entertained in any court in Solomon Islands for the recovery of any sum alleged to be payable under a judgment given in a court of a country to which this section applies.

(3) The Minister may by a subsequent order vary or revoke any order previously made under this section.

Issue of  
certificates  
of judgments  
obtained in  
Solomon Islands.

12. Where a judgment under which a sum of money is payable, not being a sum payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty, has been entered in the High Court against any person, and the judgment creditor

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is desirous of enforcing the judgment in a country to which the provisions of this Act apply, the court shall, on an application by the judgment creditor and on payment of such fee as may be fixed for the purposes of this section under any rules made under the provisions of this Act, 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 may be prescribed:

Provided that, 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.

13. (1) The Reciprocal Enforcement of Judgments Act and the Foreign Judgments (Reciprocal Enforcement) Act (hereinafter in this section referred to as the repealed Acts) are hereby repealed.

(2) Any judgment registered in the High Court under the repealed Acts before the commencement of this Act shall be deemed to have been registered under this Act and anything done in relation thereto under the repealed Acts or any rules of court or other provisions applicable under the repealed Acts shall be deemed to have been done under this Act or the corresponding rules of court or other provisions applicable to this Act.

(3) Any application for registration of a judgment under the repealed Acts which is pending at the date of commencement of this Act shall be deemed to have been made under this Act.

(4) Any subsidiary legislation made under any of the repealed Acts and in force at the date of commencement of this Act shall be deemed to have been made under this Act and shall continue in force until it is revoked.

Repeals and  
transitional.  
Caps 8 & 9.

