

RECOGNITION OF FOREIGN DIVORCES, LEGAL SEPARATIONS AND NULLITY OF MARRIAGES

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Recognition of Foreign Divorces, Legal Separations and Nullity of Marriages Act 1973

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Recognition of Foreign Divorces, Legal Separations and Nullity of Marriages Act 1973

TABLE OF AMENDMENTS

The Recognition of Foreign Divorces, Legal Separations and Nullity of Marriages Act 1973 No 12 was certified and commenced on 1 November 1973 (GN No 218/1973; Gaz 47/1973).

Amending Legislation	Certified	Date of Commencement
Revised Written Laws Act 2021 No 7	1 June 2021	1 June 2021

An Act to provide for the recognition of certain foreign divorces and legal separations and of foreign judgments relating to void and voidable marriages.

Enacted by the Parliament of Nauru as follows:

1 Short title and commencement

This Act may be cited as the *Recognition of Foreign Divorces, Legal Separations and Nullity of Marriages Act 1973* and came into effect on 1 November 1973.

2 Interpretation and application of this Act

- (1) In this Act the expressions '*foreign divorce*', '*foreign legal separation*', '*foreign annulment of marriage*' and '*foreign declaration of invalidity of marriage*' have the meanings assigned to them by Section 3.
- (2) Subject to Section 7, this Act applies to foreign divorces, legal separations, annulments of marriage and declarations of invalidity of marriage obtained before the commencement of this Act as well as to those obtained after such commencement.

3 Recognition in the Republic of foreign divorces, etc

Sections 4, 5 and 6 of this Act shall have effect, subject to Section 9, as respects the recognition in the Republic of the validity of foreign divorces, legal separations, annulments of marriage and declarations of invalidity of marriage, that is to say, divorces, legal separations, annulments of marriage and declarations of invalidity of marriage which:

- (a) have been obtained by means of judicial or other proceedings in any country other than the Republic; and
- (b) are effective under the law of that country.

4 Grounds for recognition

- (1) The validity of a foreign divorce, legal separation, annulment of marriage or declaration of invalidity of marriage shall be recognised if, at the date of the institution of the proceedings in the country in which it was obtained:
 - (a) either spouse was habitually resident in that country;
 - (b) either spouse was a national of that country; or
 - (c) the proceedings by means of which it was obtained were held in the exercise in that country of a jurisdiction similar to any jurisdiction conferred on the Family Court in respect of proceedings in the Republic by Section 44 of the *Matrimonial Causes Act 1973*.
- (2) In relation to a country the law of which uses the concept of domicile as a ground of jurisdiction in matters of divorce, legal separation or nullity of marriage, subsection (1)(a) shall have effect as if the reference to habitual residence included a reference to domicile within the meaning of that law.
- (3) In relation to a country comprising territories in which different systems of law are in force in matters of divorce or legal separation, subsections (1) and (2), except those relating to nationality, shall have effect as if each territory were a separate country.

5 Cross-proceedings and divorces following legal separations

- (1) Where there have been cross-proceedings, the validity of a foreign divorce, legal separation, annulment of marriage or declaration of invalidity of marriage obtained either in the original proceedings or in the cross-proceedings shall be recognised if the requirements of Section 4(1)(a), (b) and (c) are satisfied in relation to the date of the institution either of the original proceedings or of the cross-proceedings.
- (2) Where:
 - (a) a legal separation the validity of which is entitled to recognition by virtue of Section 4 or subsection (1) is converted, in the country in which it was obtained, into a divorce; and
 - (b) if proceedings for divorce had been instituted in that country by either party on the date on which the proceedings for the legal separation were instituted, the requirements of Section 4(1)(a), (b) and (c) would have been satisfied in relation to such proceedings, the validity of the divorce shall be recognised, whether or not, it would otherwise be entitled to recognition.

6 Proof of facts relating to recognition

- (1) For the purpose of deciding whether a foreign divorce, legal separation, annulment of marriage or declaration of invalidity of marriage is entitled to recognition under this Act, any finding of fact made, whether expressly or by implication, in the proceedings by means of which the divorce, legal separation, annulment of marriage or declaration of invalidity of marriage was obtained and on the basis of which jurisdiction was assumed in those proceedings shall:
 - (a) if both spouses took part in the proceedings, be conclusive evidence of the fact found; and
 - (b) in any other case, be sufficient proof of that fact unless the contrary is shown.
- (2) In this Section, “*finding of fact*” includes a finding that either spouse was habitually resident or domiciled in, or a national of, the country in which the divorce or legal separation was obtained and for the purposes of subsection (1)(a), a spouse who has appeared in judicial proceedings shall be treated as having taken part in such proceedings.

7 No recognition except under this Act

No foreign divorce, legal separation, annulment of marriage or declaration of invalidity of marriage shall be recognised as valid in the Republic except as provided in this Act:

Provided that nothing in this Act shall affect:

- (a) the validity of any marriage celebrated before the commencement of this Act where the capacity of either party to marry was dependent upon the validity of a foreign divorce, legal separation, annulment of marriage or upon the invalidity of a previous marriage, if at the time when the marriage was celebrated the foreign divorce, legal separation, annulment of marriage or the invalidity of the previous foreign marriage would have been recognised in the Republic; or

- (b) any property rights to which any person became entitled before that date or apply where the question of the validity of a foreign divorce, legal separation or annulment of marriage, or of the invalidity of a marriage, has been decided by a competent court in the Republic before the commencement of this Act.

8 Non-recognition of divorce or annulment by third country no bar to re-marriage

Where the validity of a divorce or the annulment of a marriage obtained in any country is entitled to recognition by virtue of the preceding provisions of this Act or by virtue of Section 7, neither spouse shall be precluded from re-marrying in the Republic on the ground that the validity of the divorce or annulment would not be recognised in any other country.

9 Exceptions from recognition

- (1) Recognition by virtue of this Act of the validity of a divorce, legal separation, annulment of marriage or declaration of invalidity of marriage obtained outside the Republic may be refused if, and only if:
 - (a) it was obtained by one spouse:
 - (i) without such steps having been taken for giving notice of the proceedings to the other spouse as, having regard to the nature of the proceedings and all the circumstances, should reasonably have been taken; or
 - (ii) without the other spouse having been given, for any reason other than lack of notice, such opportunity to take part in the proceedings as, having regard to the matters aforesaid, he or she should reasonably have been given; or
 - (b) its recognition would manifestly be contrary to public policy.
- (2) Nothing in this Act shall be construed as requiring the recognition of any findings of fault made in any proceedings for divorce, legal separation or annulment or of any maintenance, custody or other ancillary order made in any such proceedings.

