

Legal hospitality: an overview of the rules

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Unlike the United Kingdom which has signed up to various international conventions dealing with the enforcement of foreign judgments, judgments made outside of Jersey which provide for a payment of a sum of money are dealt with by reference to the Judgments (Reciprocal Enforcement) (Jersey) Law 1960 (the 1960 Law), or under the common law.

The 1960 Law provides for the registration and automatic enforcement in Jersey of money judgments obtained in the superior courts of countries, which accord reciprocal treatment to judgments given in Jersey. Presently these are as follows: (a) England and Wales; (b) Scotland; (c) Northern Ireland; (d) Isle of Man; and (e) Guernsey.

In order to register a foreign judgment, the judgment creditor must apply to the Jersey Royal Court within six years of the date of the judgment. Where the judgment has been appealed, the date of the last judgment in the appeal proceedings would apply.

It is important to note that not all foreign judgments can be registered. Part 2 of the 1960 Law only applies to judgments given or made in civil proceedings, or in criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party.

Additionally, the judgment must be final and conclusive as between the parties, and provide for the payment of a sum of money, not being a sum payable in respect of taxes or other charges of a similar nature, or in respect of a fine or other penalty.

Once registered, a foreign judgment will have the same force and effect and be enforceable, as if the judgment had been originally given in the Royal Court of Jersey, and entered on the date of registration.

Enforcement at common law

Where the 1960 Law does not apply, a foreign money judgment may be enforced at common

law by commencing fresh proceedings.

The Royal Court will apply the common law requirements for enforcement which closely mirror those set out above in the 1960 Law, i.e. to enforce a foreign judgment in personam, the judgment will need to be: (a) final and conclusive; (b) for a debt or definite sum of money (not payable in respect of taxes, a fine or penalty); (c) given by a court of competent jurisdiction; and (d) not have been obtained by fraud or be contrary to public policy or natural justice.

In addition, the Royal Court has to be satisfied that the foreign court had jurisdiction over the judgment debtor, i.e. he was physically present and served with the foreign process within that court's territorial jurisdiction; he voluntarily appeared to contest the action on its merits; he was the plaintiff or counterclaimed; or he agreed to submit to the jurisdiction.

Provided these tests are met, the Royal Court is likely to recognise the principles of comity and the defences available to a judgment debtor will be limited.

With regards to foreign 'non-monetary' judgments, historically these have been unenforceable in Jersey. However, recent developments in the common law indicate that they may now be enforced in certain circumstances.

Foreign arbitration awards

The Arbitration (Jersey) Law 1998 (the 1998 Law) gives effect to international conventions on the recognition and enforcement of foreign arbitration awards. The Law is based generally on the English Arbitration Acts 1950 to 1982. Part III of the 1998 Law provides for enforcement of awards made pursuant to an arbitration agreement, to which apply the Protocol on Arbitration Clauses 1923, and the Geneva Convention on the Execution of Foreign Arbitration Awards 1927. Part IV of the 1998 Law covers enforcement of awards under the New York Convention on the Recognition and Enforcement of Foreign Arbitration Awards 1958.

For the award to be enforceable in Jersey, the award creditor must show that the award:

- was made pursuant to an agreement for arbitration that was valid under the law by which it is governed
- was made by the tribunal provided for in the agreement or constituted in a manner agreed by the parties
- was made in conformity with the law governing the arbitration procedure
- is final in the country it was made
- is in respect of a matter that may be referred to arbitration under Jersey law; and

- enforcement would not be contrary to public policy or the law of Jersey.

Assuming the above requirements are met, the award may be enforced either by action or, by leave of the court on an application made ex parte, in the same manner as a judgment or order to the same effect.

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