

Snapshot Getting your Foreign Judgment Recognised and Enforced in the Cayman Islands

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Ensuring the effective enforcement of judgments is a crucial aspect of a successful litigation strategy. The Cayman Islands recognise that valid decisions made beyond its white sands should be as enforceable as domestic judgments. While the statutory regime for registration and enforcement has only been extended to some of the Superior Courts of Australia and its External Territories, the Cayman Courts are willing to consider extending assistance to all judgment creditors through the well-trodden common law route.

Additionally, rather than merely seeking recognition of a monetary judgment, a plaintiff may wish to consider direct recourse to insolvency proceedings

[<https://www.ogier.com/publications/snapshot-compulsory-liquidation-in-cayman>] or the holder of a non-monetary judgment may consider relief in aid of those foreign proceedings [<https://www.ogier.com/publications/cayman-injunctions-in-aid-of-foreign-proceedings>].

This Snapshot outlines the common law route for recognition and enforcement.

Recognition and enforcement of foreign judgments at Common Law

Other than from that handful of Australian Courts, the successful foreign plaintiff must bring a new action in the Financial Services Division of the Grand Court against the defendant if it wishes to have the judgment recognised and enforced in the Cayman Islands. Initially limited to monetary judgments that create a debt obligation between the parties, the Cayman Court now accepts that it should recognise non-monetary judgments where the principle of comity applies.

The Grand Court may enter a domestic judgment of a valid foreign judgment if it:

- a. was given by a court of competent jurisdiction;
- b. is final and conclusive;
- c. is not fiscal, penal, or contrary to Cayman public policy; and
- d. is not statute-barred by Cayman limitation periods.

Did the foreign court have jurisdiction?

The Grand Court will need to be satisfied that the foreign court had proper jurisdiction according to Cayman Islands conflicts principles. In Cayman, that is if the defendant:

- a. was ordinarily resident in the foreign country at the time of commencing the foreign proceedings;
- b. voluntarily participated in the proceedings before the foreign court, other than only to contest jurisdiction;
- c. appeared as a party in the proceedings before the foreign court; or
- d. expressly agreed to submit to the jurisdiction of the foreign court (as opposed to the laws of the foreign country), by contract or subsequent conduct.

Final, interim or interlocutory?

Whether a judgment is final, interim or interlocutory will depend on the nature of the judgment. A decision will ordinarily be regarded as final and conclusive even if it is under appeal or an appeal is pending in the foreign court. However, the Grand Court has unfettered discretion and will decide each case on its merits.

Contrary to public policy in Cayman?

The Grand Court will not enforce a foreign judgment which is contrary to public policy. Examples include where the foreign judgment was obtained in proceedings contrary to natural justice, where the defendant's rights were breached (such as by failure to allow the defendant to present his case or that inadequate notice of the proceedings had been given to the defendant) or if the applicable foreign law is repugnant to Cayman law.

Enforcement and execution

If the Grand Court gives judgment in favour of the plaintiff, it may be enforced in the same manner as a domestic judgment. For a monetary judgment, these would include:

- a. a warrant of execution by which the defendant's moveable assets (including cash, etc.) are

seized and sold to pay the judgment debt;

- b. a sale of land owned by the defendant;
- c. an attachment of assets beneficially owned by the defendant (including those in the hands of a third party, such as a bank account);
- d. a garnishee order by which debts owed to the defendant can be claimed in satisfaction of the judgment debt;
- e. an order for commitment to prison for wilfully refusing to pay a debt that is within the defendant's means to pay; and
- f. an order appointing liquidators (for corporates) or a bankruptcy trustee (for individuals) pursuant to which the defendant's estate is wound up for failure to pay a due debt of \$100 or more.

Ogier regularly deals with questions of recognition and enforcement at all stages of the litigation cycle, please reach out to your usual Ogier contact to include this element in your effective litigation strategy.

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