



Enforcement of Foreign Judgments

in 28 jurisdictions worldwide

2012

Contributing editors: Mark Moedritzer and Kay C Whittaker



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Law

Business

Research

| | |
|--|------------|
| Global Overview <i>Mark Moedritzer and Kay C Whittaker</i> Shook, Hardy & Bacon LLP | 3 |
| Australia <i>Colin Loveday and Sheena McKie</i> Clayton Utz | 5 |
| Belgium <i>Laurent Arnauts and Isabelle Ven</i> Arnauts Attorneys | 10 |
| Bermuda <i>Chen Foley, Mark Chudleigh and Nick Miles</i> Sedgwick Chudleigh | 16 |
| Brazil <i>Marcus Alexandre Matteucci Gomes and Fabiana Bruno Solano Pereira Felsberg e Associados</i> | 21 |
| Canada <i>John K Downing, Jennifer J Quick, Sherry A Kettle and Joel G Belisle</i> Miller Thomson LLP | 25 |
| China <i>Tim Meng</i> GoldenGate Lawyers | 31 |
| Cyprus <i>Michalis Kyriakides, Olga Shelyagova and Asrin Daoudi</i> Harris Kyriakides LLC | 35 |
| Ecuador <i>Rodrigo Jijón Letort and Juan Manuel Marchan</i> Perez Bustamante & Ponce | 40 |
| France <i>Christoph Schultheiss</i> Endrös-Baum Associés | 44 |
| Germany <i>Stephan Kleemann and Stefanie Burkhardt</i> Schmitz & Partner Rechtsanwälte | 50 |
| Guernsey <i>Mark Dunster and Sophia Harrison</i> Carey Olsen | 56 |
| India <i>Mustafa Motiwala, Dhirajkumar Totala and Neha Samant</i> Juris Corp, Advocates & Solicitors | 62 |
| Japan <i>Masahiro Nakatsukasa</i> Chuo Sogo Law Office PC | 67 |
| Korea <i>Woo Young Choi, Sang Bong Lee and Dong Hyuk Kim</i> Hwang Mok Park PC | 72 |
| Luxembourg <i>Christel Dumont and Guy Perrot</i> OPF Partners | 76 |
| Netherlands <i>Philip WM ter Burg and Femke Faes</i> Buren van Velzen Guelen NV | 80 |
| Nigeria <i>Etigwe Uwa, SAN, Adeyinka Aderemi and Chinasa Unaegbunam</i> Streamsowers & Köhn | 86 |
| Philippines <i>Simeon V Marcelo</i> Villaraza Cruz Marcelo & Angangco | 91 |
| Russia <i>Alexander Bezborodov and Nikita Rodionov</i> Beiten Burkhardt | 97 |
| Singapore <i>Edmund Jerome Kronenburg, Tan Kok Peng and Charmaine Cheong</i> Braddell Brothers LLP | 103 |
| South Africa <i>Roger Wakefield</i> Werksmans Attorneys | 108 |
| Sweden <i>Sverker Bonde, Polina Permyakova and Anna Backman</i> Advokatfirman Delphi KB | 115 |
| Switzerland <i>Dieter A Hofmann and Oliver M Kunz</i> Walder Wyss Ltd | 120 |
| Turkey <i>Serap Zuvin, Melis Oget Koc and T Gokmen Bolayir</i> Serap Zuvin Law Offices | 126 |
| Ukraine <i>Timur Bondaryev, Markian Malskyy and Volodymyr Yaremko</i> Arzinger | 131 |
| United Kingdom <i>Mark Tyler</i> Shook Hardy & Bacon International LLP | 136 |
| United States <i>Mark Moedritzer and Kay C Whittaker</i> Shook, Hardy & Bacon LLP | 143 |
| Venezuela <i>Carlos Dominguez Hoet</i> Pelaez Castillo & Duque | 149 |

Guernsey

Mark Dunster and Sophia Harrison

Carey Olsen

1 Treaties

Is your country party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments? What is the country's approach to entering into these treaties and what, if any, amendments or reservations has your country made to such treaties?

The Bailiwick of Guernsey is not a party to the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters. However, the Guernsey courts will readily recognise and enforce foreign judgments as a matter of common law – relying on the principal of comity of the courts of different jurisdictions.

It is also of note that the UK Parliament has power to legislate for the Channel Islands without their consent on any matter in order to give effect to an international agreement. Such powers are in practice only used on very rare occasions. Rather, the UK government accepts that it will not bind Guernsey to any international treaty without consultation.

2 Intra-state variations

Is there uniformity in the law on the enforcement of foreign judgments among different jurisdictions within the country?

The Bailiwick of Guernsey comprises the inhabited islands of Guernsey, Alderney, Sark, Herm, Brecqhou and Jethou. It is divided into three separate legal jurisdictions, which are all self-governing territories of the British Crown, these being Guernsey (which comprises Herm and Jethou) (the Island of Guernsey), Alderney and Sark. Guernsey is by far the most populous of these islands and the overwhelming majority of all legal work flows through it.

There is not complete uniformity in relation to the law on the enforcement of foreign judgments among these islands. While the principles governing enforcement of foreign judgments at common law is the same among these islands, the enforcement of foreign judgments under statute, namely the Judgment (Reciprocal Enforcement) (Guernsey) Law 1957, as amended (the 1957 Law), applies only to the Island of Guernsey. No such legislation exists in Alderney or Sark.

Unless otherwise stated this article only relates to the laws of the Island of Guernsey.

3 Sources of law

What are the sources of law regarding the enforcement of foreign judgments?

In the Island of Guernsey two mutually exclusive systems of enforcement prevail. The first is enforcement at common law and the second is enforcement pursuant to statute, the principal piece of legislation being the 1957 Law.

In the Island of Guernsey if the 1957 Law does not apply then common law prevails. As stated above, this operates on the principal of comity among courts of different jurisdictions.

There do exist separate provisions concerning the recognition and enforcement of foreign judgments relating to trusts. However, a discussion of these is outside the scope of this article.

4 Hague Convention requirements

To the extent the enforcing country is a signatory of the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, will the court require strict compliance with its provisions before recognising a foreign judgment?

The Bailiwick of Guernsey is not a party to the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

5 Limitation periods

What is the limitation period for enforcement of a foreign judgment? When does it commence to run? In what circumstances would the enforcing court consider the statute of limitations of the foreign jurisdiction?

Under section 4(1) of the 1957 Law in order for a judgment of a reciprocating country under the 1957 Law, to be enforced in Guernsey, it must first be registered in the Royal Court of Guernsey.

An application for the registration of a foreign judgment under section 4(1) of the 1957 Law must be made within six years of the judgment, or, if there has been an appeal, six years from the date of the last judgment.

At common law, a judgment in personam of a foreign court is capable of recognition and enforcement in Guernsey. It will be regarded as creating a debt between the parties to it, the debtor's liability arising from an implied promise to pay the amount of the foreign judgment.

At common law a judgment in rem may be defined as the judgment of a court of competent jurisdiction determining the status of a person or thing, or the disposition of a thing.

Judgments in personam and judgments in rem must be capable of enforcement in their home jurisdiction (and hence whatever period of limitation applies there) and, separately within Guernsey's prescription periods. These are generally six years from judgment after a contested case and three years for a default judgment.

The concept of prescription in Guernsey differs to that of limitation in, for example, England. While the passing of a limitation period in England merely bars the remedy, in Guernsey prescription extinguishes the right. Therefore, under English law a right may be set up as a defence notwithstanding the expiry of limitation whereas after prescription there is no right at all.

By the principle of *empêchement d'agir*, prescription will cease to run against persons who are subject to an impediment that prevents them from bringing a claim or otherwise acting in the prosecution or defence of their rights. There are two types of impediment. The first is *empêchement de droit*, which occurs when a person has a legal

disability, for example being a minor or suffering from a mental disability. The second is *empêchement de fait*. This is often very difficult to determine. It most often concerns whether the ignorance of the plaintiff causes the prescription period to stop running. Both types of *empêchement* are developed case by case and must be considered as judge-made law. Accordingly it is hard to be definitive about the boundaries of these legal principles.

6 Types of enforceable order

Which remedies ordered by a foreign court are enforceable in your jurisdiction?

Under section 3(2)(b) of the 1957 Law for a judgment of a foreign court to be registrable it must be for a definite sum of money. A judgment debt for taxes or other charges of a like nature or a fine or other penalty will not be enforceable if made after the 1957 Law came into effect. The foreign judgment may be in personam or in rem, but will invariably be in personam. The 1957 Law is essentially concerned with simple money judgments.

Under the common law, the Guernsey courts will recognise and enforce foreign judgments in personam and in rem.

Accordingly, subject to certain qualifications (for example, judgments obtained by fraud, judgments contrary to public policy and proceedings contrary to natural justice) a judgment in personam of a foreign court with jurisdiction to give that judgment is capable of recognition and enforcement. The judgment must be for a debt or definite sum of money, other than a sum payable in respect of taxes or penalties. Notably, an order for the payment of costs is not therefore enforceable until the costs have been taxed. A sum is sufficiently certain for this purpose if it can be ascertained by simple arithmetical process. The judgment must also be final and conclusive. Note that a judgment may be final and conclusive even though an appeal is pending.

A judgment in rem is also capable of recognition and enforcement at common law. A judgment in rem is a judgment where under either possession or property in a thing is decreed in satisfaction of a claim against the thing itself. A judgment in rem pronounced by a court of a competent jurisdiction is conclusive and binding in Guernsey, not only between parties and privies, as in the case of a judgment in personam, but against all the world.

As regards specific performance, there exists Jersey, but not Guernsey, case law on this issue. While the Guernsey courts are not bound by the decisions of the Jersey courts, they can find them persuasive. Accordingly, the Guernsey courts may follow the Jersey position, which provides that the Jersey courts have a discretion, to be exercised cautiously, to enforce a foreign in personam non-monetary judgment given by the courts of competent jurisdiction without reconsidering the merits.

Given the width of orders that may be recognised, the common law enforcement route should be capable of covering declarations from foreign courts and other orders relating to the status of things, for example, matters concerning trusts.

7 Competent courts

Must cases seeking enforcement of foreign judgments be brought in a particular court?

Under both the 1957 Law and the common law, cases seeking enforcement of foreign judgments in the Island of Guernsey must be brought in the Royal Court of Guernsey.

8 Separation of recognition and enforcement

To what extent is the process for obtaining judicial recognition of a foreign judgment separate from the process for enforcement?

Under section 4(1) of the 1957 Law, for a foreign judgment to be enforced in Guernsey it must first be registered in the Royal Court.

Pursuant to the Judgments (Reciprocal Enforcement) (Amendment) (Guernsey) Rules, 1975 (the 1975 Rules) a judgment debtor then has fourteen days from the date of the notice of registration to apply to have the registration set aside. This period may be extended by an amount prescribed by ordinance in the case of a judgment debtor not being present within the Bailiwick of Guernsey or to a fixed period of sixty days if notice was served by substituted service.

Once the permitted period for the judgment debtor to make an application to set aside the registration has passed, the judgment creditor may make an application to Court, ex parte, which may then grant leave to enforce the registered judgment. The Court will not give its consideration to the enforcement of a judgment unless the application is supported by the correct proof of service in accordance with the 1957 Rules as follows:

- personal service within the jurisdiction – a certificate of service by HM Sergeant in prescribed form;
- personal service outside the jurisdiction – an affidavit of service in prescribed form; or
- substituted service by a newspaper advertisement – a copy of an issue of that newspaper presented under an affidavit confirming compliance with the requirements of the order permitting substituted service.

Once registered, the judgment is converted into one of equal force and effect to the country from which it originated, proceedings may be taken on the registered judgment and the Royal Court is given the same control over the execution of the judgment as if it had been given in the Royal Court itself and entered on the date of registration.

At common law in relation to actions in personam as the foreign judgment constitutes a simple contract debt only, there is no merger of the original cause of action and it is open to the plaintiff to sue either on the foreign judgment or on the original cause of action which it is based (note that no action may be brought on a foreign judgment at common law in circumstances where section 6 of the 1957 Law is applicable). When proceedings on a foreign judgment have been served on the defendant and the defendant has acknowledged service or filed a defence the plaintiff may then apply for summary judgment.

As regards foreign judgments in rem at common law, these are freely recognised but rarely call for enforcement. Rather the plaintiff may apply to the Royal Court for a declaratory judgment mirroring that of the foreign judgment, determining the status of a person or thing or the disposition of a thing. As set out above, this could cover things as wide as (for example) declarations on commercial matters or the status of beneficiaries under a trust.

Injunctions issued in other jurisdictions are not enforceable in Guernsey, although the Guernsey courts may use evidence used to grant non-Guernsey injunctions to grant an injunction in the Guernsey courts. These are often referred to as mirror injunctions.

9 Defences

Can a defendant raise merits-based defences to liability or to the scope of the award entered in the foreign jurisdiction, or is the defendant limited to more narrow grounds for challenging a foreign judgment?

As set out above in answer to question 8, under section 6 of the 1957 Law the judgment debtor may apply to have the registration of the foreign judgment set aside.

The bases on which the registration can be set aside are narrow. It is not open to the defendant to raise merits-based defences.

The registration may be set aside by the Royal Court on the following grounds:

- the judgment does not come within the 1957 Law or contravenes it;
- the original court does not have jurisdiction to order judgment against the debtor;
- 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 the proceedings in sufficient time to enable him to defend the proceedings and did not appear;
- the judgment was obtained by fraud;
- the enforcement of the judgment is contrary to public policy; or
- the applicant had no *locus standi* to apply to register the judgment.

The application for registration may also be set aside if the Royal Court is satisfied that the matter in dispute:

- was the subject of an earlier and inconsistent judgment by a court that also had jurisdiction; or
- was not the subject of a final and conclusive judgment by a court having jurisdiction in the matter, up to the date of judgment in the original court.

Pursuant to section 6(2)(a) of the 1957 Law the original court shall be deemed to have jurisdiction in relation to claims in personam if:

- the judgment debtor, as defendant in the original court, submitted to its jurisdiction by appearing on his or her own free will in the proceedings for reasons other than to safeguard or obtain the release of property seized, or threatened with seizure in the proceedings or contest the jurisdiction of the court;
- the judgment debtor was the plaintiff or counterclaimed in the proceedings in the original court;
- the judgment debtor as the defendant, had agreed before proceedings began to submit to the jurisdiction of that court or the courts of the country of that court;
- the judgment debtor, during the proceedings was resident, or had his principal place of business, if a corporate body, in the country of that court; or
- the judgment debtor was resident within the country of the original court or, if a company, had an office or place of business in the country of that court and the proceeding in that court were in respect of a transaction effected through or at that office or place.

Under section 6(2)(a) of the 1957 Law the original court shall be deemed to have jurisdiction in relation to claims in rem if:

- in relation to immoveable property, the relevant property is located within the country of the original court; and
- in relation to moveable property, if the moveables were situated in the foreign country at the time of the proceedings.

Under common law it is not open to the defendant to raise merit-based defences to impeach a foreign judgment. A foreign judgment that is final and conclusive on its merits is conclusive as to any matter thereby adjudicated on and cannot be impeached for any error of fact or law save that the foreign judgment may be impugned on the grounds that:

- it was obtained by fraud on the part of the party in whose favour the judgment was given;
- fraud on the part of the court pronouncing the judgment;
- its recognition or enforcement would be contrary to public policy; or
- it was obtained in proceedings that were contrary to natural justice.

As regards judgments in personam, the foreign judgment must be for a definite sum of money, other than a sum in respect of taxes or penalties, and must be final and conclusive. In absence of any of these factors the foreign judgment in personam cannot be recognised or enforced.

A foreign judgment in personam is also impeachable on the ground that the foreign court has no jurisdiction where the judgment debtor was, at the time the proceedings were instituted, present in the foreign country and the bringing of the proceedings in that court was contrary to an agreement under which the dispute was to be settled (otherwise than by proceedings in the courts of that country) and the judgment debtor did not agree to the proceedings being brought in that court, nor counterclaim, or otherwise submit to the jurisdiction.

A foreign judgment may further be impeached if it was against a person who was entitled to immunity from the jurisdiction of the courts of that country.

The court may also refuse recognition or enforcement of a foreign judgment if the foreign court did not have jurisdiction according to Guernsey rules on the conflict of laws.

The foreign court shall be deemed to have jurisdiction in claims in personam if:

- at the date of the commencement of the proceedings the defendant was resident or present in the country of the foreign court, or, where the defendant is a corporation, was carrying on business in the country of the court at a definite and reasonably permanent place;
- the defendant submitted to the jurisdiction of the foreign court by voluntarily appearing in the proceedings;
- the defendant, before the commencement of proceedings in the foreign court agreed, in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of that country; or
- the defendant claimed or counterclaimed in the proceedings in the foreign court.

The original court shall be deemed to have jurisdiction in claims in rem if:

- in relation to moveables they were situated in the foreign court at the time of proceedings; and
- in relation to immoveables, they are situated in the foreign country.

10 Basic requirements for recognition

What are the basic mandatory requirements for recognition of a foreign judgment?

Under section 3 of the 1957 Law the mandatory requirements for recognition of a foreign judgment are that:

- It is the judgment of a superior court of a reciprocating country, as set out in the Judgments (Reciprocal Enforcement) Ordinance, 1973, as amended (the 1973 Ordinance);
- the judgment is final and conclusive, no foreign interim award is directly enforceable (it is irrelevant that an appeal may be pending, although this may be relied upon by the judgment debtor in an application to set aside the registration, or have the application to set aside the registration adjourned);
- a sum of money is payable under the judgment, not being a sum payable in respect of taxes, fines or other penalties; or
- the courts of the country of the original court are deemed to have had jurisdiction to grant the judgment, as set out in answer to question 9 above.

At common law, it is crucial to the recognition of a foreign judgment in personam that:

- the foreign court should be deemed to have jurisdiction, as set out above in answer to question 9;

- the foreign judgment should be for a definite sum of money, other than a sum payable in respect of taxes or penalties. An order for the payment of costs is not enforceable until the costs have been taxed; and
- the foreign judgment must also be final and conclusive, so as to be *res judicata* in the country where it has been pronounced. It must be final in the particular court in which it is pronounced. A judgment otherwise final is not less so because it is the subject of an appeal to a higher court.

At common law, crucial to the recognition of a foreign judgment in rem is that:

- in relation to moveables, the moveables were situated in the foreign country at the time of the proceedings; and
- in relation to immoveables, they are situated in the foreign country.

11 Other factors

May other non-mandatory factors for recognition of a foreign judgment be considered, and if so, what factors?

The States of Guernsey (the parliament of the Island of Guernsey) may under section 10(1) of the 1957 Law direct that the Guernsey courts do not entertain proceedings for the recovery of money allegedly payable under a judgment of a foreign court where that court's treatment in respect of the recognition and enforcement of the judgments of the Guernsey courts is less favourable than that accorded by the Guernsey courts to that country.

The issue of comity remains untested under Guernsey law however, the Guernsey courts may look to the Jersey position on this matter which, while not binding may be considered persuasive by the Guernsey courts. The Jersey courts have found that foreign judgments may be recognised and enforced where it would be fair to do so as a matter of comity.

12 Procedural equivalence

Is there a requirement that the judicial proceedings where the judgment was entered correspond to due process in your jurisdiction, and if so, how is that requirement evaluated?

Under the 1957 Law there is no requirement that the judicial proceedings where the judgment was entered correspond to due process in Guernsey.

However, under the common law, a foreign judgment can be impeached if the proceedings in which the judgment was obtained were contrary to natural justice.

Ordinarily the Guernsey courts will not investigate the propriety of the proceedings in the foreign court, but will do so if they offend against the Guernsey courts' views of substantial justice.

Proceedings are not regarded as having been contrary to natural justice merely because the foreign court admitted evidence that was inadmissible under Guernsey law or excluded evidence under Guernsey law, or because of a mere procedural irregularity on the part of the foreign court, provided that the unsuccessful party was given an opportunity to present his or her case.

The objection that the foreign proceedings were contrary to natural justice cannot be taken in Guernsey if it could have been or was taken before the foreign court.

13 Personal jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had personal jurisdiction over the defendant, and if so, how is that requirement met?

Under section 6(2)(a) of the 1957 Law, the Guernsey courts will examine whether the foreign court had personal jurisdiction over the defendant in relation to actions in personam as it is a condition

to registration that the foreign court be deemed to have jurisdiction in in personam claims.

A court will be deemed to have such jurisdiction if:

- the judgment debtor, as defendant in the original court, submitted to its jurisdiction by appearing of his or her own free will in the proceedings for reasons other than to safeguard or obtain the release of property seized in the proceedings or contest the jurisdiction of the court;
- the judgment debtor was the plaintiff or counterclaimed in the proceedings in the original court;
- the judgment debtor as the defendant, had agreed before proceedings began to submit to the jurisdiction of that court;
- the judgment debtor, during the proceedings, was resident, or had his or her principal place of business, if a corporate body, in the country of that court; or
- the judgment debtor was resident within the country of the original court or, if a company, had its principal place of business there.

Under common law the Guernsey courts will also examine whether the foreign court had personal jurisdiction over the defendant in relation to actions in personam as it is again essential to the recognition or enforcement in Guernsey of a foreign judgment in personam that the foreign court have jurisdiction.

A foreign court will be deemed to have jurisdiction in relation to in personam claims if:

- at the date of the commencement of the proceedings, the defendant was resident or present in the country of the foreign court, or, where the defendant is a corporation, it was carrying on business in the country of the court at a definite and reasonably permanent place;
- the defendant claimed or counterclaimed in the proceedings in the foreign court;
- the defendant submitted to the jurisdiction of the foreign court by voluntarily appearing in the proceedings; or
- the defendant in the foreign court had, before the commencement of the proceedings, agreed in respect of the subject matter of the proceedings, to submit to the jurisdiction of the courts of that country.

14 Subject-matter jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had subject-matter jurisdiction over the controversy, and if so, how is that requirement met?

Under section 6(2)(b) of the 1957 Law and under the common law the Guernsey courts will examine whether the foreign court had subject-matter jurisdiction in relation to claims in rem.

A court will be deemed to have jurisdiction in an action relating to immovable property or any action in rem if the relevant property was located within the country of the original court at the time of the proceedings.

The foreign court will be deemed not to have had jurisdiction if the proceedings were in respect of immovable property located outside of the country of the foreign court.

15 Service

Must the defendant have been technically or formally served with notice of the original action in the foreign jurisdiction, or is actual notice sufficient? How much notice is usually considered sufficient?

Under section 6(1)(iii) of the 1957 Law the registration of the foreign judgment must be set aside by the Royal Court if the defendant 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 the original proceedings in sufficient time to enable him or her to defend the proceedings and did not appear.

However, pursuant to both the 1957 Law and the common law, there is no requirement that the defendant was technically and formally served with notice of the original action in the foreign jurisdiction, actual notice is sufficient.

Lack of formal notice of the foreign proceedings is not a ground on which objection can be taken in Guernsey to a foreign judgment if the defendant voluntarily appeared in the proceedings. In any event, if the law of the foreign country with regard to notice is complied with, as in those circumstances it seems that any notice is sufficient that is in accordance with the law of the foreign country. If the defendant agreed to submit to the jurisdiction of the foreign court, he or she is deemed to have agreed to submit to the foreign court's rules of procedure and is bound by its judgment even though he or she may not have had notice of the proceedings.

16 Fairness of foreign jurisdiction

Will the court consider the relative inconvenience of the foreign jurisdiction to the defendant as a basis for declining to enforce a foreign judgment?

This is not taken into consideration under the common law or the 1957 Law.

17 Vitiating by fraud

Will the court examine the foreign judgment for allegations of fraud upon the defendant or the court?

Pursuant to section 6(1)(a)(iv) of the 1957 Law the judgment debtor may apply to have the registration of the foreign judgment set aside if the judgment was obtained by fraud.

Further, under common law, a foreign judgment is impeachable if there was fraud on the part of the court pronouncing judgment or fraud on the part of the party in whose favour judgment was given.

18 Public policy

Will the court examine the foreign judgment for consistency with the enforcing jurisdiction's public policy and substantive laws?

Under section 6(1)(a)(v) of the 1957 Law the registration of a judgment can be set aside and under the common law a foreign judgment can be impeached, if the enforcement of the judgment would be contrary to public policy in Guernsey. Although, this is a difficult ground to prove.

19 Conflicting decisions

What will the court do if the foreign judgment sought to be enforced is in conflict with another final and conclusive judgment involving the same parties or parties in privity?

Under section 6(1)(b) of the 1957 Law, the Royal Court may set aside the registration if satisfied that the matter in dispute was the subject of an earlier and inconsistent judgment by a court that also had jurisdiction.

Equally pursuant to the common law, the judgment of a foreign court of competent jurisdiction in an in personam matter in favour of the defendant, is a good defence to an action brought by another party in Guernsey on the original cause of action.

In order to be a good defence to an action in Guernsey, on the original cause of action, the foreign judgment must be final and conclusive between the parties. The judgment must also have been pronounced on the merits of the case and be in respect of the same cause of action.

Further, it seems likely that, in line with the position in Jersey which (as stated above) the Guernsey courts are likely to find persuasive in absence of their own case law, where there exists conflicting final judgments by foreign courts of competent jurisdiction, the Guernsey court will give effect to the earlier in time unless it would

be unfair to do so because, for example, the applicant was estopped by representation from relying upon it.

In rem actions rarely call for enforcement and there is no decided case law in Guernsey as to what action the court will take if the foreign judgment sought to be enforced is in conflict with another final and conclusive judgment.

20 Alternative dispute resolution

What will the court do if the parties had an enforceable agreement to use alternative dispute resolution, and the defendant argues that this requirement was not followed by the party seeking to enforce?

It is a condition for the recognition and enforcement of judgments under section 2 of the 1957 Law and pursuant to the common law that the court be deemed to have jurisdiction. Section 6(3)(b) of the 1957 Law and the common law provides that the foreign court will be deemed not to have jurisdiction if proceedings were brought contrary to any agreement under which the dispute in question was to be settled otherwise than by proceedings in the courts of the country and the defendant did not agree to the proceedings being brought in that court nor counterclaimed in the proceedings, or otherwise submitted to the jurisdiction of that court.

21 Favourably treated jurisdictions

Are judgments from some foreign jurisdictions given greater deference than judgments from others? If so, why?

For the 1957 Law to apply the judgment sought to be registered must be that of a superior court, other than a judgment of such a court given an appeal from a court which is not a superior court, of a reciprocating country under section 3(2) of the 1957 Law.

Pursuant to the 1973 Ordinance the reciprocating jurisdictions are England and Wales, the Isle of Man, Israel, Jersey, the Netherlands, Netherlands Antilles, Northern Ireland, Italy, Scotland and Suriname.

Under the common law, judgments from foreign jurisdictions are treated equally.

22 Alteration of awards

Will a court ever recognise only part of a judgment, or alter or limit the damage award?

Pursuant to section 4(4) of the 1957 Law, 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.

Further, under section 4(5) of the 1957 Law if, on an application for the registration of a judgment, it appears to the Royal Court that the judgment is in respect of different matters, not all of which could have been properly registered if those provisions had been contained in separate judgments, the judgment may be registered in respect of those provisions that could have been properly registered, but not in respect of any others.

Under the common law, a judgment which enforces both civil and criminal liability is severable and that part of it which awards a sum of money as damages is enforceable as an action in personam in Guernsey. As with the 1957 Law where a money judgment has been partly satisfied, the Guernsey courts will only give judgment in respect of the balance of the foreign judgment remaining payable, not in respect of the whole sum payable under the judgment of the foreign court.

Update and trends

There are no particular trends. The process usually works smoothly. As set out above the usual dispute (if there is to be one) is over whether the defendant had proper notice of the original process.

23 Currency, interest, costs

In recognising a foreign judgment, does the court convert the damage award to local currency and take into account such factors as interest and court costs and exchange controls? If interest claims are allowed, which law governs the rate of interest?

Under the 1957 Law, the court does not convert the damage award to local currency. Any award will be expressed in the currency of the jurisdiction of the foreign court.

Pursuant to section 4(2)(c) of the 1957 Law the sum for which a judgment is registered shall carry interest. Further, in line with section 4(6) of the 1957 Law, in addition to the sum of money payable under the judgment of the original court, including any interest that 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 costs of obtaining a certified copy of the judgment from the original court.

In relation to in personam claims at common law, the Guernsey courts do not generally convert the damage award into local currency. Judgments can be awarded and enforced in any currency. Further, interest is payable pursuant to section 1(1) of the Judgments (Interest) (Bailiwick of Guernsey) Law, 1985 which provides that interest will run from the time the judgement becomes the equivalent (by whatever method) of a Guernsey judgment.

As actions in rem at common law rarely concern the award of damages, the issue of interest does not arise.

Costs may be awarded in actions both in personam and in rem in favour of the successful party as a fresh action is being brought on either the foreign judgment itself or on the original cause of action.

24 Security

Is there a right to appeal from a judgment recognising or enforcing a foreign judgment? If so, what procedures, if any, are available to ensure the judgment will be enforceable against the defendant if and when it is affirmed?

There is a right to appeal a judgment recognising or enforcing a foreign judgment. This right is based on the standard right to appeal civil cases in Guernsey pursuant to the Court of Appeal (Guernsey) Law, 1961.

The grounds for appeal most commonly stated are that the judge, namely the bailiff, deputy bailiff or lieutenant bailiff was wrong in law, or wrongly exercised his or her discretion;

Once recognised under either the common law or the 1957 Law a foreign judgment is enforceable in the same way any other judgment is at Guernsey law. There are no additional safeguards to ensure the judgment will be enforceable.

25 Enforcement process

Once a foreign judgment is recognised, what is the process for enforcing it in your jurisdiction?

Once recognised under either the common law or the 1957 Law, a foreign judgment is enforceable in the same way any other judgment is at Guernsey law. In relation to claims in personam these may be satisfied by seeking to execute the judgment against the moveable or immovable property of the debtor or by commencing insolvency proceedings.

26 Pitfalls

What are the most common pitfalls in seeking recognition or enforcement of a foreign judgment in your jurisdiction?

In practice the overwhelming majority of disputes revolve around the defendants claiming that they never had notice of the original process.

A lesser number of disputes arise in trying to enforce judgments from legal jurisdictions having radically different social and legal traditions to Guernsey's. Issues of public policy arise. These are highly unlikely to succeed if the original judgment comes from a European country, the United States, jurisdictions in the Commonwealth or with common law routes.

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