

## Enforcement of judgments and arbitral awards in the Cayman Islands: overview

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### JUDGMENTS: LEGAL FRAMEWORK

#### Domestic framework

#### 1. What is the applicable domestic legislative framework for enforcement of judgments?

##### Domestic

Under section 31 of the Judicature Law, the Grand Court of the Cayman Islands has jurisdiction to deal with the enforcement of judgments, orders, decrees and directions. Domestic judgments are automatically enforceable in the Cayman Islands within six years from the date of their delivery.

##### Foreign

The Cayman Islands has enacted the Foreign Judgments Reciprocal Enforcement Law (1996 Revision) (Reciprocal Enforcement Law), which provides a statutory regime for the enforcement of foreign judgments. However, to date this regime has only been extended to judgments from Australia and its external territories.

Under the Reciprocal Enforcement Law, a judgment creditor can apply to register a foreign judgment in the Cayman Islands. Once registered, a foreign judgment is deemed to have the same force and effect as if it were originally made by the Grand Court of the Cayman Islands.

Judgments from all other countries are enforceable at common law. That is, the creditor can sue on the judgment debt as an unpaid debt obligation in a fresh proceeding brought in the Cayman Islands.

##### International conventions/agreements

#### 2. What international conventions and agreements on enforcement of judgments is your jurisdiction a party to?

The Cayman Islands is not party to any international conventions or agreements about the reciprocal enforcement of judgments.

The Cayman Islands is a British overseas territory, and the UK can extend (although it has not yet in respect of any instruments relating to reciprocal enforcement) its ratification of treaties to the Cayman Islands by an Order in Council.

The Cayman Islands is a party to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention). The Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which was opened for signature in Washington on 18 March 1965 (Washington Convention) has also been extended to the Cayman Islands by the UK.

See *Question 22 to 40* about the enforcement of arbitral awards.

### Definitions

#### 3. What is the definition of judgment in your jurisdiction for the purpose of enforcement proceedings?

##### Domestic

For the purposes of enforcement, a domestic judgment includes all decisions given by a court or tribunal including default judgments, decrees, orders, non-money judgments and interim measures.

##### Foreign

For the purposes of enforcement at common law, a foreign judgment is generally enforceable where:

- It is a final and conclusive judgment or order.
- Made for the payment of a sum of money.
- Made by a foreign court of competent jurisdiction.
- Made in proceedings for compensation or damages to an injured party.

Certain non-monetary foreign judgements are also enforceable at common law (see *Question 4*).

A foreign judgment is defined in the Reciprocal Enforcement Law to mean "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".

##### Enforceable/excluded types of judgment

#### 4. What types of judgment in commercial matters are enforceable, and what types are excluded?

##### Domestic

**Enforceable.** All types of domestic awards, judgments and orders are enforceable, whether they are final and conclusive, preliminary or interim. These include:

- Money judgments.
- Non-money judgments.
- Default judgments.
- Interim measures.
- Injunctions/judgments prohibiting acts.

**Excluded.** There are no specific domestic judgments that are excluded from recognition and enforcement.

##### Foreign

**Enforceable.** The following types of judgments are enforceable:

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**Money judgments.** At common law, foreign money judgments are enforceable in the Cayman Islands, provided the foreign judgment in question meets the requirements set out in *Question 3*.

Under the Reciprocal Enforcement Law, foreign money judgments can be enforced provided that they meet the following conditions:

- The judgment debtor was properly served in accordance with the law of the foreign country.
- The judgment originates from one of the jurisdictions to which the Reciprocal Enforcement Law applies (it currently applies only to Australian judgments).
- The foreign judgment in question is final and conclusive.
- There is a sum of money payable.
- The foreign judgment was given after the Reciprocal Enforcement Law came into force.
- Registration is sought within the limitation period of six years from the date of the judgment.
- At the date of the application, the judgment has not already been wholly satisfied or enforced, and is still capable of enforcement in the country of the foreign judgment.

**Judgments ordering or prohibiting the doing of acts/injunctions.** Foreign *in personam* (non-money) judgments or orders are not enforceable under the Reciprocal Enforcement Law.

However they can be enforced at common law provided that the Cayman court can be satisfied that the judgment was given by a court with competent jurisdiction, it is final and conclusive, and the court is required to enforce judgments of its type on the principles of comity (see *Bandone v Sol Properties Incorporated [2008] CILR 201*). Accordingly, non-money judgments can be recognised and enforced by way of equitable remedies, if the principle of comity requires it.

**Declaratory judgments.** These judgments cannot be enforced under the Reciprocal Enforcement Law, but can be at common law if they meet the relevant conditions outlined above.

**Default judgments.** These judgments can be enforced under the Reciprocal Enforcement Law and at common law if they meet the relevant conditions outlined above.

**Judgments made without notice (ex parte)/awards.** These judgments cannot be enforced under the Reciprocal Enforcement Law, but can be at common law if they meet the relevant conditions outlined above.

**Foreign decisions granting provisional measures.** These judgments cannot be directly enforced under the Reciprocal Enforcement Law or at common law. However, under section 11A of the Grand Court Law, the Cayman court has jurisdiction to make interim orders (including injunctive orders and orders for the appointment of receivers) in support of foreign proceedings.

**Foreign enforcement orders and (pre-judgment) attachment orders.** These judgments cannot be enforced under the Reciprocal Enforcement Law, but can be enforced at common law if they meet the relevant conditions.

**Excluded.** As a matter of public policy, the Grand Court of the Cayman Islands will not uphold a foreign judgment, whether at common law or under the Reciprocal Enforcement Law, if it is repugnant to the Cayman Islands system of law. Further, the court will not enforce judgments that relate to the penal laws of another country, or that impose punitive damages. Another class of judgment that cannot be enforced are foreign tax judgments. Nor will the court enforce a foreign judgment adjudicating in rem on the title to, or the right to possession of, immovable property in the Cayman Islands (*Tartaglia v Colonial Dev Corp Ltd [1996] CILR Note 4b*), although, as noted above, the court can enforce in personam judgments concerning such property.

Under the Trusts Law, a foreign judgment will not be enforced if it holds that Cayman Islands trusts or dispositions in respect of them are void or liable to be set aside either because the foreign law does not recognise the trust concept or because of heirship, matrimonial or certain other rights that will not be enforced by the foreign court.

## JUDGMENTS: PROCEDURE FOR ENFORCEMENT Overview

### 5. What is the general outline of enforcement proceedings?

#### Domestic

The procedure for enforcement of domestic judgments is set out in 0.45 to 0.52 of the Grand Court Rules (1995) (<http://www.judicial.ky/wp-content/uploads/2011/10/Grand-Court%20-Rules%20-1995-Revised.pdf>), and the Judicature Law (as revised). A domestic judgment is recognised the moment it is made and becomes enforceable immediately unless it is subject to a condition.

A money judgment can be enforced by means of:

- A writ of fieri facias.
- Garnishee proceedings.
- A charging order.
- The appointment of a receiver.
- An order for committal.
- A writ of sequestration.
- An attachment of earnings order.

A judgment for the delivery up of goods can be enforced by an order of committal, a writ of sequestration or a writ of delivery up.

An *in personam* judgment can be enforced (with leave) by a writ of sequestration against the property of the relevant individuals, or an order for committal.

A judgment for the possession of land can be enforced by a writ of possession (with leave), an order for committal or a writ of sequestration.

#### Foreign

**Common law.** The procedure for enforcement of a foreign judgment at common law involves starting a fresh proceeding in the Cayman Islands by filing a writ of summons suing for the amounts due and owing pursuant to the foreign judgment. The action must be brought in the Financial Services Division of the Grand Court.

Once filed, the writ of summons must be served on the judgment debtor in the ordinary way (noting additional requirements if the judgment debtor resides outside of the Cayman Islands). The judgment debtor has a time limit within which it must acknowledge service or file a defence, and if this is not done, the claimant can apply for judgment to be entered against the judgment debtor by default. In the event that service is acknowledged, a claimant would typically apply for summary judgment by reference to the outstanding judgment debt (there is usually no need to relitigate the merits of the underlying dispute which gave rise to the foreign judgment).

Once the judgment creditor obtains judgment in the new proceeding, the full range of domestic enforcement procedures is available.

**Reciprocal Enforcement Law.** Where the Reciprocal Enforcement Law applies (currently only to Australian judgments) the judgment creditor must apply to the Grand Court of the Cayman Islands to have the judgment in question registered in the Cayman Islands.

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This application is made ex parte by originating summons unless the court directs the summons to be served on the judgment debtor.

The judgment debtor has a limited time within which to apply to set aside registration on grounds including that:

- The judgment in question was obtained by fraud.
- The judgment debtor did not receive proper notice of the foreign proceedings.
- The foreign court did not have jurisdiction to decide the matter.
- Enforcement will be contrary to public policy.
- The rights under the foreign judgment do not vest in the person seeking to enforce it.

If registration is not challenged by the judgment debtor, or if it is confirmed, the registered judgment is treated as if it were a judgment of the Grand Court.

**Timing and cost.** Enforcement proceedings, whether by way of a fresh proceeding or by application to register a foreign judgment, can take several months, depending on the length of time required to effect service. Interim relief can be sought to preserve assets pending enforcement, if required.

Security for costs is not required as a matter of course in enforcement proceedings. However, a defendant can apply for this security, and it is commonly given (typically by way of an undertaking in damages to the Court) as a pre-requisite for interim relief.

The court fee to start a new claim or to file a registration application is KYD5,000 (about USD6,100).

Appeals can be brought against:

- Fresh proceedings.
- Refusal to set aside registration of a foreign judgment under the Reciprocal Enforcement Law.
- Specific enforcement permitted by the court.

Appeals can be founded on a number of bases applicable to any action or application including:

- Issues of fact.
- Points of law.
- Quantum of damages.
- Excess of jurisdiction.

The Cayman Islands Court of Appeal will investigate alleged errors of law and of principle, if permission to appeal is obtained.

### **Foreign judgments: formal/simplified proceedings**

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## **6. Is the enforcement of a foreign judgment subject to formal proceedings or simplified procedures?**

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Formal proceedings are required for enforcement at common law. However, claimants can typically take advantage of the procedures to obtain a judgment in default or summary judgment when seeking to enforce a foreign judgment.

An application to register a foreign judgment, which is the process in instances where the Reciprocal Enforcement Law applies, is a simplified enforcement procedure.

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## **7. Must applicants institute a new action on the foreign judgment in the form of main proceedings instead of**

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## **making an application for enforcement based on the judgment?**

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A fresh action must be commenced for enforcement at common law.

An application for registration of a foreign judgment is necessary if the Reciprocal Enforcement Law applies.

### **Form of application**

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## **8. What documents and information must be provided with an application for enforcement?**

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### **Domestic**

There is no requirement to make an application for enforcement prior to seeking to enforce a domestic judgment.

### **Foreign**

An application made by ex parte summons to register and enforce a judgment must be supported by an affidavit:

- Exhibiting the judgment or a certified copy, and, where the judgment is not in English, a notarised translation.
- Stating the name, trade or business, and last known place of abode or business, of the judgment creditor and judgment debtor.
- Stating that the judgment creditor is entitled to enforce the judgment.
- Confirming that the judgment remains unsatisfied.

*(Section 4, Reciprocal Enforcement Law.)*

For registration under the Reciprocal Enforcement Law, the judgment must be converted into Cayman Islands dollars, at the rate of exchange prevailing at the date the judgment was given in the foreign court.

The documentary requirements for recognition and enforcement of a foreign judgment at common law are similar to those requirements set out in section 4 of the Reciprocal Enforcement Law. In either case, a certified English translation of the judgment or other supporting documents will be required if they are in a foreign language. English is the only language that is recognised in the Cayman Islands.

For enforcement at common law, the new proceedings can be expressed in a foreign currency. Conversion to local currency will be effected either when the local judgment is entered, or at the time of enforcement.

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## **9. What information must be included in the application regarding the judgment, the claim as awarded in the judgment, the facts and legal grounds of the case, and that the judgment is no longer appealable?**

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### **Domestic**

All types of domestic awards, judgments and orders are enforceable. There is no legal requirement under Cayman Islands law to include any information in respect of the judgment, the claim as awarded in the judgment, the facts and legal grounds of the case, or whether the judgment is appealable in an application for enforcement.

### **Foreign**

A copy of the foreign judgment (including a certified translation) must be exhibited to the affidavit in support of the application to

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register the judgment under the Reciprocal Enforcement Law (see *Question 8*). In addition, the amount of the claim as awarded must be specified in the application. There is no specific requirement to include factual and legal grounds.

## **CHALLENGING ENFORCEMENT Service**

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### **10. Does the enforcing court review service of the proceedings? What conditions regarding service of the proceedings must be satisfied?**

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#### **Domestic**

The Cayman Islands court will not review the nature of service of proceedings in relation to a domestic judgment at the enforcement stage, unless it is raised by the judgment debtor. Any issues around service must be addressed as part of the underlying domestic proceedings.

#### **Foreign**

When considering enforcement of a judgment at common law, the Cayman Islands court will not consider the merits of the dispute giving rise to the foreign judgment. However, if the judgment debtor's defence raises issues about service failure in relation to the foreign proceedings, that can be a basis for the Cayman Islands court to refuse to permit enforcement.

Under the Reciprocal Enforcement Law, service failure in the foreign proceedings is a statutory ground to set aside registration of a foreign judgment.

#### **Final/provisional judgments**

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### **11. Must a judgment be final and have conclusive effect, and what is the effect of pending appeal proceedings?**

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#### **Domestic**

A domestic judgment is enforceable within the Cayman Islands whether it is:

- Preliminary.
- Provisional.
- An interim ruling.
- Final and conclusive.

However, the Cayman Islands court can grant a stay of execution pending appeal either unconditionally or with conditions.

#### **Foreign**

All enforceable foreign judgments must be final and conclusive in the court that gave the judgment. This is the case regardless of whether enforcement is at common law or falls under the Reciprocal Enforcement Law.

If the judgment in question is under appeal in a foreign court, it can still be final and conclusive for the purposes of recognition by the Cayman Islands court. However, each application will be considered on its merits and the court has unfettered discretion about whether it will allow enforcement. It is open to the Cayman court to stay any application for registration or enforcement pending determination of the foreign appeal.

Enforcement by common law claim is on notice, so the judgment debtor has the chance to raise the nature of the appeal at any summary judgment hearing and/or other hearing of the claim.

## **Foreign judgments: jurisdiction**

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### **12. Is the enforcing court entitled to consider the grounds on which the court assumed jurisdiction (and if so, on what jurisdictional grounds can enforcement be refused)?**

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When considering whether a foreign judgment will be enforceable in the Cayman Islands, the court is entitled to consider the grounds on which the court assumed jurisdiction. For a judgment to be enforced at common law, the court must be satisfied that the court issuing the judgment had jurisdiction over the defendant and that the judgment debtor:

- Was present in the foreign jurisdiction at the time when the proceedings were instituted.
- Participated as a claimant or counter-claimant in the foreign proceedings.
- Voluntarily appeared in the foreign proceedings as a defendant.
- Submitted to the foreign court's jurisdiction as a defendant by prior agreement.

It is not enough that the foreign court is vested with jurisdiction under the foreign legal system. It must also have jurisdiction according to common law rules of conflict of laws (*160088 Canada Incorporated v Socoa [1997 CILR 409]*).

For enforcement under the Reciprocal Enforcement Law, the Cayman Islands court can consider the grounds on which the foreign court assumed jurisdiction, and can set aside registration where it is shown that the foreign court lacked the required jurisdiction. The foreign court will have had the required jurisdiction if the judgment debtor:

- Voluntarily submitted to the jurisdiction of the foreign court as evidenced by a voluntary appearance at court.
- Agreed to submit to the jurisdiction of the foreign court in respect of the subject matter of the proceedings, prior to their commencement.
- Resided in the country of the foreign court or carried on business there at the time the proceedings were instituted.
- Was a claimant or a counterclaimant in the proceedings in the foreign court.

(Section 6, *Reciprocal Enforcement Law*.)

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### **13. If the court assumed jurisdiction on the basis of an exorbitant ground of jurisdiction, can the enforcing court review the judgment on that ground?**

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#### **Exorbitant ground of jurisdiction**

The court will not review a judgment specifically on the basis that it has been granted on an exorbitant ground of jurisdiction. However, the court will refuse to enforce a foreign judgment where it does not comply with the grounds for recognition either under the common law or the Reciprocal Enforcement Law.

#### **Voluntary acknowledgement**

The Cayman Islands court can still analyse the grounds even if the defendant voluntarily acknowledged the jurisdiction, where the jurisdiction of the foreign court came into dispute once proceedings had been issued.



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## Foreign judgments: review of judgment

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### 14. Can the enforcing court review the judgment as to its substance if all formalities have been complied with and if the judgment meets all requirements?

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At common law, the Cayman Islands court will not review the substance of the foreign judgment unless there is an overriding public policy reason; for example, where it is alleged to have been procured by fraud or is contrary to public policy.

If enforcement is sought under the Reciprocal Enforcement Law, the court will review the foreign judgment under the grounds set out in section 6 (see *Question 12*).

#### Foreign judgments: public policy

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### 15. Can enforcement of a judgment be refused on grounds of public policy? Does public policy include matters of substantive law?

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When exercising its discretion to enforce a judgment, the court will have regard to whether the foreign judgment or its enforcement breaches public policy. However, the scope of this review is very narrow and refusal on the grounds of public policy will only arise where there has been a fundamental breach of the most basic notions of justice.

Public policy does not include matters of substantive law.

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### 16. In what circumstances and against which types of judgments has the principle of public policy generally been applied?

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On public policy grounds, the court will not enforce a judgment debt from a foreign court in respect of taxes, fines or other penalties. Nor will it enforce a judgment where the effect is to assist a foreign state to collect tax.

The court will not aid an attempt by a foreign state to act in excess of its jurisdiction by enforcing sovereign acts of that state outside its own territory (see *Tasarruf Mevduati Sigorta Fonu v Merrill Lynch Bank and Trust Co (Cayman) Ltd & others [2008 CILR 267]*).

#### Domestic and foreign: other conditions for recognition and enforcement

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### 17. What other conditions exist to enforce and recognise a judgment/refuse recognition and enforcement?

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#### Domestic

Generally, the Cayman Islands court will not examine the domestic judgment further, unless issues are raised by the judgment debtor.

A judgment is enforceable automatically in the Cayman Islands for six years from the date of delivery of the judgment (*section 30, Limitation Law (1996 Revision)*). Execution is not possible after expiry of this time limit.

#### Foreign

Opposition to enforcement at common law typically takes the form of substantive defences raised in the fresh proceedings. Challenges include that:

- The foreign judgment was obtained by fraud.

- The foreign court was not competent to pronounce the judgment.
- The foreign judgment was obtained in proceedings contrary to natural justice.
- Enforcement will be contrary to public policy.

The grounds on which a defendant can challenge the authority of a foreign judgment under the Reciprocal Enforcement Law include that:

- The foreign court lacked jurisdiction over the defendant.
- The foreign judgment was obtained by fraud or proceedings contrary to natural justice.
- Enforcement of the foreign judgment will be contrary to public policy (that is, the foreign law is repugnant to Cayman Islands law).
- The judgment debtor did not receive proper notice of the foreign proceedings in time to defend and did not appear.
- The rights under the judgment in question are not vested in the person who made the application.

(*Section 6, Reciprocal Enforcement Law*.)

## JUDGMENTS: METHODS OF ENFORCEMENT

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### 18. What is the enforcement procedure after a declaration of enforceability is granted?

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Once judgment has been issued by the court in proceedings brought for the purposes of enforcing a foreign judgment at common law, or once such a judgment has been registered in the Cayman Islands under the Reciprocal Enforcement Law, it can be enforced in the same way as any other judgment of a Cayman Islands Court.

Domestic enforcement options are set out above in *Question 5*.

#### JUDGMENTS: INTERIM REMEDIES AND INTEREST

##### *Interim remedies*

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### 19. Is it possible to apply for interim measures from the enforcing court pending the enforcement proceedings?

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The Cayman Islands court can order a variety of provisional measures pending enforcement of either domestic or foreign judgments. Interim measures include:

- Mandatory interim injunctions (and related relief) such as:
  - Anton Piller orders;
  - orders appointing receivers;
  - orders appointing provisional liquidators;
  - orders for interim payments; and
  - orders for detention or inspection and preservation of property.
- Freezing injunctions.

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## Interest

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### 20. Is the judgment creditor entitled to interest? If so, on what basis is it calculated?

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#### Domestic

The court can award interest at such rate as it considers appropriate. A domestic judgment will accrue interest automatically from the date of its award, unless the court orders otherwise. The interest rate applied is prescribed in the Judgement Debts (Rates of Interest) Rules and differs depending on the currency in which the judgment is expressed.

#### Foreign

Even if the foreign judgment does not award interest, the corresponding Cayman Islands judgment will automatically accrue interest at the standard judgment interest rate from the date of its award, unless ordered otherwise. If the foreign judgment does contain interest provision, the amounts owing pursuant to it can be sought in the action commenced before the Grand Court.

Similarly, a foreign judgment registered under the Reciprocal Enforcement Law accrues interest from the date of registration. Judgment creditors can include in their enforcement action any accrued interest due under the law of the foreign court up to the time of registration.

#### Currency

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### 21. Must the value of a foreign judgment be converted into the local currency?

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For common law enforcement, the new main proceeding can be expressed in the foreign currency. Conversion to the local currency will be effected either when the local judgment is entered or at the time of enforcement.

For judgments registered under the Reciprocal Enforcement Law, the judgment must be converted into Cayman Islands dollars.

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## ARBITRAL AWARDS: LEGAL FRAMEWORK

### Domestic framework

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### 22. What is the applicable domestic legislative framework for enforcement of arbitral awards?

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#### Domestic

The Cayman Islands enacted the Arbitration Law (2012 Revision) (Arbitration Law) (<http://www.lrc.gov.ky/portal/page/portal/lrhome/projects/ARBITRATION/21D2AC704F598A0AE0506F0A891F3092>) to govern the enforcement of all arbitration proceedings where the seat of the arbitration is in the Cayman Islands, irrespective of where the parties are based.

The Arbitration Law is largely based on the UNCITRAL Model Law on International Commercial Arbitration 1985 (UNCITRAL Model Arbitration Law). It provides a regime for enforcement of domestic awards, interim measures, and challenges to arbitration agreements in the Cayman Islands courts.

#### Foreign

The Foreign Arbitral Awards Enforcement Law (1997 Revision) (Foreign Awards Enforcement Law) ([http://www.judicial.ky/wp-content/uploads/pdf/court-rules-in-force/Grand\\_Court\\_Rules\(Revised\)October\\_2013.pdf](http://www.judicial.ky/wp-content/uploads/pdf/court-rules-in-force/Grand_Court_Rules(Revised)October_2013.pdf)) gives domestic effect to the New York Convention and provides a

mechanism for enforcement of New York Convention awards in the Cayman Islands.

Foreign, non-New York Convention awards are also enforceable under the Arbitration Law. Section 72(5) provides that any arbitral awards from any foreign state (irrespective of whether they are New York Convention awards) are enforceable in the Cayman Islands under the enforcement provisions of section 6 and 7 of the Foreign Awards Enforcement Law.

Awards under the Convention on the Settlement of Investment Disputes between States and Nationals of Other States, which was opened for signature in Washington on 18 March 1965 (Washington Convention), are also enforceable in the Cayman Islands pursuant to the Arbitration (International Investment Disputes) Act 1966, which was extended to the Cayman Islands by the UK via the Arbitration (International Investment Disputes) Act 1966 (Application To Colonies Etc.) Order 1967.

#### International conventions/agreements

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### 23. What international conventions and agreements on enforcement of arbitral awards is your jurisdiction a party to?

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The government of the UK extended the operation of the New York Convention to the Cayman Islands, which took effect on 24 February 1981 by way of a notification to the Secretary General of the United Nations. The Foreign Awards Enforcement Law gives effect to the New York Convention in the Cayman Islands. As noted above, the Washington Convention has also been extended to the Cayman Islands.

#### Definitions

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### 24. What is the definition of an arbitral award in your jurisdiction for the purpose of enforcement proceedings?

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The Arbitration Law defines an "award" as a decision of the arbitral tribunal on the substance of the dispute. A decision includes any interim, interlocutory or partial award. It is analogous to a judgment in a court of law.

Section 62 of the Arbitration Law outlines the requirements about form and content of all arbitral awards. The arbitral award must be in writing and signed by the tribunal. Unless the parties have agreed that no reasons are to be stated in the award, or that it is made for the purposes of recording a settlement reached between the parties, the award must state the reasons on which it is based.

The Foreign Awards Enforcement Law defines "Convention award" as an award made under an arbitration agreement in any state (other than the Cayman Islands) that is party to the New York Convention.

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## ENFORCEABLE/EXCLUDED TYPES OF ARBITRAL AWARD

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### 25. What types of arbitral awards are enforceable, and what types are excluded?

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#### Domestic

**Enforceable.** Any award made by an arbitral tribunal with the correct jurisdiction can be enforced with leave from the court, including:

- Money awards.
- Awards containing injunctions ordering or prohibiting the doing of acts.

- Decisions in preliminary/provisional proceedings.
- Decisions or awards by arbitral tribunals granting provisional measures and declaratory awards.

**Excluded.** Provided the arbitral tribunal had jurisdiction to make the award, no awards will be excluded from enforcement once leave from the court is obtained.

### Foreign

**Enforceable.** In principle, any award made under an arbitration agreement in a state that is a party to the New York Convention is enforceable under the Foreign Awards Enforcement Law. This includes the award types listed above under *Domestic*.

**Excluded.** There are no arbitral awards specifically excluded from enforcement under the Foreign Award Enforcement Law.

## ENFORCEMENT PROCEEDINGS

### Procedure

### 26. What is the procedure for making an application to enforce an arbitral award?

#### Domestic awards

An award made with leave from the court can be enforced in the same way as a judgment or order of the court (*section 72(1), Arbitration Law*).

All applications made to the Grand Court arising out of arbitrations must be made in the Financial Services Division. Order 73 of the Grand Court Rules requires that the parties must apply for leave to enforce an award by *ex parte* originating summons, and must file supporting affidavit evidence exhibiting both the arbitration agreement and the original award (or certificated copies). In addition, the affidavit must state the usual or last known place of residence or business of each of the parties, and must confirm that the award has not been complied with or the extent to which it has not been complied with at the date of the application.

The resulting order must be served on the party against whom the award is sought to be enforced, and that party is then given the opportunity to apply to set aside recognition of the award, or to apply to the court to challenge enforcement.

The fee for start proceedings to enforce an arbitration award in the Grand Court of the Cayman Islands is KYD5,000 (about USD6,100).

There is a limitation period of six years to enforce proceedings (*section 9, Limitation Law (1996 Revision)*). The length of enforcement proceedings depends on the complexity of the award.

#### Foreign awards

The procedure to enforce foreign awards is the same as for enforcement of domestic awards. In the case of both New York Convention and non-New York Convention awards, any enforcement procedure is carried out under sections 6 and 7 of Foreign Awards Enforcement Law. The only additional requirement is that, where the award is in a foreign language, a translation of it, certified by an official or sworn translator or by a diplomatic or consular agent, is required. It is not necessary to convert the value of foreign awards into local currency.

### 27. Can parties seek to enforce only part of the award?

Section 72(1) of the Arbitration Law allows awards to be enforced with permission from the court in the same way as a judgment or order of the court. Even though the legislation does not specifically provide for the enforcement of part of an award, there is no reason in principle why a Cayman Islands court will not allow this.

Awards sought to be enforced can be separated to allow enforcement only of those parts of the award properly submitted to arbitration (*section 7(4), Foreign Awards Enforcement Law*).

### Form of application

### 28. What documents and information must be provided with an application to enforce an award?

#### Domestic

See *Question 26*.

#### Foreign

See *Question 26*.

### 29. What information must be included in the application?

Neither the Grand Court Rules (in the case of a domestic award) nor the Foreign Awards Enforcement Law (in the case of a foreign award) require specific information about the award to be included in the *ex parte* originating summons. However, the requirement to give full and frank disclosure to the court in cases of *ex parte* proceedings demands that information about details of the claim, the facts and legal grounds and whether the judgment is still open to challenge will, except in unusual cases, be necessary.

Section 6 of the Foreign Awards Enforcement Law requires that the party seeking to enforce a New York Convention award must produce as evidence:

- A duly authenticated original or duly certified copy of the award.
- The original arbitration agreement or a duly certified copy of it.
- A translation if necessary.

## CHALLENGING ENFORCEMENT

### Service

### 30. Does the enforcing court review service of the proceedings? What conditions regarding service of the proceedings must be satisfied?

#### Domestic

Any issues about service of the proceedings will have been addressed as part of the underlying domestic proceedings.

Leave to enforce both a domestic and a foreign award will not be given in circumstances where the arbitral tribunal lacked jurisdiction to make the award (*section 72(1) (3), Arbitration Law*). In addition, it is likely that the Cayman Islands can set aside and refuse to enforce a domestic award on the same grounds applicable to New York Convention awards (*see below*).

The Grand Court will not usually consider again any issue about service *ex officio*, but will consider this as a defence if raised as a ground to refuse enforcement.

#### Foreign

Enforcement can be refused if any of the conditions set out in section 7(2), Foreign Awards Enforcement Law, are not met. One of those conditions is that proper notice of the appointment of the arbitrators or of the arbitration proceedings was not given or that the party was otherwise unable to present its case.

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## Pending challenge proceedings

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### 31. What is the effect of pending challenge proceedings to the award?

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#### Domestic

There are no express provisions in the Grand Court Rules allowing a domestic award to be set aside or suspended pending an application to challenge proceedings. However, in practice it is likely that the Cayman Islands court will take into account the same considerations that are set out in the Foreign Awards Enforcement Law (see below, *Foreign*).

#### Foreign

Where an application has been made to set aside or suspend an award in the country in which it was made, the Cayman court can adjourn the Cayman Islands proceedings and/or order the person against whom the award is made to provide security (section 7(5), *Foreign Awards Enforcement Law*). In *Terk Technologies Corporation v Dockery 2000 CILR N-1*, it was held that, where an award is not yet suspended or set aside by the foreign court, an application for a stay must be made under the court's inherent jurisdiction or under Order 47(1) of the Grand Court Rules, which give the court a wide discretion.

#### Review/opposition

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### 32. Can the enforcing court review an award if all formalities were complied with and if the award meets all requirements?

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#### Domestic

The Cayman Islands court is not required to review an award if all formalities were complied with and the award meets all the requirements.

#### Foreign

The court will not review an award *ex officio*, and will only review an award on certain grounds, limited to the grounds outlined in section 7(2) of the Foreign Awards Enforcement Law (see *Question 37*).

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### 33. What are the grounds for refusing enforcement?

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#### Domestic

Leave to enforce a domestic award will not be given in circumstances where the arbitral tribunal lacked jurisdiction to make the award (section 72(1)(3), *Arbitration Law*). In addition, it is likely that the Cayman Islands can set aside and refuse to enforce a domestic award on the same grounds applicable to New York Convention awards (see below, *Foreign*).

#### Foreign

The Cayman Islands court can refuse to enforce a New York Convention award if any of the following grounds are proved by the person resisting enforcement:

- A party to the arbitration agreement was under some incapacity.
- The arbitration agreement was not valid under the law of the agreement or the law of the forum.
- Proper notice of the appointment of the arbitrator or of the proceedings was not provided or a party was otherwise unable to present a case.

- The award deals with a dispute not contemplated by or outside the terms or scope of the submission to arbitration.
- The tribunal was not properly or validly composed.
- The award is not yet binding, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.
- The award is in respect of a matter not capable of settlement by arbitration.
- It would be contrary to public policy to enforce the award.

(Section 7, *Foreign Awards Enforcement Law*.)

Where the award is not a New York Convention award, it is covered by the Arbitration Law.

#### Public policy

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### 34. Which country's public policy applies? Does the court approach the issue differently depending on whether the award is a domestic or foreign award?

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#### Domestic

The court will apply Cayman Islands public policy when considering local enforcement questions.

#### Foreign

See above, *Domestic*.

The court will apply Cayman Islands public policy (*Gol Linhas v MatlinPatterson Global Opportunities* (CICA 012 of 2019, 11 August 2020, unreported)).

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### 35. In what circumstances and against which awards has the principle of public policy generally been applied?

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The Grand Court of the Cayman Islands refused to enforce an arbitral award in circumstances where it made findings on grounds that were not pleaded or argued in the arbitration, because such an award violated the public policy of the Cayman Islands, which requires that a party must have the right to be heard (*VRG Linhas Aereas S.A. v Matlin Patterson Global Opportunities Partners (Cayman) II L.P. & others* (FSD 137 of 2016, Mangatal J, 19 February 2019, unreported)). The award in question was also in any event held to have violated the requirements of the New York Convention and of the Foreign Awards Enforcement Law that respondents must be parties to the arbitration agreement.

The Grand Court's decision in this matter was recently overturned by the Cayman Islands Court of Appeal (*Gol Linhas v MatlinPatterson Global Opportunities* (CICA 012 of 2019, 11 August 2020, unreported)). The appellate judgment does not impact the fundamental principle that enforcement may be reduced on public policy grounds. However, it does make a number of important observations. In particular, while it is Cayman Islands public policy, including concepts of due process, that apply, procedural devices properly applicable in the arbitration under the curial law selected by the parties is to be accorded appropriate respect and not to be held to violate Cayman Islands public policy simply because they may differ from principles of adversarial procedure generally applicable under common law. Moreover, it must be shown that the violation materially changed the outcome.

In general, the Cayman Islands courts will be guided by decisions of the English and Commonwealth courts in relation to the question of what circumstances would be sufficient to refuse enforcement on grounds of public policy.



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Arbitral awards obtained by fraud or illegality have been refused enforcement by English courts and it is likely that the Cayman court will adopt a similar position.

As regards awards under the Washington Convention, enforcement of such awards is subject to Cayman Islands law on sovereign immunity.

## ACTUAL ENFORCEMENT

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### 36. What is the execution procedure when a declaration of enforceability is granted?

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An award can be enforced in the same way as a local judgment of the court, once a declaration of enforceability is granted.

Methods of enforcement include:

- Seizure of assets.
- Garnishee orders.
- Charging orders over land or other assets.
- The appointment of a receiver.

Insolvency proceedings (on the basis that the company in question is unable to pay its debts as they fall due) can also be commenced.

### 37. Can defendants oppose the execution procedure, and if so, on what grounds/defences?

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#### Domestic

The target of any enforcement process can seek to oppose the execution procedure on the same grounds that apply to judgments. The available defences are the same as for enforcement of a domestic judgment. See *Question 17*.

#### Foreign

See above, *Domestic*.

## ARBITRAL AWARDS: INTERIM REMEDIES AND INTEREST

### *Interim remedies*

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### 38. Is it possible to apply for interim measures from the enforcing court pending the enforcement proceedings?

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#### Domestic

The court has jurisdiction to grant interim freezing orders, regardless of whether the seat of the arbitration is in the jurisdiction.

#### Foreign

See above, *Domestic*.

## Interest

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### 39. Is the creditor entitled to interest? If so, on what basis is it calculated?

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#### Domestic

The tribunal can award interest calculated as agreed by the parties or, in the absence of agreement, in the manner determined by the arbitral tribunal. Interest can be awarded on all or any part of an amount that the tribunal orders to be paid in respect of any period up to the date of the award. Unless the tribunal otherwise directs, the award carries interest from the date of the award at the same rate as a judgment debt.

Under Order 73, rule 32 of the Grand Court Rules, where an applicant seeks to enforce an award of interest, a supporting affidavit must be filed stating:

- Whether simple or compound interest was awarded.
- The date from which the interest was awarded.
- The rate of interest.
- A calculation showing the total amount claimed up to the date of the affidavit and whether any sum will become due afterwards on a daily basis.

#### Foreign

See above, *Domestic*.

#### Currency

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### 40. Is it required to convert the value of foreign awards into the local currency?

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It is not necessary to convert the value of foreign awards into local currency.

## JUDGMENTS AND ARBITRAL AWARDS: PROPOSALS FOR REFORM

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### 41. Are any changes to the law currently under consideration or being proposed?

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#### Judgments

There are no changes to the law currently under consideration or being proposed.

#### Arbitral awards

There are no changes to the law currently under consideration or being proposed.

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## Practical Law Contributor profiles

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