

Enforcement of Foreign Judgments

Fundamental Principles [British Virgin Islands]

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I. RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT DECISION (CIVIL AND COMMERCIAL MATTERS)

A. Ability to Apply for Recognition and Enforcement of a Court Judgment

- 1. Is it possible to apply for enforcement of a foreign court judgment in Your country?**

Answer: Yes.

B. Applicable Law: General Rules

- 1. Which laws are generally applicable to the enforcement of a foreign court judgment in your country?**

Answer: There are two possible ways in which recognition and enforcement of a foreign judgment may be obtained:

Judgments of the High Court of England and Wales, the Court of Session in Scotland, and the Courts of Northern Ireland, New South Wales (Australia), the Bahamas, Barbados, Bermuda, Belize, Guyana, Grenada, Jamaica, Nigeria, St Lucia, St Vincent and Trinidad & Tobago may be registered in the High Court of the British Virgin Islands and enforced in the Territory under the Reciprocal Enforcement of Judgments Act (Cap. 65) using the procedure set out in Part 72 of the Eastern Caribbean Supreme Court Civil Procedure Rules 2000.

For judgments from all other jurisdictions, it is necessary for the judgment creditor to bring a common law claim for enforcement of the judgment.

C. Special Rules: European Union

- 1. Are there any special rules regarding the enforcement of a foreign court judgment in your country?**

Answer: Not applicable.

- 2. Does the European Union have a special procedure to enforce court judgments coming from its member states?**

Answer: Not applicable.

D. Average Duration of Enforcement Procedure

- 1. What is the average length of time for this kind of procedure?**

Answer: Typically 2 to 6 months depending upon whether the application/claim is opposed. If it is necessary to serve the originating

process or an order for registration out of the jurisdiction, this could substantially lengthen the procedure.

II. DENIAL OF RECOGNITION AND ENFORCEMENT OF A FOREIGN COURT JUDGMENT: REASONS

A. Can a Court in your country deny recognition and enforcement of a foreign court judgment? If YES: what kind of reasons may justify denial?

Answer: Under the Reciprocal Enforcement of Judgments Act, the BVI

Court must refuse to register a foreign judgment if:

the original Court acted without jurisdiction; or

the judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the original Court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that Court; or

the judgment debtor being the defendant in the proceedings, was not duly served with the process of the original Court and did not appear, notwithstanding that he was ordinarily resident or was carrying on business within the jurisdiction of that Court or agreed to submit to the jurisdiction of that Court; or

the judgment was obtained by fraud; or

the judgment debtor satisfies the BVI Court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment; or

the judgment was in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the BVI Court.

The Reciprocal Enforcement of Judgments Act generally restates the grounds upon which recognition and enforcement of a foreign judgment may be refused at common law.

B. Costs and expenses

1. What kind of cost and expenses can a claimant expect in this enforcement procedure?

Answer: A claimant may expect to incur costs and expenses of the following nature:

Court fees;

Translation fees if, for instance, the foreign judgment is not in the English language, or the originating process is required to be served in a jurisdiction where English is not the official language;

Lawyers' fees; and

Process servers' fees.

The reasonable costs of and incidental to the registration or recognition and enforcement of the foreign judgment are likely to be recoverable in like manner as if they were sums payable under the judgment.

III. FORMAL REQUIREMENTS

A. Time limit

1. Is there a time limit to apply for enforcement of a foreign court judgment?

Answer: An application under the Reciprocal Enforcement of Judgments Act must be made within 12 months after the date of the judgment or within such longer period as the BVI Court considers 'just and convenient'.

A common law claim for enforcement of a judgment may not be brought after the expiration of 12 years from the date on which the judgment became enforceable.

B. Final and Definitive Court Judgment: Provisional Enforcement

1. Is it mandatory for the judgment to be a final and definitive court judgment? If NO: Are there any special requirements to provisionally enforce a court judgment which is not final and definitive?

Answer: Yes. The BVI Court must refuse to register a foreign judgment under the Reciprocal Enforcement of Judgments Act if the judgment debtor satisfies the BVI Court either that an appeal is pending, or that he is entitled and intends to appeal, against the judgment.

Likewise, a foreign judgment will generally only be enforced at common law if it is final and conclusive.

C. Necessary Requirements

1. What necessary requirements must the foreign court judgment fulfill to be recognised and enforced?

Answer: A foreign judgment may be registered under the Reciprocal Enforcement of Judgments Act if it is a judgment or order made by a Court in any civil proceedings, whereby any sum of money is made payable.

Generally speaking, a foreign judgment may be enforced in the BVI at common law by a claim for the amount due under the judgment if:

- (i) the foreign court had jurisdiction over the parties;
- (ii) the judgment is for a debt or a fixed sum of money; and
- (iii) the judgment is final and conclusive.

In either case, the BVI Court may nevertheless refuse to register or recognise and enforce a foreign judgment if it is satisfied that grounds for the refusal of registration or recognition exist (see the answer to II. A. above).

D. Other Formal Requirements: Court Fees

1. Is it mandatory to pay court fees for this kind of application?

Answer: Yes.

E. Are there any other formal requirements in your country to enforce a court judgment?

Answer: No.

IV. PROCEDURE

A. Competent court

1. Which court or courts are competent to decide an enforcement application?

Answer: Applications for registration and claims for recognition and enforcement may be brought before the High Court of Justice. If the value of the judgment is at least US\$500,000 and subject to the nature of the judgment debt, it may be possible to bring the proceedings in the High Court's specialist Commercial Division.

B. Informational Requirements for the Application to Enforce a Foreign Court Judgment

1. What information must be contained in the enforcement application of a foreign court judgment?

Answer: An application for registration of a judgment under the Reciprocal Enforcement of Judgments Act must be supported by affidavit evidence:

specifying the amount of the interest, if any, which under the law of the country of the original court has become due under the judgment up to the time of the application;

stating the name, trade or business and the usual or last known place of abode or business of the judgment creditor and the judgment debtor respectively, so far as is known to the deponent; and

stating to the best of the information or belief of the deponent:

that the judgment creditor is entitled to enforce the judgment; and either:

that at the date of the application the judgment has not been satisfied; or

the amount in respect of which it remains unsatisfied;

that the judgment may be ordered to be registered for enforcement under the Reciprocal Enforcement of Judgments Act; and

that the registration would not be or be liable to be, set aside under the Reciprocal Enforcement of Judgments Act.

A common law claim for enforcement of a foreign judgment will need to set out as succinctly as possible a statement of all the facts on which the claimant relied to establish liability under the foreign judgment. It will also be necessary to identify any document which the claimant considers to be necessary to his or her case.

C. What documents must be included with/attached to the application to enforce a foreign court judgment?

Answer: An application for registration of a judgment under the Reciprocal Enforcement of Judgments Act must be supported by affidavit evidence exhibiting the judgment or a verified, certified or otherwise duly authenticated copy of it and, if the judgment is not in the English language, an English translation of it certified by a notary public or authenticated by affidavit.

D. Phases of the Procedure

1. What are the phases of the procedure to enforce a foreign court judgment?

Answer: An application to have a judgment registered in the High Court under the Reciprocal Enforcement of Judgments Act may be made without notice to the judgment debtor. If the High Court is satisfied that the judgment should be registered, it will make an order for registration which must state the period within which an application may be made to set aside the registration and contain a notification that execution on the judgment will not issue until after the expiration of that period. Notice of the registration of a judgment must be served on the judgment debtor by delivering it to the judgment debtor personally or in such other manner as the court may direct.

Once a common law claim for enforcement of a foreign judgment has been issued, it will need to be served on the defendant. If the defendant is resident outside the jurisdiction, it will be necessary to make an application for permission to serve outside the jurisdiction. Once the defendant has been served, it will have an opportunity to acknowledge service of the claim and/or file and serve a defence to the claim. Should it fail to do so within the prescribed time, the claimant will then be able to apply for judgment in default. Otherwise it will usually be possible to bring matters to a swift conclusion by obtaining summary judgment. This is on the basis that the defendant has no real prospect of successfully defending the claim, given that the foreign judgment is generally determinative of the merits of the claim.

E. Opposition of the Defendant

1. Can a defendant oppose to this enforcement application?

Answer: As mentioned above, an application to have a judgment registered in the High Court under the Reciprocal Enforcement of Judgments Act may be made without notice to the judgment debtor in the first instance. However, notice of the registration of a judgment must be served on the judgment debtor who will then have an opportunity to make an application to set aside the registration of the judgment.

As mentioned above, a defendant to a common law claim for enforcement may defend the claim, but is at risk of summary judgment being entered against it on the basis that the foreign judgment is generally determinative of the merits of the claim.

2. Are there a limited number of reasons for the defendant to oppose to the enforcement of the court judgment? If YES: what are those reasons?

Answer: Yes, if the court hearing an application to set aside the registration of a judgment under the Reciprocal Enforcement of Judgments Act is satisfied that:

- (i) it is not just or convenient that the judgment should be enforced within the jurisdiction; or
- (ii) the judgment falls within any of the cases in which a judgment may not be registered under the provisions of the Reciprocal Enforcement of Judgments Act (see the answer to II. A. above);

it may order the registration of the judgment to be set aside on such terms as it directs.

F. Appeal and its Consequences in this Procedure

1. Is it possible to appeal a court decision to recognise and enforce a foreign court decision?

Answer: Yes.

2. Can this appeal suspend the enforcement?

Answer: The mere fact of an appeal does not operate as a stay of execution of any judgment of the High Court. If the judgment debtor wishes to suspend enforcement of the judgment, it will need to make an application for a stay of enforcement to the High Court or the Court of Appeal.

The court's jurisdiction to grant a stay is based upon the principle that justice requires that the court should be able to take steps to ensure that its judgments are not rendered valueless. The essential question for the court is whether there is a risk of injustice to one or both parties if it grants or refuses a stay. Further, the evidence in support of the application for stay of execution should be full, frank and clear. The normal rule is for no stay and if a court is to consider a stay, the applicant has to make out a case by evidence which shows special circumstances for granting one. The mere existence of arguable grounds of appeal is not, by itself, a good enough reason.

G. Recovery of judicial costs and expenses

1. Are there any rules concerning recovery of the judicial costs incurred as a result of the enforcement application?

Answer: The reasonable costs of and incidental to the registration or recognition and enforcement of the foreign judgment are likely to be recoverable in like manner as if they were sums payable under the judgment.

V. RECOVERY OF THE DEBT

A. Means of Enforcement

1. What types of assets are subject to enforcement of the court's judgment?

Answer: Generally speaking, a judgment may be enforced against any of the judgment debtor's assets. Typically in the British Virgin Islands, judgments are enforced against the judgment debtor's interest in shares in British Virgin Islands' companies.

VI. OTHER ISSUES OF INTEREST IN YOUR JURISDICTION

A. Any other issues of interest in your jurisdiction

Answer: It is not necessary for a foreign judgment to be first enforced in the jurisdiction before a statutory demand can be presented in reliance on it. Further, there is no statutory provision or common law principle in the British Virgin Islands which prohibits a judgment creditor from serving a statutory demand or a winding up petition based on an unenforced foreign judgment.

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