

International Comparative Legal Guides



Practical cross-border insights into the enforcement of foreign judgments

Enforcement of Foreign Judgments 2022

Seventh Edition

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1 Country Finder

1.1 Please set out the various regimes applicable to recognising and enforcing judgments in your jurisdiction and the names of the countries to which such special regimes apply.

Applicable Law/ Statutory Regime	Relevant Jurisdiction(s)	Corresponding Section Below
The Foreign Judgments Reciprocal Enforcement Act (2021 Revision) (the Foreign Judgments Act).	Australia and external territories.	Sections 2 and 3.
Common law.	All countries to which the Foreign Judgments Act does not apply.	Section 2.

2 General Regime

2.1 Absent any applicable special regime, what is the legal framework under which a foreign judgment would be recognised and enforced in your jurisdiction?

The Foreign Judgments Act provides a statutory framework for enforcement. The Act currently applies only to judgments from the Supreme Courts of stated Australian states and territories and the Australian Federal and High Courts. Most foreign judgments are therefore enforced in the Cayman Islands using the common law route, i.e. commencing a claim based on the foreign judgment and then seeking summary judgment on that claim.

Order 72 of the Cayman Islands Grand Court Rules 1995 (as amended) (**GCR**) requires that any action to enforce a foreign judgment must be commenced in the Financial Services Division (**FSD**) of the Grand Court of the Cayman Islands.

GCR Order 45 sets out the practice and procedures for enforcement of judgments generally.

2.2 What constitutes a 'judgment' capable of recognition and enforcement in your jurisdiction?

For the purpose of the Foreign Judgments Act, "*judgment*" means "*a judgment or order made or given 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*", i.e. it is limited to money judgments.

There is no fixed definition at common law, so there is scope for enforcement of non-monetary judgments under the common law route.

2.3 What requirements (in form and substance) must a foreign judgment satisfy in order to be recognised and enforceable in your jurisdiction?

Statutory recognition under the Foreign Judgments Act requires:

- the judgment debtor to have been properly served in accordance with the law of the foreign country;
- the judgment to be from one of the jurisdictions to which the Foreign Judgments Act applies, and to have been given after the Foreign Judgments Act came into force;
- the foreign judgment to be final and conclusive;
- the foreign judgment to be for payment of a sum of money;
- registration to be sought within six years from the date of the foreign judgment; and
- at the date of the application, the foreign judgment must not already have been wholly satisfied or enforced and must still be capable of enforcement in the country of origin.

The court can recognise or enforce a foreign judgment at common law if the judgment is given by a court of competent jurisdiction and is final and conclusive. Non-money judgments can be recognised where the principles of comity apply.

The court will not enforce criminal fines and tax judgments and judgments that are contrary to Cayman Islands public policy, whether under the Foreign Judgments Act or at common law.

GCR Order 45 requires that a judgment must have been properly served before it can be enforced.

It is possible for the court to sever parts of a judgment, to recognise and/or enforce the parts that are capable of recognition and/or enforcement, and disregard the remaining parts. Even if a judgment is unenforceable, it may nonetheless be recognised as

being *res judicata* at common law, thereby creating a cause of action estoppel for the purpose of other proceedings between the same parties in respect of the same issue.

2.4 What (if any) connection to the jurisdiction is required for your courts to accept jurisdiction for recognition and enforcement of a foreign judgment?

The court can enforce at common law without the need to establish any connection with the Cayman Islands. However, the court is unlikely to do so in its discretion in the absence of power over the judgment debtor or assets within the jurisdiction.

2.5 Is there a difference between recognition and enforcement of judgments? If so, what are the legal effects of recognition and enforcement respectively?

The Cayman Islands theoretically distinguishes between recognition and enforcement – recognition may allow the judgment to be relied upon as a defence in proceedings in the Cayman Islands, whereas enforcement involves exercise of power over the judgment debtor or execution on assets. However, for judgments enforced at common law by action, there is no practical scope for separate recognition.

2.6 Briefly explain the procedure for recognising and enforcing a foreign judgment in your jurisdiction.

The procedure for enforcement under the Foreign Judgments Act is set out in GCR Order 71. It requires the judgment creditor to apply to the court (FSD) by *ex parte* Originating Summons for the judgment to be registered. The application must be supported by an affidavit that:

- exhibits the judgment (or a certified copy) and where the judgment is not in English, a notarised translation;
- states the name, trade or business and the last-known place of abode or business of the judgment creditor and the judgment debtor;
- states that the judgment creditor is entitled to enforce the judgment; and
- confirms that the judgment remains unsatisfied.

The court may direct the summons to be served on the judgment debtor.

If the court is satisfied that the judgment meets the statutory criteria (set out at question 2.7 below), it can register the judgment. The judgment creditor must serve the Notice of Registration on the judgment debtor. The judgment debtor then has a limited time (fixed by the court) within which to apply to set aside registration. If registration is not challenged by the judgment debtor, or is confirmed, the registered judgment is treated as if it were a judgment of the court.

The procedure for enforcement at common law is to commence proceedings by a writ of summons making a claim based on the foreign judgment. The writ must be served on the judgment debtor. This may require obtaining permission of the court to serve the writ in the appropriate jurisdiction if the judgment debtor is not present in the Cayman Islands.

The judgment debtor must acknowledge service and file a defence (unless the claim is admitted) within a time limit fixed by the GCR (if within the jurisdiction) or the court (if outside the jurisdiction). The judgment creditor will usually then apply for summary judgment (or possibly judgment in default).

Security for costs is not required as a matter of course in enforcement proceedings.

2.7 On what grounds can recognition/enforcement of a judgment be challenged? When can such a challenge be made?

The Foreign Judgments Act provides certain limited grounds upon which a judgment debtor may challenge registration or enforcement. These are:

- the court issuing the judgment did not have jurisdiction to pronounce the judgment;
- the judgment debtor, being a defendant in the proceedings in the original court, did not receive proper notice of those proceedings in time to defend the proceedings and did not appear;
- the foreign judgment was obtained by fraud;
- the enforcement of the judgment would be contrary to public policy;
- the rights under the judgment are not vested in the person by whom the application was made; or
- there is a previous final and conclusive foreign judgment dealing with the same subject matter.

A judgment debtor in common law enforcement proceedings may impeach the underlying foreign judgment on grounds broadly similar to those in the Foreign Judgments Act and/or on the basis that the requirements for enforcement (referred to at question 2.3) have not been satisfied, and additionally on the ground that a different enforceable foreign judgment (or arbitral award) nullifies or impacts upon the foreign judgment sought to be enforced. The judgment debtor may raise as a counterclaim any other liability that the judgment creditor has to the judgment debtor.

Whether at common law or under the Foreign Judgments Act, a judgment debtor can apply for an injunction to prevent the enforcement of a foreign judgment (albeit such relief will only be granted in limited circumstances).

2.8 What, if any, is the relevant legal framework applicable to recognising and enforcing foreign judgments relating to specific subject matters?

No specific regimes have been adopted.

2.9 What is your court's approach to recognition and enforcement of a foreign judgment when there is: (a) a conflicting local judgment between the parties relating to the same issue; or (b) local proceedings pending between the parties?

The Foreign Judgments Act requires the court to recognise duly registered foreign judgments as conclusive between the parties in respect of all proceedings founded on the same grounds. Therefore, a conflicting local judgment or local proceedings between the parties would not *prima facie* affect recognition under the Foreign Judgments Act.

Under common law, a previous conflicting judgment by the court in respect of the same issue(s) determined between the same parties is a basis for a judgment debtor to resist recognition/enforcement proceedings. See further question 2.7.

If proceedings are ongoing in the court between the same parties in respect of the same issue(s), those proceedings may be stayed pending determination of the judgment creditor's action on the foreign judgment.

2.10 What is your court's approach to recognition and enforcement of a foreign judgment when there is a conflicting local law or prior judgment on the same or a similar issue, but between different parties?

Recognition and enforcement will not be refused simply because there is conflicting Cayman law, even if the foreign court made an error of fact or law. However, if the conflict is such that the recognition and enforcement would be contrary to Cayman Islands public policy, the court may refuse to recognise and enforce the foreign judgment.

The fact there is a prior judgment on a similar issue between different parties is not of itself sufficient grounds for the court to refuse recognition and enforcement of a foreign judgment.

2.11 What is your court's approach to recognition and enforcement of a foreign judgment that purports to apply the law of your country?

A foreign judgment is not challengeable on the basis that it misapplied Cayman law. Therefore, a foreign judgment that purports to apply Cayman law is capable of recognition and enforcement in the same way as any other foreign judgment.

2.12 Are there any differences in the rules and procedure of recognition and enforcement between the various states/regions/provinces in your country? Please explain.

There are no such differences.

2.13 What is the relevant limitation period to recognise and enforce a foreign judgment?

The judgment creditor has six years to enforce a foreign judgment: see section 30(1) of the Limitation Act (1996 Revision), “[a]n action shall not be brought upon any judgment after the expiration of six years from the date on which the judgment became enforceable”.

3 Special Enforcement Regimes Applicable to Judgments from Certain Countries

3.1 With reference to each of the specific regimes set out in question 1.1, what requirements (in form and substance) must the judgment satisfy in order to be recognised and enforceable under the respective regime?

See the response to question 2.3 above.

3.2 With reference to each of the specific regimes set out in question 1.1, does the regime specify a difference between recognition and enforcement? If so, what is the difference between the legal effect of recognition and enforcement?

See the response to question 2.5 above.

3.3 With reference to each of the specific regimes set out in question 1.1, briefly explain the procedure for recognising and enforcing a foreign judgment.

See the response to question 2.6 above.

3.4 With reference to each of the specific regimes set out in question 1.1, on what grounds can recognition/enforcement of a judgment be challenged under the special regime? When can such a challenge be made?

See the response to question 2.7 above.

4 Enforcement

4.1 Once a foreign judgment is recognised and enforced, what are the general methods of enforcement available to a judgment creditor?

For both enforcement under the Foreign Judgments Act and at common law, the end result is a Cayman Islands judgment, which can be enforced using all the normal methods of execution available for any domestic judgment. These include:

- a writ of *fieri facias*, to permit the seizure and sale of a judgment debtor's goods and chattels to satisfy the judgment debt;
- a garnishee order, ordering a person indebted to the judgment debtor to pay that debt direct to the judgment creditor;
- a charging order, to provide the judgment creditor with security over the judgment debtor's assets;
- the appointment of receivers;
- an order for committal, where the judgment debtor fails to comply with a court order;
- a writ of sequestration, to permit seizure of personal property where the judgment debtor has failed to comply with an earlier order and is therefore in contempt of court; and
- an order for attachment of earnings, which compels the judgment debtor's employer to deduct payments from their salary and pay those deductions directly into court.

5 Other Matters

5.1 Have there been any noteworthy recent (in the last 12 months) legal developments in your jurisdiction relevant to the recognition and enforcement of foreign judgments? Please provide a brief description.

No, there have not.

5.2 Are there any particular tips you would give, or critical issues that you would flag, to clients seeking to recognise and enforce a foreign judgment in your jurisdiction?

The recognition and enforcement process is relatively straightforward, but it can take some time.

If there is a genuine concern that a recalcitrant debtor is moving or may move assets out of the jurisdiction, it should be considered whether it is necessary to seek interim injunctive relief to ensure that the assets against which enforcement is sought are preserved.

If using the common law route with a judgment debtor who does not participate, then it is usually better to obtain summary judgment, having presented the evidence, rather than simply obtaining a default judgment which might be liable to being set aside later.

It should be noted that many companies or partnerships registered in the Cayman Islands carry on their business and have their assets in another jurisdiction. It may be wise to take steps to lock down those assets as part of a global enforcement campaign. The appointment of a receiver or insolvency proceedings rather than private enforcement may be a more economical and timely method of recovering the debt owed.



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Peter Tyers-Smith is an English barrister representing clients in complex, ultra-high-value international disputes typically with a connection to one or more offshore jurisdictions. Mr. Tyers-Smith frequently leads major litigation proceedings in the Cayman Islands and the British Virgin Islands, where he holds permanent court admissions, but he also has significant experience in acting in global disputes originating from or proceeding before the courts of Nevis, Antigua, the Bahamas, Bermuda and Gibraltar, where he has been admitted *pro hac vice*.

Mr. Tyers-Smith has very substantial advocacy experience. He has appeared as sole advocate in well over 50 trials and substantially more contested "heavy" interim hearings in the Commercial Court (now the Business and Property Court of England & Wales), the BVI Commercial Court and the Cayman Islands Grand Court, Financial Services Division, where he has often appeared against Queen's Counsel. Mr. Tyers-Smith has also acted in cases before the House of Lords (now the UK Supreme Court) and the Court of Appeal (England & Wales and BVI).

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Kobre & Kim is an Am Law 200 global law firm focused exclusively on disputes and investigations, often involving fraud and misconduct. Recognised as the premier firm for high-stakes, cross-border disputes, the firm has a particular focus on financial products and services litigation, insolvency disputes, intellectual property litigation, international judgment enforcement and asset recovery, and U.S. government enforcement and regulatory investigations.

Our offshore asset recovery team has an acute focus on complex, cross-border asset tracing and claim monetisation. Comprising English solicitors, barristers, Queen's Counsel, as well as Hong Kong solicitors, our team has deep experience tracing, freezing and recovering misappropriated assets hidden in offshore structures.

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