

GETTING THE
DEAL THROUGH 

Enforcement of Foreign Judgments 2015

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Published by
Law Business Research Ltd
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London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910

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First published 2011
fourth edition
ISSN 2048-464X

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Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112



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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?

With exceptions limited only to Australia (see question 23) as well as foreign arbitral awards, the Cayman Islands has not itself entered into any international treaties for the reciprocal recognition of enforcement of foreign judgments.

Of note, however, is that as the Cayman Islands is a British overseas territory, the United Kingdom has authority to extend treaties ratified on its behalf to the Cayman Islands by Order in Council. With the exception of the Convention on the Recognition of and Enforcement of Foreign Arbitral Awards (the New York Convention), no such treaty has been extended to the Cayman Islands.

2 Intra-state variations

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

Not applicable.

3 Sources of law

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

Although a statutory regime exists in the Cayman Islands for the enforcement of foreign judgments, reciprocity under the Foreign Judgments Reciprocal Enforcement Law (1996 Revision) (the 1996 Law) applies only between the Cayman Islands and judgments from supreme courts in various Australian states and territories, and the Australian federal and high courts. With respect to judgments arising from elsewhere, it is necessary to have recourse to common law principles of enforcement of foreign judgments.

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?

Not applicable.

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 the 1996 Law, applications for registration of an award must be made within six years of the date of the judgment or, where there have been appeals, the date of the last judgment.

The Cayman Islands Court would not consider the statute of limitations of the foreign jurisdiction.

6 Types of enforceable order

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

The types of foreign judgment that may be enforced in the Cayman Islands are traditionally limited to debt or specific sums of money. In *Bandone v Sol Properties* (2008) CILR 301, regarding an application for rectification of the register of a Cayman Islands company before the Cayman Court following a foreign judgment, it was confirmed that enforcement of in personam foreign judgment is not confined to debts of specific amounts. The court confirmed that non-money judgments may now be recognised and enforced through equitable remedies should the principle of comity require it.

When deciding whether or not to enforce a non-money judgment, in the exercise of its discretion the court will have regard to general considerations of fairness but will not re-examine the merits of the underlying case. Under the 1996 Law, the court must be satisfied that:

- the foreign court had personal jurisdiction over the defendant;
- the foreign judgment was final and conclusive; and
- the enforcement of such a judgment would not be contrary to public policy.

7 Competent courts

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

A party seeking to enforce a foreign judgment pursuant to the common law, the Foreign Judgments Reciprocal Enforcement Law or the Foreign Arbitral Awards Enforcement Law, must bring an action in the Financial Services Division of the Cayman Islands Grand Court.

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?

In the limited scenarios where it is applicable (see question 3), section 4 of the 1996 Law requires judgments to first be registered or recognised before they can be enforced and take effect as if they were a judgment of a Cayman Islands court. In order to register a judgment, the claimant must apply to the Cayman Islands Grand Court, who will then make a determination as to whether that judgment meets the requirements for registration. Once a Cayman judgment has been obtained, a number of execution options are potentially available such as writs of fieri facias, garnishee proceedings and charging orders.

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?

A party is only permitted to challenge the authority of or basis for the foreign judgment on the limited grounds set out in section 6 of the 1996 Law. These grounds are as follows:

- that the court issuing the judgment did not have valid jurisdiction to pronounce the judgment;
- that 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;
- that the foreign judgment was obtained by fraud;
- that the enforcement of the judgment would be contrary to public policy; or
- that the rights under the judgments are not vested in the person by whom the application was made.

The court may exercise its discretion to set aside the registration of the judgment if the matters in dispute in the proceedings had already been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.

10 Injunctive relief

May a party obtain injunctive relief to prevent foreign judgment enforcement proceedings in your jurisdiction?

To the extent that the foreign judgment is one to which the 1996 Law applies, a defendant may prevent foreign judgment enforcement proceedings by obtaining an order to set aside a registration on the basis of the grounds described above.

11 Basic requirements for recognition

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

Section 4 of the 1996 Law sets out three basic requirements that must be satisfied for a foreign judgment to be registered in the Cayman Islands:

- the judgment must have been from one of the jurisdictions to which 1996 Law applies;
- the application for registration falls within the specified time period; and
- at the date of the application, the judgment must not have been wholly satisfied or enforceable in the foreign country.

12 Other factors

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

No. Factors that are to be taken into consideration are specified and mandatory.

13 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?

No.

14 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?

According to section 6 of the 1996 Law, the Cayman Islands Grand Court must examine whether the foreign court had the required jurisdiction over the judgment debtor and will refuse to register a judgment where it is proven that the original court lacked the required jurisdiction.

To determine that the original court had the required jurisdiction, the court will need to be satisfied that the judgment debtor:

- voluntarily submitted to the jurisdiction of the court as evidenced by his or her voluntarily appearing in the proceedings;
- agreed, prior to the commencement of the proceedings, that he or she would submit to the jurisdiction of that court in respect of the subject matter of the proceedings;
- at the time when the proceedings were instituted, was resident in the country of that court or carried on business there; and
- was a plaintiff in, or counterclaimant in, the proceedings in the original court.

15 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?

Where the issue of subject-matter jurisdiction is raised, the court needs to be satisfied that the foreign court had jurisdiction. The foreign court will be deemed to have jurisdiction where:

- the court has personal jurisdiction over the parties if any of the requirements for personal jurisdiction, as expressed above, are met; and
- the subject matter is moveable or immoveable property and the property was at the time of the proceedings in the original court situated in the country of that court.

16 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?

The 1996 Law requires a judgment debtor to have properly been served for that judgment to be registered in the Cayman Islands. Service must be effected in accordance with the requirements of the foreign country. Failure to provide sufficient notice forms one of the bases upon which the Grand Court must set aside registration. The Foreign Arbitral Awards Enforcement Law (1997 Revision) carries a similar provision in that enforcement of an award may be refused if the person against whom an award was made was not given proper notice of the appointment of an arbitrator or given notice of arbitration proceedings.

17 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?

The 1996 Law provides an exhaustive list of grounds for which registration of a foreign judgment may be refused, which does not include inconvenience to the defendant.

18 Vitiating by fraud

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

According to section 6 of the 1996 Law, if a foreign judgment has been obtained by means of fraud, the Grand Court will refuse to register that judgment. So, in circumstances where fraud is alleged, the Cayman Islands Grand Court will carefully examine whether a foreign court has been misled.

19 Public policy

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

The Cayman Islands Grand Court will have regard to whether public policy has been impeached. However, the scope is very narrow and refusal on the grounds of public policy will only arise where there has been a breach of the most basic notions of morality and justice.

20 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?

If a foreign judgment is inconsistent with a previous final and conclusive decision of a Cayman court, the foreign court or a competent court of a third jurisdiction, it will not be recognised.

21 Enforcement against third parties

Will a court apply the principles of agency or alter ego to enforce a judgment against a party other than the named judgment debtor?

No.

22 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?

Except where the defendant has voluntarily submitted to the jurisdiction of the foreign court by voluntarily participating in proceedings, or he or she was the plaintiff or counterclaimed in the proceedings, the Cayman Islands Court will refuse registration of a foreign judgment where the bringing of the proceedings in the foreign court is contrary to an agreement between the parties that the dispute was to be settled by alternative dispute resolution.

23 Favourably treated jurisdictions

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

Judgments of any superior court in Australia and its external territories will be registered in the Cayman Islands provided that they meet the requirements for registration. Once registered, those judgments may be treated as though they are Cayman Islands judgments and enforced in the same manner. Judgments from other jurisdictions are not directly enforceable in the Cayman Islands and the judgment must be sued upon in the Cayman Islands Grand Court. However, this will not involve a re-litigation of the issues previously decided in the foreign court.

24 Alteration of awards

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

The Cayman Islands Court will only register certain types of judgments, for example money judgments. If, on the application for registration of a judgment, it appears to the Cayman Islands Court that the judgment is in respect of a variety of different matters (ie, to those that can be registered) some, but not all, of the provisions are of such a nature that if they were contained in a separate judgment could properly be registered, the judgment may be registered in respect of those provisions but not the others.

Update and trends

On 30 June 2014, the Foreign Judgments Reciprocal Enforcement (Amendment) Bill 2014 was gazetted in the Cayman Islands. The bill seeks to substantially extend the number of eligible countries by removing the requirement for reciprocity that is now needed to determine whether a judgment should be registered and recognised. If the bill is passed (and in its present form it is opposed by the Cayman Islands Law Society), such determinations will be made according to whether a country is listed in the proposed schedule contained within the bill. In addition to Australia and its states and territories presently covered under the existing legislation, the bill proposes to recognise judgments of superior courts in the Bahamas, Bermuda, the British Virgin Islands, Canada and its provinces and territories, England and Wales, Guernsey, Hong Kong, the Isle of Man, Jamaica, Jersey, New Zealand, Northern Ireland, the Republic of Ireland, Scotland, and Singapore. Undoubtedly, the coming into effect of this amendment will fundamentally affect the extent to which common law is relied upon in the Cayman Islands to assist with the recognition of foreign judgments.

25 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?

Because the judgment will be enforced in the same manner as a judgment of the courts of the Cayman Islands, section 4 of the 1996 Law states that where the judgment is in a currency different from that of the Cayman Islands, the judgment is converted into Cayman Islands dollars, on the basis of the rate of exchange prevailing at the date the judgment was made in the original foreign court.

The foreign judgment may already contain an order for costs, interest or both and, once it is finally determined, may form part of the capital amount of the judgment debt awarded in the Cayman Islands. Even where the foreign judgment contains no award for interest, the Cayman Islands judgment will automatically accrue interest at the standard rate from the date of its award unless the court orders otherwise. In the Cayman Islands, the general principle is that a successful party will recover the fees and cost of the litigation incurred in the islands from the opposing party (often referred to as costs shifting). Such awards are subjected to an assessment process or agreed by the losing party before it becomes enforceable as a monetary judgment.

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26 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?

An application may be made to the Cayman Islands Grand Court to set aside the registration of the judgment. However, the applicant must satisfy the court that an appeal is pending or he or she is entitled to and intends to appeal the original judgment of the foreign court. If he or she is successful, the court may set aside registration of the judgment entirely or it may adjourn the application to permit the defendant sufficient time to have the appeal disposed of.

Where the original decision of the foreign court is affirmed, if the registration of the foreign judgment had been set aside, a new application may be brought for registration. Additionally, there is a right of appeal to the Cayman Islands Court of Appeal.

27 Enforcement process

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

Once the foreign judgment is registered in the Cayman Islands it may be enforced in the same manner as any other judgment of a Cayman Islands court.

28 Pitfalls

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

Not applicable.

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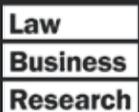
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Judgments
ISSN 2048-464X



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