

GUIDE TO DOMESTIC ENFORCEMENT IN THE CAYMAN ISLANDS

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PREFACE

This Guide is a summary of the law and procedures relating to the domestic enforcement of judgments in the Cayman Islands.

It is recognised that this Guide will not completely answer detailed questions which clients and their advisers may have; it is not intended to be comprehensive. If any such questions arise in relation to the contents, they should be addressed to any member of the Dispute Resolution Department, using the [contact information](#) provided at the end of this Guide.

Appleby
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1. INTRODUCTION

Prior to commencing any litigation, a plaintiff should consider what assets a defendant has in order to decide whether there will be any utility in obtaining a judgment against it which can then be enforced either in or out of the Cayman Islands. This is because the ultimate aim for any litigant who has obtained a judgment from a court is to be able to enforce that judgment against the defendant. For example, a litigant may seek money from the defendant to compensate for a loss suffered, or orders either requiring another party to do something, or to refrain from doing something depending on the circumstances of the case.

The Grand Court of the Cayman Islands has several remedies available to enable successful litigants to enforce a judgment against assets located in the Cayman Islands. Such assets may include stocks, shares, real estate and cash in bank accounts. The remedies to enforce a monetary judgment include a charging order over real property, garnishment of a bank account, or the appointment of a receiver to rents and profits otherwise payable to the judgment debtor. Which remedy (or remedies) is appropriate will depend on the circumstances.

For a party who has obtained the benefit of an arbitral award, either foreign or domestic, steps can be taken to have the Grand Court recognise such an award, which may then be enforced in the same manner as a judgment or order of the Grand Court to the same effect. Similarly, some foreign judgments may also be recognised and enforced.

This Guide is focused on the steps available for enforcement of monetary judgments, although the enforcement mechanisms for non-monetary judgments are briefly discussed. The possibility of winding up or bankruptcy proceedings is also considered.

2. ENFORCEMENT OF JUDGMENTS GENERALLY

2.1 Monetary Judgments

The primary enforcement mechanisms for a payment of money may be found in the Grand Court Rules, specifically:

- a writ of *fiery facias*
- garnishee proceedings
- a charging order
- the appointment of a receiver
- an order for committal
- a writ of sequestration
- an attachment of earnings order

2.2 A Writ of *fiery facias*

A writ of *fiery facias* was historically one of the principal ways in which a judgment creditor may enforce a judgment. The writ entitles a bailiff to seize and sell so much of the debtor's goods as is required to satisfy the debt, the cost of proceedings and the costs of enforcement. This remedy is only effective to the extent that physical assets are located in the Cayman Islands and a judgment creditor should only proceed down this route if it is known that the judgment debtor has physical assets in the Cayman Islands which may be seized and sold.

2.3 **Garnishee Proceedings**

Garnishee proceedings result in an order, on the basis that a judgment debtor is owed money by a third party, that the third party should pay the money over to the judgment creditor and not to the judgment debtor. Third parties in this context include banks holding funds on account for a judgment creditor. A judgment creditor may proceed down this route if it has information about monies owing to a judgment debtor, including deposit accounts held with a local bank.

2.4 **A Charging Order**

A charging order may be made by the Grand Court in relation to property in the Cayman Islands in which the judgment debtor has a beneficial interest, for example: securities, funds in Court or land. A charging order results in a statutory charge which has the effect of making the judgment creditor a secured creditor. As a result, if necessary, the judgment creditor can enforce the charge by obtaining an order for the sale of the charged property or appointing a receiver to exercise a power of sale.

2.5 **The Appointment of a Receiver**

A judgment creditor may apply for the appointment of a receiver over property belonging to the judgment debtor. The Grand Court has power to appoint a receiver whenever it appears to it to be just and convenient to do so. In considering whether such an appointment should be made, the Grand Court will give regard to (i) the amount claimed by the judgment creditor; (ii) the amount likely to be obtained by the receiver; and (iii) the probable costs of the appointment.

Receivers appointed on the application of a judgment creditor are described as being appointed by way of "equitable execution". They are appointed over specific property, not over the judgment debtor's assets in general, and the application must state the property over which their appointment is sought. If appointed, the receiver will stand in the place of the judgment debtor to gather in the property and prevent the judgment debtor from dealing with it.

Receivership orders used to be available only where none of the usual methods of execution was available. However, recent authority has confirmed that this is no longer the case: the demands of justice are the overriding consideration, and receivers may be appointed over an asset whether or not it is amenable to execution at law. A receiver may be appointed to collect money (often referred to as "rents") but may also be appointed to carry out other acts, such as the execution of a contract.

2.6 **An Attachment of Earnings Order**

An attachment of earnings order provides for the deduction of monies from a judgment debtor's earnings to recover monies owing in relation to the judgment and such an order may be made even if the judgment debtor resides outside of the Cayman Islands. The order is served on the judgment debtor's employer and provides that a proportion of the judgment debtor's earnings be deducted from their salary and paid to the Accountant General of the Grand Court for credit to the judgment creditor, the advantage being that the deduction is made prior to payment to the judgment debtor. An attachment of earnings order may only be made against natural persons, not corporate bodies.

2.7 **Other Remedies**

Lesser-used remedies include an order for committal, pursuant to which a judgment creditor may seek an order to commit the judgment debtor to a term of imprisonment not exceeding six weeks; or a writ of sequestration which empowers a sequestrator to seize all of the judgment debtor's real and personal property.

2.8 Non-Monetary Judgments

Judgments requiring a person to do or refrain from doing something other than pay money may be enforced by:

- a writ of possession requiring a person to deliver up possession of land in the Cayman Islands;
- a writ of delivery requiring a person to deliver up goods in the Cayman Islands or, in the alternative, pay their assessed value;
- a writ of specific delivery requiring a person to deliver up goods without the alternative of paying their assessed value;
- a writ of sequestration (see above);
- an order for committal (see above); and
- the appointment of a receiver by way of equitable execution (see above).

3. ENFORCEMENT OF FOREIGN JUDGMENTS

While a Cayman statutory regime exists for the reciprocal enforcement of foreign judgments, currently reciprocity only extends between the Cayman Islands and judgments from certain courts in Australia. Accordingly, in practice, the statutory regime is of little practical importance, and recourse to the common law principles of enforcement of foreign judgments is necessary.

The ordinary procedure for enforcement of a foreign judgment is by commencing an action in the Grand Court, with the foreign judgment being the basis for the cause of action, usually a debt claim, and then applying for summary judgment in that action. The Grand Court will not enquire into the issues underlying the foreign judgment. The enforcement process retains a discretionary element and is subject to certain specific limitations. Once judgment is entered, it may be enforced like any other judgment of the Grand Court as discussed above.

For enforcement to occur at common law, there are a number of factors which must be demonstrated, namely that (a) the foreign court had international jurisdictional competence over the defendant; and (b) the judgment was final and conclusive on the merits.

According to common law principles, a foreign court will be recognised as having had personal jurisdiction over the defendant if the defendant:

- (a) was ordinarily resident in the foreign country at the time the foreign proceedings were commenced (residence for a corporation in this context is determined by the place in which it carries on business);
- (b) submitted to the jurisdiction of the foreign court, for example defending the claim on the merits, being the plaintiff or submitting a counter claim. The defendant is unlikely to have satisfied this requirement if the defendant merely appears to contest jurisdiction; or
- (c) expressly agreed to submit to the jurisdiction of the foreign court (as opposed to the laws of the foreign country), by contract or subsequent conduct.
- (d) A defendant may seek to challenge the authority of or basis for the foreign judgment on certain limited grounds, namely that the foreign judgment was (a) obtained by fraud; (b) contrary to public policy; or (c) obtained in proceedings contrary to natural justice. Whether a foreign judgment will be recognised will also depend on the nature of the judgment, for example judgments for tax, fines and penalties will not be recognised as a matter of public policy.

Although traditionally only foreign monetary judgments were capable of recognition, the Cayman Islands has now recognises and enforces both monetary and non-monetary judgments.

Please see our Client Guide on "Enforcement of Foreign Judgments" for further information.

4. **ENFORCEMENT OF ARBITRAL AWARDS – DOMESTIC AND FOREIGN**

4.1 **Domestic Arbitral Awards**

An arbitration award may, with leave of the Grand Court, be enforced in the same manner as a judgment or order of the Grand Court to the same effect. Where leave of the Grand Court is given, judgment may then be entered in terms of the award. Practically speaking, the arbitration award is treated as a judgment of the Grand Court and the enforcement mechanisms discussed in this Guide will apply.

Leave will not be given where the person again whom it is sought to be enforced shows that the arbitral tribunal lacked jurisdiction to make the award. There are limited grounds upon which the Grand Court may set aside an arbitral award (pursuant to an application which must be made within 30 days of receiving the award), and also limited grounds to appeal against an arbitral award (and to seek a stay of enforcement pending such appeal).

4.2 **Foreign Arbitral Awards**

As a result of broad reforms to the Cayman Arbitration Law which took effect in 2012, the obligation on the Grand Court to enforce foreign arbitral awards has been significantly expanded beyond those countries which are signatories to the New York Convention. The Grand Court is now required to recognise as binding an arbitral award "irrespective of the country in which it was made". The existing obligation on the Grand Court to recognise "Convention awards" under the New York Convention has also been retained.

There are some limited grounds upon which the Grand Court may refuse enforcement, namely that:

- (a) a party to the arbitration agreement was (under the law applicable to him) under some incapacity;
- (b) the arbitration agreement was not valid under the law to which the parties subjected it or, failing indication thereon, under the law of the country where the award was made;
- (c) it was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present its case;
- (d) with some exceptions, that the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration or contains decisions on matters beyond the scope of the submission to arbitration;
- (e) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country where the arbitration took place;
- (f) the award has not yet become binding on the parties, 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.

In addition, the Grand Court will not enforce an award if it is in respect of a matter not capable of settlement by arbitration or if enforcement would be contrary to public policy.

Procedurally, the applicant is required to produce a copy of the arbitration agreement and award (and any translation as may be necessary) and a Court application is required.

As with domestic arbitral awards, upon a successful application for enforcement, the mechanisms to enforce discussed in this Guide will apply.

5. **WINDING UP AND BANKRUPTCY**

As with other jurisdictions, bankruptcy, winding up or liquidation describes the process of appointing a third party over the estate of the debtor and the settling of liabilities out of the available assets of the debtor. If appropriate, a judgment creditor may apply to the Court to have an individual made bankrupt or a company placed in liquidation. The judgment creditor will then share with other creditors in the distribution of assets from the judgment debtor's estate (if any).

A key distinguishing feature of both liquidation and bankruptcy from the enforcement mechanisms discussed above is that they are a collective remedy, in which the assets of the company or individual are realised for the benefit of all stakeholders and are distributed first to creditors and then to either shareholders or back to the bankrupt individual, on a *pari passu* basis in accordance with relevant rules for priority of claims for different classes of stakeholders.

Creditors with security over assets in the Cayman Islands are not affected by liquidation or bankruptcy proceedings and may realise and deal with their security in the usual way, subject to an obligation to account to the bankruptcy trustee or liquidator for any recoveries from the sale of secured assets over and above the amount secured. What this means in practical terms is that only if there are unsecured assets will a judgment creditor receive any distribution from the bankrupt estate, since secured creditors will enforce their interests outside of the liquidation proceedings and are only obliged to remit any recoveries over and above the secured amount to the liquidator so that he can apply them to meet the judgment debt on a *pari passu* basis. Once all stakeholders have been paid (insofar as there are funds to do so) in the case of a company its affairs are then finalised prior to its dissolution and, in the case of an individual, a discharge from bankruptcy is obtained.

As with other common law jurisdictions, upon appointment bankruptcy trustees and liquidators are required to investigate the affairs of the bankrupt/company, to report to stakeholders, and are given certain powers to claw back or unwind certain transactions occurring pre-bankruptcy/pre-liquidation.

The process for obtaining a bankruptcy or liquidation order differs, but both require an application to the Grant Court and adherence to strict procedural steps whether filed by the individual, by the company or by another stakeholder such as a creditor or shareholder. Please refer to our client guide on Cayman Islands Insolvency.

5.1 **Compulsory Liquidation**

If a company fails to pay a judgment for more than \$100, the judgment creditor may petition the court to have the company wound up on the ground that it is unable to pay its debts.

Procedurally, the Court will presume that the company is unable to pay its debts in certain circumstances, including *inter alia* if the company fails to comply with a statutory demand or if execution of a judgment is returned either wholly or partially unsatisfied.

On the making of an order to wind up a company, the Court will appoint one or more official liquidators of the petitioner's choosing (unless there is objection from other creditors) who will then assume control of the company's affairs. The liquidation is deemed to have commenced at the date of the presentation of the winding up petition.

The official liquidators are generally accountants and insolvency practitioners. The company retains its corporate status during the winding up process, though upon the making of a winding up order the powers (though not the duties) of the directors are overridden and the company acts by its liquidator(s). The liquidators are given various powers and duties by law and by court order to conduct the company's functions during the liquidation process and to recover and realise assets for the benefit of stakeholders.

5.2 Bankruptcy

If an individual fails to pay a judgment debt, a judgment creditor may seek to have the judgment debtor adjudged bankrupt, and a trustee in bankruptcy appointed.

A creditor's petition is filed at the Grand Court, which, if satisfied that one of certain "acts of bankruptcy" has occurred may make a provisional order of bankruptcy. There are a number of different acts of bankruptcy; most relevant to a judgment creditor are that the debtor has served a bankruptcy notice for an amount not less than \$40 or that execution of the judgment is returned either wholly or partially unsatisfied.

Once a provisional order is made, the bankrupt can apply to have it revoked, and if the order is not revoked the bankrupt is then required to file a statement of assets and liabilities. The Grand Court then summons a meeting of the bankrupt's creditors. At this meeting the creditors can decide whether the petition should be stayed, and the affairs of the bankruptcy administered under a deed of arrangement, or alternatively that the adjudication of bankruptcy be made and an absolute order made by the Court.

Importantly, upon the making of a provisional bankruptcy order, title to all of the bankrupt's assets vest in the trustee in bankruptcy, which assets are then realised, administered and distributed as quickly as possible for the benefit of creditors whether upon the making of an absolute order or under a deed of arrangement.

The Trustee in Bankruptcy is generally the Clerk of the Court, who may appoint an insolvency practitioner to act as his or her agent. As with liquidation, the trustee is given certain powers and duties to realise assets for the benefit of stakeholders.

6. CONCLUSION

The Cayman Islands has adopted the traditional methods of enforcement of judgments which are found under English law and will be familiar to practitioners from most common law jurisdictions. These methods of enforcement are well-known to the Grand Court and have been thoroughly tested through cases both in the Cayman Islands and other common law jurisdictions whose judgments are persuasive (albeit not binding) in the Grand Court. The Cayman Islands has also allowed for the enforcement of foreign non-monetary judgments, and has recently expanded the scope of foreign arbitral awards which will be enforced.

The effectiveness of enforcing any judgment in the Cayman Islands will largely depend on a prior investigation of assets which may be located in the jurisdiction. Alternatively, the cost-benefit of seeking to appoint a liquidator or trustee in bankruptcy in order to investigate the affairs of the judgment debtor should be considered.

The Cayman Islands is a self-confessed "creditor friendly" jurisdiction, and has a robust judicial administration, including dedicated judges sitting in a Financial Services Division of the Grand Court. These specialist judges are familiar with all aspects of commercial litigation, winding up and liquidation proceedings, and will work with insolvency practitioners to maximise returns to stakeholders.

For more specific advice on domestic enforcement of judgments in the Cayman Islands, we invite you to contact:

Cayman Islands

Peter McMaster, QC

Partner, Local Head, Cayman Islands

Dispute Resolution

+1 345 814 2795

pmcmaster@applebyglobal.com

For the convenience of clients in other time zones, a list of contacts available in each of our jurisdictions may be found [here](#).