

GUIDE TO RECOGNITION AND ENFORCEMENT OF FOREIGN JUDGMENTS IN GUERNSEY

CONTENTS

PREFACE	1
1. Introduction	2
2. The Reciprocal Enforcement Law	2
3. Common Law	3
4. Enforcement	4

PREFACE

This Guide is a summary of the law and procedures relating to the Recognition and Enforcement of Foreign Judgments in Guernsey

We recognise 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 may be addressed to any member of the Dispute Resolution Team, using the [contact information](#) provided at the end of this Guide.

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1. INTRODUCTION

Guernsey is a distinct jurisdiction from that of England and Wales with its own legal history, legal system and laws. Guernsey is not part of the European Union, is not a member of the European Economic Area and is not a signatory to the Brussels or Lugano Conventions. The judgments of foreign courts cannot, therefore, be directly enforced in Guernsey simply by way of execution.

A foreign judgment may be enforced within Guernsey by one of two routes:

1. pursuant to the Judgments (Reciprocal Enforcement) (Guernsey) Law, 1957 (as amended) (**Reciprocal Enforcement Law**); or
2. pursuant to common law principles.

2. THE RECIPROCAL ENFORCEMENT LAW

2.1 Registration of Foreign Judgments

The Reciprocal Enforcement Law provides for the registration in Guernsey of judgments obtained in foreign countries that afford reciprocal treatment to judgments of the Guernsey courts. Reciprocating countries are defined in Ordinances made under the Reciprocal Enforcement Law and comprise England and Wales, the Isle of Man, Israel, Jersey, the Netherlands, Curacao and St Maarten previously known as the Netherlands Antilles, Northern Ireland, Italy, Scotland and Surinam.

An application to register a judgment from a reciprocating country may be made where the following criteria are satisfied:

- the judgment is one of a superior court (in the context of the courts of England and Wales, for example, the High Court of Justice, the Court of Appeal and the Supreme Court are superior courts for the purposes of the Reciprocal Enforcement Law);
- the decision of the original court is final and conclusive (notwithstanding that an appeal may be pending or that the matter may still be subject to appeal in the reciprocating country);
- a sum of money is payable under the judgment, which is not a sum payable in respect of taxes or similar charges, fines or other penalties;
- the application to the Royal Court is made within six years of the date of the judgment or the date of the last judgment given in relevant appeal proceedings; and
- the original court had jurisdiction in the circumstances of the case.

The procedure for registering a judgment is straightforward. An *ex parte* application (i.e. an application made on behalf of one party and decided by a judge without the need for the other party to attend) may be made to the Royal Court for leave to register the judgment of the foreign court. Such application should be supported by affidavit evidence and a certified copy of the relevant judgment. The Royal Court has the ability to impose conditions upon registration, but once registered the judgment of the reciprocating country will be treated as if it had originally been given in the Royal Court on the date of registration. This means that the judgment may be enforced and judgment interest can then accrue under Guernsey law from the date of registration.

2.2 Foreign Judgments that may not be Registered

The Reciprocal Enforcement Law specifies that a judgment of a reciprocating country will not be registered by the Royal Court if:

- it has been wholly satisfied;
- it could not be enforced by execution in the court of the reciprocating country; or

- the judgment is an *in personam* judgment (i.e. is a judgment directed at a specific person) dealing with a matrimonial cause, the administration of a deceased's estate, insolvency, the winding up of companies, lunacy or the guardianship of infants.

2.3 Cases where the Registration of a Judgment may be set aside

The judgment debtor will have the ability to apply under the Reciprocal Enforcement Law for an order that the registration be set aside. Any such application should be made within 14 days from the date of service of the registered judgment.

The Royal Court may set aside registration if it is satisfied that one of the following applies:

- the judgment is not one to which the Reciprocal Enforcement Law applies or it was registered in contravention of the provisions of that law;
- the court of the reciprocating country had no jurisdiction to give judgment against the debtor;
- the judgment debtor did not receive notice of the proceedings in sufficient time to enable a defence of the proceedings and did not appear in the proceedings;
- the judgment was obtained by fraud;
- enforcement of the judgment would be contrary to public policy in Guernsey; or
- the rights under the judgment do not vest in the party making the application for registration.

2.4 Jurisdiction of the Court of the reciprocating Country

(a) Actions *in personam*

Pursuant to the Reciprocal Enforcement Law, the relevant court of the reciprocating country will be deemed to have had jurisdiction if, in the case of a judgment given in an action *in personam*, (i.e. against an individual person) the judgment debtor:

- as defendant voluntarily submitted to the jurisdiction of the foreign court (otherwise than for the purpose of protecting or obtaining the release of property or for the purpose of challenging the jurisdiction of the court);
- as defendant agreed to submit to the jurisdiction;
- as defendant had an office or place of business in the country of the reciprocating country and the proceedings of the relevant court were in respect of a transaction effected through that office or place; or
- was plaintiff or counter claimant in the proceedings before the original court.

(b) Actions *in rem*

In the case of a judgment given in an action *in rem* (i.e. an action against property) relating to movable property or an action in relation to immovable property, the original court will be deemed to have had jurisdiction if the relevant property was situated in that country at the time of the judgment.

(c) Other types of action

In the case of a judgment given in any other type of action, the original court will be deemed to have had jurisdiction if jurisdiction of that court is recognised by the law of Guernsey.

3. COMMON LAW

Where registration of a foreign judgment is not available under the Reciprocal Enforcement Law, a judgment creditor will need to rely upon common law principles to have its judgment recognised and enforced within Guernsey. In such circumstances, the judgment creditor will seek to sue on the foreign judgment in the ordinary manner for a civil debt.

In the majority of cases the judgment creditor may have no substantive defence to the claim and it should be relatively straightforward to obtain judgment from the Royal Court. There will, however, be scope to challenge a foreign judgment if:

- the original court did not have jurisdiction to give judgment;
- the judgment was obtained by fraud on the part of the judgment creditor or by the foreign court;
- enforcement would be contrary to public policy in Guernsey; or
- the proceedings before the foreign court were contrary to natural justice.

4. ENFORCEMENT

A judgment registered under the Reciprocal Enforcement Law or successfully sued upon under the common law route may be enforced by HM Sheriff, who has the power to seize and sell assets and to institute wage arrests.

Under Guernsey law a judgment debtor may, where necessary, also proceed against the judgment debtor's personalty (via a process known as *désastre*) or against the debtor's realty (via the Guernsey procedure known as *saisie*).

For more specific advice on the recognition and enforcement of foreign judgments in Guernsey, we invite you to contact:

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

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