

Enforcement of judgments and arbitral awards in Jersey: overview

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JUDGMENTS: LEGAL FRAMEWORK

Domestic framework

1. What is the applicable domestic legislative framework for enforcement of judgments?

Domestic

The enforcement of judgments regime in Jersey is derived from customary law and practice and is not codified in any particular statute or rules.

The Jersey Royal Court Rules 2004 (RCR) contain limited rules (*Rule 11/3 and Rule 11/4*) relating to:

- The satisfaction of judgments by distraint of a defendant's moveable assets (broadly, anything other than real property).
- The sale of movables upon which distraint has been made.

The RCR do not codify a more general regime on the enforcement of judgments.

Foreign

Judgments given by a "superior court" in a country listed in the Judgments (Reciprocal Enforcement) (Jersey) Law 1960 (the Reciprocal Enforcement Law) are registrable under the regime set out in that law and its related rules. After registration, it can be enforced in the same way as a local judgment. At present the signatory countries to which the Reciprocal Enforcement Law applies are limited to England and Wales, Scotland, Northern Ireland, Isle of Man and Guernsey.

Judgments from any other courts (including inferior courts in countries designated under the Reciprocal Enforcement Law and the courts of any other country) are enforceable by issuing a fresh action under the principles of Jersey private international law (referred to as "common law enforcement").

The common law enforcement procedure is not available for judgments that are registrable under the Reciprocal Enforcement Law.

The legal principles applied by the Royal Court are broadly similar in the case of both registration and common law enforcement, although the latter offers greater flexibility.

International conventions/agreements

2. What international conventions and agreements on enforcement of judgments is your jurisdiction a party to?

Jersey is not a member of the EU or the EEA and is not a party to the Brussels or Lugano conventions on jurisdiction and enforcement.

Definitions

3. What is the definition of judgment in your jurisdiction for the purpose of enforcement proceedings?

Domestic

Any judgment or order of a Jersey court is enforceable in Jersey unless it has been set aside on appeal or a stay of execution has been granted.

Foreign

Registration. Under the Judgments (Reciprocal Enforcement) (Jersey) Law 1960 (Reciprocal Enforcement Law), "judgment" is defined as "a judgment or order given or made 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". The judgment must be from a superior court of a country designated under the law and:

- Be final and conclusive as between the parties to it.
- Provide for payment of a sum of money (that is not payable in respect of taxes or other similar charges or in respect of a fine or other penalty).

Common law enforcement. The court will apply a substantially similar test to that set out in the Reciprocal Enforcement Law. The court has been prepared to enforce non-monetary judgments under the common law enforcement process and as such the common law enforcement regime is potentially more flexible than the registration procedure.

Further information about the types of foreign judgment that may or may not be enforced by the Jersey court are set out in *Question 4*.

Enforceable/excluded types of judgment

4. What types of judgment in commercial matters are enforceable, and what types are excluded?

Domestic

Any judgment or order of a Jersey court is enforceable.

Foreign

Enforceable. The following judgments are enforceable:

- **Monetary judgments.** A foreign money judgment for a fixed sum will be enforceable, subject to the requirements for finality.
- **Non-monetary judgments.** Non-monetary judgments are enforceable at the court's discretion. The court can recognise (as opposed to enforce) a number of categories of foreign non-

monetary judgments. For example, the court has an inherent jurisdiction to recognise the appointment of receivers appointed by a foreign court in order to police a worldwide freezing order.

- **Insolvency judgments.** The position in Jersey in relation to the enforcement of foreign insolvency judgments is not currently clear following two conflicting rulings in the UK, neither of which is binding in Jersey. It is thought that the Jersey court will apply ordinary rules of private international law to the enforcement of foreign insolvency judgments.
- **Trusts/matrimonial judgments.** Article 9 of the Trusts (Jersey) Law 1991, which sets out Jersey's trust firewall provisions, has the effect of restricting the circumstances in which foreign court decisions about Jersey trusts will be enforceable in Jersey. The basic position (following various amendments to Article 9) is that a foreign order to vary a Jersey trust (directing a trustee to take some action authorised by the terms of the trust) may be enforceable or given effect to, but an order to alter a Jersey trust (directing a trustee to take some action not authorised by the terms of the trust) will not.

Excluded. Judgments to enforce a foreign penal or revenue law are not enforceable in Jersey.

JUDGMENTS: PROCEDURE FOR ENFORCEMENT Overview

5. What is the general outline of enforcement proceedings?

Domestic

Monetary judgments. A monetary judgment is immediately enforceable by distraint against the judgment debtor's assets. Although no further court order is required before enforcement by distraint against a debtor's assets can begin, in practice it is common to apply for an order or directions, particularly where additional remedies are sought or where third parties are affected (see *Question 17*).

While it is possible to seek an order that the judgment debtor's immovable property be subject to a judicial hypothec (*hypothèque judiciaire*) (see *Question 18*), certain time limits must have elapsed before any action can be taken to enforce against this property.

Non-monetary judgments. A non-monetary judgment (such as a mandatory injunction or order for specific performance) will typically specify a time within which the defendant must comply with the relevant order. If the defendant fails to comply, enforcement of the order will usually take the form of an action for committal. If the defendant is found to be in contempt of court following a committal trial, the defendant can be ordered to pay a fine or serve a term of imprisonment. The court can make "unless" orders and other forms of procedural sanction providing that certain consequences will follow if the defendant fails to comply with the order.

Foreign

A foreign judgment is not enforceable in Jersey unless and until either:

- It has been registered and the time for challenging the registration has passed.
- An order has been made giving effect to the foreign judgment following a common law enforcement action.

Once the foreign judgment has been registered in Jersey (or an order has been made enforcing it), the judgment will be enforceable from that point on in the same way as a domestic judgment.

Foreign judgments: formal/simplified proceedings

6. Is the enforcement of a foreign judgment subject to formal proceedings or simplified procedures?

If a foreign judgment is registrable under the Judgments (Reciprocal Enforcement) (Jersey) Law 1960, the judgment creditor must follow the registration procedure under that law. It must apply to the Royal Court for registration but does not require a new action. Once the judgment has been registered, a notice must be served on the judgment debtor, who will have an opportunity to apply to set aside the registration before it can be enforced.

For any other foreign judgment, the judgment creditor must begin a fresh action in the Royal Court, relying on the unsatisfied foreign judgment as a cause of action. The matter will usually be determined summarily without a full trial. The judgment debtor can oppose the application for summary judgment and/or defend the claim, but there are only limited grounds on which enforcement will be refused and a full factual enquiry is rarely necessary.

The grounds for refusing to enforce a judgment are substantially similar to the grounds on which registration can be set aside (see *Question 10*). If the court is satisfied that the judgment must be enforced, it will be entered in favour of the judgment creditor and be enforceable in Jersey as a domestic judgment.

7. Must applicants institute a new action on the foreign judgment in the form of main proceedings instead of making an application for enforcement based on the judgment?

See *Question 6*.

Form of application

8. What documents and information must be provided with an application for enforcement?

Domestic

No separate application needs to be made to enforce a domestic judgment (subject to the requirement to apply for certain enforcement procedures and remedies) (see *Question 5*).

Foreign

Registration procedure. An application for registration under the Judgments (Reciprocal Enforcement) (Jersey) Law 1960 (Reciprocal Enforcement Law) is made without notice to the judgment debtor.

The application is made to the Judicial Greffier (a judicial officer of the Royal Court) and the following documents are required:

- Covering letter.
- Affidavit sworn by a representative of the judgment creditor, exhibiting a certified copy of the judgment to be registered and stating to the best of the information and belief of the deponent:
 - that the applicant is entitled to enforce the judgment;
 - either that at the date of the application the judgment has not been satisfied, or if the judgment has been satisfied in part, what the amount is in respect of which it remains unsatisfied;
 - that at the date of the application the judgment can be enforced by execution in the country of the original court; and

- that if the judgment were registered, the registration would not be, or be liable to be, set aside under Article 6 of the Reciprocal Enforcement Law.

The affidavit must also specify the amount of interest, if any, that under the law of the country of the original court has become due under the judgment up to the time of registration, and set out any other evidence required.

Two copies of a draft order for registration in the prescribed form.

Unless the Judicial Greffier is doubtful that the order for registration should be made or believes that there are questions relating to the application that should be referred to the Royal Court for determination, the foreign judgment will be registered without a hearing.

After registration, the judgment creditor must serve a notice of registration on the judgment debtor, providing a short time (14 or 28 days) within which an application to set aside the registration can be made. The judgment cannot be enforced until that period expires. The registration notice can be served out of the jurisdiction without the leave of the court. The person serving it must endorse a duplicate of the notice of registration with the date on which service was effected within three days of service (or within another time specified by the court in special circumstances), otherwise the judgment cannot be enforced without leave. The judgment creditor must also produce an affidavit of service.

Common law enforcement procedure. A common law enforcement action is commenced by an Order of Justice. This is a form of originating process containing a formal pleading setting out the legal and factual basis for a claim. In an action to enforce a foreign judgment, the Order of Justice does not need the full details of the original claim (but an outline summary is usually provided). The fact that a final and conclusive judgment has been entered against the judgment debtor and not satisfied will in itself form the basis of the cause of action in the form of a simple debt claim. The Order of Justice must annex a certified copy of the judgment to be enforced (or this can be exhibited to the affidavit in support of a summary judgment application).

The Order of Justice is endorsed by the court and then served on the defendant (judgment debtor). The Service of Process Rules 2004 provide that a claim brought to enforce a judgment can be served out of the jurisdiction with leave from the court.

A judgment creditor will typically file an application for summary judgment under Royal Court Rule 7/1 with the Order of Justice on the basis that the judgment debtor has no defence to the claim. This requires a summons and supporting affidavit to be filed and served on the defendant. To the extent that the defendant objects on the basis that the judgment should not be enforced, the summary judgment application will be opposed on the basis of those objections.

9. What information must be included in the application regarding the judgment, the claim as awarded in the judgment, the facts and legal grounds of the case, and that the judgment is no longer appealable?

Domestic

Not applicable.

Foreign

Registration. The affidavit must exhibit a certified copy of the judgment to be registered and state to the best of the information and belief of the deponent:

- That the applicant is entitled to enforce the judgment.

- Either that at the date of the application the judgment has not been satisfied, or if the judgment has been satisfied in part, what the amount is in respect of which it remains unsatisfied.
- That at the date of the application the judgment can be enforced by execution in the country of the original court.
- That if the judgment were registered, the registration would not be, or be liable to be, set aside under Article 6 of the Judgments (Reciprocal Enforcement) (Jersey) Law 1960 (Reciprocal Enforcement Law).

The affidavit must also specify 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 registration, and setting out such other evidence required.

There is no requirement to include the full facts and legal arguments of the underlying case.

Common law enforcement. An applicant for common law enforcement is expected to include basic information relating to the foreign judgment in the Order of Justice to establish a cause of action based on the unsatisfied judgment.

The affidavit in support of an application for summary judgment must contain substantially the same information as required for registration under the Reciprocal Enforcement Law.

CHALLENGING ENFORCEMENT Service

10. Does the enforcing court review service of the proceedings? What conditions regarding service of the proceedings must be satisfied?

Domestic

Not applicable.

Foreign

On an application for registration or an application for common law enforcement, the court will not necessarily conduct a detailed inquiry about whether the foreign proceedings were properly served. In both cases it is an implied pre-requisite that the foreign court had jurisdiction.

A judgment debtor can apply to set aside registration or enforcement of a foreign judgment on the grounds that:

- The courts of the country of the original court had no jurisdiction in the circumstances of the case.
- The judgment debtor (being the defendant in the proceedings in the original court) did not (notwithstanding that process was duly served on the judgment debtor in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable it to defend the proceedings and did not appear.

The affidavit in support of an application for registration must state the deponent's belief that there are no grounds on which the registration can be set aside, and the judgment creditor must highlight any potential issues about this in its application. The Judicial Greffier can refer any question in relation to an application for registration to the Bailiff (the senior judge and president of the Royal Court), so that the Royal Court can give directions on it. If there are any obvious doubts about whether the foreign court had jurisdiction, these will be determined before granting the order for registration. Alternatively, the judgment debtor can raise jurisdictional grounds in support of an application to set aside the registration of the judgment.

In a common law enforcement action (made on notice to the judgment debtor), the judgment debtor will be expected to raise

jurisdictional arguments in opposition to the application for summary judgment (and/or by way of a substantive answer to the Order of Justice) and these are then determined by the court.

The Judgments (Reciprocal Enforcement) (Jersey) Law 1960 (Reciprocal Enforcement Law) provides that the courts of the country of the original court will, subject to certain exceptions, be deemed to have had jurisdiction only:

- In the case of a judgment given in an action *in personam*:
 - if the judgment debtor (being a defendant in the original court) submitted to the jurisdiction of that court by voluntarily appearing in the proceedings other than for the purpose of protecting or obtaining the release of property seized, or threatened with seizure in the proceedings, or of contesting the jurisdiction of that court;
 - if the judgment debtor was plaintiff in, or counter-claimed in, the proceedings in the original court;
 - if the judgment debtor (being a defendant in the original court) had before the start of the proceedings agreed in respect of the subject matter of the proceedings, to submit to the jurisdiction of that court or of the courts of the country of that court;
 - if the judgment debtor (being a defendant in the original court) was at the time when the proceedings were instituted, resident in, or being a body corporate had its principal place of business in, the country of that court; or
 - if the judgment debtor (being a defendant in the original court) had an office or place of business in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place.
- In the case of a judgment given in an action where the subject matter was immovable property (or an action *in rem* where the subject matter was movable property), where the property in question was at the time of the proceedings in the original court situated in the country of that court.
- In the case of a judgment given in an action other than any action mentioned in the first two bullet points above, if the jurisdiction of the original court is recognised by the law of Jersey.

The exceptions to the above are as follows:

- If the subject matter of the proceedings was immovable property outside the country of the original court.
- Except in certain circumstances, if the bringing of the proceedings in the original court was contrary to an agreement under which the dispute in question was to be settled other than by proceedings in the courts of the country of that court.
- If the judgment debtor, being a defendant in the original proceedings, was a person who under the rules of public international law was entitled to immunity from the jurisdiction of the courts in the country of the original court and did not submit to the jurisdiction of that court.

The Reciprocal Enforcement Law provides that "action *in personam*" will not include:

- Any matrimonial cause or any proceedings in connection with any matrimonial matter.
- Matters relating to the administration of the estates of deceased persons.
- Bankruptcy.
- Winding up of companies.
- Lunacy.
- Guardianship of infants.

The same (or substantially similar) principles about jurisdiction will apply to an action to enforce a foreign judgment at common law. These broadly correspond with English private international law rules on jurisdiction.

Final/provisional judgments

11. Must a judgment be final and have conclusive effect, and what is the effect of pending appeal proceedings?

Domestic

A domestic judgment will not be enforceable if it is not final and conclusive.

A pending appeal does not render a domestic judgment unenforceable unless a stay of execution is granted.

Foreign

A foreign judgment will not be registrable or enforceable at common law unless it is final and conclusive.

A pending appeal does not render a foreign judgment unenforceable. However, a pending appeal can be a discretionary factor taken into consideration by the court in the context of an application to set aside registration, or when considering whether to enforce a judgment at common law. It can, in appropriate circumstances, result in an adjournment of the enforcement proceedings pending determination of the appeal.

Foreign judgments: jurisdiction

12. Is the enforcing court entitled to consider the grounds on which the court assumed jurisdiction (and if so, on what jurisdictional grounds can enforcement be refused)?

See Question 10.

13. If the court assumed jurisdiction on the basis of an exorbitant ground of jurisdiction, can the enforcing court review the judgment on that ground?

Exorbitant ground of jurisdiction

The court will apply principles of the Judgments (Reciprocal Enforcement) (Jersey) Law 1960 and/or Jersey private international law when determining whether the foreign court had jurisdiction. If it is established that the foreign court's jurisdiction was based on an exorbitant ground not recognised under Jersey law, the court will refuse to register or enforce the judgment.

Voluntary acknowledgement

A voluntary submission by the defendant to the jurisdiction of the foreign court (other than for the limited purpose of contesting jurisdiction) will be considered sufficient to establish that the foreign court had jurisdiction as a matter of Jersey law.

Foreign judgments: review of judgment

14. Can the enforcing court review the judgment as to its substance if all formalities have been complied with and if the judgment meets all requirements?

The court will not review the substance of the underlying judgment unless the substance of the judgment is relevant to the court's determination of any issues about the enforceability or registrability of the judgment. For example, if the judgment debtor alleges that the judgment was obtained by fraud, or that its enforcement will be in breach of public policy, the court may need

to review the judgment to determine those issues. Typically, however, the court will not assess the merits of the foreign court's decision when deciding whether a foreign judgment should be enforced.

Foreign judgments: public policy

15. Can enforcement of a judgment be refused on grounds of public policy? Does public policy include matters of substantive law?

A foreign judgment will not be enforced if enforcement is contrary to public policy in Jersey. This can relate to the manner in which the foreign judgment was obtained (procedural issues) or to matters of substantive law.

16. In what circumstances and against which types of judgments has the principle of public policy generally been applied?

The Royal Court has so far never refused to register or enforce a foreign judgment on public policy grounds.

In *Dalemont Limited v Senatorov and others* [2013] JRC 207, the Royal Court held (*obiter*), that the public policy ground for refusing recognition should operate only in exceptional circumstances.

In *Haryanto v Man* (Unreported, 5 July 1991) the Jersey Court of Appeal considered whether registration of an English judgment should be refused on public policy grounds. The English judgment (which gave effect to an arbitral award) had been obtained on the basis of a breach of a settlement agreement between the parties relating to an earlier dispute over various contracts. The judgment debtor objected to the registration of the English judgment on the basis of a finding by a court in Indonesia that the underlying contracts to which the settled proceedings related were void and unenforceable. Unsurprisingly, the Jersey Court of Appeal considered that the enforceability of the underlying contracts was irrelevant, given that the subsequent settlement agreement was valid and binding and that the judgment debtor had previously abandoned arguments about the enforceability and validity of the contracts in earlier proceedings.

Domestic and foreign: other conditions for recognition and enforcement

17. What other conditions exist to enforce and recognise a judgment/refuse recognition and enforcement?

Domestic

There are no other conditions to enforce and recognise a judgment/refuse recognition and enforcement.

Foreign

The following conditions apply:

- **Time limits.** The registration procedure must be commenced within six years of the date of the foreign judgment or, if applicable, the date of judgment in any relevant appeal. For common law enforcement, no strict time limits apply but the judgment must remain enforceable as a matter of the law of the relevant foreign jurisdiction. Where no time limit applies as a matter of relevant foreign law, a ten-year time limit is generally assumed to apply, but this will ultimately be a question for the court to decide in an appropriate case.
- **Fraud.** No judgment can be registered or enforced in Jersey if it was obtained by fraud.

- **Double recovery.** A foreign judgment will not be enforced if it can be shown that the judgment has already been satisfied in another jurisdiction.
- **Conflicting judgments.** If there are two or more conflicting foreign judgments, the court will consider that the earliest of the judgments creates *res judicata* between the parties, such that the subsequent judgment(s) will not be registrable/enforceable.
- **Multiple damages.** The Trading Interests Act 1980 (Jersey) Order 1983 provides that no foreign judgment awarding a party multiple damages can be registered or enforced in Jersey. A judgment for multiple damages is defined as any judgment for an amount arrived at by doubling, trebling or otherwise multiplying a sum assessed as compensation for the loss or damage sustained by the person in whose favour the judgment is given.

JUDGMENTS: METHODS OF ENFORCEMENT

18. What is the enforcement procedure after a declaration of enforceability is granted?

The principal methods by which a judgment can be enforced are as follows:

- **Distrain** (by *arrêt*) against a defendant's moveable assets via the Viscount (a government officer whose responsibilities include various functions relating to the enforcement of judgments), who can effect a sale of the assets and apply the proceeds in satisfaction of the judgment.
- **Enforcement of a judicial hypothec.**
- ***Arrêt entre mains*:** a procedure with some similarities to a garnishee/third party debt order in England (and also some similarities to a charging order), giving the judgment creditor rights in respect of the judgment debtor's moveable property currently in the hands of a third party.
- Although not strictly a method of enforcement, a judgment creditor can also be entitled to apply for the commencement of a collective bankruptcy proceeding against a judgment debtor known as *désastre*.
- Non-monetary judgments are enforceable by the court through committal proceedings and/or procedural and other sanctions, including unless orders.

While it is technically possible to have an impecunious judgment debtor imprisoned in certain circumstances under a "*saisie*", the procedure has fallen out of use and is generally not considered appropriate.

Distrain

As soon as the foreign judgment is deemed to be enforceable, the judgment creditor can begin arresting (distraining) the judgment debtor's assets. Although the Royal Court Rules (RCR) refer to "*distrain*" the customary term for the procedure is an "*arrêt*". The Viscount (at the written request and direction of the judgment creditor) will take possession of the judgment debtor's assets and can sell them in satisfaction of the judgment debt, subject to certain notification requirements set out in RCR 11/4.

There is an automatic right to distrain against wages up to GB£80 a week, but for a figure in excess of that amount a separate application will be required.

Judicial hypothec

If a defendant owns property in Jersey, a Jersey court judgment can specify that the immovable property must be registered in the *Registre Public*. This creates a judicial hypothec, enabling the judgment debtor to enforce the judgment against that property

using procedures known as "*dégrévement*" (for immoveable property) and "*réalisation*" (for moveable property).

If the judgment remains unsatisfied after a month, the judgment creditor can apply to the Royal Court for an "*Acte Vicomte chargé d'écrire*". The Viscount will then notify the judgment creditor that the property will be deemed to have been renounced if the judgment remains unsatisfied for a further two months (in the case of Royal Court judgments). After a further application to the court by the judgment creditor, the *dégrévement* and/or *réalisation* procedures can be initiated to realise the property in satisfaction of the judgment.

Arrêt entre mains

The judgment creditor can apply for an order arresting assets that belong (or that may belong) to the judgment debtor in the hands of third parties. The process is derived from customary law but is similar in many respects to the English garnishee or third party debt order procedure, and can also have characteristics of a charging order.

The judgment creditor can apply *ex parte* to the Royal Court (usually by Order of Justice supported by affidavit) for an order arresting the assets on an interim basis. The *ex parte* order creates an interim charge over the assets that can be finalised or discharged when the matter comes back to the court *inter partes*. The court has discretion whether to grant the order in the circumstances of the case.

Once granted, the order arrests or attaches the debt owed to the judgment debtor, charging it or diverting it to the judgment creditor. The effect is to direct the third party to pay the judgment creditor and also to give the judgment creditor proprietary rights in respect of the asset or debt. The third party in whose hands the assets are arrested will be obliged to make payment, or pass the assets directly to the judgment creditor.

Bankruptcy

The procedure for applying for a declaration *en désastre* in respect of a judgment debtor is set out in the Bankruptcy (Désastre) (Jersey) Law 1990 and the related Rules. In broad terms the test is whether the debtor can pay its debts as they fall due, and failure to satisfy a judgment debt can constitute evidence of insolvency. In the case of a foreign judgment debt for a specific sum it is not usually a requirement to bring separate enforcement or registration proceedings in respect of that judgment.

If a declaration *en désastre* is made by the court, the Viscount will take responsibility for collecting in the judgment debtor's assets and distributing them to all creditors on the basis of a statutory waterfall. In most cases a judgment debtor will have an unsecured, non-preferential claim in the *désastre* and will rank *pari passu* with other unsecured creditors and will be subordinated to secured and preferential creditors.

There is currently no mechanism as a matter of Jersey law for a judgment creditor to seek to appoint an independent liquidator or trustee in bankruptcy in respect of a judgment debtor.

JUDGMENTS: INTERIM REMEDIES AND INTEREST

Interim remedies

19. Is it possible to apply for interim measures from the enforcing court pending the enforcement proceedings?

Domestic

The Royal Court has an inherent jurisdiction to grant interim relief in support of the enforcement of a judgment, and regularly does. Interim relief includes freezing injunctions to prevent the dissipation of assets (the *arrêt* procedure (see *Question 18*) may also be available as an alternative). A judgment creditor can also

seek a *caveat* in respect of Jersey immoveable property, which restricts the judgment debtor's ability to dispose of property.

There are currently no codified provisions in Jersey to examine a judgment debtor. However, the court will, in appropriate cases, grant disclosure orders to assist in the identification of assets against which enforcement can be made, and to assist in the policing of freezing injunctions. Disclosure orders have been made against third parties, although the juridical basis for these orders remains unclear. Notwithstanding the lack of a codified examination procedure, it is conceivable that the court will, in an appropriate case, order the cross-examination of a judgment debtor to police either a freezing order or a free-standing disclosure order.

Each of the above interim remedies must be sought by application to the court, which in most cases has discretion whether to order the relief sought in the circumstances of the case. Judicial precedent will apply.

Foreign

The court will exercise its inherent jurisdiction in relation to domestic judgments when enforcing foreign judgments. The principles were restated in *ENRC NV v Zamin Ferrous Limited* [2015] JRC 217, where the court demonstrated its willingness to grant freezing orders and make disclosure orders in aid of a judgment creditor's worldwide enforcement efforts.

Interest

20. Is the judgment creditor entitled to interest? If so, on what basis is it calculated?

Domestic

Simple interest can be ordered to be paid on any judgment for the payment of a debt or damages from the date the cause of action arose up to the date of judgment. This amount must be included in the judgment amount.

Every judgment must carry post judgment interest at a rate determined by the court, to accrue up to the date of satisfaction.

Interest will not run on debts that are already accruing it (for example, contractual interest on a loan).

Foreign

Registration. Pre-judgment interest awarded by the foreign court must be included and payable in the registered judgment.

The court can determine the rate of post-registration interest (up to 4%) that will accrue from the date of registration of the judgment.

Common law enforcement. Any pre-judgment interest awarded by a foreign court will ordinarily be included in the Jersey court's judgment giving effect to the foreign judgment, provided that the rate of interest is not excessive or punitive. The court will award post judgment interest in the same way as for a domestic judgment.

Currency

21. Must the value of a foreign judgment be converted into the local currency?

Registration. The Judgments (Reciprocal Enforcement) (Jersey) Law 1960 requires judgments for payment of a sum in a foreign currency to be converted to sterling at the rate of exchange prevailing at the date of the judgment of the original court.

Common law enforcement. There is no strict requirement for conversion into sterling, although where enforcement is executed against assets valued or denominated in sterling the judgment

amount must be converted so that the court can be sure that the judgment creditor does not recover more than the judgment debt.

ARBITRAL AWARDS: LEGAL FRAMEWORK

Domestic framework

22. What is the applicable domestic legislative framework for enforcement of arbitral awards?

Domestic

Arbitration is rarely used as a method of commercial dispute resolution in Jersey. However, domestic arbitral awards are enforceable in Jersey with leave of the court under the provisions of the Arbitration (Jersey) Law 1998 (Arbitration Law).

Foreign

In addition to the domestic procedure above, the Arbitration Law provides that a foreign arbitral award handed down in a country that is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention) is enforceable as if it were a domestic arbitral award.

Further, other foreign awards from certain non-New York Convention states may also be enforceable under the Arbitration Law if the state in question is a signatory to the Geneva Convention on the Execution of Foreign Arbitral Awards 1927 (Geneva 1927 Convention) in the same way as a domestic award or "by action".

Separately, arbitral awards are to be treated as binding between the parties and can be relied on by parties as a defence, set-off or otherwise in any legal proceedings in Jersey, subject to the rules on enforceability.

The Arbitration Law does not apply to awards from the International Centre for the Settlement of Investment Disputes (ICSID). These awards are enforceable under the Arbitration (International Investment Disputes) (Jersey) Order 1979. This chapter focuses on private commercial arbitration awards.

International conventions/agreements

23. What international conventions and agreements on enforcement of arbitral awards is your jurisdiction a party to?

Jersey has been a deemed signatory of the New York Convention since 2002.

Definitions

24. What is the definition of an arbitral award in your jurisdiction for the purpose of enforcement proceedings?

The Arbitration Law sets out enforcement regimes in relation to:

- Arbitral awards generally and (principally) domestic awards.
- New York Convention awards.
- Other foreign awards (that fall outside the New York Convention but within the Geneva 1927 Convention).

ENFORCEABLE/EXCLUDED TYPES OF ARBITRAL AWARD

25. What types of arbitral awards are enforceable, and what types are excluded?

Domestic

Enforceable. Any domestic award is enforceable under the Arbitration Law.

Excluded. The Arbitration Law does not set out any specific grounds for refusing to enforce a domestic arbitral award. However, there are limited grounds on which an appeal against a domestic award can be brought including:

- Misconduct by the arbitrator.
- Where an arbitration or an award was improperly procured.

A court can choose to exercise its discretion not to enforce an award where an appeal is pending, and it is unlikely to grant leave to enforce it if there are extant proceedings to set the award aside.

Foreign

Enforceable. Any valid New York Convention award or Geneva 1927 Convention award is *prima facie* enforceable under the Arbitration Law and there are no restrictions about the types of award that are or are not enforceable.

However, a foreign award must meet well-established basic criteria of enforceability including:

- Capacity of the parties.
- Validity of the arbitration agreement.
- Notice.
- Arbitrability of the dispute and scope of the arbitration agreement.
- Proper constitution and conduct of the tribunal.
- Finality of the award.
- Public policy.

Excluded. In the case of New York Convention Awards, there is no explicit obligation on the party seeking to enforce it to establish that there are no grounds to set the award aside. The Arbitration Law provides that the court can refuse to enforce an award where the person against whom enforcement is sought proves that one or more of the basic criteria above has not been satisfied.

In the case of a Geneva 1927 Convention award, the person seeking enforcement is under a positive obligation to prove that the award satisfies the basic criteria for enforceability.

ENFORCEMENT PROCEEDINGS

Procedure

26. What is the procedure for making an application to enforce an arbitral award?

Domestic awards

There are no specific rules specifying the procedure for enforcing an arbitral award, but the Arbitration Law specifies that applications for leave to enforce can be made without notice and must specify the proposed manner of enforcement of the award in Jersey.

The most common method of application is a "representation" (a form of originating process, similar to a petition) accompanied by an affidavit. Unless there are any likely difficulties with

enforcement, or an onerous method of enforcement such as an *arrêt entre mains* is sought, the application will generally be granted at a short procedural hearing or on the papers.

An application to enforce an arbitral award must be made within ten years of the date the award was made and published to the parties.

Foreign awards

The procedure is the same as for a domestic award, although the time limit for bringing an enforcement action will be determined by reference to the rules of the foreign arbitration and/or the relevant law in that jurisdiction.

27. Can parties seek to enforce only part of the award?

There is nothing to prevent a party from enforcing only part of an award.

Form of application

28. What documents and information must be provided with an application to enforce an award?

Domestic

The Arbitration Law is silent about the documentary requirements for enforcement of a domestic award but at a minimum the award itself and a copy of the underlying arbitration agreement must be produced to the court.

Foreign

A party seeking to enforce a New York Convention award must produce:

- The authenticated original award or a certified copy of it.
- The original arbitration agreement or a certified copy of it.
- Where the award or agreement is in a foreign language, a certified translation of it.

In practice, those documents will be exhibited to an affidavit in support of the application.

Any awards falling outside the New York Convention must in addition submit:

- Evidence proving that the award is final.
- Evidence proving that the award is a foreign award and that the conditions for enforceability (see *Questions 24 and 32*) are satisfied.

29. What information must be included in the application?

Domestic

Generally the arbitral award will speak for itself and no further information will be required.

Foreign

In the case of a New York Convention award the burden of proof as to enforceability lies primarily with the party against whom enforcement is sought. The enforcing party is not obliged to prove that the award meets the basic criteria for enforceability. In practice, however, it is advisable to confirm that no grounds to refuse enforcement exist.

For other awards, the enforcing party must prove that the basic criteria for enforceability are met, so the evidential burden is higher.

CHALLENGING ENFORCEMENT

Service

30. Does the enforcing court review service of the proceedings? What conditions regarding service of the proceedings must be satisfied?

Domestic

There are no specific provisions in the Arbitration Law about setting aside awards on service grounds and this will be a matter for determination by the arbitral tribunal itself during the course of the arbitration. However, in the unlikely event that a party can establish that it did not receive proper notice of an arbitration and an award was made, this may constitute a ground to set aside the award on the basis that it was "improperly procured".

Foreign

The court can (and almost certainly will) refuse to enforce a New York Convention award if the party against whom enforcement is sought proves that:

- It was not given proper notice of the appointment of the arbitrator or the arbitration proceedings.
- It was otherwise unable to present a case.

A Geneva 1927 Convention award will not be enforceable if the court is satisfied that the party against whom enforcement is sought was not given notice of the arbitration proceedings in sufficient time to enable the party to present its case, or was under some legal incapacity and was not properly represented.

Pending challenge proceedings

31. What is the effect of pending challenge proceedings to the award?

Domestic

There is no specific provision about the effect of pending challenges on the enforcement of a domestic arbitration award. However, where a challenge to an award is pending, the court is expected to exercise its discretion not to enforce, or to adjourn or stay the enforcement application until the challenge is determined.

Foreign

Where an application to set aside or suspend a New York Convention Award has been made to a competent authority, the court can adjourn the enforcement proceedings and, on application from the party seeking to enforce the award, order the other party to provide security.

For Geneva 1927 Convention awards, they are not deemed final if any proceedings contesting the validity of the award are pending in the country in which it was made.

Review/opposition

32. Can the enforcing court review an award if all formalities were complied with and if the award meets all requirements?

Domestic

The court can only review an award if an appeal is made on a point of law. An appeal requires leave of the court or the consent of the

parties. The parties can agree to exclude appeal rights in the arbitration agreement.

Foreign

The court cannot review a foreign award other than to ensure that the basic criteria for validity and enforceability are met.

33. What are the grounds for refusing enforcement?

Domestic

There are no specific grounds for refusing to enforce a domestic award. The court might refuse to enforce an award if there is evidence that it was improperly procured, or there is a pending appeal or other procedure to set the award aside.

Foreign

New York Convention awards. The court can set aside enforcement where the party against whom enforcement is sought proves that:

- A party to the arbitration agreement was (under the law applicable to the party) under some incapacity.
- The arbitration agreement was not valid under the law to which the parties subjected it or, failing that, under the law of the country where the award was made.
- The person was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present a case.
- 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. (An award that contains decisions on matters not submitted to arbitration can be enforced to the extent that it contains decisions on matters submitted to arbitration that can be separated from those on matters not so submitted).
- The composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing agreement, with the law of the country where the arbitration took place.
- 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.

Enforcement of an award can also be refused if it is in respect of a matter not capable of settlement by arbitration, or if it would be contrary to public policy to enforce the award.

Geneva 1927 Convention awards. The grounds for opposing enforcement are substantially the same as for New York Convention awards but there is a provision for the person against whom enforcement is sought to prove some other reason why the award should not be enforced.

Public policy

34. Which country's public policy applies? Does the court approach the issue differently depending on whether the award is a domestic or foreign award?

Domestic

These issues are unlikely to arise in the context of the enforcement of a Jersey award, but the court would probably apply principles of Jersey public policy.

Foreign

The court will consider issues of Jersey public policy. The principles are the same as those for the enforcement of foreign judgments (see *Question 15*).

35. In what circumstances and against which awards has the principle of public policy generally been applied?

See *Question 15*.

ACTUAL ENFORCEMENT

36. What is the execution procedure when a declaration of enforceability is granted?

The enforcement methods available are exactly the same as for foreign judgments. However, a key difference in approach is that the order granting leave to enforce must specify the manner of enforcement.

37. Can defendants oppose the execution procedure, and if so, on what grounds/defences?

Domestic

There are various circumstances in which a defendant can seek to oppose an execution procedure. This will vary depending on the circumstances of enforcement and the method of enforcement being pursued (this applies also to foreign judgments and foreign arbitral awards).

The following are examples of arguments raised in opposition to enforcement/execution in Jersey:

- The possibility that parallel enforcement proceedings in Jersey and another jurisdiction may result in double recovery, and/or that enforcement steps being taken in the other jurisdiction may be improper or fraudulent.
- That the principle of sovereign immunity extended to the entity against which enforcement was sought.
- That the entity against which enforcement was sought was not responsible for the liabilities of the judgment debtor.
- That the *situs* of the assets (for example, debts) against which enforcement was sought was not in Jersey.

Foreign

See above, *Domestic*.

ARBITRAL AWARDS: INTERIM REMEDIES AND INTEREST

Interim remedies

38. Is it possible to apply for interim measures from the enforcing court pending the enforcement proceedings?

Domestic

Interim remedies are available and are the same as those available for enforcement of judgments (see *Question 19*).

Foreign

All interim remedies are available in respect of the enforcement of a foreign award.

Interest

39. Is the creditor entitled to interest? If so, on what basis is it calculated?

Domestic

Sums directed to be paid in an award are subject to simple interest at a rate specified by the arbitrator, unless the award directs otherwise.

Foreign

Any award of interest in a foreign award will be enforceable in Jersey, provided that the award satisfies the public policy requirement. It is possible that excessive or punitive rates of interest granted in a foreign award may not be enforced.

Currency

40. Is it required to convert the value of foreign awards into the local currency?

There is no strict requirement to convert awards in a foreign currency into sterling. However, if enforcement is to be made

against money or assets held in Jersey and valued in sterling, the court will expect the amount of the award to be converted into sterling to ensure that the enforcing party does not recover more than it is entitled to.

JUDGMENTS AND ARBITRAL AWARDS: PROPOSALS FOR REFORM

41. Are any changes to the law currently under consideration or being proposed?

Judgments

There are possible reforms under debate to the Royal Court Rules to include provisions for the examination of judgment debtors, but to date there are no concrete proposals.

Amendments to the Companies (Jersey) Law 1991 are likely to be introduced to enable creditors to apply for the appointment of a liquidator for a debtor company, but the expected timing for the introduction of the amendments is currently not clear.

Arbitral awards

There are no current or potential reforms under consideration.

ONLINE RESOURCES

Jersey Legal Information Board

W www.jerseylaw.je

Description. This contains revised versions of all Jersey laws and provides access to judgments of the Royal Court, Court of Appeal and Privy Council, as well as the Royal Court Rules 2004 and practice directions.

Practical Law Contributor profiles



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Recent transactions

- Advised on the incorporation, acquisition and operation of a vehicle to acquire a multinational property structure underlying a formerly listed property fund to enable all of the underlying entities to have all remaining assets wound up and dissolved.
- Regularly acts for regulated entities involved in actual or threatened proceedings with the Jersey Financial Services Commission.
- Advising a property holding vehicle for a Jersey based HNW family, in relation to a recovery of fraud losses.



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Recent transactions

- Acting on Jersey's first substantive judgment on dishonestly assisting breach of trust.
- Acting in a dispute concerning allegations of forgery and fraud in relation to an estate which is being administered in accordance with the laws of Monaco.
- Acting on Jersey's first AML non-disclosure prosecution.

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Publications.

Offshore Civil Procedure, Sweet & Maxwell.