

Enforcement of Judgments: Overview (Cayman Islands)

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A Practice Note providing an overview of the key practical issues concerning enforcement of judgments in the Cayman Islands.

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Enforcement is a key stage in resolving a dispute. If the judgment debtor voluntarily complies with the judgment or if parties wish to rely on the judgment as *res judicata* and prevent another party from re-litigating a claim or defence, enforcement

proceedings will not be necessary (though it may still need to be recognised). However, in many instances, enforcement is necessary to give effect to the judgment. The entire process can be especially complex and time-consuming if the judgment is being enforced in an overseas jurisdiction.

This Note provides an overview of the legal framework for enforcement of judgments in the Cayman Islands. It explains the key issues counsel must consider when advising on enforcement of domestic and foreign judgments, including:

- The procedure for enforcement.
- The grounds on which enforcement proceedings can be challenged.
- The interim measures that can be granted pending enforcement proceedings.
- The various methods of enforcing a judgment.

Enforcement Legislative Framework (Domestic and Foreign)

Domestic Framework

The main laws that govern the enforcement of domestic judgments are:

- The *Judicature Act (2021 Revision)* (Judicature Act).
- The *Grand Court Rules (2023 Revision)* (GCR).

Foreign Framework

The *Foreign Judgments Reciprocal Enforcement Act (1996 Revision)* (Reciprocal Enforcement Act) provides a statutory regime for the enforcement of foreign judgments. However, to date, this regime has only been extended to judgments from Australia and its external territories.

Under the Reciprocal Enforcement Act, a judgment creditor can apply to register a foreign judgment in the Cayman Islands. Once registered, a foreign judgment is deemed to have the same force and effect as if it were originally made by the Grand Court of the Cayman Islands.

Judgments from all other countries are enforceable at common law. That is, the creditor can sue on the judgment debt as an unpaid debt obligation in a fresh proceeding brought in the Cayman Islands.

International Conventions/Agreements

The Cayman Islands is not party to any international conventions or agreements on the reciprocal enforcement of judgments.

The Cayman Islands is a British overseas territory, and the UK can extend its ratification of treaties to the Cayman Islands by an Order in Council (although it has not yet done so in respect of any instruments relating to reciprocal enforcement).

Definition of Judgment

Domestic Definition

For the purposes of enforcement, a domestic judgment includes all decisions given by a court or tribunal in the form prescribed by Order 42 of the GCR, including default judgments, decrees, orders, non-money judgments, and interim measures (see also [Enforceable/Excluded Judgments](#)).

Foreign Definition

For the purposes of enforcement at common law, a foreign judgment is generally enforceable if it is all of the following:

- A final and conclusive judgment or order.
- Made for the payment of a sum of money.
- Made by a foreign court of competent jurisdiction.
- Made in proceedings for compensation or damages to an injured party.

Certain non-monetary foreign judgments are also enforceable at common law (see [Enforceable/Excluded Judgments](#)).

Under the Reciprocal Enforcement Act, a foreign judgment is defined as:

- A judgment or order given or made by a court in any civil proceedings.
- 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.

(Section 2, Reciprocal Enforcement Act.)

Enforceable/Excluded Judgments

Domestic Judgments

All types of domestic awards, judgments, and orders are enforceable, whether they are final and conclusive, preliminary, or interim. These include:

- Money judgments.
- Non-money judgments.
- Default judgments.
- Interim measures.
- Injunctions and judgments prohibiting acts.

There are no specific domestic judgments that are excluded from enforcement.

Foreign Judgments

The following types of judgments are **enforceable**:

- **Money judgments.** At common law, a foreign money judgment is enforceable in the Cayman Islands if it meets the requirements for enforceability (see *Foreign Definition*).

Under the Reciprocal Enforcement Act, a foreign money judgment can be enforced if it meets the following conditions:

- the judgment debtor was properly served in accordance with the law of the foreign country;
- the judgment originates from one of the jurisdictions to which the Reciprocal Enforcement Act applies (currently Australian judgments only);
- the judgment is final and conclusive;
- there is a sum of money payable;
- the judgment was given after the Reciprocal Enforcement Act came into force;
- registration is sought within the limitation period of six years from the date of the judgment; and
- at the date of the application, the judgment has not already been wholly satisfied or enforced and is still capable of enforcement in the country of issue.

(Sections 3 and 6, Reciprocal Enforcement Act.)

- **Judgments ordering or prohibiting the doing of acts/injunctions.** Foreign *in personam* (non-money) judgments or orders are not enforceable under the Reciprocal Enforcement Act. However, they can be enforced at common law if the Cayman court is satisfied that:
 - the judgment was given by a court with competent jurisdiction;
 - the judgment is final and conclusive; and
 - the court is required to enforce judgments of its type under the principles of comity.

(*Bandone v Sol Properties Incorporated* [2008] CILR 201.)

Accordingly, non-money judgments can be recognised and enforced by way of equitable remedies, if the principle of comity requires it.

- **Declaratory judgments.** These judgments cannot be enforced under the Reciprocal Enforcement Act but can be at common law if they meet the conditions outlined above for non-money judgments.
- **Default judgments.** These judgments can be enforced under the Reciprocal Enforcement Act and at common law if they meet the conditions outlined above for non-money judgments.
- **Judgments made without notice (ex parte)/awards.** These judgments cannot be enforced under the Reciprocal Enforcement Act but can be at common law if they meet the conditions outlined above for non-money judgments.
- **Decisions granting provisional measures.** These judgments cannot be directly enforced under the Reciprocal Enforcement Act or at common law. However, the Cayman Grand Court has jurisdiction to make interim orders (including injunctive orders and orders for the appointment of receivers) in support of foreign proceedings (section 11A, *Grand Court Act (2015 Revision)*).

- **Enforcement orders and (pre-judgment) attachment orders.** These judgments cannot be enforced under the Reciprocal Enforcement Act but can be enforced at common law if they meet the conditions set out above for non-money judgments.

The following types of judgments are **not enforceable**, both under the Reciprocal Enforcement Act and at common law:

- Judgments contrary to public policy (see *Public Policy*).
- Judgments that relate to the penal laws of another country or that impose punitive damages.
- Tax judgments.
- Judgments adjudicating *in rem* on the title to, or right to possession of, immovable property in the Cayman Islands (*Tartaglia v Colonial Dev Corp Ltd* [1996 CILR Note 4b]), although the court can enforce *in personam* judgments concerning such property.
- Judgments holding that Cayman Islands trusts or dispositions in respect of them are void or liable to be set aside either because the foreign law does not recognise the trust concept or because of heirship, matrimonial, or certain other rights that are not enforced by the foreign court (*Trusts Act (2021 Revision)*).

Enforcing Domestic Judgments

Enforcement Procedure

The procedure for enforcement of domestic judgments is set out in:

- Orders 45 to 52 of the GCR.
- The Judicature Act.

A domestic judgment is recognised the moment it is made and becomes enforceable immediately unless it is subject to a condition.

The procedure differs depending on the nature of the judgment to be enforced. For example, money judgments can be enforced by:

- A writ of fieri facias.
- Garnishee proceedings
- A charging order.
- Appointment of a receiver.
- An order for committal.
- A writ of sequestration.
- An attachment of earnings order.

A judgment for possession of land is enforced by a writ of possession. A judgment for delivery of goods is enforced by a writ of delivery.

Many (but not all) enforcement proceedings can be brought ex parte. It is possible to obtain a stay of enforcement.

Limitation Period

Domestic judgments are automatically enforceable within six years from the date of their delivery (section 30, *Limitation Act (1996 Revision)*).

Competent Court

The Grand Court of the Cayman Islands has jurisdiction over the enforcement of domestic judgments, orders, decrees, and directions (section 31, Judicature Act).

Application for Enforcement

Required Documents

There is no requirement to make an application for enforcement before seeking to enforce a domestic judgment.

Information to Include

There is no requirement to make an application for enforcement before seeking to enforce a domestic judgment. When seeking enforcement, there is no legal requirement to include any information in respect of the judgment, the claim as awarded in the judgment, the facts and legal grounds of the case, or whether the judgment is appealable.

Staying Enforcement

Grounds to Stay Enforcement

The court has discretion to stay enforcement of a judgment based on matters that have occurred since the date of the judgment (Order 45, rule 11, GCR). Enforcement of judgments by writ of fieri facias can be stayed, on application of the judgment debtor or other party liable to execution, if either:

- There are special circumstances that render it inexpedient to enforce the judgment or order.
- The applicant is unable to pay the money.

(Order 47, rule 1, GCR.)

The pendency of an appeal does not in itself operate as a stay. However, a stay of execution pending appeal may be granted if, among other things, enforcement would render the appeal nugatory.

Interim Remedies

The Grand Court can order a variety of provisional measures pending enforcement of both domestic and foreign judgments. Interim measures include:

- Mandatory interim injunctions (and related relief), such as:
 - Anton Piller orders;
 - orders appointing receivers;
 - orders appointing provisional liquidators;
 - orders for interim payments; and
 - orders for detention or inspection and preservation of property.
- Freezing injunctions.

Costs and Interest

The judgment creditor can recover costs of enforcement proceedings, subject to the court's discretion (see, for example, Order 46, rule 4(3), GCR (for writs of execution generally) and Order 49, rule 10, GCR (for garnishee proceedings)).

The court can award interest at such rate as it considers appropriate. A domestic judgment accrues interest automatically from the date of its award, unless the court orders otherwise. The interest rate is set out in the *Judgment Debts (Rates of Interest) Rules 1995* and differs depending on the currency in which the judgment is expressed.

Enforcement of Foreign Judgments

Foreign Judgment Procedure

Common Law

The procedure for enforcement of a foreign judgment at common law involves starting a fresh proceeding in the Cayman Islands by filing a writ of summons suing for the amounts due and owing under the foreign judgment.

Once filed, the writ of summons must be served on the judgment debtor in the ordinary way (additional requirements apply if the judgment debtor resides outside the Cayman Islands). The judgment debtor must acknowledge service or file a defence within statutory time limits. If the judgment debtor fails to do so, the judgment creditor can apply for judgment to be entered against the judgment debtor by default. If service is acknowledged, a claimant would typically apply for summary judgment by reference to the outstanding judgment debt (there is usually no need to relitigate the merits of the underlying dispute which gave rise to the foreign judgment).

Once the judgment creditor obtains judgment in the new proceeding, the full range of domestic enforcement procedures is available (see *Methods of Enforcement (Domestic and Foreign)*).

Reciprocal Enforcement Act

Where the Reciprocal Enforcement Act applies (currently to Australian judgments only), the judgment creditor must apply for registration of the judgment in the Cayman Islands. An application is made ex parte by originating summons unless the court directs the summons to be served on the judgment debtor.

The judgment debtor has a limited time within which to apply to set aside registration on certain grounds (see *Challenging Enforcement: Grounds*).

If registration is not challenged by the judgment debtor, or if it is confirmed, the registered judgment is treated as if it were a judgment of the Grand Court.

Timing and Cost

Enforcement proceedings, whether by way of a fresh proceeding or by application to register a foreign judgment, can take several months, depending on the time required to effect service. Interim relief can be sought to preserve assets pending enforcement, if required (see *Interim Remedies for Enforcing Foreign Judgments*).

Security for costs is not required in enforcement proceedings. However, a defendant can apply security for costs, and it is commonly granted as a pre-requisite for interim relief (typically by way of an undertaking in damages to the court).

The court fee to start a new claim or to file a registration application is KYD5,000.

Appeals can be brought against:

- Fresh proceedings.
- Refusal to set aside registration of a foreign judgment under the Reciprocal Enforcement Act.
- Specific enforcement permitted by the court.

Appeals can be founded on various bases applicable to any action or application, including:

- Issues of fact.
- Points of law.
- Quantum of damages.
- Excess of jurisdiction.

The Cayman Islands Court of Appeal examines alleged errors of law and of principle, if permission to appeal is obtained.

Simplified Procedure

Whether the application is under the common law or the Reciprocal Enforcement Act, an applicant must appoint an attorney to act for them unless the applicant is a natural person, in which case the applicant can proceed as a litigant in person.

Common law. Enforcement at common law require formal proceedings. However, claimants can typically take advantage of the procedures to obtain a default judgment or a summary judgment when seeking to enforce a foreign judgment.

Reciprocal Enforcement Act. An application to register a foreign judgment under the Reciprocal Enforcement Act is a simplified enforcement procedure (see *Application for Enforcing Foreign Judgments*).

New Action

A fresh action must be commenced for enforcement of a foreign judgment at common law.

Limitation Period for Foreign Judgments

Common law. An enforcement action must be brought within six years from when the judgment becomes enforceable.

Reciprocal Enforcement Act. An enforcement action must be brought within six years from the date of the judgment or, if there has been an appeal, from the date of the last judgment on appeal (section 4(1), Reciprocal Enforcement Act).

Competent Court for Filing Foreign Judgment Enforcement

Common law. The judgment creditor must bring an action in the Financial Services Division of the Grand Court.

Reciprocal Enforcement Act. The judgment creditor must apply to the Grand Court for registration of the judgment.

Application for Enforcing Foreign Judgments

Documents for Application

Reciprocal Enforcement Act. An application made by ex parte summons to register and enforce a judgment under the Reciprocal Enforcement Act must be supported by an affidavit:

- Exhibiting the judgment or a certified copy, and, if the judgment is not in English, a notarised and certified translation.
- Stating the name, trade or business, and last known place of abode or business of the judgment creditor and judgment debtor.
- Stating that the judgment creditor is entitled to enforce the judgment.
- Confirming that the judgment remains unsatisfied.

(Section 4, Reciprocal Enforcement Act.)

The judgment must be converted into Cayman Islands dollars at the exchange rate prevailing at the date the judgment was given in the foreign court (section 4(3), Reciprocal Enforcement Act).

Common law. The documentary requirements for recognition and enforcement of a foreign judgment at common law are similar to those for registration under the Reciprocal Enforcement Act.

The new proceedings can be expressed in a foreign currency. Conversion into the local currency is effected either when the local judgment is entered or at the time of enforcement.

Foreign Judgment Application Information

Reciprocal Enforcement Act. The enforcement procedure is governed by Order 71 of the GCR and requires the filing of an application supported by an affidavit exhibiting a duly authenticated copy of the judgment, together with a translation into English, and addressing matters such as:

- Whether the creditor is entitled to enforce.
- Whether and to what extent the judgment has been satisfied.
- Whether the judgment falls into any category of the cases in which registration can be refused under section 4 of the Reciprocal Enforcement Act.

Common law. The affidavit must exhibit a copy of the foreign judgment (including a certified English translation) in support of the application to register the judgment and in fresh proceedings at common law (see *Documents for Application*). In addition, the application must specify the amount of the claim as awarded. There is no specific requirement to include the factual and legal grounds of the case. However, since the enforcement application is invariably *ex parte*, the applicant is under a duty of full and frank disclosure and fair presentation, which in practice requires the applicant to address all factual and legal issues that may be relevant to the court's decision on whether to enforce. These issues vary from case to case.

Challenging Enforcement: Grounds

Common law. Opposition to enforcement at common law typically takes the form of substantive defences raised in the fresh proceedings. Challenges include that:

- The foreign judgment was obtained by fraud.
- The foreign court was not competent to pronounce the judgment.
- The foreign judgment was obtained in proceedings contrary to natural justice.
- Enforcement would be contrary to public policy.

Reciprocal Enforcement Act. The judgment debtor has a limited time, which the court specifies in the enforcement order, to apply to set aside registration on certain grounds, including the following:

- The foreign court lacked jurisdiction over the defendant.
- The foreign judgment was obtained by fraud or proceedings contrary to natural justice.
- Enforcement of the foreign judgment would be contrary to public policy (that is, the foreign law is contrary to Cayman Islands law).
- The judgment debtor did not receive proper notice of the foreign proceedings in sufficient time to defend the proceedings and did not appear.
- The rights under the judgment are not vested in the person who made the application.

(Section 6, Reciprocal Enforcement Act.)

Review of Merits

Common law. The domestic court does not review the substance of the foreign judgment unless there is an overriding public policy reason (for example, where the judgment is alleged to have been procured by fraud or is contrary to public policy).

Reciprocal Enforcement Act. The court only reviews the foreign judgment under the grounds for refusal of registration (see *Challenging Enforcement: Grounds*).

Due Process

Common law. The Grand Court can consider due process issues. Enforcement may be refused if the foreign judgment is impeachable for fraud, contrary to public policy, or was obtained in proceedings that were opposed to natural justice. Generally, Dicey Rules 52 to 55 apply. What amounts to a breach of due process vary depending on the particular case. A mere procedural irregularity is not necessarily sufficient, but denial of an opportunity to be heard may meet the relevant standard.

Reciprocal Enforcement Act. The registering court must refuse registration if the judgment debtor, being a defendant in the proceedings in the original court, did not (notwithstanding that process may have been duly served on them in accordance with the law of the country of the original court) receive notice of those proceedings in sufficient time to enable him to defend the proceedings and did not appear (section 6(1)(iii), Reciprocal Enforcement Act).

Finality

All enforceable foreign judgments must be final and conclusive under the rules applicable to the court that gave the judgment. This is the case regardless of whether enforcement is sought at common law or under the Reciprocal Enforcement Act. Decisions granting provisional measures cannot be directly enforced under the Reciprocal Enforcement Act or at common law.

If the foreign judgment is under appeal in a foreign court, it can still be final and conclusive for the purposes of recognition by the Cayman Islands court. However, each application is considered on its merits and the court has unfettered discretion to allow enforcement. Therefore, a Cayman court can stay any application for registration or enforcement pending determination of a foreign appeal.

A claim for enforcement at common law is on notice, so the judgment debtor has the opportunity to raise the nature of the appeal at any summary judgment hearing or other hearing of the claim. In practice, the Cayman court considers this issue if it is raised as a defence, as it would otherwise not be aware of it.

Jurisdiction

Common law. For a foreign judgment to be enforced at common law, the Cayman Islands court must be satisfied that the court issuing the judgment had jurisdiction over the defendant and that the judgment debtor:

- Was present in the foreign jurisdiction at the time when the proceedings were instituted.
- Participated as a claimant or counter-claimant in the foreign proceedings.
- Voluntarily appeared in the foreign proceedings as a defendant.
- Submitted to the foreign court's jurisdiction as a defendant by prior agreement.

It is not sufficient for the foreign court to have jurisdiction under the applicable foreign law. It must also have jurisdiction according to common law rules of conflict of laws (160088 *Canada Incorporated v Socoa* [1997 CILR 409]).

Reciprocal Enforcement Act. The registering court can consider the grounds on which the foreign court assumed jurisdiction and can set aside registration if the foreign court lacked the required jurisdiction. The foreign court is deemed to have the required jurisdiction if any of the following applies to the judgment debtor:

- Voluntarily submitted to the jurisdiction of the foreign court as evidenced by a voluntary appearance at court.

- Agreed to submit to the jurisdiction of the foreign court in respect of the subject matter of the proceedings before their commencement.
- Resided in the country of the foreign court or carried on business there at the time the proceedings were instituted.
- Was a claimant or a counterclaimant in the proceedings in the foreign court.

(Section 6(2), Reciprocal Enforcement Act.)

Exorbitant Ground of Jurisdiction

The enforcing court does not specifically review whether the foreign court assumed jurisdiction based on an exorbitant ground of jurisdiction. However, the domestic court will refuse to register or enforce a foreign judgment if the foreign court is not considered to have had jurisdiction either under the common law or the Reciprocal Enforcement Act (see *Jurisdiction*).

Voluntary Acknowledgement of Court's Jurisdiction

The defendant's voluntary acknowledgement of the foreign court's jurisdiction does not prevent the Cayman Islands to review the foreign court's jurisdiction if this came into dispute once proceedings had been issued (see *Jurisdiction*).

Public Policy

When exercising its discretion to register or enforce a judgment, the court can review whether the foreign judgment or its enforcement is contrary to public policy. However, the scope of this review is very narrow. Refusal on grounds of public policy only arises where there has been a fundamental breach of the most basic notions of justice (for example, denial of a right to be heard).

Public policy does not include matters of substantive law.

On public policy grounds, the domestic courts will also not enforce:

- A foreign judgment debt in respect of taxes, fines, or other penalties.
- A judgment where the effect is to assist a foreign state to collect tax.

In addition, the domestic courts will not aid an attempt by a foreign state to act in excess of its jurisdiction by enforcing sovereign acts of that state outside its own territory (see *Tasarruf Mevduati Sigorta Fonu v Merrill Lynch Bank and Trust Co (Cayman) Ltd & others* [2008 CILR 267]).

Interim Remedies for Enforcing Foreign Judgments

The enforcing or registering court can order interim relief pending enforcement in the same way as for domestic judgments (see *Interim Remedies*).

Costs and Interest for Enforcing Foreign Judgments

Common law. Even if the foreign judgment does not award interest, the enforcing Cayman Islands judgment automatically accrues interest at the standard judgment interest rate, specified in the *Judgment Debts (Rates of Interest) Rules (2021 Revision)*, from the date of its award, unless ordered otherwise. If the foreign judgment contains interest provision, that interest can be sought in the action commenced before the Grand Court. If the applicant succeeds in its application for enforcement, costs usually follow the event.

Reciprocal Enforcement Act. A foreign judgment registered under the Reciprocal Enforcement Act accrues interest at the standard judgment interest rate from the date of registration. Judgment creditors can include in their enforcement action any accrued interest due under the law of the foreign court up to the time of registration. A successful applicant is entitled to reasonable costs of, and incidental to, the registration application (section 4(6), Reciprocal Enforcement Act).

Currency

Common law. The new main proceeding can be expressed in the foreign currency. Conversion to the local currency is effected either when the local judgment is entered or at the time of enforcement.

Reciprocal Enforcement Act. The value of the foreign judgment must be converted into Cayman Islands dollars at the exchange rate prevailing at the date the judgment was given in the foreign court (section 4(3), Reciprocal Enforcement Act).

Methods of Enforcement (Domestic and Foreign)

Once judgment has been issued by the court in proceedings for enforcing a foreign judgment at common law, or once a foreign judgment has been registered under the Reciprocal Enforcement Act, it can be enforced in the same way as any other judgment of a Cayman Islands court.

A money judgment can be enforced by means of:

- A writ of fieri facias.
- Garnishee proceedings.
- A charging order.
- The appointment of a receiver.
- An order for committal.
- A writ of sequestration.
- An attachment of earnings order.

A judgment for the delivery up of goods can be enforced by:

- An order of committal.
- A writ of sequestration.
- A writ of delivery up.

An *in personam* judgment can be enforced (with leave) by:

- A writ of sequestration against the property of the relevant individuals.
- An order for committal.

A judgment for the possession of land can be enforced by:

- A writ of possession (with leave).
- An order for committal.
- A writ of sequestration.

Proposals for Reform

There are no changes to the law currently under consideration or being proposed.

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