

Enforcement of Foreign Judgments

Contributing editor
Patrick Doris



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GETTING THE
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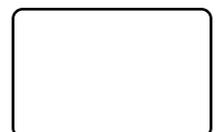


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Cayman Islands

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1 Treaties

Is your country party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments? What is the country's approach to entering into these treaties and what, if any, amendments or reservations has your country made to such treaties?

The Cayman Islands has not entered into any international treaties for the reciprocal recognition or enforcement of foreign judgments other than in relation to Australia (see below). Similarly, the UK has not so far extended its ratification of any relevant treaties to the Cayman Islands by Order in Council. The UK has power to do so because the Cayman Islands is a British Overseas Territory.

The Foreign Judgments Reciprocal Enforcement Law (1996 Revision) (the 1996 Law) provides a statutory regime for recognition and enforcement of foreign judgments but so far only applies in relation to judgments from Superior Courts of Australia and its External Territories.

2 Intra-state variations

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

Not applicable.

3 Sources of law

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

Enforcing foreign judgments in the Cayman Islands is usually done through the common law route (ie, suing in a new main proceeding based upon the foreign judgment as an unpaid debt obligation). Such an action will be conducted under the local litigation regime.

The exceptions are: (i) the statutory regime for reciprocal recognition and enforcement of judgments contained in the 1996 Law, which currently only applies to judgments from the Superior Courts of Australia and its External Territories; and (ii) the statutory regime under the Maintenance Law (1996 Revision) for recognition and enforcement of foreign judgments and orders for maintenance in a private family law context, which currently applies only to the courts of England and Wales, Ireland, Jamaica, Belize and two Canadian provinces (the Yukon and Ontario).

4 Hague Convention requirements

To the extent the enforcing country is a signatory of the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, will the court require strict compliance with its provisions before recognising a foreign judgment?

The Cayman Islands is not a signatory to the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters.

5 Limitation periods

What is the limitation period for enforcement of a foreign judgment? When does it commence to run? In what circumstances would the enforcing court consider the statute of limitations of the foreign jurisdiction?

A six-year limitation period applies for both common law enforcement and under the 1996 Law. The period starts on the date of the judgment or, when there have been appeals, the date of the last judgment. There is no statutory limitation period in respect of enforcement of foreign judgments or orders for maintenance made by a relevant foreign court, presumably on the basis that these are continuing obligations on the judgment debtor.

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

6 Types of enforceable order

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

Money and non-money judgments are both enforceable in the Cayman Islands at common law. See *Bandone v Sol Properties* (2008 CILR 301), in which the Cayman Islands court confirmed that in personam judgments may be recognised and enforced through equitable remedies or, if required, under the principle of comity. When deciding whether to enforce a non-money judgment, the court will have regard to general considerations of fairness, but will not re-examine the merits of the underlying case.

If seeking recognition or enforcement of a judgment under the 1996 Law, there are statutory requirements that the foreign judgment:

- must be final and conclusive;
- is a money judgment; and
- was given after 1996 Law came into force.

There are no specific procedural requirements in respect of enforcing foreign judgments or orders for maintenance made by a relevant foreign court. In addition, the legislation provides a mechanism for finalising and enforcing provisional orders made by a relevant foreign court.

7 Competent courts

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

Regardless of whether enforcement is sought at common law or under the 1996 Law, the proceedings must be brought in the Financial Services Division of the Grand Court of the Cayman Islands. Enforcing a foreign judgment or order for maintenance made by a relevant foreign court should be pursued in the court of corresponding jurisdiction, ie, the Grand Court for a superior court of record or the Summary Court for any other court.

8 Separation of recognition and enforcement

To what extent is the process for obtaining judicial recognition of a foreign judgment separate from the process for enforcement?

Enforcement at common law is a two-stage process: a new main proceeding must be brought on the back of the judgment to create a domestic judgment. Once judgment has been obtained from the Cayman Islands court (often on an application for summary judgment), the full range of domestic enforcement methods are available.

Enforcement under the 1996 Law is made up of three stages. The judgment creditor must first apply *ex parte* to the Grand Court for registration of the judgment. If the court is satisfied that the judgment meets the statutory criteria, the judgment will be registered. The judgment debtor then has a limited time within which to apply to set aside registration on specified grounds. If registration is not challenged, or is confirmed by the court, the registered judgment is treated as if it were a judgment of the Grand Court. Domestic enforcement methods are then available.

Enforcement under the Maintenance Law is dealt with by sending a certified copy of the foreign maintenance order to the Governor for onward transmission to the appropriate court officer of the Grand or Summary Court for registration. The registered judgment is then enforceable as a Cayman judgment.

9 Defences

Can a defendant raise merits-based defences to liability or to the scope of the award entered in the foreign jurisdiction, or is the defendant limited to more narrow grounds for challenging a foreign judgment?

In theory, merits-based defences can be brought in response to a new main proceeding to enforce a foreign judgment at common law. However, this will be limited to attacking the validity of the obligations created by the foreign judgment; the Cayman Islands court will not generally make enquiries into an apparently regular foreign judgment or entertain reopening of the merits of the underlying dispute.

A defendant may raise as a defence to common law enforcement the existence of a different enforceable foreign judgment granted in his or her favour that nullifies or impacts upon the foreign judgment sought to be enforced. The judgment debtor may also be able to raise as a counterclaim any other liability that the judgment creditor has to the judgment debtor (including another foreign judgment in the judgment debtor's favour).

When registration or enforcement is sought under the 1996 Law, limited grounds of challenge are available in section 6:

- the court issuing the judgment did not have valid jurisdiction to pronounce the judgment;
- the judgment debtor, being a defendant in the proceedings in the original court, did not receive proper notice of those proceedings in time to defend the proceedings and did not appear;
- the foreign judgment was obtained by fraud;
- the enforcement of the judgment would be contrary to public policy;
- the rights under the judgments are not vested in the person by whom the application was made; and
- there is a previous final and conclusive foreign judgment dealing with the same subject matter.

The Maintenance Law does not permit challenging the enforcement of the registered judgment. It may still be possible, nevertheless, to challenge enforcement on public policy grounds.

10 Injunctive relief

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

Whether enforcement at common law or registration under the 1996 Law is sought, the judgment debtor could theoretically try to obtain an anticipatory injunction to prevent such steps being taken. The judgment debtor would have to make out grounds to object to the enforcement or registration and that it is just and convenient to grant the injunction rather than to allow enforcement or registration to take their

normal course and for the judgment debtor to raise their objection at the appropriate time during that process.

11 Basic requirements for recognition

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

There are no specific mandatory requirements for recognition or enforcement of a foreign judgment at common law, other than that the foreign judgment must be a regular judgment and must be final and conclusive.

Statutory recognition under the 1996 Law requires:

- the judgment must have been from one of the jurisdictions to which 1996 Law applies (currently limited to judgments from the Superior Courts of Australia and its external territories);
- the foreign judgment must be final and conclusive;
- the foreign judgment must have been given after the 1996 Law came into force;
- registration must be sought within the applicable limitation period of six years; and
- at the date of the application, the judgment must not already have been wholly satisfied or enforced and must still be capable of enforcement in the country of the foreign judgment.

Statutory recognition under the Maintenance Law requires that the judgment must have been from one of the jurisdictions to which the Maintenance Law applies (currently limited to England and Wales, Ireland, Jamaica, Belize, Ontario and the Yukon).

12 Other factors

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

There are no non-mandatory factors for recognition, either at common law, or under the 1996 Law or Maintenance Law.

13 Procedural equivalence

Is there a requirement that the judicial proceedings where the judgment was entered correspond to due process in your jurisdiction, and if so, how is that requirement evaluated?

There is no such formal requirement at common law, or under the 1996 Law or the Maintenance Law. The Cayman Islands court will not generally make enquiries into an apparently regular foreign judgment, but failure to accord with local concepts of due process may be an aspect of the public policy considerations for the court in recognising and enforcing a foreign judgment.

14 Personal jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had personal jurisdiction over the defendant, and if so, how is that requirement met?

There is no such formal requirement for enforcement at common law or under the Maintenance Law. The Cayman Islands court will not generally make enquiries into an apparently regular foreign judgment.

Enforcement under the 1996 Law requires the court to examine whether the foreign court had jurisdiction over the judgment debtor. It will set aside registration of the foreign judgment when it is proven that the foreign court lacked jurisdiction. Section 6(2) requires that the court consider whether the judgment debtor:

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

15 Subject-matter jurisdiction

Will the enforcing court examine whether the court where the judgment was entered had subject-matter jurisdiction over the controversy, and if so, how is that requirement met?

The Cayman Islands court does not generally apply concepts of subject-matter jurisdiction. However, the Cayman Islands court will not enforce criminal fines and tax judgments, whether at common law or under the 1996 Law.

16 Service

Must the defendant have been technically or formally served with notice of the original action in the foreign jurisdiction, or is actual notice sufficient? How much notice is usually considered sufficient?

For enforcement by the common law route or under the Maintenance Law, the Cayman Islands court will not generally make enquiries into an apparently regular foreign judgment.

The 1996 Law requires a judgment debtor to have been properly served in accordance with the law of the foreign country in order for that judgment to be registered in the Cayman Islands. Failure to provide sufficient notice forms one of the statutory bases upon which the court must set aside registration.

17 Fairness of foreign jurisdiction

Will the court consider the relative inconvenience of the foreign jurisdiction to the defendant as a basis for declining to enforce a foreign judgment?

The Cayman Islands court will not generally make enquiries into an apparently regular foreign judgment, even if that foreign jurisdiction may not have been a convenient one for the judgment debtor.

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

18 Vitiating by fraud

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

Fraud is one of the limited grounds on which a judgment debtor may seek to impeach an apparently regular foreign judgment in order to prevent enforcement of it at common law. It is likely that fraud could also be relied upon to resist enforcement under the Maintenance Law on public policy grounds, but this is untested.

Statutory registration will be refused under section 6 of the 1996 Law if the foreign judgment has been obtained by fraud.

19 Public policy

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

No. However, the Cayman Islands court will consider whether enforcement of the foreign judgment would conflict with Cayman Islands public policy. (The scope for such a challenge is very narrow and refusal on the grounds of public policy will arise only when there has been a breach of the most basic notions of morality and justice.)

20 Conflicting decisions

What will the court do if the foreign judgment sought to be enforced is in conflict with another final and conclusive judgment involving the same parties or parties in privity?

The existence of a conflicting foreign judgment involving the same parties or parties in privity with them may provide a valid defence or counterclaim to enforcement at common law or under the Maintenance Law.

The statutory scheme for recognition in the 1996 Law allows the court to set aside registration if there is an earlier final and conclusive foreign judgment dealing with the same subject matter (see section 6(1)(b)).

21 Enforcement against third parties

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

Generally, no.

22 Alternative dispute resolution

What will the court do if the parties had an enforceable agreement to use alternative dispute resolution, and the defendant argues that this requirement was not followed by the party seeking to enforce?

The Cayman Islands court will not generally make enquiries into an apparently regular foreign judgment when considering enforcement at common law or under the Maintenance Law. Failure to use agreed ADR mechanisms is not a ground to refuse recognition under the 1996 Law.

23 Favourably treated jurisdictions

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

Judgments from countries to which the 1996 Law or the Maintenance Law has been extended are given the benefit of a streamlined statutory scheme for recognition. Apart from this, no special deference is given to judgments from one foreign country over those of another foreign country.

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

When seeking enforcement at common law, the judgment creditor may elect to pursue enforcement of certain parts of the judgment only. In particular, Cayman Islands public policy is against recognition of punitive damages awards; therefore, the enforcement of such awards is often not pursued.

The 1996 Law permits registration of part of a judgment only, and the removal from the foreign judgment of any parts that cannot properly be registered.

25 Currency, interest, costs**In recognising a foreign judgment, does the court convert the damage award to local currency and take into account such factors as interest and court costs and exchange controls?****If interest claims are allowed, which law governs the rate of interest?**

When enforcing at common law, the new main proceeding can be expressed in the foreign currency. Conversion to local currency will be effected either when the local judgment is entered or at the time of enforcement. The same approach is likely to be taken in relation to enforcement under the Maintenance Law.

Under the 1996 Law, the judgment is converted into Cayman Islands dollars at the rate of exchange prevailing on the date the judgment was given in the foreign court (see section 4(3)).

When the foreign judgment includes costs, interest or both, these may form part of the judgment debt to be enforced in the Cayman Islands, both at common law and under the 1996 Law.

When the foreign judgment contains no award for interest, the Cayman Islands judgment (whether obtained by new main proceeding at common law or registration under the 1996 Law) will accrue interest at the standard rate from the date of the Cayman Islands court's judgment award unless it orders otherwise.

26 Security**Is there a right to appeal from a judgment recognising or enforcing a foreign judgment? If so, what procedures, if any, are available to ensure the judgment will be enforceable against the defendant if and when it is affirmed?**

When enforcing at common law by new main proceeding, or registering under the 1996 Law or Maintenance Law, the usual local rights of appeal to the Cayman Islands Court of Appeal are available.

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

Once the foreign judgment has become a Cayman judgment through a new main proceeding at common law, or has been registered in the Cayman Islands under the 1996 Law or the Maintenance Law, it may be enforced in the same manner as any other judgment of a Cayman Islands court. The full range of domestic enforcement procedures is available.

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

Not applicable.

Getting the Deal Through

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Anti-Money Laundering
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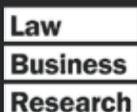
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