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Europe

Guernsey

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1. UNIFORMITY OF LAW AND REGULATIONS

The Bailiwick of Guernsey consists of three separate jurisdictions: Guernsey (including the Islands of Herm and Jethou), Alderney and Sark (including the Island of Brecqhou). Each has its own court with unlimited jurisdiction at first instance in civil matters, although appeals from Alderney and Sark go to Guernsey.

The principal law is the Judgments (Reciprocal Enforcement) (Guernsey) Law, 1957, as amended ('the 1957 Law') which applies to Guernsey. Where that law is not applicable, it is possible to sue on a foreign judgment as a debt at Common Law, as was confirmed by the Guernsey Court of Appeal in 2002. As the 1957 Law applies to relatively few jurisdictions, enforcement at Common Law remains of considerable importance. Most of the principles set out in the 1957 law are likely to be followed in the Common Law enforcement of Foreign Judgments.

2. JUDGMENTS

2.1. Definition

A judgment must be a judgment or order of a court for the payment of a sum of money in respect of compensation or damages to an injured party (1957 Law S1(1)). It must be final and conclusive, although it will be so considered notwithstanding an appeal is pending (1957 Law S3(2)(a)&(3)).

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2.2. Categories

2.2.1. *Money Judgments*

These are enforceable unless they are in respect of taxes or other charges of a like nature or in respect of a fine or other penalty (1957 Law S3(2)(b)).

2.2.2. *Specific Performance*

This remedy is not known to Guernsey Law at least as regards land although the court will order the handing over of other property.

2.2.3. *Injunctions*

Injunctions issued in other jurisdictions are not directly enforceable in Guernsey. However, it is common for the Guernsey court to grant an injunction on the basis of evidence used to obtain non-Guernsey injunctions and in order to support those injunctions.

2.2.4. *Arbitration Awards*

The Arbitration (Guernsey) Law 2016 applies where the ‘seat’ of the arbitration is Guernsey.

Foreign arbitration awards are enforceable in Guernsey under Parts II and III of the Arbitration (Guernsey) Law, 1982 (‘the 1982 Law’) (S84 of the Arbitration (Guernsey) Law, 2016 (‘the 2016 Law’)); where such an award is pursuant of an agreement for arbitration pursuant to the Protocol of 24 September 1923 between persons resident in different territories covered by the Geneva Convention of 26 September 1927 and is a ‘Foreign Award’ according to the United Kingdom.

The following conditions must apply (1982 Law S33(1)). It must have:

- (a) been made in pursuant of an agreement for arbitration which was valid under the law by which it was governed;
- (b) been made by the tribunal provided for in the agreement or constituted in the manner agreed upon by the parties;
- (c) been made in conformity with the law governing the arbitration procedure;
- (d) become final in the country in which it was made;
- (e) been in respect of a matter which may lawfully be referred to arbitration under the law of the Island.

A slightly different procedure (Part VII of the 2016 Law) applies to ‘convention awards’ i.e., an arbitration award made in a territory of a state (other than the United Kingdom) which is a party to the New York Convention of 10 June 1957.

Similar provisions exist in Alderney (the Arbitration (Alderney) Law 1983, Parts II and III).

2.2.5. *Personal Status*

No non-Guernsey court Order dealing with personal status is directly enforceable. Guernsey will recognize personal status under the rules of Private International Law.

2.2.6. *Awards for Multiple/Punitive Damages*

Section 5 of the Protection of Trading Interest Act 1980 (which has been extended by order to Guernsey law) prohibits the enforcement of foreign judgments where a multiplier may be applied to the normal compensation awarded. There does not seem to be an express prohibition on the enforcement of other forms of punitive damages. Guernsey may, in appropriate circumstances, arguably recognize damages for abuse of public office and where a wrong is committed to advance a greater gain than the damages that would be paid under ordinary principles.

2.2.7. *Judgments Recognizing Previous Foreign Judgments*

It has not been recognized that a judgment itself recognizing a foreign judgment can be enforced. However, in *Manches LLP v. Interglobal Financial Ltd* No. 41/ 2009, the Royal Court enforced a judgment of the English County Court that had been transferred to the English High Court for enforcement.

2.2.8. *Foreign Interim Awards*

No foreign interim award is directly enforceable.

2.2.9. *Judgments Against the Local State or Any of Its Organs*

In Guernsey, most state bodies are not covered by any special form of immunity and there is no reason why a foreign judgment, against such a body, should not, if enforceable on general principles, be enforced.

Certain regulatory bodies operate under a limitation of liability. Thus, the Financial Services Commission regulates banks, collective investments, insurance companies, fiduciary businesses and so on (The Financial Services Commission) (Bailiwick of Guernsey) Law, 1987). Sections of the Law limit liability with regard to members and employees of the Commission (S22) and give the power to exempt by Ordinance the Commission and the States (i.e., the Government) of Guernsey (S23). The Financial Services Commission (Limitation of Liability) Ordinance, 1990 exempts the Commission and the States from liability for anything done in the discharge of their functions

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under the 1987 Law, except if done in bad faith. Any foreign judgment overriding these provisions would be unenforceable in Guernsey.

2.2.10. Judgments Not Contrary to Public Policy and Not Covered by A Defence Set Out in 10

Foreign fiscal judgments for the collection of income tax or customs duties are not directly enforceable.

2.3. Reciprocity

Countries which are only covered by the 1957 law require reciprocity. Where it is sought to enforce under Common Law, there is no requirement to prove the foreign system would enforce the local judgment.

3. CURRENCY REGULATIONS AND RESTRICTIONS

- (a) Guernsey has a sterling-based currency and is not subject to exchange control regulations.
- (b) Judgments can be awarded and enforced in any currency.

4. DOCUMENTARY REQUIREMENTS

Under the 1957 Law, there would need to be a supporting affidavit sworn by someone with authority in the matter as well as a certified copy of the judgment. At common law, similar documentation would support an application for a summary judgment:

- (a) If the applicant was a company it would be sufficient for a director or other officer to depose that he had the authority to make the application.
- (b) In the case of an application under the 1957 Law the affidavit should state that the conditions of the Law apply. If the application is at Common Law it should confirm that the original court had jurisdiction under its rules and that the judgment is final.
- (c) The court will permit the use of faxed or emailed documents in emergency situations (e.g., if an interim injunction was sought to freeze the defendant's assets pending the bringing of an application) otherwise the normal requirements should be followed.

5. CONVENTIONS

Whilst the United Kingdom Government is responsible for Guernsey's foreign affairs, international agreements are only normally extended to Guernsey with the consent of the States of Guernsey. Thus a number of relevant conventions which apply to the United Kingdom do not apply to Guernsey, although the following do:

- (i) Convention on the Recognition of Divorces and Legal Separations.
- (ii) Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters.

6. AUTHENTICATION OF DOCUMENTS

The foreign court should certify that the copy judgment is a true copy.

7. TRANSLATION OF DOCUMENTS

Although the French language still plays a part in certain Guernsey legal proceedings, it would be prudent today to provide a translation of any document that was not in English. The translator should confirm his qualifications and official position, if any, by a short affidavit.

8. REOPENING OR REVIEW OF JUDGMENTS

(a) & (b) Provided that the foreign judgment complied with the formalities of its own jurisdiction and the requirements of the 1957 Law (which conditions would be similar at common law), it would not be reviewed by the local court.

(c) An allegation of fraud could, arguably, be raised for the first time if there was sufficient reason for it not first being raised before the foreign court.

9. PENDING PROCEEDINGS

(a) The Foreign Judgment must be final in order for it to be enforced. If the pending proceedings prevented it from being final, then it could not be enforced.

(b) Under S7(1) of the 1957 Law where there is a pending appeal, the court must either adjourn the registration or set it aside pending the outcome of the appeal by the competent tribunal.

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10. DEFENCES

A registered judgment may be set aside if:

- (i) it is not one generally registerable under the 1957 Law (if applicable);
- (ii) if the foreign court lacked jurisdiction under its own rules;
- (iii) if the Defendant although properly served did not receive sufficient notice of the foreign proceedings in sufficient time to enable him to defend the proceedings, and did not appear;
- (iv) the Foreign Judgment was obtained by fraud;
- (v) enforcement of the judgment would be contrary to Guernsey public policy;
- (vi) the person seeking to enforce the judgment does not have the rights attaching to the judgment vested in him.

The judgment may be set aside if there was a previous final and conclusive judgment in a court having jurisdiction contrary to it.

With the exception of (i), points (ii) to (vi) would be applied to the enforcement of judgments at Common Law.

11. JURISDICTION

- (a) It would be accepted that the foreign court has jurisdiction where the defendant was present in the foreign territory when proceedings were instituted or was otherwise a voluntary party to the action or the action concerned immovable property situated in the foreign jurisdiction.
- (b) There must be a jurisdiction under the rules of the foreign courts and under Guernsey Law.
- (c) There must be actual or deemed consent to the jurisdiction of the foreign court, there will not be actual consent where the sole purpose of appearing in the foreign court was to contest jurisdiction. There will be deemed jurisdiction where:
 - (i) the judgment debtor was the plaintiff or counterclaimed in the original proceedings;
 - (ii) there was an agreement to submit to the jurisdiction of the foreign court;
 - (iii) the judgment debtor was a company having its principal place of business in the foreign jurisdiction;
 - (iv) the defendant had an establishment in the foreign jurisdiction and the proceedings are in respect of a transaction effected through that establishment.
- (d) In view of these rules, residence, citizenship, ownership of moveable property or domicile are not directly relevant.
- (e) The foreign court does not have jurisdiction if the defendant merely appeared to contest jurisdiction. If the sole reason for entering into the

foreign proceedings was to protect property which was seized there, or threatened with seizure there, then this will not ground jurisdiction.

- (f) Provided that the foreign jurisdiction otherwise had jurisdiction a default judgment is not treated differently from a judgment resulting from consent or from a contested hearing. Under Guernsey Law, a default judgment is where having been properly summoned to court, a defendant does not appear.
- (g) A clause giving exclusive jurisdiction to a foreign court that was accepted by it would not be subject to review by the local court.
- (h) A respondent need not be a citizen, own assets or carry on a business there. There must be sufficient presence which in the case of a company is having a registered office situated there.

12. CONTRACTUAL WAIVER

- (a) The local court would recognize service by a contractual method, e.g., at a particular address for its own purposes. It would be impossible to commence a local action without some form of service. If the waiver in the foreign jurisdiction constituted acceptance of the jurisdiction of the foreign court, this should be recognized in the local jurisdiction.
- (b) A defendant may voluntarily agree to waive procedural requirements.

13. SERVICE REQUIREMENTS

Provided that the method of service is one that is recognized by the foreign court, it will be recognized by the local court. However, a registration may be refused if, notwithstanding good service, the defendant did not receive notice of the proceedings in sufficient time to defend the proceedings and did not appear in them.

14. CESSION

- (a) The local court would recognize a cession of the judgment to another foreign claimant or a local claimant provided that notice had been served on the defendant (The Law of Property (Miscellaneous Provisions) (Guernsey) Law, 1979 section 2).
- (b) The cession would make no difference to the enforceability of the judgment, and it would not be easier to enforce it than it would have been prior to the cession.

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15. INTERIM RELIEF

- (a) When applying for registration (or prior to this in case of urgency on giving an undertaking to bring an application for registration), it would be possible to arrest the personal property of the debtor. It would also be possible to register a claim against the defendant's immovable property, but this would be subject to any prior charges which had been registered against it. Powers to order a person not to leave the jurisdiction are now believed to be obsolete.
- (b) If it is sought to freeze the defendant's moveable assets, security for costs will have to be lodged. The figure is negotiated with the court and an undertaking will also have to be given to pay damages to those who lose as a result thereof. If it is merely sought to register against real property, no sums are lodged but a duty must be paid. This is calculated with reference to the sum registered and is currently fixed at 0%.

16. INTEREST

- (i) The local court will recognize and enforce interest awarded by the foreign court.
- (ii) The court has the discretion to award interest (The Judgments (Interest) (Bailiwick of Guernsey) Law, 1985). This would usually be from the date that the matter was first before the local court and the current rate is 8%, albeit both aspects are subject to the Court's discretion.

17. TIME OF ENFORCEMENT AND SUBSEQUENT ACTION

- (a) Estimated time to enforce – if unopposed, three weeks to four months (note only if proceedings required would it take the longer period, see below) – if opposed, eight months to one year.
- (b) The normal method of enforcing a judgment is by seizure and sale of the debtor's moveable property, which if there are competing creditors becomes a '*desastre*'. If there is insufficient moveable property, enforcement would be against immovable property (a '*saisie*'). This can be a lengthier process and can take several months, especially if the debtor obtains a stay in order to try and raise the funds. Where a creditor has claimed in a *saisie* (which involves the working out of priorities and the obligation on the junior creditor(s) to either 'buy out' the creditors above him or to drop out), he cannot then claim against the moveable property, although a prior claim against moveable property will not bar a subsequent claim in a *saisie* for the surplus. In a case of a company, a creditor may either utilize these proceedings or may put it into compulsory liquidation. Powers to prevent debtors leaving Guernsey now may be obsolete:

- (i) In the event that the Royal Court refused to register a foreign judgment or enforce it as a matter of Common Law, there would be an appeal as of right to the Guernsey Court of Appeal.
- (ii) Notice of Appeal should be lodged within twenty-eight days of the decision to be appealed against.
- (iii) In the case of an appeal, the enforcement of the judgment would not necessarily be automatically stayed as a matter of law although it would be for practical purposes.

18. EXPENSES LEGAL FEES AND SECURITY FOR COSTS

- (a) There are fees for service of the application. Fees are payable to H M Sheriff if enforcement is against moveable property or the court if enforcement is by *saisie* against real property.
- (b) Lawyer's fees would have regard to the time spent which may be at differing rates depending on the complexity and value of the matter.
- (c) Guernsey does not allow contingent fee arrangements.
- (d) Costs may either be recoverable on a standard basis or an indemnity basis. The current standard basis is an hourly rate on an index-linked basis. If a defendant defended for no good reason, the court may order that the costs are paid on an indemnity basis, that is, all of the applicant's Guernsey costs that were reasonably incurred.
- (e) The applicant would normally have to give security for costs on the application of the debtor if the applicant was not resident in the jurisdiction. The applicant could oppose this ground on the basis that there was no arguable defence. Where an order for security for costs is made, this would only be on the standard basis.

19. BANKRUPTCY–LIQUIDATOR

- (a) In the case of a *desastre*, *saisie* or liquidation, a foreign creditor (in respect of a registered foreign judgment), the foreign judgment creditor would be treated in the same way as all other creditors.
- (b) Guernsey will recognize a foreign trustee in bankruptcy who is validly appointed in his own jurisdiction. It is likely that he would need to apply to the court for his own authority to be recognized.

20. LAWYERS (WHO CAN APPEAR?)

All Guernsey lawyers are qualified as Advocates and have rights of audience in Guernsey courts (including those of Alderney and Sark).

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21. INTERNATIONAL TREATIES

The following are reciprocal countries under the 1957 Law:

England & Wales	Israel
Scotland	Italy
Northern Ireland	the Netherlands
Isle of Man	the Netherlands Antilles
Jersey	Surinam

22. CROSS-EXAMINATION OF AFFIDAVIT’S DEPONENT

- (a) It would not be usual to cross-examine a deponent, but the court would always have the discretion to permit this, for example, when something leads it to believe that the affidavit may be misleading in a material particular.
- (b) The onus would be on the defendant to show that there is good reason for believing that the affidavit is materially wrong. The court is likely to take some persuasion.
- (c) The defendant would not usually be required to give security for the deponent’s travelling expenses.

23. EXAMPLE OF APPLICATION UNDER THE 1957 LAW

IN THE ROYAL COURT OF GUERNSEY

(ORDINARY DIVISION)

AB

(‘Plaintiff’/ ‘the Judgment Creditor’)

v.

CD

(‘Defendant’/‘the Judgment Debtor’)

The Plaintiff whose address for service is in the Island of Guernsey hereby **APPLIES** to the Court under section 4(1) of the Judgments (Reciprocal Enforcement) (Guernsey) Law, 1957 to register the judgment obtained by the Plaintiff against the Defendant on the day of 2003 in the Court.

[Affidavit of XYZ enclosed]

And the Plaintiff claims interest and costs.

Dated this day of 2003

(Advocate)

24. NEW ACTION INSTEAD OF ENFORCEMENT

- (a) Where the 1957 Law applies, it is an exclusive process and a ‘new action’ cannot be brought in Guernsey. Where the 1957 Law does not apply, a claimant is required to bring an action on the foreign judgment as if it were a debt due to the claimant. However, it is not possible for the original judgment to be contested on its merits.
- (b) See below.

25. PRESCRIPTIONS

The prescription period is generally six years from the date of the foreign judgment or the date of the last judgment given in any appeal proceedings, although this may be three years for any judgment by default enforced under the Common Law mechanism.

26. STATES/CANTONS

Not applicable.

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