

# Legal 500

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### Jersey

## Enforcement of Judgments in Civil and Commercial Matters

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This country-specific Q&A provides an overview of enforcement of judgments in civil and commercial matters laws and regulations applicable in Jersey.

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# Jersey: Enforcement of Judgments in Civil and Commercial Matters

## 1. What international conventions, treaties or other arrangements apply to the enforcement of foreign judgments in your jurisdiction and in what circumstances do they apply?

Jersey, which is a self-governing British Crown Dependency, is not a party to any international conventions or treaties in relation to the enforcement of foreign judgments in civil and commercial matters.

However, Jersey has a reciprocal statutory regime (the **Reciprocal Enforcement Regime**) for the registration and enforcement of judgments from the Superior Courts (which is a defined term explained at question 3 below) of England and Wales, Scotland, Northern Ireland, the Isle of Man and Guernsey. The statutory regime substantially mirrors provisions of the UK's Judgments (Reciprocal Enforcement) Act 1933, and similar legislation in the other jurisdictions to which the Reciprocal Enforcement Regime applies.

The Reciprocal Enforcement Regime is set out in Jersey in the Judgments (Reciprocal Enforcement) (Jersey) Law 1960 (the **1960 Law**), the Judgments (Reciprocal Enforcement) (Jersey) Act 1973 (the **1973 Act**) and the Judgments (Reciprocal Enforcement) Rules 1961 (the **1961 Rules**).

## 2. What, if any, reservations has your jurisdiction made to such treaties?

Jersey is not a party to any such international treaties.

## 3. Can foreign judgments be enforced in your jurisdiction where there is not a convention or treaty or other arrangement, e.g. under the general law?

Where the Reciprocal Enforcement Regime does not apply, enforcement of a foreign judgment in Jersey is often possible under Jersey common law. This is possible, subject to the conditions indicated below, by means of a fresh judgment of the Jersey courts given on the basis that the foreign judgment is conclusive on the merits of the case.

Jersey common law is often called Jersey customary law

by reason of its different status and origin to English common law. The expression Jersey common law is used in this Guide. In this area, and indeed in respect of private international law generally, the Jersey courts have very largely adopted and followed English common law.

The effect of article 8 of the 1960 Law is that the Reciprocal Enforcement Regime is exclusive where it applies: thus, a foreign judgment which falls within the Reciprocal Enforcement Regime cannot be enforced in Jersey by using the common law route.

## 4. What basic criteria does a foreign judgment have to satisfy before it can be enforced in your jurisdiction? Is it limited to money judgments or does it extend to other forms of relief?

### Reciprocal Enforcement Regime

To fall within the Reciprocal Enforcement Regime, the foreign judgment must originate from one of the Superior Courts of England and Wales, Scotland, Northern Ireland, Isle of Man or Guernsey. It must also satisfy the substantive requirements of the 1960 Law and not be prohibited from enforcement in Jersey by another Jersey enactment.

The relevant Superior Courts are defined by the 1973 Act as follows:

- England and Wales – UK Supreme Court, the House of Lords, Court of Appeal, High Court of Justice
- Scotland – UK Supreme Court, Court of Session, Sheriff Court
- Northern Ireland – UK Supreme Court, Court of Judicature of Northern Ireland
- Isle of Man – His Majesty's High Court of Justice of the Isle of Man (including the Staff of Government Division)
- Guernsey – Guernsey Royal Court, Guernsey Court of Appeal.

(the **Superior Courts**)

There are some anomalies in this list (for example, the reference to the House of Lords has since 1 October 2015- six years after the UK Supreme Court replaced the House of Lords – become obsolete) but, generally

speaking, it has been found to be clear in practice.

Article 2(3) of the 1960 Law provides that judgments of Superior Courts on appeal from courts which are themselves not listed do not fall within the Reciprocal Enforcement Regime. Thus, a judgment of the English High Court on appeal from the English County Court does not fall within the regime and can only be enforced in Jersey using the common law route. If, however, an English County Court judgment is transferred under section 42 of the County Courts Act 1984 up to the High Court for enforcement, it has been held in Jersey (bearing in mind the particular wording of section 42 of the English statute) that the resulting judgment does fall within the Reciprocal Enforcement Regime: *In Re Marbeck Associates Ltd* 2014 (1) JLR 140.

The highest court of appeal for Guernsey and the Isle of Man (as well as Jersey) is the Judicial Committee of the Privy Council. It is noteworthy that the Privy Council sitting on appeal from Guernsey and the Isle of Man is not listed as a relevant Superior Court and the resultant Orders in Council (i.e. legislative instruments made by the Crown) are therefore not enforceable in Jersey under the Reciprocal Enforcement Regime. Instead, an Order in Council embodying a Privy Council judgment appears to have effect throughout His Majesties territories under s 33 of the Judicial Committee Act 1833. It still appears necessary, however, for the Order in Council to be presented to the Jersey Royal Court of Jersey for registration prior to enforcement in Jersey.

The basic substantive requirements for a judgment to fall within the Reciprocal Enforcement Regime are that it is:

- a. final and conclusive between the parties (a judgment is deemed to be final and conclusive notwithstanding that an appeal is pending);
- b. for payment of a sum of money which is not in respect of taxes or other similar payments, or in respect of a fine or other penalty;
- c. for a sum of money which has not been wholly satisfied; and
- d. able to be enforced by execution in the country of the original court.

However, it should be noted that the recognition in Jersey of non-money judgments, to which the Reciprocal Enforcement Regime would have otherwise applied if a sum of money had been payable thereunder, is expressly required by article 9(1) of the 1960 Law, in all proceedings founded on the same cause of action and may be relied upon by way of defence or counterclaim in any such proceedings.

For completeness, it can also be noted that the Reciprocal Enforcement Regime has been extended (with some modifications) to certain very particular judgments and determinations of further courts and non-judicial authorities in many other countries by: (a) the Civil Aviation Act 1982 (Jersey) Order 1990 (in relation to air route charges), and (b) the Shipping (Oil Pollution) (Liability and Compensation) (Jersey) Law 2015 (in relation to judgments for damages as a result of an oil spillage from a tanker).

### Common law

For the enforcement of other foreign judgments, and for recognition short of enforcement of any foreign judgment, recourse is had to Jersey common law.

At Jersey common law, a foreign judgment has no direct operation but it may: (i) be enforceable (in the manner indicated below) by claim or counterclaim, or (ii) be recognised as a defence to a claim or as conclusive of an issue in a claim. The basic requirements for enforcement of a judgment *in personam* are that it is a final judgment for a liquidated sum of money, which is not in respect of taxes, fines, penalties or other similar fiscal or revenue liabilities, provided that the court had jurisdiction to give the judgment and the judgment is obtained without fraud, in accordance with the principles of natural justice and is not contrary to public policy.

Departing from the English common law position, the Royal Court has held that it additionally has a discretion at Jersey common law to enforce foreign non-money judgments given by a court of competent jurisdiction: *Brunei Investment Agency and Bandone v Fidelis Nominees Limited* 2008 JLR 337.

## 5. What is the procedure for enforcement of foreign judgments pursuant to such conventions, treaties or arrangements in your jurisdiction?

Under the Reciprocal Enforcement Regime, the judgment creditor must apply to the Royal Court to register a foreign judgment. The application may be made *ex parte* to the Judicial Greffier (clerk of the Royal Court who carries out certain judicial functions).

The application must be supported by an affidavit which, among other things, must exhibit a certified copy of the judgment, issued by the original court, authenticated by that court's seal. If the judgment is not in English or French it must also be accompanied by a certified or authenticated translation into English.

Once a foreign judgment has been registered, notice in writing of that registration must be served on the judgment debtor by personal service if within the jurisdiction (unless otherwise ordered by the Royal Court or the Judicial Greffier). Personal service within Jersey must be carried out by the Viscount (the executive officer of the Royal Court). If the judgment debtor is to be served outside the jurisdiction, the notice must be served in accordance with the rules applicable to service of Jersey process outside Jersey, save that leave to serve out of the jurisdiction is not required.

The notice is in statutory form and must state:

- a. full particulars of the registered judgment and the order for registration;
- b. the name and address of the judgment creditor (or their legal representative);
- c. the judgment debtor's right to apply to set aside the registered judgment on the grounds specified in the 1960 Law; and
- d. the time from the date of service of the notice within which an application to set aside the registration may be made.

The period for making an application to set aside the registration is set down in the order registering the judgment. The precise period is at the discretion of the Judicial Greffier/Court. In practice, where the judgment debtor is a Jersey resident debtor, the period allowed may be as short as 7 days, however, it is typically 21 days in the case of a debtor resident in the UK; and longer, as the case requires, in the case of a debtor resident elsewhere.

A registered judgment may not be enforced until after the expiration of this period. A party wishing to enforce a registered judgment must produce to the Viscount (who administers enforcement over moveable property situate in Jersey) an affidavit of service of the notice of registration and of any order made by the Royal Court in relation to the judgment registered.

## 6. If applicable, what is the procedure for enforcement of foreign judgments under the general law in your jurisdiction?

As noted above, if the foreign judgment is not one to which the Reciprocal Enforcement Regime applies, the judgment creditor will often be able to enforce the judgment under Jersey common law. This is done by commencing fresh proceedings in Jersey on the basis that the foreign judgment is conclusive on the underlying merits.

The fresh action is commenced by way of an Order of Justice, a formal pleading and form of originating process in Jersey, which sets out the legal and factual basis of the claim. In the case of enforcement of a foreign judgment, it is not necessary to provide full detail of the underlying claim. A simple narrative in summary form establishing the cause of action in the nature of an unsatisfied debt suffices. It is common practice to annex a copy of the judgment to be enforced.

The Order of Justice and accompanying summons (which summonses the judgment debtor to an initial administrative hearing on a certain date) must be served on the judgment debtor. Where the judgment debtor is not resident in Jersey, leave from Royal Court to serve the Order of Justice in the jurisdiction in which the judgment debtor resides is required under the Service of Process Rules 2019. This entails making an *ex parte* application to the Judicial Greffier.

If the judgment debtor does not appear at the initial administrative hearing, default judgment may be granted.

The available defences to a judgment debtor are limited. If the judgment debtor defends the proceedings, the judgment creditor can apply for summary judgment under Rule 7 of the Royal Court Rules 2004 on the basis that the judgment debtor has no real prospect of successfully defending the claim or issue, and there is no other compelling reason why the claim or issue should be disposed of at a trial.

It is usual for the debtor to obtain judgment either by default or summarily in enforcement proceedings but, if the judgment debtor obtains neither default nor summary judgment, the enforcement proceedings will proceed to trial.

## 7. What, if any, formal requirements do the courts of your jurisdiction impose upon foreign judgments before they can be enforced? For example, must the judgment be apostilled?

### Reciprocal Enforcement Regime

The Reciprocal Enforcement Regime requires a certified copy of the judgment issued by the original court, authenticated by its seal, to be exhibited to the affidavit in support of the judgment creditor's application.

Where the foreign judgment is not in French or English, the applicant must also obtain a certified translation of the judgment certified by a notary public or authenticated by affidavit.

### Common law

At common law, it is standard practice to evidence the foreign judgment by provision of a certified copy and, where the foreign judgment is in a foreign language, by provision of a certified translation.

## 8. How long does it usually take to enforce or register a foreign judgment in your jurisdiction? Is there a summary procedure available?

### Reciprocal Enforcement Regime

The process of registering and enforcing a foreign judgment in Jersey under the Reciprocal Enforcement Regime is relatively fast and simple. In *Bates v Weston* [2023] JRC 032 the Royal Court observed that: 'The intention behind the 1960 Law is that registration of a foreign judgment should be a simple procedure enabling foreign judgments to which the 1960 Law applies to be enforced in Jersey with the minimum of difficulty'.

The application is submitted to the Judicial Greffier in writing and, in practice, unless any questions arise, it will be dealt with swiftly by the Greffier on the papers. This will usually take one to two weeks from submission of the application, but will vary in line with the Judicial Greffier's availability. If questions arise and/or if the Judicial Greffier requires a hearing for a particular reason, the process will take longer. As noted above, once a foreign judgment has been registered, it must be served on the judgment debtor and may not be enforced until the period for applying to set aside the judgment has expired.

### Common law

The length of time it takes to enforce a foreign judgment under common law largely depends on whether the proceedings are defended. If they are not defended, the judgment creditor is likely to seek judgment in default, which will conclude the enforcement proceedings. If the proceedings are defended, the judgment creditor may (and often does) seek an order for summary judgment on the grounds that the judgment debtor has no real prospect of succeeding and there is no other compelling reason why the case or issue should be disposed of at trial. The time period for obtaining summary judgment will depend on the court availability and the time needed by the parties for preparation for the hearing.

## 9. Is it possible to obtain interim relief (e.g. an injunction to restrain disposal of assets) while

## the enforcement or registration procedure takes place?

Yes. A judgment creditor may seek a post-judgment freezing injunction in order to prevent assets being dissipated or removed from the jurisdiction where there is risk of this happening prior to enforcement. If the debtor is properly a party before the court or the court otherwise has *in personam* jurisdiction, the judgment creditor can also seek an order for the disclosure of assets, either in support of a freezing order or as a separate order. This can also extend to requiring disclosure of worldwide assets: *Dresser-Rand BV v Al Rushaid Petroleum Investment Company and others* [2021] JRC 321.

## 10. What is the limitation period for enforcing a foreign judgment in your jurisdiction?

### Reciprocal Enforcement Regime

Under the Reciprocal Enforcement Regime, an applicant must register the foreign judgment within six years of the date of the foreign judgment. Where the judgment has been appealed, the date of the last judgment in the appeal proceedings would be the relevant date from which the six-year period runs. Once the Royal Court has registered the foreign judgment, it will be treated as a local judgment and, as such, it is enforceable for ten years from the date on which it became enforceable in Jersey. However, a judgment will not be registered if it has been wholly satisfied or if it has ceased to be enforceable by execution in the country of the original court.

### Common law

There does not appear to be any time limit for the enforcement of foreign judgments at common law. Similar to the position under the Reciprocal Enforcement Regime, the court will not enforce a judgment if it has been wholly satisfied and is unlikely to enforce a foreign judgment which has ceased to be enforceable under the law of the relevant foreign jurisdiction.

The Jersey Law Commission's 2023 consultation paper on Limitation and Prescription has proposed a general period for all 'civil claims' of 3 years from reasonable discoverability of a cause of action. The definition of 'civil claims' is wide enough to include a common law action to enforce a foreign judgment. Generally speaking, the new period would, if enacted, apply retrospectively to causes of action which have already accrued at the moment when the proposed new legislation comes into force. Whether these proposals will be adopted, amended or rejected by the Jersey legislature remains to be seen and,



for now, the position remains as per the preceding paragraph.

### 11. On what grounds can the enforcement of foreign judgments be challenged in your jurisdiction?

#### **Reciprocal Enforcement Regime**

Upon the application of a judgment debtor, by way of summons, seeking to set aside a judgment which has been registered under the Reciprocal Enforcement Regime, the Royal Court will set aside the registration if it is satisfied that:

- a. the foreign judgment is not one to which the 1960 Law applies;
- b. the foreign court had no jurisdiction to grant the foreign judgment;
- c. the judgment debtor did not receive notice of the proceedings in sufficient time to enable them to defend the proceedings and they did not appear;
- d. the foreign judgment was obtained by fraud;
- e. enforcement of the foreign judgment would be contrary to public policy in Jersey; or
- f. the rights under the foreign judgment are not vested in the person by whom the application for registration was made.

The Royal Court may also set aside the registered foreign judgment if the matter in dispute in the foreign jurisdiction had, prior to the date of that judgment, been subject to a final and conclusive judgment by another court having jurisdiction in the matter.

#### **Common law**

Under the Jersey common law procedure, a foreign judgment may be challenged if:

- a. the foreign court had no jurisdiction to grant the foreign judgment;
- b. the foreign judgment was obtained by fraud;
- c. enforcement of the foreign judgment would be contrary to public policy; or
- d. enforcement of the foreign judgment would be contrary to natural justice.

### 12. Will the courts in your jurisdiction reconsider the merits of the judgment to be enforced?

No.

### 13. Will the courts in your jurisdiction examine whether the foreign court had jurisdiction over the defendant? If so, what criteria will they apply to this?

Yes. Further elaboration is provided immediately below in respect of the position under the Reciprocal Enforcement Regime and the position under Jersey common law.

#### **Reciprocal Enforcement Regime**

Under the Reciprocal Enforcement Regime, if the action of the foreign court was *in personam* action, the foreign court will be deemed by the Royal Court to have had jurisdiction only if:

- a. the judgment debtor, being a defendant in the foreign proceedings, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings otherwise 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;
- b. the judgment debtor was plaintiff in, or counter-claimed in, the proceedings in the foreign court;
- c. the judgment debtor, being a defendant in the foreign proceedings, had before the commencement of those 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;
- d. the judgment debtor, being a defendant in the foreign proceedings, 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
- e. the judgment debtor, being a defendant in the foreign proceedings, 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.

If the foreign judgment was given in an action of which the subject matter was immovable property or in an action *in rem* of which the subject matter was movable property, the foreign court will be deemed to have had jurisdiction if the property in question was at the time of the proceedings before the foreign court situate in the country of that court.

If the foreign judgment was given in an action other than the actions set out in the preceding two paragraphs, the foreign court will be deemed to have had jurisdiction if the jurisdiction of the foreign court is recognised by the common law of Jersey.

On the other hand, the court of the foreign judgment will not be deemed to have had jurisdiction if:

- a. the subject matter of the proceedings was immovable property outside the country of the foreign court;
- b. subject to exceptions, if the bringing of the proceedings in the foreign court was contrary to an agreement whereby the dispute in question was to be settled otherwise than by proceedings in the courts of the country of that court; or
- c. if the judgment debtor, being a defendant in the foreign proceedings, was a person who was entitled to immunity from the jurisdiction of the courts of the country of the foreign court in accordance with public international law and they did not submit to the jurisdiction of that court.

#### **Common law**

Following principles of English common law, under Jersey common law a foreign court will be considered by the Jersey court to have had jurisdiction *in personam* if:

- a. the judgment debtor was, at the time the proceedings were instituted, present in the foreign country;
- b. the judgment debtor was claimant, or counterclaimed, in the proceedings in the foreign court;
- c. the judgment debtor, being a defendant in the foreign court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings; or
- d. the judgment debtor, being a defendant in the original court, had before the commencement 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 that country.

The above list, being a matter of common law and therefore subject to development by the courts, is not necessarily exhaustive.

If the foreign judgment was given in an action of which the subject matter was immovable property or in an action *in rem* of which the subject matter was movable property, the foreign court will be considered by the Jersey court to have had jurisdiction if the property in question was at the time of the proceedings before the foreign court situate in the country of that court.

#### **14. Do the courts in your jurisdiction impose any requirements on the way in which the defendant was served with the proceedings? Can foreign judgments in default be enforced?**

##### **Reciprocal Enforcement Regime**

The Reciprocal Enforcement Regime does not impose any requirements on the manner in which the defendant was served with the original foreign proceedings. A foreign judgment in default may be registered and enforced in Jersey.

However, one of the grounds available to a judgment debtor to apply to set aside registration of a foreign judgment under the Reciprocal Enforcement Regime is that the judgment debtor did not receive notice of the proceedings in sufficient time to enable them to defend the proceedings and they did not appear. Should such a ground be raised, the Jersey court would need to consider on the facts whether the sufficient notice was given.

##### **Common law**

The same principles are likely to apply at Jersey common law.

#### **15. Do the courts in your jurisdiction have a discretion over whether or not to recognise foreign judgments?**

##### **Reciprocal Enforcement Regime**

Under the Reciprocal Enforcement Regime, the Royal Court must accede to an application to register a foreign judgment if it satisfies the statutory requirements and its enforcement is not prohibited by a later enactment.

##### **Common law**

Under common law, if the requirements for enforcement of a foreign judgment (as set out in question 4 above) are satisfied and its enforcement is not prohibited by contrary enactment, the Court must accede to the application to enforce and there is no further discretion to be exercised.

However, as noted above, the Jersey court does retain a discretion at Jersey common law to enforce foreign non-money judgments *in personam* and has made clear that this discretion is to be exercised 'cautiously': *Brunei Investment Agency v Fidelis* [2008] JRC 152.

#### **16. Are there any types of foreign judgment which cannot be enforced in your jurisdiction? For example can foreign judgments for punitive or multiple damages be enforced?**

##### **Reciprocal Enforcement Regime**

Under the Reciprocal Enforcement Regime, the foreign

judgment must be for a sum of money which is not payable in respect of taxes or other charges of a like nature or in respect of a fine or other penalty. As noted above, the judgment debtor may seek to have the registration of the judgment set aside on various, limited grounds. Non-money judgments are not enforceable under the Reciprocal Enforcement Regime.

The 1960 Law was based on the UK's Foreign Judgments (Reciprocal Enforcement) Act 1933. The 1933 Act was amended by the Civil Jurisdiction and Judgments Act 1982 to the effect that a foreign judgment on another foreign judgment does not fall within the scheme. No similar amendment was made in Jersey. Nevertheless, by parallel reasoning to that of the English Court of Appeal in *Strategic Technologies Pte Ltd v Procurement Bureau of China Ministry of National Defence* [2020] EWCA Civ 1604 (as regards the UK's unamended Administration of Justice Act 1920) it is likely that, properly construed, the Reciprocal Enforcement Regime in Jersey does not extend to enforcement of a foreign judgment on a foreign judgment. Thus, a money judgment of the English High Court which arises only by way of enforcement of a money judgment given on the merits by a court in a third country is unlikely, in our view, to be registrable under the Jersey Reciprocal Enforcement Regime as an English judgment, even if it otherwise appears to fulfil the statutory requirements.

### **Common law**

At Jersey common law, the Royal Court will not enforce a foreign judgment for a sum of money which is in respect of taxes, fines, penalties or other similar fiscal or revenue liabilities. It will also not enforce judgments which are contrary to public policy or contrary to natural justice. As set out above in the case of *Brunei Investment Agency v Fidelis* [2008] JRC 152 the Royal Court confirmed that it could apply its discretion to enforce non-money judgments, albeit that the discretion was to be exercised 'cautiously'.

There appears as yet to be no case in which the Royal Court has had to decide whether foreign judgments for punitive damages are contrary to public policy.

As under the Reciprocal Enforcement Regime a question may arise as to whether a foreign judgment on another foreign judgment falls within the common law mechanism for enforcement in Jersey. English common law on the conflicts of law is generally persuasive in Jersey. According to *Dicey, Morris and Collins on the Conflicts of Law* 16th edition at 14-118, it is unlikely that, where a foreign court (A) enforces or recognises a judgment given on the merits by another foreign court (B),

the judgment given by A will under the common law rules itself be regarded as conclusive on the underlying merits of the case. Only the judgment given by B appears to benefit from those rules. The position at English common law was not directly raised and was accordingly left expressly undecided by the English Court of Appeal in *Strategic Technologies Pte Ltd v Procurement Bureau of China Ministry of National Defence* [2020] EWCA Civ 1604 at [47]. Although alluded to, the point also did not require a decision in the Jersey case of *Emirates NBD Bank P.J.S.C. v Almkhawi and Ors* [2023] JRC 243.

### **Restrictions covering both the Reciprocal Enforcement Regime and Common law**

In relation to multiple damages, the Protection of Trading Interests Act 1980, as extended to Jersey by the Protection of Trading Interests Act 1980 (Jersey) Order 1983, provides that a foreign judgment for multiple damages may not be enforced in Jersey either under Reciprocal Enforcement Regime or at Jersey common law. A judgment for multiple damages is defined as: 'a 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'.

Additionally:

- a. a judgment may not be registered or enforced under the Reciprocal Enforcement Regime or enforced at common law if the judgment debtor is entitled to immunity from jurisdiction or from enforcement in Jersey under the terms of the UK State Immunity Act 1978, as extended to Jersey by the State Immunity (Jersey) Order 1985;
- b. certain foreign judgments in relation to Jersey trusts in respect of a number of specified matters (including the validity and interpretation of the trust and the nature and extent of beneficial interests under it) are not enforceable or otherwise given effect in Jersey unless Jersey law was applied by the foreign court in reaching its decision: article 9(4), Trusts (Jersey) Law 1984. A similar firewall applies to Jersey foundations: article 32(9), Foundations (Jersey) Law 2009;
- c. Another firewall applies to certain foreign judgments against Jersey cell companies. Where a foreign judgment arises by virtue of a transaction entered into in respect of a particular cell of a cell company, it may only be enforced in Jersey against the assets attributable to that particular cell and thus not against the cell company's non-cellular assets or against the assets of another cell, notwithstanding that the cell company and its cells are not, strictly speaking, separate legal persons: article 127YU, Companies



- (Jersey) Law 1991;
- d. Under article 12 of the Limited Partnerships (Jersey) Law 1994 no judgment may be enforced against any property of a limited partnership unless it was granted against a person acting in their capacity as a general partner of the limited partnership. Other restrictions as to the identity of the proper judgment debtor are contained in the Separate Limited Partnerships (Jersey) Law 2011 and the Limited Liability Partnerships (Jersey) Law 2017;
- e. A judgment, whether in Jersey or elsewhere, against a bank which is the subject of a winding up order under the Bank (Recovery and Resolution) (Jersey) Law 2017 (which aims to enable an insolvent bank to be wound up satisfactorily with minimum disruption to critical banking services) may not be enforced in Jersey against it, whether under the Reciprocal Enforcement Regime or otherwise; and
- f. More generally, the ability of a creditor to enforce a foreign judgment in Jersey may be pre-empted by insolvency proceedings in Jersey so that the creditor becomes a creditor who must file a claim in the insolvency. For example, article 159(4) of the Companies (Jersey) Law 1991 provides that, after the commencement of a creditors' winding up of a Jersey company, no action may be taken or proceeded with against the company except by leave of the Royal Court and subject to such terms as it may impose.

### **17. Can enforcement procedures be started in your jurisdiction if there is a pending appeal in the foreign jurisdiction?**

#### **Reciprocal Enforcement Regime**

Yes. As regards the Reciprocal Enforcement Regime, article 3(3) of the 1961 Rules confirms that judgment is taken to be final and conclusive 'notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal, in the courts of the country of the original court'.

Nevertheless, under the Reciprocal Enforcement Regime, if an appeal by the judgment debtor against the foreign judgment is pending or is intended to be made by them, the Royal Court has power, on the judgment debtor's application to set aside the registration, either: (i) to set it aside as requested, or (ii) to adjourn the judgment debtor's application until after the expiry of such period as the Royal Court considers is reasonably sufficient to enable the judgment debtor to take the necessary steps to have the appeal disposed of.

#### **Common law**

Yes. The same principles apply at Jersey common law, namely that enforcement procedures can be started if there is a pending appeal but the Royal Court would have a discretion to stay enforcement proceedings pending any appeal.

### **18. Can you appeal a decision recognising or enforcing a foreign judgment in your jurisdiction?**

#### **Reciprocal Enforcement Regime**

Yes. Under the Reciprocal Enforcement Regime the judgment debtor may apply to set aside the registration of the foreign judgment on the grounds referred to at question 11 above.

#### **Common law**

Yes. At Jersey common law, an appeal can be made against a judgment enforcing a foreign judgment on ordinary principles. However, as noted, the available defences are limited.

### **19. Can interest be claimed on the judgment sum in your jurisdiction? If so on what basis and at what rate?**

#### **Reciprocal Enforcement Regime**

Yes. As regards the Reciprocal Enforcement Regime, it follows from the wording of Article 4(6) of the 1960 Law that the enforceable debt comprised by the foreign judgment will normally include interest due pursuant to the law of the foreign court up until the date of registration. The Royal Court has a discretion to award post-judgment interest due pursuant to the law of the foreign court from the date of registration of the judgment.

#### **Common law**

Yes. Similar principles apply at Jersey common law.

### **20. Do the courts of your jurisdiction require a foreign judgment to be converted into local currency for the purposes of enforcement?**

#### **Reciprocal Enforcement Regime**

Yes. The currency of Jersey is pound sterling.

Specifically, Article 4(3) of the 1960 Law states: 'Where the sum payable under a judgment which is to be

registered is expressed in a currency other than the currency of Jersey, the judgment shall be registered as if it were a judgment for such sum in the currency of Jersey as, on the basis of the rate of exchange prevailing at the date of the judgment of the original court, is equivalent to the sum so payable.'

In addition, under Rule 4(2) of the 1961 Rules, the affidavit in support of an application for registration of the foreign judgment must, where any sum payable under the foreign judgment is expressed in a currency other than the currency of Jersey, state the sterling equivalent calculated at the prevailing rate at the date of the judgment.

#### **Common law**

Yes. Similar principles apply at Jersey common law.

### **21. Can the costs of enforcement (e.g. court costs, as well as the parties' costs of instructing lawyers and other professionals) be recovered from the judgment debtor in your jurisdiction?**

Article 4(6) of the 1960 Law states: 'In addition to the sum of money payable under the judgment of the original court, including any interest which by the law of the country of the original court becomes due under the judgment up to the time of registration, the judgment shall be registered for the reasonable costs of and incidental to registration, including the costs of obtaining a certified copy of the judgment from the original court.'

At Jersey common law, a successful party on a summary judgment application will generally be awarded their costs of and incidental to the action and the application. This may not, however, cover the entirety of their actual costs.

### **22. Are third parties allowed to fund enforcement action in your jurisdiction? If so, are there any restrictions on this and can third party funders be made liable for the costs incurred by the other side?**

Third parties are permitted to fund litigation in Jersey providing that the funding arrangement is not contrary to public policy on the grounds of champerty: *Re Valetta Trust* [2011] JRC 227 (confirmed after *inter partes* argument in *Barclays Wealth Trustees (Jersey) Limited and anor v Equity Trust (Jersey) Limited and anor* [2013] JRC 094). The general rule is that the Royal Court will permit third party funding if control of the proceedings

remains with the plaintiffs, the plaintiffs will retain a substantial proportion of the damages if successful and the defendants will not be prejudiced in respect of costs if the claim fails.

We do not expect the UK Supreme Court decision in *R (on the application of PACCAR Inc and ors) v Competition Appeal Tribunal and ors* [2023] UKSC 28 to have a significant impact on the funding landscape in Jersey, though we are keeping the matter under review.

### **23. What do you think will be the most significant developments in the enforcement process in your jurisdiction in the next 5 years?**

There may be further opportunities for the courts to consider the question of enforcement at Jersey common law of non-money foreign judgments. Further elucidation of the principles in this area would be welcome.

For wider context, Jersey has never been a member of the European Union. As such, post-Brexit questions as to whether there will be any replacement of the Recast Brussels Regulation (Council Regulation 121/2012) with regard to the UK or any re-admission of the UK to the Lugano Convention do not arise as far as Jersey is concerned.

### **24. Has your country ratified the Hague Choice of Courts Convention 2005? If not, do you expect it to in the foreseeable future?**

Jersey is not included in the Hague Choice of Courts Convention 2005. We do not consider it likely that this convention will be signed by or extended to Jersey in the foreseeable future.

### **25. Has your country ratified the Hague Judgments Convention 2019? If not, do you expect it to in the foreseeable future?**

The Hague Judgments Convention 2019 was ratified by the UK on 27 June 2024 and will come into force in England and Wales on 1 July 2025. The UK's accession does not automatically include Jersey or the other Crown Dependencies. If a Crown Dependency does wish to join the Convention, the UK government has said that it will in the future extend its own accession arrangements in order to include it.

Jersey was never a member of the EU or the enforcement conventions to which the UK was a party prior to leaving

the EU. Unlike the position in the UK, therefore, Brexit did not have the effect of removing any enforcement mechanism that was previously available or create a need to replace anything. The present arrangements for the enforcement of foreign judgments in Jersey and for the enforcement of Jersey judgments elsewhere do not

appear to have caused significant problems in practice. Extension of the 2019 Convention could also be disadvantageous to Jersey in certain respects. For these reasons we consider it on the whole unlikely that Jersey will request the 2019 Convention to be extended to it in the foreseeable future.

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