

Recognition and enforcement of foreign judgments in Guernsey

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Guernsey has its own legal system and is a separate jurisdiction from that of England and Wales. As a result, a foreign judgment (including a judgment of the courts of England and Wales) has no direct operation in Guernsey and it cannot, as of right, be enforced in Guernsey simply by execution.

In Guernsey a foreign judgment may be enforced by one of two methods: pursuant to statute, namely the Judgments (Reciprocal Enforcement) (Guernsey) Law, 1957 (the **1957 Law**); and pursuant to the common law.

Statute: the 1957 Law

A foreign judgment of the courts of a Reciprocating Country (as defined in the various Ordinances specifying reciprocating jurisdictions) may be enforceable in Guernsey under the 1957 Law by a process of registration if the following criteria are satisfied:

- it is the judgment of a Superior Court of a Reciprocating Country (please refer to the Schedule below)
- the judgment is final and conclusive, regardless of whether an appeal is pending or possible
- a sum of money is payable under the judgment that is not a sum payable in respect of taxes, fines or other penalties
- the court of the Reciprocating Country had jurisdiction to grant the judgment (determined according to Guernsey rules – please see below under 'Jurisdiction'), and
- a period of less than six years has elapsed since the date of the judgment or the date of the last judgment given in any appeal proceedings.

Application for registration is made to the Royal Court *ex parte*, supported by an affidavit which must include a certified copy of the foreign judgment.

The 1957 Law prevents registration of a judgment if:

- it has been wholly satisfied at the date of the application
- it could not be enforced by execution in the court of the Reciprocating Country
- it is an *in personam* judgment which deals with matrimonial matters, administration of a deceased's estate, insolvency, winding up of companies, lunacy or guardianship of infants.

Jurisdiction

The 1957 Law stipulates criteria for the recognition of the jurisdiction of the foreign court, depending on whether the judgment was in respect of an action *in personam* or an action *in rem* or in relation to immovable property. For actions *in personam*, the 1957 Law deems the foreign court to have had jurisdiction if the judgment debtor was:

- the defendant and either submitted to the jurisdiction of the court by voluntarily appearing (other than to protect his property or contest the jurisdiction) or agreed to so submit, or
- a company with a principal place of business in that jurisdiction, or had an office or place of business there and the action was in respect of a transaction effected through that office, or

- plaintiff in, or counterclaimed in, the original proceedings in that court.

For actions *in rem* relating to movable property or actions relating to immovable property, the test is whether the property was at the time of the proceedings situate in the same jurisdiction as the court.

The Royal Court may attach conditions to an order for registration, such as prescribing the matters to be proven, the manner of proof making provision for security for costs to be paid by the applicant, and the service of notice on the judgment debtor.

Effect of registration

Once registered, the judgment has the same force and effect as a judgment given by the Royal Court; judgment interest can accrue from the date of registration.

It should be noted that it is not necessary to first obtain registration of a foreign judgment before issuing a statutory demand seeking payment of that judgment or relying on the failure to meet the statutory demand as grounds for seeking the compulsory winding up of a company on the basis under the Companies (Guernsey) Law, 2008.¹

Setting aside a registration

A judgment debtor may apply to the Royal Court to set aside the registration of the foreign judgment within 14 days from the date of the service of registration. This period may be extended in certain circumstances. Registration may be set aside on one of the following six grounds:

- the judgment contravenes or does not come within the scope of the 1957 Law
- the court of the Reciprocating Country does not have jurisdiction to order judgment against the debtor (see above)
- notice of the registration upon the debtor was not served correctly (meaning that the debtor did not receive notice of the proceedings in time to prepare a defence and did not appear)
- the judgment was obtained by fraud
- the enforcement of the judgment is contrary to public policy in Guernsey, or
- the applicant for registration is not the foreign judgment creditor.

Common law

Where the 1957 Law does not apply (ie where the criteria for registration set out above have not been met), a judgment creditor seeking to enforce a foreign judgment in Guernsey must rely on common law principles.

In these circumstances, the judgment creditor will be required to sue on the foreign judgment as one would on a civil debt. Often there will be no real defence and summary judgment will be granted.

Challenging a foreign judgment under common law

A foreign judgment may be challenged in the Guernsey court if:

- the foreign court did not have jurisdiction to give the judgment
- the judgment involved fraud by the judgment creditor
- the judgment involved fraud by the foreign court
- the proceedings in the foreign court were contrary to natural justice, or
- where enforcement would be contrary to Guernsey public policy.

Enforcement

A judgment successfully registered under the 1957 Law or successfully sued upon as a debt can then be enforced by Her Majesty's Sheriff who has powers to arrest and sell personalty. Where necessary, the judgment creditor will proceed against either a debtor's personalty using a Guernsey insolvency procedure called '*désastre*', or a debtor's realty using a Guernsey procedure called '*saisie*'.

¹ *JJW Limited (in liquidation) v Aareal Bank AG* [2021] GCA021.

Schedule

Reciprocating Countries	Superior Courts
England and Wales	The Supreme Court, the Senior Courts of England and Wales, excluding the Crown Court
Isle of Man	The High Court of Justice of the Isle of Man
Israel	The Supreme Court; The District Courts; Rabbinical Courts; Moslem Religious Courts; Christian Religious Courts and Druze Religious Courts
Italy	The Corte d'Appello and the Tribunale
Jersey	The Royal Court of Jersey; the Court of Appeal of Jersey
The Netherlands	The Hoge Raad der Nederlanden; the Gerechtshoven and the Arrondissementsrecht-banken
Netherlands Antilles	The Hoge Raad der Nederlanden; the Hof van Justitie der Nederlandse Antillen and the Gerecht in Eerste Aanleg
Northern Ireland	The Court of Judicature of Northern Ireland
Republic of Italy	The Corte d'Apello and the Tribunale
Scotland	The Court of Session; the Sheriff Court
Surinam	The Hof van Justitie van Suriname; the Kantongerecht in het Eerste Kanton and the Kantongerecht in het Derde Kanton

Judgments handed down by courts other than those listed above may not be registered under the 1957 Law. The Royal Court confirmed that the 1957 Law does not apply to the County Courts of England and Wales.² However, a judgment given in an English County Court and subsequently transferred to the High Court was deemed to be registrable in Guernsey under the 1957 Law.³

Contacts

A full list of contacts specialising in this area can be found [here](#).

² *Highseal Windows Limited v Gary Martel and Graham Caroll (trading as The Conservatory Centre)* (2 January 2001).

³ *Manches LLP v Inter Global Financial Limited* [2009] 10 GLR 283.

This guide is only intended to give a summary and general overview of the subject matter. It is not intended to be comprehensive and does not constitute, and should not be taken to be, legal advice. If you would like legal advice or further information on any issue raised by this guide, please get in touch with one of your usual contacts. You can find out more about us, and access our legal and regulatory notices at [mourant.com](https://www.mourant.com). © 2024 MOURANT ALL RIGHTS RESERVED