



# Enforcement of Foreign Judgments

in 29 jurisdictions worldwide

# 2014

Consulting editors: Mark Moedritzer and Kay C Whittaker



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# British Virgin Islands

Paul Webster and Rhonda Brown

O'Neal Webster

## 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?

No; however, in the case of arbitration awards, while not a signatory to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), the British Virgin Islands (BVI) is a dependent overseas territory of the United Kingdom, which is party to the New York Convention. The BVI parliament has sought to give effect to the New York Convention by virtue of part IX of the Arbitration Ordinance (chapter 6), which deals with the enforcement of foreign arbitration awards generally, and more specifically, New York Convention awards. The New York Convention is included in its entirety in the schedule to the Arbitration Ordinance.

## 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?

The main source of law on the enforcement of foreign judgments in the BVI is legislation; these are:

- the Reciprocal Enforcement of Judgments Act (chapter 65), which deals with the registration of judgments from the High Court in England or Northern Ireland and the Court of Session in Scotland;
- the Foreign Judgments (Reciprocal Enforcement) Act 1964, which governs enforcement of judgments from certain named Commonwealth jurisdictions; and
- the Arbitration Ordinance (chapter 6), which governs the recognition of foreign arbitration awards).

Where a foreign judgment or award does not fall within the scope of any of the aforementioned legislation, the common law governs the enforcement of such a judgment and case law provides directions on enforceability.

## 4 Hague Convention requirements

To the extent the enforcing country is a signatory of the Hague Convention on 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?

Not applicable.

## 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?

In the case of an application for registration of a judgment, including an arbitration award, from the High Courts of England, Northern Ireland or the Court of Session in Scotland, such an application must be made within 12 months from the date of the judgment or such longer date as the BVI court determines. The time commences to run on the date that the judgment is given. An application for registration of an award under the Foreign Judgments (Reciprocal Enforcement) Act (that is, an application made by countries listed in the subsidiary legislation) must be made within six years of the date of the judgment or, where there have been appeals, the date of the last judgment.

The BVI 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?

The types of foreign judgments that may be enforced in the BVI are limited to monetary judgments and arbitration awards (which are not limited to awards for the payment of money).

## 7 Competent courts

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

When seeking enforcement of a foreign judgment, an application for registration of the foreign judgment must be brought in the High Court of the British Virgin Islands in either its civil or commercial division. The monetary amount of the judgment will determine the in which court the application is brought, as claims valued at more than US\$500,000 are allocated to the commercial division of the High 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?

Before a foreign judgment becomes enforceable in the BVI it must first be recognised or registered in the BVI so that it can take effect as if it were, in fact, a judgment of a BVI court. The claimant must first make an application to the High Court, upon which the High Court will make a determination on whether the foreign judgment

meets the specific requirements for registration. Once registered the foreign judgment takes effect as a judgment obtained in a BVI court. As such, the judgment is capable of being enforced in the same manner as a local judgment, for example, by means of a charging order or appointment of a liquidator.

## 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?

A defendant is prohibited from raising merits-based defences. Under BVI law a foreign judgment that is final and conclusive on the merits cannot be impeached for any error of fact or law. The BVI court will not therefore engage in an examination of the merits of the claim. A defendant is limited to narrow grounds as specified in the relevant legislation or at common law. For example on the grounds of fraud, the judgment being contrary to public policy or that the foreign court lacked the requisite jurisdiction to adjudicate on the claim.

## 10 Injunctive relief

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

A defendant may make an application to set aside the registration of a judgment if the applicant satisfies the court of one of the following:

- that an appeal is pending;
- that he or she is entitled to and intends to appeal against the judgment; or
- that at the date of the application for registration the judgment was not enforceable in the foreign country.

The BVI court may then either:

- set aside the registration; or
- adjourn the application for a period that it deems reasonably sufficient to enable the applicant to take the necessary steps to have the appeal disposed of by a competent tribunal.

## 11 Basic requirements for recognition

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

There are three basic requirements that must be satisfied in order for a foreign judgment to be registered:

- the judgment must have emanated from one of the jurisdictions specified in the Reciprocal Enforcement of Judgments Act or the Foreign Judgments (Reciprocal Enforcement) Act;
- the judgment must be for a specific sum of money; and
- the application for registration of the judgment within the BVI must have been made within the specified time limit.

## 12 Other factors

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

No; factors that are to be taken into consideration are specified and are mandatory.

## 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?

No.

## 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?

Where the issue is raised, the BVI court will examine whether the foreign court had the required jurisdiction over the judgment debtor. A BVI court will refuse to register a foreign judgment where it is proved that the court had no jurisdiction over the judgment debtor.

The court will have jurisdiction over the judgment debtor where:

- the judgment debtor is ordinarily resident in the jurisdiction or carries on business in the jurisdiction (the common law position is less stringent and appears to be satisfied merely by the judgment debtor being present in the country at the time when the proceedings were instituted);
- the judgment debtor voluntarily submitted to the jurisdiction of the court as evidenced by their voluntarily appearing in the proceedings;
- the judgment debtor agreed, prior to the commencement of the proceedings, that they would submit to the jurisdiction of that court in respect of the subject matter of the proceedings; and
- the judgment debtor was either the claimant or has counter-claimed in the proceedings.

## 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?

Where the issue of subject-matter jurisdiction is raised the court will examine whether the foreign court had jurisdiction to act. The foreign court will be deemed to have jurisdiction where:

- the court has personal jurisdiction over the parties if any of the requirements for personal jurisdiction, as expressed above, is met;
- the subject matter of the dispute is an action of which the subject matter is moveable or immoveable property and the property was at the time of the proceedings situated in the country of the foreign court; and
- the parties agreed prior to the commencement of proceedings in the foreign court that the foreign court would have jurisdiction over the dispute.

## 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?

In order for the judgment to be registered in the BVI the judgment debtor must have been formally served in accordance with the service requirements of the foreign country in which the original proceedings were held. Under the Reciprocal Enforcement of Judgments Act registration of the foreign judgment must be refused if the judgment debtor was not duly served with the foreign proceedings and does not appear. A similar requirement is found under the Arbitration Act, which states that enforcement of an arbitration award may be refused if the person against whom the award was made proves that they were not given proper notice of either the appointment of the arbitrator or the arbitration proceedings.

## 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 grounds upon which registration of a foreign judgment may be refused are exhaustive and limited to those grounds specified in the

relevant legislation or at common law and do not include inconvenience to the defendant.

#### 18 Vitiating by fraud

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

One of the grounds for refusal to register a foreign judgment is that the judgment has been obtained by means of fraud. Accordingly, where there are allegations of fraud the BVI will examine whether the foreign court had been deliberately misled. Where the BVI court finds evidence of fraud it will refuse to register the judgment.

#### 19 Public policy

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

The BVI court will have regard to whether there has been an impeachment of public policy. However, the scope is very narrow and refusal on the grounds of public policy will only arise where there has been a breach of the most basic notions of morality and justice. However, a judgment cannot be impeached merely because it is inconsistent with BVI law.

#### 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?

A foreign judgment will not be recognised if it is inconsistent with a previous final and conclusive decision of a BVI court, the foreign court or competent court of a third jurisdiction.

#### 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?

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?

Except where the defendant has voluntarily submitted to the jurisdiction of the foreign court by voluntarily participating in proceedings or they were the plaintiff or counterclaimed in the proceedings, the BVI court will refuse registration of a foreign judgment where the bringing of the proceedings in the foreign court is contrary to an agreement between the parties that the dispute was to be settled by alternative dispute resolution.

#### 23 Favourably treated jurisdictions

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

Judgments from the High Court of England or Northern Ireland, the Court of Session in Scotland; or a superior court in any one of the countries listed in the Foreign Judgments (Reciprocal Enforcement) Act will be registered in the BVI once they meet the requirements for registration and will be enforced in the same manner as judgments of the BVI courts. Judgments from the courts of other jurisdictions are not directly enforceable in the BVI and the judgment must be sued upon in the BVI High Court. However, this will not involve a re-litigation of the issues previously decided in the foreign court.

The aforementioned jurisdictions are specifically listed in the relevant legislation as countries whose judgments can be directly enforced.

#### 24 Alteration of awards

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

Since the BVI court will only register certain types of judgments, for example money judgments, if on the application for registration of a judgment it appears to the BVI court that the judgment is in respect of different matters and some, but not all, of the provisions are of such a nature that if they were contained in a separate judgment could properly be registered, the judgment may be registered in respect of those provisions but not the others.



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**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?

Since the judgment will be enforced in the same manner as a judgment of the courts of the BVI, where the judgment is in a currency different from that of the BVI, the judgment is converted into US dollars (the local currency of the BVI) on the basis of the rate of exchange prevailing at the date the judgment was made in the original foreign court. The sum for which a judgment is registered does carry interest. The BVI court makes a distinction between pre-recognition and post-recognition rate of interest. Interest incurred prior to the date of registration will be calculated at the rate of interest specified by the foreign court in its judgment. However, the interest rate after the registration of foreign judgment is the local interest rate as specified in the Judgments Act (chapter 35).

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**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?

An application may be made to the BVI court to set aside the registration of the judgment. However, the applicant must satisfy the BVI

court that an appeal is pending or they are entitled to and intend to appeal the original judgment of the foreign court. If the applicant is successful, the court may set aside registration of the judgment entirely or it may adjourn the application to permit the defendant sufficient time to have the appeal disposed of.

Where the original decision of the foreign court is affirmed, if the registration of the foreign judgment had been set aside, a new application may be brought for registration. Additionally, there is a right of appeal to the Eastern Caribbean Court of Appeal.

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**27 Enforcement process**

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

Once the foreign judgment is registered in the BVI it may be enforced in the same manner as any other judgment of a BVI court.

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**28 Pitfalls**

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

Not applicable.

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