

Enforcement of judgments and arbitral awards in the British Virgin Islands: overview

by Ben Mays and Richard Brown, [Carey Olsen](#)

A Q&A guide to enforcement of judgments and arbitral awards law in the British Virgin Islands.

The Q&A gives a structured overview of key practical issues concerning enforcement of judgments and arbitral awards in this jurisdiction, including the legal framework; international conventions/agreements; definitions; enforceable judgments and awards; enforcement proceedings; challenging enforcement; final/provisional judgments; foreign judgments; interim remedies and interest; formalities; and any reform proposals.

To compare answers across multiple jurisdictions, visit the Enforcement of judgments and arbitral awards [Country Q&A tool](#).

This article is part of the global guide to enforcement of judgments and arbitral awards. For a full list of contents, please visit global.practicallaw.com/enforcement-guide.

Law stated as at 01-Nov-2019

Resource Type
Country Q&A

Jurisdiction
British Virgin Islands

Judgments: procedure for enforcement

Overview

1. What is the general outline of enforcement proceedings?

Domestic

A domestic judgment is recognised the moment it is made and becomes enforceable immediately unless subject to a condition. Under the Eastern Caribbean Civil Procedure Rules 2000 (CPR) Part 43, once a domestic judgment has become enforceable, a judgment creditor must apply to request an enforcement order from the court.

A judgment subject to the fulfilment of a condition cannot be enforced unless that condition has been fulfilled or the court gives permission. A judgment must be properly served on the judgment creditor before it can be enforced.

CPR Part 45 sets out types of enforcement remedies available in relation to a money judgment, including:

- Charging order.
- Garnishee order.

- Judgment summons.
- Order for the seizure and sale of goods.
- Appointment of a receiver.

It also sets out enforcement remedies for certain non-money judgments, such as an order for possession of land and an order for delivery of goods. See [Question 18](#).

The beneficiary of an injunction/judgment prohibiting acts can apply for a committal order or sequestration order to help police that judgment.

A judgment creditor with an unpaid money judgment against a BVI company can seek to enforce that judgment by applying to the court to appoint a liquidator over the judgment debtor company under the Insolvency Act 2003.

Foreign

A judgment from a jurisdiction subject to the Reciprocal Enforcement of Judgments Act 1922 (Reciprocal Enforcement Act) can be registered in the BVI for enforcement as if it were a BVI judgment. The foreign judgment is registrable within 12 months of the date of judgment, unless the BVI court grants a longer period on the basis that it is just and convenient to do so.

A judgment creditor must apply to court under CPR Part 72, including an affidavit containing the necessary confirmations and statements about the judgment (such as the amount of interest that has become due) along with a verified/certified copy of the foreign judgment and a certified/authenticated translation into English if necessary. The application can be made without notice to the judgment debtor. The court can order the judgment creditor to give security for costs in relation to any proceedings that can be brought to set aside the registration. Once a foreign judgment is registered, it can be enforced like any other BVI judgment.

Judgments from jurisdictions not subject to the Reciprocal Enforcement Act cannot be registered. The judgment creditor must bring a claim in the BVI court on the judgment debt as a cause of action under common law. This involves commencing proceedings under CPR Part 8, and serving the judgment debtor under CPR Part 5 (or, if the judgment debtor is resident in another jurisdiction, under CPR Part 7). The judgment debtor must reply or acknowledge service within 14 days if served within the jurisdiction or within 28 days if served outside the jurisdiction. If the judgment debtor does not acknowledge service, the judgment creditor can apply for default judgment. If the judgment debtor does acknowledge service, the judgment creditor can apply for summary judgment. Once judgment is entered, the judgment can be enforced like any domestic BVI judgment.

If the judgment debtor is a BVI company and has not paid the foreign judgment debt when due, the judgment creditor may apply to appoint a liquidator over the foreign judgment to wind it up on the basis of insolvency. In such circumstances, separate recognition/registration of the foreign judgment is not necessary, and there is no strict requirement to issue a formal statutory demand for payment before applying to appoint a liquidator, provided there is sufficient evidence of the existence of the foreign judgment debt and non-payment by the judgment debtor. However, the BVI court must be satisfied that the common law requirements for enforcement of the foreign judgment debt are satisfied (see below).

It is not a requirement to appoint counsel to enforce judgments in the BVI, but since applications must be made in the BVI court, it is advisable to do so. The applications above are made to the High Court. Fees payable include:

- *Inter partes* court application fees of USD300 (or USD500 if the application lasts for 2 hours or more).
- Ex parte application fees of USD500.
- Affidavit filing fee of USD100 (plus USD25 for an exhibit).

Applications to register foreign judgments under the Reciprocal Enforcement Act can take three to four months depending on court availability, if the application is not done on the papers. Applications under the common law can take longer because the proceedings must be served (sometimes outside the jurisdiction) and summary judgment must be sought and ordered.

Foreign judgments: formal/simplified proceedings

2. Is the enforcement of a foreign judgment subject to formal proceedings or simplified procedures?

Judgments from jurisdictions subject to the Reciprocal Enforcement of Judgments Act 1922 can be registered under simplified proceedings.

Judgments from other jurisdictions cannot be registered and require formal proceedings, although the proceedings will usually be determined on a summary basis (see [Question 5](#)).

3. Must applicants institute a new action on the foreign judgment in the form of main proceedings instead of making an application for enforcement based on the judgment?

Judgments from jurisdictions not subject to the Reciprocal Enforcement of Judgments Act 1922 require a new action to be commenced on the foreign judgment in the BVI court (see [Question 5](#)).

Form of application

4. What documents and information must be provided with an application for enforcement?

Domestic

When commencing enforcement proceedings, the judgment creditor must include a copy of the relevant domestic judgment. CPR 43.7 provides that if the court has given judgment for a sum in a foreign currency, the judgment creditor must file a certificate stating the exchange rate at the close of business on the previous business day.

Foreign

An application under CPR Part 72 for registration of a foreign judgment under the Reciprocal Enforcement of Judgments Act 1922 must include an affidavit containing the necessary confirmations and statements regarding the judgment (such as the amount of interest that has become due) along with a verified/certified copy of the foreign judgment and a certified/authenticated translation into English if necessary.

A common law claim on a foreign judgment from a jurisdiction not subject to the Reciprocal Enforcement Act must include the documents required by CPR Part 8 to start proceedings in the usual manner, such as a claim form and statement of claim. An affidavit must also be included, exhibiting a verified/certified copy of the foreign judgment and a certified/authenticated translation into English if necessary.

5. What information must be included in the application regarding the judgment, the claim as awarded in the judgment, the facts and legal grounds of the case, and that the judgment is no longer appealable?

Domestic

An application to enforce a domestic judgment in any of the ways set out in the CPR Part 45 (see [Question 18](#)) requires an affidavit that provides:

- Brief details of the judgment.
- Details of the claim as awarded in the judgment.
- The facts and legal grounds of the case.

Foreign

An application for registration of a foreign judgment under the Reciprocal Enforcement of Judgments Act 1922 must include an affidavit that provides:

- Brief details of the judgment (such as details of the claim as awarded in the judgment).
- The facts and legal grounds of the case.
- Details of service and appearances by the judgment debtor.
- Whether the judgment is appealable and/or subject to an appeal.

A claim to enforce a foreign judgment not subject to the Reciprocal Enforcement Act must be supported by evidence dealing with substantially the same issues as are required in support of an application for registration of a judgment.

Challenging enforcement

Service

6. Does the enforcing court review service of the proceedings? What conditions regarding service of the proceedings must be satisfied?

Domestic

The court will not review the nature of service of proceedings in relation to a domestic judgment at the enforcement stage unless it is raised by the judgment debtor. However, a judgment must be duly served on the judgment debtor before it can be enforced.

Foreign

A foreign judgment will not be registered under the Reciprocal Enforcement of Judgments Act 1922, or be considered valid under a common law enforcement action, if the judgment debtor was not duly served with the process of the foreign court.

The judgment creditor must provide evidence of due service in the affidavit supporting the application/claim in order to satisfy the court.

Final/provisional judgments

7. Must a judgment be final and have conclusive effect, and what is the effect of pending appeal proceedings?

Domestic

Under CPR 60.3, the filing of an appeal against a domestic judgment does not automatically stay the enforcement of the judgment under appeal. Consequently, a judgment creditor can continue to apply to enforce a domestic judgment that is under appeal unless the judgment debtor has successfully applied for a stay of execution pending the determination of the appeal.

Foreign

Under both the Reciprocal Enforcement of Judgments Act 1922 and common law, it is up to the judgment debtor to satisfy the court that an appeal is pending or that it is entitled and intends to appeal against the judgment. Therefore, a foreign judgment can be registered under CPR 72 without notice, and the judgment debtor must apply to set this aside and persuade the court that it is just and convenient to do this pending the appeal in the foreign jurisdiction. At common law, a foreign judgment is final and conclusive even though it is subject to appeal and an appeal is pending in the foreign country where it was given. Further, enforcement at common law is an on notice procedure, so the judgment debtor has the chance to raise the existence of an appeal at any summary judgment hearing and/or other hearing of the claim. While the existence of an appeal may not be a strict bar to enforcement, it may be a discretionary factor taken into consideration by the BVI Court in the context of enforcement proceedings; for example it may stay or adjourn the enforcement proceedings pending the outcome of the appeal, if appropriate.

Foreign judgments: jurisdiction

8. Is the enforcing court entitled to consider the grounds on which the court assumed jurisdiction, and if so, on what jurisdictional grounds can enforcement be refused?

The court will consider the grounds on which the foreign court assumed jurisdiction, on the basis of:

- Due service on the defendant.
- Whether the defendant was subject to the *in personam* jurisdiction of the foreign court.
- Appearances/submission to the jurisdiction by the defendant.

See [Question 10](#) and [Question 13](#).

9. If the court assumed jurisdiction on the basis of an exorbitant ground of jurisdiction, can the enforcing court review the judgment on that ground?

Exorbitant ground of jurisdiction

A foreign judgment will not be registered under the Reciprocal Enforcement of Judgments Act 1922/CPR Part 72 if the:

- Foreign court acted without jurisdiction.
- Judgment debtor, being a person who was neither carrying on business nor ordinarily resident within the jurisdiction of the foreign court, did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court.
- Judgment debtor was not duly served with the process of the foreign court and did not appear in those proceedings, notwithstanding the fact that the judgment debtor was ordinarily resident or carrying on business in the foreign jurisdiction.

- Judgment was in respect of a cause of action that, for reasons of public policy in the BVI or for some similar reason, could not have been entertained in the BVI court.

Similar considerations apply under the common law, and principles of fairness or "natural justice" such as due service of proceedings and notice of hearings, are relevant. The BVI court will not simply accept a foreign court's own determination of its jurisdiction. If the foreign court has taken exorbitant jurisdiction (in the eyes of the BVI court), then for reasons of fairness and public policy, the BVI court can refuse to enforce the foreign judgment at common law.

Voluntary acknowledgement

Voluntary appearances in the foreign court or submission to the foreign jurisdiction will not automatically make a foreign judgment registrable/enforceable if broader considerations of due service, fairness and public policy have more weight.

Foreign judgments: review of judgment

10. Can the enforcing court review the judgment as to its substance if all formalities have been complied with and if the judgment meets all requirements?

The enforcing court will not review the underlying substance of the judgment. However, it will refuse to enforce certain foreign judgments and so to the extent necessary to ascertain the nature of the underlying judgment, the BVI court may need to review the underlying judgment and/or proceedings. For example:

- The BVI court will not (subject to certain specific international treaties, which are beyond the scope of this article) enforce the public laws of another state, therefore, a foreign judgment that enforces a foreign tax law or penal award such as a fine, will not be enforced.
- Because gambling is illegal in the BVI, a judgment based on the gambling laws of another state will not be enforced.
- A foreign judgment contrary to the Trustee Act 1961 relating to BVI trusts, will not be enforced.
- Punitive damages may be unenforceable.

The BVI court will not register/enforce a foreign judgment obtained by fraud or in breach of principles of natural justice. Therefore, it may be necessary to consider the substance of the claim if these allegations are made by the judgment debtor.

Foreign judgments: public policy

11. Can enforcement of a judgment be refused on grounds of public policy? Does public policy include matters of substantive law?

Public policy considerations are not just limited to procedural deficiencies such as due service. See [Question 14](#).

12. In what circumstances and against which types of judgments has the principle of public policy generally been applied?

See [Question 14](#).

Domestic and foreign: other conditions for recognition and enforcement

13. What other conditions must be satisfied for recognition and enforcement of judgments?

Domestic

A domestic judgment that is subject to the fulfilment of a condition cannot be enforced unless that condition is fulfilled or the court gives permission. Other than that, the court will not examine the domestic judgment further, unless issues are raised by the judgment debtor.

Foreign

The relevant conditions around registration and enforcement of a foreign judgment are considered in [Question 12](#), [Question 13](#) and [Question 14](#).

Judgments: methods of enforcement

14. What is the enforcement procedure after a declaration of enforceability is granted?

CPR Part 45 sets out types of enforcement remedies available in relation to a money judgment, including the following:

- Charging order (*CPR Part 48*).
- Garnishee/attachment order (*CPR Part 50*).
- Judgment summons (*CPR Part 52*).
- Order for the seizure and sale of goods (*CPR Part 46*).
- Order for the possession and sale of land (*CPR Part 53*).

The court can also appoint a receiver (*CPR Part 51*).

The beneficiary of the following can apply for a committal order or sequestration order to help police them (*CPR Part 53*):

- An injunction.
- Judgment prohibiting acts.
- Order of payment of monies into court.

These remedies are available in relation to both domestic judgments and foreign judgments (once registered/recognised).

The BVI Commercial Court has recently cast doubt as to whether there was a substantive legal jurisdiction in the BVI to grant charging orders, which is a relatively common method of enforcement in respect of shares in BVI companies (*Stichting Nems v Gitlin BVIHC (COM) No 1 of 2018, unreported (19 December 2018)*). The BVI Commercial Court confirmed, in a judgment published on 1 May 2019, that the BVI Courts did indeed have jurisdiction to grant charging orders, thus removing any uncertainty in this regard (*Commercial Bank of Dubai v Abdalla Juma Majid Al-Sari & Others BVIHC (COM) 114 of 2017*).

Judgments: interim remedies and interest

Interim remedies

15. Is it possible to apply for interim measures from the enforcing court pending the enforcement proceedings?

CPR Part 17 provides for a range of interim remedies that the court can order at any stage of proceedings (including pre-action or post-judgment), including freezing and search orders. CPR Part 49 provides for stop notices/orders that can help prevent certain steps being taken in relation to shares in BVI companies.

Under section 24 of the Eastern Caribbean Supreme Court (Virgin Islands) Act (Cap 80), the court can grant an injunction or appoint a receiver if it is just and convenient to do so. Further, a creditor can apply to court to appoint a provisional liquidator over a company in certain circumstances under the Insolvency Act 2003.

All of these measures can assist with preserving assets that may be subject to enforcement.

A judgment creditor can also apply for an order for oral examination of a judgment debtor to ascertain the judgment debtor's assets and assist with deciding the best method of enforcement (*CPR Part 44*). However, it is well established that such orders do not have extra-territorial effect in the light of the English decision in *Masri v Consolidated Contractors International (UK) Ltd and others (No 4)* [2009] UKHL 43, and as such their use in enforcement proceedings, where officers of BVI companies tend to reside outside the BVI, has historically been limited. That may change with the introduction of economic substance requirements, which may result in more BVI companies appointing BVI-resident directors.

Once a foreign judgment is recognised, it can be enforced in the same way as a domestic judgment, including interim remedies if appropriate.

Before registration/recognition, a foreign claimant can apply to the court for a remedy such as a freezing injunction to assist with the foreign proceedings (see [Question 4](#)).

Interest

16. Is the judgment creditor entitled to interest? If so, on what basis is it calculated?

Domestic

Under the Judgments Act 1907, domestic judgment debts carry interest at a rate of 5% a year from the date of judgment until satisfaction of the debt.

Foreign

Foreign judgments will carry the same rate of interest under the Judgements Act, unless the BVI court decides to accept a rate of interest applied by the foreign court. As a matter of public policy, the BVI court may not accept a punitively high interest rate awarded by a foreign court.

Currency

17. Must the value of a foreign judgment be converted into the local currency?

When applying to register or enforce a judgment given in a different currency to the BVI, the party must file a certificate stating the exchange rate at the close of business the previous business day.