

Enforcement of judgments and arbitral awards in Guernsey: overview

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A Q&A guide to enforcement of judgments and arbitral awards in Guernsey.

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.

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Resource Type

Country Q&A

Jurisdiction

Channel Islands-Guernsey

Judgments: legal framework

Domestic framework

1. What is the applicable domestic legislative framework for enforcement of judgments?

Domestic

In Guernsey there are various ways to enforce a domestic judgment. An *arrêt* (or arrest) is a form of execution derived from customary law. The types of *arrêt* include:

- *Arrêt conservatoire*, used to freeze assets pending the determination of a claim;
- *Arrêt execution*, used to arrest the assets of a judgment debtor pending sale, towards satisfaction of a judgment debt;
- *Registration* (with leave) against the judgment debtor (or its interest in any realty);
- *Arrêt de gages* (wages), used to arrest wages (a Guernsey form of an attachment of earnings order);
- *Arrêt de personnes*, used to arrest a person to increase the chances of a debt being paid. This is theoretically still available but has not been used in many years;
- *Licitation* is a customary law enforcement procedure against jointly owned property; and

- *Saisie* proceedings for the seizure (and ultimate realisation of) the judgment debtor's Guernsey realty.

The *arrêt conservatoire* has to an extent been eclipsed by the adoption of the Guernsey equivalent of English Mareva and Anton Piller orders, but can still be used where the creditor wishes to arrest a particular tangible thing, for example, a yacht or car. The key difference is that an arrest works *in rem* (against the thing) whereas the injunctive relief works *in personam*. Thus it is not necessary for the court to have jurisdiction over the person against whom proceedings are being raised for the court to be able to grant an *arrêt des biens* (the *arrêt conservatoire* or *arrêt execution*).

Foreign

The following methods are available to enforce a foreign judgment in Guernsey:

- The Judgments (Reciprocal Enforcement) (Guernsey) Law 1957 (Reciprocal Enforcement Law) (if applicable).
- The foreign judgment can be sued on as a debt (and early summary judgment obtained even if defended).
- If the Reciprocal Enforcement Law does not apply, common law prevails. This operates on the principle of comity among courts of different jurisdictions.

International conventions/agreements

2. What international conventions and agreements on enforcement of judgments is your jurisdiction a party to?

The Bailiwick of Guernsey is not a party to the HCCH Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters 1971.

Definitions

3. What is the definition of judgment in your jurisdiction for the purpose of enforcement proceedings?

Domestic

There is no statutory definition of what constitutes a "judgment" in domestic law for enforcement purposes. However, an act of court recording the decision made by one of the judges in one of the following divisions of the courts in the Bailiwick will apply:

- Magistrate's court in Guernsey.
- Court of Alderney.
- Court of the SÉNÉSCHAL in Sark.
- Royal Court of Guernsey (which has various divisions including the ordinary court, matrimonial court and interlocutory court).
- Guernsey Court of Appeal.

Foreign

"Judgment" is defined in the Judgments (Reciprocal Enforcement) (Guernsey) Law 1957 as "a judgment or order given or made by a court in any civil proceedings, or a judgment or order given or made by a court in any

criminal proceedings for the payment of a sum of money in respect of compensation or damages to an injured party".

Enforceable/excluded types of judgment

4. What types of judgment in commercial matters are enforceable, and what types are excluded?

Domestic

Enforceable. In principle a judgment made by a Bailiwick Court for a definite sum of money will be enforceable using the means set out in *Question 1*.

Excluded. The following judgments are excluded:

- Where the judgment is impeachable for whatever reason or is subject to appeal and where a stay of execution pending appeal has been granted.
- Where the action is barred by the passage of time (more than six years for judgments by consent or following a hearing (*Acte d'amerçi*) or more than three years for judgments by default (*Acte de vers arrêt*)).

Foreign

Enforceable. Under the Judgments (Reciprocal Enforcement) (Guernsey) Law 1957 (Reciprocal Enforcement Law), the following conditions apply:

- For a judgment of a foreign court to be registrable, it must be for a definite sum of money.
- A judgment debt for taxes or other similar charges or a fine or other penalty will not be enforceable if made after the Reciprocal Enforcement Law came into effect.
- The foreign judgment can be *in personam* or *in rem*, but will usually be *in personam*.
- Under the common law, Guernsey courts will recognise and enforce foreign judgments *in personam* and *in rem*. Accordingly, subject to certain qualifications (for example, judgments obtained by fraud, judgments contrary to public policy and proceedings contrary to natural justice) a judgment *in personam* from a foreign court with jurisdiction to give that judgment is capable of both recognition and enforcement.
- The judgment must be for a debt or definite sum of money, other than a sum payable in respect of taxes or penalties.
- An order for the payment of costs is not enforceable until the costs have been taxed.
- A sum is sufficiently certain if it can be ascertained by simple arithmetical process.
- The judgment must be final and conclusive (this can be the case even though an appeal is pending).
- A judgment *in rem* is also capable of recognition and enforcement at common law. A judgment *in rem* pronounced by a court of a competent jurisdiction is conclusive and binding in Guernsey, not only between parties and privies, as in the case of a judgment *in personam*, but against the world.
- With regard to specific performance, there is only case law in Jersey, not Guernsey. While the Guernsey courts are not bound by the decisions of the Jersey courts, they find them persuasive. Accordingly, the Guernsey courts can follow the Jersey position which provides that the Jersey courts have discretion (to be exercised cautiously) to enforce a foreign *in personam* non-monetary judgment given by the courts of a competent jurisdiction without considering the merits.

- Given the width of orders that can be recognised, the common law enforcement route must be capable of covering declarations from foreign courts and other orders relating to the status of things, for example, matters concerning trusts.

The Reciprocal Enforcement Law will apply if:

- The judgment that is sought to be enforced was obtained in a reciprocating country.
- It is a judgment to which the Reciprocal Enforcement Law applies.
- The judgment was made in a superior court of the reciprocating country with jurisdiction.

The judgment must be final and conclusive and for a sum of money. Reciprocating jurisdictions include:

- England and Wales.
- Scotland.
- Northern Ireland.
- Isle of Man.
- Israel.
- Italy.
- Jersey.
- Netherlands.
- Netherlands Antilles.
- Surinam.

Where the Reciprocal Enforcement Law does not apply, the common law applies and can permit recognition and enforcement of a foreign judgment. However, the following conditions apply:

- The foreign court that granted the judgment must have had jurisdiction. Guernsey courts will apply conflict of laws rules when determining this.
- Under the common law, a foreign judgment is regarded as a debt (with liability arising from the implied promise to pay the amount of the foreign judgment). Therefore, a claimant will sue the defendant on the debt and apply for summary judgment.

Excluded. A judgment will be excluded where it:

- Is impeachable for whatever reason or is subject to appeal and where a stay of execution pending appeal has been granted.
- Is barred by the passage of time (more than six years for judgments by consent or following a hearing (*Acte d'americi*) or more than three years for judgments by default (*Acte de vers arrêt*)).
- Does not comply with the requirements to be enforceable.
- Relates to taxes or other similar charges, fines or other penalties.
- Is contrary to public policy or in relation to proceedings in breach of the principles of natural justice.

Judgments: procedure for enforcement

Overview

5. What is the general outline of enforcement proceedings?

Domestic

In personam claims can be satisfied by seeking to execute the judgment against the moveable or immoveable property of the debtor or by starting insolvency proceedings.

Nearly all of the applications listed in *Question 1* to enforce a domestic judgment will involve an application to the Royal Court.

When executing a judgment against the debtor's personalty, the judgment must be sent to the sheriff asking for the arrest and sale of the personalty to satisfy the outstanding debtor or wage arrest orders to be put in place.

Wage arrests in relation to domestic proceedings or petty debts can also be sought by application to the magistrate's court.

Foreign

The process begins with the judgment creditor applying to the Royal Court on an ex parte basis seeking leave for the judgment to be registered with the Royal Court.

Once recognised under either the common law or the Judgments (Reciprocal Enforcement) (Guernsey) Law 1957, a foreign judgment is enforceable in the same way as any domestic judgments under Guernsey law.

Foreign judgments: formal/simplified proceedings

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

Enforcement of a foreign judgment will be subject to a simplified process if a reciprocating country is involved because the court will not wish to re-open and examine the merits of the judgment.

7. 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?

An application must be made based on the judgment itself.

Form of application

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

Domestic

For an *arrêt conservatoire* (see *Question 1*), Practice Direction 3 of 1992 in relation to information that must be included in an injunction applies equally to applications for an arrest. This requires that the following information must be provided:

- Address for service (within the Bailiwick).
- Security for costs and damages and/or undertakings as to costs and damages.

- Undertakings about service of the arrest documentation (and copies if required) and time limits for it.
- Undertakings about time within which to commence action.
- (In urgent cases) undertakings about the time within which to furnish an original affidavit sworn by the claimant or by some other senior agent or director of the claimant with knowledge of the facts.
- A sufficient timeframe for the defendant or affected parties to apply for a variation or lifting of arrest before information is released.
- Details about the party on whom the order is to be served.

As a matter of practice, the applicant for an arrest must also specify:

- The amount and nature of the debt.
- That the creditor has requested payment but the debt remains unsatisfied.
- That the debtor has goods in the jurisdiction capable of arrest.
- That there is a likelihood that the assets will be removed if not arrested.
- That the removal will prejudice the applicant's claim.

Further directions are given in Practice Direction 2 of 1993 and include:

- All applications for an *arrêt conservatoire* must be made through HM Greffier with a sworn affidavit, the draft order and any documents in support.
- At the hearing, the advocate must present the original affidavit and any supporting exhibits.

For an *arrêt execution*, a judgment automatically grants the judgment creditor authority to proceed to enforcement against the personalty of the judgment debtor. Once the judgment creditor receives a certified copy of the judgment, it can deliver it to the sheriff who will then arrest the personalty of the debtor to the value required to be satisfied by the judgment.

For an *arrêt des gages*, the court or sheriff requires the following information:

- Identity of the debtor's employer.
- Debtor's place of work.
- Debtor's rate of earnings including overtime.
- Debtor's expenditure.
- Debtor's other assets and debts.

For an *arrêt des personnes*, the order will only be granted on a debt of GBP10 or more and the creditor must swear an affidavit containing:

- The debtor's name and address.
- The amount and nature of the debt.
- The facts leading the creditor to fear that the debtor is about to leave Guernsey.
- The facts demonstrating that the creditor has tried to obtain payment of the debt without success.
- The reason why the debtor's absence from Guernsey will prejudice the action.

Foreign

If the Judgments (Reciprocal Enforcement) (Guernsey) Law 1957 (Reciprocal Enforcement Law) applies, a supporting affidavit is required. The affidavit must:

- Exhibit a certified copy of the judgment and state to the best of the deponent's information and belief that the creditor is entitled to enforce the judgment and the judgment has not been satisfied.
- State that the judgment is enforceable by execution in the original jurisdiction and that, if registered, the judgment will not be liable to be set aside under the provisions of section 6 of the Reciprocal Enforcement Law.
- Specify the amount of interest payable and clarify any parts of the judgment that are not enforceable. If the judgment is expressed as payable in a foreign currency, the Guernsey equivalent must be specified on the basis of the exchange rate prevailing at the date of the judgment.

Under the common law, a foreign judgment is regarded as a debt (so the liability arises on the implied promise to pay the amount of the foreign judgment). Therefore, it is necessary to sue the defendant and then apply for summary judgment.

Enforcement then follows as set out above for a domestic judgment where the presence of the debtor or its assets within the jurisdiction allows.

9. 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?

See *Question 8*.

Challenging enforcement

Service

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

Domestic

A judgment will not be granted in domestic proceedings unless the court is satisfied that the proceedings have been adequately served in accordance with the rules of court.

Foreign

Under section 6(1)(m) of the Judgments (Reciprocal Enforcement) (Guernsey) Law 1957, the registration of a foreign judgment must be set aside by the Royal Court if the defendant did not (notwithstanding that process was duly served in accordance with the law of the country of the original court) receive notice of the original proceedings in sufficient time to enable it to defend the proceedings and it did not appear.

However, under both the Reciprocal Enforcement Law and the common law, there is no requirement that the defendant was technically and formally served with notice of the original action in the foreign jurisdiction. Actual notice is sufficient.

Lack of formal notice of the foreign proceedings is not a ground on which objection can be taken in Guernsey to a foreign judgment if the defendant voluntarily appeared in the proceedings. In any event, if the law of the

foreign country with regard to notice is complied with, any notice is sufficient if it is in accordance with the law of the foreign country.

If the defendant agreed to submit to the jurisdiction of the foreign court, it is deemed to have agreed to submit to the foreign court's rules of procedure and is bound by its judgment even though the defendant may not have had notice of the proceedings.

Final/provisional judgments

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

Domestic

A judgment must be final and conclusive. An otherwise final judgment is not invalidated because it is subject to an appeal to a higher court, or because an appeal is actually pending, unless a stay of execution has been granted.

Foreign

The foreign judgment must be final and conclusive, so it is *res judicata* in the country where it has been pronounced. It must be final in the particular court in which it is pronounced.

Foreign judgments: jurisdiction

12. 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)?

It is essential to the recognition or enforcement of a foreign judgment *in personam* that the foreign court must have had jurisdiction according to Guernsey rules on the conflict of laws. The enforcing court will consider the following:

- A foreign court has jurisdiction to pronounce a judgment if, at the date of the commencement of the proceedings, the defendant was resident or present in the country of the foreign court.
- Where the defendant is a corporation, the foreign court has jurisdiction over it if, at the date of the commencement of the proceedings, the corporation was to some extent carrying on business in the country of the court at a definite and reasonably permanent place.
- A foreign court has jurisdiction to pronounce a judgment *in personam* capable of recognition and enforcement in Guernsey if the defendant submitted or agreed to submit to the jurisdiction of the foreign court.
- It is uncertain whether the courts of a foreign country have jurisdiction over a national of that country merely by reason of nationality or domicile.
- The mere fact that a foreign court has assumed jurisdiction in circumstances in which a Guernsey court would have assumed jurisdiction is insufficient to give the foreign court jurisdiction for the purpose of recognition or enforcement of a foreign judgment *in personam*.
- The possession by the defendant of property, whether movable or immovable, in the country of the foreign court is an insufficient basis of jurisdiction.

- The mere fact that the defendant was present in the foreign country at the time when the cause of action arose is also insufficient to give the foreign court jurisdiction.

13. 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

See *Question 12*.

Voluntary acknowledgement

Provided that the foreign court has jurisdiction to pronounce a judgment *in personam* according to the Guernsey conflict of laws rules, it is immaterial to the recognition or enforcement of the foreign judgment that the court lacked competence under the law of its own country.

If the defendant appeared and pleaded to the merits, the appearance is regarded as having been voluntary, even if the defendant contested the court's jurisdiction. On the other hand, an appearance merely to contest the jurisdiction of the foreign court is not a voluntary appearance.

An appearance to release or protect a defendant's property after it has been seized by a foreign court is not a voluntary appearance. An appearance before it has been seized (in order to protect it from seizure) is a voluntary appearance.

Foreign judgments: review of judgment

14. 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 can only review the judgment in the following cases:

- Judgments obtained by fraud.
- Judgments contrary to public policy.
- Proceedings contrary to natural justice.

Foreign judgments: public policy

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

Under section 6(1)(a)(v) of the Judgments (Reciprocal Enforcement) (Guernsey) Law 1957, the registration of a judgment can be set aside and under the common law a foreign judgment can be impeached, if the enforcement of the judgment is contrary to public policy in Guernsey.

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

The principle of public policy has been applied:

- In relation to the level of interest applied to the judgment.
- Where the enforcement of a foreign revenue claim has been sought.

Domestic and foreign: other conditions for recognition and enforcement

17. What other conditions exist to enforce and recognise a judgment/refuse recognition and enforcement?

Domestic

See *Questions 7 to 15*.

Foreign

Once a foreign judgment is reciprocated or successfully sued on, it becomes enforceable as though it were an originating Guernsey judgment.

Judgments: methods of enforcement

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

See *Questions 1 and 17*.

Judgments: interim remedies and interest

Interim remedies

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

Domestic

Interim relief such as a freezing order (Mareva injunction) can, in appropriate circumstances, be obtained to support an application. Where this occurs, the claimant may need to give security for costs. The amount will depend on the:

- Means of the applicant.
- Likely chance of success.
- Nature of the dispute.
- Likely amount of the costs.

Foreign

See above, *Domestic*.

Interest

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

Domestic

The Bailiwick courts are empowered by statute to award simple interest on the sum of debt or damages, for any rate and for any period it thinks fit (*section 1, Judgments (Interest)(Bailiwick of Guernsey) Law 1985*).

Foreign

Under section 4(2)(c) of the Judgments (Reciprocal Enforcement) (Guernsey) Law 1957, the sum for which a judgment is registered will carry interest. Once registered, it is treated as a Guernsey judgment and the interest is 8% simple.

Currency

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

In relation to *in personam* claims at common law, the Guernsey courts do not generally convert the damage award into local currency. Judgments can be awarded and enforced in any currency.

Arbitral awards: legal framework

Domestic framework

22. What is the applicable domestic legislative framework for enforcement of arbitral awards?

Domestic

Section 61 of the Arbitration (Guernsey) Law 2016, (Arbitration Law) provides that an arbitral award can, with leave of the court, be enforced in the same way as a judgment or order of the court to the same effect. This law applies to arbitration agreements entered into after 12 December 2016. Otherwise the Arbitration (Guernsey) Law 1982 (old Arbitration Law) will continue to apply.

Section 26 of the old Arbitration Law is identically worded as far as enforcement of domestic arbitral awards is concerned.

Foreign

Part II of the old Arbitration Law (enforcement of certain foreign awards) continues to apply in relation to foreign awards within the meaning of that Part which are not also New York Convention awards.

International conventions/agreements

23. What international conventions and agreements on enforcement of arbitral awards is your jurisdiction a party to?

A foreign arbitration award is enforceable under the Arbitration (Guernsey) Law, 1982. The Guernsey legislature has given statutory effect to the UN Convention on the Recognition and Enforcement of Foreign Arbitral Awards