

Jersey

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1. What are the basic criteria for the courts of your jurisdiction to allow enforcement of a foreign judgment?

In Jersey, foreign (i.e., non-Jersey) judgments cannot be directly enforced.

There are two methods of enforcement of foreign judgments in Jersey: (i) pursuant to the Judgments (Reciprocal Enforcement) (Jersey) Law 1960 (as amended) (**‘Reciprocal Enforcement Law’**); or (ii) pursuant to the common law.

If the Reciprocal Enforcement Law applies then a judgment creditor must use that method.

Enforcement by way of statute - Reciprocal Enforcement Law

A foreign judgment of the courts of a reciprocating country may be enforceable in Jersey under the Reciprocal Enforcement Law by a process of registration.

What judgments can be registered?

A judgment of a reciprocating country can only be registered pursuant to the Reciprocal Enforcement Law if it satisfies the following criteria:

- a) it is a judgment of one of the following superior courts of a reciprocating country:
 - i) *England and Wales*: The Supreme Court of the United Kingdom, the House of Lords, the Court of Appeal and the High Court of Justice;¹
 - ii) *the Isle of Man*: The High Court of Justice of the Isle of Man (including the Staff of Government Division);
 - iii) *Guernsey*: Royal Court of Guernsey and the Court of Appeal of Guernsey;

¹ The Reciprocal Enforcement Law does not apply to the County Courts of England and Wales. However, a judgment given in an English County Court and subsequently transferred to the English High Court, was deemed to be registrable in Jersey under the Reciprocal Enforcement Law.

iv) *Northern Ireland*: The Supreme Court of the United Kingdom and the Court of the Judicature of Northern Ireland; and

v) *Scotland*: The Supreme Court of the United Kingdom, the Court of Session and the Sheriff Court.

- b) the judgment is final and conclusive. A judgment will be final and conclusive notwithstanding the fact an appeal is pending or that the time period for making an appeal is still open;
- c) the judgment must be for a debt or a definite sum of money, other than a sum payable in respect of taxes or similar charges, a fine or other penalty;
- d) the court of the reciprocating country must have had jurisdiction to grant the judgment. Whether a foreign court has jurisdiction is determined by reference to the laws of Jersey rather than the laws of the reciprocating country; and
- e) a judgment creditor may apply to the Royal Court of Jersey (the '**Royal Court**') at any time within six years after the date of the judgment, or, where there have been proceedings by way of appeal against the judgment, after the date of the last judgment given in those proceedings.

The Reciprocal Enforcement 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 an action *in personam*, the Reciprocal Enforcement Law deems the foreign court to have had jurisdiction, where the judgment debtor was the defendant, if they:

- a) submitted to the jurisdiction of the foreign court by voluntarily appearing in the proceedings or otherwise agreed to submit to its jurisdiction;
- b) counterclaimed in the proceedings;
- c) were resident in the jurisdiction of the foreign court at the time of the proceedings (or in the case of a company had its principal place of business there); or
- d) had an office or place of business in the jurisdiction of the foreign court and the action was in respect of a transaction effected through that office.

For the avoidance of doubt, where the judgment debtor was the plaintiff, the foreign court will be deemed to have had jurisdiction.

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

DEFAULT JUDGMENTS

Default judgments which satisfy the above criteria are registerable under the Reciprocal Enforcement Law.

What judgments cannot be registered?

In addition to foreign judgments which do not satisfy the conditions above, there are a number of foreign judgments that are not capable of being registered under the Reciprocal Enforcement Law. These include:

- a) judgments which have been wholly satisfied at the date of the application;
- b) judgments which could not be enforced by execution in the country of the original court; and
- c) *in personam* judgments which concern matrimonial matters, the administration of a deceased's estate, bankruptcy, winding up of companies, lunacy or guardianship of infants.

Under section 4(4) of the Reciprocal Enforcement Law, if the foreign judgment is partially satisfied by the original country at the date the application, it may be registered with the Royal Court. However, only the balance payable at that date may be registerable.

Power to make judgments unenforceable if no reciprocity

If it appears that the treatment in respect of recognition and enforcement accorded by the courts of any other country to judgments given in Jersey is substantially less favourable than that accorded by the courts of Jersey to judgments of the superior courts of that country, it is open to the courts of Jersey to make the foreign judgment unenforceable.

The process for registration

In order to register a judgment under the Reciprocal Enforcement Law, a judgment creditor must apply to the Royal Court seeking permission for the judgment to be registered.

An application for registration may be made on an *ex parte* basis to the Judicial Greffier, supported by an affidavit which must include a certified copy of the foreign judgment.

Notice of registration of the foreign judgment

Notice in writing of the registration of a judgment must be served on the judgment debtor:

- a) if in Jersey, by personal service (through the Viscount's Department), unless some other mode of service is ordered; or

- b) if outside Jersey, in accordance with the Service of Process Rules 2019, save that leave to serve out of the jurisdiction shall not be required.

Effect of registration

Once registered, the foreign judgment is enforceable in Jersey in the same way as a Jersey judgment and judgment interest can accrue from the date of registration.

Setting aside a registration

A judgment debtor may apply to the Royal Court to set aside the registration of the foreign judgment.

Registration shall be set aside if one or more of the following grounds apply:

- a) the judgment contravenes or does not fall within the scope of the Reciprocal Enforcement Law;
- b) the court of the reciprocating country did not have jurisdiction to order judgment against the debtor (see above);
- c) the debtor did not receive notice of the proceedings in sufficient time to prepare a defence and did not appear;
- d) the judgment was obtained by fraud;
- e) the enforcement of the judgment is contrary to public policy in Jersey; or
- f) the applicant's rights under the judgment are not vested in the person by whom the application for registration was made.

Registration may also be set aside if the Royal Court is satisfied that the matter in dispute in the original court proceedings had previously to the date of the judgment in the original court been the subject of a final and conclusive judgment by a court having jurisdiction in the matter.

Enforcement of monetary judgments

Foreign monetary judgments for a definite sum of money are enforceable. The Reciprocal Enforcement Law states that if the sum of the original judgment is not presented in the currency of Jersey (Pound Sterling), the judgment shall be registered as if it were.

Enforcement by way of common law

Where foreign judgments cannot be registered under the Reciprocal Enforcement Law, a judgment creditor seeking to enforce a foreign judgment in Jersey must rely on common law principles.

Common law enforcement requires the judgment creditor to sue on the foreign

	<p>judgment in the same manner as they would a civil debt. Ordinarily, the judgment creditor will, after the commencement of proceedings, apply for summary judgment under Rule 7/1 of the Royal Court Rules 2004 (as amended), on the foreign judgment due to there being very limited grounds for defending the proceedings and the Royal Court is generally unlikely to enquire as to the merits of the original action.</p> <p><i>Challenging a foreign judgment under common law</i></p> <p>A foreign judgment may be challenged if:</p> <ul style="list-style-type: none"> a) the foreign court did not have jurisdiction to give the judgment; b) the judgment involved fraud by the judgment creditor; c) the judgment involved fraud by the foreign court; d) the proceedings in the foreign court were contrary to natural justice; and/or e) where enforcement would be contrary to Jersey public policy. <p>It remains to be seen what the impact of <i>Invest Bank PSC v El-Husseini [2023] EWHC 2302 (Comm)</i> might be in Jersey.</p> <p>A judgment successfully registered under the Reciprocal Enforcement Law or successfully sued upon as a debt pursuant to the common law may then be enforced in Jersey.</p> <p><i>Enforcement of non-monetary judgments</i></p> <p>The Royal Court's judgment in <i>Brunei Investment Agency and Bandone v Fidelis and others [2008] JRC 152</i>, significantly extended the jurisdiction of the Royal Court's discretion to enforce non-monetary judgments. However, it was held that the Royal Court should exercise its discretion cautiously.</p>
<p>2.</p>	<p>What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, e.g. notice provisions?</p>
	<p>Recognition of a foreign judgment against the state</p> <p>In 1986, the State Immunity (Jersey) Order 1985 (the ‘1985 Order’) was registered by the Royal Court. The 1985 Order largely enacted the provisions of the English statute, the State Immunity Act 1978 (the ‘1978 Act’).</p> <p>In summary, the 1978 Act (via the 1985 Order) provides that states are immune from court action, subject to certain exceptions.</p> <p><i>Notice provisions</i></p> <p>Section 12 of the 1978 Act provides the notice provisions required to effect service on a state.</p>

	<p>Under section 12(1) of the 1978 Act, any writ or other document required to be served for instituting proceedings against a state shall be served by being sent to the Ministry of Foreign Affairs of the state and service shall be deemed to have been effected when the writ or document is received at the Ministry.</p> <p><i>Reciprocal Enforcement Law</i></p> <p>Under article 5(1) of the Reciprocal Enforcement Law (if applicable), the Royal Court is able to impose conditions on the registration of a foreign judgment, such as requiring that the judgment debtor be given notice of the registration of the judgment and making provision for security for costs.</p>
<p>3.</p>	<p>What special considerations apply where the defendant/debtor in enforcement proceedings is a state, e.g. doctrine of sovereign immunity?</p>
	<p>The law relating to sovereign immunity in Jersey</p> <p>The law of state immunity derives from international law, but the manner of its application in Jersey is determined by the 1978 Act (via the 1985 Order). The 1978 Act contains provisions with respect to state immunity and proceedings in Jersey by or against other states.</p> <p>By the 1985 Order, the provisions of the 1978 Act extend to Jersey subject to particular modifications which are specified in the schedule to the 1985 Order.</p> <p>The general approach to sovereign immunity in Jersey</p> <p>The concept of state immunity that applies in Jersey is that of restrictive immunity. This means that the immunity of the state is not absolute, but is restricted to acts of the state involving a sovereign power. Therefore, the immunity of the state is restricted to claims involving the states' governmental acts and does not extend to immunity in respect of commercial activities or over commercial assets.</p> <p>Commercial activities or transactions include:</p> <ul style="list-style-type: none"> (a) any contract for the supply of goods or services; (b) any loan or other transaction for the provision of finance and any guarantee or indemnity in respect of any such transaction or of any other financial obligation; and (c) any other transaction or activity (whether of a commercial, industrial, financial, professional or other similar character) into which a state enters or in which it engages otherwise than in the exercise of sovereign authority. <p>Therefore it is in respect of its sovereign activities that a state may reasonably expect to be immune from proceedings in a foreign court.</p>

The scope of state immunity

State immunity in Jersey covers immunity from both suit and enforcement.

State immunity covers the state itself and also extends to the states' instrumentalities e.g. any board or commission which is supported in whole or in part by funds appropriated by the state. Under section 14(1) of the 1978 Act, the term 'state' encapsulates:

- a) the sovereign or other head of that state in their public capacity;
- b) the government of that state; and
- c) any department of that government.

Therefore, 'state' does not include entities that are '*distinct from the executive organs of the government of the state and capable of suing or being sued*'. Under section 14(2) of the 1978 Act, such separate entities are only immune if the proceedings relate to acts performed in the exercise of sovereign authority, and the circumstances are such that a state would have been so immune.

Jurisdictional immunity extends to all activities unless specifically excepted in sections 2 to 11 of the 1978 Act.

Application of state immunity

Under section 1(1) of the 1978 Act, a state is immune from the jurisdiction of the courts of Jersey except as provided for (and as modified by the 1985 Order).

Under section 1(2) of the 1978 Act, a court shall give effect to the immunity conferred by this section even though the state does not appear in the proceedings in question.

Exceptions to state immunity

Under section 2 of the 1978 Act, there are various exceptions to state immunity. These include:

- a) submission to the Royal Court's jurisdiction. A submission in respect of any proceedings extends to any appeal but not to any counterclaim unless it arises out of the same legal relationship or facts as the claim;
- b) written consent to enforcement; and/or
- c) commercial transactions or activities (as noted above).

4.	What exceptions may apply where the claim results from improper actions of the defendant state, e.g. wars of aggression?
	<p>In the context of a war of aggression or a breach of international law, these are contexts which do not form the basis of an exception to state immunity from enforcement in Jersey.</p>
5.	What due process standards and exceptions may apply in proceedings for enforcement of judgment against a state?
	<p>Process is served on a state under section 12 of the 1978 Act and the Service of Process Rules 2019. Typically, proceedings will be issued before the Royal Court.</p> <p>Under section 12(1) of the 1978 Act, service shall be effected on a state by the transmission of the writ or any other document required to be served for instituting proceedings through the Foreign and Commonwealth Office to the Ministry of Foreign Affairs of the state. Service shall be deemed to have been effected when the writ or document is received at the Ministry.</p> <p>The period permitted for filing an acknowledgment of service or defence or for filing or serving an admission does not begin to run until two months after the date on which the state is served.</p>
a.	<i>What standard will the court apply in the enforcement proceedings when assessing whether the service requirements have been met in the original proceedings against a state?</i>
	<p>The service requirements under section 12 of the 1978 Act are mandatory and service cannot be effected without adhering to them. However, where there is an agreement with the state, section 12(1) of the 1978 Act shall not prevent the service of a writ or document.</p> <p>However, section 12 of the 1978 Act only applies to writs or other documents ‘<i>required to be served for instituting proceedings</i>’ and, therefore, this section does not apply to service of an arbitration claim.</p> <p>That said, in <i>Certain Underwriters at Lloyd’s London v Syrian Arab Republic</i> [2018] EWHC 385 (Comm), the English High Court adopted a more lenient approach, finding that an order dispensing service could be made (under CPR Rule 6.16(1)), in circumstances where the Syrian Foreign Ministry refused to accept a claim form.</p>
b.	<i>What exceptions may apply where conventional forms of service against a state are impossible, e.g. due to absence of diplomatic relations?</i>
	<p>The laws of Jersey do not provide for any exceptions or exclusions to the standards described in section 5(a) above.</p>

6. What assets may be subject of enforcement if the claim is against a state and what are the requirements, e.g. enforcement against assets of state owned entities?

Assets that may be subject to enforcement

Under section 13(2)(b) of the 1978 Act, *‘the property of a state shall not be subject to any process for the enforcement of a judgment or arbitration award or, in an action in rem, for its arrest, detention or sale’*. This means that as a type of asset, state property is generally excluded from enforcement.

Section 13(4) of the 1978 Act, clarifies that *‘subsection 2(b) above does not prevent the issue of any process in respect of property which is for the time being in use or intended for use for commercial purposes’*. Consequently, the assets that would typically be subject to enforcement would be assets used or intended to be used for commercial purposes. This includes movable and immovable property (with the latter being specifically held to be liable to be enforced against pursuant to section 6(1) of the 1978 Act) and choses in action, such as debts owed to a state by third parties concerning commercial transactions.

In *SerVaas Inc v Rafidain Bank [2013] 1 A.C. 595*, Lord Clarke pointed out at paragraph 17, that the language of section 13(4) of the 1978 Act which speaks of property *‘in use or intended for use’* for commercial purposes may be contrasted with that of other sections which use language such as *‘relating to’* a commercial transaction or to claims *‘in connection with’* a ship.

He continued: *‘Property will only be subject to enforcement where it can be established that it is currently ‘in use or intended for use’ for a commercial transaction. It is not sufficient that the property ‘relates to’ or is ‘connected with’ a commercial transaction’*.

In terms of funds within a state's bank account, the Supreme Court has determined that the source of the funds is not conclusive. Whether such funds are in use or intended for use for commercial purposes is considered at the time of the attempted execution.

In *Orascom Telecom v Chad [2008] EWHC 1841 (Comm)*, the English High Court considered that proceeds of oil shares held in an account, which were held for the purpose of making repayments to the World Bank, did not attract immunity.

However, in *Alcom v Republic of Colombia [1984] AC 580*, the House of Lords held that enforcement action by execution could not be taken against a bank account that was used to make payments concerning both commercial transactions and more general purposes ('mixed' embassy account) by Colombia's diplomatic mission in the United Kingdom.

In *LR Avionics Technologies Ltd v The Federal Republic of Nigeria and another [2016] EWHC 1761 (Comm)*, premises used for the performance of consular activities (such as passport and visa applications) were found to be immune from

enforcement by execution, even though the premises in question had been leased to a privately owned company that carried out the relevant consular activities on the state's behalf (such as a liaison office).

In the Jersey case of *Tepe Insaat Sanayii AS v Boru Hatlari Ile Paterol Tasima (also known as Botaş Petroleum Pipeline Corporation Limited)* [2016] JCA 199D, the Royal Court held that only adjudicative immunity was engaged as the state must have sufficient legal, equitable, or contractual right or interest in property, not just possession or control to claim state immunity.

This was further considered in *Boru Hatlari Ile Petrol Taşıma AŞ and others (also known as Botaş Petroleum Pipeline Corporation) v Tepe Insaat Sanayii AS (Jersey)* [2018] UKPC 31, where The Judicial Committee of the Privy Council (the '**Privy Council**') found in respect of the commercial purpose that the right approach was to first consider whether the property was owned by the state or a separate entity. To skip this consideration and assess entitlement to enforce based on whether the assets were used for commercial purposes would undermine the purpose of the statutory provision for separate entities to exist. In other words, it would effectively eliminate any difference between state property and a separate entity's property.

In respect of the state's control over the property, the Privy Council concluded that the state must have some proprietary interest for immunity to be conferred or it would be difficult for a creditor to enforce against the state property where it was used for a commercial purpose.

Exceptions

Under section 13(5) of the 1978 Act, a certificate that is given on behalf of a state² which confirms that the property is not '*in use or intended for use by or on behalf of the state for commercial purposes*' will be '*accepted as sufficient evidence of that fact unless the contrary is proved*'. Therefore, the burden of proof shifts to the foreign claimant to prove that the property is in use, or is intended for a commercial purpose in order for that asset to be enforced against.

² The head of a state's diplomatic mission in the United Kingdom or the person currently performing their functions shall be deemed to have authority to give this certificate on behalf of the state.