

Guernsey

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

In Guernsey, foreign judgments cannot be directly enforced simply by way of execution.

There are two methods of enforcement of foreign judgments in Guernsey: (1) pursuant to statute, by the reliance on the Judgments (Reciprocal Enforcement) (Guernsey) Law, 1957 (as amended) (Reciprocal Enforcement Law); or (2) pursuant to the common law.

If the Reciprocal Enforcement Law applies then a judgment creditor must use that method rather than pursuant to common law.

Enforcement by way of statute – Reciprocal Enforcement Law

A foreign judgment of the courts of a reciprocating country (as defined below, and in the various Ordinances specifying reciprocating jurisdictions) may be enforceable in Guernsey 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:

1. It is a judgment of one of the following superior courts of a reciprocating country:
 - *England and Wales* – The Supreme Court; the Senior Courts of England and Wales, excluding the Crown Court
 - *The 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
 - *Jersey* – The Royal Court of Jersey; the Court of Appeal of Jersey

- *The Kingdom of the Netherlands* – The Hoge Raad der Nederlanden; the Gerechtshoven and the Arrondissementsrecht-banken
- *The Netherlands Antilles* – 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 Reciprocal Enforcement Law.

The Guernsey Royal Court confirmed that 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 High Court was deemed to be registrable in Guernsey under the Reciprocal Enforcement Law.

2. 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.
3. 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, or a fine or other penalty.
4. 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 Guernsey laws rather than the laws of the reciprocating country.
5. The judgment must not be more than six years old.

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 actions *in personam*, the Reciprocal Enforcement Law deems the foreign court to have had jurisdiction, where the judgment debtor was the defendant, if they: (1) submitted to the jurisdiction of the foreign court by voluntarily appearing in the proceedings or agreed to submit; (2) counterclaimed in the proceedings; (3) 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 (4) had an office or place of business there and the action was in respect of a transaction effected through that office. Where the judgment debtor was the plaintiff, the foreign court will be deemed to have had jurisdiction.

For actions relating to immovable property, or in 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.

What judgments cannot be registered?

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

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

The process for registration

Under the Judgments (Reciprocal Enforcement) (Guernsey) Rules, 1972, as amended by the Judgments (Reciprocal Enforcement) (Amendment) (Guernsey) Rules, 1975 (the Rules), in order to register a judgment in Guernsey, the foreign judgment creditor must apply to the Royal Court of Guernsey seeking permission for the judgment to be registered. This application for registration may be made on an *ex parte* basis to the Court.

Under Rule 2(1) of the Rules, the application for registration should be supported by an affidavit of the facts which must also include a certified copy of the foreign judgment.

At the Greffe of the Guernsey Royal Court, His Majesty's Greffier will then keep a register of the judgments ordered to be registered under the Law.

Notice of registration of the foreign judgment

Once the application for registration of the foreign judgment has been made, a notice in writing of the registration of the foreign judgment in Guernsey must then be served on the judgment debtor.

Rule 6(1) of the Rules contains the provisions regarding service of the notice of registration of the judgement on the judgment creditor by the judgment debtor:

- a) If within the jurisdiction (within the Bailiwick of Guernsey), service may be effected either: (i) personally on the judgment debtor by His Majesty's Sergeant; or (ii) by substituted service with leave of the Court.
- b) If outside of the jurisdiction, service must be effected in accordance with the provisions of Rule 7 of these Rules, as described below.

Rule 6(2) stipulates that the notice of registration must state:

- a) Full particulars of the judgment registered and the order for registration;
- b) The name and address of the judgment creditor or of their Advocate on whom, and at which, any summons issued by the judgment debtor may be served;
- c) The right of the judgment debtor to apply to have the registration set aside; and

- d) The period within which an application to set aside the registration may be made.

If service of the notice of registration is required to be served outside of the jurisdiction (to a foreign country that is not within the Bailiwick of Guernsey), then Rule 7(1) of the Rules applies subject to the provisions of Rule 7(2). Under this Rule, service outside of the jurisdiction is effected either: (1) personally on the judgment debtor by any person without leave of the Court; or (2) by substituted service with leave of the Court.

Rule 7(2) of the Rules states that subject to the provisions of any relevant Convention between His Majesty and the Government of a foreign country, the provisions of which extend to the Bailiwick, the following procedure shall apply to service where the person to be served is not a British Subject and is not within any part of His Majesty's dominions.

Under this Rule, the procedure is as follows. A request for service abroad must be made to the Bailiff in accordance with Form I, which is set out in the Schedule to these Rules. On the granting of the request, the document to be served shall be sealed with the seal of the Guernsey Royal Court and then transmitted by the Bailiff to His Excellency the Lieutenant-Governor, together with a copy thereof translated at the instance and cost of the person making the request into an official language of the country in which service is to be effected. If such language is not the language in which the document is expressed, and with a request, in accordance with Form 2 set out in the Schedule to these Rules for the further transmission of the same, through His Majesty's Principal Secretary of State for Foreign and Commonwealth Affairs, to the government of the foreign country in which it is proposed to serve the document.

In terms of the proof of service of the notice of registration outside of the jurisdiction, Rule 7(2) of the Rules states that:

- a) An official certificate, or declaration on oath or otherwise, transmitted through the diplomatic channel by the government of the foreign country to the Bailiff, if it certifies or declares the document to have been personally served, or to have been duly served in accordance with the law of the foreign country, or words to that effect, shall be deemed sufficient proof of such service;
- b) Where an official certificate or declaration transmitted to the Bailiff in the aforesaid manner, certifies or declares that endeavours to serve a document have been unsuccessful, or where it otherwise appears that personal service probably cannot be effected, the Court may, upon the *ex parte* application of the judgment creditor, order that the judgment creditor may, through the Bailiff, in the aforesaid manner, bespeak a request for substituted service of such document; the said order and request shall be respectively in accordance with Forms 3 and 4 set out in the Schedule to these Rules.

Under Rule 7A(1) of the Rules, where it is desired to effect service of notice of the registration of a judgment by substituted service, an application, *ex parte*, shall be made to the Court for leave to do so specifying: (1) the kind of substituted service desired; and (2) the reasons for which the application is made.

Under Rule 7A(2) of the Rules, where it is desired to effect substituted service by means of advertisement, there shall be submitted to the Court, at the time of the application, a draft of the advertisement which it is proposed to issue and a list of the newspapers in which it is proposed to insert the advertisement; and the advertisement shall be issued in the form, and in the newspapers, approved by the Court.

The effect of registration

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

Setting aside a registration

A judgment debtor may apply to the Royal Court of Guernsey 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 if one of the following six grounds apply:

- the judgment contravenes or does not come within the scope of the Reciprocal Enforcement 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 sufficient 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.

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 Guernsey must rely on common law principles.

Enforcement by way of the common law requires the judgment creditor to sue on the foreign judgment in the same manner as they would a civil debt. Ordinarily, the judgment creditor will apply for summary judgment on the foreign judgment due to there only being limited grounds for defending the proceedings.

Challenging a foreign judgment under common law

A foreign judgment may be challenged in the Royal Court of Guernsey 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.

Service out of the jurisdiction when enforcing under the common law

When suing on a foreign judgment under the common law, the judgment creditor must obtain permission of the Royal Court of Guernsey to serve the foreign proceedings outside of the jurisdiction. The test for service out of the jurisdiction is:

1. that there is a serious issue to be tried on the facts (that is a substantial question of fact or law or both), such an issue being one as to which there is a real (as opposed to a fanciful) prospect of success;
2. that the cause is properly justiciable (the Court being able, should it think fit, to draw assistance as to this from the approach taken by the courts in neighbouring jurisdictions in relation to the available ‘gateways’ prescribed by their rules of court for service out of the jurisdiction);
3. that Guernsey is in the circumstances of the case clearly and distinctly the appropriate forum; and
4. that in the circumstances the Court should exercise its discretion (given by Rule 8(1) of the RCCR) to allow service out.

Enforcement

A judgment successfully registered under the Reciprocal Enforcement Law or successfully sued upon as a debt may then be enforced by His Majesty’s Sheriff who has powers to arrest and sell personal property. Where necessary, the judgment creditor will proceed against either a debtor’s personal property using a Guernsey insolvency procedure called ‘désastre’, or a debtor’s realty using a Guernsey procedure called ‘saisie’. Once saisie is commenced the judgment creditor loses the right to pursue the debtor’s personal property.

2. What other considerations may apply to enforcement of a foreign judgment against a state in your jurisdiction, (eg, notice provisions)?

Notice provisions for foreign judgments against the state

In 1980, the State Immunity (Guernsey) Order 1980 (the 1980 Order) was registered by the Royal Court of Guernsey. The 1980 Order largely enacted the provisions of the English statute, the State Immunity Act 1978 (the 1978 Act). Section 12 of the 1978 Act dictates the notice provisions required to effect service on the state.

Notably under section 12(1) of the 1978 Act, any writ or other document required to be served on the state for instituting proceedings against a state shall be served by being transmitted through 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.

Further, under section 5(1) of the Reciprocal Enforcement Law, the Royal Court of Guernsey is able to impose conditions on the registration of a foreign judgment, including requiring that notice of the registration of the judgment is given to the judgment debtor and making provision for security for costs.

Once the judgment is registered in Guernsey, service of the notice of registration of the judgment, if against the government of Guernsey, must then be effected by complying with the notice provisions in Rule 6 of the Rules, as discussed above.

If the judgment is against a foreign state service of the notice of registration of the judgment must then be effected by complying with the notice provisions in Rule 7 of the Rules and section 12 of the 1980 Order.

Recognition of a foreign judgment against the state

In terms of the recognition of a foreign judgment against the state, section 19(1) of the 1978 Act states that a Guernsey court need not recognise a judgment given against the state by a court in another state if:

- a) To do so would be manifestly contrary to public policy or if any party to the proceedings in which the judgment was given had no adequate opportunity to present his case; or
- b) If the judgment was given without provisions corresponding to those of section 12 above having been complied with and the appropriate Government has not entered an appearance or applied to have the judgment set aside.

Further, section 19(2) states that the court need not recognise the foreign judgment:

- a) If proceedings between the same parties, based on the same facts and having the same purpose:
 - i. are pending before a court in the United Kingdom and were the first to be instituted; or
 - ii. are pending before a court in another State party to the European Convention on State Immunity, were the first to be instituted and may result in a judgment to which that section will apply; or
- b) If the result of the judgment is inconsistent with the result of another judgment given in proceedings between the same parties, and:
 - i. the other judgment is by a court in the United Kingdom and either those proceedings were the first to be instituted or the judgment of that court was given before the first-mentioned judgment became final within the meaning of subsection (1)(b) of section 18; or
 - ii. the other judgment is by a court in another State party to the Convention and that section has already become applicable to it.

Additionally, under section 19(3) of the 1978 Act, where the judgment was given against the appropriate government in proceedings in respect of which the appropriate government was not entitled to immunity by virtue of a provision corresponding to section 6(2), a court need not give recognition in respect of the judgment if the court that gave the judgment:

- a) Would not have had jurisdiction in the matter if it had applied rules of jurisdiction corresponding to those applicable to such matters in the United Kingdom; or

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| | <p>b) Applied a law other than that indicated by the United Kingdom rules of private international law and would have reached a different conclusion if it had applied the law so indicated.</p> |
| <p>3.</p> | <p>What special considerations apply where the defendant/debtor in enforcement proceedings is a state, (eg, doctrine of sovereign immunity)?</p> |
| | <p>The law relating to sovereign immunity in Guernsey</p> <p>The law relating to state immunity derives from international law, but the manner of its application in Guernsey is determined by the 1978 Act. The 1978 Act contains provisions with respect to state immunity and proceedings in Guernsey by or against other states.</p> <p>By the 1980 Order, the provisions of the 1978 Act extend to the Bailiwick subject to particular exceptions, adaptations and modifications which are specified in the Schedule to this Order.</p> <p>The general approach to sovereign immunity in Guernsey</p> <p>The concept of state immunity that applies in Guernsey is that of restrictive immunity. This means that the immunity of the state is not absolute, but is restricted to acts of state involving a sovereign power. Therefore, the immunity of the state is restricted to claims involving the state’s governmental acts and does not extend to immunity in respect of commercial activities or over commercial assets. It is, therefore, only in respect of its sovereign activities that the state may reasonably expect to be immune from proceedings in a foreign court.</p> <p>State immunity for Guernsey covers immunity from both suit and enforcement.</p> <p>Section 7 of the Schedule contained within the 1980 Order, contains an addition to the 1978 Act’s provisions to restrictions and extensions of immunities and privileges, which applies in Guernsey. This section states that ‘at the end of section 15 there shall be inserted the following subsection: (5A) Any Order in Council made under this section shall extend to the Bailiwick if registered in the Royal Court of Guernsey and from the date of such registration’.</p> <p>This means that His Majesty may, by Order in Council, provide for the restriction or extension of immunities and privileges as he deems appropriate. However, an additional step is required in Guernsey, whereby in order for this restriction/extension to be applied, the Order in Council needs to be registered in the Royal Court of Guernsey (by the process of registration as discussed above).</p> <p>The scope of state immunity</p> <p>State immunity covers the state itself and also extends to the state’s instrumentalities for example, any board, commission etc, which is supported in whole or in part by funds appropriated by the state. So, under section 14(1) of the 1978 Act, the term ‘state’</p> |

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| | <p>encapsulates: the sovereign or other head of that state in his or her public capacity; the government of that state; and any department of that government.</p> <p>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.</p> <p>In the Jersey case of <i>Boru Hatlari Ile Petrol Taşıma AŞ and others v Tepe Insaat Sanayii AS [2018] UKPC 31</i>, the Privy Council held that the protection that state immunity affords should not be extended to the assets of state owned entities. These entities, which are often trading entities, are separate from the state that owns them. In the same way that the entities are not liable for the debts of the parent state, the parent state should not be able to use state immunity to protect the entities from paying their debts. No similar case regarding state immunity has been brought before the Royal Court of Guernsey. However, this Jersey case was appealed to the Privy Council, which is the same Court of final appeal for Guernsey and so this case provides an important protection for creditors of Guernsey state owned enterprises.</p> <p>Jurisdictional immunity extends to all activities unless specifically excepted in sections 2 to 11 of the 1978 Act.</p> <p>Application of state immunity</p> <p>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. Therefore, state immunity may be relied on by the courts <i>ex officio</i>.</p> |
| <p>4.</p> | <p>What exceptions may apply where the claim results from improper actions of the defendant state, (eg, wars of aggression)?</p> |
| | <p>Exceptions to state immunity</p> <p>Under section 2 of the 1978 Act, there are various exceptions to state immunity. These include:</p> <ul style="list-style-type: none"> a) submission to the court’s jurisdiction; b) submission to arbitration; c) written consent to enforcement; and d) commercial activities (as noted above). <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 sovereign immunity from enforcement in Guernsey.</p> |
| <p>5.</p> | <p>What due process standards and exceptions may apply in proceedings for enforcement of judgment against a state?</p> |

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| | <p>Process is served on a state under section 12 of the 1978 Act and Rule 8 of the Royal Court Civil Rules 2007. Typically, proceedings will be issued before the Royal Court of Guernsey.</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> |
| 5a. | <p>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?</p> |
| | <p>In general, absent to an agreement to the contrary (s 12(6) of the 1978 Act), the service requirements under section 12 of the 1978 Act are mandatory and service cannot be effected without adhering to them.</p> <p>However, section 12 of the 1978 Act only applies to writs or other documents ‘required to be served for instituting proceedings’ 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 [2018] EWHC 385 (Comm)</i>, 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> |
| 5b. | <p>What exceptions may apply where conventional forms of service against a state are impossible, (eg, due to absence of diplomatic relations)?</p> |
| | <p>Guernsey law does not provide for any exceptions to the standards described in the response to Question 5a, above.</p> |
| 5c. | <p>What standard will the court apply in the enforcement proceedings when assessing whether the right to representation requirements have been met in the original proceedings against a state?</p> |
| | <p>Under section 19(1)(b) of the 1978 Act, the court need not recognise the foreign original judgment, if the judgment was given without provisions corresponding to those of section 12 as noted above (regarding service of process and judgments) having been complied with, and if the United Kingdom (or Guernsey) has not entered an appearance or applied to have the judgment set aside.</p> |

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| | <p>Therefore, if service was not effected on the state in the original proceedings against the state, and the state was therefore unable to enter an appearance, then under the 1978 Act the court need not recognise the judgment.</p> |
| <p>5d.</p> | <p>What exceptions may apply where the defendant state cannot find legal representation, or chooses not to be represented?</p> |
| | <p>Guernsey law does not provide for any exceptions or exclusions to the standards described in the response to Question 5c, above.</p> <p>As with Guernsey citizens, the state has the right to represent itself, as a litigant in person, if legal representation cannot be found.</p> <p>Guernsey advocates have exclusive rights of audience in the Royal Court of Guernsey and Court of Appeal, albeit a litigant in person can conduct litigation on their own behalf subject to certain procedural steps.</p> |
| <p>6.</p> | <p>What assets may be subject of enforcement if the claim is against a state and what are the requirements, (eg, enforcement against assets of state-owned entities)?</p> |
| | <p>Assets that may be subject to enforcement</p> <p>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.</p> <p>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’. So, 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 and choses in action (such as debts owed to a state by third parties concerning commercial transactions).</p> <p>In <i>SerVaas Inc v Rafidain Bank</i> [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 uses 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.’</p> <p>In terms of funds within a state’s bank account, the UK 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 <i>Orascom Telecom v Chad</i> [2008] EWHC 1841 (Comm), the English High Court</p> |

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 *Boru Hatlari Ile Petrol Taşıma AŞ and others (also known as Botaş Petroleum Pipeline Corporation) v Tepe Insaat Sanayii AS (Jersey)* [2018] UKPC 31 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 step 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, the head of a state's diplomatic mission in the United Kingdom may issue a certificate to the effect that any property is not 'in use or intended for use by or on behalf of the state for commercial purposes', which 'shall be accepted as sufficient evidence of that fact unless the contrary is proved'. So, with this exception, the burden of proof would then be on the foreign claimant to prove that the property is in use, or intended for use for a commercial purpose in order for that asset to be enforced against.