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Collas Crill explains... Enforcing foreign judgments in Jersey

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This guide gives a brief overview to enforcing foreign judgments in Jersey.

Words in **bold** are defined at the end of this guide.

We refer to the person or entity seeking to enforce a foreign judgment as the **Creditor** and the person or entity being enforced against as the **Debtor**.

Overview

Jersey has a statutory **Reciprocal Enforcement Process** for the registration and enforcement of foreign judgments from the **Superior Courts** of England and Wales, Scotland, Northern Ireland, Isle of Man and Guernsey. The Reciprocal Enforcement Process is set out the **1960 Law**, the **1973 Act** and the **1961 Rules**, and largely mirrors provisions of the UK's Judgments (Reciprocal Enforcement) Act 1933.

If the Reciprocal Enforcement Process applies, it is exclusive, and the Creditor cannot instead choose to enforce the judgment by way of **Customary Law** (see immediately below).

Where the Reciprocal Enforcement Process does not apply, in order to enforce a foreign judgment, the Creditor will have to issue fresh proceedings in Jersey, but on the basis that the foreign judgment is conclusive on the merits of the case. This is enforcement by **Customary Law**.

Interim relief

Under both procedures, a Creditor can seek a freezing injunction in order to prevent assets being dissipated or removed from Jersey where there is a risk of this happening prior to enforcement. It is also possible to seek, in certain circumstances, an order for the disclosure of assets, either in support of a freezing order or as a separate order, and which can extend to a disclosure of worldwide assets.

Restrictions

There are restrictions under both procedures as to the types of judgments that can be enforced. The following types of foreign judgments will not be enforced:

- payment of taxes, fines or other similar penalties;

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- multiple damages (being a judgment for an amount arrived at by doubling, trebling or otherwise multiplying a sum assessed as compensation for loss or damage sustained by the Creditor);
- if the Debtor is entitled to immunity from jurisdiction or enforcement in Jersey;
- certain judgments in relation to Jersey trusts and foundations unless Jersey law was applied by the foreign court in reaching the judgment;
- as against the property of a limited partnership, unless it was granted against a person acting in their capacity as a general partner of the limited partnership;
- as against Jersey cell companies, there are restrictions on enforcement, with enforcement only being allowed against the assets attributable to that particular cell;
- as against a bank which is the subject of a particular winding up order (which allows it to be wound up with minimum disruption to critical banking services);
- where the Debtor is a company subject to insolvency proceedings in Jersey, no action may be taken against the company except by leave of the **Court**. The Creditor can still however file a claim in the liquidated estate of the Debtor in respect of the foreign judgment.

Interest

Interest can be claimed on the foreign judgment up to the date of registration. The Court has discretion to allow post-judgment interest which may be due from the date of registration in accordance with the law of the foreign court.

Currency

Jersey's currency is pound sterling. If the foreign judgment is expressed in a currency other than pound sterling, it must be registered in a sum equivalent to pound sterling on the basis of the exchange rate prevailing at the date of judgment of the originating court. An **Affidavit** stating the sterling equivalent calculated accordingly must accompany an application for registration.

Enforcement under the Reciprocal Enforcement Process

As stated above, the Reciprocal Enforcement Process will only be available if the foreign judgment originated from one of the **Superior Courts** of England and Wales, Scotland, Northern Ireland, the Isle of Man, or Guernsey, which is defined in the **1973 Act**, and detailed at the end of this guide.

Judgments of **Superior Courts** which are only made following appeal from a lower court (which is not one of the listed **Superior Courts**) do not fall within the Reciprocal Enforcement Process.

However, judgments which have been transferred from a lower court to a **Superior Court** for the purposes of enforcement may fall within the **Reciprocal Enforcement Process**.

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For the foreign judgment to fall within the **Reciprocal Enforcement Process**, it must also satisfy the requirements contained in the **1960 Law**, which require the judgment to be:

- final and conclusive;
- for a sum of money, which has not been wholly paid (but which is not in respect of taxes, fines or other similar penalties); and
- capable of being enforced by execution in the country where the judgment was given.

Non-monetary judgments cannot be enforced under the Reciprocal Enforcement Process.

A judgment is considered to be final and conclusive even if an appeal is pending against it.

If some part of the foreign judgment does not satisfy the requirements of the **Reciprocal Enforcement Process** but there are other parts of the judgment that do satisfy the requirements and those parts can be separated, an application can be made to register those other parts.

Procedure

The process of registering and enforcing a foreign judgment under the **Reciprocal Enforcement Process** is relatively quick and easy. The application to register, once submitted, will usually be dealt with by the **Court** within a week or two (depending on court business) without the need for a hearing. Once registered, the Creditor can enforce the judgment once the time limit for setting it aside has expired.

Application to register

The Creditor must first make an application to the **Court** to register the foreign judgment.

The application to register the judgment may be made without giving notice to the Debtor (known as ex parte).The application must always be supported by an **Affidavit** explaining the basis upon which the judgment is entitled to be enforced. The **Affidavit** must exhibit a certified copy of the judgment which must be authenticated by the originating court. Any judgment not in French or English will need to be accompanied by an authenticated English translation.

Service

Once the foreign judgment has been registered, the Creditor must serve notice of the registration on the Debtor. If the Debtor is within Jersey, service of the notice must be made by way of personal service, unless the **Court** orders otherwise. Personal service in Jersey is carried out by the Viscount, who is the executive officer of the **Court**. If the Debtor is outside of Jersey, the Creditor will have to follow the applicable rules for service outside Jersey, except that leave of the Court to serve out of the jurisdiction will not be required.

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Notice of registration

The form of notice to be served on the Debtor is set by the **1961 Rules**, and must state:

- full particulars of the foreign judgment and the order for registration;
- name and address of the Creditor or their Jersey legal representative at which any **Summons** made by the Debtor may be served;
- the Debtor's right to apply to set aside the registered judgment (on one of the grounds specified in the **1960 Law**), and the deadline for making such an application.

The deadline for the Debtor to apply to set aside the registered judgment is set by the **Court** and contained in the order. For Debtors in Jersey it may be as short as a week. Debtors in the UK will typically be given around three weeks, and Debtors resident further afield may be given more time as required.

Enforcement

Once the deadline for setting aside the registered judgment has passed, the judgment can then be enforced.

A Creditor wishing to enforce the judgment will need to produce to the Viscount an **Affidavit** of service, describing how the notice of registration was served, together with any order made by the Court in relation to the registered judgment.

Challenging registration

The Debtor can seek to have the registered judgment set aside by applying by way of a **Summons** to the **Court** before the deadline fixed by the Court expires. The Court will set aside the registration if the Debtor can demonstrate that:

- the Reciprocal Enforcement Process does not apply;
- the foreign court had no jurisdiction to grant the foreign judgment (see below);
- the Debtor was not given sufficient notice of the original foreign proceedings to enable them to be defended and they did not appear (notwithstanding that the notice may have met the requirements of the law of the country where the foreign judgment was given);
- the judgment was obtained by fraud;
- enforcement of the judgment would be contrary to public policy in Jersey;
- the person applying for registration is not the person with the right to enforce the judgment; or
- prior to the judgment being given, another court gave a final and conclusive judgment on the same subject matter.

Jurisdiction

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It is open to the **Court** to consider and determine whether the foreign court had jurisdiction to issue the foreign judgment. In doing so, the Court will consider whether the foreign court had **Personal Jurisdiction** or **In Rem Jurisdiction**. In all other cases, the foreign court will be deemed to have had jurisdiction if its jurisdiction was one which is recognised by **Customary Law**.

Personal Jurisdiction

If the foreign judgment related to the personal rights and interest of the parties to the judgment, the foreign court will be deemed by the **Court** to have had jurisdiction if:

- the Debtor (as defendant in the foreign proceedings) submitted to the foreign court's jurisdiction by voluntarily appearing in the proceedings (other than appearing only to protect property or obtain the release of property seized, or to contest jurisdiction);
- the Debtor was the **Plaintiff** in the foreign court's proceedings or counterclaimed in them;
- the Debtor (as defendant in the foreign proceedings) had, before the commencement of the foreign proceedings, agreed to submit to the jurisdiction of the foreign court (or the courts of that country);
- the Debtor (as defendant in the foreign proceedings) was, at the time of the foreign proceedings, resident in the country of the foreign court or, in the case of a corporate body, had its principal place of business in that country; or
- the Debtor (as defendant in the foreign proceedings) had an office or place of business in the country of the foreign judgment and the foreign proceedings were in respect of a transaction effected through that office or place.

In Rem Jurisdiction

If the foreign judgment was in respect of property, whether immovable or moveable, the foreign court will be deemed to have had jurisdiction if the property subject of the dispute was, at the time of the foreign proceedings, situated in the country of that court.

The court of the foreign judgment will be deemed not to have had jurisdiction if:

- the subject matter of the foreign judgment is in respect of immovable property which is not in the country of the foreign court;
- if the foreign proceedings were contrary to an agreement as to jurisdiction of the dispute, i.e. there was an agreement which provided that settlement of any dispute was to be dealt with other than by proceedings in the foreign court; or
- if the Debtor (as defendant in the foreign proceedings) was a person entitled to immunity from the jurisdiction of the foreign court (or other courts in that country) in accordance with private international law and did not submit to the jurisdiction of the foreign court.

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Costs

In terms of the **1960 Law**, reasonable costs can be claimed in respect of registering the judgment. This includes the "costs of and incidental to" the registration as well as the costs of obtaining a certified copy of the judgment form the original court.

Appeals

If the Debtor seeks to set aside the registration on the basis that an appeal of the foreign judgment is pending, or that they are entitled to appeal and intend to do so, then the **Court** may either set aside the registration, or adjourn the Debtor's application to set aside the registration to give the Debtor a reasonable amount of time to conclude their appeal.

The Debtor can appeal the **Court's** decision to recognise or enforce the foreign judgment on the same grounds as above for challenging the registration.

Time limits

Creditors have six years from the date of the foreign judgment (or the conclusion of the last appeal of it) to register it, so long as it is still enforceable in the country in which it was issued. Once registered, the judgment is then treated as a Jersey judgment, and Creditors have 10 years from the date of registration to enforce it in Jersey.

Enforcement under Customary Law

If the **Reciprocal Enforcement Process** does not apply, enforcement of a foreign judgment can often be effected through the **Customary Law** process.

Process

The Creditor will have to begin fresh court proceedings in Jersey by way of an **Order of Justice**. In doing so, it is not necessary to set out the full detail of the original claim, as the foreign judgment is conclusive on the underlying merits, and the **Court** will not reconsider the merits of the foreign judgment to be enforced. A copy of the judgment to be enforced should be filed with the **Order of Justice**.

Service

Once filed with the Court, the **Order of Justice** must then be served on the Debtor, along with an accompanying summons, which notifies the Debtor that they must attend court for an administrative hearing on a fixed date. Where the Debtor is not resident in Jersey, leave of the Court to serve out of the jurisdiction is required, in accordance with the governing rules. This will involve an ex parte application to the **Court**.

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Disposal of the proceedings

If the Debtor does not appear at the administrative hearing, **Default Judgment** may be granted, so the process can be concluded fairly quickly (generally within a couple of weeks from filing the **Order of Justice**). Even if the Debtor does appear, the Creditor can still apply for **Summary Judgment** on the basis that the Debtor has no real prospect of successfully defending the claim and that there is no compelling reason to have matters disposed of at a trial. This can also be achieved relatively quickly, depending on the Court's availability to hear the application for Summary Judgment.

If the Debtor defends the proceedings and Summary Judgment is not granted, the matter will proceed to trial, which can take several months.

Defending enforcement

A Debtor can challenge a foreign judgment on the grounds that:

- the foreign court had no jurisdiction;
- the judgment was obtained by fraud;
- enforcement of the judgment would be contrary to public policy or the principles of natural justice; or
- the judgment is not final and conclusive.

A judgment can still be final and conclusive even if an appeal is pending or available to the Debtor.

If the judgment is for a **Liquidated Sum** and not subject to challenge on any of the above grounds, the Court must allow it to be enforced. If the foreign judgment is a non-monetary judgment (of a **Personal Jurisdiction**) the **Court** has discretion whether to permit enforcement, but its discretion is to be exercised 'cautiously'. Foreign judgments can also be used to defend a claim by the Debtor, or as evidence of an issue within a claim.

Appeals

The Court may pause any enforcement pending an appeal of the foreign judgment to allow a reasonable amount of time for determination of the appeal.

A Debtor can appeal the **Court's** judgment to enforce a foreign judgment on ordinary principles and on the same grounds as above for defending enforcement.

Jurisdiction

As with the **Reciprocal Enforcement Process**, under Customary Law, it is open to the Court to consider and determine whether the foreign court had jurisdiction to issue the foreign judgment. In doing so, the **Court** will follow principles of English common law.

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Personal Jurisdiction

The foreign court will be deemed by the **Court** to have had jurisdiction if:

- at the time the proceedings were instituted, the Debtor was present in the foreign country;
- the Debtor was the **Plaintiff** or counterclaimed in the proceedings in the foreign court;
- the Debtor (as defendant in the foreign proceedings) submitted to the jurisdiction of the court by voluntarily appearing;
- the Debtor (as defendant in the foreign proceedings) had, before the commencement of the foreign proceedings, agreed to submit to the jurisdiction of the foreign court (or the courts of that country).

In Rem Jurisdiction

If the foreign judgment was in respect of property, whether immovable or moveable, the foreign court will be deemed to have had jurisdiction if the property subject of the dispute was, at the time of the foreign proceedings, situated in the country of that court.

Costs

Under Customary Law, a successful party will generally be awarded their costs of and incidental to the court proceedings. However, these costs generally do not cover the entirety of the actual costs incurred.

Time limits

There is no time limit for enforcing the foreign judgment through **Customary Law**, but enforcement will not be available if the judgment can no longer be enforced in the jurisdiction in which it was obtained or if it has been wholly satisfied.

Glossary

1960 Law means the Judgments (Reciprocal Enforcement) (Jersey) Law 1960.

1961 Rules means the Judgments (Reciprocal Enforcement) Rules 1961.

1973 Act means the Judgments (Reciprocal Enforcement) (Jersey) Act 1973.

Affidavit means a written statement, sworn or affirmed to be true as an oath.

Court means the Royal Court of Jersey

Creditor means the person or entity trying to enforce a foreign judgment.

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Customary Law means the law of Jersey that applies in the absence of legislation (comparable to the common law of England and Wales), and in this article specifically refers to the process of enforcing a foreign judgment when the statutory Reciprocal Enforcement Process does not apply.

Debtor means the person or entity against whom a foreign judgment is being enforced.

Default Judgment means judgment obtained when a party does not appear in response to a summons, or certain other circumstances.

In Rem Jurisdiction means disputes about the ownership of a specific piece of property, whether it be moveable or immoveable, and seeks to resolve the ownership issue against all possible claimants.

Liquidated Sum means relief that can be calculated as a specific amount of money.

Order of Justice means the originating court process used in **Court** to commence an action.

Personal Jurisdiction means jurisdiction established over a person or other legal entity.

Plaintiff means the person who initiates court proceedings against another.

Reciprocal Enforcement Process means the statutory process for recognising and enforcing judgments given by the **Superior Courts** pursuant to the 1960 Law.

Summary Judgment means judgment given on the basis of **Affidavit** evidence if the Plaintiff can prove that the defendant has no defence to the claim or part of it.

Summons (in this guide) means an application to the court to seek relief in existing proceedings.

Superior Courts means the courts as defined by the 1973 Act, as follows:

- England and Wales – UK Supreme Court, the House of Lords, Court of Appeal, High Court of Justice
- Scotland – UK Supreme Court, Court of Session, Sheriff Court
- Northern Ireland – UK Supreme Court, Court of Judicature of Northern Ireland
- Isle of Man – His Majesty's High Court of Justice of the Isle of Man (including the Staff of Government Division)
- Guernsey – Guernsey Royal Court, Guernsey Court of Appeal.

About Collas Crill

We are a leading offshore law firm practising the law of Jersey, Guernsey, the British Virgin Islands, and the Cayman Islands. We pride ourselves on being easy to do business with.

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This guide gives a general overview of the enforcement of foreign judgments. It is not a substitute for proper legal advice.

If you get in touch with one of the members of our Insolvency and Corporate Disputes department we would be happy to help.

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