

How can a Foreign Judgment be enforced in Guernsey?

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As a consequence of Guernsey's legal system and separate jurisdiction, judgments obtained elsewhere are not enforceable in Guernsey as of right.

In Guernsey, there are two ways in which to enforce foreign judgments. The first is enforcement pursuant to The Judgments (Reciprocal Enforcement) (Guernsey) Law, 1957 ("the 1957 Law") and secondly under the common law. In order to make an election as to which route to follow, it is first necessary to consider the 1957 Law as it will take precedence if it applies to the judgment which you are seeking to enforce.

Closer inspection of the 1957 Law reveals that it currently only applies to judgments from a limited group of countries. Presently, the reciprocating countries and courts are as outlined in the table below:

Countries	Court
England and Wales	House of Lords; Court of Appeal; High Court of Justice
Scotland	Court of Session; Sheriff Court
Northern Ireland	Supreme Court of Judicature
Isle of Man	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 Court
The Netherlands	The Hoge Raad der Nederlanden; the Gerechtshoven and

	Arrondissement-srechtbanken
Netherlands Antilles	The Hoge Raad der Nederladen; the Hof van Justitie der Nederlandse Antillen and the Gerecht in Derste Aanleg
Republic of Italy	The Corte d'Apello and the Tribunale
Surinam	The Hof Van Justitie van Suriname; the Kantongerecht in het Eerste Kanton and the Kantongerecht in het Derde Kanton
Jersey	Court of Appeal; Royal Court

If the judgment has been obtained from any of these countries and their superior courts it is then necessary to determine what sort of judgment has been granted, as not all judgments are enforceable under the 1957 Law, notwithstanding that it is a judgment obtained from a reciprocating country.

There are a number of criteria by which a judgment under the 1957 Law may be registered. It may be registered if it is the judgment of a Superior Court of a reciprocating country or if the judgment is final and conclusive and it matters not if an appeal is pending or possible. It may also be registered if a sum of money is payable under the judgment, not being a sum payable in respect of taxes, fines or other penalties and finally if the Courts of the country of the foreign court are deemed to have had jurisdiction to grant the judgment.

One of the questions frequently asked is when will a foreign court be deemed to have had jurisdiction in the case of a judgment given in an action which is against a specific person, technically this is known as a judgment *in personam*. A Court is deemed to have had jurisdiction in circumstances such that the debtor took part in the proceedings of the foreign court of his own free will, but not so as to protect his property, or the debtor lost his case, or the debtor as the defendant had agreed to come before that foreign court or the debtor was resident within the country of the

foreign court, or if a company had its principle place of business in the country of the foreign court, or the debtor had an office or place of business in the country of the foreign court and the proceedings concerned a transaction which was effected through that office or place.

It is worth noting that a judgment *in personam* for the purposes of the 1957 Law is deemed not to include any matrimonial cause or any proceedings connected with matrimonial matters, administration of the estates of the deceased persons, insolvency, winding up of companies, lunacy or guardianship of infants.

Another question to consider is when will a foreign court be deemed to have had jurisdiction in the case of a judgment *in rem*? *In rem* describes a right that should be respected by other people generally, such as ownership of property.

A foreign judgment *in rem* relating to movables will be recognised and enforced in Guernsey if the movables were situated in the foreign country at the time of the proceedings. A foreign judgment *in rem* relating to immovables will be recognised in Guernsey if the immovables are situated in the foreign country.

Once you have established that your foreign judgment can be enforced pursuant to the 1957 Law, a judgment creditor may apply to the Royal Court within six years of the date of the judgment for it to be registered in the Royal Court. The judgment may not be registered if it has either been satisfied wholly or could not be enforced in the jurisdiction of the original court. Once registered, the judgment has the same force and effect as a judgment given by the Royal Court.

The debtor has 14 days from the date of the service of registration to apply to have the registration set aside. This period may be extended in certain circumstances. The registration may be set aside by the Royal Court on six grounds, that is, if the judgment does not come within the 1957 Law or contravenes it; the foreign court

does not have jurisdiction to order judgment against the debtor; notice of the registration upon the debtor was not served correctly so that the debtor did not receive notice of the proceedings in enough time for him to prepare a defence; the judgment was obtained by fraud; the enforcement of the judgment is contrary to public policy in Guernsey or the applicant has no *locus standi* to apply to register the judgment.

If the 1957 Law does not apply, then the enforcement of a foreign judgment would take place under the common law. This means that the judgment creditor would sue on the foreign judgment itself and apply for summary judgment if the case is defended.

If a foreign judgment is sued upon it is impeachable only on a given number of grounds.

Those grounds would be if the foreign court did not have jurisdiction to give the judgment or if a fraud was perpetrated on the part of the party in whose favour the judgement was given, or if a fraud was perpetrated on the part of the Court pronouncing the judgment. Other grounds would be where the proceedings in which the judgment was obtained were contrary to natural justice or where enforcement would be contrary to public policy, for example, if the judgment of the foreign court related to a contract which was intended to commit a crime or to defraud the income tax authority.

Enforcing a foreign judgment is not always a straightforward exercise but provided the correct procedures are followed, clients can take advantage of Guernsey's robust legal system to ensure that judgments are successfully enforced.

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