Recognition and Enforcement of Foreign Judgments and Arbitral awards

Last reviewed: December 2016

Enforcement

Enforcement of foreign money judgments is relatively straightforward and will follow one of two procedures, depending upon the country where the original judgment was obtained.

There is a simplified registration process applicable to judgments of the High Court of England and Wales, the Court of Session in Scotland and the Court of Northern Ireland, New South Wales, the Bahamas, Barbados, Bermuda, Belize, Guyana, Grenada, Jamaica, Nigeria, St Lucia, St Vincent and Trinidad & Tobago (the Reciprocal Enforcement of Judgments Act (Cap 65) 1922). Once registered, such judgments may be enforced by the BVI Court without re-examining the underlying claim. From the date of registration, the judgment has the same force and effect as if it had originally been obtained in the BVI and proceedings may be taken on it as such. The reasonable costs of registration are recoverable as if they were sums payable under the judgment.

Registration can be made by application without notice. The requirements for registration are as follows:

• the judgment or order must have been given by a Court in civil proceedings, must be final and conclusive and must be for a fixed judgment sum;
• the application must be made within 12 months of the judgment being handed down (or such longer period as the Court may allow);
• the judgment debtor must not have appealed the judgment, have the right to appeal or have expressed an intention to appeal;
• it must be 'just and convenient' that the judgment should be enforced in the territory;
• the original Court must have had jurisdiction;
• the judgment debtor must have been properly served and appeared or submitted to the jurisdiction of that court or carried on business or been ordinarily resident within the jurisdiction of the original Court;
• the judgment must not have been obtained by fraud or in breach of natural justice; and
• the judgment must not be for penalties, fine or taxes or similar fiscal obligations.

In the case of judgments from Courts which are not covered by the Reciprocal Enforcement of Judgments Act 1922, the judgment creditor must issue fresh proceedings based upon an implied breach of contract to pay the judgment debt. The procedure is relatively straightforward, but must be made on notice and requires that the judgment debtor is subject to the jurisdiction of the BVI Court. For these purposes, the existence of assets within the jurisdiction is insufficient to establish jurisdiction if the judgment debtor is not resident within the jurisdiction. The Court will expect to see that the conditions set out above in relation to registration are met.

Non money judgments are not typically enforceable, although it may be possible to commence fresh proceedings in the BVI relying upon the original cause of action and the foreign judgment. In those circumstances, it may be possible to assert issue estoppel on properly litigated, and determined, facts.
Contacts

To find out more, please get in touch with your usual Mourant contact, or alternatively, a full list of contacts specialising in BVI litigation can be found here.