RELIANCE ON UNRECOGNISED FOREIGN JUDGMENTS IN **BVI INSOLVENCY PROCEEDINGS**

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This article considers the recent decision of the English Court of Appeal in *Servis-Terminal LLC v Drelle* [2025] EWCA Civ (***Servis-Terminal***) and its implications on enforcing foreign money judgments or awards in the British Virgin Islands (**BVI**).

The English Court of Appeal's approach

In *Servis-Terminal,* the claimant obtained a Russian judgment against a former director of a company for breach of statutory duties under Russian law. That judgment had not been recognised in England when the claimant served a statutory demand based upon the judgment debt and, later, a bankruptcy petition.

At first instance, the petition succeeded, but the Court of Appeal overturned it. Underscoring that decision was the common law principle encapsulated in *Dicey* Rule 45, that:

'A judgment of a court of a foreign country … has no direct operation in England but may…be enforceable by claim or counterclaim at common law or under statute…'

The Court held that an unrecognised foreign judgment has no 'direct operation' and does not constitute a 'debt' under English insolvency law. As such, it cannot be used as a 'sword' to ground bankruptcy proceedings. A foreign judgment is not 'payable' unless it is first recognised in the English court or there is some other statutory basis permitting enforcement.

The position in the British Virgin Islands

Under BVI Insolvency legislation, a company is deemed insolvent if it is served with a statutory demand and fails to pay the debt due or set the demand aside within 21 days.

In practice, the statutory demand route is commonly used by creditors because it provides a straightforward evidential pathway to establish insolvency and seek the appointment of a liquidator, without needing to prove cash-flow or balance-sheet insolvency directly. In effect, it places the burden back on the defendant company to show that the debt is genuinely disputed, or that the application should not be granted for some other reason.

The leading BVI authority on the use of unrecognised foreign judgments and awards as a basis for insolvency proceedings is the Privy Council's decision in *Vendort Traders Inc v Evrostroy Grupp LLC* [2016] UKPC 15 (***Vendort***).

In *Vendort*, the debt arose from an arbitral award made pursuant to contractual obligations under a share purchase agreement (**SPA**).

Vendort applied to the High Court to set aside the statutory demand, arguing that there was a genuine and substantial dispute as to the existence of any debt. It contended that, since the award had not been recognised or enforced in the BVI, it could not give rise to a debt capable of supporting a statutory demand. The High Court dismissed the application.

The Court of Appeal found that there was no statutory provision or common law principle in the BVI that prohibited an award holder from serving a statutory demand or a winding up petition based on an unenforced foreign arbitration award or judgment. The Privy Council upheld that reasoning, finding that an arbitral award gives rise to an enforceable debt as soon as it is issued. In this case, the source of the debt was the contract between the parties (the SPA) – the award merely recognised the enforceability of that debt.

Practitioners must take a fact-specific approach, considering whether the obligation stems from contract or statute, and whether the judgment or award satisfies the statutory definition of a 'debt.'

Reconciling the two approaches

Whist these two English and BVI decisions may appear divergent, they can be understood as addressing different types of liabilities. In *Vendort*, the obligation arose under a contract; the arbitral award confirmed a debt already existing under that contract. In *Servis-Terminal*, the Russian judgment created a liability pursuant to statute.

In the BVI, English authority is persuasive rather than binding. The courts may well consider the reasoning in *Servis-Terminal,* if faced with an analogous situation involving a foreign judgment arising from statutory or regulatory obligations, as opposed to a contractual claim. The courts in the BVI have not yet ruled directly on this point. Nonetheless, the current position remains that a creditor may proceed with a statutory demand or liquidation application based on an unrecognised foreign award or judgment, provided the debt is otherwise due and payable.

Conclusions

These decisions highlight the importance of assessing the nature and source of a foreign judgment or award before relying on it in insolvency proceedings. In the BVI, a contractual debt confirmed by an arbitral award or foreign judgment may support a statutory demand even without formal recognition, provided that the award or judgment confirms a pre-existing debt (rather than itself giving rise to a liability). By contrast, a liability arising purely under foreign statute may not suffice—particularly if BVI courts begin to adopt the persuasive reasoning in *Servis-Terminal.*

Practitioners must take a fact-specific approach, considering whether the obligation stems from contract or statute, and whether the judgment or award satisfies the statutory definition of a 'debt.'

While the BVI remains a creditor-friendly jurisdiction, offering flexibility in using foreign decisions to demonstrate insolvency, recognition or enforcement is still required where execution is sought.

As cross-border insolvency disputes continue to develop, the distinction between evidencing a debt and enforcing one remains critical. The BVI's approach may evolve, but for now, it provides a pragmatic route for creditors to pursue unpaid foreign debts through insolvency mechanisms.