

Recognition and enforcement of foreign judgments and arbitral awards in the British Virgin Islands

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Introduction

This guide examines the routes to the recognition and enforcement of foreign judgments and arbitral awards in the British Virgin Islands (the **BVI**).

Recognition and enforcement of foreign judgments

Foreign money judgments

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.

Enforcement under the Reciprocal Enforcement of Judgments Act 1922

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 under the Reciprocal Enforcement of Judgments Act 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 BVI 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;
- the judgment must not be in respect of a cause of action which for reasons of public policy or for some other similar reason could not have been entertained by the court; and
- the judgment must not be for penalties, fine or taxes or similar fiscal obligations.

Enforcement under common law

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. The court will expect to see that the conditions set out above in relation to registration are met.

Foreign non-money judgments

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.

Enforcement of foreign arbitral awards

There is a distinction between awards under the 1958 United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the **New York Convention**) (a **Convention Award**) and non-New York Convention awards (a **Non-Convention Award**), as further explained below.

The New York Convention was extended by the UK Government to the BVI in 2014.

The enforcement of arbitral awards is governed by the Arbitration Act 2013, which came into force on 1 October 2014, as amended by the Amendment Act 2015 (which came into force on 1 November 2016) and the Arbitration Amendment Act 2020 (which came into force on 13 August 2021) (the **Arbitration Act**). The Arbitration Act is modelled on the UNCITRAL Model Law on International Commercial Arbitration (1985) with some exceptions.

Convention Award

A party can seek to enforce a Convention Award in the BVI by applying for leave of the court pursuant to the statutory regime under Part X, Division 2 of the Arbitration Act or by commencing an action on the award at common law. Once leave is granted, the award is enforceable in the same manner as a judgment or order of the BVI court.

Leave to enforce an arbitral award

An application for leave to enforce an arbitral award may be made under Rule 43.12 of the Eastern Caribbean Supreme Court Civil Procedure Rules (the **CPR**) by way of a Fixed Date Claim Form. The application must be supported by affidavit evidence and the applicant must provide:

- the duly authenticated original award or a duly certified copy of it;
- the original arbitration agreement or a duly certified copy of the arbitration agreement;
- if the award or agreement is in a language other than English, a translation of the award or agreement (as the case may be) certified by a translator;
- Specify the date and place of the proceedings;
- Specify the amount of interest, if any, which under the law of the country of the award has become due under the award up to the time of the application;
- State to the best of the information or belief of the applicant –
 - (i) that the claimant is entitled to enforce the award;
 - (ii) at the time of the application the award has not been satisfied; and
 - (iii) the amount of the award which remains unsatisfied; and
- give an address for service on the person against whom the applicant seeks to enforce the award.

A copy of the original award or original agreement will be considered verified, certified or duly authenticated if it is notarised by a notary public or any other person having authority under the laws of the country in which the award was made to notarise or certify documents.

The Fixed Date Claim Form must be served on the award debtor.¹ At the first hearing of the claim the court will generally make directions for a further hearing if the application is contested on one of the grounds below. If an application is not defended, or the court considers that there is no arguable defence, the court may deal with the application summarily.

Grounds for refusing enforcement

For Convention Awards, the court may refuse enforcement if the party against whom it is invoked provides that:

- a party to the arbitration agreement was under some incapacity under the law applicable to it;
- the arbitration agreement was not valid;
- the party was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings; or was otherwise unable to present a case;
- the award deals with a difference not contemplated by, or not falling within, the terms of the submission to arbitration; or contains decisions on matters beyond the scope of submission to arbitration;
- the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties; or if no agreement, the law of the country where the arbitration took place; or
- the award has not yet become binding on the parties; or has been set aside or suspended by a competent authority of the country in which, or under the law of which, it was made.

The burden of proof is therefore on the party against whom enforcement is invoked to prove that one of the circumstances applies.

The court may also refuse enforcement of Convention Awards on its own volition if:

- the award is in respect of a matter that is not capable of settlement by arbitration under the laws of the BVI; or
- it would be contrary to public policy to enforce the award.

These grounds for refusing the enforcement of Convention Awards are exhaustive.

Non-Convention Award

Non-Convention Awards can only be enforced by an application to enforce pursuant to the statutory regime under Part X, Division 1 of the Arbitration Act.

The requirements and procedure applicable to Non-Convention Awards are the same as those specified for Convention Awards above. However, for Non-Convention Awards, in addition to the grounds for refusing enforcement as set out above, the court has a broader discretion to refuse enforcement on its own volition for any other reason it considers it just to do so.

Adjournment of enforcement proceedings

For both Convention Awards and Non-Convention Awards, if an application for the setting aside or suspension of an award has been made to a competent authority, the court may:

- adjourn the enforcement proceedings, if it thinks fit; and
- on the application of the party seeking to enforce the award, order the person against whom the enforcement is invoked to give security.

The decision or order of the court in this regard is not subject to appeal.

¹ If the other party is located outside of the jurisdiction, it will be necessary to make an application for permission to serve out of the jurisdiction.

Conclusion

The BVI is a user-friendly jurisdiction for the enforcement of foreign judgments and arbitral awards, adopting a pro-enforcement approach.² The legal framework provides straightforward routes to enforcement, which should be considered before commencing any foreign court proceedings and arbitration.

Contacts

A full list of contacts specialising in BVI litigation and dispute resolution can be found [here](#).

² In the Privy Council's decision of *Cukurova Holding AS v Sonera Holding BV* [2014] UKPC 15, the court confirmed that the general approach to enforcement of an arbitral award should be pro-enforcement. In the decision in *Ge Wu v Xun Liu* (BVIHC (COM) 2021/0103, 3 March 2022), the court confirmed that it is not difficult to enforce foreign judgments in the BVI, and despite the lack of treaty between the BVI and the PRC, enforcement of a PRC judgment in the BVI at common law is not a difficult procedure.