

COLLAS DAY | DISPUTE RESOLUTION

Enforcement in Guernsey of Foreign Judgments and Arbitration Awards

July 2008

You act for a Claimant in litigation or arbitration proceedings. You have obtained judgment against the Defendant/Respondent. You have ascertained that the Defendant has assets residing in Guernsey. Once you have “frozen” those assets, how do you recover them by enforcing your judgment/award?

What means of enforcement are available

Money judgments are enforced by HM Sheriff (the equivalent to a Bailiff in the UK). The Sheriff has extremely effective methods of seizing assets including insolvency proceedings (known in Guernsey as ‘desastre’ proceedings) which can be applied to personal property. Another procedure known as ‘saisie’ is used by creditors against a debtor’s real property. The saisie procedure involves an application to evict the judgment debtor from the property and then the obtaining of an order for sale. A peculiar quirk of Guernsey law is that the judgment creditor is entitled to retain all of the proceeds of sale of the property and need not account to the judgment debtor for any positive balance over and above the debt owed.

Interest on sums found due to the Claimant

Where interest is governed by a contractual provision, it is this which will determine the sum payable. In the absence of such provision, a successful party to litigation must rely upon the Judgments (Interest) (Bailiwick of Guernsey) Law 1985 which gives power to the Court to apply interest at such rate as the Court thinks fit for the whole or any part of the period between the date when the cause of action arose and the date of the judgment. Only simple interest may be awarded, not compound.

Foreign judgments

There is provision for the reciprocal enforcement of judgments from the UK and a number of other countries (i.e. including Israel, Netherlands and Italy) by way of registration. For other jurisdictions, the general principles of enforcement by suing upon a foreign judgment apply. Whether a foreign judgment not covered by the reciprocal enforcement law will be recognised by the Royal Court of Guernsey depends on whether it was that of a Court of competent jurisdiction. Even if it does qualify on that ground, it may still be impeached on various limited grounds.

Arbitration awards

An award on a domestic arbitration agreement may, with leave of the Royal Court, be enforced in the same way as a judgment or order of the Royal Court to the same effect. The Royal Court will specify the manner of enforcement.

A foreign arbitration award is enforceable in Guernsey either by action in the Royal Court of Guernsey (e.g. summary judgment in the case of a liquidated sum) or in the same manner as above for a domestic award, provided that it meets certain requirements set out in the 1982 Arbitration law and is not contrary to public policy or Guernsey law.

For further information or professional advice, please contact:

Christian Hay
Head of Dispute Resolution
t: +44 (0)1481 734275
e: christian.hay@collasday.com



► **collas day** PO Box 140, Manor Place,
St Peter Port, Guernsey GY1 4EW

► t: +44 (0)1481 723191 f: +44 (0)1481 711880
e: inbox@collasday.com ► w: collasday.com