

# Snapshot: enforcement of foreign arbitral awards in the Cayman Islands

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Foreign arbitral awards may be enforced relatively quickly and easily in the Cayman Islands and the Cayman Islands Courts are willing to assist with the recovery of judgment debts. This Snapshot provides an overview of the recognition process and the steps that are then available for enforcement.

## Recognition and enforcement of foreign arbitral awards

The Foreign Arbitral Awards Enforcement Act (1997 Revision) (the **FAAEA**) gives domestic effect to the New York Convention in the Cayman Islands. However, following the enactment of the Arbitration Act, 2012 in July 2012, the jurisdiction for the recognition and enforcement of foreign arbitral awards has been significantly extended so that arbitral awards from **any** foreign state may be enforced in accordance with the provisions of the FAAEA.

An application seeking leave to enforce the arbitral award is made by ex-parte originating summons and must be supported by originals (or certified copies) of the arbitration agreement and award (together with English translations, if the award or agreement is in a foreign language). As with all ex-parte applications, the award creditor will be under a duty of full and frank disclosure, which will include details of the claim, relevant facts as to enforcement attempts and any grounds upon which the award may be subject to challenge.

Once an order granting leave to enforce the foreign arbitral award is made, the order must be served on the respondent, and may be served out of the jurisdiction without leave of the Court. The respondent then has 14 days (or if the order is to be served out of the jurisdiction, such period as the Court may fix in the order) to apply to set aside the order or challenge enforcement.

The Court can only refuse the enforcement of foreign arbitral awards at the ex parte stage, and subsequently to set aside that order on extremely limited grounds. This includes a party challenging enforcement on the basis of a violation of its right to due process, and allows the

enforcing state to refuse enforcement where the award violates its public policy.

If there has been an application to set aside or suspend the award in the foreign jurisdiction, the Grand Court **may** adjourn the enforcement proceedings, and **may** also order the award debtor to provide security in the interim, although it is not required to do so.

In a Cayman Islands Court of Appeal decision (*VRG Linhas Aereas S.A. v Matlin Patterson Global Opportunities Partners (Cayman) II L.P.* (CICA No: 12 of 2019) (11 August 2020), in which Ogier successfully acted for the award creditor) the Court of Appeal, overturning the first instance decision of the Grand Court, held that the award debtors and respondents to the appeal were estopped from challenging enforcement of the award on the basis of challenges that had already been raised and dismissed before the Brazilian courts.

## Enforcement mechanisms

Once an award has been recognised by the Grand Court, it can be enforced in the same manner as a judgment or order of the Court. Upon leave being granted, judgment will be entered in the terms of the award.

Once leave to enforce has been obtained and the 14 day period (or if the order is to be served out of the jurisdiction, such period as the Court may fix in the order) for the respondent to bring a set aside application has expired (or any such application has been brought, but has failed), the judgment creditor will then be able to take steps to enforce the award in the Cayman Islands, and all of the common enforcement mechanisms will be available to it, including:

- **Garnishee proceedings:** an order by which debts owed to the judgment debtor can be claimed in satisfaction of the judgment debt (this enforcement method is most commonly used to obtain money from the debtor's bank account).
- **Charging order:** an order in respect of certain types of property belonging to the judgment debtor, including interests held beneficially in land or other securities. The charging order effectively makes the judgment creditor a secured creditor so he can enforce the judgment by obtaining an order for sale of the charged property. The debt can then be satisfied out of the sale proceeds. See our [Snapshot on Charging Orders](#).
- **Writ of sequestration:** an order for the seizure of the judgment debtor's assets to the value and in satisfaction of the judgment debt.
- **Appointment of receivers by way of equitable execution:** receivers are appointed over specific property belonging to the judgment debtor. Once appointed, the receiver will stand in the place of the debtor to gather in and realise the specific assets.

An alternative option, if applicable, is to present a petition to wind up a corporate judgment debtor based on the unpaid foreign judgment debt. Upon the winding up, official liquidators will

gather in and realise the company's assets, take steps to avoid any transactions or "clawback" any assets which should be in the estate and pursue any viable claims on behalf of the company. Once the assets are fully realised, the liquidators will pay out the recoveries in the order of priority. The drawbacks of this route are that the judgment creditor will get paid pari passu alongside other creditors (behind the expenses of the winding up, secured creditors, and preferential debts but before shareholders) and it may take some time from presentation of the petition to recoveries being paid out. This option may, however, be a powerful tool where the judgment creditor has little or no information about assets, as official liquidators have extensive powers to investigate, gather in and realise assets.

For further information or assistance with the enforcement of arbitral awards, please reach out to your usual Ogier contact or one of the authors of this Snapshot.

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