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Enforcement of Judgments

Cayman Islands: Law & Practice
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Cayman Islands: Trends & Developments
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CAYMAN ISLANDS

Law and Practice

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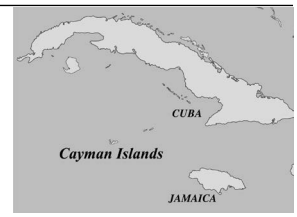

Contents

1. Identifying Assets in the Jurisdiction

1.1 Options to Identify Another Party's Asset Position

In Cayman Islands litigation, there is no general obligation upon a party to disclose their asset position, and publicly available information is limited.

There are central ownership registers for land, ships, aircraft and motor vehicles, but not for other types of moveable or immovable property. Information contained in company share registers, and in the newly introduced beneficial ownership register, is not publicly available.

However, the Cayman Islands courts will, in appropriate cases, make asset disclosure orders in support of freezing injunctions. Likewise, there is a well-established and flexible jurisdiction to grant Norwich Pharmacal and Bankers Trust relief in order to obtain information from an innocent party who has become "mixed up" in wrongdoing. The respondents to such applications in the Cayman Islands are typically banks and corporate services providers.

Once a judgment has been obtained, it is possible to examine the judgment debtor as to their assets, as discussed in **2.4 Post-judgment Procedures for Determining Defendants' Assets**.

2. Domestic Judgments

2.1 Types of Domestic Judgments

A wide range of judgments and orders are available in the Cayman Islands, reflecting the diverse range of international and domestic cases before the courts.

Judgments may be obtained by default (if, for example, a defendant fails to respond to a summons), summarily (that is, without a trial) or following a contested trial.

The available juridical remedies broadly correspond to those available in England and Wales, and include:

- legal remedies, such as an award of compensatory monetary damages;
- equitable remedies such as
  - (a) specific performance,
  - (b) injunctive relief (including freezing and proprietary injunctions),
  - (c) account of profits,
  - (d) constructive trust,
  - (e) restitution,
  - (f) rescission, and
  - (g) rectification;
- declaratory relief, whereby the court determines the rights, duties or obligations of one or more parties to a dispute without ordering damages or requiring further action.

To place this in context, the litigation landscape includes major substantive claims pursued by writ action in the specialist Financial Services Division of the Grand Court and the Cayman Islands Court of Appeal. For example, in recent years the Cayman Islands Courts have heard an approximately USD2 billion claim brought by a Madoff feeder fund against its custodian/administrator (the Primeo litigation) and an approximately USD9 billion fraud claim involving a series of Cayman Islands companies connected to Saudi Arabia (the Saad litigation).

The Financial Services Division also hears all insolvency proceedings in respect of Cayman Islands companies and exempted limited partnerships, which are typically investment vehicles for hedge fund and private equity structures. The primary available relief is a winding up order placing a company into official liquidation and appointing liquidators (although, if the grounds for a just and equitable winding up are established, the court may in its discretion grant alternative remedies). If the company is wound up, the company's liquidation will be supervised by the court, which will (for example) determine applications brought by the liquidators for sanction to exercise certain powers, such as their power of sale of the company's assets.

The Cayman Islands also has a well-developed provisional liquidation regime, which provides a means for a distressed company to seek protection from creditor claims while court-appointed provisional liquidators promote (or supervise the directors in promoting) a compromise or arrangement with creditors.

Another notable stream of Cayman Islands litigation concerns the statutory merger regime, pursuant to Section 238 of the Companies Law. In summary, this regime permits a dissenting shareholder to seek "fair value" for its shares rather than receive the price otherwise payable under the merger agreement. Such litigation is heavily contested, involving expert evidence as to the value of the shares in question, and it will result in a judgment according to the court's findings about the fair value of those shares.

The courts also have a jurisdiction to grant a variety of free-standing interlocutory relief in certain cases, such as freezing orders in aid of foreign proceedings and anti-suit injunctions to restrain foreign proceedings brought vexatiously or in breach of contract.

Finally, the courts will determine the costs of the proceedings, generally on the basis that the loser shall pay the winner's costs. Costs are taxed (assessed), if not agreed, following the conclusion of the proceedings.

2.2 Enforcement of Domestic Judgments

A Cayman Islands judgment may be enforced within the jurisdiction by various means having regard to the nature of the judgment and relief. Domestic judgments are enforceable in the Cayman Islands within six years of their delivery.

A judgment for the payment of money may be enforced by:

- a writ of fieri facias (a writ of execution leading to an order directing the court bailiff to seize assets in order to satisfy the judgment debt);
- garnishee proceedings (where the court directs a third party that owes money to the judgment debtor to pay the judgment creditor instead);
- a charging order over land or other assets;
- an attachment of earnings order (redirecting a portion of the judgment debtor's wages to the judgment creditor);
- a writ of sequestration (a general seizure of property);
- the appointment of a receiver; and/or
- committal for contempt.

Failure to satisfy a money judgment also provides grounds for the judgment creditor to bring insolvency proceedings against the judgment debtor.

A judgment for the possession of land or the delivery of goods may be enforced by a writ of possession or delivery of goods, an order for committal and/or a writ of sequestration.

A judgment requiring a person to perform or refrain from performing any act may ultimately be enforced by a writ of sequestration, including against the property of any director or other officer of a corporate judgment debtor. Committal for contempt is also possible, including against any such officer. The court also has the power to make a further order requiring the act to be done within another specified period of time or by another person at the expense of the disobedient party.

Procedure

The required procedure, stipulated in the Grand Court Rules (GCR), will depend upon the chosen method of execution, as summarised below.

General – writ of execution

The procedure for issuing a writ of execution (defined as a writ of fieri facias, a writ of possession, a writ of delivery, a writ of sequestration or a writ in aid of any other such writ) is given in GCR Order 46. Save in certain circumstances, a writ of execution may be issued without the leave of the court. However, where an application for leave to issue a writ of execution is required, it may be made ex parte unless the court directs it to be made by summons (and save for an application for leave to issue a writ of sequestration, which application must be made by motion to a judge, and served personally upon the person against whose property is the subject of the writ).

Any such application must be supported by an affidavit that identifies the judgment and provides various other information. The judge hearing the application may grant or refuse leave or, if necessary, may first order that any issue or question be tried. Where the application is for leave to issue a writ of sequestration, the judge may sit in private in any case in which, if the application were for an order for committal, he or she would be entitled to do so (ie, certain matters involving children, mental health, secrecy or national security, etc) though it shall otherwise be heard in open court.

As a formality, before a writ is issued a praecipe for its issue (ie, a document signed by the person entitled to execution or, if represented, his or her attorney) must be filed.

Once issued, a writ of execution is valid for 12 months, which period may be extended by the court from time to time, if an application for extension is made before the writ expires.

Any party at whose instance a writ of execution has been issued may serve a notice on the bailiff to whom the writ was directed requiring him or her, within the time specified in the notice, to indorse on the writ a statement of the manner in which he or she has executed it, and to send that party a copy of the statement. If the bailiff fails to do so, the judgment creditor may seek an order requiring him or her to comply with the notice.

Garnishee proceedings

A garnishee is a person who is indebted to the judgment debtor, and who is therefore a person against whom execution may be sought provided the judgment is not for the payment of money into court.

The procedure for garnishee proceedings is given in GCR Order 49. In summary, an application must be made ex parte supported by an affidavit stating the name and last known address of the judgment debtor, identifying the judgment and stating the amount remaining unpaid, and stating that to the best of the deponent's information or belief (giving sources of that information or grounds for the belief), the garnishee (naming him or her) is within the jurisdiction and is indebted to the judgment debtor.

An order made pursuant to GCR Order 49, rule 1 shall in the first instance be an order to show cause, specifying the time and place for further consideration of the matter, etc. Unless the court otherwise directs, such an order must be served on the garnishee personally at least 14 days before the hearing date, and on the judgment debtor at least seven days after the order has been served on the garnishee and at least seven days before the hearing date. Such an order shall "bind in the hands of the garnishee as from the service of the order on him [or her] any debt specified in the order so much thereof as may be so specified".

If the garnishee does not attend the hearing, or does not dispute the debt claimed to be due from him or her to the judgment debtor, the court may make the garnishee order absolute. Any such order may then be enforced in the same manner as any other order for the payment of money.

If the garnishee disputes liability to pay the debt claimed to be due from him or her to the judgment debtor, the court may summarily determine that question, or order that it be tried. Likewise, the court may determine or try any question as to whether the garnishee's debt is payable to a person other than the judgment debtor.

As to costs of the garnishee proceedings, the judgment creditor shall ordinarily be entitled to retain such sums out of the money recovered by him or her under the order and in priority to the judgment debt.

Charging orders, stop orders, etc

The procedure governing charging and stop orders is given in GCR Order 50. In summary, an application by a judgment creditor for a charging order in respect of a judgment debtor's beneficial interest in any property shall be made by an ex parte originating motion to show cause, specifying the time and place for further consideration of the matter and imposing the charge in any event until that time. Once again, a supporting affidavit is required to contain certain specified information.

If the order is granted it must be served, together with the supporting affidavit, on the judgment debtor. Where the order relates to securities (other than securities held in court) it must also be served upon the corporate entity concerned (and, in the case of securities issued by or on behalf of the Cayman Islands government, it must be served upon the Financial Secretary and the stock transfer agent, if any). Where the order relates to a fund in court, a copy shall be served on the Accountant General at the Court Funds Office. Where the order concerns an interest under a trust (not being a registered mutual fund), the court may direct that it be served upon the trustees. Such service (and any additional service directed by the court) must be effected at least seven days before the hearing date.

Upon further consideration of the matter, the court shall either make the order, with or without modifications, or discharge it.

If a charging order is made over an interest in land, it shall be registered in the encumbrances section of the relevant land register. Once any such order is made absolute, the judgment creditor may exercise his power of sale to sell the property by public auction in accordance with Section 75 of the Registered Land Law without applying to the court for an order for sale and without giving any notice in accordance with Section 72 of the Registered Land Law.

There are also specific procedural rules with respect to stop orders, the purpose of which is to prevent transfers in securities.

Attachment of earnings

Applications for an attachment of earnings order are made under GCR Order 50A. Such applications tend to be more straightforward than certain other methods of enforcement. In summary, the application shall be supported by an affidavit identifying the judgment or order in respect of which the attachment of earnings order is sought, verifying the amount due and stating whether a writ of execution has been issued. The application must be served on the debtor giving him or her eight days to file a statement of means.

On receipt of the debtor's reply, the judge may make an attachment of earnings order. The judge may also make a consolidated attachment order where the judgment debtor owes multiple judgment debts.

Equitable execution – the appointment of a receiver

GCR Order 51, rule 1 provides that where an application is made for the appointment of a receiver by way of equitable execution, the court in determining whether it is just and equitable to do so shall have regard to the amount claimed by the judgment creditor, to the likely amount to be obtained by the receiver and to the probable costs of his or her appointment. The court may direct an inquiry into any of these matters or any other matter before making the appointment.

GCR Order 51, rule 3 provides that any such application shall be made in accordance with GCR Order 30, rule 1 and that rules 2 to 6 of that Order shall apply as they would in relation to a receiver appointed for any other purpose. In summary, GCR Order 30, rule 1 provides that an application for the appointment of a receiver may be made by summons or motion, and it may be made in conjunction with an application for an injunction.

If any such application for an injunction is made ex parte, the court may grant the relief sought, pending a return date hearing.

GCR Order 30, rules 2 to 6 provide, in summary, that a receiver may be required to give security, that they shall be allowed such proper remuneration as may be authorised by the court, that service of the order or judgment appointing the receiver must be made on the receiver and all other parties, that the receiver shall submit accounts to the court, and that the court may fix the amounts and frequency of payments into court to be made by the receiver.

Sequestration and committal for contempt

Since enforcement via sequestration and/or committal for contempt is very rare, the detailed procedures are beyond the scope of the current article.

2.3 Costs and Time Taken to Enforce Domestic Judgments

The costs and time taken to enforce a domestic judgment will depend upon factors such as the complexity of the case, the nature of the assets which are sought to be enforced against, and the degree of resistance from the judgment debtor (as to which, see **2.6 Unenforceable Domestic Judgments**).

A simple enforcement action in respect of a money judgment against a natural person might be completed within a matter of weeks at minimal expense, typically via a charging order and/or an attachment of earnings or garnishee order.

However, the enforcement of a high-value judgment in a complex commercial case may be time-consuming and expensive. For instance, any application for the appointment of a receiver may be strongly opposed, resulting in detailed legal arguments and one or more hearings. Assets may need to be frozen to avoid them being dissipated before enforcement is complete. Such enforcement actions may only be worthwhile where the amounts involved are large and there are reasonable prospects of making recoveries. A prudent litigant will have considered enforcement at an early stage and will have an enforcement strategy to ensure any judgment in its favour will be enforceable.

Although the COVID-19 pandemic has had some impact upon the Cayman Islands judicial administration, the courts have generally continued to operate without substantial delays.

2.4 Post-judgment Procedures for Determining Defendants' Assets

Where the judgment creditor has obtained a money judgment, they may apply for an order requiring the judgment debtor (or, if the debtor is a company, an officer of the company) to attend before a judge and be orally examined under oath as to their debts and means of satisfying the judgment debt. The court may also order the judgment debtor or officer to produce relevant books or documents at the examination. Procedurally, an application for examination of a judgment debtor must be supported by an affidavit giving certain particulars, and any such order must be served personally on the judgment debtor or officer of a company ordered to attend for examination.

Following the examination, the judge shall certify a written record of the judgment debtor's testimony.

2.5 Challenging Enforcement of Domestic Judgments

The Cayman Islands court will not consider whether the proceedings in which the judgment was given were validly served on the judgment debtor unless that issue is specifically raised.

The ability of a debtor to challenge the enforcement of a domestic judgment depends upon the nature of the enforcement method and the circumstances of the case.

The court has the power to stay a writ of fieri facias where the judgment debtor or any other party liable to execution upon a money order establishes, upon making an application, that there are special circumstances why the judgment should not be enforced or the applicant is unable to pay the money.

In light of the economic hardship caused by the COVID-19 pandemic, the courts may more readily find that there are special circumstances justifying a stay of enforcement actions taken against an individual or local business. However, enforcement actions in complex international cases will largely be unaffected by such factors.

Nonetheless, certain complex methods of enforcement already involve the judgment debtor having a degree of latitude in challenging the enforcement. Equitable execution (via the appointment of a receiver) is rarely straightforward since it involves the exercise of the court's discretion. For instance, the court has declined to appoint a receiver over a bankrupt's assets in favour of a single judgment creditor since that would exclude all of the bankrupt's other creditors.

On the application of a judgment debtor, the court may grant a stay of execution pending an appeal against the judgment. An appeal does not automatically give rise to any stay of execution – however, the court has a discretion to grant a stay, and it will ordinarily do so where the applicant establishes a good reason such as the risk of a successful appeal being rendered nugatory. The applicant must satisfy the court that it has a real prospect of success on appeal, that the appeal is bona fide and the balance of convenience favours a stay. No stay will be granted if the respondent would be unfairly prejudiced by being deprived of the proceeds of the judgment.

These principles were confirmed in the recent decision in Deputy Registrar v Day [2019 (1) CILR 510], a high-profile case concerning same-sex marriage rights. If the judgment is for payment of a sum of money and the court is satisfied having regard to all relevant factors (including the strength or weakness of the grounds of appeal) that a stay should be granted, the whole judgment sum will usually be ordered to be paid into court unless there is good cause for not imposing that requirement (Shanda Games Limited v Maso Capital Investment Limited & Ors, Cayman Islands Court of Appeal, unreported, 18 August 2017).

If the trial judge refuses to grant a stay of execution, the applicant may renew its application to the Cayman Islands Court of Appeal.

2.6 Unenforceable Domestic Judgments

Generally, all judgments made by the Cayman Islands courts are capable of being enforced.

A judgment creditor will be unable to enforce a judgment that the judgment debtor successfully applies to be set aside – for example, on the grounds that a default judgment was irregular on account of the proceedings never having been served on the defendant.

2.7 Register of Domestic Judgments

The judicial administration maintains a public register of originating processes, orders and judgments, save to the extent such documents have been determined by the court to be confidential or are otherwise sealed.

This register contains a copy of every final written judgment unless the court directs otherwise. The register does not contain any additional or separate record of any information such as the amounts paid under any judgments, and a judgment will not be removed from the register once it has been satisfied.

3. Foreign Judgments

3.1 Legal Issues Concerning Enforcement of Foreign Judgments

The Cayman Islands has a well-established regime for the enforcement of foreign judgments.

The Cayman Islands has enacted the Foreign Judgments Reciprocal Enforcement Law (1996 Revision) in respect of foreign money judgments; however, this legislation has to date only been extended to Australia and its external territories. All other foreign judgments must be enforced under common law rules which, in summary, provide for enforcement where:

- the court issuing the judgment had personal jurisdiction over the defendant;
- the judgment is final and conclusive; and
- the judgment has not been obtained by fraud or in breach of natural justice, and is not contrary to Cayman Islands public policy.

Therefore, the legal issues concerning the enforcement of foreign judgments typically involve challenges to enforcement on the grounds that one or more of these requirements has not been fulfilled.

3.2 Variations in Approach to Enforcement of Foreign Judgments

As noted in **3.1 Legal Issues Concerning Enforcement of Foreign Judgments**, Australian money judgments are enforceable in Cayman under the Foreign Judgments Reciprocal Enforcement Law, whereas all other judgments are subject to common law enforcement.

The Cayman Islands courts routinely enforce foreign money judgments made in personam. Historically, enforcement was not available in respect of non-monetary foreign judgments – however, the courts will now enforce such judgments in certain circumstances, such as where the principles of comity require it.

For instance, in Bandone v Sol Properties Inc. [2008 CILR 301], the court ordered rectification of a share register in favour of the plaintiff as a means of enforcing Brunei orders for specific performance against one of the defendants, Prince Jefri Bolkiah of Brunei. According to the judgment, judicial discretion is required to maintain the integrity of the Cayman Islands judicial system. The court should have regard to comity, fairness, and mutuality and ensure that domestic law is not extended to suit foreign litigation. On the facts, Prince Jefri had failed to show that the court should not recognize and enforce the Brunei orders in the exercise of that discretion.

3.3 Categories of Foreign Judgments Not Enforced

The judgment in Bandone confirmed that the Cayman Islands courts will not enforce a foreign in rem judgment with respect to Cayman property. Likewise, the courts will not enforce judgments that relate to the penal or public laws of another country or unpaid foreign taxes. However, these limitations do not apply to a judgment arising from foreign statutory breaches that gives rise to a private law remedy.

Pursuant to the Trusts Law, a foreign judgment that a Cayman trust or trust disposition is void or liable to be set aside because such trusts are not recognised under the relevant foreign law,

or because of matrimonial or certain other rights existing in the foreign jurisdiction, will not be enforced.

The requirements stated in **3.1 Legal Issues Concerning Enforcement of Foreign Judgments** must also be satisfied (see further **3.6 Challenging Enforcement of Foreign Judgments**).

3.4 Process of Enforcing Foreign Judgments

The procedure for enforcing a foreign judgment involves issuing a writ of summons suing for the foreign judgment debt, serving the writ upon the defendant and then ordinarily seeking summary judgment (or default judgment in the absence of an acknowledgment of service). The court will usually not re-hear the merits of the underlying action, although the court will hear any challenge to the recognition and enforcement of the judgment (see **3.6 Challenging Enforcement of Foreign Judgments**). Upon judgment being granted in the writ action, it will be enforceable in the same manner as a domestic judgment.

3.5 Costs and Time Taken to Enforce Foreign Judgments

As with any other aspect of the enforcement process, the time and costs involved will depend substantially upon the degree of resistance from the judgment debtor, and the complexity of any resulting dispute.

At its simplest, a Cayman Islands judgment for the enforcement of a foreign money judgment, which faces little or no resistance, may be obtained within a matter of weeks and at modest expense.

On the other hand, any robust and persistent challenge to the recognition and enforcement of a foreign judgment, particularly one involving complex non-monetary remedies, such as in Bandone, can be expensive and time-consuming. The judgment creditor is typically unable to control such matters since they depend largely upon the nature and degree of the resistance made by the judgment debtor. However, the court will be cognisant of a judgment debtor simply seeking to delay enforcement of a foreign judgment against it.

3.6 Challenging Enforcement of Foreign Judgments

The recognition and enforcement of a foreign judgment may be challenged on the grounds that one or more of the requirements outlined in **3.1 Legal Issues Concerning Enforcement of Foreign Judgments** are not satisfied.

As to the requirement for the foreign court to have had personal jurisdiction over the judgment debtor, the Cayman Islands court must be satisfied that the debtor was either present in the foreign jurisdiction at the time the proceedings were instituted, participated as a plaintiff or counter-claimant in those proceedings, voluntarily appeared as defendant, or submitted to the foreign court's jurisdiction as a defendant by prior agreement. By definition, this means that the foreign proceedings must have been served upon the debtor. Such matters may constitute a triable issue which precludes the grant of a summary judgment in a writ enforcement action.

As to finality, a foreign judgment will be treated as final and conclusive if it is regarded as res judicata by the foreign court. A judgment entered in default of appearance by a defendant who has had notice of the foreign court's intention to proceed may be final and conclusive even though the court has the power to set aside its own judgment.

However, the principle of res judicata is to be applied with caution to earlier proceedings resolved by a judgment in default, and the Cayman Islands court may give leave to defend if the case was decided upon documentary evidence alone and the issue upon which the defendant seeks to rely was not a necessary element in the foreign court's judgment. Judgment will not be considered final for the purposes of Cayman Islands enforcement unless/until any foreign appeals procedure has been exhausted. Where enforcement is sought via recognition of foreign receivership proceedings, a foreign receivership order does not create any conclusive and final obligation capable of being enforced in the Cayman Islands.

As to fraud or breach of natural justice, the judgment debtor will be estopped from pleading any such challenge if they consented to the judgment. A foreign judgment will be impeachable for fraud only on the basis of newly discovered material facts which were not before the foreign court. Likewise, it will be assumed that foreign proceedings have been conducted according to the proper procedure unless the contrary is shown.

4. Arbitral Awards

4.1 Legal Issues Concerning Enforcement of Arbitral Awards

The Cayman Islands is a pro-arbitration jurisdiction in which arbitral awards are readily enforceable in accordance with international norms. The Arbitration Law, 2012 (the "Arbitration Law") is based on the widely adopted UNCITRAL Model Law on International Commercial Arbitration. Together with the Foreign Arbitral Awards Enforcement Law (1997 Revision) (the "Enforcement Law"), the Arbitration Law gives effect to the 1958 Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the "New York Convention").

The Arbitration Law provides that an arbitral award made pursuant to an arbitration agreement may, with the leave of the court, be enforced in the same manner as a judgment or order of the court to the same effect. Upon the grant of leave, judgment may be entered in the terms of the award.

The Arbitration Law further provides that an arbitral award made in any country shall be recognised as binding and, upon application to the court, shall be enforced subject to the provisions of sections 6 and 7 of the Enforcement Law (whether or not the award was made in a New York Convention contracting state – ie, a "convention award").

Section 6 of the Enforcement Law concerns the application procedure for seeking enforcement of a foreign award (see **4.4 Process of Enforcing Arbitral Awards**) and Section 7 concerns the (narrow) grounds upon which enforcement of such an award may be resisted (see **4.3 Categories of Arbitral Awards Not Enforced**).

4.2 Variations in Approach to Enforcement of Arbitral Awards

The Enforcement Law does not apply to an arbitral award made in investor-state arbitrations. There is an alternative statutory enforcement mechanism for such awards pursuant to the Arbitration (International Investment Disputes) Act 1966 (Application to Colonies Etc.) Order 1967, by which the UK extended certain provisions of the Arbitration (International Investment Disputes) Act 1966 to the Cayman Islands. By these means, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (known as the Washington Convention) has been given effect in the Cayman Islands.

4.3 Categories of Arbitral Awards Not Enforced

In accordance with the Arbitration Law, no arbitral award shall be enforced where, or to the extent that, the arbitral tribunal lacked jurisdiction to make the award. The additional grounds upon which a foreign arbitral award may be refused are discussed in **4.6 Challenging Enforcement of Arbitral Awards**.

4.4 Process of Enforcing Arbitral Awards

An application for leave to enforce an arbitral award is made by ex parte originating summons, supported by affidavit evidence.

In the case of a foreign award, Section 6 of the Enforcement Law provides that a party seeking to enforce a convention award shall adduce an original or certified copy of the award and the arbitration agreement, and a certified translation where the award is in a foreign language, and give certain other information.

Upon leave being granted, the order giving leave must be served on the respondent. If required, service outside of the jurisdiction is permitted without leave.

The respondent then ordinarily has 14 days from service of the order in which to apply to set it aside. The award shall not be enforced until either that time period has expired or the court has disposed of any application made within that period.

4.5 Costs and Time Taken to Enforce Arbitral Awards

A domestic arbitral award may readily be recognised as a court judgment, in which case the time and costs of enforcement will depend upon the factors outlined in **2.3 Costs and Time Taken to Enforce Domestic Judgments**.

The same applies to a foreign arbitral award unless the respondent applies to set aside the recognition order. The time and costs involve will depend upon the number and complexity of the grounds of resistance.

4.6 Challenging Enforcement of Arbitral Awards

As noted in **4.3Categories of Arbitral Awards Not Enforced**, a domestic arbitral award will ordinarily be enforced unless the arbitral tribunal lacked jurisdiction.

As to the enforcement of a foreign award, the grounds for potential refusal are set out in Section 7 of the Enforcement Law, which mirror those in Article 5 of the New York Convention. In summary, enforcement shall only be refused if it is established that:

- a party to the arbitration agreement was under some incapacity;
- the arbitration agreement was not valid;
- the opposing party was not given proper notice of the appointment of the arbitrator or the arbitration proceedings, or was unable to present his or her case;
- the award goes beyond the scope of the arbitrable dispute;
- the composition of the arbitral authority or the arbitral procedure was defective;
- the making of the award was induced or affected by fraud, corruption or misconduct on the part of an arbitrator; or
- a breach of the rules of natural justice has prejudiced the rights of any party.

Although a refusal to enforce an award is rare, in VRG Linhas Aereas S.A. v Matlin Patterson Global Opportunities Partners (Cayman) II L.P. & Ors [2019 (1) CILR 192] enforcement of a Brazilian award was refused as the defendants were not parties to the arbitration agreement and did not consent to the arbitra-

tion. The award violated the principles of natural justice and was contrary to public policy.

Generally, however, the Cayman Islands courts take a robust approach to the recognition and enforcement of foreign arbitral awards, while ensuring that the defendant is given an opportunity to apply for enforcement to be set aside. For instance, in Re China Hospitals Inc. [2018 (2) CILR 335] a petitioner was entitled to rely upon a Hong Kong arbitral award as the basis for seeking to wind up a company even though the award was subject to a set-aside application in Hong Kong. An indemnity costs order has been made against a defendant who pursued a collateral action with the purpose of frustrating the enforcement of a convention award.

Campbells is a leading full-service offshore law firm established in 1970. From its offices in the Cayman Islands, the British Virgin Islands and Hong Kong the firm provides comprehensive corporate and litigation advice and services to clients worldwide in relation to Cayman Islands and British Virgin Islands law. Campbells is regularly trusted to advise some of the most prominent names in finance, investment and insurance and is frequently involved in the largest and most complex transactions, disputes and insolvencies in both jurisdictions. The firm's clients range from large international, financial and trading organisations to liquidators and trustees in bankruptcy of international and local entities, participants in investment and trust structures, family offices and government agencies. Campbells is a leader in advising financial service providers and other clients in connection with local and overseas regulatory investigations. Its litigators also appear regularly as expert witnesses in foreign proceedings and speak at local and international conferences.

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