

ENFORCEMENT OF FOREIGN JUDGMENTS IN THE ISLE OF MAN



This brochure is intended to provide an introduction to the Isle of Man as a litigation forum and to outline the possibilities which exist for enforcing foreign judgments in this jurisdiction. It seeks only to give the reader an overall view of the subject and is not a substitute for specific legal advice. The information given in this brochure is believed accurate as at January 2012.

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I. INTRODUCTION

This brochure provides an outline of the possible avenues of recovery for parties who have obtained judgment outside the Isle of Man (a “foreign judgment”) against Isle of Man based companies, trusts or individuals or against a party who has assets within the Isle of Man. It sets out three possibilities for recovering money owed under such a judgment:-

- i. registration of the foreign judgment;
- ii. an action in the Isle of Man based on the foreign judgment;
- iii. an action in the Isle of Man based on the original cause of action.

The final and crucial stage in the enforcement of a foreign judgment is the enforcement of the execution. This brochure briefly explains when execution is issued in the Isle of Man and what methods are available to enforce an execution.

2. ISLE OF MAN – THE JURISDICTION

The Isle of Man enjoys a complex constitutional relationship with the United Kingdom. Although it recognises the Queen as Head of State and is technically a Crown Dependency, for most practical purposes the Island is legally, politically and constitutionally separate from the United Kingdom. The Crown is represented on the Island by the Lieutenant-Governor who is appointed by the Crown every five years. His role now, however, is largely ceremonial. Traditionally the United Kingdom Parliament has been able to legislate for the Isle of Man, but by convention this power is only exercised in respect of defence, immigration and foreign policy. The Island’s status within the European Union is governed by Protocol 3 to the Act of Accession, under which the Isle of Man is neither a full nor associate member state, although it is part of the EU customs territory. European provisions relating to the free movement of goods apply to the Isle of Man.

2.1 Sources of Isle of Man Law

The primary sources of Isle of Man Law are the Acts of Tynwald and the Regulations and Orders made under them. Tynwald is the Manx Parliament which legislates for the Island; it has a venerable history which dates back over 1,000 years. The current model is bicameral: the lower house, the House of Keys, is directly elected by universal suffrage every five years; the upper house, the Legislative Council, is elected largely by the 24 Members of the House of Keys.

Acts of Tynwald are often very similar to, and passed in response to, United Kingdom Acts of Parliament. However, the Island does not slavishly follow where the United Kingdom leads. In some areas legislation is adapted

to meet the particular requirements of the Isle of Man, whereas in others the Island has pursued an independent legislative course as, for instance, regarding taxation and financial services.

The Isle of Man is a common law jurisdiction so case law and precedent are important. The overlap with the United Kingdom in statute law is reflected in the common law. Technically, only the decisions of the High Court of Justice of the Isle of Man, the Staff of Government Division (the Manx Court of Appeal) and the Judicial Committee of the Privy Council, sitting as the final avenue of appeal in a Manx case, are binding, but the body of reported Manx case law is relatively small. Therefore much use is made of English and more recently Commonwealth case law in particular. This is regarded as highly persuasive in the Manx Court and in the absence of Manx authority on a specific point, the Manx Court would require a good reason not to follow a clear English or Commonwealth precedent.

EU law applies in relation to trade between the Island and other member states, but the Island is outside the European Union for the purposes of trade in financial services and products. Furthermore the EU provisions in relation to free movement of persons, services and capital do not apply.

2.2 The Manx Courts

The Civil Jurisdiction of the High Court of Justice of the Isle of Man is divided into three divisions in a similar manner to its English counterpart: Common Law, Chancery and Family. There is no equivalent to the County Court in the Isle of Man. Appeals from decisions of the High Court are heard by the Staff of Government Division which also hears criminal appeals with a final right of further appeal to the Judicial Committee of the Privy Council. Procedure in the Manx High Court is very similar to that in the English Courts.

There are three full time High Court judges called Deemsters. Acting Deemsters are appointed from time to time to hear particular cases, either to clear a backlog of cases or where the other Deemsters are prevented from sitting through conflict. Acting Deemsters are drawn from members of the senior echelons of the Manx Bar and English Queen's Counsel with judicial experience. The Judge of Appeal is appointed by the Crown every five years to sit solely in the Staff of Government Division. The First and Second Deemsters also sit in the Staff of Government Division, but inevitably one or both will often be unable to hear a particular matter, due to the inevitable conflict of interest in presiding over the case at first hearing. In such circumstances the Judge of Appeal may sit with only one Deemster or, with the consent of the parties, may sit alone. In the unlikely situation that the Judge of Appeal is also prevented from sitting, an Acting Judge of Appeal may be appointed.

2.3 The Attorney – General

The Attorney-General is appointed by the Crown as the Manx Government's chief legal adviser. He is also responsible for the enforcement of criminal law in the Isle of Man.

2.4 The Legal Profession

Lawyers qualified in the Isle of Man are called Advocates. The profession is fused, so Advocates combine the roles performed by Solicitors and Barristers in England. Advocates perform a wide range of work and have exclusive rights of audience in the Manx Courts. English Counsel can be licensed to appear in particular cases where it is deemed appropriate.

2.5 The Isle of Man as a Litigious Forum

The Island has considerable advantages as a litigious forum. It is culturally, legally and geographically close to the United Kingdom, yet independent. As a small, intimate jurisdiction it offers great flexibility. The Island has developed into an important offshore financial centre with a sophisticated legal and regulatory system and a network of experienced professionals to cater for an international client base.

3. ENFORCEMENT OF A FOREIGN JUDGMENT

Where a party (the “judgment creditor”) has obtained a foreign judgment for a debt or definite sum of money against a party (the “judgment debtor”) they may be able to enforce that judgment in the Isle of Man in one of three ways. First, it may be possible to commence registration proceedings under the Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968. Secondly, if the registration procedure is not available, the judgment creditor may commence an action in the High Court of Justice of the Isle of Man based on the foreign judgment. Thirdly, where neither of the above methods is available or appropriate, the judgment creditor may recover the money owed under the foreign judgment indirectly by commencing a fresh action in the High Court of Justice of the Isle of Man based on the underlying cause of action.

3.1 Registration Proceedings

The Judgments (Reciprocal Enforcement) (Isle of Man) Act 1968 (“the Act”) makes provision for the enforcement in the Isle of Man of judgments given by certain prescribed “Superior Courts” of countries which afford reciprocal treatment to judgments given in the Isle of Man. At present, there are eight such countries:-

- i. the United Kingdom;
- ii. Guernsey;
- iii. Jersey;
- iv. Suriname;
- v. Israel;
- vi. Italy;
- vii. the Netherlands; and
- viii. the Netherlands Antilles

The prescribed “Superior Courts” of these countries are listed in Appendix A to this brochure.

A judgment of such a Superior Court (the “Original Court”) can be registered in the Isle of Man if it is final and conclusive and there is payable thereunder a sum of money (not being a sum in respect of taxes, fines or similar penalties). Note that a UK judgment in respect of VAT can be registered in the Isle of Man. A judgment will be treated as final and conclusive notwithstanding that an appeal may be pending. Registration will not be permitted, however, if, at the date of the application for registration:-

- i. the judgment has been wholly satisfied; or
- ii. the judgment could not be enforced by execution in the country of the Original Court.

Pursuant to Rule 12.56 of the Rules of the High Court of Justice of the Isle of Man 2009, an application for the registration of a foreign judgment must be made by a Claim Form and supported by written evidence. The written evidence must state:

- a. the name of the judgment creditor and his address for service within the jurisdiction;
- b. the name of the judgment debtor and his address or place of business, if known;
- c. the grounds on which the judgment creditor is entitled to enforce the judgment;
- d. that the judgment is a money judgment;
- e. the amount in respect of which it remains unsatisfied; and
- f. where interest is recoverable on the judgment under the law of the country of origin –
 - i. the amount of interest which has accrued up to the date of the application, or
 - ii. the rate of interest, the date from which it is recoverable, and the date on which it ceases to accrue.

Written evidence in support of the application must also confirm that the judgment can be enforced by execution in its country of origin and that the registration is not liable to be set aside (see below). There must be exhibited to the Claim Form a certified copy of the judgment duly authenticated by the seal of the Original Court and, where the judgment is not in English, a certified translation of the judgment.

The application for registration is made *ex parte* to a Deemster in Chambers who will normally, at this stage, make an Order *nisi* for registration. However, the Deemster may direct that notice of the application be given to the judgment debtor. Once the Order *nisi* is made execution will not be issued until after the expiration of a period fixed by the Court within which an application to set aside the registration may be made. If at the expiration of that period no application to set aside has been made (or no application for an extension of time for which to make an application to set aside has been made) the Order for registration becomes absolute and execution may then be issued.

After the Order *nisi* is made, the judgment creditor must serve a notice of the registration on the judgment debtor at his last known residence or place of business by recorded delivery with certificate of delivery or in such other manner as the Deemster may direct. The person serving the notice of registration must within three days of service, indorse the notice with the date on which service was effected together with the date on which such indorsement was made. If this is not done, the judgment creditor will not be at liberty to obtain execution on the judgment without the leave of the court.

After the Order *nisi* is made, the judgment debtor may apply within the time prescribed by the court to set aside the registration on any of the following grounds:-

- i. that the Original Court did not have jurisdiction in the circumstances of the case;
- ii. that he did not receive notice of the original proceedings in sufficient time for him to defend and did not appear;
- iii. that the judgment was obtained by fraud; or
- iv. that enforcement of the judgment would be contrary to public policy in the Isle of Man.

The first of these is the ground most commonly invoked to set aside registration and section 4(2) of the Act provides an exhaustive list of situations where the Original Court is deemed to have had jurisdiction (see Appendix B for the text of section 4(2)). If the judgment cannot be brought within the terms of section 4(2) it is not registrable because, for the purposes of the Act, it is a judgment of a court which had no jurisdiction in the circumstances of the case.

A foreign judgment once registered shall, for the purposes of execution, be of the same force and effect as if the judgment had been a judgment originally given in the High Court of Justice of the Isle of Man and entered on the date of registration.

Finally, it must be noted that if the registration procedure under the Act applies to a judgment, no proceedings for the recovery of a sum payable under that judgment, other than by way of registration, will be entertained by the Courts of the Isle of Man. This is so even where the judgment cannot be registered because it is liable to be set aside. In such a case, the judgment creditor would have to commence an independent action in the Isle of Man in order to recover the money owed (see paragraph 3.3 below).

3.2 Action Based on Foreign Judgment

If the registration procedure under the Act is not available, the judgment creditor may commence a default action in the High Court of Justice of the Isle of Man claiming the amount owed under the foreign judgment, provided that such judgment is final and conclusive and is not in respect of taxes, fines or similar penalties or is contrary to public policy. This method of giving effect to a foreign judgment is not dependent on the reciprocal treatment of judgments of Isle of Man Courts in the foreign country.

The procedure for commencing a default action in the Isle of Man is relatively straight-forward. The judgment creditor (who will be the claimant in such an action) serves a Claim Form and Particulars of Claim, together with Acknowledgement of Service forms on the judgment debtor (the defendant). This service must be effected by the Coroner who is the process server and judgments enforcement officer in the Isle of Man. However, if the defendant is resident outside the Isle of Man, it will be necessary to apply to the Manx Court for leave to serve the proceedings out of the jurisdiction. In the event that such service could not be effected in the prescribed manner, it may be open to the claimant to apply to the court for an Order for substituted service.

The Particulars of Claim (which briefly sets out the nature of the claimant's claim) will include a claim for the amount adjudged to be due by the defendant to the claimant under the terms of the judgment of the Original Court, together with a claim for interest and costs. If the Original Court gave judgment in a currency other than sterling, the claimant may claim in that currency.

If the defendant fails to acknowledge service of the Claim Form and Particulars of Claim, or fails to serve his defence within the prescribed time, the claimant may apply for judgment in default. This application is made administratively to the Chief Registrar who will, within seven working days, enter judgment and issue execution. The execution may be stayed, however, if the parties have agreed that the judgment debt will be discharged by instalments.

If the defendant serves a valid defence within the prescribed time the claimant will be required to prove his claim to the satisfaction of the court. The defendant may be able to defend the action by claiming, *inter alia*, that the Original Court had no jurisdiction in the circumstances of the case (i.e. that the defendant did not submit to the jurisdiction of the Original Court), that the judgment was obtained by fraud or that enforcement of the judgment would be contrary to public policy in the Isle of Man.

If the claim is for a sum of £10,000 or less it will be dealt with by the small claims court. A claim for a greater sum may be referred to the small claims court with the agreement of the parties.

3.3 Action Based on the Original Cause of Action

Where the judgment creditor has obtained a foreign judgment which is neither registrable under the Act nor enforceable by an action based on the judgment, they may wish to commence a new action in the Isle of Man based on the original cause of action. Although this course of action may result in the judgment creditor effectively recovering the money owed under the foreign judgment, it is entirely independent of that judgment and is based solely on the cause of action which the judgment creditor has against the judgment debtor (e.g. breach of contract).

Where the amount sought to be recovered is a debt or definite sum of money the judgment creditor may commence a default action in the Isle of Man Court against the judgment debtor (see paragraph 3.2 above). However, where the amount sought to be recovered is unquantified (e.g. a claim for damages) the judgment creditor must commence an ordinary civil action and will generally be required to serve Particulars of Claim (the document which outlines his case in detail). In either case, if the judgment debtor disputes the claim, the action will continue through the normal procedural steps (defence, disclosure and inspection, interlocutory motions etc.) with the obvious delays and costs consequences.

Whether the proceedings are by way of default action or ordinary civil action, the judgment creditor should ensure that the Isle of Man is the appropriate jurisdiction to deal with the matter. If not, it will be open to the judgment debtor, if he contests the proceedings, to raise the defence of *forum non conveniens* (i.e. that the Isle of Man is not the most suitable forum for trying the action).

4. ISSUE OF EXECUTION

When the judgment creditor has successfully registered the foreign judgment or obtained a judgment of the Isle of Man Court pursuant to one of the above methods, he must then obtain execution on that judgment.

Under the registration procedure, execution may be issued once the Order for registration is made absolute. In order to obtain execution on a registered judgment, the judgment creditor must lodge with the General Registry a Certificate of Service of the notice of registration and of any Order made by the Isle of Man Court in relation to the registered judgment. The Claim Form must have exhibited to it the Certificate of Service or other proof of service together with a copy of the notice of registration duly indorsed.

In default action proceedings the judgment creditor may apply for execution when applying for judgment. This involves making an application to the Chief Registrar who will, within seven days, enter judgment and issue execution (see paragraph 3.2 above).

In the case of an ordinary civil action, the judgment creditor may apply for execution at the time of applying for judgment, although if some form of arrangement for satisfying the judgment has been agreed, he may postpone his application for execution.

5. ENFORCEMENT OF EXECUTION

The final and crucial stage in the enforcement of a foreign judgment is the enforcement of the execution. The judgment creditor places the execution in the hands of the Coroner, who has the power to inquire as to the judgment debtor's means and, subject to certain exceptions, to arrest and sell sufficient of the judgment debtor's assets to satisfy the judgment debt. The Coroner must keep the seized property under arrest for a period of 28 days during which time the judgment debtor may make arrangements to satisfy the debt. At the expiration of the 28 day period, the property may be advertised for sale by public auction.

In the event that the Coroner cannot enforce the execution directly by arrest and sale, the judgment creditor may enforce the execution indirectly by way of:-

- i. Garnishee Proceedings;
- ii. an Instalment Order; or
- iii. an Attachment of Earnings Order.

The Coroner has the power to arrest the debts owing to the judgment debtor in the hands of a third party and any money so recovered is deemed to have been obtained from the judgment debtor. The exercise of this power does not require a court Order, although if the third party disputes the debt due to the judgment debtor, it may be necessary (or more appropriate) to apply for an Order by way of formal Garnishee Proceedings, directing the third party to pay the debt directly to the judgment creditor.

If the judgment debtor has an income, it is possible for either the judgment debtor or the judgment creditor to apply to have the debt discharged by way of instalments. Such an application will prevent execution from being

issued, or, if already issued, will stay the execution so long as the instalments are maintained as agreed. An application for the discharge of a judgment debt by instalments is heard by a Deemster who will inquire as to the means of the judgment debtor and make an Order having regard to all the circumstances of the case.

Where the judgment debtor is an employee, the judgment creditor (or the Coroner with the permission of the judgment creditor) may apply to the court for an Order directing that the employer deduct from the judgment debtor's earnings such sums as may be specified in the Order. If the judgment debtor opposes such an application, the court will only make an Order if it satisfied that the judgment debtor has failed to comply with an Instalment Order without cause and has the means to satisfy the debt within a reasonable time by instalments deducted from his earnings.

Finally, if it can be shown that the judgment debtor, being an individual, has had the means to pay an amount under the relevant Order or execution and has "refused or neglected or refuses or neglects" to pay, the court may order the imprisonment of the debtor.

6. OTHER CONSIDERATIONS

Whenever contemplating any litigation, the prospective claimant should always attempt to ascertain whether the prospective defendant has sufficient, or indeed any, assets within that jurisdiction to satisfy any eventual judgment. For this reason, it is advisable to instruct an inquiry agent to investigate the judgment debtor's means before issuing any proceedings.

If the judgment creditor suspects that the judgment debtor may attempt to remove or dissipate any or all of his assets from the Isle of Man in order to frustrate the enforcement of a future judgment against him, the judgment creditor may apply to the court for a freezing injunction (also known as a Mareva injunction) restraining the judgment debtor from removing his assets from the jurisdiction or otherwise disposing of or dealing with his assets.

7. DOUGHERTY QUINN'S ROLE

Dougherty Quinn has a wealth of experience of litigation in the Isle of Man and acts for clients from all around the world.

Our Litigation Department can help you with all aspects of enforcing a foreign judgment in the Isle of Man, including:

- i. advising on the merits of pursuing a claim;
- ii. conducting all procedural steps in obtaining and enforcing a judgment effective in the Isle of Man; and
- iii. advising and assisting on all ancillary matters as and when they become relevant, such as service out of the jurisdiction, freezing injunctions and search orders.

8. ABOUT DOUGHERTY QUINN

Dougherty Quinn is a leading full service law firm in the Isle of Man advising on Isle of Man and BVI law. Our lawyers are specialists in their fields and are recommended in the leading directories (Chambers Global, Legal 500, Which Lawyer PLC).

Dougherty Quinn is the trading name of Dougherty Quinn Limited, an incorporated legal practice in the Isle of Man with company number 119175C. Dougherty Quinn Limited's registered office is at The Chambers, 5 Mount Pleasant, Douglas, Isle of Man, IM1 2PU and its directors are Paul Dougherty, Tom Maher, Walter Wannenburg, Mark Dougherty, Giles Hill and Annemarie Hughes.

9. CONTACTING US

If you have any queries with regard to the enforcement of foreign judgments in the Isle of Man or litigation in the Isle of Man generally, please contact:-

Walter Wannenburg Email: walter@dq.im Tel: +44 1624 632951

Giles Hill Email: giles@dq.im Tel: +44 1624 632996

Michael Craine Email: michael@dq.im Tel: +44 1624 632997

Leanne McKeown Email: leanne@dq.im Tel: +44 1624 632957

Niall Prentice Email: niall@dq.im Tel: +44 1624 632973

APPENDIX A

JUDGMENTS (RECIPROCAL ENFORCEMENT) (ISLE OF MAN) ACT 1968

List of Superior Courts

1. United Kingdom

- The Supreme Court of the United Kingdom
- Court of Appeal (in England and Wales)
- High Court of Justice (in England and Wales)
- Court of Session and the Sheriff (in Scotland)
- Court of Judicature (in Northern Ireland)

Note: A judgment of the County Court in England and Wales may be registered under the 1968 Act if it has been transferred to the High Court of Justice in England and Wales pursuant to section 106 County Courts Act 1984.

2. Guernsey

- Royal Court of Guernsey
- Court of Appeal in Guernsey

3. Jersey

- Royal Court of Jersey
- Court of Appeal Jersey

4. Suriname

- Hof van Justitie van Surinam
- Kantongerecht in het Eerste Kanton
- Kantongerecht in het Derde Kanton

5. Israel

- Supreme Court
- District Courts
- Rabbinical Courts
- Christian Religious Courts
- Moslem Religious Courts
- Druze Religious Courts

6. Italy

- Corte d'Appello
- Tribunale

7. Netherlands

- Hoge Raad der Nederlanden
- Gerechtshoven
- Arrondissementsrechtbanken

Netherlands Antilles

- Hoge Raad der Nederlanden
- Hof van Justitie der Nederlandse Antilles
- Gerecht in Eerste Aanleg

APPENDIX B

JUDGMENTS (RECIPROCAL ENFORCEMENT) (ISLE OF MAN) ACT 1968

Section 4(2)

4. (2) For the purpose of this section, the courts of the country of the Original Court shall, subject to the provisions of subsection (3) of this section, be deemed to have had

jurisdiction –

- a. in the case of a judgment given in an action in personam-
 - i. if the judgment debtor, being a defendant in the Original Court, submitted to the jurisdiction of that court by voluntarily appearing in the proceedings otherwise than for the purpose of protecting, or obtaining release of, property seized, or threatened with seizure, in the proceedings, or of contesting the jurisdiction of that court; or
 - ii. if the judgment debtor was claimant in, or counter-claimed in, the proceedings in the Original Court, or
 - iii. the judgment debtor, being a defendant in the Original Court, had before the commencement of the proceedings agreed, in respect of the subject of the proceedings, to submit to the jurisdiction of that court or of the courts of the country of that court; or
 - iv. if the judgment debtor, being a defendant in the Original Court, was at the time when proceedings were instituted resident in, or being a body corporate had its principal place of business in, the country of that court; or
 - v. If the judgment debtor, being a defendant in the Original Court, had an office or place of business in the country of that court and the proceedings in that court were in respect of a transaction effected through or at that office or place;
- b. in the case of a judgment given in an action of which the subject matter was immovable property or in an action in rem of which the subject matter was movable property, if the property in question was at the time of the proceedings in the Original Court situate in the country of that court;
- c. In the case of a judgment given in an action other than any such action as mentioned in paragraph (a) or paragraph (b) of this subsection, if the jurisdiction of the Original Court is recognised by the law of the Isle of Man.

Legal Notice: Dougherty Quinn Limited is an incorporated practice in the Isle of Man.

Registered Office: The Chambers, 5 Mount Pleasant, Douglas, Isle of Man, IM1 2PU. Incorporated in the Isle of Man with company number 119175C.

Directors: Paul Dougherty, Tom Maher, Walter Wannenburg, Mark Dougherty, Giles Hill, Annemarie Hughes.