

American College of Trial Lawyers Enforceability Project

Country: Isle of Man - Prepared by Simcocks Advocates

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Constitution and Legal System of the IOM

Constitution

The Isle of Man is not part of the United Kingdom, but is part of the British Isles. The Queen is acknowledged as the head of state and is represented on the Island by a Lieutenant Governor. The Island is however largely self governing through its own parliament (Tynwald). The United Kingdom Government still retains responsibility for the Island's defence and external relations.

Parliament

The Island's parliament, known as Tynwald, has a history traceable back over a thousand years and has continually shown a strong democratic tradition which includes giving the vote to women in 1881. The parliament is bi-cameral with a popularly elected House of Keys and a Legislative Council consisting of the Lord Bishop, the Attorney General and members elected by the House of Keys. There is a Ministerial system of Government with a Chief Minister, elected by Tynwald, who, in turn, nominates 9 Ministers to be responsible for the Departments of Government.

Relationship with the European Union (EU)

When the United Kingdom joined the EU in 1973 the Island's relationship with the EU was enshrined in Protocol 3 of the Treaty of Accession. This confines the application of EU legislation to the Island in the following areas only;

- free movement of goods.
- agricultural products,
- conformity with EU customs arrangements.

The Island neither contributes to, nor receives support from the EU Budget.

Judicial System

The Isle of Man is an entirely separate legal jurisdiction to that of the United Kingdom. It is not part of the realm of the United Kingdom nor is it governed by the laws of the United Kingdom. The system of law which exists in the Isle of Man is a common law system based on the principles of English law which are shared by many other countries. During recent centuries, the Manx Courts have generally followed English precedents, unless there was some provision in Manx law to the contrary. English precedents are not binding, but are treated as highly persuasive.

In the areas of criminal law, contract, tort and family law, Manx law remains broadly in line with the law in the United Kingdom. In other areas such as direct taxation, company law and financial supervision Manx law has been drafted to meet the Island's own special circumstances.

There are presently three permanent Judges (the equivalent of a High Court Judge in England and Wales) called Deemsters (a title which derives from the 13th Century). The Deemsters are appointed by the Crown after consultation with the Island's Authorities. The Lieutenant Governor has the power to appoint acting Deemsters of the High Court, a power which is exercised for cases of unusual length or requiring particular expertise.

Court System for Civil Actions

For actions where the value is less than £5,000 and do not raise complex or difficult issues then the action will be referred to arbitration proceedings under the Rules of the High Court of Justice (Small Claims Arbitration) 1984.

All other actions are commenced by writ in the High Courts of Justice. Civil matters are usually heard at first instance by a single Deemster sitting in the High Court. Appeals are dealt with by an Appellate Court which is known as the Staff of Government Division. Appeals are usually heard by a Deemster and a Judge of Appeal who is chosen from prominent members of the English Bar. The Judge of Appeal is appointed by the Crown on the advice of the Home Secretary in London. A Deemster is not permitted to hear appeals against his own decisions.

The final avenue of appeal against the decision of a Manx Court is to the Judicial Committee of the Privy Council in London. However, leave of the appellate court or the Privy Council is required before this final appeal is heard.

Enforceability of US/Canadian Judgments in the Isle of Man

Most foreign judgments can be enforced in the Isle of Man following either action in the Isle of Man based on the original foreign judgment or registration in the Court here pursuant to legislation which applies to certain specific countries.

At this present time there are no reciprocal enforcement agreements between the Isle of Man and either the USA or Canada created by statute. This means that the only method of

enforcement of judgments obtained in the USA or Canada in Isle of Man is under Manx common law.

Enforcement under Manx Common Law

Under Manx common law a foreign judgment properly obtained constitutes res-judicata or issue estoppel between the parties by creating an implied contract to pay and so it should be given effect in the Island.

The party seeking payment would have to issue proceedings in the High Court of the Isle of Man as a foreign judgment is treated like any other debt.

For the Manx Court to assume jurisdiction the US or Canadian judgment must be for a fixed sum and must not be for an amount due in respect of a tax or a penalty. The US or Canadian judgment must be final and conclusive on the merits in the country or state where the judgment has been granted.

At the time of the commencement of proceedings before the US or Canadian Court, the relevant Court must have had jurisdiction over the defendant (judgment debtor). This can be either by residence or having a principal place of business in the country of that Court, or any office or place of business in the country of that Court if the proceedings were in respect of a transaction carried out through that office or place of business.

The Manx Courts will recognise that the foreign Court had jurisdiction in the foreign proceedings where at least one of the following criteria applies to the judgment debtor:

- Physical presence of Defendant before the court at the time the judgment was made.
- Participation in the proceedings before the Court by way of bringing a claim or counter-claim.
- Voluntarily appearing in the proceedings before the US or Canadian Court
- Voluntarily submitting to the jurisdiction of the US or Canadian Court

There are however three specific instances where a foreign judgment is not enforceable. These are:-

- where the subject matter of the US or Canadian action was immovable property outside the country where the original judgment was obtained;
- if there had been an agreement under which the dispute was to be settled otherwise than by proceedings in the US or Canadian court; or
- if the defendant was entitled to immunity from jurisdiction.

A claim for enforcement of a US or Canadian judgment under the common law is subject to the defences of fraud, being contrary to public policy or that the relevant US or Canadian proceedings were contrary to natural or substantive justice.

Proceedings to Enforce a US or Canadian Judgment

The normal first step is the obtaining of documentary evidence from the Court (giving the judgment) detailing the judgment. These would include at least a copy of the Order or

Judgment certified by that Court and if necessary copies of the pleadings giving rise to the judgment.

Unless the value of the debt claim is less than £5000 (when arbitration will be used) a summons and statement of claim specifying the nature of the claim will have to be issued. After processing by the Court the documents are served on the defendant. The defendant has 14 days in which to acknowledge service.

If the defendant fails to acknowledge service or does not intend to contest the action then an application can be made for a judgment in default in respect of the debt.

If the defendant contests the action then the matter will proceed to a hearing in the High Court.

Where there is no likelihood of the debtor trying to dispute the claim, consideration can be given to the possibility of the immediate issue of a statutory demand in bankruptcy / winding up in the Isle of Man based on the foreign judgment. This can be a very cost effective method of persuading the debtor to pay up, although the actual issue of a bankruptcy / winding up petition is a very expensive step as the creditor has to pay an accountant to act as trustee / liquidator because there is no public trustee / official receiver in the Isle of Man.

Proceedings to Recover Monies Owed

Once an Isle of Man judgment has been obtained, application is made for an Execution Order (a purely administrative process) which is then placed in the hands of the local Coroner (the equivalent of a Bailiff or Sheriff's Officer in England and some other jurisdictions).

The Coroner has wide powers to arrest any property (including land and the contents of bank accounts). If for any reason execution through the Coroner fails to achieve a successful result, there are other possibilities such as summoning the debtor in order to obtain details of his / her financial circumstances, garnishee proceedings (arrest of money), or the issue of a bankruptcy / winding up petition.

Where there is reason to believe that the judgment debtor may seek to move assets out of the Isle of Man jurisdiction or otherwise dissipate them, there are pre-emptive remedies available such as the appointment of receiver, and arrest by a Coroner. Additionally pre judgment injunction reliefs are also available

Case Law on Enforcement of Foreign Judgments in the Isle of Man

Interlink Metals and Chemicals Incorporated v Regent Systems Limited and Hightech Consolidated Limited Manx Law Reports (MLR) 1993 – 95 292

The judgment of the Supreme Court of the State of New York that was being enforced was not final and conclusive for the purposes of private international law and could not be enforced in the Island.

Kamlesh Mansukhal Damji Pattni v. (1) Nasir Ibrahim Ali (2) Dinky International SA (Appeal No. 23 of 2005) [2006] UKPC 51

<http://www.privacy-council.org.uk/output/page5.asp>

The Privy Council held that the Kenyan Court had made a judgment over the transfer of the shares in question which was in personam and not in rem. The order to transfer the shares was therefore not a Judgment that could be enforced in the Isle of Man.

Judgments in relation to Foreign Bankruptcy and Insolvency Matters

Cambridge Gas Transport Corporation v The Official Committee of Unsecured Creditors (of Navigator Holdings PLC and others) [2006] UKPC 26

<http://www.privy-council.org.uk/output/page5.asp>

The Privy Council held that by recognising the US Bankruptcy proceedings (Chapter 11) the Manx Court was empowered to give assistance in the implementation of the re-organisation. The Law Lords decided that as long as the Manx Court had the domestic ability to grant the relief sought in the Letter of Request, assistance could be provided. Shares in companies can be transferred or otherwise affected under Manx law pursuant to a scheme of arrangement; hence the Manx Court had the domestic power to transfer the shares. The Privy Council stated that recognition of the orders of the US Court was sufficient to allow the Manx Court to give assistance by ordering the transfer of the shares without the need of having to start separate parallel insolvency proceedings on the Island. The US Bankruptcy Court's Letter of Request was sufficient cause to transfer the shares.

Accordingly, the Privy Council held it would be appropriate for the Manx Court to assist in transferring the shares in Navigator Holdings to the creditors so as to enable them to re-launch the Navigator group of companies but freed from debt.

Petition of US Bankruptcy Court Chapter 7 Trustee unreported Judgment of the High Court of Justice of the Isle of Man Staff of Government Division Case No 2DS 2006/05 dated 28th July 2006

The Court held that it is appropriate to recognise foreign trustees in bankruptcy and to provide assistance to the trustee in the circumstances of the case. There would have to be strong and compelling reasons to justify the Manx Courts refusing such recognition and assistance.

Enforceability of US/Canadian Arbitral Awards in the Isle of Man

The New York Convention (Convention on the Recognition and Enforcement of Foreign Arbitral Awards) and the Geneva Convention (Convention on the Execution of Foreign Arbitral Awards) have been extended to the Isle of Man by the United Kingdom. They are enacted into Manx law by the Arbitration Act 1976.

Proceedings to Enforce a US or Canadian Arbitration award under the New York Convention

The enforcement of an arbitration award follows the same process as the enforcement of a foreign Judgment.

The party seeking to enforce the award must produce the following evidence;

- the duly authenticated original award or a duly certified copy of it;
- the original arbitration agreement or a duly certified copy of it; and
- where the award or agreement is in a foreign language, a translation of it certified by an official or sworn translator or by a diplomatic or consular agent.

The enforcement of a convention award may be refused if the person against whom the award is invoked proves;

- that a party to the arbitration was (under the law applicable to him) under some incapacity; or
- that the arbitration agreement was not valid under the law to which the parties subjected it or, failing any indication thereon, under the law of the country where the award was made; or
- that he was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his case; or
- 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 the submission to arbitration; or
- that the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, with the law of the country where the arbitration took place; or
- that 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 enforcement of a convention award may also be refused if the award is in respect of a matter which is not capable of settlement by arbitration, or if it would be contrary to public policy to enforce the award.

Alternative Proceedings to Enforce a US or Canadian Arbitration Award

Generally under common law the Manx Court will enforce a foreign arbitration award on the same basis as it would enforce a foreign judgment. This means that as long as the foreign arbitration award is recognised by the Court of the Isle of Man as raising res-judicata or issue estoppel it will be enforceable by an action upon the award as long as the award is made in accordance with an arbitration agreement valid by the law under which it is constituted and that such award is valid, final, binding and conclusive under the law governing the arbitration.

Proceedings to Enforce Awards made Pursuant to the Washington Convention on the Settlement of Investments Disputes 1965

Any award rendered pursuant to the Washington Convention on the Settlement of Investments Disputes 1965 (applied in the Isle of Man by the Arbitration (International Investment Disputes) 1983) can be registered in the High Court of the Isle of Man.

The application to register the award is made by way of a petition to the Court supported by an affidavit.

As evidence the details of the award are to be provided and if not in English, a translation into English shall be certified by a notary public or authenticated by affidavit.

The effect of registering an award means that for purposes of effect and execution it has the same force as if it had been a judgment of the High Court of the Isle of Man.

Application of the Law of Set Aside in respect of Arbitration Awards in the Isle of Man

Set aside by the High Court is available under s 16 (4) of the High Court Act 1991 if the Courts thinks fit. The power is only to be exercised to correct irregularities, such as error of law on face of the award, fraud or corruption. (*Athol Garage (1945) Limited v Cook 1990 – 92 MLR 165*)

Case Law on Enforcement of a Foreign Arbitration Awards in the Isle of Man

In the Matter of Gispen (Receiver in Bankruptcy of United Dutch Group NV) and Stichting Demerara Trust. 199-01 MLR

It was rare for a foreign judgment to be denied enforcement or recognition for reasons of public policy in the absence of fraud or breach of natural justice. It is irrelevant that the award would not have been made if arbitration agreement had been governed by Manx law. An award or judgment of punitive or exemplary damages however, may be subject to requirements of inequity due to public policy.

Conclusion

Whilst the enforcement of judgments or arbitration awards of US or Canadian statutory bodies is possible in circumstances where the IOM Court finds that the defendant has submitted to the jurisdiction of the applicable body. Such enforcement does involve a degree of formality which entails time and expense. Therefore, before proceedings are commenced in the US or Canada against a defendant resident in the Isle of Man, consideration should be given to commencing the substantive proceedings in the Courts of the Isle of Man. Additionally, where there is no likelihood of the debtor trying to dispute the claim, consideration ought to be given to the possibility of the immediate issue of a statutory demand in bankruptcy/winding up in the Isle of Man based on the foreign judgment. If there is reason to believe that the judgment debtor may seek to move assets out of the Isle of Man jurisdiction or otherwise dissipate them, there are pre-emptive remedies available including injunction, appointment of a receiver, and arrest by Coroner.

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This document is intended to provide a general overview and should not in any way be construed as legal advice. Always seek specific advice in respect of any particular issue.

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