

MARKET INSIGHTS

JERSEY

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Prior to commencing legal proceedings, a claimant should carefully consider how any subsequent judgment will be enforced. However frustrating it may be, there is no point spending money on litigation if a debtor is unlikely to have any realisable assets or if those assets will be impossible to enforce against.

The Viscount's Department

A typical first step after obtaining a judgment from the Jersey courts will be to instruct the Viscount's Department. The Viscount is an appointed public servant and executive officer of the court and has a key role in enforcing judgments. While the Viscount's participation may be helpful, there can be disadvantages when a judgment creditor has to rely on a third-party government agency rather than maintaining control of the process. The Viscount has power to seize and sell the judgment debtor's movable property and to make deductions from the debtor's salary. These are useful for individual debtors or small companies but of little assistance where the debtor company is, as is more common, used for offshore structuring purposes rather than a local trading entity.

Injunctive relief

After a creditor has obtained a judgment, injunctive relief can be obtained to ensure the debtor's assets are not dissipated and/or removed from the jurisdiction. A creditor may apply for a post-judgment freezing injunction and disclosure order or (if the debtor owns Jersey immovable property) a caveat to prevent disposal of that property. Both these methods are easier to obtain post-judgment when the merits of the claim have been established. Pre-judgment freezing injunctions are available (indeed they can be obtained before proceedings have been issued) but a good arguable case needs to be established as well as the standard requirements, such as risk of dissipation. In practice, a debtor who may evade repayment of a judgment debt is likely to dissipate assets before a judgment is obtained, so pre-judgment injunctions, including worldwide ones, are common. They are readily granted by the Jersey courts in appropriate cases.

To understand the assets which can be enforced against, a judgment creditor can also apply for a post-judgment disclosure order. The Jersey courts are very willing to make orders for a judgment debtor to disclose its assets to aid enforcement.

Insolvency procedures

If the debt cannot be enforced by the methods set out above, the creditor may have to use an insolvency procedure. Traditionally, the options were limited to the customary law procedures of *désastre* and *dégrévement*.

Désastre is a form of bankruptcy, but one driven by the Viscount (who has to act as liquidator). The procedure is unwieldy and expensive. Despite much criticism, until 2022 judgment creditors had no other insolvency option available. A creditors' corporate winding-up procedure equivalent to those in many other jurisdictions – and which also allowed insolvency practitioners from accountancy firms to act as liquidators – was finally introduced in 2022 and has been widely used since. This has undoubtedly enhanced Jersey's reputation as a leading financial centre and strengthened its support for creditors. *Désastre* remains the only available method for an individual judgment debtor.

The procedure for a creditors' winding up is provided for in the Companies (Jersey) Law 1991 and follows a format familiar to lawyers from common law jurisdictions. It enables a creditor to issue a statutory demand against the company if its debt exceeds GBP 3,000. If the debtor company fails to satisfy the debt within 21 days, the creditor may apply for the company to be wound up, and for its assets to be distributed to its creditors. An unpaid judgment will be a debt for these purposes.

While the threat of winding up can be a useful enforcement tool for an individual creditor, there can be downsides. The creditor will need to fund the liquidators, and any proceeds are shared between all creditors. Furthermore, the proceeds may well be insufficient to cover the liquidation costs and to pay all creditors in full.

Dégrévement is an alternative and somewhat Dickensian customary law enforcement procedure. In 1999 the Jersey Law Commission recommended the abolition of *dégrévement*, which arguably breaches human rights legislation, but it nevertheless survives. It allows a creditor to take a debtor's immovable property, pay off its debt and keep any proceeds – i.e. the debtor loses any surplus equity in the property. While some protections for debtors have been introduced over the years, the unfairness of *dégrévement* for debtors is clear (likewise the potential benefits for creditors who can make a significant profit).

Contempt

Civil contempt is not an enforcement method *per se* but can be a useful tool to secure payment of a debt. While the use of the “debtor's prison” for failing to pay a debt is largely prohibited (although theoretically still possible in Jersey for individual debtors), contempt of court for disobedience of a court order related to a judgment remains possible. Contempt is primarily used to enforce non-monetary judgments, such as injunctions, ancillary disclosure orders or orders for examination of a debtor.

In a recent case the Jersey court found Princess Camilla de Bourbon des Deux Siciles guilty of contempt for failing to comply with a post-judgment disclosure order (*Representation of BNP Paribas Jersey Trust Corporation Limited* [2020] JRC267), fining her GBP 2 million with a default prison sentence of 12 months. While it is the Jersey court that receives the fine, the prospect of a prison sentence can prompt payment or settlement.

Recognition and enforcement of foreign judgments

Foreign judgments may be registered in Jersey under the Judgments (Reciprocal Enforcement) (Jersey) Law 1960. However, this only applies to judgments from the UK, the Isle of Man and Guernsey. Once registered, a foreign judgment may be enforced in Jersey using the same enforcement procedures available to creditors with a Jersey judgment.

If the foreign judgment cannot be registered pursuant to the Reciprocal Enforcement Law, the foreign creditor must bring fresh proceedings in Jersey suing on the foreign judgment debt and usually applying for summary judgment on the assumption that there will be little (if any) credible dispute.

To be enforced in Jersey, a foreign judgment must be recognised. The court has held that an unrecognised foreign judgment is only evidence of a debt and therefore is not itself directly enforceable.

However, in *HWA 555 Owners, LLC v. Redox Plc SA* [2023] JCA085, the Jersey Court of Appeal held that it did not regard the presentation of a winding-up petition as a process of enforcement because it was for the benefit of all creditors. In *HWA*, the creditor relied on a foreign order in support of its application to wind up the debtor and it was not required to first have that judgment recognised.

There is some doubt as to whether this approach will be followed after the English Court of Appeal's recent decision in *Servis-Terminal v. Drelle* [2025] EWCA Civ 62, which addressed the issue of whether a foreign judgment must be recognised before a creditor's winding-up petition can be issued and held that a foreign judgment must be recognised, stating that "a person should not be able to invoke the collective enforcement mechanisms of bankruptcy or winding-up proceedings in the English court unless and until he obtains an English judgment, or registers the judgment or has some other basis under a statute or treaty permitting such enforcement of the foreign judgment".

While the Jersey court typically follows English higher court judgments, it is unclear whether it will do so in relation to *Drelle* given the contrary decision in *HWA* which reflects a more creditor-friendly approach.

Arbitral awards under, *inter alia*, the New York Convention may be enforced in Jersey under the Arbitration (Jersey) Law 1998. Enforcement may be resisted on certain limited grounds, such as that the arbitration agreement was invalid, the judgment debtor was not given proper notice or enforcement would be against public policy.

The public policy grounds on which an award may be refused were recently considered by the Jersey courts in *OWH SE i.L v. RTI Ltd* [2025] JRC137; [2025] JCA327, in which Baker & Partners represented RTI. OWH, a German subsidiary of VTB Russia, sought to enforce a New York Convention award against RTI, which was made following RTI's non-payment of amounts owed under swap arrangements. RTI applied to set aside the enforcement, arguing on public policy grounds that Article 46A of the Sanctions and Asset-Freezing (Jersey) Law 2019 provides civil immunity where a party has a reasonable belief that an act which would otherwise attract liability was carried out in a reasonable belief that it was necessary to comply with sanctions, and it had the necessary reasonable belief. The court held that Article 46A was the kind of public policy argument which could be raised as an objection to enforcement, though RTI lost on other grounds.

Conclusion

Historically enforcing judgments in Jersey has involved somewhat arcane customary law remedies but recent years have seen modernisation and a more creditor-friendly approach. This is clearly helpful given Jersey's status as a major offshore financial centre.

AUTHOR BIOGRAPHIES



Stephen Baker

Stephen Baker is an English barrister, Jersey Advocate and is called to the Bar in the BVI. He is the Managing Partner at Baker & Partners. Specialising in international financial litigation including trust disputes, commercial disputes and civil fraud, Stephen is an expert at unravelling complex offshore trust structures and resolving the issues which arise. He is frequently instructed to advise on the strategic approach needed for cross-border litigation. Known for his expertise on the interaction between civil and criminal law in fraud cases including those seeking to evade judgment debts, Stephen regularly acts for foreign governments in asset recovery actions. He acted for the liquidators of the offshore structure used to launder the proceeds of the 1MDB fraud. He has also acted for the Federal Republic of Brazil, the Islamic Republic of Pakistan, and the Kenyan Ethics Anti-Corruption Commission. Stephen is co-chair of the IBA Asset Recovery Committee.



William Redgrave

William is one of Jersey’s most highly rated litigators. He specialises in trust and commercial disputes. An English barrister and a Jersey Advocate, he has almost three decades’ experience of acting in very complex and high-value cases. He acts for clients from all over the world: individuals, corporations and government agencies. He is rated in band 1 for Offshore Dispute Resolution in Jersey by Chambers & Partners. Much of his work involves asset tracing and/or fraud. He has substantial expertise in obtaining creative and effective freezing and disclosure orders in support of both Jersey and overseas litigation. He has also prosecuted and defended in major criminal cases, involving fraud and money laundering. He obtained a First Class degree in Modern History at Oxford University, Distinction in the Diploma in Law at City University and Outstanding at the Inns of Court School of Law.



Lynne Gregory

Lynne Gregory is a Partner in the Jersey office. Lynne is an English qualified Solicitor and Jersey Advocate. In 2024, Lynne was admitted as a solicitor of the Eastern Caribbean Supreme Court for the Territory of the Virgin Islands. Lynne studied at University College London, graduating with First-Class honours before completing her legal studies at the College of Law in London. She went on to train at the “Magic Circle” law firm, Allen & Overy, before qualifying into its litigation department where she carried out a broad range of commercial litigation, arbitration and public inquiry work. Lynne subsequently worked at several of London’s top firms including Baker & McKenzie and Charles Russell Speechlys, practising the full spectrum of commercial and civil dispute resolution.



Thomas McLachlan

Thomas is an Associate within the Jersey legal team at Baker & Partners having qualified as a solicitor of England and Wales in 2024. Before joining the firm, Thomas gained invaluable experience in financial services and public policy, in the latter case within the House of Commons of the United Kingdom and the Government of New South Wales in Sydney, Australia.