

# Snapshot of key enforcement methods in the British Virgin Islands

The enforcement toolkit available in the BVI is similar to many other common law jurisdictions. However, the BVI Courts have tailored their approach to meet the challenges a creditor may face when looking to enforce over a complex structure.

While it has its own legal system, the BVI is a British Overseas Territory. It is therefore heavily influenced by judicial decisions made in England and Wales - widely recognised as one of the fairest jurisdictions in the world. Parties also have the added benefit of being able to appeal to the Privy Council, where Supreme Court judges regularly hear appeals from the BVI.

This guide sets out a high-level overview of the areas in which we regularly assist our clients.

## Enforcement of foreign judgments

Subject to certain criteria being met, BVI Courts can recognise many foreign Judgments and have strong legal frameworks in place in this regard. Drawing from both common law and statute, the Courts offer well tested and flexible procedures that are adaptable to global developments.

## Disclosure orders

### Norwich Pharmacal Orders (*NPOs*)

In the BVI it is not compulsory to make publicly available all company records, such as minutes of meetings and the decisions behind the minutes. However, they are kept by a “registered agent” located on the island. Sometimes companies do make these records available and for a small fee we can check the record. Alternatively, if there has been wrongdoing, the BVI Courts have a powerful weapon in being able to compel the registered agents (and other entities such as banks and internet service providers) to release information to your client identifying wrongdoers, proving wrongdoing or identifying assets for enforcement. *NPOs* can be accompanied by “seal and gag” orders meaning that if successful, the registered agent cannot tell its client that such an order has been made.

## Interim remedies

### Freezing injunctions

Where there is a risk that assets or proceeds may be dissipated, BVI Courts are frequently used to grant freezing injunctions. These are a powerful tool to prevent any steps being taken to dissipate assets pending the outcome of the wider proceedings (even if those proceedings are in other jurisdictions). The requirements to obtain a freezing injunction are similar to other common law jurisdictions but are flexible so as to recognise the way assets are held in offshore jurisdictions.

The BVI Courts have a statutory power to grant freezing injunctions in support of foreign proceedings which ensure that assets located in the BVI, including shares, are kept safe during the pendency of dispositive foreign litigation. This development is particularly helpful in the case of the BVI companies, as such companies typically conduct most or all of their business activities outside the BVI (such that the BVI may not be the most appropriate forum for asset recovery litigation).

## Methods of enforcement

### Charging orders

BVI Courts have powers to grant charging orders over shares, property or other assets belonging to a debtor (to include beneficially ownership). If successful a charge will be imposed on a judgment debtor's assets. If the debt remains unsatisfied, further steps can be taken to enforce a sale of the charged asset to satisfy a judgment or other award.

### Garnishee orders

Creditors can make an application to the BVI Courts for monies to be paid directly to them which are held by a third party. This method of enforcement is commonly used to take possession of funds held in a debtor's bank account.

### Appointment of a receiver

One of the most powerful weapons in the BVI enforcement toolkit is the appointment of a receiver. Given offshore companies are often used as holding vehicles, receivership allows a receiver to take control of a corporate structure and move "downstream" to recover assets. In simple terms, a receiver can stand in the judgment debtor's shoes to gather in and realise property. This has the added advantage of immediately preventing a judgment debtor from dealing with that property.



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