



Legal Insights

Default judgment and summary judgment in the British Virgin Islands

July 2025

Introduction

Default judgments and summary judgments are judgments made by a court without the need for a claim to go to full trial. Judgment can therefore be obtained more swiftly and cost-effectively compared to if the claim proceeded through to trial. It should be noted that a key difference between default judgment and summary judgment is that the former brings the proceedings to an end (unless it is set aside or varied) whereas the latter may not necessarily do so (as summary judgment can be made merely on a single issue of fact or law).

This Legal Insight will provide an overview of these two types of judgments available to parties in the British Virgin Islands (“**BVI**”) and the threshold required for being granted either by the BVI court.

Default judgment

What is default judgment?

Default judgment is judgment in favour of a claimant (without the claim proceeding to trial) where the defendant has failed to respond to the claim within the prescribed timeframe set out in the Eastern Caribbean Supreme Court Civil Procedure Rules (revised edition) 2023. Default judgment may determine liability only (or liability and remedy) on the basis of the information that has been provided already in the proceedings.

It should be noted that a defendant can also obtain default judgment where the claimant has not filed a defence to the counterclaim or any part of it (see below).

When is default judgment available?

A claimant may obtain default judgment where the defendant has failed to file:

- 1) a defence; or
- 2) an acknowledgement of service giving notice of intention to defend to the claim.

The general rule is that the period for a defendant to file:

- 1) a defence is the period of 28 days after the date of service of the claim form. If a claim form is issued in one Member State¹, Territory² or Circuit³ and served in another, the period for filing is 42 days after the date of service of the claim form; and

¹ Member State means one of the six states which are members of the Eastern Caribbean Supreme Court, i.e. Antigua and Barbuda, Commonwealth of Dominica, Grenada, Saint Christopher and Nevis, Saint Lucia and Saint Vincent and the Grenadines.

² Territory means one of the three British Overseas Territories which are members of the Eastern Caribbean Supreme Court, i.e. Anguilla, Montserrat and the BVI.

³ Circuit means the Saint Christopher circuit and the Nevis circuit in the State of Saint Christopher and Nevis.

- 2) an acknowledgment of service is the period of 14 days after the date of service of the claim form. If a claim form is issued in one Member State, Territory or Circuit and served in another, the period is 28 days after the date of service of the claim form.

It should be noted that a claimant in the BVI may not obtain default judgment in certain types of claims, such as a claim in probate proceedings.

Conditions to be satisfied – judgment for failure to file acknowledgment of service

The court office (at the request of the claimant) must enter judgment for failure to file an acknowledgment of service if:

- 1) the claimant proves service of the claim form and statement of claim;
- 2) the defendant has not filed:
 - a) an acknowledgment of service; or
 - b) a defence to the claim or any part of it;
- 3) the defendant has not satisfied in full the claim;
- 4) (if the only claim is for a specified sum of money, apart from costs and interest), the defendant has not filed an admission of liability to pay all of the money claimed together with a request for time to pay it;
- 5) the period for filing an acknowledgment of service has expired;
- 6) the claimant has the permission of the court to enter judgment (if necessary); and
- 7) the claim is not a claim in which default judgment may not be obtained.

Conditions to be satisfied – judgment for failure to defend

The court office (at the request of the claimant) must enter judgment for failure to defend if:

- 1) the claimant proves service of the claim form and statement of claim or proves that service is dispensed with or an acknowledgment of service has been filed by the defendant;
- 2) the period for filing a defence and any extension agreed by the parties or ordered by the court has expired;
- 3) the defendant has not:
 - a) filed a defence to the claim or any part of it (or the defence has been struck out or is deemed to have been struck out); or
 - b) (if the only claim is for a specified sum of money) filed or served on the claimant an admission of liability to pay all of the money claimed, together with a request for time to pay it; or
 - c) satisfied the claim on which the claimant seeks judgment;
- 4) (where necessary) the claimant has the permission of the court to enter judgment; and
- 5) the claim is not a claim in which default judgment may not be obtained.

Conditions to be satisfied – judgment for failure to defend counterclaim

The court office (at the request of the defendant) must enter judgment for failure to defend the counterclaim if:

- 1) the defendant proves service of the counterclaim;

- 2) the period for filing a defence to counterclaim and any extension agreed by the parties or ordered by the court has expired;
- 3) the claimant has not filed a defence to the counterclaim or any part of it (or the defence to counterclaim has been struck out or is deemed to have been struck out);
- 4) (where necessary) the defendant has the permission of the court to enter judgment; and
- 5) the claim is not a claim in which default judgment may not be obtained.

Claim against more than one defendant

A claimant may apply for default judgment on a claim for money against one of two or more defendants and proceed with the claim against the other defendants.

If a claimant applies for a default judgment against one of two or more defendants, then if the claim can be dealt with separately from the claim against the other defendants, the court may enter judgment against that defendant and the claimant may continue the proceedings against the other defendants. If the claim cannot be dealt with separately from the claim against the other defendants, the court may not enter judgment against that defendant and must deal with the application at the same time as it disposes of the claim against the other defendants.

Procedure for obtaining default judgment

A claimant applies for default judgment by filing the prescribed form supported by evidence on affidavit.

Setting aside or varying default judgment - Cases where court must set aside default judgment

The court must set aside a default judgment if judgment was wrongly entered, i.e. if any of the conditions to be satisfied were not.

Setting aside or varying default judgment - Cases where court may set aside or vary default judgment

The court may set aside a default judgment only if the defendant has a real prospect of successfully defending the claim. In determining this, the court may consider if the defendant:

- 1) applied to the court as soon as reasonably practicable after finding out that judgment has been entered; and
- 2) gives a good explanation for the failure to file an acknowledgement of service or a defence, as the case may be.

In any event, the court may set aside a default judgment if the defendant satisfies the court that there are exceptional circumstances. Where the court has power to set aside a judgment, the court may instead vary it.

Application to vary or set aside default judgment - procedure

An application may be made by any person who is directly affected by the entry of judgment. The application must be supported by evidence on affidavit. The affidavit must exhibit a draft of the proposed defence.

Summary judgment

What is summary judgment?

Summary judgment is a judgment given in favour of a party without a full trial of the issues and hearing of evidence on the basis that the claim, defence or a particular issue (whichever is applicable) has no real prospect of success and there is no other compelling reason why the matter should be disposed of at trial. Summary judgment may dispose of the case as a whole or can be confined to a particular issue in the matter.

Grounds for summary judgment

The court may give summary judgment on the claim or on a particular issue if it considers that the:

- 1) claimant has no real prospect of succeeding on the claim or the issue; or
- 2) defendant has no real prospect of successfully defending the claim or the issue.

It should be noted that a party in the BVI may not obtain summary judgment in certain types of claims, such as a claim in probate proceedings.

Procedure for obtaining summary judgment

Notice of an application for summary judgment must be served not less than 14 days before the date fixed for hearing the application. Such notice must identify the issues which it is proposed that the court should deal with at the hearing.

An applicant seeking summary judgment must:

- 1) file an application in the prescribed form;
- 2) file evidence on affidavit in support of the application; and
- 3) serve copies of the application and the affidavit evidence on each party against whom summary judgment is sought, not less than 14 days before the date fixed for hearing the application.

The application must identify the issues which it is proposed that the court should deal with at the hearing.

A respondent who wishes to oppose an application for summary judgment may:

- 1) file evidence on affidavit; and
- 2) serve copies of the affidavit evidence on the applicant and any other respondent to the application not less than 7 days before the date fixed for the hearing.

Powers of court on application for summary judgment

The court may give summary judgment on any issue of fact or law whether or not the judgment will bring the proceedings to an end. If the proceedings are not brought to an end, the court must also treat the hearing as a case management conference.

This publication is not intended to be a substitute for specific legal advice or a legal opinion. For specific advice on default judgments or summary judgments in the BVI, please contact your usual Loeb Smith attorney or:

E: edmond.fung@loebsmith.com

SERVING CLIENTS GLOBALLY



About Loeb Smith Attorneys

Loeb Smith is a leading offshore corporate law firm, with offices in the British Virgin Islands, the Cayman Islands, and Hong Kong, whose Attorneys have an outstanding record of advising on the Cayman Islands' law aspects and BVI law aspects of international corporate, investment, and finance transactions. Our team delivers high quality Partner-led professional legal services at competitive rates and has an excellent track record of advising investment fund managers, in-house counsels, financial institutions, onshore counsels, banks, companies, and private clients to find successful outcomes and solutions to their day-to-day issues and complex, strategic matters.