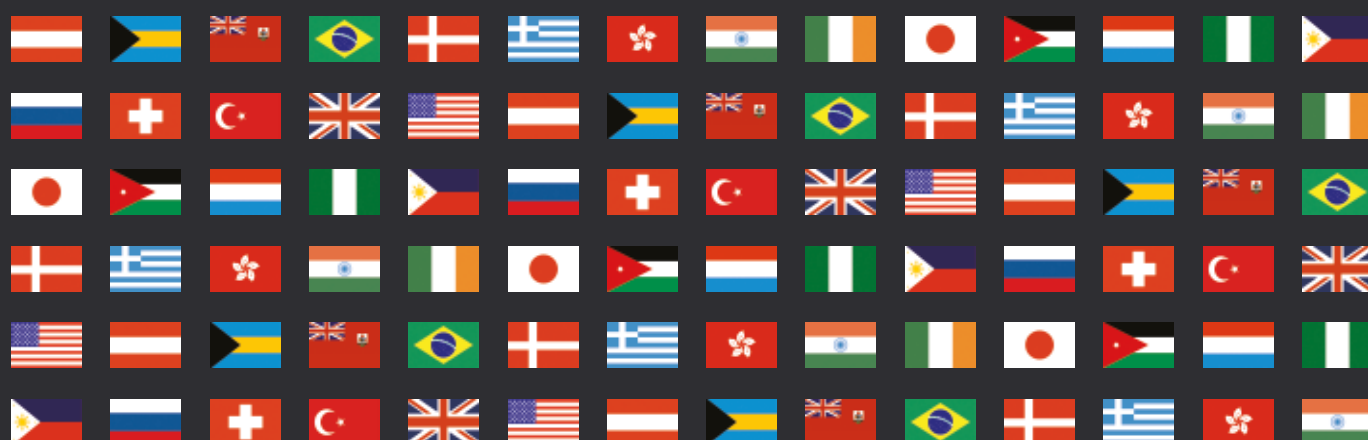


Enforcement of Foreign Judgments 2021

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Enforcement of Foreign Judgments 2021

Contributing editors

Oliver Browne and Tom Watret
Latham & Watkins

Lexology Getting The Deal Through is delighted to publish the tenth edition of *Enforcement of Foreign Judgments*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on the Bahamas, Denmark and Greece.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Oliver Browne and Tom Watret of Latham & Watkins, for their continued assistance with this volume.



London
August 2020

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Global overview

Oliver Browne and Tom Watret

Latham & Watkins

This new edition in the Lexology Getting The Deal Through series deals with the final and perhaps most critical stage in the international litigation process: enforcing a judgment obtained in a foreign jurisdiction.

From a global perspective, the enforcement of foreign judgments is generally a complex field, governed by a variety of approaches in different jurisdictions, involving a mixture of bilateral and multilateral conventions and jurisdiction-specific procedural laws, rules and regulations. Because approaches to the enforcement of judgments differ widely around the globe, the broad range of jurisdictions covered by this volume, and the identification of the key issues and the latest developments in those jurisdictions, makes this a very useful publication.

Of course, the key global issue of 2020 is the covid-19 pandemic. Just as it has affected every other area of life, covid-19 has also impacted the enforcement of judgments (as well as litigation more generally). In almost all the jurisdictions surveyed in this edition, legislatures and courts have made creative changes to court processes and procedures to address the impact of the pandemic, including the widespread use of virtual or remote hearings by telephone or over the internet (including in Nigeria, Brazil, the UK, Denmark, India, Japan, the Philippines and Hong Kong), the digital filing of court documents (such as in Denmark, the UK, India, Brazil and Japan) and the temporary suspension of enforcement proceedings (for example, in Greece) or the extension of court deadlines or limitation periods more generally (for example, in Nigeria, Jordan, the UK, Switzerland, Luxembourg, Turkey and The Bahamas). These developments are documented in the 'Update and Trends' section of each chapter.

Covid-19 is, unfortunately, also likely to heighten the importance of understanding how to enforce a foreign judgment in jurisdictions across the globe. Disputes arise more frequently in times of crisis, and the economic turmoil caused by the pandemic is likely to result in a wave of litigation. Prospective litigants should be aware that a successful litigation outcome (in the form of a favourable judgment) may be worthless if that judgment is not enforceable in the jurisdictions in which their opponent has assets.

Leaving the covid-19 pandemic to one side, the approach to foreign judgments has been hugely impacted by the tension between, on the one hand, the increasing and intensifying efforts by states and courts to improve cooperation in the context of recognition and enforcement of judgments and, on the other, the legal arrangements that will govern those issues following the UK's departure from the European Union: that is, Brexit. These issues are interlinked because the two main instruments that have been developed by the international community in recent times to promote the effective enforcement of judgments on the international plane – the Hague Choice of Court Convention 2005 (the Hague Convention 2005) and the Hague Convention on the Recognition of Foreign Judgments in Civil and Commercial Matters 2019 (the Hague

Convention 2019; together, the Hague conventions) – may play an important role in governing the enforcement of judgments between the UK and other countries post-Brexit. This may in turn provide renewed momentum to the widespread adoption of both Hague conventions.

Brexit, and the question of which international regime will govern questions of the recognition and enforcement of judgments between the UK and other countries, is not just an issue for the UK. Several of the jurisdictions covered by this volume highlight it as an important development. As the UK is one of the world's major economies and one of the most popular centres for the resolution of international disputes, the regime governing jurisdiction and enforcement of judgments between the UK and its most significant trading partner and the world's largest trading bloc, the EU, and with other countries, is of considerable significance to litigants around the globe.

The UK's current arrangements with the EU will remain in place until the end of the transition period on 31 December 2020. What will replace the current regime remains unclear at the time of publication. The UK's preferred replacement is the Lugano Convention 2007, the regime governing jurisdiction and the recognition and enforcement of judgments as between the EU and EFTA states that largely replicates the existing regime under the Brussels Regulations (original and recast). It is unclear if the EU will consent to the UK's accession, which is a necessary pre-condition.

The Hague conventions provide an alternative to the Lugano Convention 2007. Their adoption by the UK would impact the regime governing enforcement of judgments between both the UK and EU and the UK and other countries.

The Hague Convention 2005 provides for a simple mechanism for recognition and enforcement of judgment when the parties have agreed an exclusive jurisdiction clause. Currently, the EU states, Singapore, Mexico and Montenegro have ratified this convention (and the UK will likely do so in its own right when it leaves the EU). China, the USA, the Republic of North Macedonia and the Ukraine have also signed the convention but have not yet ratified it. The Hague Convention 2019, which was designed to complement the Hague Convention 2005, applies where no exclusive jurisdiction clause has been agreed between the parties. It currently has only two contracting parties: the Ukraine and Uruguay. However, it appears likely that the EU – and possibly the UK – will join the Hague Convention 2019 in due course. Widespread adoption of the Hague conventions would be a game changer for the enforcement of judgments on the international plane, similar to the impact of the New York Convention of 1958 on the recognition and enforcement of foreign arbitral awards.

Whatever the rest of 2020 brings, the topic of the enforcement of foreign judgments is likely to give litigants and lawyers alike plenty to consider.

United Kingdom

Oliver Browne and Tom Watret

Latham & Watkins

LEGISLATION

Treaties

- 1 | Is your country party to any bilateral or multilateral treaties for the reciprocal recognition and enforcement of foreign judgments? What is the country's approach to entering into these treaties, and what, if any, amendments or reservations has your country made to such treaties?

The UK is party to a number of bilateral and multilateral treaties for the reciprocal recognition and enforcement of foreign judgments. Whether one of those treaties applies to the enforcement of a particular foreign judgment largely depends on the country from which the foreign judgment originates. For foreign judgments that do not fall within the scope of one of the treaties, the UK rules on enforcement of foreign judgment can be found in a mixture of statute and case law.

EU regime

Due to the UK having left the EU (Brexit), the UK's future arrangements with regards to the recognition and enforcement of judgments as between the UK and the EU member states is currently in a state of flux.

For the time being, although the UK has left the EU, it remains party to the existing EU regime pursuant to article 127 of the Brexit Withdrawal Agreement, which provides for EU law (and international agreements to which the EU is a party) to continue to apply until the end of the transition period, which is scheduled for 31 December 2020. The deadline to extend the transition period via the formal process set out in article 132 of the Brexit Withdrawal Agreement expired on 1 July 2020.

There are three main regimes that are applicable to judgments obtained from EU member states, depending on when the relevant proceedings were commenced. Each regime applies to civil and commercial matters, and therefore excludes matters relating to revenue, customs and administrative law. There are also separate EU regimes applicable to matrimonial relationships, wills, succession, bankruptcy, social security and regulation. The most recent regime applicable to civil and commercial matters is the Recast Brussels Regulation 2012 (Regulation (EU) 1215/2012), which applies to judgments given in proceedings commenced on or after 10 January 2015. The original Brussels Regulation 2001 (Regulation (EU) 44/2001) applies to judgments given in proceedings commenced before 10 January 2015. Finally, the Brussels Convention 1968 also continues to apply in relation to judgments given in Gibraltar and some dependent territories of EU member states. Additionally, the Lugano Convention 2007 governs the recognition and enforcement of judgments as between EU and certain EFTA member states (Iceland, Norway, and Switzerland, but not Lichtenstein). The UK has applied to join the Lugano Convention 2007 after the end of the Brexit transition period.

Commonwealth and British overseas territories

The UK has a statutory regime for the recognition and enforcement of judgments in place with most commonwealth countries and British overseas territories, found in the Administration of Justice Act 1920 (AJA 1920).

Hague Convention on Choice of Court Agreements 2005

The UK is currently a party to the Hague Convention 2005 by virtue of its membership of the EU. It will remain a party until the end of the Brexit transition period on 31 December 2020. The UK government has indicated it intends that the UK will accede to the Hague Convention 2005 in its own right prior to the end of the Brexit transition period, and there is currently legislation before the UK Parliament that would provide for the corresponding amendments to UK domestic law.

Other statutory regimes

The Foreign Judgments (Reciprocal Enforcement) Act 1933 (the FJA 1933) applies to judgments from courts in Australia, Canada (except Quebec and Nunavut), India, Israel, Pakistan, Guernsey, Jersey and the Isle of Man. The FJA 1933 also applies to judgments from some European countries (Austria, Belgium, France, Germany, Italy, the Netherlands and Norway) to the extent that their subject matter is not covered by the European regime. The UK also has specific rules relating to the enforcement of judgments between its constituent parts. For example, the Civil Jurisdiction and Judgments Act 1982 is the relevant regime for the enforcement of judgments from the courts of Scotland and Northern Ireland in England and Wales.

Common law rules

The common law relating to recognition and enforcement of judgments applies where the jurisdiction from which the judgment relates does not have an applicable treaty in place with the UK, or in the absence of any applicable UK statute. Prominent examples include judgments of the courts of the United States, China, Russia and Brazil. At common law, a foreign judgment is not directly enforceable in the UK, but instead will be treated as if it creates a contract debt between the parties. The foreign judgment must be final and conclusive and on the merits of the action. The creditor will then need to bring an action in the relevant UK jurisdiction for a simple debt. Summary judgment procedures will usually be available. Any judgment obtained will be enforceable in the same way as any other judgment of a court in the UK. However, courts in the UK will not give judgment on such a debt where the original court lacked jurisdiction according to the relevant UK conflict of laws rules, if it was obtained by fraud, or is contrary to public policy or the requirements of natural justice.

Sector-specific rules

The UK is party to a range of subject-matter treaties and conventions that provide for recognition and enforcement of specific types of judgments or awards. These are generally modelled on the FJA 1933.

Examples include the Carriage of Goods by Road Act 1965, the Merchant Shipping Act 1995 and the Civil Aviation Act 1982.

Intra-state variations

2 | Is there uniformity in the law on the enforcement of foreign judgments among different jurisdictions within the country?

The law on the enforcement of foreign judgments is substantively similar in each of the three jurisdictions in the UK (England and Wales, Scotland, and Northern Ireland). However, each jurisdiction has a separate court system and therefore the court procedure for the enforcement of foreign judgments differs in each jurisdiction. This chapter focuses on the procedure in England and Wales.

Sources of law

3 | What are the sources of law regarding the enforcement of foreign judgments?

The law regarding the enforcement of foreign judgments in the UK derives from a mixture of the EU regime, bilateral and multilateral treaties, domestic statute and the common law.

Hague Convention requirements

4 | To the extent the enforcing country is a signatory of the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, will the court require strict compliance with its provisions before recognising a foreign judgment?

The UK is not a signatory to the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters 1971 or the Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters 2019.

BRINGING A CLAIM FOR ENFORCEMENT

Limitation periods

5 | What is the limitation period for enforcement of a foreign judgment? When does it commence to run? In what circumstances would the enforcing court consider the statute of limitations of the foreign jurisdiction?

Different limitation periods apply depending on which set of rules for the recognition and enforcement of judgments apply.

EU regime

Under the various EU instruments there is generally no set limitation period, but the judgment must still be enforceable in the jurisdiction in which it was obtained. In the case of *C-420/07 Apostolides v Orams* [2009] ECR I-03571, [2011] 2 WLR 324, the Court of Justice of the EU (CJEU) confirmed that enforceability of a judgment in the member state of origin is a precondition for its enforcement in another member state.

Administration of Justice Act 1920

Section 9(1) of the Administration of Justice Act 1920 (AJA 1920) requires that an application to register the judgment must be made within 12 months of the date of the judgment. However, the court has discretion to allow a longer period. For instance, in *Ogelegbanwei v President of the Federal Republic of Nigeria* [2016] EWHC 8 (QB), proceedings brought to enforce a Nigerian judgment were incorrectly brought under the Foreign Judgments (Reciprocal Enforcement) Act 1933 (the FJA 1933), but the High Court permitted the claimants to amend their application to proceed under the AJA 1920 even though the 12-month period had expired.

Hague Convention 2005

Article 8(3) of the Hague Convention 2005 requires that the foreign judgment must still be enforceable in the jurisdiction in which it was obtained. Section 4B of the Civil Jurisdiction and Judgments Act 1982 (the UK domestic implementing legislation) also provides that a judgment to which the Hague Convention 2005 applies must be registered 'without delay'.

Foreign Judgments (Reciprocal Enforcement) Act 1933

Section 2(1) of the FJA 1933 provides that an application should be made to register the judgment debt within six years of the foreign judgment or, where the judgment has been subject to appeal, from the date of the last judgment in the foreign proceedings.

Common law rules

Section 24(1) of the Limitation Act 1980 provides that an action to enforce a foreign judgment under the common law rules must be commenced within six years of the date on which the foreign judgment became enforceable.

Types of enforceable order

6 | Which remedies ordered by a foreign court are enforceable in your jurisdiction?

Broadly speaking, foreign non-monetary judgments are only enforceable in the UK if they fall within the EU regime or the Hague Convention 2005. Under the common law rules and other statutory schemes, only monetary judgments which are final and conclusive are enforceable.

EU regime

The EU instruments provide for the enforcement of any judgment in a civil or commercial matter given by a court or tribunal of a contracting state, whatever it is called by the original court. For example, article 2(a) of the Recast Brussels Regulation provides for the enforcement of any decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by an officer of the court.

The Recast Brussels Regulation 2001 also extends to interim, provisional or protective relief (including injunctions) when ordered by a court which has jurisdiction by virtue of the EU instrument in question.

Administration of Justice Act 1920

The AJA 1920 covers any judgment or order in civil proceedings where a sum of money is awarded to a judgment creditor. It includes arbitration awards that are enforceable in the original jurisdiction. Under section 9(2)(e) of the AJA 1920, a foreign judgment will not be recognised or enforced in England if the court is satisfied that an appeal is pending or that the judgment debtor is entitled to and intends to appeal.

Hague Convention 2005

The Hague Convention 2005 applies to final decisions on the merits, but not interim, provisional or protective relief (article 7). Under article 8(3) of the Hague Convention 2005, if a foreign judgment is enforceable in the country of origin, it may be enforced in England. However, article 8(3) of the Hague Convention 2005 permits an English court to postpone or refuse recognition if the foreign judgment is subject to appeal in the country of origin. Article 11(1) of the Hague Convention 2005 permits recognition and enforcement of a judgment to be refused if it awards exemplary or punitive damages that do not compensate a party for actual loss or harm suffered.

Foreign Judgments (Reciprocal Enforcement) Act 1933

The FJA 1933 covers judgments or orders made by a recognised court in civil proceedings or in criminal proceedings for a sum of money in respect of compensation or damages to an injured party, as long as

it is not in respect of a tax, fine or penalty. The judgment must also finally and conclusively determine the rights and liabilities of the parties (although, per section 5(1) of the Act, it is no bar to enforcement that an appeal is pending). The FJA 1933 also makes specific provision for the enforcement of arbitration awards.

Common law rules

At common law, the judgment must be final and conclusive between the parties and for a specific monetary sum. The Court of Appeal has held that a foreign judgment will be considered final and binding where it 'would have precluded the unsuccessful party from bringing fresh proceedings in the [foreign] jurisdiction' (see *Joint Stock Company 'Aeroflot-Russian Airlines' v Berezovsky and Glushkov* [2014] EWCA Civ 20). However, the fact that the judgment is subject to appeal in the foreign jurisdiction does not necessarily prevent its enforcement in the UK. Injunctive relief or interim awards will not be recognised or enforced at common law.

Competent courts

7 | Must cases seeking enforcement of foreign judgments be brought in a particular court?

Proceedings seeking recognition and enforcement of foreign judgments should be brought before the High Court in England and Wales, the Court of Session in Scotland and the High Court of Northern Ireland.

Separation of recognition and enforcement

8 | To what extent is the process for obtaining judicial recognition of a foreign judgment separate from the process for enforcement?

Outside of the specific regimes set out in the treaties to which the UK is a party, recognition and enforcement are separate processes in England and Wales. Generally speaking, a foreign judgment will have no direct operation and cannot be immediately enforced until it has been recognised. The party seeking to enforce a foreign judgment must therefore first apply to court to have it recognised. Once the necessary procedural steps for recognition have been completed, the foreign judgment will be enforced as if it was an English judgment.

Brussels Regulation 2001, Brussels Convention 1968, Lugano Convention 2007, AJA 1920, FCA 1933

For judgments that fall within the EU instruments other than the Recast Brussels Regulation 2012, or within the AJA 1920 or FCA 1933, the process for obtaining recognition of a judgment is set out in detail in the Civil Procedure Rules (CPR), Part 74. The process involves applying to a High Court master with the support of written evidence. The application should include, among other things, a verified or certified copy of the judgment and a certified translation (if necessary). Further details are set out in Part 74 of the CPR. The judgment debtor then has an opportunity to oppose appeal registration on certain limited grounds. Assuming the judgment debtor does not successfully oppose registration, the judgment debtor can then take steps to enforce the judgment.

Recast Brussels Regulation 2012

The position is different with regard to judgments to which the Recast Brussels Regulation 2012 applies. Under the Recast Brussels Regulation 2012, judgments from EU member states are automatically recognised as if they were a judgment of a court in the state in which the judgment is being enforced – no special procedure is required for the judgment to be recognised (Recast Regulation 2012, article 36).

For the judgment to be enforced, the applicant must provide the documents set out in article 42 of the Recast Brussels Regulation 2012

to the court (CPR, Part 74.4A). It is incumbent on the party resisting enforcement to apply for refusal of recognition of the judgment (Recast Brussels Regulation 2012, article 45).

Common law rules

For judgments that fall within the common law rules, the judgment creditor will need to commence a claim in the English courts in accordance with the CPR, Part 7, in order to obtain an English judgment. It will usually be possible to apply for summary judgment under the CPR, Part 24. An application for summary judgment must be supported by written evidence. Once the judgment creditor has obtained an English judgment in respect of the foreign judgment, that English judgment will be enforceable in England like any other English judgment.

OPPOSITION

Defences

9 | Can a defendant raise merits-based defences to liability or to the scope of the award entered in the foreign jurisdiction, or is the defendant limited to more narrow grounds for challenging a foreign judgment?

Generally, courts in the UK will give effect to a validly obtained foreign judgment and will not enquire into errors of fact or law in the original decision.

EU regime

The EU instruments contain express prohibitions on the review of the merits of a judgment from another member state.

A judgment debtor may object to the registration of a judgment under the EU instruments (or, in the case of the Recast Brussels Regulation 2012, which does not require registration, appeal the recognition or enforcement of the foreign judgment) on similar, strictly limited grounds.

In the case of the Recast Brussels Regulation 2012, these are set out in article 45 and include:

- if recognition of the judgment would be manifestly contrary to public policy;
- if the judgment debtor was not served with proceedings in time to enable the preparation of a proper defence; or
- if conflicting judgments exist in the UK or other member states.

Equivalent defences are set out in articles 34 to 35 of the Brussels Regulation 2001 and the Lugano Convention, respectively. The court may not refuse a declaration of enforceability on any other grounds.

Administration of Justice Act 1920

Under the Administration of Justice Act 1920 (AJA 1920), the court's power to register a judgment is discretionary. The court will order enforcement if it considers it just and convenient that the judgment should be enforced in the UK. This provides some scope for a merits-based review. Section 9(2) sets out specific grounds on the basis of which registration will be refused.

Hague Convention on Choice of Court Agreements 2005

The Hague Convention 2005 sets out limited grounds on the basis of which recognition or enforcement may be refused (article 8). These are found in article 9. It expressly prohibits the review of the merits of judgments (article 8(1)).

Other statutory regimes

The Foreign Judgments (Reciprocal Enforcement) Act 1933 (the FJA 1933) makes provision for setting aside registration in circumstances

where the original court lacked jurisdiction, the judgment was obtained by fraud, an appeal is pending or intended to be filed by a judgment debtor, the judgment is contrary to UK public policy, or the judgment is for multiple damages (unenforceable under the Protection of Trading Interests Act 1980).

Common law rules

At common law, recognition of the judgment debt is discretionary. Courts in England will not give judgment when the foreign court lacked jurisdiction according to relevant UK conflict of laws rules, was obtained by fraud, or is contrary to public policy in England or to the requirements of natural justice. Under section 32(1) of the Civil Jurisdiction and Judgments Act 1982 (CJJA 1982), a foreign judgment may not be recognised where it was obtained in breach of a valid jurisdiction or arbitration clause, unless the judgment debtor submitted to the foreign court's jurisdiction. When considering the natural or substantial justice requirement, the court will consider the principles of justice rather than the strict rules, and it is not restricted to a lack of notice or denial of a proper opportunity to be heard, though mere procedural irregularity will not be sufficient to preclude recognition and enforcement. In addition, a UK court is unlikely to refuse to recognise a foreign judgment on grounds that could have been raised in the foreign proceedings.

Injunctive relief

10 | May a party obtain injunctive relief to prevent foreign judgment enforcement proceedings in your jurisdiction?

Injunctive relief to prevent enforcement of foreign judgments in England

Brussels Regulation 2001, Brussels Convention 1968, Lugano Convention 2007, AJA 1920, FCA 1933

For a foreign judgment to which these instruments apply to be recognised in England, the judgment creditor must first apply for registration of the judgment.

Following a successful application for registration, the judgment creditor will receive a registration order. That order will state the debtor's right to challenge or appeal against the registration and the time period within which such a challenge or appeal must be brought.

Pursuant to the Civil Procedure Rules (CPR) Part 74.9, no steps can be taken to enforce the judgment before the end of that period, except measures ordered by the English court to preserve the assets of the debtor. If the debtor challenges or appeals the registration, then no steps can be taken to enforce the judgment until that application or appeal has been determined.

Recast Brussels Regulation 2012

Under article 44(1) of the Recast Brussels Regulation 2012, a judgment debtor that applies to challenge the recognition and enforcement of a foreign judgment may also apply to the English court to limit the enforcement proceedings to protective measures; make any enforcement conditional on the judgment creditor providing security; or suspend the enforcement proceedings either wholly or in part.

Injunctive relief to prevent enforcement of judgments in other jurisdictions

Following the decisions in *C-185/07 Allianz SpA v West Tankers* and *Nori Holding v Bank Otkritie* [2018] EWHC 1343 (Comm), it is clear that English courts may not grant injunctions to restrain proceedings that fall within the EU regime.

When proceedings fall outside the EU regime, the English courts are willing in exceptional circumstances to grant anti-enforcement injunctions to prevent a party from enforcing a judgment in other jurisdictions.

In the case of *Ellerman Lines Ltd v Read* [1928] 2 KB 144, the court granted an injunction restraining the judgment debtor from enforcing a judgment obtained both in breach of contract and through fraud committed on the foreign court.

In the more recent case of *Ecobank Transnational Inc v Tanoh* [2015] EWHC 1874 (Comm), the High Court discharged a worldwide anti-enforcement injunction partly on the basis that the party that had obtained the injunction could have sought an anti-suit injunction at an earlier date and had therefore not applied sufficiently promptly for the anti-enforcement injunction.

The court can also enforce by injunction an agreement not to enforce foreign judgments, as in the case of *Bank St Petersburg v Arkhangelsky* [2014] EWCA Civ 593.

REQUIREMENTS FOR RECOGNITION

Basic requirements for recognition

11 | What are the basic mandatory requirements for recognition of a foreign judgment?

The requirements for recognition of a foreign judgment depends on where it originates from and the applicable regime.

Depending on the applicable regime, the basic requirements broadly relate to:

- the nature of the judgment;
- the jurisdiction of the foreign court; or
- existence of factors that renders the judgment impeachable.

Once requirements (1) and (2) are satisfied, the foreign judgment is prima facie entitled to be recognised.

EU regime

Under the EU regime, any judgment given by a court or tribunal can be recognised. There is no requirement that the judgment must be final and conclusive, and both monetary and non-monetary judgments are eligible to be recognised. Unlike the position at common law, the Administration of Justice Act 1920 (the AJA 1920) and Foreign Judgments (Reciprocal Enforcement) Act 1933 (the FJA 1933), the English courts are generally not entitled to investigate the jurisdiction of the originating court.

Such foreign judgments shall be recognised without any special procedures, subject to the grounds for non-recognition in article 45 Recast Brussels Regulation 2012, article 34 Brussels Regulation 2001 and article 34 Lugano Convention. These include:

- recognition is manifestly contrary to English public policy;
- in cases of default judgments, the judgment debtor was not served the document that instituted the proceedings in sufficient time to enable them to arrange for their defence; or
- judgment is irreconcilable with a judgment given between the same parties in England or an earlier judgment in another EU/EFTA state or a third state that is eligible for recognition in England.

AJA 1920

The scope of foreign judgments that can be recognised at common law are limited to those that are final and conclusive on the merits and given by a court of competent jurisdiction according to English conflicts of law rules.

Hague Convention 2005

The Hague Convention 2005 sets out limited grounds on the basis of which recognition or enforcement may be refused (article 8). These are found in article 9.

Other factors

12 | May other non-mandatory factors for recognition of a foreign judgment be considered and, if so, what factors?

Only the AJA 1920 contains an explicit provision to the effect that enforcement of a foreign judgment by registration is within the discretion of the English court. Section 9(1) of the AJA 1920 states that enforcement will only be allowed if the court thinks it just and convenient that the judgment should be enforced. However, the consideration of grounds for non-recognition or non-enforcement under all regimes – for example, public policy factors and natural justice at common law – would involve the exercise of discretion.

While it is clear that reciprocity is not a factor that the English courts consider when determining whether a foreign judgment is recognised, it forms the basis of the system of recognition and enforcement of foreign judgment under the AJA 1920 and FJA 1933.

Procedural equivalence

13 | Is there a requirement that the judicial proceedings where the judgment was entered correspond to due process in your jurisdiction and, if so, how is that requirement evaluated?

EU regime

Procedural equivalence is not a standalone requirement when considering whether to recognise or enforce a foreign judgment. However, procedural fairness in the originating court's process is relevant under various grounds for challenging recognition and enforcement; for example, the requirement of natural justice under the common law, service requirements under the AJA 1920 and FJA 1933 and breach of article 6 of the ECHR. A fundamental objective underlying the EU regime is to facilitate the free movement of judgments by providing a simple and rapid procedure, and it was established in *Maronier v Larmer* [2003] QB 620 that this objective would be frustrated if courts of an enforcing state could be required to carry out a detailed review of whether the procedures that resulted in the judgment had complied with article 6 of the ECHR. There is a strong presumption that the court procedures of other signatories of the ECHR are compliant with article 6. Nonetheless, the presumption can be rebutted, in which case it would be contrary to public policy to enforce the judgment.

Statutory schemes (AJA 1920, FJA 1933)

Under the AJA 1920 and FJA 1933, the originating court's process would already have been considered when the UK entered into the arrangement. The AJA 1920 covers former territories of the UK that share similar systems and processes, whereas the FJA 1933 is extended to selected jurisdictions on an individual basis by Order in Council. Furthermore, both legislations are required to be read in light of ECHR rights under the Human Rights Act.

Hague Convention 2005

Under the Hague Convention 2005, a court may refuse to recognise or enforce a foreign judgment if it would be incompatible with public policy, particularly where the proceedings resulting in the judgment are incompatible with the fundamental principles of procedural fairness of the enforcing country.

Common law rules

The English courts generally do not investigate the propriety of foreign proceedings at enforcement stage at common law. However, a foreign judgment would not be enforced if it would constitute a breach of natural justice. This would arise, for example, if the judgment debtor had no notice of the proceedings or if he or she was not given a proper

opportunity present the case. In *Merchant International Co Ltd v Natsionalna Aktsionerna Kompaniia Naftogaz Ukrainy* [2012] 1 WLR 3036, the Court of Appeal confirmed the applicability of the rebuttable presumption that the procedures of other Convention states comply with article 6 of the ECHR established in *Maronier*. A foreign judgment found to be in flagrant breach of article 6 would therefore be unenforceable.

JURISDICTION OF THE FOREIGN COURT

Personal jurisdiction

14 | Will the enforcing court examine whether the court where the judgment was entered had personal jurisdiction over the defendant and, if so, how is that requirement met?

EU regime

There is very limited scope for the English courts to investigate the jurisdiction of the originating court in respect of a foreign judgment falling under the EU regime, unless article 45(1)(e) of the Recast Brussels Regulation 2012, article 35(1) of the Brussels Regulation 2001 or article 35(1) of the Lugano Convention 2007 apply. It is therefore not possible to deny enforcement on the basis that the foreign court took jurisdiction wrongly, except where the judgment conflicts with:

- sections 3, 4 or 5 of Chapter II of the Recast Brussels Regulation 2012, which provide jurisdictional rules in insurance, consumer and employment cases;
- sections 3 or 4 of Chapter II of the Brussels Regulation 2001 and Lugano Convention 2007, which provide jurisdictional rules in insurance and consumer cases; or
- section 6 of Chapter II of the Recast Brussels Regulation 2012, Brussels Regulation 2001 and Lugano Convention 2007, which confers exclusive jurisdiction on the court of the state with particularly close connection with a specific subject matter.

Hague Convention 2005

The Hague Convention 2005 requires an exclusive choice of court agreement in favour of the enforcing contracting state. The agreement can either be in writing or by any means of communication that renders information accessible for subsequent reference. It also provides that contracting states may make declaration to the effect that its courts would refuse to recognise or enforce a judgment from another contracting state if:

- the parties were resident in the requested state; and
- the relationship of the parties and all other elements relevant to the dispute (other than the location of the chosen court) were connected with only the requested state.

Common law rules

The position under common law is different. In order for a foreign judgment to be recognised and enforced, the originating court must have jurisdiction according to English conflicts of law rules. This would be satisfied if the judgment debtor was:

- present in the jurisdiction at the time the proceedings were instituted (in the case of a company, it can be directly present in the jurisdiction by having a place of business, or indirectly present through an agent, representative, subsidiary or joint venture company that is carrying on the company's business);
- the judgment creditor in the proceedings in the foreign court, or counter-claimed;
- voluntarily appeared in the foreign proceedings; or
- agreed to submit to the jurisdiction of the originating court by way of an express jurisdiction clause or implied jurisdiction agreement.

Other statutory schemes

Under the Administration of Justice Act 1920 (the AJA 1920), the originating court must have acted with jurisdiction in order for the foreign judgment to be registered. Section 9(2)(b) of the AJA 1920 provides that the judgment debtor must either be carrying on business or ordinarily resident within the jurisdiction of the original court and did not voluntarily appear or otherwise submit or agree to submit to the jurisdiction of that court. This largely mirrors the common law position, although it is different in that 'carrying on business' is an alternative to residence not only for corporations but also individuals. The requirements under the Foreign Judgments (Reciprocal Enforcement) Act 1933 (the FJA 1933) are also similar to the rules of the common law, except that mere presence is not sufficient for an individual to come under the jurisdiction of the foreign court. The individual must be resident when proceedings were instituted or have a place of business in the foreign country and the cause of action is connected with that place. For a company, it must have its principal place of business in the foreign country or an office of place of business through which the transaction is effected.

Subject-matter jurisdiction

15 | Will the enforcing court examine whether the court where the judgment was entered had subject-matter jurisdiction over the controversy and, if so, how is that requirement met?

The subject matter of the foreign judgment is only determinative under the EU regime and the Hague Convention 2005. This is because the Recast Brussels Regulation 2012, Brussels Regulation 2001 and Lugano Convention 2007 exclude certain subject matters from the scope of its application, including revenue, customs, administrative matters, personal status, matrimonial matters, wills and succession, insolvency and arbitration. Relationships comparable to marriage and maintenance obligations are also excluded under the Recast Brussels Regulation 2012. There are also special provisions for jurisdiction in relation to certain subject matters, including insurance, consumer contracts and employment contracts. Article 2 of the Hague Convention also contains a list of subject matters to which it does not apply.

Service

16 | Must the defendant have been technically or formally served with notice of the original action in the foreign jurisdiction, or is actual notice sufficient? How much notice is usually considered sufficient?

EU regime

Under the Recast Brussels Regulation 2012, Brussels Regulation 2001 and Lugano Convention 2007, a judgment given in default of appearance will not be enforced if the judgment debtor was not served with the document instituting the proceedings, or if he or she was duly served but not in sufficient time to arrange for his or her defence. However, the defence would be lost if the judgment debtor failed to commence proceedings to challenge the judgment when it was possible for them to do so. In *Reeve and others v Plummer* [2014] EWHC 362 (QB), the court noted that all relevant circumstances should be considered to determine whether actual or sufficient service had been effected to give the judgment debtor a proper opportunity to defend themselves.

Hague Convention 2005

Under article 9 of the Hague Convention 2005, recognition and enforcement may be refused if the documents that instituted the proceedings were not notified to the judgment debtor in sufficient time and in such a way to enable them to arrange his or her defence. The defence would not be available if the judgment debtor appeared without contesting notification in the originating court. Furthermore, the judgment would

not be enforced if the manner of service was incompatible with fundamental principles of the enforcing state.

Common law rules

At common law, the overriding question is whether there was a procedural defect that constituted a breach of the English's court view of natural justice; for example, if the judgment debtor was not given notice of the proceedings and the opportunity to put a case to the foreign court. A mere procedural irregularity would not be sufficient. Article 6 of the ECHR would also likely afford protections in this regard, and a judgment that is obtained in breach of the rules of natural justice would most certainly be unenforceable due to a violation of the right to fair trial under article 6.

Other statutory schemes

The AJA 1920 and FJA 1933 both contain specific provisions dealing with service and notice. The AJA 1920 provides that registration of a foreign judgment will be refused if the judgment debtor was not duly served with the process of the original court and did not appear in the proceedings. Whether the judgment debtor has been duly served is judged according to the law of the originating court. However, there are limits to this. For example, nailing a copy of the writ to the court-house door would not constitute due service within the meaning of the AJA 1920 (as in *Buchanan v Rucker* (1808) 9 East 192) despite it being due service according to the foreign law. Similarly, the FJA 1933 requires the judgment debtor to have received notice of the proceedings in sufficient time to enable them to defend themselves. Otherwise, if the judgment debtor did not appear, service would not have been given even if process may have been duly served on them in accordance with the applicable foreign law.

Fairness of foreign jurisdiction

17 | Will the court consider the relative inconvenience of the foreign jurisdiction to the defendant as a basis for declining to enforce a foreign judgment?

Forum non conveniens is not a ground for challenging the recognition or enforcement of a foreign jurisdiction under any of the regimes, and the English courts would not consider the factual nexus between the jurisdiction of the originating court and the dispute, nor the convenience to the parties or witnesses when determining whether to recognise or enforce a foreign judgment.

EXAMINATION OF THE FOREIGN JUDGMENT

Vitiating by fraud

18 | Will the court examine the foreign judgment for allegations of fraud upon the defendant or the court?

EU regime

The Recast Brussels Regulation 2012, Brussels Regulation 2001 and Lugano Convention 2007 do not contain a separate defence for fraud. However, it has been accepted that recognition or enforcement of a judgment from a court of another member state that is tainted by fraud may be refused on grounds of public policy. Nonetheless, it would not be contrary to public policy for the UK court to recognise or register a judgment if means of redress against the alleged fraud were available in the original court giving judgment.

Hague Convention 2005

Unlike the Brussels regime, fraud in matters of procedure is a ground of appeal against a decision to register a judgment that falls under the Hague Convention (section 6B of the Civil Jurisdiction and Judgments Act 1982).

Common law rules

At common law, fraud is a defence to an action on a foreign judgment if it is operative in obtaining the foreign judgment. It has the effect of preventing enforcement in England only. The judgment debtor remains fully entitled to raise the defence of fraud even if the facts relied upon were known to the judgment debtor and could have been raised by way of defence in the foreign proceedings and even if the foreign court had rejected them. However, the defence of fraud would not succeed in two circumstances:

- first, if the issue of fraud has been litigated in the foreign court in separate proceedings, the judgment debtor would not be permitted to raise the same defence at the point of enforcing the foreign judgment (*House of Spring Gardens Ltd v Waite* [1991] 1 QB 241); and
- second, if the judgment debtor has not come up with new evidence at all to satisfy the court that further investigation on the issue of fraud is required, the court is entitled to strike out the allegation of fraud as an abuse of process (*Owens Bank v Etoile* [1992] 2 AC 43).

Other statutory schemes

The statutory regime under the Administration of Justice Act 1920 (the AJA 1920) and Foreign Judgments (Reciprocal Enforcement) Act 1933 (the FJA 1933) mirrors the common law principles. Section 9(2)(d) of the AJA 1920 prohibits registration of foreign judgements that are obtained by fraud, whereas section 4(1)(a)(iv) of the FJA 1933 provides that registration of such judgment must be set aside. In *Owens Bank v Etoile*, it was held that the reference to fraud in the AJA 1920 must be construed by reference to the common law principles, and it is assumed that the same would apply to the FJA 1933.

Public policy

19 Will the court examine the foreign judgment for consistency with the enforcing jurisdiction's public policy and substantive laws?

It is possible to set aside the enforcement of a foreign judgment on the ground of public policy under the EU regime, Hague Convention, AJA 1920, FJA 1933 and at common law. However, the operation of this defence varies between the regimes.

EU regime

Article 45(1)(a) of the Recast Brussels Regulation 2012, article 34(1) of the Brussels Regulation 2001 and Lugano Convention 2007 provide that recognition and enforcement would be denied if it would be manifestly contrary to the public policy in the state where its recognition or enforcement is sought. This defence is interpreted strictly and would only apply in exceptional circumstances where recognition or enforcement would be at variance to an unacceptable degree with the legal order of the state of the enforcing court, or if there is a manifest breach of a rule of law or right regarded as essential in the EU legal order. A principal example is where the judgment debtor is able to demonstrate that there has been a deprivation of the right to fair trial in accordance with article 6 of the ECHR. In *Maronier v Larmer* [2003] QB 620, the presumption that the procedures of other signatories of the ECHR are compliant with article 6 was rebutted, given that the Dutch judgment was obtained from proceedings that were reactivated after it had been stayed for 12 years and without fresh service of process on the judgment debtor. The court concluded that it would infringe public policy to enforce the judgment. The presumption was also rebutted in a more recent case, *Laserpoint Ltd v Prime Minister of Malta and others* [2016] EWHC 1820 (QB), due to a delay of 26 years in the conduct of the proceedings and the fact that the judgment debtor was not informed that the proceedings were subsequently revived. Given that a manifest breach of public policy has been established through the analysis of article 6 of the ECHR, the judge rejected the argument that the judgment debtor also had to have exhausted all remedies available

in the originating court. Another example of the public policy exception is where the foreign proceedings are tainted by fraud. On the other hand, a failure to make a reference to the ECJ by the originating court does not render recognition and enforcement of a judgment manifestly contrary to the public policy of the UK, as there exists a final remedy in the form of an action against the state of the originating court (*CDR Creances SAS and another v Tapie and others* [2019] EWHC 1266 (Comm)).

Common law rules

At common law, the public policy exception is a residual category of reasons for non-recognition and non-enforcement of foreign judgments. A recent case, *Lenkor Energy Trading DMCC v Puri* [2020] EWHC 1432 (QB), establishes that it is the recognition or enforcement of the foreign judgment that must be contrary to public policy, rather than the underlying transaction on which the course of action in the foreign proceedings is based. Examples from case law include:

- cause of action in the foreign proceedings is unknown to English law (*Re Macartney* [1921] 1 Ch 522);
- the foreign judgment is obtained in breach of an arbitration agreement or injunction (*AK Investment CJSC v Kyrgyz Mobil Tel Ltd* [2011] UKPC 7); and
- enforcement of the foreign judgment would offend the principle of res judicata as it is inconsistent with a previous decision of a competent English court in proceedings between the same parties or their privies (*ED&F Man (Sugar) Ltd v Haryanto (No.2)* [1991] 1 Lloyd's Rep. 429).

Other statutory schemes

Section 9(2)(f) of the AJA 1920 provides that a foreign judgment would not be registered if the cause of action could not have been entertained by the registering court for reasons of public policy or for some other similar reasons. The defence contained in the FJA 1933 is more limited than that under the AJA 1920 and more akin to the common law position. It provides that registration would be set aside if the enforcement would be contrary to public policy in the country of the registering court.

Conflicting decisions

20 What will the court do if the foreign judgment sought to be enforced is in conflict with another final and conclusive judgment involving the same parties or parties in privity?

EU regime

Article 45(1)(c) of the Recast Brussels Regulation 2012 and article 34(3) of the Brussels Regulation 2001 provide that enforcement would not be permitted if the judgment is irreconcilable with a prior English judgment, which need not be obtained in proceedings subject to the Regulations. Furthermore, enforcement would not be permitted if the judgment conflicts with an earlier judgment in another member state or a third state, provided that the earlier judgment is entitled to enforcement in England.

Hague Convention 2005

A Hague Convention judgment will also be denied enforcement if it is inconsistent with an English judgment in a dispute between the same parties, or if it is inconsistent with an earlier judgment given in another contracting state between the same parties on the same caution of action, provided that the earlier judgment fulfils the condition for it to be recognised in England.

Common law

Under the common law, the existence of a prior English judgment is a defence to recognition or enforcement of a subsequent foreign judgment on the grounds of public policy.

Estoppel

In certain circumstances, a foreign judgment may be relied upon in the English courts to establish a right or defend a claim, even where that foreign judgment has not been formally recognised or enforced. That will be the case where the judgment creates an estoppel preventing one of the parties from re-litigating an issue between the same parties that has already been determined by a court.

Enforcement against third parties

21 | Will a court apply the principles of agency or alter ego to enforce a judgment against a party other than the named judgment debtor?

A foreign judgment creates a debt as between the judgment debtor and judgment creditor only, and therefore is only enforceable against the party against whom the judgment is made. In very limited circumstances would the English courts hold another person liable for the debt of a corporate judgment debtor through the principle of agency. It would require the individual to have set up the corporate structure in order to avoid existing liabilities to justify a finding that the separate legal personality is a mere sham or façade. In the case of group companies, there must be a sufficiently high degree of control and influence over the entities such that it could be treated as one single economic unit. The originating court would also have jurisdiction over the entity against which it is seeking to enforce the judgment debt (*Adams v Cape Industries plc* [1990] Ch 433).

Alternative dispute resolution

22 | What will the court do if the parties had an enforceable agreement to use alternative dispute resolution, and the defendant argues that this requirement was not followed by the party seeking to enforce?

A foreign judgment will not be enforced at common law, the AJA 1920 or FJA 1930 if it has been obtained in breach of an agreement to settle the dispute otherwise than by proceedings in that country (section 32(1), CJA 1982). The protection under section 32 of the CJA 1982 would not be available if the judgment debtor has agreed to the proceedings being brought in the foreign court, or if the judgment debtor counter-claimed or otherwise submitted to the jurisdiction of that court. Furthermore, the protection would be lost if the agreement was void, illegal, unenforceable or incapable of being performed for reasons not attributable to the fault of the party bringing the foreign proceedings (section 32(2) of the CJA 1982). On the other hand, the EU regime does not contain provisions that are equivalent to section 32 of the Civil Jurisdiction and Judgments Act 1982 and is silent as to the effect of an agreement that refers matters to alternative dispute resolution. If an English court has granted an anti-suit injunction restraining a party from seeking judgment in another forum based on an arbitration agreement, the resulting foreign judgment would be obtained in contempt of the English court. Recognition and enforcement would be denied on grounds of public policy. Anti-suit injunctions are impermissible under the EU regime.

Favourably treated jurisdictions

23 | Are judgments from some foreign jurisdictions given greater deference than judgments from others? If so, why?

Foreign judgments that fall under the various schemes of enforcement, including the EU regime, the AJA 1920 and FJA 1933, are more readily enforceable through the procedures set out in the relevant statute or instrument than judgments that are enforceable only at common law. This can be understood in light of the objectives underpinning the EU regime, which are to facilitate the free movement of judgments, as well as the assumption of a harmonised approach to jurisdiction, recognition

and enforcement of judgments from other EU member states. On the other hand, the basis of the application of the AJA 1920 and FJA 1933 is the existence of a substantial measure of reciprocity, which is only extended to jurisdictions that demonstrate that judgments from the UK would be afforded reciprocal treatment.

Alteration of awards

24 | Will a court ever recognise only part of a judgment, or alter or limit the damage award?

The English courts can sever parts of an award that are penal in nature, or that it would be contrary to public policy to enforce. Furthermore, the Protection of Trading Interest Act 1980 bars the enforcement of a foreign judgment sum arrived at by multiplying an amount assessed as compensation for the loss or damage sustained by the claimant. The amount in excess of the compensatory element would be severed and unenforceable. Article 48 of the Brussels Regulation 2001 also allows for severance of part of a judgment where a foreign judgment is given in respect of several matters but not all of them can be enforced. Enforcement would be limited to the eligible part of the judgment sum. Article 15 of the Hague Convention 2005 also provides for the severability of parts of judgments.

AWARDS AND SECURITY FOR APPEALS

Currency, interest, costs

25 | In recognising a foreign judgment, does the court convert the damage award to local currency and take into account such factors as interest and court costs and exchange controls? If interest claims are allowed, which law governs the rate of interest?

In general, if the original judgment carries an entitlement to interest under local law, that interest will be recoverable if the original judgment is enforced in England. Every application for registration of a foreign judgment in the UK will include a statement as to the amount of the award, including any interest that has accrued on that award, which is usually expressed in the currency of the jurisdiction where the foreign judgment was made (see *Miliangos v George Frank (Textiles) Ltd* [1976] AC 443). The order registering the judgment will usually provide for payment of the sums in the foreign currency expressed in the judgment. If a judgment debtor fails to pay in the foreign currency, then the date for conversion into sterling is thought to be when the judgment creditor is given leave to levy execution for a sum in sterling. Any court fees and costs incurred by the enforcing party will be assessed and awarded against the judgment debtor according to the usual court procedures. The EU regime and the Hague Convention 2005 explicitly include costs awards.

The courts can also make an additional order to compensate a judgment creditor for an exchange rate loss, where costs are ordered in sterling, but the costs were originally incurred in a foreign currency in which the creditor operates (see *Elkamet Kunststofftechnik GmbH v Saint-Gobain Glass France SA* [2016] EWHC 3421 (Pat.)).

Security

26 | Is there a right to appeal from a judgment recognising or enforcing a foreign judgment? If so, what procedures, if any, are available to ensure the judgment will be enforceable against the defendant if and when it is affirmed?

EU regime

Under the Recast Brussels Regulation 2012, the foreign judgment is automatically recognised and so is immediately enforceable. In order for the judgment to be enforced, a judgment creditor must provide the

documents set out in article 42 of the Recast Brussels Regulation 2012 to the court (Civil Procedure Rules (CPR), Part 74.4A). It is incumbent on the party resisting enforcement to apply for refusal of recognition of the judgment (Recast Brussels Regulation 2012, article 45). Under the other EU instruments, the judgment debtor has either one or two months from the service of the order registering the judgment to appeal that registration, depending on whether or not they are based within the jurisdiction (CPR, Part 74.8).

Other statutory schemes

Under the Administration of Justice Act 1920 and the Foreign Judgments (Reciprocal Enforcement) Act 1933, registration of a judgment without notice to a judgment debtor is permissible. The judgment debtor will then be able to apply to have the declaration set aside within the time limited specified in the court order registering the judgment.

Hague Convention 2005

In relation to Hague Convention 2005 judgments, the Civil Jurisdiction and Judgments Act 1982 permits applications without notice for registration. Points of law may also be appealed before the Court of Appeal in England, Wales or Northern Ireland (or the Inner House of the Court of Session in Scotland).

Common law rules

The process for recognition of a foreign judgment under the common law rules involves obtaining a new English judgment. That judgment will be subject to appeal under normal English domestic law rules.

Security for costs

In terms of granting a security for costs of any appeal proceedings, courts in England may order security for costs against a non-resident judgment creditor or appellant where it is just to do so and it is either mandated by statute or one of the following conditions are met:

- the judgment creditor is resident outside the jurisdiction, but not resident in a state to which the Brussels Regulation 2001 or the Lugano Convention 2007 applies;
- the judgment creditor is a company or other body corporate (whether incorporated inside or outside Great Britain) and there is reason to believe it will be unable to pay the judgment debtor's costs if ordered to do so;
- the judgment creditor changed his or her address since the claim was commenced with a view to evading the consequences of the litigation; or failed to give an address in the claim form or gave an incorrect address; or has taken steps in relation to his or her assets that would make it difficult to enforce an order for costs against them; or
- the judgment creditor is acting as a nominal judgment creditor (other than as a representative judgment creditor under CPR, Pt 19) and there is reason to believe that he or she will be unable to pay the judgment debtor's costs if ordered to do so.

In exercising its discretion when ordering security for costs against a non-resident claimant, the courts will pay particular regard to the ease of enforcement of a judgment for costs in countries where the judgment creditor has assets (see *Nasser v United Bank of Kuwait* [2001] EWCA Civ 556). However, the courts will not make an order for security for costs where this is precluded by the terms of an international convention to which the UK is a party.

ENFORCEMENT AND PITFALLS

Enforcement process

27 | Once a foreign judgment is recognised, what is the process for enforcing it in your jurisdiction?

A foreign judgment can be enforced in the UK by the courts in the same way as a domestic judgment, provided it has been recognised by the courts. There is no need for an award to be registered in order to be enforceable; however, under statute the process of registration is a more direct way to enforce a foreign judgment. The effect of registering a foreign judgment is essentially to render it equivalent to a judgment of the UK courts. A judgment creditor can apply to the court for the imposition of one or more enforcement methods, including orders compelling the judgment debtor to provide information about its affairs, seizure of assets, the seizure of bank accounts or diversion of funds owed by third parties to the judgment debtor, attachment to wages or other earnings or charges over land and other assets including securities (see *Cruz City 1 Mauritius Holdings v Unitech Ltd* [2014] EWHC 3704 (Comm) regarding a freezing order issued against a non-party outside the UK in aid of enforcement ordered by the English courts).

Pitfalls

28 | What are the most common pitfalls in seeking recognition or enforcement of a foreign judgment in your jurisdiction?

Fundamentally, it is important to identify the jurisdiction in which the original judgment was rendered. This will have a direct impact on which regime or application is used for enforcement of the award in the UK. Judgments in default axiomatically should be handled with particular care as they are prone to raise factual issues concerning the original court's jurisdiction, proper service of proceedings on the judgment debtor or the time provided to the judgment debtor to mount a defence (see, for example, *Reeve v Plummer* [2014] EWHC 4695 (QB), where registration of a Belgian judgment was set aside on a finding that the Belgian courts had yet to review the default judgment being challenged).

More generally, claimants should consider whether the foreign judgment being enforced in the UK would be likely to contradict public policy. If so, it will not be enforced. As such, it is advisable that where the factors relied on as being contrary to public policy in England were factors that the foreign court had already considered or that could have been raised by way of objection in the foreign jurisdiction then the foreign jurisdiction is likely the best place for these arguments to be determined.

UPDATE AND TRENDS

Hot topics

29 | Are there any emerging trends or hot topics in foreign judgment enforcement in your jurisdiction?

The most important issue in the field is Brexit. The EU regime (and, predominantly, the Recast Brussels Regulation 2012) is currently an integral part of the system of recognition and enforcement of judgments in the UK. Once the transition period ends on 30 December 2020, the UK will no longer be part of the EU regime as found in the Recast Brussels Regulation 2012, Brussels Regulation 2001 and Brussels Convention 1968, since those instruments are only available to EU member states. Instead, at the time of writing, the UK has applied to join the Lugano Convention 2007. The Lugano Convention 2007 governs the relationship between the EU and EFTA states in respect of jurisdiction and the recognition and enforcement of judgments and has the same substantive provisions as Brussels Regulation 2001.

It is currently uncertain whether the UK will successfully join the Lugano Convention 2007, as the EU has indicated it may be opposed to the UK's accession. If the UK does not accede to the Lugano Convention 2007, it is likely to rely on the Hague Convention 2005 and, possibly, the Hague Judgments Convention 2019.

The Hague Convention 2005 provides for a simple mechanism for recognition and enforcement of judgments. However, it only applies when the parties have agreed an exclusive jurisdiction clause.

The Hague Judgment Convention 2019 applies where no exclusive jurisdiction clause has been agreed between the parties. However, it currently only has two contracting parties: the Ukraine and Uruguay. However, it appears likely that the EU will join the Hague Judgments Convention 2019 in due course.

Coronavirus

30 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The courts have made some limited accommodations to account for the covid-19 pandemic. In England and Wales, several amendments have been made to the Civil Procedure Rules (CPR), the court's civil procedure rules. The new court guidance found in Practice Direction 51ZA allows parties to extend time for a court deadline by written agreement by up to 56 days rather than the usual 28 days permitted under the ordinary CPR rules. Accordingly, if a party finds themselves unable to comply with a court deadline during the covid-19 pandemic, they should ordinarily seek to agree an extension of time of up to 56 days with the other party. If they are unable to agree an extension, they should consider making an application to court. The court guidance states that it will take into account the impact of the covid-19 pandemic when it comes to applications for extensions of time, the adjournment of hearings, and applications for relief from sanctions. Parties should also consider ordinary case management tools such as adjournment of hearings and stays of proceedings. However, the court has indicated that it is keen to press on with hearings remotely using technology 'wherever possible' so it should not be assumed that adjournments or stays will be granted simply because of coronavirus.

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