



Enforcement of Foreign Judgments

in 28 jurisdictions worldwide

Contributing editors: Mark Moedritzer and Kay C Whittaker

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United Kingdom

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1 Treaties

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 courts of the jurisdictions of the United Kingdom (England & Wales, Scotland and Northern Ireland) have historically recognised and enforced judgments of foreign courts with or without treaty obligations. Various different frameworks exist, and the rules for each are separate.

Common law

Where no treaty or convention or EU law instrument applies, the courts will recognise foreign judgments and assist in their enforcement where they are for definite sums of money, they are final and conclusive in the foreign courts and where UK courts are satisfied that the foreign courts properly exercised jurisdiction over the defendant. Enforcement is not available directly, however, and for judgment to be actually enforced, new UK proceedings must be commenced on the cause of action that is the unpaid foreign debt. Usually, summary judgment can be obtained.

Examples of major countries with which there are no enforcement treaties, but with which enforcement may be available under the common law route, include Brazil, China, Russia and the United States.

UK statutes

There are two distinct statutory regimes for recognition and enforcement that apply to countries with which the UK has had constitutional associations (eg, former dominions, members of the British Commonwealth and Crown territories).

The Administration of Justice Act 1920 (AJA 1920) enables money judgments from countries to which it extends to be registered in the superior courts of the United Kingdom (the High Court or, in Scotland, the Court of Session). At present the countries to which the AJA 1920 applies are Anguilla; Antigua and Barbuda; Bahamas; Barbados; Belize; Bermuda; Botswana; British Indian Ocean Territory; British Virgin Islands; Cayman Islands; Christmas Island; Cocos (Keeling) Islands; Republic of Cyprus; Dominica; Falkland Islands; Fiji; The Gambia; Ghana; Grenada; Guyana; Jamaica; Kenya; Kiribati; Lesotho; Malawi; Malaysia; Malta; Mauritius; Montserrat; New Zealand; Nigeria; Territory of Norfolk Island; Papua New Guinea; St Christopher and Nevis; St Helena; St Lucia; St Vincent and the Grenadines; Seychelles; Sierra Leone; Singapore; Solomon Islands; Sovereign base of Akrotiri and Dhekelia in Cyprus; Sri Lanka; Swaziland; Tanzania; Trinidad and Tobago; Turks and Caicos Islands; Tuvalu; Uganda; Zambia; and Zimbabwe.

The different enforcement regimes described in this chapter are generally mutually exclusive. However, a judgment creditor from an AJA 1920 country is also at liberty to bring a common law action in the UK.

The Foreign Judgments (Reciprocal Enforcement) Act 1933 (1933 Act) enables enforcement by registration of judgments in any civil proceedings or compensatory award in criminal proceedings of the recognised foreign courts. At present, the 1933 Act applies to the following countries: Australia; Canada (except Quebec, whose judgments are recognised and enforced under common law); India; Guernsey; Jersey; Isle of Man; Israel; Pakistan; Surinam; and Tonga.

European judgments regulation and conventions

As a member of the European Union, the UK is party to what is now the principal European enforcement and recognition system, which is based on Council Regulation (EC) No. 44/2001 (Judgments Regulation). This European legislation has direct effect in each of the member states of the EU. A plaintiff who has obtained a judgment from one member state may have that judgment enforced in all other member states, but for this to take place the foreign judgment has to first be registered in a UK court. Judgments for these purposes means any order of a court in a member state, including injunctions, interlocutory orders, decrees for specific performance and orders for costs, but it excludes certain matters such as those relating to arbitration, bankruptcy and winding-up of corporations and revenue, customs and administrative matters.

The other member states to which this Regulation applies are Austria; Belgium; Bulgaria; Czech Republic; Denmark (with effect from 1 July 2007); Estonia; Finland; France; Germany; Greece; Greek Cyprus; Hungary; Italy; Latvia; Lithuania; Luxembourg; Malta; Netherlands; Poland; Portugal; Republic of Ireland; Romania; Slovakia; Slovenia; Spain; and Sweden.

Two important treaties pre-date the Judgments Regulation: the Brussels Convention on Jurisdiction and Judgments in Civil and Commercial Matters, 1968 (the Brussels Convention) and the Lugano Convention on Jurisdiction and the Enforcements of Judgments in Civil and Commercial matters (1988) (the Lugano Convention). The Brussels Convention remains relevant mainly in relation to pre-2007 judgments from Denmark. The Lugano Convention applies in relation to Iceland, Norway and Switzerland. A new Lugano Convention that is more aligned with the Judgments Regulation was signed in 2007, and was fully implemented by these three countries by May 2011.

European fast-track procedures

Foreign judgments that have been obtained in uncontested proceedings of civil and commercial matters in other EU member states (except from Denmark) can be enforced under Regulation (EC) No. 805/2004 of the European Parliament and of the European Council of 21 April 2004 – European Enforcement Order. A European Enforcement Order (EEO), once obtained in the foreign court, is automatically enforceable in the UK without registration or other proceedings having to be issued, and with very little opportunity for the judgment to be challenged.

The European Small Claims Procedure (ESCP) established by Regulation (EC) No. 861/2007 also applies in the UK. This Regulation provides an alternative for cross-border claims up to €2000 in value involving civil and commercial matters (excluding certain matters such as arbitration, employment law and bankruptcy). Where cross-border enforcement is sought, it eliminates intermediate proceedings necessary to enable recognition and enforcement as between the UK and other EU member states (except Denmark).

A newer alternative European system now exists as well for cross-border claims – the European Order for Payment Procedure (EOP), governed by Regulation (EC) No. 1896/2006. This simplified process employs standard forms and procedures across EU member states (excluding Denmark) for the recovery of uncontested monetary debts in many types of civil and commercial matters that are not the subject of any existing judgment. On receipt of an application for an EOP, the UK court issues the order, which also informs the defendant that: the information in the application has not been verified by the court; the order becomes enforceable unless a statement of objection is lodged; and that the time limit for such objections is 30 days from the date of service. If objections are lodged, the matter then proceeds as a contested claim under the ordinary civil procedure.

Special subject-matter conventions

Certain international conventions apply to specific commercial activities and subject matter and may contain provisions for reciprocal enforcement, for example, the Berne Convention 1980 concerning international carriage by rail (COTIF) and the Geneva Convention on the Contract for the International Carriage of Goods by Road 1956 and the International Convention on Civil Liability for Oil Pollution Damage 1992. However, these special conventions are not considered further in this chapter.

Arbitration awards

The UK is party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958. Valid arbitration awards may be enforced under the common law, the AJA 1920 and the 1933 Act if they are final and binding under the law of the arbitration agreement. It is not necessary for a foreign court to first make a judgment or order for an arbitration award to be enforced in the UK. Alternatively, the Arbitration Act 1996 provides a summary registration procedure. Awards obtained by fraud or through breaches of natural justice and matters contrary to public policy will not be enforced. Arbitration awards are not considered further in this chapter.

2 Intra-state variations

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

The treaty provisions and legislation are common to all three jurisdictions of England & Wales, Scotland and Northern Ireland and the same general principles apply in each. However, Scots law is a distinct and separate system and there can be significant procedural differences between the jurisdictions.

3 Sources of law

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

In addition to the common law (derived from case law recognised as precedents) the principal sources of UK statute law are: the AJA 1920; the 1933 Act; the Civil Jurisdiction and Judgments Act 1982; and the Civil Jurisdiction and Judgments Order 2001. In addition to these, the following European laws have direct effect in the UK: Council Regulation (EC) No. 44/2001 (Judgments Regulation) and Regulation (EC) No. 861/2007 (ESCP).

The leading case in this area is *Adams v Cape Industries plc* ([1991] 1 All ER 929). The judgment of the English Court of Appeal in this case sets out the common principles underlying the recognition and enforcement of judgments from non-treaty countries. The Court of Appeal decision in *United States of America v Inkley* ([1988] 3 All ER 144) is authority for the principle that the courts will not enforce judgments that are penal in form or substance.

In addition to the substantive law, the procedural rules for applications to enforce judgments should be taken into account. For England & Wales these are located in the Civil Procedure Rules parts 74 and 78 and the associated Practice Directions. In Scotland the equivalent is chapter 62 of the Rules of the Court of Session, and in Northern Ireland it is the Rules of the Supreme Court.

Agreements resulting from mediation

A mediation settlement enforcement order may be obtained to give effect to agreements resulting from cross-border mediations in other EU member states while retaining confidentiality. This is to give effect to Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters. Each of the parties to the mediation settlement agreement must give explicit consent to the application for the order.

4 Hague Convention requirements

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 party to this Convention and it has no application to enforcement in the UK.

5 Limitation periods

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?

The limitation periods vary depending on which recognition and enforcement regime applies to the foreign country from where the judgment originates. For an action for enforcement brought under the common law, the limitation period is six years from the date of the foreign judgment. Under the AJA 1920 an application can be made to register a judgment within 12 months of the date of the foreign judgment. Where the 1933 Act applies, the application to register the judgment must be made within six years of the date of the foreign judgment.

There are no explicit limitation rules laid down for judgments to be enforced under the Brussels Convention, the Lugano Convention, the Judgments Regulation or the EEO and ESCP procedures. The general principle is that such judgments must still be enforceable in the state where the judgment has originated for it to be given effect in the UK. The Civil Jurisdiction and Judgments Act 1982 and Order 2001 together provide that judgments registered under the Conventions or the Judgments Regulation shall have force as the original foreign judgment and enforcement shall be dealt with as if it were a judgment originally given by the foreign court. Regulation (EC) No. 805/2004 provides that where a judgment certified as an EEO has ceased to be enforceable, a certificate indicating the lack of enforceability may be obtained from the court of origin.

6 Types of enforceable order

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

At common law, enforcement is limited to money judgments for exact amounts, and foreign judgments must be final and conclusive.

Judgments for taxes, fines or other penalties are not enforceable. The position is the same when foreign judgments are registrable by virtue of the AJA 1920 and 1933 Act; however, under the latter, an order for an interim payment may be enforceable.

There is wider scope for civil judgments other than money judgments to be enforced where they are enforceable under the Judgments Regulation, the Brussels or Lugano Conventions or under the EEO and ESCP processes. Most forms of judgments of the relevant contracting states are enforceable, whether or not money judgments and whether or not final judgments. Certain exceptions exist, for example, for judicially approved settlement, and judgments giving effect to a judgment of a third country's courts would not be enforceable.

Interim and permanent injunctions and orders for specific enforcement may be enforceable where they originate from countries contracting to the relevant European regulations and conventions.

7 Competent courts

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

The High Court (or the Court of Session in Scotland) is the competent court for the enforcement of judgments obtained pursuant to the AJA 1920 and the 1933 Act.

For judgments emanating from the EU or other treaty states, the general rule is that the competent court for their enforcement is the High Court (or the Court of Session in Scotland). However, both these and the lower tier civil courts also have jurisdiction in relation to EEOs and ESCP cases in relation to common law actions in respect of non-treaty countries.

8 Separation of recognition and enforcement

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

The UK courts generally do not require such special recognition procedures as exist in some countries, and within Europe such procedures have been largely eliminated by the Judgments Regulation. For enforcement purposes the two issues are largely indistinguishable. If the claimant obtains a new judgment by way of a common law action, or registers the foreign judgment under one of the various regimes, enforcement will be effected either by officers of the court by way of execution or one of the other measures described in question 27.

There may be situations where a party merely relies on a foreign judgment to assert a right or to defeat a claim, for example, to establish that a dispute has been the subject of a previous judgment in a foreign country and is *res judicata* or is otherwise a bar to further proceedings in the UK. Generally a judgment does not have to be formally registered in order for it to be recognised; it can be proved by producing the requisite documentary evidence.

9 Defences

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?

In all cases the opportunity to defend enforcement of foreign judgments is constrained by the basic principle that the UK court will strive to give effect to a validly obtained foreign judgment. In any case, the merits are treated as having been determined conclusively by the foreign court, and its judgment will not be reviewed or impeached for any error of law or fact. There are, however, some differences in this respect between the common law and the other regimes.

Where enforcement is sought by a common law action or the 1933 Act, it will be a defence to show that the foreign judgment

conflicts with a previous judgment decided in the UK court (or previously recognised there), or a conflicting but earlier judgment of another court on the same issues. There may possibly also be a defence in exceptional cases where the defendant can show that, since the original judgment was obtained, new and material evidence has emerged. There are further defences that a foreign judgment should not be enforced if it concerns a foreign penal or revenue law (involving making a payment to a foreign state authority) or foreign public law.

Under the AJA 1920, the UK courts retain a general discretion to not register or to set aside a judgment and may do so if it is considered just and convenient for the judgment to be enforced. It is therefore possible that a challenge on the merits might succeed in dissuading a UK court from granting enforcement, at least if such a challenge would have otherwise supported a successful defence to a common law action.

Each of the Judgments Regulation, the Brussels and the Lugano Conventions provide that under no circumstances can the judgment of the originating court be reviewed as to its substance, leaving only limited specific grounds for recognition or enforcement to be refused by receiving UK courts: where judgment was entered in default of appearance by the defendant but the defendant was not served with documents instituting proceedings in sufficient time to prepare a defence; if the judgment is irreconcilable with judgment given in a dispute between the same parties in the member state where recognition is sought; and if the judgment is irreconcilable with an earlier judgment given in another member state involving the same cause of action and between the same parties, provided that the judgment fulfilled conditions necessary for its recognition (see also questions 11 and 19). No procedure exists whereby an EEO or ESCP award can be challenged on the merits of the original claim. However, in all these treaty and European law regimes a foreign judgment is not enforceable if it conflicts with a previous judgment of another court on the same issues and between the same parties.

It will, therefore, be in a defendant's best interests to raise all possible defences in the original foreign proceedings (except where it aims to avoid submitting to the foreign jurisdiction in the first place). Where merits remain in issue because a defendant has lodged an appeal against a judgment in the foreign court and the appeal is pending when enforcement is sought in the UK, the position will again vary according to the treaty or European member state status of the foreign court in question.

Where the common law regime applies there may be a stay of the UK proceedings pending the determination of the appeal. In cases that are subject to the AJA 1920 or the 1933 Act the UK courts can exercise discretion not to register a judgment that is still under appeal.

Under the Judgments Regulation and the Brussels and the Lugano Conventions, a foreign judgment may be registered in the UK as soon as it becomes enforceable in the country of the judgment's origin, but if an appeal is lodged (or the time for appealing is still running) a procedure exists whereby execution of the registered judgment can be stayed. (Security may be required as a condition of a stay). An EEO or a foreign judgment obtained under the ESCP is enforceable in the UK irrespective of any appeal in the country of origin.

10 Injunctive relief

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

Where the common law regime applies, a foreign judgment will almost always be enforced by a UK court where the foreign judgment is final and conclusive, for a fixed sum and the defendant is subject to the jurisdiction of the foreign court. However, where enforcement of a foreign judgment would be inequitable, in exceptional circumstances, a UK court may grant an injunction (called *interdict* in Scotland) to prevent enforcement. These circumstances

include where the foreign judgment was obtained due to fraud or breach of contract (*Ellerman Lines v Read* [1928] All ER Rep 415). The injunction is granted against the judgment creditor to stop him or her benefiting from the enforcement of a judgment obtained by fraud and is not against the foreign court over which the UK court has no jurisdiction.

No such power is available to prevent enforcement of a judgment from an EU member state. By analogy, the European Court of Justice has held that it is an infringement of the Judgments Regulation and the Brussels Convention for an English court to issue an anti-suit injunction against a claimant pursuing a claim before another member state court in breach of a choice of jurisdiction agreement. As an alternative to an injunction, enforcement of an EU member state judgment can be resisted on exceptional grounds such as if enforcement would be contrary to public policy, as set out in article 34 of the Judgments Regulation (see also questions 11 and 19).

11 Basic requirements for recognition

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

As noted above, the UK courts do not approach recognition and enforcement with considerations of reciprocity. Nor will they embark on analysis of comparative jurisprudence and procedure. The basic mandatory requirements are few, but differ for each of the treaties, regulations and common law systems described previously. Increasingly, these mandatory requirements are being minimised as between European countries, with the aim of ultimately making European judgments on a par with domestic judgments for enforcement purposes.

For common law purposes a foreign judgment must be a money judgment and 'final and conclusive'. The UK court will require that a foreign court exercised jurisdiction to give a judgment in personam according to the UK courts' conflict of laws rules, not the jurisdiction rules of the foreign court. A foreign court's jurisdiction will be recognised where the defendant was present or carrying on business there at the time the original action was commenced, or had agreed in advance to that jurisdiction for the determination of the matters in dispute, or had later agreed to accept service of process there. It will also be recognised where the defendant has voluntarily appeared in the foreign proceedings (other than to contest the jurisdiction or to protect property seized there or threatened with seizure), or has actively been involved by bringing a claim or counter-claim in the same proceedings (the Scottish courts may also recognise foreign jurisdiction based on the fact of the defendant owning property there). It is not settled law, but it appears that if these criteria are met it is no bar to enforcement under common law that the foreign court did not properly have jurisdiction over the defendant according to its own laws. Lack of due process in the foreign court can be a consideration for the UK courts to take into account, in particular if it consists of a failure to give the defendant proper notice of the proceedings, if this amounts to a breach of natural justice (see question 13).

These principles for determining whether the foreign court has duly exercised jurisdiction over the defendant are applied in the same way to foreign judgments subject to the AJA 1920 or the 1933 Act, with some slight differences as regards criteria for foreign residence and business presence in the jurisdiction.

The lesser mandatory requirements for enforcement under the Judgments Regulation and the Brussels and the Lugano Conventions are that the judgment in question falls within the classes of judgments defined in these instruments; there is only very limited scope for the UK courts to investigate or decline to recognise these foreign courts' jurisdiction over the defendant (exceptions in relation to certain types of insurance or consumer contracts and exclusive jurisdictions are set out in the Judgments Regulation). Grounds for disputing recognition and enforcement are limited (see question 19) but permit the UK

courts to refuse to register judgments obtained without due notice to the defendant. The foreign procedural rules for service will be applied for these purposes, although the UK courts may take their own view of whether the defendant in fact had sufficient time in which to respond to the proceedings.

The EEO and the ESCP procedures are even more streamlined for the purposes of foreign enforcement. The former requires no recognition process at all in the UK courts, in the sense that, once the EEO or ESCP judgment is certified by the foreign court and the requisite documents produced, it may then be executed like a judgment of a UK court.

12 Other factors

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

The common law and the provisions of the AJA 1920 and the 1933 Act permit the UK courts some room to apply other criteria in the sense that there may be a discretion whether or not, in all the circumstances, to enforce a foreign judgment or stay its execution (for example, if a defendant can demonstrate that the judgment is in the process of being satisfied). There is less scope for this under the Judgments Regulation or the other European treaties and regulations that aim to eliminate national law divergences of approach. In practice, other non-mandatory factors that may be considered are narrow and relate to public policy or natural justice principles (see questions 17 to 19).

Except in the case of ESCP judgments, the courts may in some circumstances require the judgment creditor seeking enforcement to provide security for costs. Defendants seeking to set aside registration of a foreign judgment may also be required to provide security for costs.

13 Procedural equivalence

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?

For the reasons explained above, procedural equivalence is not a factor for the UK courts. The inclusion of countries within the ambit of the AJA 1920 or the 1933 Act presupposes that the UK considers that these courts and processes are broadly acceptable. The European treaties and regulations also assume basic minimum standards of fairness in each of the participating member states.

However, if serious procedural unfairness has occurred in the originating process court, this may be a bar to enforcement in the UK. If the irregularity is considered by the UK courts to amount to significant breach of natural justice in the foreign proceedings (such as a failure to present the unsuccessful party with an opportunity to present his or her case), this may be a relevant consideration in cases involving countries to which the common law or the AJA 1920 or the 1933 Act regimes are applicable.

In the case of *Adams v Cape Industries* it was held that lack of due notice of the foreign proceedings is not the only factor that may be considered in relation to natural justice. In this instance the court was dealing with a default judgment obtained by South African claimants from a US federal district judge sitting in the Tyler division of Texas. The claim for enforcement was rejected. Other substantive justice issues may also be taken into consideration by a defendant opposing enforcement in relation to procedural fairness. In this case the absence of a judicial assessment of the damages by the Tyler court was deemed contrary to natural justice, even though the defendants had been on notice of the proceedings and had declined to participate to avoid submitting to the jurisdiction.

Apart from certain limited provisions in relation to lack of due notice of the proceedings (see question 16), due process issues will not normally afford protection against recognition or enforcement of

foreign judgments under the Judgments Regulation or the European conventions or other regulations. These systems rely instead on the defendant having to raise any procedural objections in the originating courts.

This area is, however, affected by the developing jurisprudence of the Human Rights Act 1998, which gives direct effect in UK law to the principles contained in the European Convention on Human Rights to which the UK is a signatory. Article 6 of the Convention provides that ‘in the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law’. The 1998 Act requires the UK courts to interpret legislation in accordance with this and other articles of the Convention, and to take into account relevant rulings of the European Court of Human Rights. This means that while the UK courts will still normally not make comparisons between due process in their own rules and that of an originating court, there is now potentially a minimum standard of due process necessary for enforcement to be compatible with article 6. The application of these principles has not yet been well worked out in case law.

It is established, however, that article 6 will be a relevant consideration, regardless of the country, of whether or not the originating court of a judgment is also a signatory to European Convention on Human Rights. In the case of *Government of USA v Montgomery* (No. 2) ([2004] UKHL 37) the English courts were asked to give effect (under criminal law provisions, and not the civil justice systems described in this chapter) to an external confiscation order made by the United States District Court, Middle District Florida, Jacksonville Division. On appeal it was held that article 6 could be applied to judgments on non-convention states, although an extreme degree of unfairness would have to be established (ie, amounting to a flagrant denial of article 6 rights).

In one case, enforcement of a judgment from a Brussels Convention country (France) was denied in England for article 6 breaches on account of the defendant being unaware of dormant proceedings being reactivated. It appears unlikely in practice, however, that in cases where the Judgments Regulation applies (or the other European conventions and regulations) that UK courts will be slow to accept article 6 grounds for refusing registration or execution of judgments, even the narrow ‘flagrant breach’ test.

14 Personal jurisdiction

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?

For non-European countries, the UK courts will consider in personam jurisdiction by reference to their conflicts of laws principles as described in question 11. The Judgments Regulation and other EU instruments do not permit the UK courts to review the jurisdiction of the European foreign courts.

15 Subject-matter jurisdiction

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?

Subject-matter jurisdiction will not normally arise as an issue provided the court where the judgment was entered was a competent foreign court. Exceptions would be where jurisdiction and enforcement is governed by one of the special subject matter conventions described in question 1. Article 22 of the Judgments Regulation lists various matters that are subject to the exclusive jurisdiction of courts of a country related in specific ways to the parties, including matters relating to specified aspects of real estate, intellectual property and dissolutions of companies or associations. The UK courts are entitled to review the subject-matter jurisdiction of the court of origin of a foreign judgment in these cases.

16 Service

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?

Under most of the different common law and treaty regimes, UK courts will require that the defendant had fair notice of the original action as has been described in question 11 (generally, this will not be a relevant consideration for enforcement for an EEO or an ESCP judgment). A failure to effect service in accordance with the correct formalities of the foreign court will not of itself render a judgment impeachable.

The Judgments Regulation specifically provides that a foreign judgment will not be recognised where it was given in default of appearance, if the defendant was not served with the document that instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him or her to arrange for his or her defence, unless the defendant failed to commence proceedings to challenge the judgment when it was possible for him or her to do so. The European Court has ruled that this requires consideration of due service by reference to the service rules of the originating court. Whether the defendant had sufficient time to arrange a defence is an issue of fact that is determined by the UK court in receipt of the application to register the judgment.

There is no set period that is deemed by UK courts to be sufficient for notice of the foreign proceedings. European case law in relation to the Judgments Regulation indicates it only as such time as would be needed to prevent a judgment in default from being entered.

17 Fairness of foreign jurisdiction

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

There is no room for forum non conveniens principles in determining whether a foreign judgment will be recognised or enforced under any of the enforcement regimes described above.

18 Vitiating by fraud

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

The UK courts will entertain objections to enforcement where fraud, either of the party in obtaining a judgment abroad or by the foreign court itself, is alleged.

The UK courts may allow a fraud defence even where the allegation of fraud has previously been made and ruled on by the foreign court, or if the defendant was aware of the alleged fraud and yet did not raise the issue in the foreign proceedings. The defendant will not necessarily be required to produce newly discovered evidence and to prove that it would have altered the outcome in the original proceedings. (The cases decided under the common law pre-date much of the modern treaty-related legislation in this area and are not entirely consistent with the principles for setting aside domestic UK court judgments for fraud).

Pleadings rules generally require that allegations of fraud are fully particularised. It may amount to professional misconduct for defendants’ attorneys to plead fraud if they have not been presented with reasonably credible material to justify the claims. A defendant who fails to prove alleged fraud may ultimately be subject to costs sanctions.

The Judgments Regulation, the Brussels and Lugano Conventions and other European instruments do not contain specific provisions addressing fraud as a justification for the receiving courts to refuse recognition and enforcement. Article 34 of the Judgments Regulation provides that ‘a judgment shall not be recognised [...] if such recognition is manifestly contrary to public policy in the

member state in which recognition is sought'. It is considered that this reference to public policy is broad enough to encompass the fraud defence to recognition as understood in the UK, although the leading case in which this has been considered indicates that it would be only be in exceptional cases that the courts will allow the defence. *Interdesco SA v Nullifire Ltd* ([1992] 1 Lloyd's Rep 180) was a case in relation to the Brussels Convention concerning a French judgment where fraud was alleged by reference to newly discovered evidence after the French proceedings. The court ruled that all issues should be, so far as possible, dealt with by the courts of the original jurisdiction because those courts are better placed to assess whether the original judgment was tainted by fraud.

19 Public policy

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

Under the common law a foreign judgment will not be given effect where its recognition or enforcement is inconsistent with public policy in the UK jurisdiction in question. The position is the same under the 1933 Act. The AJA 1920 is slightly different: a foreign judgment will not be registered where the original cause of action is, for public policy or similar reasons, not one that could have been entertained by the UK court to which the application is made.

It is difficult to describe public policy with any precision for these purposes. There are few examples of actual cases where public policy has prevented a foreign judgment from being enforced that cannot be described in narrower terms (eg, fraud, breach of article 6 of the European Convention on Human Rights or the statutory bar on recovery of multiple damages). It is considered that inconsistency with a UK court's own prior decision on the same matters between the same parties would be a valid public policy ground to deny enforcement. Also, a foreign judgment obtained in disobedience of a UK anti-suit injunction is generally treated as contrary to public policy. However, an anti-suit injunction may be regarded by the European Court of Justice as being inconsistent with the Judgments Regulation – and so ineffective to prevent enforcement of a foreign judgment – if it obstructs the foreign court from deciding its own jurisdiction. See *Allianz SpA v West Tankers Inc* (Case C-185/07).

The public policy ground for not allowing enforcement is expressly preserved by article 34 of the Brussels and Lugano Conventions and the Judgments Regulation (in the latter with the proviso that the foreign judgment is 'manifestly contrary' to public policy in the UK). In the European Court case of *Krombach v Bamberski* ([2000] E.C.R. I-1935) concerning matters between the courts of Germany and France under the Brussels Convention, it was held that the public policy objections of a receiving court do not justify recognition or enforcement of a judgment given in another contracting state solely on the ground that the court of origin had wrongly applied nationality criteria in the Convention relating to its original jurisdiction. At least in relation to matters of jurisdictional competence, this decision narrows the scope for any traditional UK conflict of laws rules on in personam jurisdiction being re-cast as public policy objections to enforcement under the Judgments Regulation and other EU instruments.

The EEO and the ESCP provide no scope for public policy objections to enforcement of these foreign judgments in the UK.

The Protection of Trading Interests Act 1980 prohibits the enforcement under common law (and the AJA 1920 and 1933 Act) of foreign judgments for multiple damages, ie, a judgment for multiple damages means a judgment for an amount arrived at by doubling, trebling or otherwise multiplying a sum assessed as compensation. (It also gives UK-based defendants a remedy in such cases of a statutory right to recover the excess over the base compensation amount in the foreign court from the plaintiff in the foreign proceedings).

The UK position regarding foreign punitive damages awards and public policy is not entirely clear. In *SA Consortium General Textiles v Sun & Sand Agencies Ltd* ([1978] All ER 339), a French judgment containing a punitive award for 'resistance abusive' (unreasonably contesting an action) was upheld. It was held that the bar on enforcing penalties only applies to penalties payable to the state. There has been no ruling that has definitively determined the position as regards the consistency of US-style substantial punitive damages awards with public policy, or that has yet considered the question in the context of the Human Rights Act 1998 and article 1 of the European Convention on Human Rights (which concerns the right against deprivation of property).

20 Conflicting decisions

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?

Generally judgments in matters with the same causes of action and between the same parties that are not reconcilable with a previous judgment in a UK or foreign court will not be recognised or enforced under any of the different regimes described above. This is so even under the very liberal rules for EEOs and ESCP judgments, provided that the irreconcilability was not and could not have been raised as an objection in the proceedings in the member state where the judgment was made.

21 Enforcement against third parties

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

Foreign judgments are regarded as creating a debt between the parties to it, and are therefore only enforceable against the named judgment debtor. The judgment debtor must be subject to the jurisdiction of the foreign court. The court would only apply principles of agency or alter ego to enforce a judgment against a party other than the named judgment debtor in exceptional circumstances. Those principles would only apply to companies, not individuals.

The foundation principle of English company law is that each individual company is a separate legal entity with distinct legal rights and liabilities from other companies in its group. Only in exceptional circumstances will the corporate veil be pierced so as to make one company liable for the obligations of its officers or another company. This principle was confirmed in *Adams v Cape Industries plc* [1990] Ch 433 where the claimant sought to enforce a Texas judgment against an under-capitalised subsidiary company in England where the parent company was incorporated. Although the parent company exercised significant control and influence over the subsidiary, enforcement against the parent company was refused because it was not subject to the jurisdiction of the Texas court.

22 Alternative dispute resolution

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?

The general rule is that a foreign judgment will not be enforced in the UK if it has been obtained in proceedings brought in contravention of an agreement between the parties for the matters in dispute to be subject to a different forum, including valid arbitration agreements (see, however, question 19 regarding anti-suit injunctions and the limited protection now afforded to jurisdictional agreements in Europe).

However, this principle is not re-stated in the Judgments Regulation, the Brussels and Lugano Conventions or the EEO and European Small Claims Procedures. As a consequence, there is currently uncertainty as to the state of the law. One view is that the UK might not recognise European judgments under the Judgments Regulation

Update and trends

The complexity in this area of law is mainly attributable to the interplay between the common law enforcement regime, which provides UK courts with some discretion to refuse to enforce foreign judgments, and the EU Judgments Regulation regime, which is predicated on a harmonised and certain system to enforce member state judgments throughout the EU. At root, there is a divergence between a common law system that affords more scope for judicial discretion to determine matters on their facts and merits and a civil law codified system that aims for predictability and standardisation.

Recent case law continues the erosion of weaponry available to UK courts, including the anti-suit injunction, which is intended to stop parties proceeding before a foreign court when to do so would be in breach of a contractual obligation to litigate or arbitrate their dispute in the UK. In the long running *West Tankers* litigation, the European Court of Justice held that an English court cannot issue an anti-suit injunction against a party commencing or continuing proceedings

before the courts of another EU state because this would interfere with the foreign court's ability to determine if it has jurisdiction over the dispute. Thus, if a foreign EU court renders a judgment on a dispute that a UK court considers that it should have jurisdiction over, the UK court cannot act to displace the assumption of jurisdiction by the foreign court if the foreign court determines that it has jurisdiction. Despite the contract containing a dispute resolution clause in favour of arbitration in the UK, the foreign court may conclude that it has jurisdiction to hear the dispute because it is located where the harmful event occurred.

Due to the strength of the enforcement regime under the EU Judgments Regulation, there is more risk to parties that their dispute may be determined in an EU jurisdiction, which they did not agree to and would give rise to a binding and judgment, which the UK courts have little option but to enforce.

if they have been obtained contrary to arbitration or other binding alternative dispute resolution agreements on grounds of UK public policy, irrespective of any ruling in the foreign court to the effect that the agreement was not binding under its laws.

23 Favourably treated jurisdictions

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

The UK courts do not favour any particular foreign jurisdictions, and operate within the broad frameworks of the common law and other treaties, conventions and European regulations described above. There are procedural and speed advantages, however, for plaintiffs seeking to enforce judgments in the UK obtained in other European member states, because the Judgments Regulation provisions and those for EEO and ESCP judgments have been designed to harmonise and greatly facilitate the rules governing recognition and enforcement across the European Union.

The judgments of courts of countries that were formerly or still are dominions or territories of the British Crown are more readily enforceable than countries such as the US that lack the reciprocal recognition afforded to the dominions or territories. The 1933 Act contains provisions whereby the Crown may by order withdraw the UK from enforcement of judgments from countries covered by this Act if their courts give less favourable treatment to UK judgments than the UK courts afford to theirs.

24 Alteration of awards

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

Parts of a foreign judgment that offend the rules of the UK courts for enforcement may be severed and the rest may be enforced. For example, if the judgment comprises (i) penal awards or taxes or multiple damages as well as (ii) compensatory damages, the former elements can be excised by the UK courts while the latter would be subject to a new UK judgment in a common law action or registered under the AJA 1920 or the 1933 Act.

For the position with regards to enforceability of judgments comprising punitive damages, see question 19.

Awards of attorneys' fees comprised in foreign judgments will generally be unobjectionable and enforceable in the UK courts.

25 Currency, interest, costs

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?

Applications for enforcement are usually made in the currency of the foreign judgment, and amounts are converted at the date that execution is later commenced. With EEO and ESCP judgments, the parties seeking to enforce them must however provide a certificate of the sterling equivalent amount of the judgment debt. Interest can be claimed, usually by reference to the rates prevailing in the foreign jurisdiction. Court fees and other costs of enforcement of the foreign judgment (including attorneys' fees) may be assessed and allowed by the UK courts.

26 Security

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?

Common law awards actions giving effect to foreign judgments are appealable under the usual domestic civil procedural rules. Where judgments are registered under the AJA 1920 or 1933 Act, or under the Judgments Regulation, Lugano Convention or Brussels Convention, the initial court process takes place without notice to the defendant. When the order for registration is made the defendant is given notice of its rights to apply to the court to set aside registration (in the case of the AJA 1920 or the 1933 Act) or to appeal against the registration (in the case of the Judgments Regulation, Brussels or Lugano Conventions). These rights may be subject to a defendant having to provide security for costs. Foreign judgment creditors faced with orders for enforcement being challenged may be able to apply for freezing orders in order to preserve assets, which might otherwise be dissipated by defendants.

The relevant regulations for the ESCP and for EEOs do not permit appeals, except that the debtor may apply to the UK court for a refusal of enforcement on the grounds that the judgment is irreconcilable with an earlier judgment in another country, provided certain conditions set out in the Regulation are met. The EEO and ESCP regulations both allow for stay of enforcement proceedings. Where the foreign judgment is being challenged in the originating jurisdiction the courts may, upon application by the defendant, limit the enforcement proceedings to protective measures or the provision of security or, under exceptional circumstances, stay the enforcement proceedings.

27 Enforcement process

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

Once a foreign judgment has been the subject of a fresh UK judgment or is registered or otherwise processed under one of the various provisions described above, it becomes enforceable as if it were a judgment of the relevant court in England & Wales, Scotland or Northern Ireland. In each jurisdiction the processes and terminology for enforcement methods are different, but broadly they consist of seizure of assets by court-appointed officials, garnishee orders against bank accounts or other third parties owing money to the defendant, charges being imposed over land or other assets or the appointment of a receiver over the defendant's assets (which may be a means of securing payment of future foreign debts). Individuals in employment may be subject to attachment of earnings orders. In some circumstances injunctions may be obtained to prevent the dissipation of assets.

28 Pitfalls

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

Aside from the sheer complexity and patchwork nature of the different enforcement regimes, the greatest problems for enforcing judgments in the UK tend to occur over uncertainty of default judgments arising from non-EU and non-treaty or convention courts. Unless the UK courts criteria for personal jurisdiction in these cases are met, foreign plaintiffs may be forced to re-litigate their claims in the UK courts, assuming this is permissible on forum non conveniens principles.



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