

# ENFORCEMENT OF FOREIGN JUDGMENTS

## United Kingdom



# Enforcement of Foreign Judgments

Consulting editors

**Elliot Friedman, David Livshiz, Christian Vandergeest**

*Freshfields Bruckhaus Deringer*

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Quick reference guide enabling side-by-side comparison of local insights into relevant treaties, conventions and other sources of law; limitation periods; types of enforceable order; competent courts; separation of recognition and enforcement; opposition; jurisdiction of the foreign court; awards and security for appeals; enforcement and pitfalls; and recent trends.

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# Table of contents

## LEGISLATION

- Treaties
- Intra-state variations
- Sources of law
- Hague Convention requirements

## BRINGING A CLAIM FOR ENFORCEMENT

- Limitation periods
- Types of enforceable order
- Competent courts
- Separation of recognition and enforcement

## OPPOSITION

- Defences
- Injunctive relief

## REQUIREMENTS FOR RECOGNITION

- Basic requirements for recognition
- Other factors
- Procedural equivalence

## JURISDICTION OF THE FOREIGN COURT

- Personal jurisdiction
- Subject-matter jurisdiction
- Service
- Fairness of foreign jurisdiction

## EXAMINATION OF THE FOREIGN JUDGMENT

- Vitiating by fraud
- Public policy
- Conflicting decisions
- Enforcement against third parties
- Alternative dispute resolution
- Favourably treated jurisdictions
- Alteration of awards

**Effect of sanctions**

**AWARDS AND SECURITY FOR APPEALS**

Currency, interest, costs

Security

**ENFORCEMENT AND PITFALLS**

Enforcement process

Pitfalls

**UPDATE AND TRENDS**

Hot topics

## Contributors

### United Kingdom



**Maria Kostytska**  
mkostytska@winston.com  
*Winston & Strawn LLP*

WINSTON  
& STRAWN  
LLP

## LEGISLATION

### 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 United Kingdom has several regimes for recognition and enforcement of foreign judgments ( *exequatur* ): European; conventional; statutory; and common law, the latter being the default regime applicable in the absence of conventions or statutes. The applicability of these regimes depends on the country from which a foreign judgment originates.

### EU regime

The EU regime applies to UK proceedings for recognition and enforcement of EU-country judgments from proceedings instituted before 31 December 2020, which is the end of the Brexit transition period. The EU regime comprises:

- the Brussels Recast Regulation (Council Regulation (EU) No. 1215/2012 of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters), which applies to EU-country judgments from proceedings instituted between 10 January 2015 and 31 December 2020;
- the Brussels Regulation (Council Regulation (EC) No. 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters), which applies to EU-country judgments from proceedings instituted between 1 March 2002 and 10 January 2015;
- the Brussels Convention 1968 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, which applies to judgments from Gibraltar and certain dependent territories of EU countries instituted before 31 December 2020; and
- the Lugano Convention 2007 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters, which applies to judgments from proceedings in three European Free Trade Association (EFTA) countries (Iceland, Norway and Switzerland), instituted before 31 December 2020.

### Conventional regimes

#### Hague Court Convention 2005

The UK has been a party to the Hague Convention on Choice of Court Agreements 2005 from 1 October 2015, by virtue of its EU membership, until 31 December 2020, which was the end of the Brexit transition period. The UK has been a party to the Hague Convention 2005 pursuant to its own accession since 1 January 2021. The UK considers that it has been a party to the Convention without interruption since 1 October 2015. The Hague Convention 2005 applies to judgments originating from EU countries and Mexico (since 2015), Singapore (since 2016), Denmark and Montenegro (since 2018), and Ukraine (since 2023). The United States, China and Israel have signed but have not yet ratified the Convention. A prerequisite to the applicability of the Hague Convention 2005 is that the judgment is given by the court designated in an exclusive choice of court agreement concluded in civil or commercial matters. Conversely, the Convention does not apply in the absence of such designation in a choice of court agreement.

#### Hague Convention on Recognition and Enforcement of Foreign Judgments 1971 and 2019

The UK is not a signatory of the Hague Judgments Convention 1971, which is in force between only five countries: Albania, Cyprus, Kuwait, the Netherlands and Portugal. It applies to judgments in civil and commercial matters, subject to multiple exceptions, and to the exclusion of decisions for the payment of any customs duty, tax or penalty.

The UK has not signed the Hague Judgments Convention 2019, which enters into force on 1 September 2023 for EU countries and Ukraine. The non-EU countries that have signed but not yet ratified the Hague Judgments Convention 2019 are Costa Rica, Israel, Montenegro, North Macedonia, Russia, the United States of America and Uruguay. This Convention applies broadly to judgments in civil and commercial matters, to the exclusion of revenue, customs or administrative matters.

### Statutory regimes

The statutory regimes comprise two statutes, the Administration of Judgments Act 1920 (AJA 1920) and Foreign Judgments (Reciprocal Enforcement) Act 1933 (FJA 1933) .

AJA 1920 applies to judgments from the commonwealth countries listed in Her Majesty's Reciprocal Enforcement of Judgments (Administration of Justice Act 1920, Part II (Amendment) Order 1985 .

FJA 1933 applies to judgments from certain countries based on the principle of reciprocity. The application of FJA 1933 has been extended by Her Majesty's Reciprocal Enforcement of Judgments Order to judgments from Australia, Canada (except Quebec), India, Israel, Norway, Pakistan, Guernsey, Jersey, the Isle of Man, Suriname and Tonga, as well as EU countries such as Austria, Belgium, France, Germany, Italy and the Netherlands. Its application can be extended to additional countries based on the principle of reciprocity.

The UK is also a party to conventions and has enacted statutes providing for recognition and enforcement of judgments in specific sectors. These are generally modelled after FJA 1933. Examples include: the Carriage of Goods by Road Act 1965, the Civil Aviation Act 1982 and the Merchant Shipping Act 1995.

### Common law regime

The common law regime is the default regime for recognition and enforcement of foreign judgments in the UK, in the absence of a convention or a statute. The common law regime applies notably to judgments from the United States, Russia, Ukraine, China and Brazil. Under the common law regime, an English court will treat a foreign judgment as a debt due from the judgment debtor to the judgment creditor, and will then give effect to that debt in an English judgment (if the requirements are met). The judgment creditor must bring an action on that debt before an English court. This is usually done via summary judgment procedures. One of the key prerequisites of recognition and enforcement is that the foreign court had jurisdiction over the defendant, according to English law notions. The English court will also verify whether the judgment is final and binding, and whether it is compensatory and not punitive in nature. It will also verify that the judgment is not contrary to 'natural justice', meaning due process. It will also ensure that the judgment is not contrary to public policy.

*Law stated - 21 July 2023*

### Intra-state variations

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

The law on recognition and enforcement of foreign judgments is substantially the same in each of the three jurisdictions in the UK (England and Wales, Scotland and Northern Ireland). However, court procedure and practice for

the recognition and enforcement of foreign judgments may differ in each jurisdiction. This chapter focuses on the procedure in England and Wales.

*Law stated - 21 July 2023*

## Sources of law

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

The sources of law regarding recognition and enforcement of foreign judgments are: EU and multilateral treaties, domestic statutes and common law.

*Law stated - 21 July 2023*

## 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?

As mentioned above, the UK is not a signatory to the Hague Conventions 1971 and 2019.

*Law stated - 21 July 2023*

## BRINGING A CLAIM FOR ENFORCEMENT

### 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?

Different limitation periods apply depending on the regime.

### EU regime

The various EU instruments do not specify the limitation period, but the judgment must still be enforceable in the jurisdiction in which it was rendered.

### Hague Court Convention 2005

Article 8(3) of the Hague Court Convention 2005 requires that the judgment must be enforceable in the country of origin. As to timing, travaux préparatoires suggest that the judgment can be enforced from the moment it is considered enforceable under the law of the country of origin until the moment when it stops being so considered. Further, article 8(4) specifies that recognition or enforcement may be postponed or refused (without prejudice) if the judgment is still subject to review or the time limit for seeking ordinary review has not expired. What type of review is 'ordinary' as opposed to 'extraordinary' is a matter of foreign procedural law, but 'ordinary' generally connotes appeal, and extraordinary generally connotes cassation.



## AJA 1920

Pursuant to section 9(1) of the Administration of Judgments Act 1920 (AJA 1920), the judgment creditor must apply to register the judgment within 12 months of the date of the judgment. Section 9(1) gives the court discretion to allow a longer period. For example, 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 FJA 1933 instead of AJA 1920, but the High Court permitted the claimants to amend their application to proceed under AJA 1920 even though the 12-month period had expired.

## FJA 1933

Pursuant to section 2(1) of the Foreign Judgments (Reciprocal Enforcement) Act 1933 (FJA 1933), the judgment creditor must apply to register the judgment within six years from the date of the judgment or, where the judgment has been subject to appeal, from the last judgment in those proceedings.

## Common law regime

Section 24(1) of the Limitation Act 1980 provides that an action to enforce a judgment must be brought within six years of the date on which the judgment became enforceable. The point in time when the foreign judgment becomes enforceable is a matter of foreign procedural law.

*Law stated - 21 July 2023*

### Types of enforceable order

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

The common law regime and more dated statutory mechanisms provide for enforcement of only monetary judgments or orders, to the exclusion of interim or injunctive relief. More recent conventional mechanisms provide for enforcement of not only monetary judgments or orders, but also provisional (including protective) measures.

## EU regime

Article 2(a) of the Brussels Recast Regulation contains a broad definition of 'judgment'. Judgment is enforceable regardless of its precise denomination, be it a decree, order, decision, writ of execution, or decision on the determination of costs or expenses by an officer of the court. The judgment includes not only monetary awards, but also provisional, including protective, measures ordered by a competent court. In particular, it includes protective orders aimed at obtaining information or preserving evidence. It excludes measures that are not protective in nature, for example, ordering the hearing of a witness.

## Hague Court Convention 2005

Article 4(1) of the Hague Court Convention 2005 defines judgment more narrowly as any decision on the merits, to the exclusion of interim measures of protection. Irrespective of the precise denomination, the term judgment covers a decree, order and determination of costs or expenses by the court, including an officer of the court – provided that the determination relates to a decision on the merits. Article 7 further excludes interim measures from the Convention's scope.

## AJA 1920

AJA 1920 applies to the enforcement of any monetary judgment or order made by a court in any civil proceedings whereby a sum of money is payable. It also applies to enforcement of arbitral awards that have become enforceable in the same manner as judgments at the place of arbitration pursuant to the law of the place of arbitration.

## FJA 1933

FJA 1933 applies to the enforcement of monetary judgments in civil and criminal proceedings, for sums of money as compensation or damages, to the exclusion of sums payable in respect of taxes, fines and other penalties. It does cover interim payments, in addition to final and conclusive judgments. FJA 1933 also makes provision for the enforcement of arbitral awards that have become enforceable in the same manner as judgments in the place where they were made.

## Common law regime

At common law, the judgment must be for a specific sum of money to be enforceable in the UK. It also must be final and binding in the jurisdiction where it was rendered. Interim awards and injunctive relief are not enforceable at common law.

*Law stated - 21 July 2023*

### Competent courts

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 or the High Court of Northern Ireland, depending on the jurisdiction in which the judgment is sought to be enforced.

*Law stated - 21 July 2023*

### 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?

Recognition and enforcement are separate processes in the UK. Because a foreign judgment has no direct effect in the UK, it cannot be enforced until it is recognised in the UK. Once the foreign judgment has been recognised, it can be enforced just as any English judgment. Recognition of the foreign judgment gives the judgment creditor access to the full spectrum of coercive measures available in the English legal system.

*Law stated - 21 July 2023*

## OPPOSITION

## 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?

Generally, English courts will not review the merits of the foreign judgment and will not inquire into substantive errors of facts or law.

## EU regime

Article 52 of the Brussels Recast Regulation unequivocally states that under no circumstances may the foreign judgment be reviewed as to substance. Importantly, the English court shall not review the jurisdiction of the foreign court over the matter. The English court shall be bound by the findings of fact on which the foreign court based its jurisdiction.

Pursuant to article 45 of the Brussels Recast Regulation, recognition of the foreign judgment may be refused on limited grounds if:

- recognition of the judgment would be manifestly contrary to the public policy of the UK;
- the defendant was not served with proceedings in time to enable the preparation of a proper defence, and the judgment was given in default of the defendant's appearance; or
- conflicting judgments exist in the UK or other EU member states.

Equivalent rules and defences are set out in articles 34 to 35 of the Brussels Regulation, articles 34 to 35 of the Lugano Convention and articles 27 to 28 of the Brussels Convention.

## Hague Court Convention 2005

Article 8(2) of the Hague Court Convention 2005 states that there shall be no review of the merits of the judgment given by the court of origin. The English court shall be bound by the findings of fact on which the foreign court based its jurisdiction, unless the judgment was given by default.

Pursuant to article 9, recognition of the foreign judgment may be refused on limited grounds if:

- the choice-of-court agreement was null and void under the law of the chosen court, unless the chosen court has determined that the agreement is valid;
- a party lacked capacity to conclude the choice-of-court agreement under English law;
- the proceedings were not served on the defendant in time to prepare a proper defence, unless the defendant entered an appearance and presented their case; or service was incompatible with fundamental principles of English law;
- the judgment was obtained by fraud in connection with a matter of procedure;
- recognition would be manifestly incompatible with the public policy of the UK, including where the foreign proceedings were incompatible with fundamental principles of procedural fairness of the UK; or
- conflicting judgments exist in the UK or other member states.

## AJA 1920

Under the Administration of Judgments Act 1920 (AJA 1920), the court's power to register a foreign judgment is discretionary. To that effect, section 9(1) of AJA provides that the court may register the foreign judgment where it considers it would be just and convenient for the judgment to be enforced in the UK. Section 9(2) sets out specific grounds on which registration of the foreign judgment shall be refused:

- the foreign court acted without jurisdiction;
- the judgment debtor, who was neither a resident of the foreign court's jurisdiction nor carrying on business there, did not voluntarily appear or otherwise submit to the foreign court's jurisdiction;
- the judgment was obtained by fraud;
- an appeal against the judgment is pending, or the judgment debtor is entitled and intends to appeal; or
- the judgment was in respect of a cause of action that for public policy or similar reason could not have been entertained by the English court.

Unlike under the EU regime, the English court may review jurisdiction of the foreign court and may refuse recognition if it considers that the foreign court lacked jurisdiction. Also, failure to comply with English law requirements of presence in the jurisdiction or submission to the jurisdiction can lead to non-recognition of the foreign judgment. There is some scope for merits-based review, particularly in the consideration of whether the judgment was obtained by fraud. The inquiry as to English public policy is not whether the foreign judgment violates it, but whether the cause of action was such that an English court could not have entertained it for reasons of public policy.

## FJA 1933

The Foreign Judgments (Reciprocal Enforcement) Act 1933 (FJA 1933) provides for simplified procedures for foreign judgment registration, following which registration shall or may be set aside on mandatory or discretionary grounds. Pursuant to section 4(1)(a), registration shall be set aside if:

- the judgment was not properly registered under FJA 1933;
- the foreign court lacked jurisdiction;
- the judgment debtor did not receive notice of the foreign proceedings in time to enable preparation of a proper defence and did not appear (notwithstanding that process may have been served in accordance with foreign law);
- the judgment was obtained by fraud;
- enforcement of the judgment would be contrary to public policy of the UK; or
- the rights under the judgment are not vested in the person making the application for registration.

Pursuant to section 4(1)(b), registration may be set aside if the matter in dispute had previously been the subject of a final and conclusive judgment by a court with jurisdiction in the matter.

As under AJA 1920, there is some scope for merits-based review, particularly in the consideration of whether the judgment was obtained by fraud. Section 4(2) of FJA 1933 provides for limited review of the foreign court's jurisdiction pursuant to English law notions.

## Common law regime

At common law, recognition of the foreign judgment debt is discretionary. Generally, English courts will not give

judgment where:

- the foreign court lacked jurisdiction according to English law notions;
- the judgment is contrary to the requirements of natural or substantial justice (called 'due process' in other jurisdictions), which encompasses notice and an opportunity to be heard;
- the judgment was obtained by fraud;
- the judgment is contrary to the public policy of the UK; or
- the judgment is not compensatory but punitive in nature (for taxes, fines or other penalties).

When considering the natural or substantial justice requirement, the English court will apply the principles of justice rather than strict procedural rules. The court is not restricted to a lack of notice or denial of a proper opportunity to be heard and can consider other procedural irregularities that undermine the right to a fair trial. However, procedural irregularities that are merely technical or formalistic may not suffice to impeach a foreign judgment.

Furthermore, under section 32(1) of the Civil Jurisdiction and Judgments Act 1982, a foreign judgment may not be recognised where it was obtained in breach of a valid jurisdictional or arbitration clause, unless the judgment debtor submitted to the foreign court's jurisdiction.

*Law stated - 21 July 2023*

### **Injunctive relief**

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

### **Common law regime**

English courts have the power and discretion to order an injunction preventing a judgment creditor from enforcing a foreign judgment in England and elsewhere (anti-enforcement injunction). As stated in Dicey, Morris & Collins on the Conflict of Laws, English courts may restrain a party over whom they have personal jurisdiction from the institution or continuance of proceedings in foreign courts, or the enforcement of foreign judgments. In practice, anti-enforcement injunctions, unlike anti-suit injunctions, are rare. A common feature of the cases in which anti-enforcement injunctions were granted was an exclusive English jurisdiction (or London-seated arbitration) clause, disregarded in foreign proceedings.

In the foundational case *Ellerman Lines Ltd v Read* [1928] 2 KB 144, the court granted an injunction restraining the judgment creditor from enforcing a Turkish judgment obtained both in breach of contract and by fraud on the Turkish court. While the injunction ordered by the first-instance court was limited to England, the appellate court considered that so long as the English court had jurisdiction over the person, it had the power to issue a worldwide injunction.

In *Bank St Petersburg v Arkhangelsky* [2014] EWCA Civ 593, the court granted an injunction restraining enforcement of judgments obtained in Russia, where the parties had agreed to resolve their dispute exclusively in England, and pending resolution of the English proceedings.

*Ecobank Transnational Inc v Tanoh* [2015] EWHC 1874 (Comm) illustrates that applications for anti-enforcement injunctions should be made promptly and should take the form of anti-suit injunctions.

The longer the foreign proceedings continue without an application to restrain them, the less likely the English court would be to grant an injunction. In that case, the High Court discharged a worldwide injunction restraining the enforcement of judgments obtained in Togo and Côte d'Ivoire on the basis that the applicant should have sought an anti-suit injunction earlier in the proceedings.

In *SAS Institute Inc v World Programming Ltd* [2020] EWCA Civ 599, the Court of Appeal granted an anti-enforcement injunction preventing enforcement of a US judgment through US enforcement measures (assignment order and turnover order), insofar as they targeted the UK assets and interfered with the UK jurisdiction. In that case, the claimant first brought proceedings in the UK and failed, and then brought proceedings in the US and succeeded in obtaining a US judgment. The judgment creditor then sought to enforce in the UK the heads of the US judgment that were not barred by issue estoppel in the UK. This complex case puts at issue competing jurisdiction and incompatible enforcement measures of the US and the UK.

### EU regime

The EU regime limits the judgment debtor's ability to block enforcement of judgment by way of injunction in the UK. In *Allianz SpA v West Tankers* [2007] UKHL 4, the House of Lords referred a question to the European Court of Justice as to whether an anti-suit injunction can be issued under the Brussels Regulation to restrain proceedings in breach of an arbitration agreement. The answer was that such anti-suit injunction would be inconsistent with the Brussels Regulation. In *Nori Holdings Ltd v Bank Otkritie Financial Corporation* [2018] EWHC 1343 (Comm), the English court re-examined the matter under the Brussels Recast Regulation and found that the position remained unchanged. In that case, the Commercial Court refused to grant an anti-suit injunction to restrain Cypriot court proceedings commenced in breach of an arbitration clause. These cases have been interpreted as a prohibition of anti-enforcement injunctions under the EU regime generally.

Nevertheless, article 44(1) of the Brussels Recast Regulation allows a judgment debtor who applies to challenge the recognition and enforcement of a foreign judgment in English courts to simultaneously apply to:

- limit the enforcement proceedings to protective measures;
- make any enforcement conditional on the judgment creditor providing security; or
- suspend the enforcement proceedings in whole or in part.

These measures may be viewed as functional equivalents of an anti-enforcement injunction for the duration of the challenge to recognition and enforcement.

*Law stated - 21 July 2023*

## REQUIREMENTS FOR RECOGNITION

### Basic requirements for recognition

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

The substantive requirements for recognition of a foreign judgment are the flip side of the defences against its recognition. The formal requirements are set out below.

### EU regime

Under the EU regime, the foreign judgment shall be recognised pursuant to simplified procedures, unless grounds for refusing recognition exist. Pursuant to article 36 of the Brussels Recast Regulation, the foreign judgment shall be recognised without any special procedures, and the interested party may apply for a decision that there are no grounds for refusing recognition. According to article 37, the interested party shall produce:

- a copy of the judgment that satisfies the conditions of authenticity; and
- a certificate from the foreign court that rendered the judgment containing standard information about the judgment (Annex I).

The English court may require a translation of the certificate or a translation of the judgment. Pursuant to article 61, no legalisation or similar formality is required.

Analogous provisions can be found in articles 33 and 53 to 56 of the Brussels Regulation, articles 33 and 53 to 56 of the Lugano Convention, and articles 26 and 46 to 49 of the Brussels Convention.

## Hague Court Convention 2005

Article 8(1) of the Hague Court Convention 2005 provides that a judgment of a court of a member state designed in the exclusive choice of court agreement shall be recognised in other member states, unless grounds for refusing recognition exist under the Convention.

Article 13 specifies that the party seeking recognition shall produce:

- a complete and certified copy of the judgment;
- the exclusive choice of court agreement, a certified copy thereof, or other evidence of its existence;
- if the judgment was given by default, the original or a certified copy of a document establishing service of the proceedings on the defendant;
- any documents necessary to establish that the judgment is enforceable in the state where it was made; or
- in case of a court-approved judicial settlement, a certificate from the foreign court that the judicial settlement is enforceable in the same manner as a judgment in the state where it was made.

These documents should be accompanied by a certified English translation. According to article 18, legalisation or analogous formality, such as apostille, is not required.

## Generally

Generally, the party seeking recognition of a foreign judgment under any regime needs to apply for registration in accordance with the procedures in Parts 74 and 7 of the Civil Procedure Rules (CPR). An application for registration must be made in the High Court and may be made without notice. The application must be supported by written evidence exhibiting:

- the judgment or a verified, certified or authenticated copy thereof; or
- an English translation of the judgment (where the judgment is not in English), certified by a notary public or other qualified person, or accompanied by written evidence confirming accuracy of the translation.

Summary judgment procedure in Part 24 of the CPR will generally be available. An application for summary judgment must be supported by written evidence. Such evidence can generally come in the form of a solicitor's witness statement.

*Law stated - 21 July 2023*

## Other factors

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

While reciprocity per se is not a factor, it forms a basis of the system of recognition and enforcement of foreign judgments under the Administration of Judgments Act 1920 (AJA 1920) and the Foreign Judgments (Reciprocal Enforcement) Act 1933 (FJA 1933). Reciprocity is a consideration for His Majesty's Orders listing the countries covered by these statutory regimes.

Reciprocity is also an implicit basis of the conventional regimes, insofar as conventions only apply to recognition of judgments between the member states.

As confirmed by the Supreme Court in *Rubin & Anor v Eurofinance SA & Ors* [2012] UKSC 46, reciprocity is not a criterion for the recognition and enforcement of foreign judgments under the common law regime.

*Law stated - 21 July 2023*

## 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?

Procedural equivalence is not a standalone requirement for the recognition or enforcement of a foreign judgment. However, procedural fairness is relevant for various defences to recognition or enforcement, such as natural justice under common law, public policy of according the right to fair trial pursuant to article 6 of the European Convention on Human Rights, public policy of respecting the fundamental principles of procedural fairness service pursuant to the Hague Court Convention 2005, notice in time to enable preparation of a proper defence under the statutory regimes, etc.

As seen in *Maronier v Larmer* [2003] QB 620, there is a presumption that the court procedures of the state parties to the European Convention on Human Rights are compliant with article 6. However, such presumption can be rebutted, in which case it would be contrary to public policy to enforce the judgment.

*Law stated - 21 July 2023*

## JURISDICTION OF THE FOREIGN COURT

### 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?

Whether and to what extent the English court will review the foreign court's jurisdictional determinations depends on the applicable regime.

At common law and under the statutory regimes, the foreign court's personal jurisdiction over the defendant is a prerequisite to the foreign judgment's recognition and enforcement in the UK. By contrast, there is very limited scope for review of personal jurisdiction under the European and convention regimes.

### Common law



At common law, the English court will verify whether the foreign court had jurisdiction in personam in according to the English rules, which require either presence within the jurisdiction or submission to the jurisdiction. According to Rule 47 in Dicey, Morris & Collins on the Conflict of Laws, a foreign court has jurisdiction to give a judgment in personam capable of recognition or enforcement against the judgment debtor in the following cases:

- the judgment debtor was present in the foreign country – for natural persons, this requires physical presence, and for legal persons, this requires a fixed place of business in the territory; or
- the judgment debtor submitted to the foreign court's jurisdiction by voluntarily appearing or filing a claim or counterclaim in the proceedings or agreeing to submit to jurisdiction before the commencement of the proceedings.

### Statutory regimes

Section 9(2)(a) of the Administration of Judgments Act 1920 (AJA 1920) expressly provides that registration of the foreign judgment shall be refused if the foreign court acted without jurisdiction. Similarly, section 4(1)(a) of the Foreign Judgments (Reciprocal Enforcement) Act 1933 (FJA 1933) mandates that registration shall be set aside if the foreign court lacked jurisdiction. Mirroring common law, section 4(2) specifies the cases in which the foreign court is deemed to have had jurisdiction in personam:

- the judgment debtor submitted to the foreign court's jurisdiction by voluntarily appearing or filing a claiming or counterclaim in the proceedings or agreeing to submit to jurisdiction before the commencement of the proceedings; or
- the judgment debtor was a resident, was incorporated or had its principal place of business in the foreign court's country, etc.

*Law stated - 21 July 2023*

### 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?

Generally, the English court shall not review the foreign court's subject matter jurisdiction and shall be bound by the foreign court's findings of fact as to its jurisdiction. Accordingly, recognition of the foreign judgment shall not be denied if the foreign court wrongly asserted jurisdiction over the matter. Nevertheless, the subject matter of the judgment and the foreign court's jurisdiction over it may be decisive under the EU regime and the Hague Court Convention 2005.

### EU regime

If the foreign judgment falls outside the scope of the European instruments, it will not be recognised thereunder. Article 1(2) of the Brussels Recast Regulation excludes the following matters from its scope of application:

- status or legal capacity of natural persons;
- rights in property arising out of marriage or equivalent;
- bankruptcy, liquidation or judicial administration;
- social security;
- arbitration;
- alimony; and

- wills and succession.

Similar provisions delineating the scope of application are contained in the other European instruments.

It follows that the foreign judgment regarding a matter falling outside the substantive scope of the European instrument will not be recognised thereunder, although it may still be recognisable under the default common law regime.

### Hague Court Convention 2005

Pursuant to article 1, the Hague Court Convention 2005 only applies in the presence of exclusive choice of court agreements concluded in civil or commercial matters. Article 2 excludes the following matters from the Convention's substantive scope:

- personal, family or household matters;
- employment contracts;
- status and legal capacity of natural persons;
- alimony;
- rights in property arising out of marriage or equivalent;
- wills and succession;
- insolvency or equivalent;
- carriage of passengers and goods;
- marine pollution, limitation of liability for maritime claims, emergency towage and salvage;
- anti-trust;
- liability for nuclear damage;
- personal injury;
- tort;
- rights in rem in immovable property;
- validity, nullity, or dissolution of legal persons, validity of decisions of their organs;
- validity of IP rights other than copyright;
- infringement of intellectual property rights other than copyright and related rights; and
- validity of entries in public registers.

It follows that in the absence of an exclusive choice of court agreement, or if a matter falls outside of the Convention's substantive scope, the foreign judgment will not be recognised thereunder, although it may still be recognisable under the default common law regime.

*Law stated - 21 July 2023*

### 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?

### Common law

As discussed above, a breach of natural justice in the foreign proceedings, particularly in the form of a failure to give the defendant notice of the proceedings and a fair opportunity to be heard and to present their case, is a defence to recognition and enforcement of the resulting foreign judgment in England. Judging whether there was due notice to the defendant of the foreign proceedings is a two-step process.

First, the English court will consider whether service complied with foreign procedural rules. As to the first point, the English courts will not measure the validity of service of the foreign proceedings by their own procedural rules. This will be a matter of foreign law, as well as any applicable international conventions (such as the Hague Service Convention) or bilateral arrangements between the claimant's state and the defendant's state.

Second, the English court will consider whether service complied with English law notions of natural justice. As to the second point, the English court will consider whether the foreign proceedings were in fact brought to the attention of the defendant. A historic illustration of this principle is *Buchanan v Rucker* (1808) 9 East 192, where a nailing a copy of the summons to the courthouse door did not constitute due service – even though it may have been a common practice in Tobago – and the judgment obtained in Tobago could not be enforced in England.

Practical advice to claimants is to exhaust or at least attempt all available means of service of the foreign proceedings (service via the Central Authority under the Hague Convention, through diplomatic channels, through postal channels, by email, by messenger, by social media such as Telegram or Facebook, etc) and to be able to produce proof of such service or attempted service to the English court. While service of the claim form (or equivalent) is the most important, claimants should also exercise due care in serving subsequent documents on the defendant, from the perspective of affording it an opportunity to be heard and to present its case throughout the proceedings. Relatedly, the English court will consider whether the length of time between service of the claim form (or equivalent) and the subsequent notifications of hearings was sufficient to enable the defendant to prepare a proper defence.

At common law, it does not matter whether under foreign procedural rules the defendant had an opportunity to challenge the validity of service but failed to avail itself of such opportunity. At the recognition and enforcement stage in England, the defendant or judgment debtor will still be able to raise lack of proper service as a defence.

Lack of notice and an opportunity to be heard and to present the case is a ground for refusing recognition and enforcement of a foreign judgment in all other regimes applicable in England, as discussed above and below.

### EU regime

Pursuant to article 45 of the Brussels Recast Regulations, recognition of the foreign judgment may be refused where the defendant was not served with proceedings in time to enable the preparation of a proper defence, and the judgment was given in default of the defendant's appearance. Article 34 of the Brussels Regulation additionally required the defendant to challenge the default judgment in the foreign country for improper service to be able to resist recognition and enforcement of the foreign country on this ground. *Reeve and others v Plummer* [2014] EWHC 4695 (QB) illustrates the application of article 34 of the Brussels Regulation to the effect that a Belgian default judgment was registered against two of the three defendants who failed to challenge the validity of the default judgment as required by the Brussels Regulation.

Similar service-related defences are set out in article 27 of the Brussels Convention and article 34 of the Lugano Convention.

### Hague Court Convention 2005

Pursuant to article 9 of the Hague Court Convention 2005, recognition of the foreign judgment may be refused where: the proceedings were not served on the defendant in time to prepare a proper defence, unless the defendant entered an appearance and presented their case; or service was incompatible with fundamental principles of English law.

## Statutory regimes

Both AJA 1920 and FJA 1933 contain provisions contemplating refusal of registration of a foreign judgment that was entered in default of appearance or where the defendant was not duly served with process. Section 9(2) of AJA 1920 provides that registration of the foreign judgment shall be refused where the judgment debtor who was neither a resident of the foreign court's jurisdiction nor carrying on business there, did not voluntarily appear or otherwise submit to the foreign court's jurisdiction. Pursuant to section 4(1)(a) of FJA 1933, registration shall be set aside where the judgment debtor did not receive notice of the foreign proceedings in time to enable preparation of a proper defence and did not appear (notwithstanding that process may have been served in accordance with foreign law).

*Law stated - 21 July 2023*

### 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?

Forum non conveniens is not a ground for denying recognition or enforcement of a foreign judgment under any of the regimes. English courts will not consider the factual nexus between the foreign jurisdiction rendering judgment and the underlying disputes, nor the convenience of the parties, witnesses or experts, in determining whether to recognise or enforce a foreign judgment.

*Law stated - 21 July 2023*

## EXAMINATION OF THE FOREIGN JUDGMENT

### Vitiating by fraud

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

## Common law

At common law, fraud is a defence to recognition and enforcement of registration of a foreign judgment. This common law principle is set out in Dicey, Morris & Collins on the Conflict of Laws Rule 53: a foreign judgment is impeachable for fraud. Such fraud may be either: fraud by the judgment creditor; or fraud by the foreign court pronouncing the judgment. As stated in Royal Bank of Scotland plc v Highland Financial Partners LP and others [2013] EWCA Civ 328, there has to be conscious and deliberate dishonesty, and it has to be material for the consideration of the evidence and causative of the impugned judgment.

The judgment debtor remains entitled to raise the defence of fraud even if the facts relied upon were known to the judgment debtor and could have been raised in the foreign proceedings, and even if the foreign court had rejected them (Vadala v Lawes (1890) 25 QBD 310 (CA)). However, the defence of fraud would not succeed where the issue of fraud has been litigated in the foreign proceedings, and the judgment debtor has not adduced any new evidence justifying an examination of the issue of fraud by the English court (House of Spring Gardens Ltd v Waite [1991] 1 QB 241; Owens Bank v Etoile [1992] 2 AC 43). In such a case, the English court may strike out the allegation of fraud for estoppel or abuse of process.

## European regime

The European instruments do not contain a separate defence for fraud. However, it has been accepted that recognition or enforcement of a foreign judgment tainted by fraud may be refused for violation of public policy ( *Smith v Huertas* [2015] EWHC 3745 (Comm)).

### Hague Court Convention 2005

Pursuant to article 9 of the Hague Choice of Court Convention 2005, recognition of a foreign judgment may be refused if it was obtained by fraud in connection with a matter of procedure. An Explanatory Report on the Hague Convention gives examples of procedural fraud: where the plaintiff deliberately serves the writ on the wrong address; where gives the defendant wrong information as to the time and place of the hearing; or where either party seeks to corrupt a judge, juror or witness, or deliberately conceals key evidence.

### Statutory regimes

The statutory regimes of the Administration of Judgments Act 1920 (AJA 1920) and Foreign Judgments (Reciprocal Enforcement) Act 1933 (FJA 1933) enshrine the common law principles. Section 9(2)(d) of AJA 1920 provides that registration of the foreign judgment shall be refused if it was obtained by fraud. Similarly, section 4(1)(a) provides that registration shall be set aside if the judgment was obtained by fraud. In *Owens Bank v Etoile* [1992] 2 AC 443 stands for the proposition that the reference to fraud in AJA 1920 must be construed by reference to the common law principles. The FJA 1933 applies in the same manner, as seen in *Syal v Heyward* [1948] 2 KB 443.

*Law stated - 21 July 2023*

### Public policy

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

Violation of the UK public policy is a ground for refusing recognition, enforcement or registration of a foreign judgment under all regimes. However, the operation of the public policy defence varies between the regimes.

### Common law

At common law, violation of the UK public policy is a ground for refusing recognition, enforcement or registration of a foreign judgment. According to Dicey, Morris & Collins on the Conflict of Laws Rule 54, a foreign judgment is impeachable on the ground that its recognition or enforcement would be contrary to public policy. *Lenkor Energy Trading DMCC v Puri* [2020] EWHC 1432 (QB) clarifies that it is recognition or enforcement of the foreign judgment and not the underlying transaction upon which the judgment is based which must offend English public policy. In that case, the Court of Appeal held that a Dubai judgment in respect of dishonoured checks could be enforced in England, despite the fact that the underlying gas oil-purchase transaction for which the checks were tendered was tainted by illegality.

Examples of cases in which foreign judgments were not recognised or enforced for violation of English public policy include:

- the cause of action in the foreign proceedings is unknown to English law (*Re Macartney* (No. 2) [1921] 1 Ch 522);
- the interest rate on the foreign judgment was so manifestly excessive that it amounted to a penalty (*JSC VTB Bank v Skurikhin and others* [2014] EWHC 271 (Comm));
- the foreign judgment was 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).

### EU regime

According to the European instruments, recognition and enforcement of a foreign judgment may be refused where it would be manifestly contrary to the public policy of the UK. Pursuant to article 45 of the Brussels Recast Regulation, recognition of the foreign judgment may be refused on limited grounds if recognition of the judgment would be manifestly contrary to the public policy of the UK. Equivalent defences are set out in article 34 of the Brussels Regulation, article 34 of the Lugano Convention and article 27 of the Brussels Convention. This defence is interpreted strictly and only applies in exceptional circumstances where recognition or enforcement would be at variance to an unacceptable degree with the UK legal order, or if there is a manifest breach of a rule of law or right regarded as essential in the EU legal order.

Under the EU regime, a deprivation of the right to fair trial under article 6 of the European Convention on Human Rights may also violate the UK public policy for judgment recognition and enforcement purposes. Whilst the procedures of other Convention States are presumed to comply with article 6, this presumption can be rebutted in some cases. Examples of cases in which recognition or enforcement of foreign judgments was refused for violation of the public policy of the UK to protect the right to fair trial in accordance with article 6 of the European Convention on Human Rights include:

- enforcement of the Ukrainian judgment would amount to a flagrant breach of the principle of finality and legal certainty (Merchant International Co Ltd v Natsionalna Aktsionerna Kompaniya Naftogaz Ukrayiny [2012] EWCA Civ 196; see also Joint Stock Co Aeroflot-Russian Airlines v Berezovsky [2014] EWCA Civ 20); and
- enforcement of the Maltese judgment would be manifestly contrary to public policy due to a 26-year delay, failure to inform the defendant of the subsequent revival of the proceedings and failure of its court-appointed representatives to seek instructions (Laserpoint Ltd v Prime Minister of Malta and others [2016] EWHC 1820 (QB)).

### Hague Court Convention 2005

Similarly, pursuant to article 9 of the Hague Court Convention 2005, recognition of the foreign judgment may be refused where it would be manifestly incompatible with the public policy of the UK, including where the foreign proceedings were incompatible with fundamental principles of procedural fairness of the UK.

### Statutory regimes

Both AJA 1920 and FJA 1933 contain provisions contemplating refusal of registration of a foreign judgment for violation of public policy. Pursuant to section 9(2)(f) of AJA 1920, registration of the foreign judgment shall be refused where the judgment was in respect of a cause of action that for public policy or similar reason could not have been entertained by the English court. Pursuant to section 4(1)(a) of FJA 1933, registration shall be set aside where enforcement of the judgment would be contrary to public policy of the UK.

*Law stated - 21 July 2023*

## 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?

Under all regimes, enforcement of the foreign judgment may be denied if it is in conflict with another final and conclusive judgment involving the same parties or their privies. There are slight variations in the articulation of this defence across the regimes.

## European regime

Pursuant to article 45(1)(c) of the Brussels Recast Regulation, recognition of the foreign judgment may be refused if conflicting judgments exist in the UK or other EU member states. Equivalent defences are set out in article 34(3) of the Brussels Regulation, article 34(3) of the Lugano Convention and article 27 of the Brussels Convention.

## Hague Court Convention 2005

Pursuant to article 9 of the Hague Court Convention 2005, recognition of the foreign judgment may be refused if conflicting judgments exist in the UK or other member states.

## Statutory regimes

Pursuant to section 4(1)(b) of FJA 1933, registration of the foreign judgment may be set aside if the matter in dispute had previously been the subject of a final and conclusive judgment by a court having jurisdiction in the matter. While section 9(2) of AJA 1920 does not specifically articulate this defence, the same result may be obtained under the rubric of 'public policy or similar reason'.

## Common law

At common law, the existence of a prior conflicting English judgment between the same parties or their privies is a defence to recognition and enforcement of the foreign judgment on the ground of public policy.

*Law stated - 21 July 2023*

## 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?

Generally, a foreign judgment creates a debt between the judgment debtor and the judgment creditor, and as such, is only enforceable against the person against whom it is made. Only in limited circumstances would the English courts look beyond the legal personality of the judgment debtor and enforce the debt against a third party by operation of the principles of piercing the corporate veil, agency, alter ego or group of companies. In *Prest v Petrodel Resources Limited* [2013] UKSC 34, the Supreme Court pierced the corporate veil where the person:

- was under an existing legal obligation, liability or restriction; and

- deliberately evaded that obligation, liability or restriction; or
- deliberately frustrated the enforcement of that obligation, liability or restriction by interposing a company under their control.

This principle was implied in *Kensington International Ltd v Congo* [2005] EWHC 2684 (Comm) in the context of recognition and enforcement of a foreign judgment against a state. In that case, the court pierced the corporate veil and allowed enforcement of judgments made against Congo against the assets of a Congolese state-controlled company, by making a third-party debt order garnishing the payments owed to that company by oil consignees. The court held that the Congolese companies were a sham or façade, had no legal substance, had no existence separate from the Congolese state and were simply part of the state, and were set up to defeat the creditors' claims against the state.

*Law stated - 21 July 2023*

### 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?

### Common law

By application of common law in conjunction with section 32(1) of the Civil Jurisdiction and Judgments Act 1982 (CJJA 1982), a foreign judgment shall not be recognised and enforced in the UK if it has been obtained in breach of an agreement to settle the dispute elsewhere. Excluded from the scope of this provision are cases in which the judgment debtor counterclaimed in the proceedings or otherwise submitted to the jurisdiction of that court. Section 32(1) also does not apply if the agreement to settle the dispute elsewhere was illegal, void, unenforceable or incapable of being performed for reasons not attributable to the judgment creditor. In that regard, the English court is not bound by any prior determinations of the foreign court.

If an English court has previously ordered an anti-suit injunction restraining the judgment creditor from obtaining a foreign judgment in breach of an arbitration agreement, the resulting judgment would be obtained in contempt of the English court and would be unenforceable for the violation of public policy.

### EU regime

The EU regime does not contain a provision equivalent to section 32(1) of CJJA 1992 and is silent on the effect of an alternative dispute resolution clause on judgment enforceability.

### Hague Court Convention 2005

The rule in section 32(1) of CJJA 1982 does not apply to the judgments rendered under the Hague Court Convention 2005.

Significantly, the Convention applies only in the presence of an exclusive choice of court agreement. Articles 8 to 9 of the Convention limit (but do not preclude) the English courts' ability to entertain an allegation that the foreign judgment was made in breach of an arbitration agreement, and conversely, pursuant to an exclusive choice of court agreement that was null and void under foreign law, where the foreign court itself did not conduct such inquiry.



**Favourably treated jurisdictions**

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

Formally, the English courts do not give any greater deference to judgments from some jurisdictions as opposed to others. At the same time, the EU regime, with its straightforward criteria and uniform procedures, renders the judgments more readily enforceable given its underlying policy objectives, such as a harmonised approach to jurisdiction, recognition and enforcement of judgments from the EU member states. Also, the statutory AJA 1920 and FJA 1933 regimes, with their established criteria, are premised on reciprocity. As to the common law regime, there are no readily available empirical studies demonstrating that judgments from other common-law English-speaking countries are accorded greater deference. On the other hand, one can intuit that laws and procedures of other common-law English-speaking countries are more easily understood, while laws and procedures from other countries require a greater degree of explanation and potentially proof by expert or witness evidence.

Law stated - 21 July 2023

**Alteration of awards**

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

The English courts can sever parts of judgments that are punitive as opposed to compensatory in nature, or contrary to public policy, and enforce the remaining parts. Parts of judgments corresponding to punitive, exemplary or treble damages, fines, penalties, taxes, etc, are unenforceable across the regimes. There are also express provisions for severability of judgments. For example, article 48 of the Brussels Regulation expressly provides for severance of parts of a judgment that cannot be enforced. Similarly, article 15 of the Hague Courts Convention 2005 expressly provides for severability of a judgment where only a part of it is capable of recognition or enforcement.

Law stated - 21 July 2023

**Effect of sanctions**

What effect do foreign or domestic sanctions have on the enforcement of foreign judgments in your jurisdiction? Will a court refuse enforcement of a judgment against or in favour of a sanctioned entity or individual? If so, which sanctions regimes do the courts of your jurisdiction recognise?

UK, US and European sanctions are being introduced regularly, particularly following Russia's invasion of Ukraine. The impact of sanctions on enforcement of foreign judgments is a constantly evolving area of law. Detailed analysis of the sanctions regulations, their applicability, operative provisions and the definitions of 'control', is needed in each particular case. In approaching the issue of sanctions in the context of the recognition and enforcement of foreign judgments, it is necessary to keep in mind: whether the sanctioned person or entity is a judgment creditor or a judgment debtor; whether it is a 'designated' person or entity subject to 'blocking' sanctions; what country issues sanctions; and what body grants licences.

In *PJSC National Bank Trust & Anor v Boris Mints & Ors* [2023] EWHC 118 (Comm), the High Court recently clarified that sanctions do not prevent an English court from entering judgment on a pre-sanctions claim brought by the

sanctioned person, and sanctions do not require a licence from the Office of Financial Sanctions Implementation (OFSI).

In *Ministry of Defence and Support for Armed Forces of the Islamic Republic of Iran v International Military Services Ltd* [2019] 1 WLR 6409, the Iranian Ministry sought to enforce an arbitral award rendered in its favour in England. The court enforced the award insofar as it was made before the imposition of sanctions but held that the interest accruing since the imposition of sanctions could not be enforced. The sanctions were imposed by the EU, so the issue of seeking a licence from OFSI did not arise.

Extending the courts' reasoning to recognition and enforcement of foreign judgments, one can suppose that sanctions do not preclude the English court from recognising a foreign judgment representing a pre-sanctions debt due to the sanctioned judgment creditor. However, difficulties may arise at the stage of execution. In the opposite scenario, sanctions should not become an obstacle to recognition of the foreign judgment against a sanctioned judgment debtor. However, an OFSI licence may be needed to be able to proceed to execution against the assets of the sanctioned judgment debtor.

*Law stated - 21 July 2023*

## AWARDS AND SECURITY FOR APPEALS

### 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?

Generally, a foreign judgment represents a debt that the judgment debtor owes to the judgment creditor. If the foreign judgment is in foreign currency, then upon registration in England, it will remain in foreign currency. But if the judgment fails to pay the amounts due pursuant to the judgment upon its registration in England in foreign currency, then the date of conversion into pound sterling, for purposes of execution in England, would typically be the date when the judgment creditor is given leave to levy execution ( *Miliangos v George Frank Ltd* [1977] QB 489).

If the foreign judgment provides for interest or carries such entitlement under foreign law, then such interest will be recoverable, as part of the debt, in England upon judgment registration. But in the unlikely scenario where the foreign judgment and foreign law are silent as to interest, it should be kept in mind that section 17 of the Judgment Act 1838 (FA 1838) and the Judgment Debts (Rate of Interest) Order 1993 provide for the standard simple interest rate of 8 per cent, which applies to English judgments, potentially including English judgments entered on foreign debts.

If the foreign judgment provides for recovery of foreign court costs, then they will be recoverable, as part of the debt, in England upon judgment registration. As far as the costs of the English registration proceedings are concerned, they will be assessed in accordance with the usual English procedures.

*Law stated - 21 July 2023*

### 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?

The configuration of appeal and the need to provide security for costs will depend on the regime under which the foreign judgment is enforced and the applicable procedures.

## Common law

At common law, the process of recognition of a foreign judgment entails instituting new proceedings by which a foreign debt is converted into an English judgment. The resulting English judgment will be subject to appeal by either party under the usual English rules. Generally, under Part 52 of the Civil Procedure Rules (CPR), appeal is not as of right and requires permission from either the High Court or the Court of Appeals. The Court of Appeal may order the appellant (or cross-appellant) to provide security for costs as a precondition to pursuing the appeal in accordance with the rules set out in Part 25 of the CPR. The relevant considerations include if:

- the appellant is a non-resident;
- there is reason to believe that the appellant-company will be unable to pay the respondent's costs if so ordered;
- the appellant failed to give their address in the claim form, gave an incorrect address or changed their address to evade the consequences of the litigation; or
- the appellant has taken steps to dissipate their assets, etc.

## Statutory regimes

Under the Administration of Judgments Act 1920 (AJA 1920) and the Foreign Judgments (Reciprocal Enforcement) Act 1933 (FJA 1933), an application for registration of foreign judgment may be made without notice to the judgment debtor, according to Part 74 of the CPR. The judgment debtor can then apply to set aside the order registering the foreign judgment within the time limit specified in the order. Thereafter, either party may seek permission to appeal the order setting aside the registration (or not) pursuant to the usual English rules set out in Part 52 of the CPR.

## Hague Court Convention 2005

The Hague Court Convention 2005, which is implemented through the Civil Jurisdiction and Judgments Act 1982 (CJJA 1982), permits application for registration without notice to the judgment debtor. The judgment debtor can then apply to set aside the registration order.

## European regime

The Brussels Recast Regulation provides for nearly automatic recognition of foreign judgments upon provision of documents listed in article 42, according to Part 74 of the CPR. It is incumbent on the judgment debtor to make an application for refusal of enforcement pursuant to articles 45 to 47. Article 49, to be read in conjunction with Parts 74 and 52 of the CPR, provides that the resulting decision may be appealed by either party.

*Law stated - 21 July 2023*

## ENFORCEMENT AND PITFALLS

### Enforcement process

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

Once a foreign judgment is recognised in England, it can be enforced in the same way as an English judgment. Recognition gives the judgment creditor access to the full range of compulsive mechanisms available in the English legal system. These methods include: disclosure orders compelling the judgment debtor or its banks to disclosure

information about the judgment debtor's financial affairs; 'gagging' orders restraining the banks from divulging information about the enforcement measures to the judgment debtor; worldwide freezing orders; charging orders against bank accounts, immovable and movable property; and third-party debt (garnishment) orders requiring third parties to pay to the judgment creditor the sums that they owe to the judgment debtor. These enforcement methods are not limited to the territory of the UK and can be extraterritorial. Famous examples of deployment of English enforcement measures include *JSC BTA Bank v Ablyazov* and *JSC Mezhdunarodniy Promyshlenniy Bank and State Corporation "Deposit Insurance Agency" v Pugachev* in which extraterritorial disclosure orders (in combination with contempt orders and gagging orders), search orders, worldwide freezing orders, charging orders over assets and orders to sell assets were used.

*Law stated - 21 July 2023*

### Pitfalls

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

Foreign litigants aiming to recognise and enforce foreign judgments in England should ensure compliance with due process or natural justice in the foreign proceedings, which fundamentally requires proper service on the defendant and opportunity to be heard. Caution should be exercised with accelerating or taking shortcuts in the foreign proceedings. Foreign litigants should amass proof of compliance with due process or natural justice for use in the English recognition and enforcement proceedings, which will be particularly useful in case of default judgments.

Foreign litigants should also bear in mind that only compensatory as opposed to punitive parts of foreign judgments are enforceable in England. Accordingly, they should either aim at a foreign judgment that only grants compensatory relief or avoid ambiguity between the parts of the judgment that grant compensatory and non-compensatory relief, to enable severability and enforceability of the compensatory part of the judgment in England.

*Law stated - 21 July 2023*

## UPDATE AND TRENDS

### Hot topics

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

The UK jurisdiction has come into the spotlight following comparative studies on recognition and enforcement of foreign judgments ( *exequatur* ) against foreign sovereigns. Unique features of the UK legal system make it possible to overcome state immunity from the jurisdiction of English courts, under the tort exception in particular, even if the acts or omissions occurred outside of the UK. To explain, the UK State Immunity Act 1978 (SIA 1978) , like similar statutes in other countries, embodies the general principle that foreign states are immune from the jurisdiction of English courts, unless one of the enumerated exceptions applies. The UK, unlike other countries, also has a procedural act, the Civil Jurisdiction and Judgments Act 1982 (CJJA 1982) , which provides guidance as to how to apply SIA 1978 and its exceptions from state immunity in the context of recognition and enforcement of foreign judgments ( *exequatur* ). Section 31(1) of CJJA 1982 provides that a foreign judgment against a foreign state shall be recognised and enforced in the UK if and only if: it otherwise meets the requirements for recognition and enforcement, had it not been given against a state; and the foreign court would have had jurisdiction, had it applied the exceptions from state immunity corresponding to those in sections 2 to 11 of SIA 1978. Section 31(1) thus allows the English court to step into the shoes of the foreign court rendering the judgment and presume that the facts occurred with its territory. *NML v Argentina* [2011] UKSC 31 confirms the *mutatis mutandis* application of the exception from state immunity under

section 31(1) and clarifies that it does not create an additional hurdle for state immunity, but rather a shortcut. Such *mutatis mutandis* application of the exceptions from immunity, and particularly the tort exception, is unique. By comparison to other countries, the absence of a territorial nexus with the forum renders the exceptions from immunity, and particularly the tort exception, inapplicable, with the consequence of not being able to recognise and enforce a foreign judgment against a foreign sovereign in that forum.

*Heiser v Iran* [2019] EWHC 2074 (QB) further clarifies that for a foreign judgment to be enforceable in the UK, there must be correspondence (or equivalence) between the immunity exceptions applied by the foreign court and those existing under SIA 1978. In that case, the English court essentially decided that: state immunity was not an obstacle to enforcement of a US judgment in the UK, insofar as it relied on the 'tort' exception reflected in both the US Foreign Sovereign Immunities Act 1976 (FSIA 1976) and SIA 1979 (applicable to a shooting in New York); and state immunity was an obstacle to enforcement of the US judgment in the UK, insofar as it relied on the 'terrorism' exception, which was unique to the FSIA 1976 and did not exist under SIA 1978 (applicable to terrorist attacks in the Middle East). Ultimately, the US judgment could not be enforced due to the difficulties with establishing Iran's presence within the US, through an embassy in the absence of diplomatic relations between the countries, or otherwise in view of the procedural and evidentiary particularities of that case.

The takeaway in the current geopolitical context is that the UK may be a promising jurisdiction for the recognition and enforcement of foreign judgments against foreign sovereigns, pursuant to the combined application of SIA 1976 and CJA 1982.

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*Law stated - 21 July 2023*

## Jurisdictions

	<b>Australia</b>	Ironbridge Legal
	<b>Austria</b>	WEBER & CO.
	<b>Bahrain</b>	Charles Russell Speechlys
	<b>Egypt</b>	Soliman, Hashish & Partners
	<b>France</b>	Signature Litigation
	<b>Germany</b>	Willkie Farr & Gallagher LLP
	<b>Greece</b>	PotamitisVekris
	<b>Iran</b>	Dadflamingo
	<b>Italy</b>	Ughi e Nunziante
	<b>Japan</b>	TMI Associates
	<b>Jordan</b>	Hammouri & Partners
	<b>Nigeria</b>	Streamsowers & Köhn
	<b>Switzerland</b>	Walder Wyss Ltd
	<b>Turkey</b>	Gün + Partners
	<b>United Arab Emirates</b>	Charles Russell Speechlys
	<b>United Arab Emirates - Abu Dhabi</b>	Charles Russell Speechlys
	<b>United Arab Emirates - DIFC</b>	Charles Russell Speechlys
	<b>United Kingdom</b>	Winston & Strawn LLP
	<b>USA</b>	Freshfields Bruckhaus Deringer