# ENFORCEMENT OF FOREIGN JUDGMENTS 2023

Contributing editors
**Oliver Browne and Georgie Blears**
*Latham & Watkins LLP*

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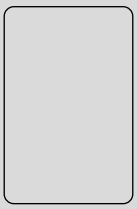

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Lexology Getting the Deal Through is delighted to publish the twelfth edition of *Enforcement of Foreign Judgments*, which is available in print and online at www.lexology.com/gtdt.

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

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

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

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

LEXOLOGY
Getting the Deal Through

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# Contents

# Global overview

**Oliver Browne and Georgie Blears**

Latham & Watkins LLP

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

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

In terms of recent developments impacting the topics addressed in this publication, the covid-19 pandemic still looms large. Just as it has affected every other area of life, covid-19 has also affected the enforcement of judgments (as well as litigation more generally). In almost all the jurisdictions included in this edition, legislatures and courts have made creative changes to court processes and procedures to address the impact of the pandemic, many of which remain in place.

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

Leaving the covid-19 pandemic to one side, the approach to foreign judgments across Europe has been impacted in recent years by the tension between, on the one hand, the increasing and intensifying efforts by states and courts to improve cooperation in the recognition and enforcement of judgments and, on the other, the legal arrangements that govern those issues following the United Kingdom's departure from the European Union: that is, Brexit. These issues are interlinked because the two main instruments that have recently been developed by the international community to promote the effective enforcement of judgments on the international plane – the Hague Choice of Court Convention 2005 (the Hague Convention 2005) and the Hague Convention on the Recognition of Foreign Judgments in Civil and Commercial Matters 2019 (the Hague Convention 2019) – are likely to play an important role in governing the enforcement of judgments between the United Kingdom and other countries post-Brexit. This may in turn provide renewed momentum to the widespread adoption of both Hague conventions in other countries. The United Kingdom acceded to the Hague Convention 2005 in its own right, effective from 1 January 2021, and the European Council has recently adopted a decision on the accession of the European Union to the Hague Convention 2019.

Brexit, and the question of which international regime will govern questions regarding the recognition and enforcement of judgments between the United Kingdom and other countries, is not just an issue for the United Kingdom. Several of the jurisdictions covered by this volume highlight the continuing uncertainties being faced following the end of the Brexit transition period. As the United Kingdom is one of the world's major economies and one of the most popular centres for the resolution of international disputes, the regime governing jurisdiction and enforcement of judgments between the United Kingdom and its most significant trading partner and the world's largest trading bloc, the European Union, and with other countries, is of considerable significance to litigants worldwide.

While the EU regime continues to apply to the recognition and enforcement of judgments obtained in proceedings instituted before the end of the Brexit transition period on 31 December 2020, that regime no longer applies to new proceedings instituted after the end of the transition period. At the time of writing, the UK's application to join the Lugano Convention 2007, the regime governing jurisdiction and the recognition and enforcement of judgments as between the EU and EFTA states, which would provide considerable continuity with the rules applicable before Brexit, continues to be rebuffed by the European Union.

The Hague Convention 2019 provides for the establishment of an international framework for the recognition and enforcement of civil and commercial judgments. If it comes into force, it will likely be of assistance to litigants. The Convention currently has been signed (but not ratified) by: Costa Rica, Israel, Russia, Ukraine, the United States and Uruguay. To come into force, it requires the accession or ratification by two states. Assuming the United Kingdom follows suit with the European Union and accedes to the Convention, it will help streamline the mutual enforcement of civil and commercial judgments post-Brexit. The ratification process will, however, take time. For present purposes therefore, understanding the operation of the multilateral and bilateral treaties and domestic rules that apply to the recognition and enforcement of judgments between the United Kingdom and other European countries continues to be important.

# United Kingdom

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## LEGISLATION

### Treaties

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

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

#### EU regime

The United Kingdom has left the European Union. It has also left the EU regime governing the recognition and enforcement of judgments between the United Kingdom and the EU member states. The EU regime, therefore, does not apply to the recognition and enforcement of judgments obtained in new proceedings instituted after the end of the Brexit transition period on 31 December 2020. (Some commentators consider that the Brussels Convention 1968, which the United Kingdom acceded to before joining the European Union, may remain in force. However, both the UK government and the European Commission have expressed the opinion that it does not.) Finally, the Lugano Convention 2007 governs the recognition and enforcement of judgments between the European Union and certain EFTA (Iceland, Norway and Switzerland, but not Lichtenstein) member states.

However, the EU regime continues to apply to the recognition and enforcement of judgments obtained in proceedings instituted before the end of the Brexit transition period. A great many such proceedings continue to make their way through the courts in the United Kingdom and EU member states. The EU regime, therefore, remains relevant, and the applicable rules under that regime are set out below, along with the rules applicable to judgments obtained in EU member states after 31 December 2020 and judgments obtained in other countries.

#### Proceedings instituted in EU member states before 31 December 2020

Three main EU regimes govern the recognition and enforcement of judgments obtained from EU member states in proceedings instituted before the end of the transition period. Each regime applies to civil and commercial matters and therefore excludes matters relating to revenue, customs and administrative law. There are also separate EU regimes applicable to matrimonial relationships, wills, succession, bankruptcy, social security and regulation.

Regulation (EU) No. 1215/2012 (Brussels I Regulation recast), which applies to judgments given in proceedings commenced on or after 10 January 2015 and before 31 December 2020, and the original Brussels Regulation (Regulation (EU) No. 44/2001 (Brussels Regulation)) applies to judgments given in proceedings commenced before 10 January 2015. The Brussels Convention 1968 applies concerning judgments given in Gibraltar and some dependent territories of EU member states. In April 2020, the United Kingdom applied to accede to the Lugano Convention 2007. More than two years on, the United Kingdom's application, which requires the unanimous consent of the current contracting parties to the Convention, has yet to be approved. At the time of writing, Iceland, Norway and Switzerland have consented to the UK's membership, but the European Union has yet to make a formal decision. The European Commission has recommended that the European Union reject the UK's application. The final decision lies with the European Council.

#### Commonwealth and British overseas territories

The United Kingdom has a statutory regime for the recognition and enforcement of judgments in place with most commonwealth countries and British overseas territories in the form of the Administration of Justice Act 1920 (AJA 1920). AJA 1920 applies to the EU member states of Cyprus and Malta.

#### Hague Convention on Choice of Court Agreements 2005

Up until the end of the transition period, the United Kingdom was a party to the Hague Convention on Choice of Court Agreements 2005 (the Hague Convention 2005) under its membership of the European Union. The United Kingdom has since acceded to the Hague Convention 2005 in its own right effective from 1 January 2021. The Hague Convention 2005 applies to EU member states from 1 October 2015, Mexico from 1 October 2015, Singapore from 1 October 2016, Montenegro from 1 August 2018 and Denmark (which acceded separately from the rest of the European Union) from 1 September 2018. It has also been signed by (but is not yet in force in) China, Israel, Ukraine and the United States.

#### Other statutory regimes

The Foreign Judgments (Reciprocal Enforcement) Act 1933 (FJA 1933) applies to judgments from courts in Australia (except the territory of Norfolk), Canada (except Nunavut and Quebec), Guernsey, India, the Isle of Man, Israel, Jersey, Pakistan, Surinam and Tonga. FJA 1933 also applies to judgments from some European countries (Austria, Belgium, France, Germany, Italy, the Netherlands and Norway) that had entered into bilateral treaties on the enforcement of judgments with the United Kingdom before the UK acceded to the European Union (or, in the case of Norway, have entered into amended and updated bilateral treaties with the United Kingdom post-Brexit). These bilateral treaties may have increased relevance post-Brexit, albeit commentators' views diverge as to whether they remain in full force and effect. This will have to be tested

in the courts. The United Kingdom also has specific rules relating to the enforcement of judgments between its constituent parts. For example, the Civil Jurisdiction and Judgments Act 1982 (CJJA 1982) is the relevant regime for the enforcement of judgments from the courts of Scotland and Northern Ireland in England and Wales.

### Common law rules

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

### Sector-specific rules

The United Kingdom is a party to a range of subject-matter treaties and conventions that provide for recognition and enforcement of specific types of judgments or awards. These are generally modelled on FJA 1933. Examples include the Carriage of Goods by Road Act 1965, the Merchant Shipping Act 1995 and the Civil Aviation Act 1982.

## Intra-state variations

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

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

## Sources of law

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

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

## Hague Convention requirements

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

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

# BRINGING A CLAIM FOR ENFORCEMENT

## Limitation periods

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

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

### EU regime

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

### Administration of Justice Act 1920

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

### Hague Convention on Choice of Court Agreements 2005

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

### Foreign Judgments (Reciprocal Enforcement) Act 1933

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

### Common law rules

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

## Types of enforceable order

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

Broadly speaking, foreign non-monetary judgments are only enforceable in the United Kingdom if they fall within the EU regime (in respect of proceedings instituted before the end of the transition period) or the Hague Convention 2005. Under the common law rules and other statutory schemes, only monetary judgments which are final and conclusive are enforceable.

### EU regime

The EU instruments provide for the enforcement of any judgment in a civil or commercial matter given by a court or tribunal of a contracting state, whatever it is called by the original court. For example, article 2(a) of Regulation (EU) No. 1215/2012 (Brussels I Regulation recast) provides for the enforcement of any decree, order, decision or writ of execution, as well as a decision on the determination of costs or expenses by an officer of the court.

The Brussels I Regulation recast also extends to interim, provisional or protective relief (including injunctions) when ordered by a court that has jurisdiction under the EU instrument in question.

### Administration of Justice Act 1920

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

### Hague Convention 2005

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

### Foreign Judgments (Reciprocal Enforcement) Act 1933

The Foreign Judgments (Reciprocal Enforcement) Act 1933 (FJA 1933) covers judgments or orders made by a recognised court in civil proceedings or criminal proceedings for a sum of money in respect of compensation or damages to an injured party, as long as it is not in respect of a tax, fine or penalty. The judgment must also finally and conclusively determine the rights and liabilities of the parties (although, per section 5(1) of FJA 1933, it is no bar to enforcement that an appeal is pending). FJA 1933 also makes specific provision for the enforcement of arbitration awards.

### Common law rules

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

## Competent courts

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

Proceedings seeking recognition and enforcement of foreign judgments should be brought before the High Court in England and Wales, the Court of Session in Scotland or the High Court of Northern Ireland, depending on the jurisdiction in which the judgment is sought to be enforced.

## Separation of recognition and enforcement

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

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

### AJA 1920, FCA 1933 and Hague Convention 2005

For foreign judgments falling within the scope of AJA 1920, FJA 1933 or the Hague Convention 2005, a judgment creditor may apply for their judgment to be registered under the rules set out in Part 74 of the Civil Procedure Rules (CPR).

The process involves applying to a High Court master with the support of written evidence. The application should include, among other things, a verified or certified copy of the judgment and a certified translation (if necessary). Further details are set out in Part 74 of the CPR. The judgment debtor then has an opportunity to oppose registration on certain limited grounds. Assuming the judgment debtor does not successfully oppose registration, the judgment debtor can then take steps to enforce the judgment.

### EU regime

Similar rules apply to foreign judgments from EU member states in proceedings instituted before the end of the transition period. Part 74 of the CPR as it existed before the end of the transition period continues to apply to such judgments as a result of transitional and savings provisions found in Regulations 26 and 27 of the Mutual Recognition of Protection Measures in Civil Matters (Amendment) (EU Exit) Regulations 2019 (SI 2019/493) (as amended by the Civil, Criminal and Family Justice (Amendment) (EU Exit) Regulations 2020 (SI 2020/1493)).

### Common law rules

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

## OPPOSITION

## Defences

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

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

### EU regime

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

A judgment debtor may object to the registration of a judgment under the EU instruments (or, in the case of Regulation (EU) No. 1215/2012 (Brussels I Regulation recast), which does not require registration, appeal the recognition or enforcement of the foreign judgment) on similar, strictly limited grounds.

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

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

Equivalent defences are set out in articles 34 to 35 of Regulation (EU) No. 44/2001 (Brussels Regulation) and the Lugano Convention 2007, respectively. The court may not refuse a declaration of enforceability on any other grounds.

### Administration of Justice Act 1920

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

### Hague Convention on Choice of Court Agreements 2005

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

### Other statutory regimes

The Foreign Judgments (Reciprocal Enforcement) Act 1933 makes provision for setting aside registration in circumstances where the original court lacked jurisdiction, the judgment was obtained by fraud, an appeal is pending or intended to be filed by a judgment debtor, the judgment is contrary to UK public policy or the judgment is for multiple damages (unenforceable under the Protection of Trading Interests Act 1980).

### Common law rules

At common law, recognition of the judgment debt is discretionary. Courts in England will not give judgment when the foreign court lacked jurisdiction according to relevant UK conflict of laws rules, was obtained by fraud or is contrary to public policy in England or the requirements of natural justice. 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 jurisdiction or arbitration clause unless the judgment debtor submitted to the foreign court's jurisdiction. The Court of Appeal case of *AdActive Media Inc v Ingrouille* [2021] EWCA Civ 313 illustrates that this can be a complex enquiry.

When considering the natural or substantial justice requirement, the court will consider the principles of justice rather than the strict rules, and it is not restricted to a lack of notice or denial of a proper opportunity to be heard, although mere procedural irregularity will not be sufficient to preclude recognition and enforcement. Also, a UK court is unlikely to refuse to recognise a foreign judgment on grounds that could have been raised in the foreign proceedings.

## Injunctive relief

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

### Injunctive relief to prevent enforcement of foreign judgments in England

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

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

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

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

Brussels I Regulation recast

Under article 44(1) of the Regulation (EU) No. 1215/2012 (Brussels I Regulation recast), a judgment debtor that applies to challenge the recognition and enforcement of a foreign judgment may also apply to the English court to:

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

### Injunctive relief to prevent enforcement of judgments in other jurisdictions

The decisions in C-185/07 *Allianz SpA v West Tankers* and *Nori Holding v Bank Otkritie* [2018] EWHC 1343 (Comm) made it clear that English courts may not grant injunctions to restrain proceedings that fall within the EU regime. These cases are interpreted as also prohibiting anti-enforcement injunctions.

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

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

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

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

In the case of *SAS Institute Inc v World Programming Ltd* [2020] EWCA Civ 599, the Court of Appeal granted an anti-enforcement injunction (in part), preventing enforcement of a US judgment, where the enforcement orders sought affected UK assets.

Anti-suit and anti-enforcement injunctions may also be permissible under the Hague Convention 2005 on the basis that the convention embodies a 'system of qualified or partial mutual trust', contrasting with

the expectation under the various EU jurisdictional regimes that prize 'the overarching principle of mutual trust and system objectives'.

## REQUIREMENTS FOR RECOGNITION

### Basic requirements for recognition

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

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

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

- the nature of the judgment;
- the jurisdiction of the foreign court; or
- existence of factors that renders the judgment impeachable (eg, fraud, breach of a jurisdiction agreement or violation of the forum's principles of natural justice or other public policy reason).

Once the requirements in the first two points are satisfied, the foreign judgment is prima facie entitled to be recognised.

#### EU regime

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

Such foreign judgments shall be recognised without any special procedures, subject to the grounds for non-recognition in article 45 Regulation (EU) No. 1215/2012 (Brussels I Regulation recast), article 34 of Regulation (EU) No. 44/2001 (Brussels Regulation) and article 34 of the Lugano Convention 2007. These include:

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

#### Common law rules, AJA 1920 and FJA 1933

The scope of foreign judgments that can be recognised at common law is limited to those that are final and conclusive on the merits and given by a court of competent jurisdiction according to English conflicts of law rules, which broadly cover three scenarios:

- the defendant was present (or, possibly, resident) within the foreign jurisdiction at the time the proceedings were instituted;
- the defendant voluntarily submitted to the jurisdiction of the foreign court (save to challenge jurisdiction or another purpose protected by statute); and
- the defendant agreed to the jurisdiction of the foreign court – for example, through a jurisdiction agreement.

The requirements of AJA 1920 and FJA 1933 are closely modelled on the common law rules.

#### Hague Convention on Choice of Court Agreements 2005

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

### Other factors

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

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

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

### Procedural equivalence

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

Procedural equivalence is not a standalone requirement when considering whether to recognise or enforce a foreign judgment. However, procedural fairness in the originating court's process is relevant under various grounds for challenging recognition and enforcement – for example, the requirement of natural justice under the common law, service requirements under AJA 1920 and FJA 1933, and breach of article 6 of the European Convention on Human Rights (ECHR).

#### EU regime

A fundamental objective underlying the EU regime is to facilitate the free movement of judgments by providing a simple and rapid procedure, and it was established in *Maronier v Larmer* [2003] QB 620 that this objective would be frustrated if courts of an enforcing state could be required to carry out a detailed review of whether the procedures that resulted in the judgment had complied with article 6 of the ECHR. There is a strong presumption that the court procedures of other signatories of the ECHR are compliant with article 6. Nonetheless, the presumption can be rebutted, in which case it would be contrary to public policy to enforce the judgment.

#### Statutory schemes (AJA 1920 and FJA 1933)

Under AJA 1920 and FJA 1933, the originating court's process would already have been considered when the United Kingdom entered into the arrangement. AJA 1920 covers former territories of the United Kingdom that share similar systems and processes, whereas FJA 1933 is extended to selected jurisdictions on an individual basis by Order in Council. Further, both legislations are required to be read in light of ECHR rights under the Human Rights Act 1998.

#### Hague Convention 2005

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

### Common law rules

The English courts generally do not investigate the propriety of foreign proceedings at the enforcement stage at common law. However, a foreign judgment would not be enforced if it would constitute a breach of natural justice. This would arise, for example, if the judgment debtor had no notice of the proceedings or if he or she was not given a proper opportunity to present the case. In *Merchant International Co Ltd v Natsionalna Aktsionerna Kompaniia Naftogaz Ukrainy* [2012] 1 WLR 3036, the Court of Appeal confirmed the applicability of the rebuttable presumption that the procedures of other Convention states comply with article 6 of the ECHR established in *Maronier*. A foreign judgment found to be in flagrant breach of article 6 would therefore be unenforceable.

## JURISDICTION OF THE FOREIGN COURT

### Personal jurisdiction

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

### EU regime

There is very limited scope for the English courts to investigate the jurisdiction of the originating court in respect of a foreign judgment falling under the EU regime, unless article 45(1)(e) of Regulation (EU) No. 1215/2012 (Brussels I Regulation recast), article 35(1) of Regulation (EU) No. 44/2001 (Brussels Regulation) or article 35(1) of the Lugano Convention 2007 apply. It is therefore not possible to deny enforcement on the basis that the foreign court took jurisdiction wrongly, except where the judgment conflicts with:

- sections 3, 4 or 5 of Chapter II of Regulation (EU) No. 1215/2012 (Brussels I Regulation recast), which provide jurisdictional rules in insurance, consumer and employment cases;
- sections 3 or 4 of Chapter II of the Brussels Regulation and Lugano Convention 2007, which provide jurisdictional rules in insurance and consumer cases; or
- section 6 of Chapter II of the Brussels I Regulation recast, Brussels Regulation and Lugano Convention 2007, which confers exclusive jurisdiction on the court of the state with a particularly close connection with a specific subject matter.

### Hague Convention on Choice of Court Agreements 2005

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

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

### Common law rules

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

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

### Other statutory schemes

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

### Subject-matter jurisdiction

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

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

### Service

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

### EU regime

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

### Hague Convention 2005

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

### Common law rules

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

### Other statutory schemes

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

## Fairness of foreign jurisdiction

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

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

## EXAMINATION OF THE FOREIGN JUDGMENT

## Vitiation by fraud

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

### EU regime

Regulation (EU) No. 1215/2012 (Brussels I Regulation recast), Regulation (EU) No. 44/2001 (Brussels Regulation) and Lugano Convention 2007 do not contain a separate defence for fraud. However, it has been accepted that recognition or enforcement of a judgment from a court of another member state that is tainted by fraud may be refused on grounds of public policy. Nonetheless, it would not be contrary to public policy for the UK court to recognise or register a judgment if means of redress against the alleged fraud were available in the original court giving judgment.

### Hague Convention on Choice of Court Agreements 2005

Unlike the Brussels regime, fraud in matters of procedure is a ground of appeal against a decision to register a judgment that falls under the Hague Convention on Choice of Court Agreements 2005 (the Hague Convention 2005) (section 6B of the Civil Jurisdiction and Judgments Act 1982).

### Common law rules

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

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

### Other statutory schemes

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

## Public policy

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

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

### EU regime

Article 45(1)(a) of the Brussels I Regulation recast, article 34(1) of the Brussels Regulation and Lugano Convention 2007 provide that recognition and enforcement would be denied if it would be manifestly contrary to the public policy in the state where its recognition or enforcement is sought. This defence is interpreted strictly and would only apply in exceptional circumstances where recognition or enforcement would be at variance to an unacceptable degree with the legal order of the state of the enforcing court, or if there is a manifest breach of a rule of law or right regarded as essential in the EU legal order. A principal example is where the judgment debtor can demonstrate that there has been a deprivation of the right to a fair trial under article 6 of the European Convention on Human Rights (ECHR). In *Maronier v Larmer* [2003] QB 620, the presumption that the procedures of other signatories of the

ECHR are compliant with article 6 was rebutted, given that the Dutch judgment was obtained from proceedings that were reactivated after it had been stayed for 12 years and without fresh service of process on the judgment debtor. The court concluded that it would infringe public policy to enforce the judgment. The presumption was also rebutted in a more recent case, *Laserpoint Ltd v Prime Minister of Malta and others* [2016] EWHC 1820 (QB), due to a delay of 26 years in the conduct of the proceedings and the fact that the judgment debtor was not informed that the proceedings were subsequently revived. Given that a manifest breach of public policy has been established through the analysis of article 6 of the ECHR, the judge rejected the argument that the judgment debtor also had to have exhausted all remedies available in the originating court. Another example of the public policy exception is where the foreign proceedings are tainted by fraud. On the other hand, a failure to refer to the Court of Justice of the European Union by the originating court does not render recognition and enforcement of a judgment manifestly contrary to the public policy of the United Kingdom, as there exists a final remedy in the form of an action against the state of the originating court (*CDR Creances SAS and another v Tapie and others* [2019] EWHC 1266 (Comm)).

### Common law rules

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

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

### Other statutory schemes

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

## Conflicting decisions

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

### EU regime

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

### Hague Convention 2005

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

### Common law

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

### Estoppel

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

## Enforcement against third parties

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

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

## Alternative dispute resolution

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

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

of the English court. Recognition and enforcement would be denied on grounds of public policy. Anti-suit injunctions are impermissible under the EU regime.

**Favourably treated jurisdictions**

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

Foreign judgments that fall under the various schemes of enforcement, including the EU regime, AJA 1920 and FJA 1933, are more readily enforceable through the procedures set out in the relevant statute or instrument than judgments that are enforceable only at common law. This can be understood in light of the objectives underpinning the EU regime, which are to facilitate the free movement of judgments, as well as the assumption of a harmonised approach to jurisdiction, recognition and enforcement of judgments from other EU member states. On the other hand, the basis of the application of AJA 1920 and FJA 1933 is the existence of a substantial measure of reciprocity, which is only extended to jurisdictions that demonstrate that judgments from the United Kingdom would be afforded reciprocal treatment.

**Alteration of awards**

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

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

## AWARDS AND SECURITY FOR APPEALS

**Currency, interest, costs**

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

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

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

**Security**

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

EU regime

Under Regulation (EU) No. 1215/2012 (Brussels I Regulation recast), the foreign judgment is automatically recognised and so is immediately enforceable. For the judgment to be enforced, a judgment creditor must provide the documents set out in article 42 of the Brussels I Regulation recast to the court (Part 74.4A of the Civil Procedure Rules (CPR) insofar as Part 74 of the CPR, as it existed before the end of the Brexit transition period, continues to apply as a result of transitional and savings provisions). It is incumbent on the party resisting enforcement to apply for refusal of recognition of the judgment (article 45 of the Brussels I Regulation recast). Under the other EU instruments, the judgment debtor has either one or two months from the service of the order registering the judgment to appeal that registration, depending on whether or not they are based within the jurisdiction (Part 74.8 of the CPR).

Other statutory schemes

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

Hague Convention 2005

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

Common law rules

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

Security for costs

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

- the judgment creditor is resident outside the jurisdiction, but not resident in a state to which Regulation (EU) No. 44/2001 (Brussels Regulation) or the Lugano Convention 2007 applies;
- the judgment creditor is a company or other body corporate (whether incorporated inside or outside Great Britain) and there is reason to believe it will be unable to pay the judgment debtor's costs if ordered to do so;
- the judgment creditor changed his or her address since the claim was commenced to evade the consequences of the litigation or failed to give an address in the claim form or gave an incorrect address or has taken steps concerning his or her assets that would make it difficult to enforce an order for costs against them; or
- the judgment creditor is acting as a nominal judgment creditor (other than as a representative judgment creditor under Part 19 of

the CPR) and there is reason to believe that he or she will be unable to pay the judgment debtor's costs if ordered to do so.

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

## ENFORCEMENT AND PITFALLS

### Enforcement process

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

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

### Pitfalls

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

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

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

## UPDATE AND TRENDS

### Hot topics

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

The most important issue in the field remains the consequences of Brexit for the recognition and enforcement of judgments from the European Union.

More than two years on from its application to accede to the Lugano Convention 2007, it appears increasingly unlikely that the United Kingdom will successfully join the Lugano Convention, at least in the short term. The European Commission recently reiterated its opposition to the UK's accession, on the ground that accession is linked to close economic integration with the European Union and participation should not be offered to any third country that is not part of the internal market. If the United Kingdom does not accede to the Lugano Convention 2007, the main international instrument governing the recognition and enforcement of judgments between the United Kingdom and the European Union will be the Hague Convention on Choice of Court Agreements 2005 (the Hague Convention 2005) and any bilateral treaties in force between the United Kingdom and EU member states.

The Hague Convention 2005 provides for a simple mechanism for the recognition and enforcement of judgments. However, there are uncertainties as to both its material and temporal scope. It only applies when the parties have agreed on an exclusive jurisdiction clause. The Court of Appeal in *Etihad Airways PJSC v Dr Lucas Flother* [2020] EWCA Civ 1707 remarked obiter that it considers asymmetric jurisdiction clauses, which are common in finance agreements, to be outside the scope of the Hague Convention 2005. Further, it only applies to contracts entered into after the Convention entered into force. The United Kingdom's position is that it entered into force for the United Kingdom on 1 October 2015, when the United Kingdom originally became a party to the Convention via its membership of the European Union. The European Union takes the position that the Convention only entered into force for the United Kingdom after it acceded in its own right on 1 January 2021. It will be up to the courts of the United Kingdom and EU member states to decide the matter.

Looking ahead, the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters (the Hague Judgments Convention 2019), which provides for the establishment of a single international framework for the recognition and enforcement of civil and commercial judgments (not limited to exclusive jurisdiction clauses), might be of assistance. The Hague Judgments Convention 2019 has not yet entered into force, which requires the accession or ratification by two states. It currently has six signatories: Israel, Ukraine, Uruguay, Costa Rica, Russia and the United States. In an important step for the Hague Judgments Convention 2019, the European Council recently adopted a decision for the European Union to accede to the Hague Judgments Convention 2019. The European Council's decision will come into force when it is adopted by the Council. Assuming the United Kingdom also joins the Hague Judgments Convention 2019 in due course, this could help streamline the mutual enforcement of civil and commercial judgments post-Brexit. The Convention would also complement or provide an alternative to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards of 1958.

The ratification process will take time. The Hague Judgments Convention 2019 will not come into force for any state until 12 months after ratification. Further, it will not apply unless the proceedings that led to a judgment were instituted at a time when the Hague Judgments Convention 2019 was in force for both the state of origin and the state of enforcement. While the Hague Judgments Convention 2019 may therefore assist litigants in the future, it does not provide a short-term solution.

Leaving Brexit to one side, a recent ruling in China has signalled a more cooperative approach to mutual recognition and enforcement of civil and commercial judgments with the United Kingdom. On 17 March 2022, the Shanghai Maritime Court issued a ruling recognising and enforcing an English commercial judgment for the first time, based on the principle of reciprocity ((2018) H72XWR No. 1). Given that China has not entered into any bilateral treaties or international instruments for the reciprocal recognition or enforcement of foreign judgments with its major trading partners, reciprocity must be established before a UK judgment can be recognised by a Chinese court. Shortly before the ruling of the Shanghai Maritime Court, the Supreme People's Court issued a memorandum on the handling of commercial and maritime matters, which clarified and broadened the position on reciprocity. Notably, the memorandum indicates that a Chinese court could enforce a foreign judgment on the basis of reciprocity on the condition that the relevant foreign court could (as a matter of principle rather than by reference to previous examples) enforce a Chinese judgment. While neither the memorandum nor the ruling is strictly binding on Chinese courts, both are likely to be influential and should, therefore, come as good news to litigants in possession of an English court judgment where their counterparty holds assets in China. These developments could also encourage a greater reliance on English law as the dispute resolution mechanism in contracts with Chinese parties.

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