Enforcement of Foreign Judgments

Contributing editor
Patrick Doris

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GETTING THE DEAL THROUGH

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1 Treaties

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

The law pertaining to recognition and enforcement of foreign judgments in the United Kingdom can be found in a number of different sources, including treaties, statutes and the common law. The application of the law depends primarily on the jurisdiction whose courts have issued the foreign judgment ('original' judgment or court), as well as the date of issue and subject matter of the foreign proceedings. Further details on non-treaty sources of law can be found in question 3. The United Kingdom comprises three separate court systems in England and Wales, Scotland and Northern Ireland. While the treaty obligations and the key relevant statutes apply equally to all three jurisdictions, the common law and applicable procedure may vary. This chapter focuses primarily on the law and procedure of England and Wales.

Recognition and enforcement of judgments

The United Kingdom is party to treaty-based schemes for the enforcement of judgments as a member of the European Union (EU) and the European Economic Area (EEA).

The Recast Brussels Regulation (EU) No. 1215/2012 (Recast Regulation), which reformed Regulation (EC) No. 44/2001 (Brussels I Regulation), provides for the speedy and simplified enforcement of judgments obtained in the courts of one EU/EEA member state in all other member states. The Recast Regulation came into force on 10 January 2015 and applies to any case brought on or after that date (Brussels I will continue to apply to any case that was brought prior to 10 January 2015). The Recast Regulation (and, as applicable, the Brussels I Regulation) applies to orders of courts and tribunals of any nature in civil and commercial matters, with the exception that it specifically excludes revenue, customs and administrative law matters; although in a recent judgment in *Pula Parking d.o.o. v Tederahn* (Case C-551/15), the Court of Justice of the European Union (CJEU) held that where a company owned by a public authority is exercising its functions independently of the public authority that owns it, the relationship between the parties to a dispute may be one in private law. Proceedings between these parties will come within the definition of civil and commercial matters. The Recast Regulation also does not apply to orders pertaining to matrimonial relationships, wills, succession, bankruptcy, social security or arbitration. Judicial decisions on the Recast Regulation and the Brussels I Regulation by the CJEU are binding on member states. Under both the Recast Regulation and the Brussels I Regulation the default rule on jurisdiction applies, meaning that if a defendant is domiciled in an EU member state such as the United Kingdom, it must be sued in the United Kingdom unless the claim falls into one of the exceptions listed in the instrument. For example, in tort actions the defendant may be sued where the harmful event took place and in contract cases the jurisdiction where the contract is to be performed.

Judgments covered by the Brussels I Regulation first need to be registered in the part of the United Kingdom (England and Wales, Scotland or Northern Ireland) in which enforcement will be sought, by way of an application for registration (registration is referred to in many of the EU/EEA instruments as obtaining a declaration of enforceability). This process is known as exequatur. A defendant may object on the following grounds:

- the original court lacked jurisdiction to hear the matter (the Brussels I Regulation contains detailed provisions in that regard);
- recognition and enforcement would be manifestly contrary to UK public policy;
- the defendant was not served with proceedings in time to enable it to prepare a proper defence; or
- conflicting judgments exist in the United Kingdom or other member states.

However, the Recast Regulation has abolished this procedure; and article 39 of the Recast Regulation provides that a judgment that has been given in a member state and is enforceable in that member state shall be enforceable in other member states without the need for a declaration of enforceability. As described more fully in questions 9, 19 and 20, an application can be made for the courts of the relevant member state to refuse enforcement by the party against which enforcement is sought as follows:

- if the enforcement would be manifestly contrary to UK public policy;
- if the defendant was not served with proceedings in time to enable it to prepare a proper defence; or
- conflicting judgments exist in the United Kingdom or other member states.

Insofar as matters within the scope of the Recast Regulation and the Brussels I Regulation are concerned, they supersede the Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters 1968. This is also true for the following member states: Austria, Belgium, Bulgaria, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Cyprus, Hungary, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Ireland, Romania, Slovakia, Slovenia, Spain and Sweden. The two Regulations also supersede a number of bilateral enforcement treaties that the United Kingdom had previously entered into with other member states. The Brussels Convention 1968 continues to apply between a limited number of territories and EU member states. The Lugano Convention on Jurisdiction and the Enforcement of Judgments in Civil and Commercial Matters 2007 (in force since 2010 and replacing the previous Lugano Convention of 1988) applies to enforcement of judgments given in Iceland, Norway and Switzerland on substantially similar terms to the Brussels I Regulation.

The European system also includes three procedures aimed at simplifying and speeding up the process and reducing the cost of recognition and enforcement. Where these procedures are used, the resulting judgments can be enforced without the need for further registration in other member states.

Where a judgment for a specific sum of money has been obtained in uncontested proceedings – meaning that the debtor has admitted to liability, failed to object or failed to appear – the judgment can be certified by the issuing court under Regulation (EC) No. 805/2004 (European Enforcement Order (EEO) Regulation). The certified judgment can then be recognised and enforced in other member states with little possibility of the defendant opposing its enforcement, except in

the case of conflicting judgments. The EEO Regulation applies to judgments given after 21 January 2005 and requires that certain minimum procedural standards be met prior to certification. The EEO Regulation's application is limited to contracts concluded between certain classes of parties; the CJEU has previously held that the EEO Regulation does not apply to contracts between two persons who are not engaged in commercial or professional activities (see *Vapenik v Thurner* (Case C-508/12) [2013] CJEU)).

As an alternative, where a civil or commercial claim does not exceed €5,000, excluding interest, expenses and disbursements, cross-border claims may be brought under the simplified procedure laid down in Regulation (EC) No. 861/2007 (European Small Claims Procedure, as amended by Regulation (EU) No. 2015/2421). Court fees for the European Small Claims Procedure 'shall not be disproportionate and shall not be higher than the court fees charged for national simplified court procedures in that member state' (article 15a of Regulation (EC) No. 861/2007, as amended).

A third avenue exists in the European Order for Payment Procedure (EOP Procedure) under Regulation (EC) No. 1896/2006 (as amended by Regulation (EU) No. 936/2012 and Regulation (EU) No. 2015/2421). The EOP Procedure provides standardised forms and procedures for pursuing uncontested money debts, without imposing any maximum value. Judgments given under the European Small Claims or EOP Procedures are enforceable in other member states without the need to first be certified or registered. In Case C-215/11, *Szyrocka v SiGer Technologie GmbH* [2012], All ER (D) 172 (Dec), the CJEU gave its first ruling on the EOP Procedure, clarifying that although national courts are not permitted to impose additional requirements for an EOP Procedure, they remain free to determine the amount of court fees applicable. However, following the amendments made to the EOP Procedure by Regulation (EU) No. 2015/2421, court fees for the EOP Procedure must not be greater than those for proceedings where there is no preceding European Order for Payment (ie, the fee that would be applicable for enforcement of a non-contested monetary judgment). The CJEU also found that a claimant can claim all interest accrued up to the date of payment of the claim. The EEO Regulation and the European Small Claims and EOP Procedures lay down subject-matter and tribunal exceptions, which are similar but with slight differences from those found in the Regulation. The three procedures apply among all member states with the exception of Denmark.

The European Union has signed and ratified the Hague Convention on Choice of Court Agreements 2005 (Hague Convention 2005) on behalf of all EU member states (including Denmark, from 1 September 2018). The Hague Convention 2005 came into force between the European Union and Mexico on 1 October 2015 and between the European Union and Singapore on 1 October 2016. The Hague Convention 2005 has also been signed but not yet ratified by China, Montenegro, Ukraine and the United States. It has been implemented into UK law by an amendment to the Civil Jurisdiction and Judgments Act 1982 (CJJA 1982).

The Hague Convention 2005 applies to judgments on the merits in civil and commercial matters where there is an exclusive choice of court agreement in place (unless one party is a natural person who is acting for primarily personal, family or household purposes). Such an agreement must be in writing or otherwise in a manner that renders it accessible for subsequent reference.

The Hague Convention 2005 specifically excludes a number of matters, namely: the status and legal capacity of natural persons; maintenance obligations; family law matters; wills and succession; insolvency; composition and analogous proceedings; the carriage of passengers and goods; certain maritime and shipping matters; competition matters; liability for nuclear damage; claims for personal injury brought by or on behalf of natural persons, tort or delict claims for damage to tangible property not arising from a contractual relationship; rights in rem and tenancies of immovable property; validity or nullity or dissolution of legal persons and the validity of decisions of their organs; validity of intellectual property rights other than copyright or related rights; infringement of intellectual property rights other than copyright and related rights, unless proceedings could also be brought for breach of contract; and the validity of entries in public registers. The European Union has also made a declaration under the Hague Convention 2005 that it will not apply to contracts of insurance other than reinsurance contracts: certain large risks arising connected with shipping, aircraft, railway rolling stock or goods used for commercial purposes; policy holders carrying on businesses over a certain size; or contracts of insurance between parties domiciled in the same contracting state and conferring jurisdiction on that state, where if the harmful event occurred abroad. This reflects the special provisions in relation to insurance, which are set out in articles 15 and 16 of the Recast Regulation.

Under the CJJA 1982 there is a simple procedure for the recognition of judgments arising from Hague Convention 2005 states. Judgments will be registered for enforcement if they are enforceable or effective in their country of origin. The party against which judgment is sought is not entitled to make submissions on an application for registration of a Hague Convention 2005 judgment and once registered, such a judgment becomes enforceable as if it were a UK judgment. However, appeals can be made against a decision to register a judgment on the following grounds:

- the judgment is not effective or enforceable in its state of origin;
- the relevant choice of court agreement was null and void;
- a party lacked capacity under the relevant law to enter into the choice of court agreement;
- proceedings were not notified to the defendant in a manner that would allow it to organise its defence (unless the defendant appeared and put its case in the original court and did not raise this);
- the proceedings were notified to the defendant in the United Kingdom in breach of fundamental principles of service in the United Kingdom;
- the judgment was obtained by procedural fraud;
- enforcement would be manifestly incompatible with public policy in the United Kingdom (including if it is incompatible with basic principles of procedural fairness); or
- the judgment is incompatible either with an earlier judgment given in the United Kingdom between the same parties or with an earlier judgment given in another Hague Convention state between the same parties and in the same cause of action.

Subject-matter treaties

The United Kingdom is party to a range of subject-matter treaties and conventions that provide for recognition and enforcement of specific types of judgments or awards. These are incorporated into law in the United Kingdom by legislation, and the provisions relating to recognition are generally modelled on the Foreign Judgments (Reciprocal Enforcement) Act 1933 (FJA 1933) (see question 3). Examples include the Carriage of Goods by Road Act 1965, the Merchant Shipping Act 1995 and the Civil Aviation Act 1982.

2 Intra-state variations

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

The law relating to enforcement of foreign judgments is substantively similar across England and Wales, Scotland and Northern Ireland; all three jurisdictions have separate court systems with their own procedural rules (see question 1).

3 Sources of law

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

The substantive law on recognition and enforcement of judgments in the United Kingdom derives from three key sources. Throughout this chapter we refer to each in turn, as there are some noteworthy differences in the substantive and procedural requirements for enforcement under each, as follows:

- European treaty law (see question 1): this pertains to the judgments of other EU member states and Iceland, Norway and Switzerland.
- United Kingdom statutes: these apply to judgments from specified jurisdictions that have historical or constitutional relationships with the United Kingdom or implementing conventions to which the United Kingdom is party as a result of its membership of the European Union into UK law.
- The Administration of Justice Act 1920 (AJA 1920) provides for the registration of judgments issued by the superior courts of specified

jurisdictions by which a sum of money is made payable, and also lists restrictions on the circumstances in which registration may be granted. Originally enacted to cover the dominions and territories of the Crown, the AJA 1920 currently applies to Anguilla, Antigua and Barbuda, the Bahamas, Barbados, Belize, Bermuda, Botswana, British Indian Ocean Territory, the British Virgin Islands, the Cayman Islands, Christmas Island, the Cocos (Keeling) Islands, Cyprus, Dominica, the Falkland Islands, Fiji, the Gambia, Ghana, Grenada, Guyana, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Malta, Mauritius, Montserrat, New Zealand, Nigeria, Norfolk Island, Papua New Guinea, St Christopher and Nevis, St Helena, St Lucia, St Vincent and the Grenadines, the Seychelles, Sierra Leone, Singapore, the Solomon Islands, the Sovereign Base Areas of Akrotiri and Dhekelia in Cyprus, Sri Lanka, Swaziland, Tanzania, Trinidad and Tobago, the Turks and Caicos Islands, Tuvalu, Uganda, Zambia and Zimbabwe.

- The FJA 1933 applies to non-penal money judgments (ie, those not imposing penalties for a crime, exemplary damages or multiple damages (see question 24)) from specified jurisdictions that afford substantially similar reciprocal treatment of UK judgments in their courts. It also extends to some interim and arbitration awards. The FJA 1933 currently applies to judgments from Australia, Canada (except Quebec), India, Guernsey, Jersey, the Isle of Man, Israel, Pakistan, Suriname and Tonga.
- The CJJA 1982 incorporated the Brussels and Lugano Conventions and the Hague Convention 2005 (see question 1) into UK law.
- The common law relating to recognition and enforcement of judgments applies where the originating jurisdictions do not have applicable treaties in place with the United Kingdom, or in the absence of any applicable UK statute. Key examples include judgments of the courts of Brazil, China, Quebec, 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 creditor will need to bring an action in the relevant UK jurisdiction for a simple debt, and 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. 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, was obtained by fraud, or is contrary to public policy or the requirements of natural justice. The judgment must be for a definite sum and be final, and must not have been issued in respect of taxes, penalties or multiple damages awards. The leading case on enforcement of judgments at common law, and which summarises the key requirements, is *Adams v Cape Industries plc* [1990] Ch 433.

4 Hague Convention requirements

To the extent the enforcing country is a signatory of the Hague Convention on the 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; however, the United Kingdom has opted in to the decision of the EU Council to authorise the opening of negotiations in relation to it.

5 Limitation periods

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

The Recast Regulation, the Brussels I Regulation, and the Brussels and Lugano Convention systems for recognition and enforcement do not provide for limitation periods. Judgments must generally still be enforceable in the state in which they were given in order to be enforced in EU member states, including the United Kingdom (eg, see article 6(1)(a) of the EEO Regulation (EC) No. 805/2004 and article 31 of the Brussels Convention). In Case C-420/07 *Apostolides v Orams* [2009] ECR I-03571, [2011] 2 WLR 324, in a matter referred to it by the English Court of Appeal concerning the enforcement in England and Wales of a judgment of the courts of Northern Cyprus, the CJEU confirmed that enforceability of a judgment in the member state of origin constitutes a precondition for its enforcement in another member state. However, practical difficulties in enforcement in the state of origin will not be enough to preclude enforcement in another member state.

The AJA 1920 provides that an application should be made to register the judgment debt within 12 months of the judgment date, although the court has the discretion to allow applications after that time. The FJA 1933 provides that an application should be made to register the judgment debt within six years of the foreign judgment or, where the judgment has been subject to appeal, from the date of the last judgment in the foreign proceedings.

The CJJA 1982 provides that a judgment under the Hague Convention 2005 must be registered without delay. Under the Hague Convention 2005 a judgment must be enforceable in its jurisdiction of origin in order to be recognised and enforced under that convention.

Where a judgment is enforced at common law, the relevant limitation period is six years from the date on which the foreign judgment became enforceable.

6 Types of enforceable order

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

The Recast Regulation, the Brussels I Regulation and the Brussels and Lugano Conventions provide for enforcement of any judgment given by a court or tribunal of a contracting state, whatever it is called by the original court, specifically including any decree, order, decision or writ of execution, as well as the determination of costs or expenses by an officer of the court. The treaties specifically exclude orders given in the course of arbitration, but extend to non-money judgments or interim orders, including injunctions.

The AJA 1920 covers any judgment or order in civil proceedings where a sum of money is awarded, and includes arbitration awards so long as they have become enforceable in the original jurisdiction. The FJA 1933 is broader than the AJA 1920, covering judgments or orders made by a recognised court in civil proceedings or in criminal proceedings for a sum of money in respect of compensation or damages to an injured party, as long as it is not in respect of a tax, fine or penalty. The judgment must also finally and conclusively determine the rights and liabilities of the parties in the state where it was given (although it is no bar to enforcement that an appeal is pending if there is no stay restraining enforcement of the lower court decision in place) or require the judgment debtor to make an interim payment to the judgment creditor. The FJA 1933 also makes specific provision for the enforcement of arbitration awards on similar terms.

The Hague Convention 2005 applies to decisions on the merits, but does not apply to interim measures of protection. A decision on the merits includes a determination of costs or expenses by the court, provided that the determination relates to a decision on the merits that can be recognised or enforced under that Convention. The Hague Convention 2005 also applies to judicial settlements, provided that they have been concluded by or approved by a court specified in an exclusive jurisdiction agreement and they are enforceable in the same manner as a judgment in their state of origin.

At common law, any judgment must be for a definite sum, meaning that the damages or costs awarded must have been assessed and quantified or must be ascertainable by a simple arithmetical process. The judgment must be final and conclusive between the parties, although it may be subject to appeal. The result is that judgments for payment into court, injunctive relief or interim awards that might yet be rescinded or varied by the court will not be enforceable at common law. The Court of Appeal has issued further guidance on the principle of finality, holding 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'; *Joint Stock Company 'Aeroflot-Russian Airlines' v Berezovsky and Glushkov* [2012] EWHC 317 (Ch).

7 Competent courts

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

The High Court of England and Wales (Queen's Bench Division), Court of Session in Scotland and High Court of Northern Ireland are the relevant courts in which to bring an application for the recognition and enforcement of a foreign judgment in each respective part of the United Kingdom. Lower civil courts also have the ability to hear EEO Regulation or European Small Claims Procedure cases, as well as cases at common law for money sums below the threshold for High Court jurisdiction.

8 Separation of recognition and enforcement

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

Under the UK legislation implementing the Brussels I Regulation, the Brussels and Lugano Conventions and the Hague Convention 2005, and under the AJA 1920 and the FJA 1933, judgments must be registered in the United Kingdom before they are enforceable. That process provides the defendant with an opportunity to oppose or appeal registration on certain limited grounds (see question 9). However, once a judgment has been registered (a process which differs from jurisdiction to jurisdiction depending on the enforcement regime which applies), it will be enforced in the same way as a judgment obtained in the United Kingdom, as would a UK judgment obtained through enforcement through the common law route.

The European Small Claims and EOP Procedures, and the Recast Regulation, do not require registration prior to enforcement (as mentioned above), therefore removing the separation between recognition and enforcement in those contexts. However, there are limited grounds under which an appeal can be brought against recognition and enforcement of a judgment under the Recast Regulation. In the first instance such an appeal is brought as an interim application to the court in which enforcement has been sought (see question 9).

A foreign judgment may, in some circumstances, be relied upon to ground a right or defend a claim in UK proceedings without first being registered (eg, to show that the issue has already been decided between the parties elsewhere).

9 Defences

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

The default position is that 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. The Recast Regulation, the Brussels I Regulation and the Brussels and Lugano Conventions contain express prohibitions on the review of a judgment from a member state as to its substance. However, a defendant may object to the registration of a judgment under those instruments – or in the case of the Recast Regulation, appeal recognition or enforcement – on the grounds that the original court lacked jurisdiction to hear the matter (both of the Regulations contain detailed provisions in that regard) as follows:

- if it would be manifestly contrary to UK public policy;
- if the defendant was not served with proceedings in time to enable the preparation of a proper defence; or
- in the case of existing conflicting judgments in the United Kingdom or other member states.

The courts may not refuse or revoke a declaration of enforceability on any other grounds even if, for example, the judgment has already been satisfied (see Case C-139/10, *Prism Investments (Area of Freedom, Security and Justice)* [2011] ECR I-9511). There is no similar procedure for challenge of EOP and European Small Claims Procedures judgments, since no registration is needed prior to enforcement, except where the judgment conflicts with an existing determination between the same parties.

The Hague Convention 2005 contains an express prohibition of review of the merits of any judgment and a provision that the registering court is bound by the findings of fact of the original court (unless the judgment was given in default). The party against which enforcement is sought may not make submissions on an application for registration of a Hague Convention 2005 judgment, but can appeal any decision to register on the grounds that the judgment is not enforceable in its state of origin or on a number of additional specified grounds that are similar to those set out in the European regime. These are as follows:

- the relevant choice of court agreement is null or void;
- a party lacked capacity to enter into the relevant choice of court agreement under the relevant law;
- a party lacked capacity under the relevant law to enter into such choice of court agreement;
- proceedings were not notified to the defendant in a manner that would allow it to organise a defence (unless the defendant appeared and put its case in the original court without raising this) or the proceedings were served on the defendant in breach of fundamental principles of service in the United Kingdom;
- the judgment was obtained by procedural fraud;
- enforcement would be manifestly incompatible with public policy in the United Kingdom (including if it is incompatible with basic principles of procedural fairness); or
- the judgment is incompatible either with an earlier judgment given in the United Kingdom between the same parties or with an earlier judgment given in another Hague Convention state between the same parties and in the same cause of action.

At present there is no jurisprudence on these defences. However, it is probable that the UK court would be unlikely to take a broader approach to the public policy defence than it currently does under the common law. The fraud defence under the Hague Convention 2005 is narrower than the common law regime.

Under the AJA 1920, the court's power to register a judgment is discretionary; it 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. The FJA 1933 directs the court to register judgments that fulfil its requirements rather than creating a discretionary power. The AJA 1920 prohibits registration and the FJA 1933 makes provision for setting aside registration in circumstances where the original court lacked jurisdiction, the judgment was obtained by fraud, an appeal is pending or intended to be filed, or the judgment is contrary to UK public policy. In addition, the FJA 1933 requires that the judgment be enforceable in the jurisdiction of origin in order to be registered and adds additional grounds for challenge where the rights under the judgment are not vested in the person seeking enforcement or where a conflicting judgment exists.

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

If an appeal is pending in the courts of the jurisdiction of origin, under the Regulations, the Brussels and Lugano Conventions, the FJA 1933 or common law, courts in the United Kingdom have the discretion to grant a stay pending resolution of the appeal. Under the AJA 1920, a judgment may not be registered where an appeal is pending in the original jurisdiction or where the defendant can show that it is entitled and intends to appeal.

10 Injunctive relief

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

Courts in the United Kingdom have no power to prevent foreign courts from acting to issue or enforce judgments and will, in the vast majority of cases, enforce foreign judgments in the United Kingdom where the common law, statutory or treaty requirements are met. However, the United Kingdom courts do have the power to restrain persons subject to their jurisdiction from enforcing in the United Kingdom a judgment obtained in breach of contract or by fraud (*Ellerman Lines Ltd v Read* [1928] 2 KB 144). The power to restrain enforcement has been used rarely, probably because contractual choice of court and fraud in the foreign court are listed explicitly among the restrictions on or grounds for challenging registration of judgments in the various statutes and other instruments governing enforcement. Further, the court will also consider delay as a potential barrier to granting an anti-enforcement injunction if the party could have sought an anti-suit injunction at an earlier date (see *Ecobank Transnational Inc v Tanoh* [2015] EWHC 1874 (Comm)).

A foreign judgment obtained in contempt of an anti-suit injunction issued by a court in the United Kingdom is not be enforceable in the United Kingdom on public policy grounds.

11 Basic requirements for recognition

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

An overview of the basic requirements for recognition of judgments in the United Kingdom under the various sources of law, including issues of jurisdiction and subject matter, is set out in questions 1 and 3. Each of these factors (which are discussed in greater detail in questions 14–20) is cast as a precondition for registration in some of the relevant statutes and other instruments, while in others they provide grounds for challenge once registration has been granted.

12 Other factors

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

Under the AJA 1920, the FJA 1933 and common law, the courts retain discretion on whether to recognise foreign judgments and may consider other factors in the exercise of their discretion. The courts do not consider reciprocity when determining the enforceability of specific judgments, though it is a factor on which the Crown must satisfy itself when extending the coverage of the FJA 1933 to new jurisdictions by Order in Council. The public policy considerations applicable to enforcement are not a closed list (see question 19), and any assessment of the requirements of natural justice will also necessarily be based on an assessment of the circumstances in each case.

13 Procedural equivalence

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

As a general rule, the UK courts will not engage in an analysis of the procedural equivalence of the original court's processes when considering an action for recognition and enforcement of a particular judgment. This approach is justified in part on the basis that the originating court's processes will have been considered when the United Kingdom entered into the relevant treaty-based enforcement arrangements. The FJA 1933 is only extended on a country-by-country basis to selected jurisdictions and the AJA 1920's coverage is chiefly to former dominions and territories of the United Kingdom that have similar legal systems and processes.

Similarly, the Recast Regulation and Brussels I Regulation and the Brussels and Lugano Convention systems are predicated on the assumption that a basic minimum standard of adequate process will be achieved across all member states. In *Maronier v Larmer* [2003] QB 620, the English Court of Appeal held that the objectives of the Brussels Convention 1968 would be frustrated if the courts of an enforcing state could be required to carry out a detailed review of whether the procedures that resulted in the judgment complied with the fair hearing rights set out in article 6 of the European Convention on Human Rights (ECHR). Furthermore, the Court of Appeal held that there is a strong but rebuttable presumption that procedures in other signatory states are compliant with article 6 of the ECHR. In *Maronier*, negligence proceedings in the Netherlands had been instituted and served upon the defendant, whose lawyers filed a defence on his behalf. The proceedings were later stayed owing to the claimant's bankruptcy. Almost 12 years later the proceedings were revived, but the defendant had since moved to England and was given no notice of the reactivation. The Court held that the defendant had manifestly not received a fair trial under article 6 of the ECHR, such that it would be contrary to English public policy to allow enforcement of the Dutch judgment. In *Laserpoint Ltd v The Prime Minister of Malta and Others* [2016] EWHC 1820 (QB), the Court found that it would not be in keeping with article 6 of the ECHR to require ECHR issues arising from a considerable delay in prosecuting proceedings in Malta to be litigated before the Maltese court, because this would lead to considerable further delay. The applicability of article 6 of the ECHR to common law enforcement actions has also been confirmed by the Court of Appeal in *Merchant International Co Ltd v Natsionalna Aktsionerna Kompaniia Naftogaz* [2012] 1 WLR 3036. In addition, the Human Rights Act 1998 requires UK legislation to be read, insofar as is possible, in accordance with rights contained in the ECHR. Consequently, ECHR considerations may fail to be taken into account where any discretion is exercised under the AJA 1920 and the FJA 1933.

Under the CJJA 1982, a registration decision can be appealed if one of the grounds for refusal or recognition or enforcement in the Hague Convention 2005 is made out. The public policy exemption specifically includes situations where the proceedings leading to judgment in the foreign court were incompatible with fundamental principles of procedural fairness in the United Kingdom. It is possible that this could provide an opening for UK judges to consider article 6 of the ECHR issues on such appeals. Further, given that the Hague Convention 2005 is open to signature to all states, the argument that procedural elements have been considered as part of the negotiation process is not available, making such a review more likely as more states ratify that Convention.

14 Personal jurisdiction

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

The Recast Regulation and Brussels I Regulation set out in detail the basis of personal jurisdiction that focuses on the domicile of the individual as a general matter, providing a list of matters in respect of which a person domiciled in one member state may be sued in the courts of another member state. The Regulations provide for very limited review by the courts of the enforcing jurisdiction of the originating court's jurisdiction and the enforcing court will be bound by the findings of fact in the original judgment. Enforcement can be challenged on the basis that the parties agreed to an exclusive jurisdiction clause in favour of a different jurisdiction or that the original court assumed jurisdiction in violation of the specific provisions in the Regulation concerning insurance and consumer contracts. Article 25 of the Recast Regulation provides that parties, regardless of their domicile, can designate an EU member state court to be the exclusive jurisdiction where their disputes will be resolved. In contrast to article 23 of the Brussels I Regulation, article 25 of the Recast Regulation does not require one or more of the parties to be domiciled in an EU member state for them to be able to reach a jurisdictional agreement enforceable in application of the Regulation. This means that the parties to the exclusive jurisdiction clause could be domiciled in, for example, the US and Japan and designate the courts of England and Wales and France, and the courts of the country in question would have mandatory jurisdiction over any dispute, without the need to seek permission to serve papers outside the jurisdiction. In addition, the 'substantive validity' of the exclusive jurisdiction clause will be determined by the law of the member state to which the parties have allocated jurisdiction.

The Hague Convention 2005 requires only that an exclusive choice of court agreement be in place, either in writing or in some other means of communication that is available for subsequent reference. The Hague Convention 2005 provides that states may make certain declarations to protect personal jurisdiction over disputes originating within them.

They may declare that their courts will not recognise or enforce judgments given by the courts of another contracting state if the parties to the dispute were resident in the requested state and all other elements relating to the dispute took place in the requested state.

At common law, courts in the United Kingdom will consider whether the original court had personal jurisdiction in accordance with conflicts of law rules in the United Kingdom. These choice of law rules provide for narrower bases for jurisdiction over foreign defendants than some similar legal systems, such as that of the United States, where a defendant's engagement in various types of business or other activity in the forum can give rise to submission to the jurisdiction of that forum. Broadly, the UK's rules require that the defendant either was present in the territory of the foreign court (for corporations, this means their business was transacted at a fixed place of business within the jurisdiction) or submitted or agreed to submit to that jurisdiction (eg, by making a voluntary appearance other than for certain limited purposes such as challenging jurisdiction), or made a cross-claim in the matter or agreed to an exclusive choice of jurisdiction clause in a relevant contract. Courts in the United Kingdom will decline to recognise a judgment obtained in breach of an agreement to determine the dispute in another manner – for example, to submit to a third jurisdiction or to utilise alternative dispute resolution processes, such as arbitration. In *Vizcaya Partners Ltd v Picard and Another (Gibraltar)* [2016] UKPC 5, the Privy Council held that a jurisdiction agreement can be implied. Such an implied agreement does not have to be contractual in force; but if it is to be by way of an implied term in a contrac,t such a term must fall to be implied as either a matter of fact or law under the governing law of the contract. It would not be sufficient that under the governing law of the contract the courts of the relevant state would exercise jurisdiction under their own jurisdictional rules. While not binding on the UK courts, this is highly persuasive authority.

The AJA 1920 and the FJA 1933 requirements are similar to those at common law, with some minor differences: under the AJA 1920, business presence is established if the defendant was 'carrying on business' in that state, while the FJA 1933 requires that the 'principal place of business' of the defendant be in the original jurisdiction or that a transaction relevant to the proceedings have been transacted through a place of business within the jurisdiction.

15 Subject-matter jurisdiction

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

The subject-matter jurisdiction of the original court is not usually an issue unless there are specific international treaty provisions of relevance or insofar as the subject matter of the dispute impacts on the applicability of an agreement by the defendant to submit to that jurisdiction.

The Recast Regulation defines personal jurisdiction in some cases by reference to the subject matter of the dispute (eg, by providing a list of matters in respect of which a person domiciled in one member state may be sued in another). They also make specific provision for jurisdiction over disputes relating to topics such as insurance, consumer contracts and employment contracts (in relation to employment contracts – see *Shannon v Global Tunnelling Experts UK Ltd* [2015] EWHC 1267 (QB)). The Recast Regulation and the Brussels and Lugano Conventions also expressly exclude certain subject matter from their application. Consequently, a court in the United Kingdom may need to consider the subject-matter jurisdiction of the original court to determine whether the European enforcement regime applies and, if so, whether the judgment is enforceable under its terms.

The Hague Convention 2005 also specifies a number of subject matters to which it does not apply (see question 1).

16 Service

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

The Recast Regulation, the Brussels I Regulation and the Brussels and Lugano Conventions provide that a judgment is not to be recognised if the defendant was not served with the document that instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable it to arrange for a defence. However, the CJEU has suggested that a defendant may not rely on an irregularity of service alone if it was made aware of the proceedings and failed to take steps to enter a defence or challenge a judgment when it was possible to do so.

Under the Hague Convention 2005, an appeal against registration can be brought on the grounds that the document notifying the defendant of the proceedings or an equivalent document setting out the essential elements of the claim was not notified to the defendant with sufficient time to allow it to prepare a defence. This defence is not available if it is possible to contest service in the court of origin and the defendant did not do so. There is also a defence if the defendant was notified of proceedings in the United Kingdom in a manner that is incompatible with the principles of notice in the United Kingdom. It is likely that to make out the latter defence, as with the common law position set out below, a mere defect in service will not suffice. At common law, a lack of fair notice of the proceeding (with sufficient time for the preparation of a defence) will have a bearing on whether the requirements of natural justice have been satisfied. Whether at common law or under relevant United Kingdom statutes, a mere procedural irregularity in service will not be sufficient, so long as the defendant knew or ought to have known that it was required to arrange for a defence and given an opportunity to respond prior to the judgment being entered (*British Seafood Ltd v Kruk and another* [2008] EWHC 1528 (QB)). The requirements of article 6 of the ECHR will likely provide some minimum requirements for notice of proceedings in accordance with the case law discussed in question 13 (Case C-283/05, *ASML Netherlands BV v Semiconductor Industry Services GmbH* [2006] ECR I-12041). *Sloutsker v Romanova* [2015] EWHC 545 (QB) provides an example of what constitutes proper service in a foreign jurisdiction under the Hague Convention on Service of Documents. Even though a court in a foreign jurisdiction may certify that the documents have not been validly served (eg, owing to non-appearance of the defendant), an English court may still find that proceedings have been validly served if steps have been taken that would be sufficient to effect service.

17 Fairness of foreign jurisdiction

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

Forum non conveniens principles do not provide a basis for resisting the recognition or enforcement of judgments under any of the relevant regimes. Some of the factors used in a forum non conveniens analysis will be relevant to the question of whether the foreign court had personal or subject-matter jurisdiction and service or notice of the proceedings on the defendant will also be a relevant factor. However, the factual nexus between the original jurisdiction and the dispute or convenience to the parties or witnesses is of no relevance to the analysis concerning recognition and enforcement.

18 Vitiation by fraud

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

Under the Recast Regulation, the Brussels I Regulation and the Brussels and Lugano Conventions, judgments will not be recognised where they are contrary to UK public policy, but fraud alone will not be enough to trigger this restriction if there are relevant procedures for investigating the allegation of fraud in the original jurisdiction and adequate local remedies. Courts in the United Kingdom take the view that the courts of the original jurisdiction are generally better placed to consider and deal with such issues (*Interdesco SA v Nullifire Ltd* [1992] 1 Lloyd's Rep 180).

The CJJA 1982 provides that one of the grounds of appeal against a decision to register a Hague Convention 2005 judgment is that it was obtained by fraud in matters of procedure.

A judgment obtained by fraud (whether fraud by the original court or the claimant) will not be recognised or enforced in the United Kingdom under the common law, the AJA 1920 or the FJA 1933. Courts in the United Kingdom will decline to treat a foreign judgment as final where it can be shown that it was obtained by fraud, even if the defendant failed to raise issues relating to fraud that were known to it during the course of the original proceedings (*Owens Bank Ltd v Bracco and*

others [1992] 2 AC 443). It does not matter if the fraud was raised and considered by the original court, unless this was done in the context of a second and separate action not also tainted by fraud, in which case the Court of Appeal has held that it would be an abuse of process or the defendant would be estopped from pleading the fraud in resisting enforcement (*House of Spring Gardens Ltd and others v Waite and others* [1991] 1 QB 241). In *Midtown Acquisitions LP v Essar Global Fund Ltd* [2017] EWHC 519 (Comm), the High Court confirmed that a high standard must be reached to resist the enforcement of a foreign judgment in the English courts on the grounds of fraud, the court, approving the view of Lord Wilberforce in *The Ampthill Peerage* [1977] AC 547 at p571: 'only fraud in a strict legal sense will do. There must be conscious and deliberate dishonesty, and the declaration must be obtained by it.'

19 Public policy

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

Under the Brussels I Regulation, the Recast Regulation, the Brussels and Lugano Conventions, the FJA 1933, the Hague Convention 2005 and common law, UK courts will not enforce a foreign judgment where it is contrary to UK public policy. In the case of the AJA 1920, the question is whether or not the underlying cause of action that is the subject of the judgment would have been entertained by courts in the United Kingdom for reasons of public policy. Although the list is not exhaustive and the case law provides that conceptions of public policy should evolve with the times, there is precedent for public policy considerations precluding the enforcement of judgments:

- for taxes, penalties or multiple damages (see questions 3, 24 and 25 and *SA Consortium General Textiles v Sun & Sand Agencies Ltd* [1978] QB 279);
- obtained in breach of article 6 of the ECHR (see question 13) or otherwise in breach of fundamental human rights;
- obtained by fraud (see question 18), although it has been held that the court is not precluded from investigating allegations of fraud by reason of potential embarrassment to diplomatic relations;
- (for non-EU judgments) obtained in breach of an anti-suit injunction or alternative dispute resolution clause (see question 22); or
- which are irreconcilable with existing judgments between the same parties on the same issues in the United Kingdom.

By contrast, under the EEO Regulation, the EOP and European Small Claims Procedures, only the existence of an irreconcilable UK judgment provides a ground for challenging enforcement.

20 Conflicting decisions

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

Each of the various regimes for enforcement of judgments in the United Kingdom provides grounds for challenging recognition on the basis that there exists a conflicting enforceable decision as to the same causes of action between the same parties in the United Kingdom or another jurisdiction. The EEO Regulation, and the European Small Claims and EOP Procedures additionally require that the irreconcilability was not and could not have been raised as an objection during the proceedings where the judgment was given.

Article 31(2) of the Recast Regulation provides that member state courts that are not the seat of an exclusive jurisdiction clause 'shall stay the proceedings until such time as the court seized on the basis of the agreement declares that it has no jurisdiction under the agreement'. Where there is no valid jurisdiction agreement in place and multiple courts have exclusive jurisdiction under the Recast Regulation, any court other than the court first seized must decline jurisdiction in favour of that court.

The Brussels I provision related to lis pendens gave rise to controversy, as litigants occasionally issued proceedings in procedurally slow jurisdictions to delay unfavourable litigation outcomes in other member states, even when the courts of other member states were designated as the seat for resolution of disputes in a relevant forum selection clause (this is often referred to as an 'Italian torpedo' action). This was because article 27(1) of the Brussels I Regulation provided: 'Where proceedings involving the same cause of action and between the same parties are brought in the courts of different member states, any court other than the court first seized shall of its own motion stay its proceedings until such time as the jurisdiction of the court first seized is established.' Article 28(1) of the Brussels I Regulation provides that where the actions are related and pending in separate member states, any court other than the court first seized may stay its proceedings. The UK Supreme Court considered these provisions and narrowly delineated the circumstances in which actions will be considered to have the 'same cause of action' as provided for in article 27(1) of the Brussels I Regulation – see *In the matter of 'The Alexandros T'* [2013] UKSC 70. The Court held that the 'essential question is whether [the two sets] of claims are mirror images of one another, and thus legally irreconcilable.'

21 Enforcement against third parties

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

A foreign judgment is treated as if it creates a contract debt between the parties and is only enforceable against the parties to which it is addressed. In the case of corporate defendants, there are limited circumstances in which principles of agency or alter ego might be applied such that another person might be liable for the debts of the corporate defendant. The threshold is very high, in that it is necessary to show that an individual set up the corporate entity to avoid existing legal obligations such that its separate legal personality is rendered a sham or facade. In the case of a group of companies, it is necessary to show that there was a sufficiently high degree of control and influence among those entities so that they should be treated as forming a single economic unit, and that the original court also has jurisdiction over the company against which the claimant is seeking to enforce judgment (*Adams v Cape Industries plc* [1990] Ch 433).

22 Alternative dispute resolution

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

The Recast Regulation, the Brussels I Regulation, and the Brussels and Lugano Conventions do not apply to arbitral awards, with the result that the enforcement of such awards is dealt with under common law, the AJA 1920 or the FJA 1933. The Regulations and the Conventions acknowledge that jurisdiction of the courts of member states can be established by prior agreement between the parties, but are silent as to the effect of an agreement to refer matters to alternative dispute resolution.

The general rule is that courts in the United Kingdom will not enforce awards obtained in breach of a contractual obligation to resort to a different forum for the resolution of disputes. Under section 32(1) of the CJJA 1982, a foreign judgment may not be recognised where it was obtained in breach of a valid choice of court or arbitration clause, unless the defendant submitted to the foreign court's jurisdiction.

The courts in the United Kingdom will, in certain circumstances, grant an anti-suit injunction restraining a party from seeking a decision in another forum where a contract provides for a court or arbitral tribunal in the United Kingdom to have jurisdiction, and foreign judgments obtained in contempt of such an order will not be enforceable in the United Kingdom on the grounds of public policy. However, the CJEU has ruled that an English or Welsh court cannot issue an anti-suit injunction against a party that has issued proceedings in the courts of another EU member state, in order to protect an agreement containing a London arbitration clause (Case C-185/07, *Allianz SpA v West Tankers Inc* [2009] ECR I-00663, [2009] AC 1138). The *West Tankers* decision generated significant controversy. The recent case of *Nori Holdings Ltd v Bank Otkritie Financial Corporation* [2018] EWHC 1343 (Comm), however, upheld the rule as confirmed in *West Tankers*, and removed any doubt as to whether Recital 12 of the Recast Regulation has any impact on whether an English or Welsh court can issue an anti-suit injunction against a party who had issued proceedings in the courts of another EU member state.

Update and trends

The impact of Brexit

The United Kingdom will formally leave the European Union on 29 March 2019.

On 19 June 2018, EU and UK negotiators published a joint statement on the progress of negotiations on the draft withdrawal agreement. The joint statement confirms that the current provisions on recognition and enforcement of EU judgments in the United Kingdom (and vice versa) will govern judgments before the end of the transition period (31 December 2020). It is silent as to what the position will be for judgments rendered after this date or for cases where a jurisdiction agreement was entered into before the end of the transition period, but proceedings were commenced after this date. Currently, at that stage, retained EU law will theoretically include the Recast Regulation, the EEO Regulation, the Small Claims Procedure and the EOP Procedure. However, in the absence of any specific agreement between the United Kingdom and the other EU member states prior to Brexit, the reciprocity of these regimes would be lost because EU member states would no longer be required to treat judgments of the UK courts as those of a member state.

Subject to the transition arrangement, the Lugano Convention and the Hague Convention 2005 will not continue to bind the United Kingdom post Brexit ,as it entered into these conventions as a consequence of EU membership and is not an individual party. The UK government has indicated that it does intend to reach a bespoke agreement with the European Union and is looking for an agreement with the European Union that is broader than the Lugano Convention.

The United Kingdom will also have the option to ratify the Hague Convention 2005 (of which the European Union is a member on behalf of all member states) on its own behalf, which would mean that EU judgments would remain readily enforceable in the United Kingdom where there was an exclusive jurisdiction clause. This is not dependent on agreement from the European Union because the Hague Convention 2005 is open for signature by all states.

The United Kingdom is an individual signatory to the Brussels Convention 1968 and acceded to this convention when it joined the European Union. It has been suggested by some commentators that the rules for the recognition and enforcement of judgments from EU member states that are also parties to the Brussels Convention 1968 (Austria, Belgium, Denmark, France, Finland, Germany, Greece, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain and Sweden) would default back to the Brussels Convention 1968, although it may be expected that this issue will attract further litigation in the UK courts.

The United Kingdom also maintains a number of pre-Brussels Convention 1968 treaties with certain EU and European Free Trade Association member states, which were incorporated into English law under the FJA 1933. While it is arguable that judgments from these states should be enforceable under the FJA 1933, this is likely to be the subject of litigation. The relevant states are Austria, Belgium, France, Germany, Italy, the Netherlands and Norway. Therefore, the safest assumption to make is that the common law rules, being the least advantageous, will apply.

For the avoidance of doubt, in the absence of specific agreement or transitional measures, judgments from Cyprus, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Malta, Poland, Slovakia and Slovenia would be enforced under the common law rules (see question 3).

Arbitration awards are enforceable under the AJA 1920, the FJA 1933 and at common law under the same conditions as outlined in question 6, in accordance with the incorporation of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) into law in England, Wales and Northern Ireland by the Arbitration Act 1996, and in Scotland by the Arbitration (Scotland) Act 2010. However, in a 2014 decision, the High Court refused enforcement of a New York Convention award under the principles of issue estoppel where a prior Austrian judgment had refused enforcement of the award – see *Diag Human Se v Czech Republic* [2014] EWHC 1639 (Comm).

Directive 2008/52/EC on mediation in civil and commercial matters also provides procedures to promote and facilitate access to alternative dispute resolution procedures, and contains provisions to enable enforcement of those agreements in specified circumstances. The Civil Procedure Rules in England and Wales (and equivalents in Scotland and Northern Ireland) contain provisions implementing the Directive.

23 Favourably treated jurisdictions

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

The scheme of enforcement regimes applicable in the United Kingdom formalises any favourable treatment afforded to judgments from particular states. The EU and EEA scheme, the Hague Convention 2005, the AJA 1920 and the FJA 1933 each apply only to specified nations (see questions 1 and 3), whose judgments are thereby more readily enforceable, through the procedures set out in the relevant instruments, than those of other jurisdictions. European Union measures are predicated on the assumption of common minimum procedural safeguards and progressive harmonisation of laws. The extension of application of the FJA 1933 to new jurisdictions depends on the Crown satisfying itself that reciprocal treatment will be afforded in such jurisdictions to judgments of courts in the United Kingdom, and the FJA 1933 makes provision for withdrawal of its application if less favourable treatment is given.

24 Alteration of awards

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

Courts in the United Kingdom can sever parts of a foreign judgment that are contrary to public policy (question 19) or otherwise ineligible under the relevant enforcement rules and recognise the balance. Where part of an award is in respect of taxes or penalties, that part may be severed. Where an award is for multiple damages, the sum in excess of the compensatory amount will be unenforceable. Article 48 of the Brussels I Regulation provides for severance as a general matter; where the original judgment cannot be registered in respect of all matters dealt with in a judgment, the courts shall give the declaration limited to only those eligible parts of the judgment. The Hague Convention 2005 also explicitly provides for the severability of parts of judgments.

25 Currency, interest, costs

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

An application for registration of a foreign judgment in the United Kingdom must include a statement as to the amount, usually made in the currency of the foreign judgment, and an indication as to the interest accrued to that date with details of the entitlement to interest (potentially also continuing after that date). In most cases, irrespective of which enforcement regime is applicable, the full amount due will be calculated at the date of execution and the amount converted at that time (including interest accrued to that date).

The court fees and costs incurred by the claimant in enforcement proceedings may be assessed and awarded against the defendant by a court in the United Kingdom. As to costs in the original proceeding, see question 24.

An award of costs or attorneys' fees will generally be enforced by the courts in the United Kingdom. In question 6 we note that the Recast Regulation, the Brussels I Regulation, the Brussels and Lugano Conventions and the Hague Convention 2005 explicitly extend to costs awards and such awards are enforceable at common law so long as the sum has been formally quantified.

Under the EEO Regulation, judgment sums may be certified by the original court in any currency as appropriate to the judgment. Where a person applies to a court in the United Kingdom to enforce an order under the EEO Regulation expressed other than in pounds sterling, the application must contain a certificate of the sterling equivalent of the judgment sum at the close of business of the nearest date preceding the application. An application under the EOP Procedure must state the amount of the claim, including any interest, contractual penalties or

costs where applicable. In Case C-215/11, *Szyrocka v SiGer Technologie GmbH* [2012] All ER (D) 172 (Dec), the CJEU found that national courts remain free to determine the amount of court fees applicable under the EOP Procedure (although as set out in response to question 1, such fees must not be greater than those for enforcement of a non-contested monetary judgment), and that the claimant can claim all interest accrued up to the date of payment of the claim.

26 Security

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

The Brussels I Regulation and the Brussels and Lugano Conventions provide for registration of judgments by the courts without notice to the defendant, which then has an opportunity to appeal within two months of service. They provide for a right of appeal against registration of the judgment in England, Wales and Northern Ireland to their respective High Courts and in Scotland to the Court of Session.

Further appeals may only be on a point of law to the Court of Appeal in England, Wales and Northern Ireland, or to the Inner House of the Court of Session in Scotland. The AJA 1920 and the FJA 1933 also provide for registration without notice to the defendant, which then has an opportunity to apply to set aside the declaration. The CJJA 1982 provides for applications without notice for registration of Hague Convention 2005 judgments. Appeals against a decision to register can be made to the High Court in England and Wales or Northern Ireland (or the Court of Session in Scotland), with a further right of appeal to the Court of Appeal in England, Wales or Northern Ireland (or the Inner House of the Court of Session in Scotland) on a point of law. Under the EEO Regulation and the European Small Claims Procedure, challenges to enforcement are allowed only on the limited grounds that the judgment is irreconcilable with an existing judgment. Appeals are dealt with under the rules of the enforcing court.

Courts in the United Kingdom have the power to make an order requiring security for costs from any appellant if:

- it is resident outside the jurisdiction (but not in a Brussels or Lugano Convention or Hague Convention 2005 contracting state);
- there is reason to believe that it will be unable to pay the respondent's costs if ordered to do so; and
- there is evidence of attempts to evade the consequences of the litigation. Where the defendant has lodged an appeal of the underlying judgment in the foreign court, the enforcing court in the United Kingdom may make protective orders or make enforcement conditional on the provision of security by the enforcing party or grant a stay of enforcement pending the appeal.

27 Enforcement process

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

When a foreign judgment has been recognised in the United Kingdom (whether by registration under the European system, the AJA 1920 or the FJA 1933, or a fresh judgment under common law, or requires no registration or recognition by virtue of the Recast Regulation, the EEO Regulation, or the EOP or European Small Claims Procedures, the original judgment can be enforced in the same way as a UK judgment. In each of England and Wales, Scotland and Northern Ireland, the creditor may apply to the court for the imposition of one or more of a range of enforcement methods, including orders compelling the debtor to provide information about its affairs to enable enforcement, seizure of assets, garnishment of bank accounts or diversion of funds owed by third parties to the debtor, attachment of wages or other earnings or charges over land and other assets including securities – see, for example, *Cruz City 1 Mauritius Holdings v Unitech Ltd* [2014] EWHC 3704 (Comm), which considered whether a freezing order could be issued against a non-party outside the United Kingdom in aid of enforcement.

28 Pitfalls

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

Care is needed in identifying the applicable enforcement regime in the United Kingdom, based on the jurisdiction of the original judgment, and the timing and nature of the award, to ensure that the most up-to-date requirements are met by any application. The EU/EEA scheme continues to evolve with the Recast Regulation fully in force and applicable to any case initiated on or after 10 January 2015. Judgments obtained in default pose a particular area of risk as they may raise factual issues concerning the original court's jurisdiction, proper service of proceedings on the defendant or the time provided to the defendant to mount a defence. *Reeve v Plummer* [2014] EWHC 362 (QB) clarifies the position when a defendant challenges a default judgment in its country of origin. In this case the judge set aside the registration of a judgment on the basis that the Belgian courts had not yet reviewed the default judgment being challenged by the defendant.

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