



# Enforcement of Foreign Judgments

in 29 jurisdictions worldwide

# 2014

Consulting editors: Mark Moedritzer and Kay C Whittaker



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# United Kingdom

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## 1 Treaties

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

The law pertaining to recognition and enforcement of judgments in the UK can be found in a number of different sources. The application of the law depends primarily on the jurisdiction whose courts have issued the judgment ('original' judgment or court), but also the date of issue and subject matter of the proceedings. Further details on non-treaty sources of law can be found in question 3. The UK 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 from jurisdiction to jurisdiction. This chapter focuses primarily on the law and procedure in England and Wales.

### Judgments of European Union member states

The UK is a party to a treaty-based scheme for the enforcement of judgments as a member of the European Union and the European Economic Area. Council Regulation (EC) 44/2001 (the Regulation) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters provides for the speedy and simplified enforcement of judgments obtained in the courts of one member state in all other member states. The Regulation applies to orders of courts and tribunals of any nature, save that it specifically excludes revenue, customs and administrative law matters. It also does not apply to orders pertaining to matrimonial relationships, wills, succession, bankruptcy, social security or arbitration.

For the Regulation to apply, proceedings must have been instituted after the Regulation came into force in the member state giving judgment.

Judgments covered by the Regulation first need to be registered in the part of the UK (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). A defendant may object on grounds that the original court lacked jurisdiction to hear the matter (the Regulation contains detailed provisions in that regard), if it would be contrary to UK public policy, if the defendant was not served with proceedings in time to enable them to prepare a proper defence, or in the case of existing conflicting judgments in the UK or other member states.

In so far as matters within the scope of the Regulation are concerned, it supersedes the Brussels Convention on Jurisdiction and Enforcement of Judgments in Civil and Commercial Matters of 1968. This is also true for the following member states: Austria, Belgium, Bulgaria, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Greek Cyprus, Hungary, Italy, Latvia,

Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Republic of Ireland, Romania, Slovakia, Slovenia, Spain and Sweden. It also supersedes a number of bilateral enforcement treaties with member states to which the UK was a party. The Brussels Convention 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 (in force since 2010 and replacing the previous Convention of the same name) applies to enforcement of judgments given in Iceland, Norway and Switzerland, on similar terms to the 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 they 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 the debtor has admitted to liability, failed to object or failure to appear, it can be certified under the European Enforcement Order Regulation (No. 805/2004) (EEO Regulation) in the state where it is given. It can then be enforced with little possibility of the defendant opposing its recognition, 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 are met prior to certification.

As an alternative, where a civil or commercial claim does not exceed €2,000, excluding interest, expenses and disbursements, cross-border claims may be brought under the simplified procedure laid down in Regulation (EC) 861/2007 (Small Claims Procedure). A third avenue exists in the European Order for Payment Procedure (EOP Procedure) under Regulation (EC) No. 1896/2006 (as amended by 936/2012). The EOP Procedure provides standardised forms and procedures for pursuing uncontested money debts, without imposing any maximum value. Judgments given under the 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) ECR Page 00000, (2012), All ER (D) 172 (Dec), the Court of Justice of the European Union (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. It also found that the claimant is able to claim all interest accrued up to the date of payment of the claim. All of the EEO Regulation, Small Claims and EOP Procedures lay down subject-matter and tribunal exceptions similar but with slight differences to those found in the Regulation. The three procedures apply among all member states with the exception of Denmark.

### Subject-matter treaties

There are a range of subject-matter treaties and conventions which provide for recognition and enforcement of specific types of judgments or awards. These are incorporated into law in the UK by

legislation, and the provisions relating to recognition are generally modelled on the Foreign Judgments (Reciprocal Enforcement) Act 1933 (FJA, see question 3); see for example 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. The three jurisdictions have separate court systems with their own procedural rules.

## 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 UK derives from three key sources. Throughout this chapter we will refer to each in turn, as there are some noteworthy differences in the substantive and procedural requirements for enforcement under each:

- *European Union treaty law*: (see question 1) pertaining to the judgments of other EU member states;
- *UK statutes*: applying to judgments from specified jurisdictions which have historical or constitutional relationships with the UK:
  - The Administration of Justice Act 1920 (AJA) 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, it currently applies to Anguilla, Antigua and Barbuda, Bahamas, Barbados, Belize, Bermuda, Botswana, British Indian Ocean Territory, British Virgin Islands, Cayman Islands, Christmas Island, Cocos (Keeling) Islands, Republic of Cyprus, Dominica, Falkland Islands, Fiji, The Gambia, Ghana, Grenada, Guyana, Jamaica, Kenya, Kiribati, Lesotho, Malawi, Malaysia, Malta, Mauritius, Montserrat, New Zealand, Nigeria, Territory of Norfolk Island, Papua New Guinea, St Christopher and Nevis, St Helena, St Lucia, St Vincent and the Grenadines, Seychelles, Sierra Leone, Singapore, Solomon Islands, Sovereign base of Akrotiri and Dhekelia in Cyprus, Sri Lanka, Swaziland, Tanzania, Trinidad and Tobago, Turks and Caicos Islands, Tuvalu, Uganda, Zambia, and Zimbabwe.
  - The FJA 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 which afford substantially similar reciprocal treatment of UK judgments in their courts. The FJA also extends to some interim and arbitration awards. The FJA currently applies to judgments from Australia, Canada (except Quebec), India, Guernsey, Jersey, Isle of Man, Israel, Pakistan, Suriname, and Tonga.
  - The Civil Jurisdiction and Judgments Act 1982, which incorporates the Brussels and Lugano Conventions (see question 1) into law in the UK.
- *The common law*: relating to recognition and enforcement of judgments applies to judgments where the original jurisdictions do not have applicable treaties in place with the UK, 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 UK, 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 UK. Courts in the UK will not give judgment on such a debt where the original court lacked jurisdiction according to the relevant UK conflict of laws rules, was obtained by fraud, or is contrary to public policy or the requirements of natural justice. The judgment must be for a definite sum, 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 Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters, will the court require strict compliance with its provisions before recognising a foreign judgment?

The UK is not a signatory to the Hague Convention on Recognition and Enforcement of Foreign Judgments in Civil and Commercial Matters. The European Union has signed (but not ratified) the Hague Convention on Choice of Court Agreements (which is not yet in force as a general matter). The latter Convention provides for the recognition and enforcement of judgments by the courts of contracting states, where the judgment state is also a contracting party and its courts are nominated by the parties in an exclusive choice of court agreement.

## 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 Regulation, and the Brussels and Lugano Conventions system 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 UK (see for example article 6(1)(a) of the EEO Regulation 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 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. Practical difficulties in enforcement in the state of origin will not be enough to preclude enforcement in another member state.

The AJA provides that an application should be made to register the judgment debt within 12 months of the judgment date, though the court has the discretion to allow applications after that time. The FJA 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 those proceedings.

At common law, the relevant foreign judgment is treated as if it creates a contract debt, and the limitation period for contractual claims applies, being six years from the date of the foreign judgment.

## 6 Types of enforceable order

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

The 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 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 is broader than the AJA, 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, namely not being 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 (though 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 also makes specific provision for the enforcement of arbitration awards on similar terms.

At common law, any judgment must be for a definite sum, meaning 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, though 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.

## 7 Competent courts

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

The High Court of England and Wales, Court of Session in Scotland and High Court of Northern Ireland are the relevant courts in which to bring an application for the enforcement of a foreign judgment in each respective part of the UK. Lower civil courts also have the ability to hear EEO Regulation or 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 Regulation, the Brussels and Lugano Conventions, and under the AJA and FJA, judgments must be registered in the UK 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 UK, as would a UK judgment obtained through enforcement via the common law route.

The Small Claims and EOP Procedures, and the updated Regulation, due to take effect in January 2015 (see 'Update and Trends'), do not require registration prior to enforcement, thus removing the separation between recognition and enforcement in

those contexts. 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, for example 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 UK will give effect to a validly obtained foreign judgment and will not enquire into errors of fact or law in the original decision. The 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 on the grounds that the original court lacked jurisdiction to hear the matter (the Regulation contains detailed provisions in that regard), if it would be 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 UK or other member states. The courts may not refuse or revoke a declaration of enforceability on any other grounds, even for example if the judgment has already been satisfied (see Case C-139/10, *Prism Investments (Area of Freedom, Security and Justice)* (2011) ECR I-0000). There is no similar procedure for challenge of EOP and 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.

Under the AJA, 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 UK. This provides some scope for merits-based review. The FJA directs the court to register judgments that fulfil its requirements rather than creating a discretionary power. The AJA prohibits registration, and the FJA 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 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 UK will not give judgment in debt claims based on a judgment of a foreign court which lacked jurisdiction according to relevant UK conflict of laws rules, was obtained by fraud, or is contrary to public policy in the UK or the requirements of natural justice. Under the Civil Jurisdiction and Judgments Act 1982, section 32(1), 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 enough.

If an appeal is pending in the courts of the jurisdiction of origin, under the Regulation, the Brussels and Lugano Conventions, the FJA or common law, courts in the UK have the discretion to grant a stay pending resolution of the appeal. Under the AJA, a judgment may not be registered where an appeal is pending in the original jurisdiction or where the defendant can show that he 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 UK 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 UK where the common law, statutory or treaty requirements are met. However, these courts do have the power to restrain persons subject to their jurisdiction from enforcing in the UK 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 or 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. A foreign judgment obtained in contempt of an anti-suit injunction issued by a court in the UK would not be enforceable in the UK 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 UK under the various sources of law, including issues of jurisdiction and subject matter, are set out in questions 1 and 3. Each of these factors (which are discussed in greater detail in questions 14–20) are cast as preconditions 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, FJA 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 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. The FJA is only extended on a country-by-country basis and the AJA's coverage is chiefly to former dominions and territories of the UK which have similar legal systems and processes.

The Regulation, and the Brussels and Lugano Convention systems are predicated on a basic minimum standard 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 would be frustrated if the courts of an enforcing state could be required to carry out a detailed review of whether the procedures that had resulted in the judgment had complied with the fair hearing rights in article 6 of the European Convention on Human Rights (ECHR). Further, they held that there is a strong but rebuttable

presumption that procedures in other signatory states are compliant with article 6, 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 due 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, such that it would be contrary to English public policy to allow enforcement of the Dutch judgment. The applicability of article 6, ECHR, to common law enforcement actions has also recently 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, in so far 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 and FJA.

**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 Regulation sets out in detail the basis of personal jurisdiction, which focuses on the domicile of the individual as a general matter, providing a list of matters in respect of a person domiciled in one member state may be sued in the courts of another member state. It provides for very limited review by the courts of the jurisdiction being asked to recognise the judgment, on prescribed grounds and 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.

At common law, courts in the UK will consider whether the original court had personal jurisdiction in accordance with conflicts of law rules in the UK. Broadly, this requires that the defendant either was present in the territory of the foreign court – for corporations, this means their business has been transacted at a fixed place of business within the jurisdiction; or submitted or agreed to submit to that jurisdiction, for example by making a voluntary appearance other than for certain specified purposes such as challenging jurisdiction, or made a cross-claim in the matter, or pursuant to an agreed exclusive choice of jurisdiction clause in a relevant contract. Courts in the UK 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.

The AJA and FJA requirements are similar to those at common law, with some minor differences: under the AJA, business presence is established if the defendant was 'carrying on business' in that state, while the FJA requires that the 'principal place of business' of the defendant was in the original jurisdiction, or a transaction relevant to the proceedings to 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 Regulation defines personal jurisdiction in some cases by reference to the subject matter of the dispute, for example by providing a list of matters in respect of which a person domiciled in one member state may be sued in another. It also makes specific provision for jurisdiction over disputes relating to topics such as insurance, consumer contracts and employment contracts. The Regulation, and the Brussels and Lugano Conventions also expressly exclude certain subject matter from their application. Consequently, a court in the UK 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.

## 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 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 which instituted the proceedings or with an equivalent document in sufficient time and in such a way as to enable him to arrange for his defence. The Regulation expressly excludes from that circumstances in which the defendant failed to commence proceedings to challenge the judgment when it was possible for him to do so.

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 UK statutes, a mere procedural irregularity in service will not be sufficient, so long as the defendant knew or ought to have known that they were required to arrange for a defence and have been 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.

## 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 are of no relevance to enforcement.

## 18 Vitiating by fraud

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

Under the Regulation, 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 UK 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).

A judgment obtained by fraud (whether fraud by the original court or the claimant) will not be recognised or enforced in the UK under the common law, the AJA or the FJA. Courts in the UK 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 that the fraud has been raised and considered by the original court, unless this has been done in the context of second and separate action not also tainted by fraud, in which case the Court of Appeal has held 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).

## 19 Public policy

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

Under the Regulation, the Brussels and Lugano Conventions, the FJA and common law the UK courts will not enforce a foreign judgment where it is contrary to UK public policy. In the case of the AJA, 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 UK for reasons of public policy. While 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, 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) and 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 UK.

By contrast, under the EEO Regulation, EOP and 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 UK provides restrictions on or grounds for challenging recognition on the basis that there exists a conflicting enforceable decision as to the same cause(s) of action between the same parties in the UK or another jurisdiction. The EEO Regulation, Small Claims and EOP Procedures additionally require that the irreconcilability was not and could not be raised as an objection during the proceedings where the judgment was given.

**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 whom it is addressed. In the case of corporate defendants, there are limited circumstances in which the 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 their separate legal personality is rendered a sham or facade. In the case of a group of companies, it would be 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 whom 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 Regulation, 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 or the FJA. The Regulation 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 UK will not enforce awards obtained in breach of a contractual obligation to resort to a different forum for the resolution of disputes. Under the Civil Jurisdiction and Judgments Act 1982, section 32(1), 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 UK will in certain circumstances grant an anti-suit injunction restraining a party from pursuing determination in another forum where the contract provides for a court or arbitral tribunal in the UK to have jurisdiction, and foreign judgments obtained in contempt of such an order will not be enforceable in the UK on the grounds of public policy. However, the CJEU has ruled that an English court cannot issue an anti-suit injunction against a party who had 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). While that position will be altered when the New Regulation comes into force in 2015 (see 'Update and Trends'), it presently remains good law.

Arbitration awards are enforceable under the AJA, FJA and at common law under the same conditions as outlined at question 6, in accordance with the incorporation of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (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.

The European Mediation Directive (EC) 2008/52 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 UK formalises any favourable treatment afforded to judgments from particular states. The EU/EEA scheme, AJA and FJA each apply only to specified nations (questions 1 and 3), whose judgments are thereby more readily enforceable, via 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 to new jurisdictions depends on the Crown satisfying itself that reciprocal treatment to will be afforded in such jurisdictions to judgments of courts in the UK, and the FJA 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 UK are able to 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. Or where an award is for multiple damages, the sum in excess of the compensatory amount will be unenforceable. Article 48 of the 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.

**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 UK 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's fees and costs incurred by the claimant in enforcement proceedings may be assessed and awarded against the defendant by a court in the UK. 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 UK. In question 6 we note that the Regulation, Brussels and Lugano Conventions explicitly extend to costs awards, and they 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 UK 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

**Update and trends**

Council Regulation (EC) 1215/2012 (New Regulation) will replace the Regulation from 10 January 2015. A key change is that a judgment given in a member state will be enforceable in the courts of another member state without first being registered in the member state where it is to be enforced, although the defendant may still make an application to object to recognition on similar grounds to those which apply today. The New Regulation also includes provisions which allow courts to take into consideration proceedings pending before the courts of non-EU states when deciding whether a stay of enforcement is necessary for the proper administration of justice. Courts should assess all the circumstances, which might include:

*...connections between the facts of the case and the parties and the third State concerned, the stage to which the proceedings in the third State have progressed by the time proceedings are initiated in the court of the Member State and whether or not the court of the third State can be expected to give a judgment within a reasonable time.*

The Regulation currently provides that a court that is 'second seised' in proceedings involving the same cause of action and between the same parties shall of its own motion stay its proceedings pending resolution in the court first seised. This applies even where there is a choice of court agreement in favour of a different court. This provision led to the deployment in certain types of cases, particularly antitrust damages claims, of a device whereby a claim for declaratory relief would be launched in the courts of one member state, so as

to avoid proceedings being pursued in the courts of another member state whose rules on, for example, disclosure or damages, were perceived as less favourable to the claimant, or simply also to cause delay, particularly if the court first seised has a reputation for delay in determining preliminary matters such as jurisdiction. Such claims are sometimes referred to as 'torpedo' claims. To enhance the effectiveness of exclusive choice of court agreements and to avoid abusive litigation tactics, the New Regulation allows the chosen court chosen in those agreements to decide on jurisdiction, regardless of whether it is first or second seised. Any other court has to stay proceedings until the chosen court has determined jurisdiction.

The New Regulation also seeks to address the impact of the CJEU decision in Case C-185/07, *Allianz SpA v West Tankers Inc* (2009) ECR I-00663, (2009) AC 1138, which held that an English court could not issue an anti-suit injunction against a party who had issued proceedings in the courts of another EU state, in order to protect an agreement containing a London arbitration clause. The UK government's consultation paper on whether to opt into the reforms in the New Regulation noted that the effect of *West Tankers* was to give 'carte blanche to any party wishing to escape an arbitration clause to select its preferred court in order to decide this issue'. The New Regulation reinforces the existing arbitration exclusion and gives precedence to the New York Convention. Where there is an applicable arbitration agreement, the courts will have the right to refer the parties to arbitration, stay or dismiss the proceedings, or to examine whether the arbitration agreement is null and void, inoperative or incapable of being performed, in accordance with their national law.

found that national courts remain free to determine the amount of court fees applicable under the EOP Procedure, and that the claimant is able to 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 Regulation, the Brussels and Lugano Conventions provide for registration of judgments by the courts without notice to the defendant, who 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 House of Lords in

England, Wales and Northern Ireland, or to the Inner House of the Court of Session in Scotland. The AJA and the FJA also provide for registration without notice to the defendant, who then has an opportunity to apply to set aside the declaration. Under the EEO Regulation and 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 UK have the power to make an order requiring security for costs from any appellant if they are (i) resident outside the jurisdiction (but not in a Brussels or Lugano Convention contracting state), (ii) there is reason to believe they will be unable to pay the respondent's costs if ordered to do so, and (iii) 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 UK may make protective orders, or may make enforcement conditional on the provision of security by the enforcing party, or grant a stay of enforcement pending the appeal.

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**27 Enforcement process**

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

Where a foreign judgment has been recognised in the UK (whether by registration under the European system, AJA or FJA, or a fresh judgment under common law, or requires no registration or recognition by virtue of the EEO Regulation, EOP or 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.

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**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 UK, based on the jurisdiction of the original judgment, timing and nature of the award, and to ensure that the most up to date requirements are met by any application. The EU/EEA scheme continues to evolve, with consultations ongoing as to the practical application and future of the Regulation, and New Regulation due to come into force on 10 January 2015 (see 'Update and Trends').

Judgments obtained in default pose a particular area of risk, as they may raise factual issues concerning whether the original court had jurisdiction, proper service of proceedings on the defendant or the time provided to the defendant to mount a defence.



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