

ENFORCEMENT OF FOREIGN JUDGMENTS IN ENGLAND AND WALES

Introduction

When making the decision to take enforcement steps in relation to a foreign judgment in England and Wales it is important in the first instance to consider the status of the country where the judgment was originally obtained. The applicable law and procedure for the enforcement of a foreign judgment in England and Wales will depend upon the country. Countries can be categorised in one of three ways:-

1. Countries which are signatories to the Brussels Regulation 2001 and the Lugano Convention 1988; or
2. Countries with which the UK has bilateral conventions which are given effect by the Administration of Justice Act, 1920 and the Foreign Judgments (Reciprocal Enforcement) Act, 1933; or
3. Countries with which there are no bilateral conventions with the UK and hence there are reciprocal rights of enforcement of foreign judgments e.g. United States and China.

There are differences in procedures depending on which category the country where the judgment was obtained sits, and consequently the ease with which a foreign judgment can be enforced in England and Wales will therefore depend upon which of the above categories apply.

The Brussels Regulation

In essence, this Regulation applies to all EU countries and there are straight forward procedures whereby a judgment obtained in one EU country will be recognised and enforced in England and Wales. There is certainly no need, and the Court will not, reassess the merits of the case.

Whilst the merits of the case will not be reassessed it is possible that foreign judgments enforced in accordance with the Regulation may not be recognised, for example, if the judgment is contrary to English law or the judgment is irreconcilable with an earlier judgment given in England and Wales involving the same causes of action and between the same parties and it is therefore important for the legal advisor to look at the background to the judgement, and consider it's subject matter.

The Administration of Justice Act, 1920 and the Foreign Judgments (Reciprocal Enforcement) Act, 1933

Essentially the 1920 and 1933 Acts cover, in the main, former and current Commonwealth countries. The 1933 Act includes Crown States such as the Isle of Man and Jersey.

Under both Acts, the judgment which you are seeking to enforce in England and Wales must be final, for a specific sum, not in respect of fines or taxes, not obtained by fraud or in breach of a jurisdiction or arbitration agreement. If registered under the

Acts, the judgment will take effect as if it were an England and Wales judgment in the first instance.

It is important to ensure that the judgment debtor has:

- been resident in the country where the foreign court is located
- it's principal place of business within the country where the foreign court is located
- agreed to submit to the court's jurisdiction
- voluntarily appeared in the proceedings

There are time limits stipulated under the Acts within which an application to register must be made. Under the 1920 Act an application to register a foreign judgment as an England and Wales judgment must be made within 12 months of the date of the judgment (although it is possible in certain circumstances to obtain an extension of time). An application to register under the 1933 Act must be made within 6 years of the date of the judgment. It is possible, in relation to applications under both the 1920 and 1933 Acts, for the judgment debtor to appeal against the registration.

Common law

Essentially, the common law provisions will apply in relation to judgements obtained in countries with which there are no bi-lateral conventions with the UK and therefore no reciprocal rights of enforcement of foreign judgments. In this scenario, a claimant will bring fresh legal proceedings in England and Wales with the foreign judgment itself being the cause of action.

Unless the judgment debtor alleges fraud, there will be no re-examination of the merits of the case at court and it would therefore be anticipated that the claimant, in the majority of cases, will obtain summary judgment very early on in the proceedings. In essence, summary judgment is a written procedural device whereby the court is asked to enter judgment without the need for a trial based on the fact that there is no legal defence to the claim, or that there is no other compelling reason that the matter should proceed to trial. Unless the judgment debtor has a credible challenge to the validity of the original judgment, summary judgment applications are normally successful and are largely a formality. The main challenge that a judgment debtor could have to the validity of the original judgment would be, for instance:

- an assertion that the foreign court did not have jurisdiction to try the case
- the judgment is not for a liquidated sum of money. It should be noted that a foreign judgment can only be enforced in England and Wales if it is finally quantified
- the judgment is not final and conclusive, however, there is a general presumption that a foreign judgment is conclusive

In relation to any potential challenge mounted by the judgment debtor it is the judgment debtor himself that has the burden of proof of showing that one of the challenges is credible and present.

European Enforcement Order

There is one other route for the enforcement of judgments obtained in *uncontested* claims within the European Union. If a judgment debtor has either agreed to the debt or not appeared in court when the claim is heard it is possible for the judgment creditor to certify the judgment as a European Enforcement Order and once a judgment has been certified as an EEO by the court of origin it is then treated as though it was a judgment of the court in England and Wales (and indeed any other jurisdiction within the EU).

The EEO procedure was designed to provide a simpler and quicker enforcement mechanism than the existing procedure under the Brussels Regulations. The EEO procedure is designed to remove the need for any form of registration procedure in another member state, or judicial approval in that second member state.

Countries covered by the Brussels Regulation and the Lugano Convention

Austria	Belgium	Cyprus
Czech Republic	Denmark	Estonia
Finland	France	Germany
Greece	Hungary	Iceland
Ireland	Italy	Latvia
Lichtenstein	Lithuania	Luxembourg
Malta	Netherlands	Norway
Poland	Portugal	Slovenia
Slovakia	Spain	Sweden
Switzerland	United Kingdom	

Countries covered for reciprocal enforcement under the foreign judgments (Reciprocal Enforcement Act 1933)

Australia	Canada	Republic of India
Island of Guernsey	Isle of Man	Israel
Bailiwick of Jersey	Pakistan	Surinam & Tonga

Countries currently covered for reciprocal enforcement under the Administration of Justice Act 1920

Anguilla	Antigua & Barbuda	Bahamas
Barbados	Belize	Bermuda
Botswana	British Indian Ocean Territory	BVI
Cayman Islands	Christmas Island	Cocas Islands
Republic of Cyprus	Dominica	Falkland Islands
Fiji	Gibraltar	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 & Nevis	St. Helena
St. Lucia	St. Vincent & the Grenadines	Seychelles
Sierra Leone	Singapore	Solomon Islands
Sri Lanka	Swaziland	Tanzania

Tasmania
Islands
Zambia

Trinidad & Tobago
Tuvalu
Zimbabwe

Turks & Caicos
Uganda

All other countries not appearing in the lists above – the common law procedure would apply.

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This Guide is intended as an overview and broad outline of the matters covered in it. Its purpose is to inform and raise awareness. We are happy to offer specific legal advice on particular circumstances.

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